

MINUTES

OF THE

SACRAMENTO CITY COUNCIL
REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO
HOUSING AUTHORITY OF THE CITY OF SACRAMENTO
ECONOMIC DEVELOPMENT COMMISSION
PARKING AUTHORITY OF THE CITY OF SACRAMENTO
SACRAMENTO CITY FINANCING AUTHORITY

REGULAR MEETING

SEPTEMBER 23, 1997

CALL TO ORDER

The Regular Meeting of the Sacramento City Council was called to order by Mayor Serna at 5:12 p.m. on the above date in the City Council Chamber located at 915 I Street.

ROLL CALL

Present: Council members Cohn, Fargo, Hammond, Kerth, Steinberg, Waters, Yee and Mayor Serna

Absent: Council member Pannell

PLEDGE OF ALLEGIANCE was led by Mayor Serna

9.0 SPECIAL PRESENTATIONS/GENERAL COMMUNICATIONS

None

10.0 PUBLIC HEARINGS

None

11.0 STAFF REPORTS

- 11.1 Matters relating to excavation and trench cuts: (PPFD 9-16-97, item 1.8) (D-All)
- A. Amendment to the Sacramento City Code, Title 38 [Streets and Sidewalks] Section 38.03, relating to excavation requirements
 - B. Establish the trench cut cost recovery fees
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NOTE: Councilman Cohn announced that he had a conflict with this issue due to his employment with the Sacramento Municipal Utility District (SMUD), and left the Chamber.

Mike Kashiwagi, Public Works Director, stated that staff's recommendation for a trench cut cost recovery fee and ordinance was based on the basic premise that excavations cause damage to the pavement adjacent to the trench. In addition, utility companies' coordination efforts were very lacking.

Mr. Kashiwagi said the fee would be established at \$3.50/linear foot, and would be placed in a separate fund for repair of streets that had been trenched. He added that the proposed ordinance did, in effect, reward a utility company by refunding to that company fees paid during

a calendar year if it demonstrated a specified high level of coordination.

According to Mr. Kashiwagi, a significant number of revisions had been made to address various utilities' concerns; however, City and Utility representatives were unable to reach agreement upon a few significant issues, including the fundamental issue of whether excavations weaken or damage the pavement adjacent to the trench.

Mr. Kashiwagi presented a background of how the fee was established, using comparisons with the cities of Santa Ana, Los Angeles, San Francisco and Sacramento County. He stressed that the fee was very conservative and did not cover the entire cost to mitigate the problem.

Mr. Kashiwagi introduced Alan Curtis from CHEC Consultants, Inc., the firm that performed testing and analysis on utility trench cuts in City streets.

Mr. Curtis discussed the technical aspects of the study, and showed overheads depicting deflection variations in longitudinal trenches. He said damage always occurs when a street is cut. His study quantified the damage and determined the amount of overlay needed. He stressed that the \$3.50/lf charge was not a cost recovery and was extremely conservative.

Mr. Kashiwagi introduced next Dr. Moser Shahine who is an expert in pavement analysis. Dr. Shahine discussed pavement deterioration/restoration studies completed by various public agencies, including Cincinnati; Burlington, Vermont; Phoenix, Arizona; and the City and County of San Francisco. In addition, Dr. Shahine said he reviewed the study completed by CHEC Consultants, Inc. and concluded that CHEC's assumptions were very conservative. According to Dr. Shahine, the fee did not even account for damage done to vehicles traveling on trenched roads. He suggested that the ordinance should improve coordination among the utilities, which would be a win-win situation for everyone involved.

Mr. Kashiwagi stated that over \$16 million would be spent to maintain the streets of Sacramento. He felt utility companies should share in that expense, and that the ordinance was fair, conservative, and rewarded good coordination.

Public Testimony

Dick Walker, from the College Glen Neighborhood Association, spoke in support of the ordinance.

Tom Burruss said he felt the ordinance would require good coordination between the City and the utility companies.

Alan Todres, a consulting engineer, argued that staff's report had many misleading conclusions. He said many street cuts performed perfectly well, while others were very bad. The difference lies in the restoration. If restored properly, performance should be good.

Councilman Yee asked if good restoration precluded water from entering the repair.

Mr. Todres replied that was correct.

Councilman Steinberg inquired about the type of evaluation needed to properly evaluate damage done to a street by pavement cuts, and how this would be administered.

Mr. Todres replied measurements had to be taken prior to the cut, at the time of the cut, and after the cut.

Mayor Serna confirmed with Mr. Todres that he was proposing that trench cuts did not cause damage to surrounding areas.

Mr. Todres responded that he had never seen conclusive evidence to confirm that surrounding areas were affected.

Mr. Kashiwagi argued that Dr. Shahine used "state of the art" devices and received the same results as CHEC.

Councilman Waters stated that he has driven the streets of the City for over 30 years and in his opinion, there were many badly restored cuts.

Councilman Yee stated that he felt damage should be paid for by the company who caused the damage. He added that City staff had taken a conservative approach to the fees and had built in incentives for the various utilities to coordinate better.

Greg Scott, Director of Street Maintenance for the city of Los Angeles, spoke in favor of the proposed ordinance.

Mr. Waters asked Mr. Scott if he felt the statistics presented this evening about street damage in Los Angeles were accurate; Mr. Scott replied yes, they were.

Isaac Ver Hage, a local businessman, stated that when the City streets were torn up, businesses suffered a loss of revenue. He said being informed of proposed street cuts would greatly help businesses.

Steve Kroes, a member of the California Taxpayers' Association, spoke in opposition to the fee, saying it was like a tax and its cost would be passed on to the consumer. He added that it might even be in violation of Proposition 218.

Mayor Serna asked the City Attorney if there was a conflict with Proposition 218.

Joe Robinson, Deputy City Attorney, responded that if this were a property-related fee it might be in conflict with Proposition 218; but, that was not the case. He added that the CHEC study clearly demonstrated an adequate nexus to mitigate the impact.

Mr. Yee said the City should not be paying for the cost of damage done by the Utility companies.

Councilman Kerth asked Mr. Kroes if his association had voted on this issue; Mr. Kroes replied that they had not taken a formal position.

Mayor Serna asked Mr. Kroes if his organization considered the damage done to the City's streets.

Mr. Kroes replied they would not be discussing that issue, as they were only interested in the proposed fee.

Mayor Serna argued that the Council was concerned about restoring the City's streets to good condition, and that the fee was what would force the utilities to comply.

Mayor Serna asked Mr. Kashiwagi if this fee applied to the City's departments; Mr. Kashiwagi confirmed that it applied to everyone, equally.

Mr. Steinberg asked about the feasibility of a variable fee related to the degree of damage done.

Mr. Robinson replied that a variable fee would be impossible to administer.

Bob Woods, Regional Vice President for AT&T, argued that his company had to deliver technology to the consumer, and added that this was a camouflage for a franchise fee.

Michael Olsen, AT&T legal department, said that his company wanted to pay the City full cost recovery, but did not want to pay a fee upfront.

Mayor Serna stated that the City would be charging for actual costs; they were not speculative. He said impact fees were based on this type of analysis all the time.

Mr. Olsen responded by saying his company was willing to post a bond.

Mayor Serna asked staff if this could be done.

Mr. Kashiwagi replied that it *could* be done, but it was irrelevant, because the studies clearly showed that when a trench is cut in the street, it weakens the area. The CHEC study shows what *has* happened, not what we *think* will happen.

Mr. Olsen argued that coordination was the answer, not a fee. He said his company's operation was customer-driven.

Mr. Robinson replied that the fee, or lack of it, was directly related to the amount of coordination by the utility companies. He said the City could not deny the utility companies' requests to trench cut, but needed to structure incentives to make them coordinate better.

Mr. Olsen offered that the permit could state that the Utility company was required to repair the street for life.

Mr. Steinberg stated that some of the utilities made good repairs, some did not. Therefore the burden to prove who was at fault was the City's.

Mr. Olsen said the Public Works Director still had the discretion to say: "fix it".

Mr. Kerth said he found it interesting that the City had been working on this ordinance for 11 years, yet AT&T had never appeared before the Council on this issue.

Mr. Olsen said AT&T makes every attempt to properly fix their trenches; however, if the Public Works Director required them to fix any previous work, they would do it. He suggested charging a higher permit fee in order for the City to be able to hire additional employees to inspect streets, monitor bonds, etc.

Mr. Kerth asked Mr. Olsen if his company would be willing to pay for additional studies on this subject, and to make up for the difference, retroactively.

Mr. Olsen said his company would agree to that. He said he would also be willing to speak with Pacific Bell and GTE on this point.

Mr. Steinberg asked the City Attorney if it were a violation of Proposition 218 for the City to increase the permit fee as Mr. Olsen proposed.

Mr. Robinson replied that if the City tripled its efforts, it could increase its fees, but then it would not have sufficient money for street repairs.

Mr. Kashiwagi suggested that Mr. Olsen had gotten the discussion off track, and emphasized again that all studies concurred that once a street was trenched, the street was damaged.

Mr. Yee and Ms. Fargo stated that if two utility companies coordinated together on a permit application, they would agree to one fee being charged.

Mr. Kashiwagi replied that he would agree with that because the City would be charging for the trench, not the number of utilities in the trench.

Mr. Waters recommended that utilities call each other to share fees and the costs of laying conduits.

Rosanna Herber, representing SMUD, said they supported the idea of better coordination and restoration standards. The area of contention was the level of the fee.

Patricia Murray-Childree, representing AT&T, stated that they were also against a cost recovery fee. She recommended that the Council model their ordinance after the Oxnard and San Bernadino ordinances which require utilities to guarantee their work.

Paul Sieracki, from SPRINT, said his company opposed the ordinance and added that the City shouldn't be taxing the very companies that had brought Sacramento to the cutting edge.

Lori Orten-Stone, from Pacific Bell, said they were willing to pay full-cost recovery and to coordinate with the City as much as possible.

Councilwoman Hammond said the life of a street pavement is typically 26 years. She asked Ms. Stone if Pacific Bell was willing to guarantee their work for that amount of time.

Ms. Stone replied yes they would be willing, in lieu of the proposed street-cut fee.

Mayor Serna asked staff if Pacific Bell's proposal would conform with the ordinance.

Joe Robinson, Deputy City Attorney, replied what isn't addressed is the damage and weakness that occurs adjacent to the trench.

Mr. Kashiwagi said that the utility companies were objecting to the fee because they said it anticipates that damage might happen. Staff purports that damage occurs when the street is trenched. He added that what the utility companies were proposing could not be fulfilled. Also, if more than one utility was in the trench at the same time, who would be held responsible for the repair.

Bob Lee, consultant, showed the Council an enlarged photograph of J Street, fronting the Convention Center. The street had numerous repaired trenches, none of which looked good. He asked the question: which trench is good, which is bad, and who is responsible.

Mr. Yee stated that the tracking of responsibility would be impossible.

Elizabeth Huber, from AT&T, spoke against the fee.

Robert Richett, representing PG&E, argued that factual findings must be established before the City could charge a fee.

Tom Bright argued that the fee violated Proposition 218's intent.

Mr. Kashiwagi replied that the money collected would be placed in a special fund.

Ed Cox, from SABA, spoke in favor of the ordinance.

George Alvarez, Santa Ana's City Engineer and member of the Statewide Coalition, stated that all studies confirmed trench cuts damaged

streets. He said the incentive for coordination was the fee. He urged Council to adopt the ordinance.

Mr. Yee asked if the Coalition would support the City of Sacramento if it were sued by the utility companies.

Mr. Alvarez replied that was a possibility.

Vitaly Troyan, from San Francisco's department of Public Works, stated that 74 % of San Francisco's streets have terrible trench cut repairs.

Councilwoman Hammond said that the picture submitted by Mr. Lee convinced her that this ordinance was necessary.

Mr. Yee also stated that he would support the adoption of the ordinance, and would agree to additional studies only after its adoption.

Councilwoman Fargo said that additional studies would be helpful. She asked Mr. Kashiwagi if the placement of utilities would occur differently in newly developed areas.

Mr. Kashiwagi responded, yes, they would be done first.

Ms. Fargo confirmed that the City's Utility department would be held to the same standard.

Mr. Kashiwagi replied everyone would be treated equally.

Councilman Steinberg stated that the City's first obligation was to keep the streets safe. The only viable alternative to the fee would be a case-by-case review, which would be too complicated to administer.

Councilman Kerth said it was a simple issue with him. Cuts to streets cause damage, and those who damage should pay.

Mayor Serna stated that he thought there might be a possibility of a compromise; but, it was extremely important for the City to regain control over the condition of its streets. He told Mr. Alvarez that the City of Sacramento would be looking to the Coalition for support in this matter.

A motion was made by Councilman Kerth, seconded by Councilman Waters to adopt Ordinance 97-060 and Resolution 97-537 related to excavation and trench cuts of City streets. The motion carried with a 7-0 roll call vote, with Councilman Cohn abstaining and Councilman Pannell being absent.

ORDINANCE 97-060

AN ORDINANCE AMENDING CHAPTER 38.03 OF THE SACRAMENTO CITY CODE, RELATING TO EXCAVATION REQUIREMENTS AND PAYMENT OF TRENCH CUT COST RECOVERY FEES

RESOLUTION 97-537

A RESOLUTION ESTABLISHING TRENCH CUT COST RECOVERY FEES

12.0 SHRA

None

13.0 CITIZENS ADDRESSING COUNCIL AGENCY OR AUTHORITIES BY PERSONAL APPEARANCE OR TELEPHONICALLY ON MATTERS NOT ON THE AGENDA

None

14.0 COUNCIL IDEAS AND QUESTIONS

- 14.1 Councilwoman Hammond announced that on Saturday, September 27th at Sierra II Community Center, the Sierra Neighborhood Association would be having a wine tasting and silent auction from 4-7 p.m.

Ms. Hammond also announced that there would be a senior appreciation dinner at Colonial Park, 19th Avenue and 53rd Street, from 4-7 p.m. on Sunday, September 28th.

- 14.2 Councilwoman Fargo had several events to announce in her district this week-end. She invited everyone to participate in the 4th annual "Run for the Library" in Natomas on Saturday morning, September 27th.

Ms. Fargo also invited everyone to attend an event in Crocker Park on Saturday and Sunday, the 27th and 28th of September, sponsored by the Sacramento Reads Program, where the public could purchase books and meet various authors.

Ms. Fargo announced that the Sacramento Old City Association would be presenting its 24th annual home tour featuring historic homes in Boulevard Park on Sunday, September 28th.

Ms. Fargo also announced that the Neighborhood Services department would be sponsoring a "Celebrate Parks" event beginning at 11:00 a.m. on the steps of the Capitol, on Saturday, September 27th.

- 14.3 Councilman Cohn announced that G and H Streets would be converted to two-way traffic this week-end.

- 14.4 Councilman Steinberg announced that the first annual Colonial Village Neighborhood day would take place on Saturday, September 27th.

15.0 ANNOUNCEMENTS

None

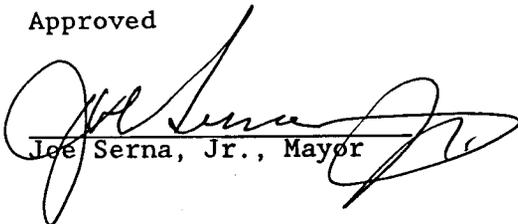
ADJOURNMENT

There being no further business to come before the Council, the meeting was adjourned in memory of Florence A. Kirrene at 9:12 p.m.

Submitted


Valerie A. Burrowes, City Clerk

Approved


Joe Serna, Jr., Mayor