

**CERES CITY COUNCIL
REGULAR MEETING MINUTES**

Monday, October 23, 2006

The regular meeting was called to order at 7:00 p.m. by Mayor Cannella with the following in attendance.

PRESENT: Vice Mayor Phipps, Council Members Lane, Ochoa, Vierra and Mayor Cannella.

INVOCATION by Pastor Randy Clark, First Southern Baptist Church.

PLEDGE OF ALLEGIANCE to the flag led by Mayor Cannella.

PRESENTATIONS

A. Report by the Ceres Youth Commission

Orhi Amino, representing the Ceres Youth Commission, gave a brief report on the first Youth Commission meeting of the 2006/07 school year and some of their upcoming events.

APPROVAL OF THE MINUTES of the Study Session minutes of September 18, 2006.

MOTION: Approve the minutes of the September 18, 2006 Study Session as recommended by staff.

MOVED: Moved by Phipps/seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

CITIZEN COMMUNICATIONS to the Council on matters not included on the agenda (ten minutes).

Ms. Thompson, Modesto resident, stated that she felt that the bingo halls in Ceres should be paying 2% of their profit to the City to help pay for police and fire services.

Len Shepherd, Fowler Road, commented on the Fire Fighter's Memorial in Sacramento which he recently visited and urged everyone to support our Police and Fire personnel.

Alex Oregel, Wild Oak Drive, thanked Council for their efforts to date and urged Council to continue working to come up with a solution to mitigate the noise generated by Clawsen Trucking.

Francisco Vasquez, Winter Oak Lane, also addressed Council regarding his concerns with the noises generated by Claussen Trucking stating that it was difficult for his family to sleep.

Staff responded that we have been and will continue to work with Clawsen Trucking and exploring various options. Staff will release a report to Council prior to the November 13, 2006 Council meeting and Mr. Oregel will be provided a copy of that report.

APPROVAL OF AGENDA AS POSTED (OR AMENDED) AND CERTIFICATION OF POSTING

MOTION: Approve the agenda as posted (or amended) and certification of posting as recommended by staff.

MOVED: Moved by Phipps/seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

CONFLICT OF INTEREST DECLARATION - None

CONSENT CALENDAR

1. **General Correspondence – Information Only**
 - a. 1st Quarter Budget Report.
 - b. Quarterly Grant Report.
 - c. Parks, Recreation & Facilities Monthly Report for August, 2006.
2. Register of Audited Demands dated October 5 – 12, 2006.
3. Council approval of the recommended revision to Stanislaus-Ceres Redevelopment Commission By-laws.
4. **Resolution No. 2006-192** authorizing destruction of certain grant records.
5. **Resolution No. 2006-193** accepting 2006 OTS Sobriety Checkpoint Grant and amending the 2006/07 Budget to appropriate those funds.
6. **Resolution No. 2006-194** accepting the 2006 Sidewalk Project as complete, approve the Balancing Contract Change Order, authorizing the filing of the Notice of Completion on payment to the contractor.
7. **Resolution No. 2006-195** awarding the Sanitary Sewer Management Plan Audit and Development Plan and approving a budget amendment.
8. **Resolution No. 2006-196** rejecting the claim for damages by Marion Martinelli.

MOTION: Approve Consent Calendar Items No. 1 - 8 as recommended by staff.

MOVED: Moved by Lane /seconded by Phipps

VOTE: Motion passed unanimously. (5/0)

PUBLIC HEARING

9. Public Hearing on Intention to Annex Annexation Area No. 5 to City of Ceres, Community Facilities District No. 1 (Public Services).

Resolution No. _____ Calling a Special Election within City of Ceres Community Facilities District No. 1 (Public Services) – Annexation Area No. 5.

Resolution No. _____ Declaring Results of Special Election and Directing Recording of Amendment to Notice of Special Tax Lien.

Resolution No. _____ Annexing Area No. 5 to Community Facilities District No. 1 (Public Services) of the City of Ceres, and Authorizing the Levy of a Special Tax Within Annexation Area No. 5.

Ordinance No. _____ Levying Special Taxes Within the City of Ceres Community Facilities District No. 1 (Public Services) – Annexation Area No. 5.

Nancy Brown, Housing Coordinator, introduced the item stating that the Community Facilities District levies an annual fee per unit to be used to support police, fire and park maintenance operations. Since the completion of Annexation No. 4 to the Community Facilities District No. 1, 16 additional infill units have received their planning approvals, which have been conditioned to be annexed into Community Facilities District No. 1. In July, 2006, Council set the fee for infill residential development at \$214.55 per unit for CFD No. 1.

Ms. Brown further stated that the ballots were mailed to the effected property owners. All ballots had been received. The total number of ballots is two. Votes in favor of the annexation equal two, with no votes against the annexation. The steps for the proceedings as follows:

Step 1: A service report is to be approved by the Council setting forth the territory proposed for annexation, the public services to be provided therein and the cost of the services.

Step 2: A public hearing will be held to allow any interested person to voice his or her concerns or comments regarding the annexation of Annexation Area No. 5 to CFD No. 1.

Steps 3 - 5: The Resolutions are to be adopted in the order presented. Resolutions include Calling a Special Election, Declaring the Results of the Election and the Resolution of Annexation.

Step 6: An Ordinance is to be adopted by the Council levying the special tax.

The Public Hearing was opened at 7:33 p.m.

There being no one wishing to speak, the Public Hearing was closed at 7:34 p.m.

Mayor Cannella polled the Deputy City Clerk, Cindy Heidorn, regarding letters of protest.

Ms. Heidorn responded that no protest letters have been received.

MOTION: Approve **Resolution No. 2006-197** calling a Special Election within City of Ceres Community Facilities District No. 1 (Public Services) – Annexation Area No. 5. as recommended by staff.

MOVED: Moved by Phipps /seconded by Lane

VOTE: Motion passed unanimously. (5/0)

MOTION: Approve **Resolution No. 2006-198** declaring results of Special Election and directing recording of amendment to Notice of Special Tax Lien as recommended by staff.

MOVED: Moved by Phipps /seconded by Lane

VOTE: Motion passed unanimously. (5/0)

MOTION: Approve **Resolution No. 2006-199** annexing Area No. 5 to Community Facilities District No. 1 (Public Services) of the City of Ceres, and authorizing the levy of a Special Tax within Annexation Area No. 5 as recommended by staff.

MOVED: Moved by Phipps /seconded by Lane

VOTE: Motion passed unanimously. (5/0)

Mike Lyons, City Attorney, explained to Council that the Ordinance before them will go into effect immediately and the motion should be for first reading and adoption.

MOTION: Move to waive full reading and have the **Ordinance No. 2006-965** read by number and title only.

MOVED: Moved by Phipps/seconded by Vierra

VOTE: Motion passed unanimously. (5/0)

MOTION: Adopt **Ordinance No. 2006-965** Levying Special Taxes within the City of Ceres Community Facilities District No. 1 (Public Services) – Annexation Area No. 5 as recommended by staff.

MOVED: Moved by Phipps /seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

OLD BUSINESS

10. Council discussion and update on the Service/Mitchell Interchange Project.

Joe Hollstein, Public Works Manager, introduced the item stating that the design work on the project is approximately 30-60 days behind schedule however, a "spare time" buffer has been built into the project so the project, as a whole, is still on track.

Council expressed concerns that there was a delay so early in the project.

Chris Metzger, Nolte Engineering, provided Council with an engineering progress review. Mr. Metzger commented that some of the factors contributing to the delay are:

- Disparity between Caltrans and Nolte in the interpretation of the design plans.
- Geometric Complications are creating challenges.
- Caltrans has conflicting requirements.

Mr. Metzger stated that there is a design review meeting with Caltrans on October 25, 2006 to address these and other issues.

Wendy Johnson, Jones Stokes, gave an environmental progress review stating all environmental studies were on schedule.

Mayor Cannella asked if Nolte was waiting on any information from the City.

Mr. Metzger responded that they were not. Mr. Metzger also indicated that the most successful Caltrans projects he has been involved in are those in which the cities were actively involved.

Mayor Cannella requested that Mr. Metzger e-mail the City Manager with any issues he would like to have resolved at the director level. He further requested that Nolte report again at the January 22, 2007, City Council Meeting.

NEW BUSINESS

11. Ordinance No. 2006-_____ and Urgency Ordinance No. 2006-_____ amending Section 3.40.040E of the Ceres Municipal Code Relating to the Utility Users' Tax to Clarify Original Intent and Remove Obsolete References.

Mike Lyons, City Attorney introduced the item explaining that since 1992 the City has been imposing a utility users' tax on a wide variety of telephone communication services. The telephone user tax is imposed on all telephone calls irrespective of what technology is utilized to transmit the call and regardless of whether the charges are based on time, distance or any other basis.

For ease of administration and the convenience of the telephone communication service providers, the City's ordinance cross-referenced federal statutory definitions from and relied upon the Internal Revenue Service's (IRS) interpretation of the Federal Excise Tax (FET) for guidance on the scope and application of the City's utility user tax (UUT) on telephone communication services. The FET and the IRS' application thereof was consistent with the City's legislative intent at the time of adoption of the UUT ordinance, and continued to be consistent until recently.

Recent rulings by the IRS depart from the City's intent and historical practice with respect to application of the City's telephone users' tax. Therefore, several amendments are necessary to make it clear that the tax shall continue to be imposed in a manner that is consistent with the City's original legislative intent and the City's historical practice.

MOTION: Move to waive full reading and have the **Ordinance No. 2006-966** read by number and title only.

MOVED: Moved by Phipps/seconded by Vierra

VOTE: Motion passed unanimously. (5/0)

MOTION: Approve **Ordinance No. 2006-966** amending Section 3.40.040E of the Ceres Municipal Code Relating to the Utility Users' Tax to Clarify Original Intent and Remove Obsolete References.

MOVED: Moved by Phipps /seconded by Vierra

VOTE: Motion passed unanimously. (5/0)

MOTION: Move to waive full reading and have the **Urgency Ordinance No. 2006-967** read by number and title only.

MOVED: Moved by Phipps/seconded by Vierra

VOTE: Motion passed unanimously. (5/0)

MOTION: Adopt **Urgency Ordinance No. 2006-967** amending Section 3.40.040E of the Ceres Municipal Code Relating to the Utility Users' Tax to Clarify Original Intent and Remove Obsolete References.

MOVED: Moved by Phipps /seconded by Vierra

VOTE: Motion passed unanimously. (5/0)

Councilmembers and City Staff reported on various recent activities.

Councilmember Ochoa commented that the TRRP Commission reported a budget shortfall this year and they may be asking for additional funding of \$13,000 next year.

Council recommended that the antique piano in the Council Chambers be relocated to the Whitmore museum.

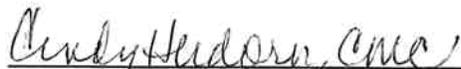
COUNCIL REQUESTS

There being no further business, Mayor Cannella adjourned the meeting at 8:35 p.m. to the next regular City Council meeting to be held on Monday, November 13, 2006 at 7:00 p.m. in the City Council Chambers, 2210 Magnolia St.



Anthony Cannella, Mayor

ATTEST:



Cindy Heidorn, CMC, Deputy City Clerk