

CITY COUNCIL MINUTES

December 10, 2007

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

ROLL CALL Council Members Lane, Ochoa, Vierra, Mayor Cannella

INVOCATION by Pastor Dave Broyles, Ceres Christian Church.

PLEDGE OF ALLEGIANCE to the flag led by Mayor Cannella.

PRESENTATIONS – None.

APPROVAL OF THE MINUTES of the regular meeting of November 13, 2007 and the City Council Study Sessions of November 8, and November 15, 2007.

MOTION: Approve the minutes of the regular meeting of November 13, 2007 and the City Council Study Sessions of November 8, and November 15, 2007

MOVED: Moved by Lane/seconded by Vierra

VOTE: **Motion passed unanimously (4/0)**

CITIZEN COMMUNICATIONS

Len Shepherd, resident, sent his condolences to the Phipps family, the City Council and staff on the loss of Vice Mayor Phipps. He further stated he was glad to see the so many people in attendance and hoped it would continue.

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

City Attorney, Mike Lyons, stated that staff is requesting to add an item to the agenda as Item 17a, **Resolution No. 2007-246** rejecting the claim of Kenya Mosley. There is a need to take immediate action on the item and the need arose after the posting of the regular agenda.

MOTION: Approve the addition of Resolution No. **2007-246** rejecting the claim of Kenya Mosley as Item 17a on the Consent Calendar

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed unanimously (4/0)**

MOTION: Approve the agenda as amended and certification of posting.

MOVED: Moved by Lane/seconded by Vierra

VOTE: **Motion passed unanimously (4/0)**

APPOINTMENTS TO BOARDS/COMMISSIONS – None.

CONFLICT OF INTEREST DECLARATION - none

CONSENT CALENDAR

1. General Correspondence – **Information Only**
 - a. Public Works Dept. monthly report for October, 2007.
 - b. Recreation Department monthly report for October, 2007.
2. Register of Audited Demands dated November 29 and November 30, 2007.
3. Cancellation of Second Regularly Scheduled Council Meeting in December, 2007.
4. **Resolution No. 2007-229** declaring certain City property within the City's possession as surplus or unclaimed; and ordering its sale, acquisition, or distribution for the common benefit of the City.
5. Waiver of second reading and adoption of **Ordinance No. 2007- 978** amending Title 9 of the Ceres Municipal Code to prohibit underage drinking and assess liability for those who knowingly host gatherings where minors consume alcohol. **Pulled for further discussion.**
6. Waiver of second reading and adoption of **Ordinance No. 2007- 979** amending Title 2 of the Ceres Municipal Code, Administration and Personnel, granting the City Manager authority to appoint the City Clerk and placing the position of City Clerk under the supervision and direction of the City Manager.
7. **Resolution No. 2007-230** authorizing the City Manager to execute agreements with the State Board of Equalization for implementation of a local transaction and use tax. **Pulled for further discussion.**
8. **Resolution No. 2007-231** approving a contract with Wood Rodgers to provide professional services relating to the preparation of a Specific Plan for the Ceres West Study Area and all associated documentation including Environmental, Engineering, Infrastructure Financing and Annexation. **Pulled for further discussion.**
9. **Resolution No. 2007-232** rejecting the claim of Daniel Pound.
10. **Resolution No. 2007-233** approving a contract with Wildan Group Inc., to provide professional services relating to a Traffic Study for a 31,128 square foot commercial project at 1771 Mitchell Road. Commercial Architecture, applicant.
11. **Resolution No. 2007-234** approving a contract with Willdan Group Inc., to provide professional services relating to a Traffic Study for a 125,000 square foot expansion to the Winco Distribution Center located at 4400 Crows Landing Road. Epstein, applicant.
12. **Resolution No. 2007- 235** accepting the 2006 Neighborhood Park Project as complete, approving the Balancing Contract Change Order, Authorizing the filing of the Notice of Completion and retention release to the Contractor.
13. Approving the additional compensation to Harris & Associates for completion of Fire Station No. 4 construction management. **Pulled for further discussion.**

- 14. Approving the additional work and compensation to C3 Design Alliance for completion of Fire Station No. 4 construction. **Pulled for further discussion.**
- 15. **Resolution No. 2007-236** approving an agreement with Caltrans for sharing operation and maintenance costs of State Highway Electrical Facilities.
- 16. Council Approval of **Resolutions No. 2007-237** through **2007-244** approving various traffic safety recommendations approved by the Traffic Safety and Control Committee. **Pulled for further discussion.**
- 17. **Resolution No. 2007-245** approving modifications to the duties of the Traffic Safety and Control Committee.
- 17a. **Resolution No. 2007-246** rejecting the claim of Kenya Mosley. **Pulled for further discussion.**

MOTION: Approve items 1a, 1b, 2-4, 6, 9-12, 15 and 17 as recommended by staff.
MOVED: Moved by Vierra/seconded by Lane
VOTE: **Motion passed unanimously (4/0)**

CONSIDERATION OF ITEM(S) REMOVED FROM THE CONSENT CALENDAR

- 5. Waiver of second reading and adoption of **Ordinance No. 2007- 978** amending Title 9 of the Ceres Municipal Code to prohibit underage drinking and assess liability for those who knowingly host gatherings where minors consume alcohol.

Steve Breckenridge, resident spoke in support of the Social Host Ordinance. He requested that Council consider striking the first paragraph prior to adoption.

Nicki Amaias, resident, spoke in opposition of the ordinance.

MOTION: Waive second reading and adopt **Ordinance No. 2007- 978** amending Title 9 of the Ceres Municipal Code to prohibit underage drinking and assess liability for those who knowingly host gatherings where minors consume alcohol.
MOVED: Moved by Ochoa/seconded by Lane
VOTE: **Motion passed unanimously (4/0)**

- 7. **Resolution No. 2007-230** authorizing the City Manager to execute agreements with the State Board of Equalization for implementation of a local transaction and use tax.

Mike Kline, resident, asked for clarification on the payment of the fees for the State Board of Equalization for the implementation of the local transaction and use tax.

Staff responded that the City's General Fund will be used to front the money for the initial set-up fees since the half-cent sales tax has not yet generated revenue. The General Fund will be reimbursed from the first installment from the State.

MOTION: **Resolution No. 2007-230** authorizing the City Manager to execute agreements with the State Board of Equalization for implementation of a local transaction and use tax.

MOVED: Moved by Vierra/seconded by Lane

VOTE: **Motion passed unanimously (4/0)**

- 8. **Resolution No. 2007-231** approving a contract with Wood Rodgers to provide professional services relating to the preparation of a Specific Plan for the Ceres West Study Area and all associated documentation including Environmental, Engineering, Infrastructure Financing and Annexation.

Vice Mayor Vierra reminded staff to include the detailed information of all bidders in future staff reports.

MOTION: **Resolution No. 2007-231** approving a contract with Wood Rodgers to provide professional services relating to the preparation of a Specific Plan for the Ceres West Study Area and all associated documentation including Environmental, Engineering, Infrastructure Financing and Annexation.

MOVED: Moved by Lane/seconded by Vierra

VOTE: **Motion passed unanimously (4/0)**

- 13. Approving the additional compensation to Harris & Associates for completion of Fire Station No. 4 construction management.

- 14. Approving the additional work and compensation to C3 Design Alliance for completion of Fire Station No. 4 construction.

Vice Mayor Vierra, requested a more detailed listing of the charges by Harris & Associates and C3 Design Alliance and a justification for the charges.

Mayor Cannella concurred.

MOTION: Continue items 13 and 14 to the meeting of January 14, 2008, to allow staff to provide more detailed reports.

MOVED: Moved by Vierra/seconded by Lane

VOTE: **Motion passed unanimously (4/0)**

- 16. Council Approval of **Resolutions No. 2007-237** through **2007-244** approving various traffic safety recommendations approved by the Traffic Safety and Control Committee.

Pursuant to their meeting on September 12, 2007, the Traffic Safety Committee presented the following recommendations to Council:

2007-237 approving "No Truck Parking" on sections of Brew Master Drive, Partee Lane, Farm Supply Drive, Faith Home Road, and Whitmore Avenue

2007-238 approving "No Stopping Any Time" on sections of Service Road

2007-239 approving the installation of handicap parking spaces at 2828 Hummingbird Drive

- 2007-240 establishing crosswalk installations at Hackett Road and Esteban and Blaker Road and Service
- 2007-241 approving red curb to be painted at 2537 Third Street and Memorial Drive
- 2007-242 rescinding resolution No. 2005-172 and authorizing the removal of a handicap parking zone at 3779 Old Oak Drive
- 2007-243 approving the installation of a four-way stop sign at the intersection of Booth Road and Waynesboro Drive
- 2007-244 authorizing the installation of stop signs at various locations

Vice Mayor Vierra asked for clarification on the definition of speed bumps vs. rumble strips.

Vice Mayor Vierra abstained from voting as a cautionary measure due to the fact that one of the items may possibly be within 500 feet of his place of residence.

- MOTION:** Approve **Resolutions No. 2007-237** through **2007-244** approving various traffic safety recommendations approved by the Traffic Safety and Control Committee.
- MOVED:** Moved by Lane/seconded by Ochoa
- VOTE:** **Motion passed with Vice Mayor Vierra abstaining. (3/0/1)**

17a. **Resolution No. 2007-246** rejecting the claim of Kenya Mosley.

Steve Breckenridge, resident, requested a brief staff report on the item since it was added at the meeting and not available for public review.

City Attorney Mike Lyons provided a brief overview of the item.

- MOTION:** Approve **Resolutions No. 2007-246** rejecting the claim of Kenya Mosley.
- MOVED:** Moved by Vierra/seconded by Lane
- VOTE:** **Motion passed unanimously. (4/0)**

UNFINISHED BUSINESS – None.

PUBLIC HEARING

18. **Resolution No. 2007-246** approving the adoption of a solid waste rate increase to pass-through the Stanislaus County tipping fee increase.

Kay Dunkel, Administrative Program Analyst, introduced the item explaining that the Stanislaus County Board of Supervisors increased the tipping fee at the Stanislaus Resource Recovery Facility, from \$25.00 per ton to \$28.00 per ton, effective August 2007. Tipping fees are levied on a per ton basis for solid waste disposed. The tipping fee was raised by \$3.00 per ton. The County raised the fee by \$1.50 per ton to help pay for the required State Assembly Bill 939 program planning, and \$1.50 per ton to help pay for the expanded Household Hazardous Waste collection program. This is the first surcharge increase since the surcharge was established in the early 1990's. Ms. Dunkel stressed that the fee increase covers only the increase in costs imposed by the State to the County, no additional fees are being charged.

7:38 p.m. – Mayor Cannella opened the Public Hearing.

Supervisor Jim DeMartini, representing the Stanislaus County Board of Supervisors, reiterated that the household hazardous waste fees had not changed for 15 years and were only increasing now to cover the State imposed increase to the County.

7:40 p.m. - There being no one else wishing to speak, the Public Hearing was closed.

MOTION: Approve **Resolutions No. 2007-247** approving the adoption of a solid waste rate increase to pass-through the Stanislaus County tipping fee increase.

MOVED: Moved by Vierra/seconded by Ochoa

VOTE: **Motion passed unanimously. (4/0)**

19. **Resolution No. 2007-XXX** approving the issuance of Multi-family housing revenue bonds by the California Statewide Communities Development Authority.

Brad Kilger, City Manager, requested that Council hold the Public Hearing and then continue the item for 90 days to the March 10, 2008 meeting.

7:41 p.m. – Mayor Cannella opened the Public Hearing.

7:42 p.m. – There being no one wishing to speak, the Public Hearing was closed.

MOTION: Continue approving the issuance of Multi-family housing revenue bonds by the California Statewide Communities Development Authority to the meeting of March 10, 2008.

MOVED: Moved by Vierra/seconded by Ochoa

VOTE: **Motion passed unanimously. (4/0)**

NEW BUSINESS

20. **Resolution No. 2007-249** Council approval on General Plan Policy 1.B.5 as it relates to Property owned by Dirk Wyatt at 3831 Hatch Road (APN 039-012-004)

Ken Craig, Community Development Director, introduced the staff report explaining that staff is requesting that Council uphold their determination that General Plan Policy 1.B.5 applies to the potential annexation and development of property located at 3831 Hatch Road (APN 039-012-004). The determination indicates that with submittal of an annexation application, the applicant would be required to submit a Master or Specific Plan.

In May 2006, Mr. Wyatt submitted an annexation application with the necessary Master Plan for the property on Hatch Road. The project did not meet density limits established in the Ceres General Plan nor, due to its proximity to the Modesto City/County Airport, the Airport Land Use Plan. Mr. Wyatt withdrew his application in June 2007.

In August 2007, Mr. Wyatt contacted staff to inquire about resubmitting an annexation application without submitting any type of Master or Specific Plan documents. Mr. Wyatt had indicated that he may now have a desire to develop his property commercially instead of residentially. Mr. Wyatt was informed that if the annexation application did not have an

accompanying Master or Specific Plan, it would not be in conformance with General Plan Policy 1.B.5.

The requirements for area-wide planning and analysis on the impact on public facilities and services may be waived by the City Council for individual projects or categories of projects where these types of studies are determined to be unnecessary or impractical due to size, scale, location or other special circumstances associated with the application to annex to the City. In general, these would include:

- a. Existing developed areas
- b. Existing or proposed public facilities
- c. Small-scale (generally less than 10 acres) infill or island areas
- d. Small-scale (generally less than 10 acres) areas located north of Hatch Road
- e. Unique economic development opportunities that offer significant community benefits (e.g., 100 or more permanent/part-time jobs, substantial sales tax revenues)
- f. Housing projects for very-low and low-income households.

Staff does not feel that this project's size, scale, location or other circumstances justify a waiver of the Policy.

Max Garcia, GDR Engineering, representing the applicant addressed Council requesting that given the uniqueness of the parcel and the project, Council pre-zone the parcel Low Density Residential, so it can be consistent with the General plan, so the Applicant can move forward with the annexation.

Mayor Cannella expressed concern that the Applicant may subdivide the property after the annexation is approved and develop it in a way that the City would not have approved initially. Mayor Cannella asked Mr. Garcia if his client would enter into a development agreement with the City that states that with the tentative map, they will submit a project for the entire piece of property.

Dirk Wyatt, applicant, responded that he would like to annex his property into the City of Ceres and would be willing to enter into an agreement with the City. Mr. Wyatt ask Council for their support.

Steve Breckenridge, commented that he felt that single family housing has a substantial impact on City infrastructure.

Vice Mayor Vierra commented that as long as we have a development agreement in place, he will support the Applicant moving forward with the annexation.

Councilmember Lane stated that he believes this project is unique and with a Development Agreement he can also support the annexation moving forward.

Mayor Cannella, concurred.

Brad Kilger, City Manager, stated that this item is a request from the Applicant to waive the requirement of an area-wide plan prior to submitting the application for annexation. Council needs to take one of the following actions: 1) waive the current City policy by making a finding from the six criteria previously expressed, 2) amend the General Plan to add a criteria that fits this particular case, or 3) finding that there are unique circumstances and in this instance the General Plan designation and the annexation, meets the definition of an

area plan. Staff does not concur with option #3, they feel that the definition of a master plan is spelled out and it would not meet the requirements.

Mayor Cannella stated that he would support the applicant with the finding that the General Plan acts as the Area Plan and prior to annexation, we enter into an agreement with the applicant that states that he will prepare a master plan and a development plan prior to approval of the tentative map.

MOTION: Continue the item and direct staff to bring back a resolution articulating that in this unique instance, the General Plan will act as the Area Plan and with the requirement that the Applicant enter into a Development Agreement prior to annexation that states that the applicant will prepare a Master Plan and a Development Plan with the first tentative map.

MOVED: Moved by Vierra/seconded by Lane

VOTE: Motion passed unanimously. **(4/0)**

Council also directed staff to place the General Plan policy on a future study session to discuss amendments to the plan.

21. Consideration of Council action to fill Council vacancy.

Mike Lyons, City Attorney, introduced the item stating that Council needs to fill the vacancy created by the untimely death of Vice Mayor Phipps. The appointee will serve for the unexpired term of Vice Mayor Phipps expiring on November 8, 2011. Mr. Lyons explained that they Council has until January 4, 2008, to either fill the Council vacancy or call for a Special Election.

Irv Gilbert, resident, spoke against holding a special election and recommended Mike Kline to fill the Council vacancy.

Len Shepherd, resident, spoke against holding a special election and recommended Steve Breckenridge to fill the Council vacancy.

Don Donaldson, resident, spoke in support of Mike Kline to fill the Council vacancy.

After some Council discussion regarding past practice of filling Council vacancies and the cost associated with an election, Council made the following motion:

MOTION: Accept applications with a deadline of 5:00 p.m. on December 20, 2007; conduct interviews on January 2, 2008 and hold a Special Council Meeting on January 3, 2008 to make the appointment.

MOVED: Moved by Vierra/seconded by Lane

VOTE: Motion passed unanimously. **(4/0)**

8:30 p.m. – Mayor Cannella adjourned to the Ceres Redevelopment Agency Meeting.

8:52 p.m. – Mayor Cannella reconvened the City Council Meeting.

COUNCILMEMBER REFERRALS – None.

Councilmembers and City Staff reported on various recent activities. Councilmember Lane

thanked the community and City staff for their support during the difficult week while arranging for Vice Mayor Phipps funeral.

9:00 p.m. – There being no further business, Mayor Cannella adjourned the City Council Meeting to Closed Session.

CLOSED SESSION

CONFERENCE WITH LABOR NEGOTIATORS

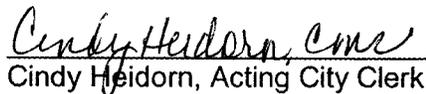
City Negotiator: Public Law Group
Employee Organization: Miscellaneous Employees
Pursuant to Gov't. Code Section 54957.6

9:35 p.m. - Mayor Cannella reconvened in Open Session with nothing to report.

9:36 p.m. - There being no further business, Mayor Cannella adjourned the meeting to the Special City Council meeting to be held on Thursday, January 3, 2008, for the appointment of the new City Council Member. The meeting will be held in the City Council Chambers located at 2210 Magnolia Street.



Anthony Cannella, Mayor



Cindy Heidorn, Acting City Clerk