

**CITY COUNCIL MINUTES**  
**January 14, 2008**

Mayor Cannella called the regular meeting of the City Council to order at 7:00 p.m. with the following in attendance:

**ROLL CALL** Council Members Durossette, 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 Special Council Meeting of December 6, 2007, the Study Session of December 20, 2007 and the regular meetings of November 26 and December 10, 2007.

**MOTION:** Approve the minutes of the Special Council Meeting of December 6, 2007, the Study Session of December 20, 2007 and the regular meetings of November 26 and December 10, 2007 as recommended by staff.

**MOVED:** Moved by Lane/seconded by Vierra

**VOTE:** **Motion passed with Councilmember Durossette abstaining. (4/0/1)**

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

Len Shepherd, resident, welcomed new Councilmember Bret Durossette

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

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

**MOVED:** Moved by Lane/seconded by Vierra

**VOTE:** **Motion passed unanimously. (5/0)**

**APPOINTMENTS TO BOARDS/COMMISSIONS**

A. Council reappointment of Victor Lopez to serve on the Stanislaus Ceres Redevelopment Commission (SCRC) for a four-year term to expire December 31, 2011.

**MOTION:** Reappoint Victor Lopez to serve on the Stanislaus Ceres Redevelopment Commission (SCRC) for a four-year term to expire December 31, 2011.

**MOVED:** Moved by Lane/seconded by Ochoa

**VOTE:** **Motion passed unanimously. (5/0)**

**CONFLICT OF INTEREST DECLARATION – None.**

**CONSENT CALENDAR**

1. General Correspondence – **Information Only**
  - a. Public Works Department Monthly Report for November, 2007.
  - b. Engineering Division Monthly Report for November, 2007.
  - c. Quarterly Grant Update.
  - d. Administrative Services Monthly Report for November, 2007.
2. Register of Audited Demands for period covering December 5-28, 2007.
3. **Resolution No. 2008-01** waiving the requirements of General Plan Policy 1.B.5. as it relates to property owned by Dirk Wyatt at 3831 Hatch Road. **Pulled for further discussion.**
4. Set public hearing date of February 11, 2008 to consider amending Municipal Code Section 18.42 Signs, to define and provide provisions for allowance of changeable copy signs, electric display board signs, and electronic message centers for on-premises and off-premises signs and conversion of existing billboards to electronic changeable copy within the City of Ceres. **Pulled for further discussion.**
5. **Resolution No. 2008-02** awarding a contract to West Yost and Associates to perform a Water Rate and Connection Fee Study and amending the FY 2007/08 Budget to appropriate funds. **Pulled for further discussion.**
6. **Resolution No. 2008-03** awarding a contract to ECO:LOGIC Consulting Engineers to perform a Wastewater System Capacity Assessment and Rate Study.
7. **Resolution No. 2008-04** approving Contract Change Order #1 for the Crows Landing Well Drilling Project in the amount of \$112,300.00 and amending the annual budget of the City of Ceres to provide financing for said contract change order. **Pulled for further discussion.**
8. **Resolution No. 2008-05** authorizing the destruction of certain grant records.
9. City Council approval of letters of support for the Dos Rios Ranch Land Protection and Habitat Restoration Project and the expansion of the San Joaquin River National Wildlife (SJRNW) Refuge to include Dos Rios Ranch.
10. **Resolution No. 2008-06** approving the Utility Agreements with the State of California for the Interchange Reconstruction as SR99/Whitmore Ave.
11. Approving the additional compensation to Harris & Associates for completion of Fire Station No. 4 construction management. (Continued from December 10, 2007.) **Staff requests this item be postponed indefinitely.**
12. Approving the additional work and compensation to C3 Design Alliance for completion of Fire Station No. 4 construction. (Continued from December 10, 2007.) **Staff requests this item be postponed indefinitely.**

MOTION: Approve Consent Calendar Items 1a-1d, 2, 6 and 8-12 as recommended by staff.  
MOVED: Moved by Vierra/seconded by Lane  
VOTE: Motion passed unanimously. (5/0)

**CONSIDERATION OF ITEM(S) REMOVED FROM THE CONSENT CALENDAR**

3. **Resolution No. 2008-01** waiving the requirements of General Plan Policy 1.B.5. as it relates to property owned by Dirk Wyatt at 3831 Hatch Road.

This item was pulled by Mr. Jake Raper, representing Dirk Wyatt. Mr. Raper requested that Resolution 2008-01 be modified as follows: *All references to "Specific Plan" be deleted.*

Staff agreed that this was a reasonable request.

MOTION: Approve **Resolution No. 2008-01** waiving the requirements of General Plan Policy 1.B.5 as it relates to property owned by Dirk Wyatt at 3831 Hatch Road with the modification that all references to "Specific Plan" will be deleted.  
MOVED: Moved by Lane/seconded by Vierra  
VOTE: Motion passed unanimously. (5/0)

4. Set public hearing date of February 11, 2008 to consider amending Municipal Code Section 18.42 Signs, to define and provide provisions for allowance of changeable copy signs, electric display board signs, and electronic message centers for on-premises and off-premises signs and conversion of existing billboards to electronic changeable copy within the City of Ceres.

Pulled by Jake Raper. Mr. Raper requested that the Public Hearing date be moved from February 11, 2008 to February 25, 2008.

Staff responded that the Public Hearing had not been noticed and that the date could be moved if Council so desired.

MOTION: Set Public Hearing date of February 25, 2008, to consider amending Municipal Code Section 18.42 Signs, to define and provide provisions for allowance of changeable copy signs, electric display board signs, and electronic message centers for on-premises and off-premises signs and conversion of existing billboards to electronic changeable copy within the City of Ceres.  
MOVED: Moved by Lane/seconded by Ochoa  
VOTE: Motion passed unanimously. (5/0)

5. **Resolution No. 2008-02** awarding a contract to West Yost and Associates to perform a Water Rate and Connection Fee Study and amending the FY 2007/08 Budget to appropriate funds.

Vice Mayor Vierra asked if the study included both the current deficiencies and the surface water project.

Staff responded that the study does include both.

MOTION: Approve **Resolution No. 2008-02** awarding a contract to West Yost and Associates to perform a Water Rate and Connection Fee Study and amending the FY 2007/08 Budget to appropriate funds.

**MOTION:** Approve **Resolution No. 2008-02** awarding a contract to West Yost and Associates to perform a Water Rate and Connection Fee Study and amending the FY 2007/08 Budget to appropriate funds.

**MOVED:** Moved by Vierra/seconded by Ochoa

**VOTE:** Motion passed unanimously. (5/0)

**7. Resolution No. 2008-04** approving Contract Change Order #1 for the Crows Landing Well Drilling Project in the amount of \$112,300.00 and amending the annual budget of the City of Ceres to provide financing for said contract change order.

Mayor Cannella asked staff how long it takes to construct a well after the initial testing has been completed.

Staff responded that it usually take one year to have a fully functioning well.

**MOTION:** **Resolution No. 2008-04** approving Contract Change Order #1 for the Crows Landing Well Drilling Project in the amount of \$112,300.00 and amending the annual budget of the City of Ceres to provide financing for said contract change order.

**MOVED:** Moved by Vierra/seconded by Ochoa

**VOTE:** Motion passed unanimously. (5/0)

**UNFINISHED BUSINESS - None**

**PUBLIC HEARING - None**

### **NEW BUSINESS**

**13. Ordinance No. 2008-980** amending Title 10, Chapter 10.36, Section 10.26.120 of the Ceres Municipal Code to add a new subsection E clarifying the intent of the City Council regarding the retroactive application of certain provisions of Section 10.36.120 affecting the location of business offices and storage facilities of towing service operators. **(Introduction and First Reading)**

Mike Lyons, City Attorney, introduced the staff report explaining that in 2005 the City significantly revised its tow ordinance to make comprehensive changes to strengthen performance, reporting and equipment standards and improve administration of the rotation tow program. Included with those revisions was a requirement that the business office and storage facilities of towing service operators must be located within a one-mile driving radius of the City's city limits. The prior ordinance simply required that such facilities be located within a one-mile radius of the city limits. The ordinance revisions were adopted by Ordinance No. 2005-948 on September 26, 2005, and became effective October 27, 2005.

Prior to the ordinance revisions, DBM Wholesale Towing, Inc. had been approved as a qualified towing service operator on the City's rotation tow list. The history of this tow company's participation on the tow rotation list dates back to the 1990's, at which time they maintained facilities within the Ceres city limits. In March of 2001 the company moved its facilities to a location in Modesto which was approximately 1.6 driving miles from the Ceres city limits. The location was approved administratively as consistent with the one-mile requirement, as the new location was within one mile of the city limits measured on a direct linear path.

The provision inserted in the revised ordinance in September of 2005 was done to clarify the language regarding the measurement of the one-mile requirement. Staff believes that it was not the intent of the ordinance to deny continued participation on the rotation list to those towing service operators who had previously qualified under the "one-mile" restriction of the prior ordinance as that restriction had been interpreted and applied.

The City Council has legislative authority to determine whether any particular ordinance provision will be applied prospectively or retroactively. Generally, retroactive application of an ordinance provision is disfavored and may be subject to legal challenge to the extent that its retroactive application impairs rights or obligations which existed prior to the enactment of the ordinance.

There is a clear distinction between tow operators making new applications and a tow operator whose existing position on the tow rotation list will be adversely affected by retroactive application of the distance requirement of the ordinance. The proposed ordinance also requires that any change in the location of the business office and storage facility must comply with the one-mile driving radius restriction.

Councilmember Lane asked if the current ownership of DBM Wholesale Towing changed, would the new owner have to re-apply for placement on the tow rotation list.

Mr. Lyons responded that sale of a business, under our existing tow ordinance, requires approval by the City.

Mr. Brenay, representing DBM Towing, expressed his concern with the existing tow ordinance regulation that requires any new owner to re-apply to the City for placement on the rotation list.

Mayor Cannella asked why staff decided to amend the ordinance to grandfather in DBM Wholesale Towing rather than just amend the ordinance to include all tow companies within a one-mile radius?

Brad Kilger, City Manager, responded that there is a definite relationship to the "one driven mile" requirement in terms of the tow company being able to provide the necessary service that meets the criteria of the City, particularly with respect to response times. In addition, there are only so many companies that can go on the rotation list to make it meaningful, otherwise it is not practical and becomes difficult to manage. So you have to establish certain criteria, separate from just doing the background check on the company.

After some discussion, the Council made the following motion:

**MOTION:** Waive full reading and have **Ordinance No. 2007-980** read by title and number only.

**Moved:** Moved by Lane/seconded by Vierra

**VOTE:** **Motion passed unanimously. (5/0)**

Mayor Cannella directed the City Clerk to read **Ordinance 2007-978** by number and title only.

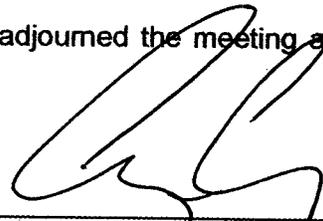
**MOTION:** Approve **Ordinance No. 2007-980** amending Title 10, Chapter 10.36, Section 10.36.120 of the Ceres Municipal Code to add a new subsection E clarifying the intent of the City Council regarding the retroactive application of certain provisions of Section 10.36.120 affecting the location of business offices and storage facilities of towing service operators for introduction and first reading.

**MOVED:** Moved by Lane/seconded by Vierra

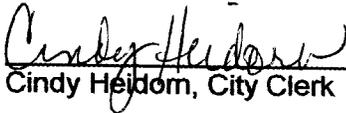
**VOTE:** Motion passed unanimously. (5/0)

Councilmembers and City Staff reported on various recent activities including the upcoming employee luncheon and the upcoming Department of Public Safety swearing in ceremony. Mayor Cannella announced that the January 17, 2008 Study Session has been cancelled.

There being no further business, Mayor Cannella adjourned the meeting at 8:09 p.m. to the next regularly scheduled meeting on January 28, 2008.



Anthony Cannella, Mayor

  
Cindy Heidorn, City Clerk