

CITY COUNCIL MINUTES
September 8, 2008

Mayor Cannella called the September 8, 2008 City Council Meeting to order at 7:00 p.m. with the following in attendance:

Council Members: Durossette, Lane, Ochoa, Vierra, Mayor Cannella

A moment of silence was held in remembrance of the victims of the tragedy which occurred on September 11, 2001.

INVOCATION by Dr. Randy Clark, Pastor, First Southern Baptist Church.

PLEDGE OF ALLEGIANCE to the flag led by Mayor Cannella.

APPROVAL OF THE MINUTES of the regular meeting of August 11 and August 25, 2008.

MOTION: Approve the Minutes of the regular meetings of August 11 and August 25, 2008 as recommended by staff.

MOVED: Moved by Lane/seconded by Vierra

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

CITIZEN COMMUNICATIONS

- Len Shepherd, resident, expressed concern that the City would not have adequate infrastructure to support future development.

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

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

MOVED: Moved by Vierra/seconded by Durossette

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

APPOINTMENTS TO BOARDS/COMMISSIONS - None

CONFLICT OF INTEREST DECLARATION - None

CONSENT CALENDAR

1. General Correspondence – **Information Only**
 - a. Recreation Department Monthly Report for July, 2008.
 - b. Building Department Monthly Report for August, 2008.
2. Register of Audited Demands for period covering August 8 - 22, 2008.
3. Waiver of second reading and adoption **Ordinance No. 2008-989** repealing Chapter 5.24 of the Ceres Municipal Code, CATV Franchise, and Enacting a New Chapter 5.24 to implement the Digital Infrastructure and Video Competition Act of 2006.

4. Council acceptance of the 2008 Local Agency Biennial Notice for the City of Ceres and the Ceres Redevelopment Agency as required by the Political Reform Act.
5. **Resolution No. 2008-121** approving the claim of the City of Ceres to the Stanislaus Council of Governments for non-transit funds and authorizing the City Engineer to sign and submit said claim on behalf of the City of Ceres.
6. **Resolution No. 2008-122** approving a 60-month lease/purchase and maintenance agreement with Mo-Cal Office Solutions for two copiers in City Hall and one copier in the City Hall Annex. **Pulled for further Discussion.**
7. **Resolution No. 2008-123** approving the agreement with the Ceres Mid-Managers' Association amending the Memorandum of Understanding between the City and the Association. **Pulled for further Discussion.**
8. **Resolution No. 2008-XXX** approving Amendment No. 1 to the Consultant Services Agreement with Pacific Municipal Consultants for Public Facility Fees Study. Pulled for further Discussion. **Pulled for further Discussion.**
9. **Resolution No. 2008-125** approving Amendment No. 1 to the Professional Services Agreement with West Yost & Associates for an amount not to exceed \$53,000 and amending the FY 2008/09 Budget to appropriate funds. **Pulled for further Discussion.**
10. **Resolution No. 2008-126** approving Amendment No. 2 to the Consultant Services Agreement with ECO:LOGIC in an amount not to exceed \$37,000 and amending the FY 2008/09 Budget to appropriate funds. **Pulled for further Discussion.**

MOTION: Approve Consent Calendar Items 1a, 1b, 2-5 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

6. **Resolution No. 2008-122** approving a 60-month lease/purchase and maintenance agreement with Mo-Cal Office Solutions for two copiers in City Hall and one copier in the City Hall Annex.

Councilmember Lane declared himself disqualified from voting on this item stating that Mo-Cal Office Solutions was his employer.

Mike Lyons, City Attorney, stated that California Government Code Section 1090 prohibits a City from contracting with a company where a councilmember is employed. However, Government Code has a provision for such contracting when the councilmember has a "remote interest" in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

Mr. Lyons certified that Councilmember Lane meets all the requirements to have a remote interest in the contract. Those requirements are as follows: 1) Mo-Cal has at least 10 other employees; 2) Councilmember Lane was employed by Mo-Cal for at least three years prior to accepting his initial term of office to the Council; 3) Councilmember Lane owns less than 3% of the business; 4) Councilmember Lane is not an officer or director; 5) Councilmember Lane did not participate in any of the discussions relating to the contract proposal.

Mayor Cannella asked for confirmation that the City did solicit three bids from three separate companies and Mo-Cal Solutions was the lowest.

Brad Kilger, City Manager, confirmed that we followed our standard procedures and solicited multiple bids with Mo-Cal submitting the lowest bid.

MOTION: Approve **Resolution No. 2008-122** approving a 60-month lease/purchase and maintenance agreement with Mo-Cal Office Solutions for two copiers in City Hall and one copier in the City Hall Annex

MOVED: Moved by Vierra/seconded by Ochoa

VOTE: **Motion passed with Councilmember Lane Disqualified from voting. (4/0/1)**

7. **Resolution No. 2008-123** approving the agreement with the Ceres Mid-Managers' Association amending the Memorandum of Understanding between the City and the Association.

Sarah Ragsdale, Administrative Services Director, gave a brief overview of the staff report, pointing out an error in the report and clarifying that the rate of pay for holidays for members who work the 56 hour work week is 125% of their hourly rate.

MOTION: Approve **Resolution No. 2008-123** approving the agreement with the Ceres Mid-Managers' Association amending the Memorandum of Understanding between the City and the Association.

MOVED: Moved by Vierra/seconded by Lane

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

8. **Resolution No. 2008-XXX** approving Amendment No. 1 to the Consultant Services Agreement with Pacific Municipal Consultants for Public Facility Fees Study. Pulled for further Discussion.

Ken Craig, Community Development Director introduced the item stating that the consultant is requesting an amendment to the original contract in the amount of \$46,677.00. The applicant is requesting additional funds to cover costs they have incurred that could not be anticipated in the original scope of work. These costs are those associated with 1) additional hours required to develop the background data and assumptions needed for the various areas of the PFF resulting from significant lack of Master Plan data and information; and 2) additional hours necessary to address the needs of the PFF Advisory Committee. The costs are being broken down as \$27,427.00 for work already completed without prior Council approval and \$19,250.00 for additional work requested by staff that was outside the scope of the original contract.

Council expressed the following concerns:

- The change order is 70% of the amount of the original contract
- The consultant worked far beyond the fixed fee of the original contract without staff authorization
- The consultant did not do enough preliminary research to prepare an accurate bid.
- PMC did not notify staff when they first discovered that their original quote did not cover all the costs so Council could decide prior to the work being completed whether or not to continue the project.

Mr. Tom Bandy, representing Pacific Municipal Consultants, addressed Council stating that he had made a mistake by allowing the Lead Consultant, Dino Serafini, to work beyond the scope of the contract. Mr. Bandy further stated that it was only after the kick off meeting that they discovered the deficiencies in the information needed to do the job. Mr. Bandy further stated that they had a lot of momentum going on the project and did not want to stop working.

Mayor Cannella asked staff when they first became aware that PMC had performed work beyond the scope of the contract and would request additional funding.

Mr. Craig responded that he first became aware of PMC's concern in February or March, 2008 but he did not know the magnitude of the overage.

Mayor Cannella asked Mike Lyons, City Attorney, if the City was legally obligated to pay for the overages.

Mr. Lyons responded that the City is not obligated to pay for work that was performed outside the scope of the original contract however, should the City ever enter into litigation, there is no guarantee that we would not be required to compensate PMC for work they have performed.

Steve Breckenridge, resident, commented that he felt that Council should not compensate PMC for any work performed without prior Council approval.

After extensive Council discussion, the following motion was made:

MOTION: Authorize a Change Order in the amount of \$19,250 and direct staff to draft a Resolution reflecting that amount for approval at the September 22, 2008 Council Meeting.

MOVED: Moved by Cannella/seconded by Vierra

VOTE: **Motion passed with Councilmembers Lane & Durossette voting No. (3/2)**

MOTION: Continue the request for the remaining Change Order amount of \$27,427.00 to the meeting of September 22, 2008 to allow the contractor to provide additional information.

MOVED: Moved by Cannella/seconded by Vierra

VOTE: **Motion passed with Councilmember Lane voting No. (4/1)**

9. **Resolution No. 2008-125** approving Amendment No. 1 to the Professional Services Agreement with West Yost & Associates for an amount not to exceed \$53,000 and amending the FY 2008/09 Budget to appropriate funds.

Mike Brinton, City Engineer, stated that West Yost & Associates are currently working on the Water Rate and Connection Fee study. As the project has progressed, it has been determined that additional work is required in order to complete the study and coordinate the various areas that are involved.

MOTION: Approve **Resolution No. 2008-125** approving Amendment No. 1 to the Professional Services Agreement with West Yost & Associates for an amount not to exceed \$53,000 and amending the FY 2008/09 Budget to appropriate funds.

MOVED: Moved by Lane/seconded by Vierra

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

10. **Resolution No. 2008-126** approving Amendment No. 2 to the Consultant Services Agreement with ECO:LOGIC in an amount not to exceed \$37,000 and amending the FY 2008/09 Budget to appropriate funds.

Mike Brinton, City Engineer introduced the item. ECO:LOGIC Engineers and Consultants are under contract to perform a Wastewater System Capacity Assessment and a Rate Study Update. The City Council recently approved Scope Amendment No. 1 to the contract for the location of existing manholes that are not located correctly on the sewer base maps.

Amendment No. 2 requested tonight includes the following services:

1. Manhole Elevation Adjustment and Quality Check
2. Vertical Control Network Modernization
3. Review Financing Assumptions Impacts to Sewer Rates
4. Capital Facilities Cost and Capacity Coordination

Mayor Cannella asked if Item No. 2 "Vertical Control Network Modernization" was required to complete this scope of work.

Mr. Brinton responded that it is not required.

After further Council discussion, the following motion was made:

MOTION: **Resolution No. 2008-126** approving Amendment No. 2 to the Consultant Services Agreement with ECO:LOGIC with the removal of Item No. 2, Vertical Control Network Modernization and direct staff to execute an RFP for said Item No. 2.

MOVED: Moved by Vierra/seconded by Durossette

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

UNFINISHED BUSINESS - None

PUBLIC HEARING

11. Public Hearing and Approval of **Resolution No. 2008-127** recommending the Stanislaus County Board of Supervisors Approve the FY 2007/08 Community Development Block Grant (CDBG) and Emergency Shelter Grant Consolidated Annual Performance and Evaluation Report (CAPER).

Bryan Briggs, Redevelopment/Economic Development Manager gave a brief overview of the item.

8:25 p.m. Mayor Cannella opened the Public Hearing.

- Steve Breckenridge, resident, asked if there were any homeless shelters in Ceres:

Mr. Briggs responded that there was not a homeless shelter in Ceres, however the funds are used for various community projects.

- Pastor Randy Clark, representing the Second Harvest Food Bank, commented that grants from CDBG help feed the homeless through the Second Harvest Food Bank in Ceres.

8:28 p.m. there being no further business, Mayor Cannella closed the Public Hearing.

MOTION: Approve **Resolution No. 2008-127** recommending the Stanislaus County Board of Supervisors Approve the FY 2007/08 Community Development Block Grant (CDBG) and Emergency Shelter Grant Consolidated Annual Performance and Evaluation Report (CAPER).

MOVED: Moved by Lane/seconded by Vierra

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

12. Council consideration of **Resolution No. 2008- XXX** denying the appeal of the applicability of Public Facility Fees for the addition of 1,623 Square Foot to the First Southern Baptist Church, 2813 E. Don Pedro Road.

Ken Craig, Community Development Director, introduced the staff report. The Ceres Municipal Codes, Chapter 16 codifies the requirements to collect Public Facilities Fees for new development. A developer of any project may apply to the City Council for reduction or adjustment of fees, or a waiver of fees, based upon absence of any reasonable relationship or nexus between the impacts of the development and either the amount of the fee charged or the type of facilities to be financed. The application shall state in detail the factual basis for the claim of waiver reduction or adjustment. Staff feels that Dr. Clark has failed to meet that requirement.

Dr. Randy Clark, First Southern Baptist Church, addressed Council stating that they believe the fees could be reduced or eliminated for the following reasons:

- The seating capacity is not being increased.
- There will be no increase in traffic flow as a result of the remodel.

- There is no impact on City water or sewer services as the church is served by its own well septic system that remains adequate for the needs of the church.
- They will not put any great strain on the street in front of the church
- There is no need for an increase in fire and police services because the seating area is not increasing
- The project is simply improving the usability of the building and better exterior appearance
- A substantial part of the project is the removal of existing porch areas and enclosing them.

8:35 p.m. Mayor Cannella opened the Public Hearing.

8:56 p.m. there being no one wishing to speak, the Public Hearing was closed.

After further Council discussion the following motion was made:

Council directed Staff to re-evaluate Section 16 of the Ceres Municipal Code to explore opportunities for flexibility of public facilities fees for certain types of facilities.

MOTION: Grant a Waiver of the Public Facilities Fess for the Project for the First Southern Baptist Church upon the finding that there is an absence of any reasonable relationship or nexus between the impacts of the development and either the amount of the fee charged or the type of the facilities to be financed.

MOVED: Moved by Lane/seconded by Vierra

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

9:00 p.m. – Council recessed for a short break.

9:05 p.m. – Council reconvened in open session.

NEW BUSINESS

13. **Resolution No. 2008-129** adopting the revised operating budget for FY 2008/09 and rescinding the spending limit of \$10,918,531 for the period July 1, 2008 – September 30, 2008.

Sarah Ragsdale, Administrative Services Director gave a brief overview of the revised operating budget for FY 2008/09.

Council directed staff to add an overtime report to future monthly study session agendas.

MOTION: Approve **Resolution No. 2008-129** adopting the revised operating budget for FY 2008/09 and rescinding the spending limit of \$10,918,531 for the period July 1, 2008 – September 30, 2008 and add a monthly overtime report to future study session agendas.

MOVED: Moved by Vierra/seconded by Lane

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

14. **Resolution No. 2008-130** awarding the Ceres Lagoon Cleaning Project to JND Thomas Co., Inc., approving an inter-fund loan in the amount of \$1,400,000 from the Street Expansion Fund to the Sewer Service Fund, and amending the FY2008/09 Budget to appropriate funds.

Mike Brinton, City Engineer, introduced the item. Staff became aware that the original bid bond was not included in the bid documents. Staff is therefore recommending approval of the contract contingent on the receipt of the original bid bond documents within 5 days.

MOTION: Approve **Resolution No. 2008-130** awarding the Ceres Lagoon Cleaning Project to JND Thomas Co., Inc., approving an inter-fund loan in the amount of \$1,400,000 from the Street Expansion Fund to the Sewer Service Fund, and amending the FY2008/09 Budget to appropriate funds conditioned upon receipt an original bid bond and a properly executed power of attorney-in fact within 5 days.

MOVED: Moved by Vierra /seconded by Lane

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

COUNCILMEMBER REFERRALS - None

City Council and Staff reported on various activities including the 25th Anniversary of Ceres Youth Soccer, the 100 year anniversary of Ceres High School and the Groundbreaking for the Whitmore overpass project.

9:28 p.m. OPEN CERES REDEVELOPMENT AGENCY MEETING

9:30 p.m. ADJOURN AS JOINT CITY COUNCIL/REDEVELOPMENT AGENCY TO CLOSED SESSION

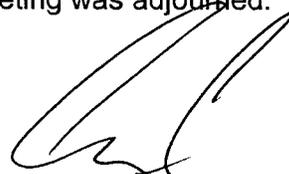
CITY COUNCIL CLOSED SESSION ITEMS:

CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION

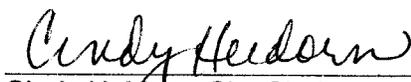
Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (two potential cases)
Identification of the litigation to be discussed would jeopardize the City's ability to conclude existing settlement negotiations to its advantage.

10:30 p.m. the City Council/Redevelopment Agency convened in open session with nothing to report.

10:30 p.m. there being no further business, the meeting was adjourned.



Mayor Anthony Cannella


Cindy Heidorn, City Clerk