

# CITY COUNCIL MINUTES

July 27, 2009

## CALL TO ORDER

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

**INVOCATION** by Jeff Hilbert, Believers Family Church

**PLEDGE OF ALLEGIANCE** to the flag led by Mayor Cannella.

## PRESENTATIONS

A. Stevenson Grove Clean-Up Presentation – Ron Richter.

Ron Richter gave a brief overview of the annual clean-up day at the grove. *Due to technical difficulties, staff was not able to show the photos of the day and will agendize the item for the next Council meeting for the slide show.*

Bryce Stevenson addressed Council and thanked everyone for their involvement in the Grove and remembering his father.

**APPROVAL OF THE MINUTES** of the regular meeting of June 29, 2009.

**MOTION:** Approve the minutes of the regular meeting of June 29, 2009.

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

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

## CITIZEN COMMUNICATIONS

- Jeremiah Parrott – Ceres Unified School District employee expressed concerns about the swine flu and asked if the City had any plans to hold a public meeting to discuss the pros and cons of vaccinations.

Council and staff responded that the City does not take a role in specific medical procedures should there be a pandemic, the City would be involved with the County on issues such as social distancing and additional protection for the emergency workers such as fire and police.

- Leonard Shepherd requested a copy of the recording of the State of the City address.

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

**MOTION:** Approve the agenda as amended 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** – Mayor Cannella declared a conflict with a portion of Item No. 9 stating that his firm has done work for Carollo Engineering within the last 12 months.

### **CONSENT CALENDAR**

1. General Correspondence – **Information Only**
  - a. Public Works Dept. monthly report for June 2009.
2. Register of Audited Demands for period covering July 2 – 9, 2009.
3. Open Public Review Period and Set Public Hearing date of September 14, 2009 for Review and Approval of the Consolidated Annual Performance and Evaluation Report (CAPER) relating to the FY 2008/09 Community Development Block Grant and Emergency Shelter.
4. **Resolution No. 2009-70** authorizing and directing the Director of Public Works to cause the necessary data to be prepared and application to be signed and filed with the State of California Department of Public Health for Safe Drinking Water State Revolving Fund American Recovery and Reinvestment Act funding.
5. **Resolution No. 2009-71** approving Fiscal Year 2008-2009 Carryover appropriations and amending the 2009-2010 Budget.
6. **Resolution No. 2009-72** approving the classification description and compensation range for the position of Deputy City Manager/Chief of Police and Director of Public Safety  
**Resolution No. 2009-73** approving an employment agreement with Art de Werk.

MOTION: Approve Consent Calendar items 1a and 2-4 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**

5. **Resolution No. 2009-71** approving Fiscal Year 2008-2009 Carryover appropriations and amending the 2009-2010 Budget.
- Len Shepherd, resident, asked for an explanation of a carryover appropriation.

Staff explained that a carryover is money that was in last years budget that was not spent and is being carried over to this year to fulfill, complete or start the project it was budget for. There is no impact on the current budget because it is a carry-over of money that has already been appropriated. Many of them are federal and state grant programs that are continuous and we always have to roll those funds over.

MOTION: Approve Consent Calendar items 1a and 2-4 as recommended by staff.

MOVED: Moved by Vierra/seconded by Ochoa

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

6. **Resolution No. 2009-72** approving the classification description and compensation range for the position of Deputy City Manager/Chief of Police and Director of Public Safety  
**Resolution No. 2009-73** approving an employment agreement with Art de Werk.

Mayor Cannella announced that this item was pulled because there has been a change in the position title from Deputy City Manager/Chief of Police/Director of Public Safety to: Chief of Police/Deputy City Manager/Director of Public Safety

Len Shepherd, resident, asked what this new title means.

Mayor Cannella responded that the Chief of Police is being promoted and his duties will now include that of Deputy City Manager, which will place him second in charge, directly below the City Manager. This promotion will include no additional compensation but Mr. de Werk will receive seven additional days of management leave and an additional \$250.00/yr. uniform allowance.

MOTION: **Resolution No. 2009-72** approving the classification description and compensation range for the position of Chief of Police/Deputy City Manager/Director of Public Safety  
**Resolution No. 2009-73** approving an employment agreement with Art de Werk.

MOVED: Moved by Vierra/seconded by Lane

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

## UNFINISHED BUSINESS

7. **Resolution No. 2009-74** electing to provide workers' compensation coverage for certain City volunteers. ***Continued from July 13, 2009.***

Betina McCoy, Acting Assistance Finance and Human Resources Director, addressed Council stating that the City utilizes a number of regular volunteers to assist staff in conducting city business. These volunteers are classified as non-safety and are not automatically covered by workers' compensation.

Due to the handling of the current volunteer injury, should Council choose to not provide workers' compensation coverage for volunteers, the City will be required to reimburse the workers' compensation provider for all costs incurred on the claim, currently \$75,104. Because of the immediacy of this situation, Staff believes that the best course of action is to provide workers' compensation for our regular non-safety volunteers, so the claim does not become the City's financial burden.

In addition, the provision of such coverage to volunteers insulates the City from possible civil lawsuits by volunteers where it can be shown that the injury resulted from some negligent act or omission by the City.

Council asked if we do decide to provide Workers' Compensation coverage for our volunteers, would we be locked in for a certain period of time or would we be able to pull out of the program?

Ms. McCoy responded that we would be able to discontinue coverage at any time in the future if Council should choose to do so.

Although Council in general disagreed with the provision of Workers' Compensation coverage to non-safety volunteer, given the current circumstances, they felt that it was in the best interest of the City to do so.

- Len Shepherd, resident, stated that he did not feel the City should provide Workers' Compensation for volunteers.
- Supervisor Jim DeMartini, stated that the County does provide workers' compensation coverage for its volunteers.

**MOTION: Resolution No. 2009-74** electing to provide workers' compensation coverage for certain City volunteers.

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

**VOTE: Motion passed With Councilmember Ochoa voting No. (4/1)**

## **PUBLIC HEARING**

8. Public Hearing to consider **Resolution No. 2009-75** amending/approving the annual report, confirming the assessment and ordering the levy for the 1987 Landscape and Lighting District for FY 2009/10.

Glenn Gebhardt, City Engineering introduced Mr. Tim Siefert with NBS Government Solutions.

Mr. Siefert stated that Stanislaus County requires each agency that wants an assessment placed on the tax rolls to certify that the assessment complies with the applicable laws and Proposition 218. All of the 1987 Landscape and Lighting District assessments are exempt from Proposition 218, as they are the same or lower than the previous year; having been only adjusted based on an inflation rate voted on by the property owners. This is the final action to adopt the assessments.

Mayor Cannella noted that the Consumer Price Index (CPI) used for this LLD is not the same one that is used for the CFDs. He asked how the CPI is chosen and what causes the disparity between the different CPIs.

Mr. Siefert responded that the CPI is chosen when the district is formed. The Western Urban Annual CPI used for this LLD was probably the norm 22 years ago when the district was formed and is not the same index that is used for the more recent CFDs. The disparity in the inflationary rate of the two CPIs is partially based on the date range (12-month period) used to calculate the CPI.

7:43 p.m. The Public Hearing was opened.

7:43 p.m. There being no one wishing to speak, the Public Hearing was closed.

**MOTION: Resolution No. 2009-75** amending/approving the annual report, confirming the assessment and ordering the levy for the 1987 Landscape and Lighting District for FY 2009/10.

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

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

**NEW BUSINESS**

9. **Resolution No. 2009-76** approving a cost sharing agreement for certain project costs in the development of the regional surface water project; approve agreements with Horizon Water and Environment and Carollo Engineers for peer reviews of the CEQA work products and engineering services respectively and amend the FY 2009/10 Budget to appropriate funds.

Mayor Cannella read the following memo into the record: *Memo From Glenn Gebhardt, City Engineer to Brad Kilger, City Manager "The Mayor has advised that he has a conflict of interest regarding the approval of any matters involving Carollo Engineers. The existing staff report includes one Resolution and one Budget Amendment. To allow Mayor Cannella to discuss portions of this agenda item and avoid a conflict of interest, attached are two separate Resolutions and Budget Amendments that break the discussion into two items. The first resolution addresses the Cost Sharing Agreement, the contract with Horizon Water and Environment and the related Budget Amendment. The second Resolution addresses the Carollo Agreement and the related Budget Amendment. This should allow the discussion of the first resolution to include the Mayor. Discussion of the second Resolution would then exclude the Mayor.*

Mayor Cannella asked Mike Lyons City Attorney if this would address his conflict of interest.

Mr. Lyons concurred that Mayor Cannella would avoid any conflict if he recused himself for the second half of the item.

Glenn Gebhardt, City Engineer, presented the staff report stating that the City of Ceres has been working with the Turlock Irrigation District along with the cities of Hughson, Modesto and Turlock for several years on a joint project to supply each agency with treated TID supplied surface water. This water supply would be used conjunctively with ground water that is supplied by wells.

Until December of 2008, the project anticipated that TID would plan, finance, own and operate the treatment plant and transmission facilities and sell treated surface water to the four cities. After receiving notice from TID that they could no longer finance and own the treatment plant and transmission facilities, representatives of the four cities have been meeting bi-weekly to determine the best plan of action for completing this project. The City Council authorized staff to work with the other cities in the development of a Joint Power Authority that would provide governance for the completed project.

It was recommended by staff of the cities that, prior to formal adoption of a JPA, certain peer review tasks need to be completed to ensure a clear understanding of the status of each element of work and the costs involved in obtaining that work that was previously performed under TID's direction. Since the four cities were being charged by TID for this initial work, the cities wanted an independent confirmation of the value of what has been prepared by TID's consultants.

If approved, this cost sharing agreement will provide for the splitting of certain project costs in the development of the regional surface water project between the participating cities, approve an agreement with Horizon Water and Environment for a peer review of the CEQA work products provided to TID. The Horizon Water and Environment contract will be managed by the City of Modesto.

Council stated that they were in support of the item and directed staff to bring any requests for funds over the allocated amount be submitted to Council for approval.

**MOTION: Resolution No. 2009-76** approving, with the amendment that any request for funds over the allocated amount of \$10,300 be submitted to Council for approval, a cost sharing agreement for certain project costs in the development of the regional surface water project; approve agreements with Horizon Water and Environmental for peer review of the CEQA work products and amend the FY 2009/10 Budget to appropriate funds.

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

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

Mayor Cannella recused himself from the dais.

Mr. Gebhardt continued the staff report stating that staff is requesting that Council approve a contract with Carollo Engineers to complete a peer review of past engineering services and the costs involved. The Carollo contract would be managed by the City of Turlock.

Vice Mayor Vierra asked why staff was requesting a not-to-exceed amount of \$40,000 when the letter from Carollo is not-to-exceed \$35,000.

Mr. Gebhardt responded that the work from Carollo was more complex and the committee thought it would be best to build in a contingency of 10%.

Staff further responded that they felt there may be additional work required of Carollo but they were unable to define it at the time. So the staff of the four cities are recommending to each of the Councils to add a larger contingency.

**MOTION: Resolution No. 2009-77** approving an agreement with Carollo Engineers for \$34,789 per contract plus \$5,211 as contingency, for peer review of the Engineering Services provided to TID.

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

**VOTE: Motion passed with Mayor Cannella abstaining. (4/0/1)**

Mayor Cannella rejoined the Council meeting.

**10. Resolution No. 2009-78** ordering the levy and collection of special taxes for FY 2009/10 within the City of Ceres Community Facilities District No. 1 (Public Service).

Glenn Gebhardt, City Engineer briefly introduced the item.

**MOTION: Resolution No. 2009-78** ordering the levy and collection of special taxes for FY 2009/10 within the City of Ceres Community Facilities District No. 1 (Public Service).

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

**VOTE: Motion passed unanimously. (5/0/1)**

**11. Resolution No. 2009-79** ordering the levy and collection of special taxes for FY 2009/10 within the City of Ceres Community Facilities District No. 2 (Public Service).

Glenn Gebhardt, City Engineer briefly introduced the item.

**MOTION: Resolution No. 2009-79** ordering the levy and collection of special taxes for FY 2009/10 within the City of Ceres Community Facilities District No. 2 (Public Service).

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

**VOTE: Motion passed unanimously. (5/0/1)**

12. **Resolution No. 2009-80** approving final acceptance of the Ceres Community Center; approving Change Order #7 and a memorandum settlement of claim; authorizing the City Clerk to file the Notice of Completion; authorizing reduction of retention and releasing retention to the contractor 35 days after recording the Notice of Completion.

Glenn Gebhardt, City Engineer presented the item explaining that in accordance with the contract documents, all work has been completed and all work contained on the Final Punch List has either been completed as indicated by the Contractor, RRM Design Group, Harris & Associates and the City of Ceres, or the funds for the remaining work have been identified and will be released upon completion. Separately, staff will return with a review of change orders triggered by the project architect, RRM. Council will then determine the level of responsibility of the architect and whether any further action is requested.

The City issued a notice of Substantial Completion on May 27, 2009. At that time, the building was considered available to occupy, and the county of working days was stopped according to the specifications. The first major event was held a few days later on June 6<sup>th</sup>. The contractor contends that his work was substantially complete as of April 4, 2009, and that the items that delayed the City's occupation of the building were due to delays caused by the City. Based on extensive review of the records, it has become clear that none of the items were the fault of the contractor. Staff recommends approval of the contractor's claim.

As is the case with any large project, the initial punch list for the project included a variety of items submitted from several City departments, from the architect and from the City's Construction Manager. Most items have been completed, but the final list includes items that are back ordered, plus new work that was recently requested. Because the Community Center has been occupied and because the remaining items are minor or resulted from last minute revisions by the City staff, staff is requesting that Council approve Final Acceptance of the Community Center.

After some discussion, Council made the following motion:

**MOTION: Resolution No. 2009-80** approving final acceptance of the Ceres Community Center; approving Change Order #7 and a memorandum settlement of claim; authorizing the City Clerk to file the Notice of Completion; authorizing reduction of retention and releasing retention to the contractor 35 days after recording the Notice of Completion.

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

**VOTE: Motion passed unanimously. (5/0/1)**

**COUNCILMEMBER REFERRALS** – None.

## REPORTS

Council and Staff reported on various community events including the Mayor's State of the City

address held on July 23, 2009.

8:21 p.m. Mayor Cannella adjourned the meeting to Closed Session

**CLOSED SESSION**

CONFERENCE WITH LABOR NEGOTIATOR

City Negotiator: Liebert, Cassidy, Whitmore

Employee Organization: Miscellaneous Bargaining Unit

Employee Organization: First Line Supervisors/Confidential Bargaining Group

Employee Organization: Mid-Management Employees

Employee Organization: Department Heads

Employee Organization: Ceres Department of Public Safety Firefighters Association

Employee Organization: Ceres Police Officers' Association

*Pursuant to Gov't. Code Section 54957.6*

8:47 p.m. Council reconvened with nothing to report.

8:47 p.m. There being no further business, Mayor Cannella adjourned the meeting.

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Anthony Cannella, Mayor

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Cindy Heidorn, CMC  
City Clerk