

## CITY COUNCIL MINUTES

**September 13, 2010**

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

**INVOCATION** by Ceres First Southern Baptist Church.

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

**APPROVAL OF THE MINUTES** of the Special Study Session of June 30, 2010.

**MOTION:** Approve the Special Study Session of June 30, 2010.

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

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

### CITIZEN COMMUNICATIONS

- Lou Toste, representing Ceres Youth Soccer Organization, thanked Council for their participation in opening day activities. Mr. Toste further requested that Council consider converting the area at Ceres River Bluff Regional Park planned for a baseball diamond into two soccer fields. Mr. Toste said that CYSO is turning families away because they cannot accommodate everyone at the current facility. CYSO currently has some funding and would like to partner with the City to build those fields.

Council directed staff to meet with CYSO for initial discussions and return to Council with a formal report.

- Len Shepherd, resident, spoke regarding the Sign Ordinance and feels the City has too many regulations.
- Craig Hunnel, resident, spoke against the use of Don Pedro Road as an access road into the planned new development of a Super Walmart.

### 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 Durossette/seconded by Lane

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

### APPOINTMENTS TO BOARDS/COMMISSIONS

- A. Council approval of the re-appointment of Kim Chapman and Randy Cerny and the appointment of John Silveria to the Measure H Oversight Committee for a three-year term expiring on June 30, 2013.

**MOTION:** Approve the reappointment of Kim Chapman and Randy Cerny and the appointment of John Silveria to the Measure H Oversight Committee for a three-year term expiring on June 30, 2013.

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

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

## CONFLICT OF INTEREST DECLARATION

Councilmember Durossette declared a conflict with Item No. 9 stating that he is an employee of the Ceres Unified School District. Mayor Cannella and Vice Mayor Lane declared a conflict with Item No. 9 stating that their respective firms have done business with the School District in the last 12 months.

## CONSENT CALENDAR

1. General Correspondence – **Information Only**
  - a. Public Works Department Monthly Report for July 2010.
  - b. Building Department Monthly Report for August 2010.
2. Register of Audited Demands for period covering July 30 – August 30, 2010.
3. **Resolution No. 2010-113** amending the Conflict of Interest Code for the City of Ceres to Reflect Changes in the Organization and Title Changes.
4. **Resolution No. 2010-114** approving Amendment #6 to the Agreement for Professional Consulting Services with Pacific Municipal Consultants (PMC) for a change in scope of services to allow economic, noise and traffic sub-consultants to attend Planning Commission and City Council public hearings regarding the Mitchell Ranch Center project. **Pulled for further discussion**
5. **Resolution No. 2010-115** approving the amended FY 2010/11 Capital Improvement Program and amend the FY2010/11 Budget to appropriate funds.
6. **Resolution No. 2010-116** approving a Consultant Services Agreement with GDR Engineering, Inc. to Design the Barbour's Lift Station Improvements and authorizing the City Manager to execute the contract.
7. **Resolution No. 2010-117** authorizing submission of a joint Sustainable Communities Planning Grant application for grants funds made available through Proposition 84.
8. **Resolution No. 2010-118** authorizing acceptance of the U.S. Department of Justice, Bureau of Justice Assistance *2010 Edward Byrne Memorial Justice Assistance Grant (JAG)* and Fiscal Year 2010/11 Budget Amendment to Appropriate Funds

MOTION: Approve Consent Calendar Items 1a, 1b, 2, 3 and 5-7 as recommended by staff.

MOVED: Moved by Vierra/seconded by Ochoa

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

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

4. **Resolution No. 2010-114** approving Amendment #6 to the Agreement for Professional Consulting Services with Pacific Municipal Consultants (PMC) for a change in scope of services to allow economic, noise and traffic sub-consultants to attend Planning Commission and City Council public hearings regarding the Mitchell Ranch Center Project.

Len Shepherd, resident asked if this amendment was for additional work we are asking the consultant to perform.

Council responded that this amendment, which will allow the consultant to attend additional meetings, is 100% developer funded and no cost to the City.

8. **Resolution No. 2010-118** authorizing acceptance of U.S. Department of Justice, Bureau of Justice Assistance 2010 Edward Byrne Memorial Justice Assistance Grant (JAG) and Fiscal Year 2010/11 Budget Amendment to Appropriate Funds.

Len Shepherd, resident asked what the Grant funds will be used for.

Mike Borges, Deputy Police Chief/Human Resources Manager responded that the money would be used to re-equip the investigation bureau's interview rooms with updated audio/video equipment and to purchase a Universal Forensic Extraction Device, used for collecting and analyzing audio and video evidence from cellular phones.

MOTION: Approve Consent Calendar Items 4 and 8 as recommended by staff.

MOVED: Moved by Ochoa/seconded by Durossette

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

### UNFINISHED BUSINESS

9. **Resolution No. 2010-119** approving an agreement for \$141,207.00 for the provision of one Ceres Police Officer/School Resource Office (SRO) to provide law enforcement services, expertise and training for the Ceres Unified School District, and authorizing the City Manager, or designee, to execute the agreement. (M. Borges) *Continued from 08/23/10.*

City Attorney Lyons made the following statement:

1. The item under consideration is approval of the contract with Ceres Unified School District for the provision of School Resource Officer.
2. The Mayor, Vice Mayor Lane and Councilmember Durossette all have disqualifying conflicts of interest regarding the matter. That leaves the Council without the required quorum to take action on this matter. The specific nature of the conflicts of interest is as follows:
  - a. The School District is a source of income to Council Member Durossette as he is an employee of the District and has received more than \$500.00 from the District in the last 12-months.

Council Member Durossette also has a Govt. Code, Section 1090 prohibition from participating in the decision. Govt. Code 1090 prohibits a City Council from making contracts with persons or entities where one of its members has an interest in the contract, unless that interest is a "remote" interest. Council Member Durossette has an interest in the contract since he is an employee of the District. However, that interest is classified as a "remote" interest under the Code because it is receipt of salary from a governmental entity. This allows the Council to make the contract, but still prohibits Council Member Durossette from voting or participating in the discussion of the matter.

- b. The School District is a source of income to Vice Mayor Lane, as he has received more than \$500.00 from the District in the past 12-months from sales of equipment to the District.

- c. The School District is a source of income to Mayor Cannella as he has received more than \$500.00 in the past 12-months for services provided to the District.

Since the School District is a party to the contract the source of income interest is directly involved in the decision and deemed to be a material disqualifying interest.

Under Govt. Code §87101 and FPPC Regulation 18708 a Council Member may participate in the making of a governmental decision despite a conflict of interest, if the Council Member's participation is legally required for the decision to be made.

In this circumstance the participation of one disqualified Council Member is legally required for the Council to make a decision.

Since Council Member Durossette has a Govt. Code 1090 prohibition the only two members of the Council that are eligible to be brought back are Mayor Cannella and Vice Mayor Lane.

The Code Section says that the selection process is to be done on a random basis. In order to determine which member of Council will be brought back to establish a quorum and consider the decision on the matter, City Attorney Lyions wrote down a number between 1 and 10. Mayor Cannella and Vice Mayor Lane will give City Attorney Lyions a number and the number closest to the one chosen by City Attorney Lyions will participate in the item.

Mayor Cannella chose the number one (1). Vice Mayor Lane chose the number nine (9). The number written down by City Attorney Lyions was Number eight (8).

The number was confirmed by the City Clerk.

Mayor Cannella and Council Member Durossette recused themselves from the dais.

After a brief staff report by Deputy Chief Borges the following motion was made:

**MOTION:** Approve **Resolution No 2010-119** as recommended by staff.

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

**VOTE:** **Motion passed with Mayor Cannella and Councilmember Durossette abstaining (3/0/2)**

## **PUBLIC HEARING**

10. Public Hearing – **Resolution No. 2010-120** recommending the Stanislaus County Board of Supervisors approve the FY 2009/10 Community Development Block Grant (CDBG) and Emergency Shelter Grant (ESG) Consolidated Annual Performance and Evaluation Report (CAPER).

Bryan Briggs, Redevelopment/Economic Development Manager presented a brief staff report.

7:28 p.m. The Public Hearing was opened.

7:28 p.m. There being no one wishing to speak, the Public Hearing was closed.

**MOTION:** Approve **Resolution No 2010-120** as recommended by staff.

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

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

**NEW BUSINESS** – None.

7:29 p.m. Mayor Cannella adjourned to the meeting of the Redevelopment Agency.

8:04 p.m. Mayor Cannella reconvened the City Council Meeting.

**COUNCILMEMBER REFERRALS** - Vice Mayor Lane submitted a request to place the potential acquisition of the property located at 2936 5<sup>th</sup> Street which is adjacent to the south boarder of the Whitmore House and Museum on the next agenda. Vice Mayor Lane feels that the condition of the property is contributing to blight in the downtown. He requested Council concurrence to have staff look into the matter and report back to Council with their findings.

Council concurred and directed staff to place this item on the next agenda.

Councilmember Ochoa referenced a letter recently written to the City by Florence Cardenas regarding the esthetics of the downtown area and the water tower. Councilmember Ochoa requested that an item be placed on an upcoming study session to discuss the issues raised in the letter.

Council concurred and directed staff to place this item on an upcoming study session.

**REPORTS**

Councilmember Vierra mentioned that he has noticed more shopping carts on the streets. He also asked the status of the Development of Lions Park and Ryno Park.

Staff responded that the funding for those two parks is on hold indefinitely. The plan is to have them redesigned with considerable citizen input.

Councilmember Vierra requested that staff notify the residents when that project begins again.

Staff assured Council that the citizens will be notified.

There being no further business, Mayor Cannella adjourned the City Council meeting at 8:07 p.m.

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Anthony Cannella, Mayor

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Cindy Heidorn, CMC, City Clerk