

CITY COUNCIL MEETING MINUTES

November 14, 2011

Mayor Vierra called the November 14, 2011 City Council Meeting to order at 7:00 p.m. with the following in attendance:

ROLL CALL Council Members Lane, Ochoa, Mayor Vierra

EXCUSED Councilmember Durossette

INVOCATION by Pastor Dionicio Vargas, Ceres Valley View Church of the Nazarene

PLEDGE OF ALLEGIANCE to the flag led by Mayor Vierra

PRESENTATIONS

A. Stanislaus County Library Update, County Librarian Vanessa Czopek.

Vanessa Czopek, County Librarian presented an annual update and requested that Council pass a resolution in support of the 1/8 cent sales tax initiative that will be placed before the voters in 2012.

Council concurred and directed staff to bring a resolution back at the next Council Meeting.

Paul Carusso, President of the Friends of the Library Committee thanked Council for their support.

Chales Teval, Ceres Library Branch Manager, updated Council on the activities for November and December.

APPROVAL OF THE MINUTES of the regular meeting of October 10 and October 24, 2011 and the Study Session of October 24, 2011. (All present)

MOTION: Approve the minutes of regular meeting of October 10 and October 24, 2011 and the Study Session of October 24, 2011.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: **Motion passed with Councilmember Durossette absent. (3/0/1)**

CITIZEN COMMUNICATIONS

- Don Donaldson, resident, spoke to Council about a recent ticket he received while parked near his home. Mr. Donaldson felt the ticket was unfair. Mr. Donaldson went on to comment about the upcoming Basketball season and his difficulty in securing gym space at the local schools.
- Len Shepherd, resident, spoke about the importance of libraries. He further stated that his house was hit by a car last weekend and thanked Ceres PD for their quick response and for catching the people who hit him.

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 Ochoa/seconded by Lane

VOTE: **Motion passed with Councilmember Durossette absent. (3/0/1)**

APPOINTMENTS TO BOARDS/COMMISSIONS – None.

CONFLICT OF INTEREST DECLARATION – None.**CONSENT CALENDAR**

1. General Correspondence – **Information Only**
 - a. Building Division Monthly Report for October, 2011.
 - b. Public Works Department Monthly Report for September, 2011.
 - c. Public Safety Update.
 - d. Major Project List Update as of November 4, 2011.
 - e. Capital Improvement Projects (CIP) Update as of November 4, 2011.
2. Register of Audited Demands for period covering October 14 – 25, 2011.
3. **Resolution No. 2011-149** authorizing an appropriation of \$2,700.00 for design, engineering and project management work associated with the FY 2010/11 Community Development Block Grant (CDBG) Project.
4. **Resolution No. 2011-150** approving Legal Services Agreement with Meyers/Nave Law Firm for Defense of Litigation challenging Council approval of the Wal-Mart Project.
5. Waive Second Reading and adopt **Ordinance No. 2011-1006** approving a Zoning Ordinance Text Amendment (11-02 ZOTA) for the modification of various definitions listed in the City of Ceres Zoning Ordinance.
6. **Resolution No. 2011-151** awarding the Construction Contract for Central Avenue and Don Pedro Road Traffic Signal Project to Collins Electric Company in the amount of \$313,250.00, authorizing a 10% contingency and authorizing the Acting City Manger to execute the Contract
7. **Resolution No. 2011-152** awarding the Construction Contract for the Mitchell Road and Don Pedro Road Traffic Signal Project to Prism Engineering Inc. in the amount of \$267,605.50, authorizing a 10% contingency and authorizing the Acting City Manger to execute the Contract.
8. **Resolution No. 2011-153** awarding the Construction Contract for the 2011 Water System Upgrade to Universal Underground Inc., Authorizing a 10% Contingency and Authorizing the Acting City Manager to execute the contract.
9. **Resolution No. 2011-154** approving a contract with Pacific Design Associates for Architectural Services for the conversion of the old Council Chambers into a Reception/Bill Collection Area for the Finance Department and amending the FY 2011/12 Budget to appropriate funds.
10. **Resolution No. 2011-155**_ authorizing the City Manager to sign the loan packet from the California Energy Commission for the energy saving LED Street Light project.
11. **Resolution No. 2011-156** authorizing the signing of Proposal Number 2 with Pacific Gas & Electric Co., for the Energy saving LED Street Light Project. (M. Brinton)
12. **Resolution No. 2011-157** approving submittal of the Applications for CalRecycle Grant Funds.
13. **Resolution No. 2011-158** approving an appropriation of \$42,702.00 to fund the agreement between the City of Ceres and O'Dell Engineering for Design and Engineering Services associated with the FY 2011/12 Community Development Block Grant (CDBG) Project.
14. **Resolution No. 2011-159** to approve a budget amendment and authorize the issuance of a purchase

order to Tri Power Systems for the installation of an Oxidation Catalyst and Testing of the generator at Fire Station #4.

15. **Resolution No. 2011-160** approving an amendment to the existing contract with West Yost Associates for the completion of a Water Rate and Connection Fee Study and approval of a budget amendment.

MOTION: Approve Consent Calendar Items 1a, 1b, 1d, 1e, 2, 3, 5, 9, 10, 12, 13 and 14 as recommended by staff.

MOVED: Moved by Ochoa/seconded by Lane

VOTE: Motion passed with Councilmember Durossette absent. (3/0/1)

CONSIDERATION OF ITEM(S) REMOVED FROM THE CONSENT CALENDAR

1c. Public Safety Update. *Pulled by Don Donaldson, resident.*

Mr. Donaldson asked for a summary of the update.

Deputy Chief Borges, responded highlighting the recent achievements of the Public Safety Department.

4. **Resolution No. 2011-150** Approving Legal Services Agreement with Meyers/Nave Law Firm for Defense of Litigation challenging Council approval of the Wal-Mart Project. *Pulled by Len Shepherd, resident.*

Mr. Shepherd asked who was paying for the Legal Services.

Staff responded that all legal costs were being paid by Wal-Mart not the City.

6. **Resolution No. 2011-151** awarding the Construction Contract for Central Avenue and Don Pedro Road Traffic Signal Project to Collins Electric co. in the amount of \$313,250.00 authorizing a 10% contingency and authorizing the Acting City Manager to execute the Contract. *Pulled by Council.*

7. **Resolution No. 2011-152** awarding the Construction Contract for the Mitchell Road and Don Pedro Road Traffic Signal Project to Prism Engineering Inc. in the amount of \$267,605.50, authorizing a 10% contingency and authorizing the Acting City Manager to execute the contract. *Pulled by Council.*

Council asked why there was such a large price difference between to two traffic light projects.

Staff responded that the Central Avenue/Don Pedro Road Traffic Signal required more infrastructure work than the Mitchell/Don Pedro Road Project.

8. **Resolution No. 2011-153** awarding the Construction Contract for the 2011 Water System Upgrade to Universal Underground, Inc., Authorizing a 10% Contingency and Authorizing the Acting City Manager to execute the contract. *Pulled by Len Shepherd, resident.*

Len Shepherd pulled the item to comment on his continued dislike of the use of contingencies. Items 6, 7 and 8 all had contingencies and Mr. Shepherd thinks the City should only allow for a 5% contingency if any.

Staff explained that the contingency is only used if staff is requesting additional work done that was not included in the additional bid. By allowing for the contingency, it allows staff to make quick decisions without having to delay the project until the next Council meeting.

9. **Resolution No. 2011-154** approving a contract with Pacific Design Associates for Architectural Services for the conversion of the old Council Chambers into a Reception/Bill Collection Area for the Finance Department and amending the FY 2011/12 Budget to appropriate funds.
11. **Resolution No. 2011-156** authorizing the signing of Proposal Number 2 with PG & E for the Energy saving LED Street Light Project. *Pulled by Len Shepherd, resident*

Mr. Shepherd asked why PG & E was involved. *Staff responded that TID had no such program.*

15. **Resolution No. 2011-160** approving an amendment to the existing contract with West Yost Associates for the completion of a Water Rate and Connection Fee Study and approval of a budget amendment.

Daniel Padilla, resident asked if West Yost has done these types of studies before. *Staff commented that West Yost has done many of these types of studies and are extremely capable.*

Council requested that staff remove Task 5, Review of RSWSP Financial Analysis stating that they did not feel it was necessary at this time.

MOTION: Approve 1c, 4, 6, 7, 8, 9, 11 and 15 with the removal of Task No. 5, Review of RSWSP Financial Analysis.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: Motion passed with Councilmember Durossette absent. (3/0/1)

UNFINISHED BUSINESS – None.

PUBLIC HEARING – None.

NEW BUSINESS

16. Christmas Festival/Christmas Tree Lane Update.

Traci Farris, Recreation Supervisor, presented the report to Council stating that during the October 24, 2011 study session, Recreation staff sought recommendations from Council regarding the relocation of the Annual Christmas Festival from Smyrna Park to the Ceres Community Center. Staff had originally proposed the relocation as a cost savings idea since our special events budget was drastically reduced during the last round of budget cuts.

Council directed that the festival remain at Smyrna Park and requested that Recreation provide an updated budget for the event. This budget, according to Council, should include all overtime costs for Public Works, as well as the costs associated with maintaining the same level of service and activities that residents have become accustomed to. Staff estimates the cost for activities to be \$1,730 not including the wagon rentals as staff is still trying to secure a suitable alternative for the previous wagon provider. Due to advanced age and poor health, Mr. George Cabral will no longer be able to provide his services during the festival. Staff is currently seeking quotes on other modes of transportation for the Grand Opening. Other costs associated with the event including overtime for both public works and Public Safety personnel is estimated at approximately \$2,000.

Recreation Staff has secured funding from a combination of the General Fund, a donation from Wal-Mart and the Miscellaneous Recreation Donation Account.

Ms. Farris further reported that staff has been meeting with the citizens of Christmas Tree Lane and are diligently working to meet the needs of the residents including an increase in the number of trash receptacles and street sweeping occurrences. Additionally, Public Safety will arrange for extra traffic control on Friday and Saturday evenings during the month of December

Council thanked staff for their efforts to secure funding from donated sources and restore the Christmas Festival to its former levels and for working with the residents to help alleviate their concerns.

17. **Resolution No. 2011-161** approving an agreement and Memorandum of Understanding with the Westport Fire District regarding the West Landing Specific Plan Annexation to provide for the District to be “Made Whole” and establish a collaborative approach.

Tom Westbrook, Planning, Building and Housing Manager presented a brief staff report to Council stating that this Agreement is proposed to implement the provisions of the West Landing Specific Plan and responds to concerns raised by the District during the City Council meeting of July 27, 2011. Further, provisions to ensure no net loss of revenue to the District are generally required and supported by the Stanislaus LAFCO policies and are consistent with the West Landing approvals. The Memorandum of Understanding establishes a basis for collaboration between the District and the City and provides guidance for future ongoing discussion.

MOTION: Approve **Resolution No. 2011-161** as recommended by staff.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: Motion passed with Councilmember Durossette absent. (3/0/1)

18. **Ordinance No. 2011-1007** amending Title 1, Chapter 1.24, Section 1.24.020 of the Ceres Municipal Code to clarify the types of Claims which must be presented. **FIRST READING AND INTRODUCTION.**

Mike Lyons, City Attorney addressed Council stating that at the time the local claims ordinance was adopted in 2002, it was the intention to include all of the claims listed as exempt in Government Code Section 905. Otherwise, there would be no reason to have adopted the ordinance as the existing provisions if the Government Code would have been sufficient. It can be claimed that the language of Section 1.24.020 of the City’s local claims ordinance does not indicate a specific intent to make the claims exempt under Section 905 of the Government Code subject to the local claims ordinance. Mr. Lyons became aware of the potential problem when a recent lawsuit was filed against 135 California Cities claiming refunds of utility users taxes to be charged in violation of Federal law prohibiting a tax on internet access.

The proposed ordinance amendment makes changes to the language of Section 1.24.020 of the Municipal Code to make it clear that the claims procedure applies to those claims listed as exempt in Government Code, Section 905. The amendment will eliminate any possibility of a successful challenge to the application of the claims ordinance to such claims in a contested proceeding.

MOTION: Waive First Reading and have **Ordinance No. 2011-1007** read by title only.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: Motion passed with Councilmember Durossette absent. (3/0/1)

Mayor Vierra directed the Clerk to read **Ordinance No. 2011-1007** by Title Only

City Clerk read the title into the record as follows:

“**Ordinance No. 2011-1007**, amending Title 1, Chapter 1.24, Section 1.24.020 of the Ceres Municipal Code to clarify the types of Claims which must be presented.

MOTION: Approve for First Reading and Introduction **Ordinance No. 2011-1007** for First Reading and Introduction.

MOVED: Moved by Lane/seconded by Ochoa

VOTE: Motion passed with Councilmember Durossette absent. (3/0/1)

COUNCILMEMBER REFERRALS

Add - Discussion of City Christmas decorations on the next agenda.

REPORTS

Councilmember Ochoa mentioned that the trees do not appear to be growing in the Eastgate subdivision. Jeremy Daman is currently investigating and will report to Council on November 28, 2011.

There being no further business the meeting was adjourned at 8:50 p.m.

/s/ Chris Vierra, Mayor

/s/ Cindy Heidorn, City Clerk