

**MINUTES OF THE CITY COUNCIL  
REGULAR MEETING  
Wednesday, April 22, 2009**

**CALL TO ORDER/ROLL CALL**

Mayor Hume called the regular City Council meeting of April 22, 2009 to order at 6:14 p.m.

Present: Mayor Hume, Vice Mayor Scherman, Council Members Cooper, Davis and Detrick

Absent: None.

Council Member Cooper led the Pledge of Allegiance.

Mayor Hume asked that a moment of silence be observed.

**APPROVAL OF AGENDA**

***Motion: M/S Cooper/Davis*** to approve the agenda as presented. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**CLOSED SESSION**

None.

**PRESENTATIONS/ANNOUNCEMENTS**

- 4.1 A video presentation was given by Sacramento Regional Human Rights / Fair Housing Commission Executive Director Barbara Lehman and Sacramento Association of Realtors Executive Vice President Nelson Janes, who also presented a resolution to the City recognizing Fair Housing Month and the City of Elk Grove's commitment to affordable housing
- 4.2 Council Member Davis presented the National Volunteer Week Proclamation to Elk Grove Volunteers In Police Services program volunteers
- 4.3 Vice Mayor Scherman presented the Sexual Assault Awareness Month Proclamation to WEAVE Executive Director Beth Hassett
- 4.4 Integrated Waste Program Manager Cedar Kehoe gave a presentation regarding Earth Week 2009 Activities

## **PUBLIC COMMENT**

Emmanuel Okwuosa stated that he was a resident of the Shires subdivision and had been unable to finish his swimming pool installation, due to a neighbor's complaint, which resulted in the City issuing a Stop Work Order. His backyard is now unusable and the landscaping is dying pending a resolution of the situation.

Chisoromi Okwuosa reported that a Stop Work Order was issued one week after a permit was received to construct her swimming pool. A meeting took place on April 13 with the City Attorney and other City staff regarding the matter. She noted that a City ordinance states that "building" setbacks are to be 75 feet from the fence line; however, Ms. Okwuosa did not believe the words "swimming pool" and "building" were synonymous. She stated that the matter was tentatively scheduled to be heard before Council on May 13, though she asked that it be resolved prior to that time due to the safety issue created by the open ditch in her backyard.

Amaka Okwuosa stated that she and her two brothers had wanted a swimming pool for over two years and the installation process had already begun. Ms. Okwuosa reported that her neighbor had called the police several times for minor instances. She asked Council not to deny the pool permit based on a complaint by one individual.

Council Member Davis expressed hope that this matter would be resolved quickly and suggested a variance request be applied for.

Karol Widemon, attorney representing Emmanuel Okwuosa, distributed background information and photos regarding the situation surrounding the City's Stop Work Order (filed). She believed the Stop Work Order to be unlawful and cited the case of *Congregation Etz Chaim v. City of Los Angeles*. She reported that, on April 2, the City issued a permit for the Okwuosa's to build a pool. The permit showed that the pool would be built within 75 feet of the dividing property line. One week later, in response to a complaint by one neighbor, a Stop Work Order was issued. Ms. Widemon asserted that once a permit has been issued in California there is a vested property right that cannot be revoked by the City. She noted that the property owners had spent over \$25,000 in the first week of construction. The Stop Work Order was issued after holes were dug and a three-foot trench was dug along the property line, creating both an attractive nuisance and a health and safety issue. She felt it was unacceptable to wait two more weeks to resolve this matter.

At the request of Mayor Hume, City Attorney Cochran explained that the City had never indicated an intent to revoke the swimming pool permit in this case. She pointed out that a swimming pool is defined as a structure in the Building and Zoning Codes. She confirmed that it was a validly issued Stop Work Order because there are two setbacks being questioned. The Order was issued within three days of the issuance of the building permit; however, despite the issuance, the property

owners continued to do work incurring a majority of the cost related to the installation of rebar and plumbing. Ms. Cochran asserted that the doctrine of attractive nuisance was not applicable in this case. The City had suggested the Okwuosa's file a variance application; however, they have refused to do so. An item has tentatively been scheduled for the City Council meeting of May 13 to consider the interpretations of conditions 37 and 51 of the Shires subdivision map.

Jay Smith reported that there was an impact fee dispute between the Elk Grove Sports Center and its tenants versus the City of Elk Grove. A letter from the City dated April 8 threatened to close the businesses on April 29 if payment was not made. Mr. Smith asked Council to allow additional time so that further negotiations between all impacted parties could continue.

At the request of Council Member Detrick, Assistant City Manager Blacklock explained that this matter had been ongoing since 2007. There was continued interest on behalf of the City to reach conclusion on the deferral agreement, or some mechanism to ensure the fees are paid. A meeting recently took place between the Mayor, representatives of the Cosumnes Community Services District, City staff, and the applicant to identify a remedy. At the meeting the applicant indicated that the deferral agreement was not viable for him and that he would seek to propose an alternative deferral agreement. The meeting was concluded by noting that significant progress would need to be made by April 29.

City Manager Gill reported that a fee deferral was first discussed in June 2007. A letter dated October 3, 2007 was sent by the former Assistant City Manager to the applicant regarding the possibility of a fee deferral program.

City Attorney Cochran noted that Mr. Smith signed documents in June 2008 and August 2008 in which he was provided notice that the tenant improvements would require the payment of additional development impact fees and that the project was eligible for the City's fee deferral program. Ms. Cochran explained that the City has an agreement with Mr. Smith; it does not have an agreement with the tenants.

Council Member Davis expressed dismay that there is a "disconnect" between the building owner and the tenants. He noted that the letter dated October 3, 2007 states that the fees were approximately \$1.15 million. He pointed out that the tenants were not aware of this and passing the burden along to them would make it difficult for them to do business. He maintained that the developer knew about the fees and is obligated to pay them.

Larry Tucker introduced himself as the President of the Americans Disabled Rights Organization. He urged Council to consider the impact on handicapped persons and senior citizens of increasing bus fares, particularly in light of decreased government assistance programs.

## **CONSENT CALENDAR ITEMS**

In reference to Item 6.8, Council Member Davis recalled that, during fee discussions, the Council gave direction to develop an ordinance that would provide local preference on Public Works contracts. Assistant City Manager Blacklock replied that the Sacramento Builders Exchange is coordinating such a program region wide, though the information has not yet been received by the City.

In reference to Item 6.9, Vice Mayor Scherman asked where Odell's Pump and Motor Service was located, to which Public Works Director Shepard answered Sacramento and he reported that other bidders were from Sacramento, Daly City, and Napa.

Prior to action on the consent calendar items approval, Mayor Hume read the following statement of recusal on behalf of himself and Vice Mayor Scherman into the record:

*"I own property within the survey area covered by the resolution designating the survey area. State law provides that council members not participate in any decision that may have an effect on real property owned or leased by that council member. Therefore, I will not be participating in **Consent Item 6.10**. The record should reflect my recusal on the item and my 'abstention' from participation in this matter. In addition to my recusal here today, I have not made, participated in making, or otherwise influenced or attempted to influence this decision."*

**Motion:** *M/S Scherman/Davis* to approve the Consent Calendar as presented with abstentions noted on Agenda Item 6.10 (Hume, Scherman). ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item No. 6.1:** Received February and March 2009 Treasurer's Reports

**Agenda Item No. 6.2:** Approved City Council Meeting Minutes of: a) March 11, 2009 Special Meeting, and b) March 11, 2009 Regular Meeting

**Agenda Item No. 6.3:** Received report on City Manager approved purchases and contracts authorized by Elk Grove Municipal Code Chapter 3.42 Contracts and Purchasing, filed through April 15, 2009

**Agenda Item No. 6.4:** Received report on Requests for Proposals, Qualifications, and Bids

**Agenda Item No. 6.5:** **Resolution No. 2009-77** adopted delegating authority to the City Manager for determining Industrial Disability Retirement eligibility

**Agenda Item No. 6.6:**     **Resolution No. 2009-78** adopted amending the 2008-13 Capital Improvement Program and the Fiscal Year 2008-09 budget by approving the allocation of \$3,683,000 of economic stimulus funding for the Annual Pavement Resurfacing Program, Intelligent Transportation Systems Program, and the I-5 / Elk Grove Boulevard Northbound On-ramp Project

**Agenda Item No. 6.7:**     **Resolution No. 2009-79** adopted authorizing the Public Works Director to establish and submit the Annual Anticipated Race Conscious Disadvantaged Business Enterprise Participation Level and to execute DBE Implementation Agreements and related amendments with Caltrans and the Federal Transit Administration

**Agenda Item No. 6.8:**     **Resolution No. 2009-80** adopted authorizing the City Manager to execute a construction contract with George Reed, Inc. for the Elk Grove Boulevard Rehabilitation Project (Franklin Boulevard to Bruceville Road) in the amount of \$1,168,616.39 and authorizing the City Engineer to approve change orders not to exceed \$175,292

**Agenda Item No. 6.9:**     **Resolution No. 2009-81** adopted authorizing the City Manager to execute a contract with Odell's Pump and Motor Service to Furnish Backup Pump Equipment for Pump Stations D-50 and D-53 in the amount of \$119,435

**Agenda Item No. 6.10:**   **Resolution No. 2009-82** adopted designating the Elk Grove Redevelopment Survey Area

***Approved by Consent vote with Mayor Hume and Vice Mayor Scherman abstaining. The motion was approved by the following vote: Ayes: 3; Noes: 0; Abstentions: 2 (Hume, Scherman)***

**Agenda Item No. 6.11:**   **Resolution No. 2009-83** adopted authorizing the City Manager to execute a contract amendment with Bank of America for banking services extending the contract term one year and authorizing an expenditure of funds not to exceed \$108,000

**Agenda Item No. 6.12:**   Approved Certificate of Recognition in honor of the 25<sup>th</sup> Anniversary of the Veterans of Foreign Wars Post 2073

## **PUBLIC HEARINGS**

**Agenda Item No. 7.1:**   Continue public hearing to May 13, 2009 to consider updates to Capital Facilities and Roadway Impact Fees

**RECOMMENDATION:**

Open the public hearing and continue it until May 13, 2009. This continuance is necessary to allow staff to incorporate technical and agreed-upon changes in the nexus studies.

**PUBLIC COMMENT:**

None.

**Motion:** *M/S Scherman/Cooper* to open and continue the public hearing regarding updates to Capital Facilities and Roadway Impact Fees to the regularly scheduled City Council meeting of May 13, 2009. ***The motion passed by the following vote: Ayes: 5; Noes: 0.***

**Agenda Item No. 7.2:** A public hearing to consider a rezone, design review, and variance request for the Elk Grove 76 Service Station Project located at 8475 Elk Grove Boulevard (EG-08-002; APN: 125-0010-005)

**PLANNING COMMISSION RECOMMENDATION:**

1. Introduce and waive the full reading, by substitution of title only, an ordinance amending the Elk Grove Zoning Map for a 0.71 acre parcel from Limited Commercial (LC) to Shopping Center (SC) for the Elk Grove 76 Service Station Project No. EG-08-002; and
2. Adopt resolution approving the Design Review and Variance request for the Elk Grove 76 Service Station Project No. EG-08-002 subject to findings and conditions of approval.

Mayor Hume declared the public hearing open.

With the aid of an overhead presentation (filed), Jessica Shalamunec, Project Planner, provided an overview of the staff report and recommendation. She noted that the existing gas station would be demolished and the site reconfigured to accommodate a more modern style gas station. Variances are required because the site is small and constrained. The Planning Commission considered this item on March 19 and, with two additional conditions of approval related to architecture and the reciprocal access agreement, they recommended that Council approve the project entitlements.

In reply to Mayor Hume, Ms. Shalamunec confirmed that no additional right of way has been asked for or garnered.

Geoffrey George Fujimoto, environmental design consultant, urged Council to approve the project.

**PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

***Motion #1: M/S Cooper/Scherman*** to introduce and waive the full reading, by substitution of title only, **Ordinance No. 8-2009** amending the Elk Grove Zoning Map for a 0.71 acre parcel from Limited Commercial (LC) to Shopping Center (SC) for the Elk Grove 76 Service Station Project No. EG-08-002. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

***Motion #2: M/S Cooper/Davis*** to adopt **Resolution No. 2009-84** approving the Design Review and Variance request for the Elk Grove 76 Service Station Project No. EG-08-002 subject to findings and conditions of approval. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item No. 7.3:** A public hearing to consider approving a Letter of Public Convenience and Necessity for a Type 21 (Off-Site General) alcohol license for Rite Aid #6494 located at 9260 Elk Grove Boulevard (EG-09-013; APN: 134-0050-001)

**PLANNING COMMISSION RECOMMENDATION:**

Adopt resolution approving the Letter of Public Convenience and Necessity for Rite Aid #6494.

Mayor Hume declared the public hearing open.

With the aid of an overhead presentation (filed), Mike Costa, Assistant Planner, provided an overview of the staff report and recommendation.

In response to Council Member Davis, Mr. Costa reported that members of the Old Town Elk Grove Foundation and Elk Grove Historical Society were notified of this matter and none responded with concerns. One comment was received by an individual who expressed general concern about the sale of alcohol.

**PUBLIC COMMENT:**

Harold Van Dyke stated that he lived near the site and complained of crime in the area, which he feared would increase by an additional establishment that sold alcohol.

Mayor Hume declared the public hearing closed.

***Motion: M/S Cooper/Scherman*** to adopt **Resolution No. 2009-85** approving the Letter of Public Convenience and Necessity for Rite Aid #6494. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item No. 7.4:** A public hearing to consider adoption of resolutions calling an election and declaring results of the special election for annexation to Community Facilities District No. 2006-1 (Maintenance Services) and introduction of an ordinance levying and apportioning the special tax to the annexing area (Annexation No. 12)

**RECOMMENDATION:**

1. Adopt resolution calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors;
2. (*Following tabulation and certification of ballot results by the City Clerk*) Adopt resolution declaring the results of the special election held on April 22, 2009 for the twelfth annexation to Community Facilities District No. 2006-1 (Maintenance Services); and
3. Introduce and waive the full reading, by substitution of title only, an ordinance levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 12.

Mayor Hume declared the public hearing open.

Andrew Keys, Finance Analyst, reported that the item relates to the annexation of one project into Community Facilities District 2006-1 for maintenance services. The project consists of 115 multifamily units for the Elk Grove Retirement Residence. Subsequent to the Resolution of Intention (adopted on March 11, 2009) the property owner of Parcel 116-0030-037 changed from Han Do, Long Do, Nu-Klieu Phan to Harvest Management Services Corporation.

**PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

**Motion #1:** *M/S Davis/Scherman* to adopt **Resolution No. 2009-86** calling an election to submit the question of levying a special tax within the area proposed to be annexed to Community Facilities District No. 2006-1 (Maintenance Services) to the qualified electors. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

City Clerk Blackston reported that of 115 possible votes, 115 affirmative votes were cast authorizing the City of Elk Grove to levy a special tax at the rate apportioned and described. The measure passed with more than two-thirds of all votes cast in the election in favor of the measure.

**Motion #2:** *M/S Davis/Scherman* to adopt **Resolution No. 2009-87** declaring the results of the special election held on April 22, 2009 for the twelfth annexation to Community Facilities District No. 2006-1 (Maintenance Services). ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**Motion #3:** *M/S Davis/Scherman* to introduce and waive the full reading, by substitution of title only, **Ordinance No. 9-2009** levying and apportioning the special tax in territory annexed to Community Facilities District No. 2006-1 (Maintenance Services) Annexation No. 12. ***The motion passed by the following vote: Ayes: 5; Noes: 0***

**Agenda Item No. 7.5:** A public hearing to consider adoption of a resolution determining to levy street maintenance assessments for certain properties in the Eastern Area which represents annexation No. 12 into Street Maintenance District No. 1 – Zone 3-A

**RECOMMENDATION:**

Conduct a public hearing on Supplement No. 12 to the Engineer’s Report, the question of levying assessments within Street Maintenance District No. 1 – Zone 3 and creating a subset of Zone 3 to be titled Street Maintenance District No. 1, Zone 3-A for certain properties in the Eastern Area pursuant to the Benefit Assessment Act of 1982. Following the close of the public hearing and tabulation of ballot results, staff recommends the adoption of a resolution determining to Levy Assessments in Street Maintenance District No. 1 – Zone 3-A (Annexation 12).

Mayor Hume declared the public hearing open.

Andrew Keys, Finance Analyst, reported that the item represents the annexation of one project into Street Maintenance District No. 1 Zone 3-A. The project consists of 115 multifamily units for the Elk Grove Retirement Residence.

**PUBLIC COMMENT:**

None.

Mayor Hume declared the public hearing closed.

City Clerk Blackston reported there was no majority protest; of one possible vote, one affirmative vote was returned. The ballot approved the proposed assessment and the proposed inflation limit described for the parcel identified in the ballot.

**Motion:** *M/S Davis/Detrick* to adopt **Resolution No. 2009-88** determining to Levy Assessments in Street Maintenance District No. 1 – Zone 3-A (Annexation 12). ***The motion passed by the following vote: Ayes: 5; Noes: 0***

## **REGULAR AGENDA ACTION ITEMS/RECOMMENDATIONS**

None.

## **GENERAL ADMINISTRATION INFORMATION**

City Manager Laura Gill reviewed the April 22, 2009 Administrative Report (filed).

## **COUNCIL COMMENTS/FUTURE AGENDA ITEMS**

Reports on Regional Boards, Commissions, Committees; Travel/Training Expenditures Disclosure (*in accordance with Resolution 2006-295 and Government Code § 53232.3(d)*):

Council Member Davis reported that the City sponsored a bill which requires the State of California to give priority to locating state office buildings in communities that have large concentrations of state workers. He and Council Member Detrick serve on a subcommittee working on this issue and Senator Cox has agreed to become a coauthor.

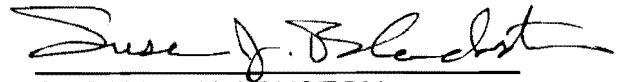
Vice Mayor Scherman asked Public Works to check the synchronization of traffic lights on Waterman Road between Elk Grove Boulevard and Calvine Road, as it is currently causing traffic to back up. She expressed concern heard from members of the Old Town Elk Grove Foundation regarding the \$60,000 grant for improvements in the area and asked the Public Works Director to look into the matter. She reported that hundreds of people paid tribute to U.S. Army Sergeant Bryan Hall on May 19.

Council Member Detrick reported that three Wilton residents were killed in two separate airplane accidents recently. He mentioned that one of the deceased was his friend and he expressed sympathy to his wife and daughters.

Mayor Hume reported that the Sacramento Transit Authority expended all funds from the original Measure A, some of which will meet Elk Grove's obligations for funding. A historical vote took place at the last Sacramento Regional Transit District meeting at which 50 votes in favor (i.e. representatives from the City of Sacramento and County of Sacramento) with all others opposed, defeated an attempt to charge for parking at the light rail park-and-ride lots. It was thought that such a change would have deterred riders. He asked staff to return to Council with a presentation on the Intelligent Transportation System, which will receive \$1 million in federal stimulus funding. Additionally, he recommended that discussion take place regarding the Promenade Mall project, e.g. its status, future plans, what incentives could be put in place for continued development, etc. He noted that longtime Elk Grove resident John Lewis passed away on April 9.

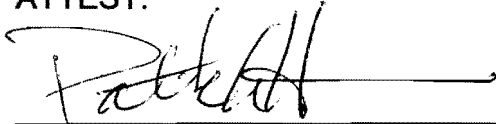
**ADJOURNMENT**

With no additional business to conduct, the April 22, 2009 City Council meeting was adjourned at 7:50 p.m.



SUSAN J. BLACKSTON,  
CITY CLERK

ATTEST:



PATRICK HUME, MAYOR