



CITY OF CORNING  
CITY COUNCIL AGENDA  
TUESDAY, FEBRUARY 9, 2010  
CITY COUNCIL CHAMBERS  
794 THIRD STREET

A. CALL TO ORDER: 6:30 p.m.

B. ROLL CALL:

Council:

Becky Hill  
Ross Turner  
Toni Parkins  
John Leach  
Gary Strack

Mayor:

The **Brown Act** requires that the Council provide the opportunity for persons in the audience to briefly address the Council on the subject(s) scheduled for tonight's closed session. Is there anyone wanting to comment on the subject(s) the Council will be discussing in closed session? If so, please come to the podium, identify yourself and give us your comments.

C. ADJOURN TO CLOSED SESSION:

**PUBLIC EMPLOYEE PERFORMANCE EVALUATION:**

Pursuant to Government Code 54957

Title: City Attorney.

D. RECONVENE AND REPORT ON CLOSED SESSION: 7:30 p.m.

E. PLEDGE OF ALLEGIANCE:

F. PROCLAMATIONS, RECOGNITION'S, APPOINTMENTS, PRESENTATIONS:

G. **BUSINESS FROM THE FLOOR:** If there is anyone in the audience wanting to speak on an item not already on tonight's Agenda, if so, please come to the podium, identify yourself and briefly present your information to the Council. **A three-minute time limit will apply unless the Council makes an exception due to special circumstances.** If your matter will require more time or formal action by the Council, the law requires that it be placed on the printed Agenda for a future meeting so that interested members of the public will have the chance to appear and speak on the subject.

H. **CONSENT AGENDA:** It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or members of the audience requests separate discussion and/or action.

1. Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.
2. Waive the Reading and Approve the Minutes of the January 26, 2010 Meeting with any necessary corrections.
3. February 3, 2010 Claim Warrant - \$150,174.76.
4. January 2010 Wages and Salaries - \$357,263.83.
5. January 2010 – Treasurer's Report.

6. January 2010 Building Permit Valuation - \$120,006.
  7. City of Corning Wastewater Operation Summary Report – January 2010.
  8. Approve Progress pay Estimate No. 4 in the amount of \$51,480 to Teichert Construction for the Airport Runway Improvement Project.
  9. Accept Resignation from Recreation Commissioner Shannon Boles.
  10. Resolution 02-09-10-01 Approving the Application for the Statewide Park Program Grant Funds.
  11. Ordinance No. 639, Regulating the Cultivation of Medical Marijuana: An Ordinance of the City of Corning adding a Chapter to Title 17 of the Corning Municipal Code that would regulate the cultivation of medical marijuana. (Second Reading)
  12. Ordinance No. 640, Adoption of Water Efficient Landscape Regulations: An Ordinance of the City of Corning providing authority for the City to adopt Water Efficient Landscape Regulations by Resolution of the City Council. (Second Reading)
- I. **ITEMS REMOVED FROM THE CONSENT AGENDA:**
- J. **PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Mayor declares the Hearing open. **ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**
- K. **REGULAR AGENDA:**
13. Consider Senior Center Request for an Annual Increase of \$1,000 in Additional Funds.
  14. Corning Skate and Bike Park Association's Report and Request for Funding.
  15. Accept Offer of Dedication of Excess Property, Assessor's Parcel No. 71-250-36 from Self Help Home Improvement Project.
  16. Approve Payment of City Attorney Retirement Funds Held by the City.
- L. **ITEMS PLACED ON THE AGENDA FROM THE FLOOR:**
- M. **COMMUNICATIONS, CORRESPONDENCE AND INFORMATION:**
- N. **REPORTS FROM MAYOR AND COUNCIL MEMBERS:**
17. Hill:
  18. Turner:
  19. Parkins:
  20. Leach:
  21. Strack:
- O. **ADJOURNMENT!:**

POSTED: FRIDAY, FEBRUARY 5, 2010

THE CITY OF CORNING IS AN EQUAL OPPORTUNITY EMPLOYER



**CITY OF CORNING  
CITY COUNCIL MINUTES**

**TUESDAY, JANUARY 26, 2010  
WOODSON ELEMENTARY SCHOOL GYMNASIUM  
150 NORTH TOOMES AVENUE**

**A. CALL TO ORDER: 7:00 p.m.**

**B. ROLL CALL:**

**Council:**

**Becky Hill  
Ross Turner  
Toni Parkins  
John Leach  
Gary Strack**

**Mayor:**

All Council Members were present.

The **Brown Act** requires that the Council provide the opportunity for persons in the audience to briefly address the Council on the subject(s) scheduled for tonight's closed session. Is there anyone wanting to comment on the subject(s) the Council will be discussing in closed session? If so, please come to the podium, identify yourself and give us your comments.

No one addressed the Council.

**C. ADJOURN TO CLOSED SESSION: 7:02 p.m.**

**CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

**Pursuant to Section 54956.8**

**Potential Land Acquisition:**

**Potential Park Properties: APN No's: 71-250-21, 71-250-35, and 71-250-38.**

**Negotiating Party: Stephen Kimbrough, John Brewer, Ed Anderson and John Stoufer.**

**D. RECONVENE AND REPORT ON CLOSED SESSION: 7:38 p.m.**

Mayor Strack reported that Council met with the property negotiators and gave them direction.

**E. PLEDGE OF ALLEGIANCE: City Manager Kimbrough led the Pledge of Allegiance.**

**F. PROCLAMATIONS, RECOGNITION'S, APPOINTMENTS: None.**

**G. BUSINESS FROM THE FLOOR:**

Ken Prather addressed the Council regarding the action taken against THC, Inc. by the City. He stated that to date the Collective has collected \$8,300 in donations since the City has begun citing them to assist with legal costs associated with the fines the City has imposed. He also stated that he doesn't understand how an Ordinance that is being changed by the Council is not sent back before the Planning Commission where it started before being voted on.

Bucky Bowen requested that Council move Agenda Item K-11 ahead of J-6 due to the lengthy meeting. By consensus of the Council, K-11 regarding the City Attorney contract has been moved for discussion before J-6.

A member of the audience asked how many members present tonight are residents of Corning under the 96021 Zip Code and was informed by the City Attorney that people outside of the City Limits are allowed to address the City Council. He stated that to his knowledge Marijuana Dispensaries are not legal according to Federal Law. Mayor Strack clarified that his business related to dispensaries, not cultivation which is what is agendized for discussion tonight. He then stated that all discussion related to the marijuana issue will be discussed during the public

**THE CITY OF CORNING IS AN EQUAL OPPORTUNITY EMPLOYER**

hearing. He also stated that it will be discussed respectfully or disrespectful individuals speaking out of turn will be removed. Both sides will be provided an opportunity to fairly speak. Councilor

John Richardson from Corning Skate and Bike Park Association thanked Vice Mayor Turner for drawing the winners for their raffle.

- H. **CONSENT AGENDA:** It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or members of the audience requests separate discussion and/or action.
1. **Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.**
  2. **Waive the Reading and Approve the Minutes of the January 12, 2010 City Council Meeting with any necessary corrections.**
  3. **January 20, 2010 Claim Warrant - \$539,797.11.**
  4. **Business License Report – January 20, 2010.**
  5. **Adopt Resolution No. 01-26-10-02 Authorizing Tehama County Sanitary Landfill Agency Submittal of a Regional Tire Recycling Grant Application.**

Councilor Leach asked to remove Consent Item 3 for clarification. Councilor Turner then moved to approve Consent Items 1-2 and 4-5. Councilor Hill seconded the motion. **Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion was approved by a 5-0 vote.**

I. **ITEMS REMOVED FROM THE CONSENT AGENDA:**

3. **January 20, 2010 Claim Warrant - \$539,797.11.**

Councilor Leach asked why the items (kitchen range, ceiling fans and fireplace insert) purchased for the house were paid out of M&S/Airport. City Manager Kimbrough explained that the Airport owns this property, all rental income from this property is placed in this fund, therefore Airport Funds support all costs. Councilor Leach moved to approve Consent Agenda Item 3. Councilor Hill seconded the motion. **Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion was approved by a 5-0 vote.**

K. **REGULAR AGENDA:**

11. **Approve Proposed Revision to City Attorney Contract.**

City Manager Kimbrough explained that the Council had discussed informally at one of the meetings an interest in bringing this whole issue to a close and suggested that a new City Attorney Contract be prepared in which the retirement was removed and contained just salary. He also stated that the contract proposed is the standard contract with retirement removed and only salary is listed. He informed the Council that the proposed contract shows an annual increase of \$250 and stated that knowing that the Council would want to know where the numbers came from, he listed it showing the retirement dollars converted to pay in lieu of retirement.

Mayor Strack stated that in discussion with the Grand Jury, they suggested it would be better if we rewrote the contract so that what he was receiving as retirement became salary and was taxable. Mayor Strack informed the Council that included in the contract is that the City would no longer contribute to Mr. Fitzpatrick's Malpractice Insurance. He stated that either party could end this contract at will with 60-days notice. Mayor Strack noted that Mr. Fitzpatrick was also voluntarily participating in the City furlough by taking a 10% cut in pay. Mayor Strack clarified that this has

nothing to do with the retirement issue associated with the existing contract, the retirement money held that was collected, or the issue of assigning an Attorney to review the existing contract, that is being handled separately.

Bucky Bowen stated that his comments are not intended to question the competency of the City Attorney, nothing in his remarks is intended to be derogatory, his comments are directed at what he sees as a lack of financial prudence in granting a part-time employee a significant salary increase when the salaried and hourly rated employees are having their pay reduced by 10%. He fails to see how this action can be justified. He asked if any effort had been made to seek a qualified part-time employee who would work for a more modest salary? If not, why? Assuming the present salary of the employee is \$60,000 per year, the addition of proposed increases amount to \$29,596 per year in one eighteen month period, which is in excess of 60%. Mr. Bowen stated that while some of the increase proposed is listed as "in lieu of retirement" the fact is that it is simply an attempt to disguise the payment as something beside a salary increase. The payments will be reported as taxable income just as any other salary payment. Prudent fiscal management requires this proposal be rejected. If the present employee does not find this acceptable, a search can be made for a qualified replacement.

Dean Cofer, Concerned Citizens stated that unless this had been changed since he checked the Agenda on line, the malpractice insurance was still listed on the proposed contract. Mayor Strack stated that the malpractice insurance had been removed. He also stated that it was news to him that Mr. Fitzpatrick was participating in the furlough reduction of 10% in pay. He stated that he opposes this agreement and gift of public funds. He stated that this proposed contract is a typical example of the backroom deals, failure to use common sense, business as usual, lack of transparency, and squandering of public funds by our national and State leadership, and sadly right here in Corning that has taxpayers and voters outraged. This agreement is an insult to the taxpayers of Corning. Concerned Citizens is convinced that the local Attorney should be placed on a small monthly retainer to handle routine legal matters and a fee agreement for additional work be agreed to that would be more advantageous and cost effective than that which is being proposed tonight. In closing, and this is not intended as a threat, he suggests that the Council, unless they do not intend to run for re-election, he would respectfully suggest that they think long and hard before you vote yes to approve this generous agreement for a part-time attorney.

Ken Prather stated that the City is paying too much for the legal opinions the City is receiving.

Councilor Turner requested that this be carried through until after the budget is reviewed, if accepted at that time it can be made retroactive. Councilor Leach agreed with Councilor Turner's request. Mayor Strack stated that this is already in the budget. Councilor Parkins moved to approve the proposed contract with City Attorney Michael Fitzpatrick effective January 1, 2010. Councilor Hill seconded the motion. **Ayes: Strack, Hill, and Parkins. Opposed: Turner and Leach. Absent/Abstain: None. Motion was approved by a 3-2 vote with Turner and Leach opposing.**

Dean Cofer stated that there was one significant change to the proposed Contract; the proposed contract now requires a 60-day termination clause instead of the previous 30-day clause.

Approved by a 3-2 vote with Turner and Leach opposing.

**J. PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Mayor declares the Hearing open. **ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**

**6. Ordinance No. 639, Regulating the Cultivation of Medical Marijuana: An Ordinance of the City of Corning adding a Chapter to Title 17 of the Corning Municipal Code that would regulate the cultivation of medical marijuana.**

Mayor Strack introduced this item by title stating that this is strictly about cultivation only and regulations associated with cultivation. Planning Director John Stoufer then briefed the Council on some recommended amendments due to recent changes in law, changes that took effect as recently as last Thursday. He then briefed the Council on each of these proposed amendments and the options available to the Council.

Councilor Turner asked the City Attorney if these amendments are required to go back to the Planning Commission prior to Council making a decision. He was informed by City Attorney Fitzpatrick that the Council was not legally required to send the amendments back to the Planning Commission prior to Council action, however the Council could if they so desired, or they could act on the amendments and/or information provided.

Mr. Stoufer went through each of the recommended amendments and changes page by page. Mr. Stoufer stated that these changes have been recommended based upon recent court decisions. Councilor Turner asked if there are any changes regarding odor effects on neighboring properties. Mr. Stoufer stated that ventilation issues have been addressed with the recommendations. He stated that neighbors adversely affected by odors would have to seek civil action through the courts to mitigate. There is no way to measure odor like there is with noise.

Mr. Prather asked how the Council could properly review the information provided by Mr. Stoufer in such a short time. Mayor Strack stated that could be a question that Mr. Prather could pose after the public hearing is closed. Mayor Strack then opened the public hearing.

1<sup>st</sup> Speaker Web Petty: Stated that he was not a resident and that there is a lot of prejudice regarding this item, how can civil leaders take this issue and mold it to their own agenda.

2<sup>nd</sup> Speaker Ken Killinger: Stated that he has nothing personally against the Prathers. He stated that he sees no provision in that law as a cooperative growing it to distribute.

3<sup>rd</sup> Speaker Karen Killinger: Spoke as a Parent, Retired School Teacher, and Grandparent. Instead of growing it at your home, why can't it be dispensed by a pharmacy and regulated as other medications are. She stated that her husband has visited them in juvenial halls, spoken to members of broken homes, there's got to be a better way.

4<sup>th</sup> Speaker Mary Fallen: Stated that she has two sons that are in it, and grandsons that are using it. It is not good. She has raised two grandchildren because her children couldn't raise their children.

5<sup>th</sup> Speaker Valerie Feelo: Stated marijuana is not good; her daughter has gone to prison over it.

6<sup>th</sup> Speaker Lois Cosby: She stated that medicinal marijuana is a joke. If it comes under the disguise of medicine they should be required to obtain it from a drug store.

7<sup>th</sup> Speaker Ken Prather: Discussed Proposition 215 and Senate Bill 420. He stated that he can't believe that in this agricultural community the City of Corning wants to take away the sun. The sun is our biggest utility; you are making this so costly. He stated that he feels that this is pointless. Councilor Leach asked why you hear so often in the news about growing lights and fires caused by them. He also asked why Marinol can't be used instead of marijuana? Mr. Prather stated that Marinol isn't very effective and is too costly.

8<sup>th</sup> Speaker Sandy Powell: Stated that she thinks Mr. Stoufer has done a great job with the proposed amendments.

9<sup>th</sup> Speaker: Addressed the Council and stated that he sees a neighbor using it and handing it out to kids, we don't need this in our town.

10<sup>th</sup> Speaker Kathy Prather: Stated that she has Huntington's disease and she uses marijuana everyday.

11<sup>th</sup> Speaker Mr. Clark: Stated that nobody has ever died from an overdose of marijuana.

12<sup>th</sup> Speaker Wally Prather: Stated he moved here in 1968 and that the City is now trying to take away his rights, and he doesn't think it is right. The majority rule is a democracy. Corning has ostriches with their heads in the sand.

13<sup>th</sup> Speaker Kristina: Medical marijuana patient, medical marijuana has helped her.

Mayor Strack again stated that this Ordinance would define how Medical Marijuana is grown within the City Limits.

14<sup>th</sup> Speaker Robert Hall: Stated that his wife spoke and that medical Marijuana helps his wife. He stated that his father used marijuana as rubbing alcohol and it helped him a lot.

15<sup>th</sup> Speaker: Asked for advise on how to go to the top in order to change regulations. Mayor Strack advised her to speak with the City Manager.

16<sup>th</sup> Speaker Kyle Lauderdale: Stated that he believes the proposal put together is very good. He stated that he doesn't wish to smell the growing of marijuana, or have the odor reduce the value of his home. He appreciates that the City is proposing regulations to prevent this.

17<sup>th</sup> Speaker Tony Miller: At what level can we control or place restraints? He stated that he thinks what is being proposed is good, but at what level do we place restraints? Mr. Stoufer and City Attorney Fitzpatrick addressed Mr. Miller's question in more detail relating to penalties.

18<sup>th</sup> Speaker: Stated that she has many ailments, has watched her neighborhood go downhill because of marijuana, and regardless of her ailments she would not use marijuana.

Mayor Strack closed the public hearing. Councilor Leach stated he would like to send this back to the Planning Commission to review and go through with a fine tooth comb. Councilor Parkins commended the Planning Commission and City Staff on this and believes that this should be approved tonight. Councilor Parkins moved to waive the first reading of Ordinance 639 and read by short title the Ordinance to implement regulations for the cultivation of medical marijuana within the City of Corning and approve with items discussed tonight. Councilor Hill seconded the motion. City Attorney stated that an Ordinance is not approved on the first reading; it is approved on the second reading and goes into effect 30-days following.

Mr. Stoufer at the request of the Mayor clarified the temporary grandfather clause (until the end of 2010) included within the Ordinance. Councilor Turner asked who will be the policing agency: Mr. Stoufer stated Planning, Police and Building. **Ayes: Strack, Hill, Turner and Parkins. Opposed: Leach. Absent/Abstain: None. Motion was approved by a 4-1 vote with Leach opposing.** Councilor Turner asked if this could be amended at a future date if needed; he was told yes.

**7. Ordinance No. 640, Adoption of Water Efficient Landscape Regulations: An Ordinance of the City of Corning providing authority for the City to adopt Water Efficient Landscape Regulations by Resolution of the City Council.**

Mayor Strack introduced this item by title and Mr. Stoufer briefed the Council on the proposed Ordinance. Mr. Stoufer stated that this wouldn't affect existing landscapes; it will affect future subdivisions. He stated that due to current Staffing and Budgeting Staff requests, he recommends Council adopt the proposed Department of Water Resources Ordinance. Mayor Strack then opened the public hearing. With no discussion the public hearing was closed.

Councilor Turner moved to adopt the Subfindings and Findings 1-4 as presented in the Staff Report for the Adoption of Ordinance 640, to waive the first reading of Ordinance 640, the Ordinance referencing the model water efficient landscape ordinance in the Corning Municipal Code. Councilor Hill seconded the motion. **Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion was approved by a 5-0 vote.** Mayor Strack introduced the Ordinance by title.

**K. REGULAR AGENDA:**

**8. Resolution 01-26-10-01, a Resolution Authorizing Signatures and Application for a USDA Rural Development Loan for New Water Well and associated Water System Improvements at Clark Park.**

Mayor Strack introduced this item by title and Public Works Director John Brewer briefed the Council on the completed application stating that the loan amount requested is \$587,000 and the City contribution would be \$46,000. Mayor Strack stated this would be a 40 year loan at 3.75% interest. With no further discussion, Councilor Hill moved to adopt Resolution 01-26-10-01, the Resolution authorizing the Mayor, Vice Mayor and City Manager to take all necessary actions to submit an application and obtain a USDA loan for construction of the new City Water Well at Clark Park and associated water system improvements. Councilor Parkins seconded the motion. **Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion was approved by a 5-0 vote.**

**9. Revise and Update parallel Sidewalk Cost Estimate & Authorize Concrete Median Installation to Limit Left Turns within Toomes Avenue and Solano Street Intersection; Accept Easement Deed for Parallel Sidewalk.**

Mayor Strack introduced this item by title and John Brewer outlined the proposal. Mr. Brewer stated that Staff has recommended a revision to the previous recommendation which consists of the following:

- A revised sidewalk standard, and
- Authorize the expenditure of \$2,360 to Ward's Concrete for the installation of the concrete median in Solano Street, just west of Toomes Avenue, and appropriate \$3,000 from the Traffic Congestion relief Fund 115 to Street Projects Account 115-9112-3001, and
- Authorize the expenditure of \$6,063.99 to Ward's Concrete for the installation of a sidewalk constructed to the City Engineer's standard (Exhibit "C") and appropriate \$6,100 from the General Fund Reserve to Street Project Account 001-8004-3001, and
- Authorize expenditure to replace the two existing Toomes Avenue driveway encroachments on the Moller Property (Assessor's parcel 71-140-45) expected to cost approximately \$3,072 and funded through Street materials and supplies account 107-6150-3001; and
- Accept the Easement Deed from Mike and Leslie Moller for pedestrian access across the southerly 6.5 feet of their property, the site of the "parallel sidewalk".

Councilor Turner left the room at 9:15 p.m. due to possible conflict of interest.

Councilor Hill asked if it wouldn't be prudent to put posts, a less expensive item, in lieu of a concrete barrier now rather than a median. City Engineer Ed Anderson stated he recommends the concrete barrier.

Councilor Leach moved to approve Staff's recommendation as stated above. Councilor Parkins seconded the motion. **Ayes: Strack, Parkins and Leach. Opposed: Hill. Absent: None. Abstain: Turner. Motion was approved by a 3-1 vote with Hill opposing and Turner abstaining.**

Councilor Turner reentered the room at 9:21 p.m.

**10. Authorization for Rodgers Theatre Rehabilitation Plan and Expenditures.**

Mayor Strack introduced this item by title and Kyle Lauderdale of the Corning Community Foundation presented the formal request to begin the work on Rodger's Theatre. Mr. Lauderdale outlined the proposed work and the phases the work will be done in. Councilor Leach asked if the roof work would be delayed due to the weather and begin instead now on the interior work? Mr. Lauderdale stated that the work would begin with the roofing. With no further discussion, Councilor Hill moved to authorize the Corning Community Foundation, working with City Staff, to seek formal bids as required and commence work on the Rodgers Theatre restoration. **Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion was approved by a 5-0 vote.**

**L. ITEMS PLACED ON THE AGENDA FROM THE FLOOR: None**

**M. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION:**

Mayor Strack read a letter received from Joseph Russo, Board President of the Corning Senior Center, Inc. requesting the \$3,700 City allocation that is annually budgeted. By Council consensus it needs to be taken care of.

**N. REPORTS FROM MAYOR AND COUNCIL MEMBERS:**

11. Hill: Thanked everyone for putting their trust in her in regards to her attendance representing the City at the League Meetings.

12. Turner: Stated that last Saturday he represented the City at the Chamber of Commerce installation of new Board Members and had the privilege of swearing in their new Board and presenting the matching funds check in the amount of \$4,000 from the City.

13. Parkins: None.

14. Leach: Stated that the Tripartite scheduled planning session for February had been canceled and updated the Council on issues the Board is currently working on.

15. Strack: Stated he had the privilege of going to Sacramento with City Staff members to meet with HCD to and recover some of the money promised for the First Time Home Buyers Program and the Blackburn Avenue Improvements (\$1,500,000 total) that they rescinded. It was a good meeting and hopefully we will get some if not all of the money back.

**O. ADJOURNMENT!: 9:30 p.m.**

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Lisa M. Linnet, City Clerk



# MEMORANDUM

**TO:** HONORABLE MAYOR AND COUNCIL MEMBERS

**FROM:** LORI SIMS  
ACCOUNTING TECHNICIAN

**DATE:** February 3, 2010

**SUBJECT:** Cash Disbursement Detail Report for the  
Tuesday, February 9, 2010 Council Meeting

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PROPOSED CASH DISBURSEMENTS FOR YOUR APPROVAL CONSIST OF THE FOLLOWING:

|    |                       |        |          |                    |                             |
|----|-----------------------|--------|----------|--------------------|-----------------------------|
| A. | Cash Disbursements    | Ending | 01-28-10 | \$                 | 14,639.50                   |
| B. | Payroll Disbursements | Ending | 01-27-10 | \$                 | 78,436.03                   |
| C. | Cash Disbursements    | Ending | 02-03-10 | \$                 | 57,099.23                   |
|    |                       |        |          | <b>GRAND TOTAL</b> | <b>\$ <u>150,174.76</u></b> |

REPORT.: Jan 28 10 Thursday  
 RUN....: Jan 28 10 Time: 12:30  
 Run By.: LORI

CITY OF CORNING

Cash Disbursement Detail Report

Check Listing for 01-10 Bank Account.: 1020

PAGE: 001  
 ID #: PY-DP  
 CTL.: COR

| Check Number | Check Date | Vendor Number | Vendor Name               | Gross Amount | Discount Amount | Net Amount | Invoice # | Payment Information Description |
|--------------|------------|---------------|---------------------------|--------------|-----------------|------------|-----------|---------------------------------|
| 010016       | 01/21/10   | SCH05         | SCHLERETH, DAYMON         | 156.00       | .00             | 156.00     | 100121    | TRAINING/ED-FIRE                |
| 010017       | 01/21/10   | SPA10         | SPANNAUS, MARTIN          | 142.29       | .00             | 142.29     | 100121    | TRAINING/ED-FIRE                |
| 010018       | 01/25/10   | RED02         | RED BLUFF POLICE DEPT     | 436.07       | .00             | 436.07     | 100121    | OTS GRANT-POLICE                |
| 010019       | 01/25/10   | TEH15         | TEHAMA CO SHERIFF'S DEPT  | 691.92       | .00             | 691.92     | 100121    | OTS GRANT-POLICE                |
| 010020       | 01/25/10   | TEH34         | TEHAMA COUNTY PROBATION D | 276.62       | .00             | 276.62     | 100121    | OTS GRANT-POLICE                |
| 010021       | 01/27/10   | ACC00         | ACCESS INFORMATION        | 40.00        | .00             | 40.00      | 55562     | EQUIP MAINT-GEN CITY            |
| 010022       | 01/27/10   | ADA02         | ADAMSON POLICE PRODUCTS   | 975.22       | .00             | 975.22     | INV25699  | SAFETY ITEMS-POLICE             |
| 010023       | 01/27/10   | ALL11         | ALL SPORTS EQUIPMENT &    | 1484.73      | .00             | 1484.73    | 100125    | MAT & SUPPLIES-REC              |
| 010024       | 01/27/10   | BAS01         | BASIC LABORATORY, INC     | 86.00        | .00             | 86.00      | 1000667   | ProfServices Water Dept         |
| 010025       | 01/27/10   | CAM02         | CAMELLIA VALLEY SUPPLY    | 637.75       | .00             | 637.75     | 0733251   | MAT & SUPPLIES-WTR              |
| 010026       | 01/27/10   | COM01         | COMPUTER LOGISTICS, INC   | 3840.00      | .00             | 3840.00    | 47609     | Equip.Maint.-GEN CITY           |
| 010027       | 01/27/10   | COR11         | CORNING SAFE & LOCK       | 7.58         | .00             | 7.58       | 2662      | BLD MAINT-TRANS FAC             |
|              |            |               | Check Total.....          | 93.05        | .00             | 93.05      | 2663      | BLD MAINT-TRANS FAC             |
| 010028       | 01/27/10   | COR18         | CORNING SENIOR CENTER     | 2700.00      | .00             | 2700.00    | 100127    | Senior Center General Cit       |
| 010029       | 01/27/10   | COR20         | CORNING ELECTRONICS       | 3.24         | .00             | 3.24       | 10085994  | EQUIP MAINT-POLICE              |
| 010030       | 01/27/10   | GRA01         | GRANDFLOW, INC            | 301.21       | .00             | 301.21     | 106052    | Office Supplies Finance D       |
| 010031       | 01/27/10   | HEN03         | HENRY SCHEIN INC.,        | 95.47        | .00             | 95.47      | 937354-01 | SAFETY ITEMS-FIRE               |
| 010032       | 01/27/10   | HOL04         | HOLIDAY MARKET #32        | 38.98        | .00             | 38.98      | 34405     | Mat/Supplies-CITY COUNCIL       |
|              |            |               | Check Total.....          | 43.29        | .00             | 43.29      | 100125    | Mat/Supplies BuildingMain       |
| 010033       | 01/27/10   | MAY01         | MAY, WILLIAM L.           | 1100.70      | .00             | 1100.70    | 201011620 | EE RELATIONS-LEGAL SERV         |
| 010034       | 01/27/10   | NOR31         | NORM'S PRINTING           | 14.02        | .00             | 14.02      | 007874    | MAT & SUPPLIES-CITY COUNC       |
| 010035       | 01/27/10   | OFF01         | OFFICE DEPOT              | 30.29        | .00             | 30.29      | 117683975 | Office Supplies Policedis       |
|              |            |               | Check Total.....          | 141.99       | .00             | 141.99     | 505546119 | Office Supplies Policedis       |
| 010036       | 01/27/10   | PGE2A         | PG&E                      | 172.28       | .00             | 172.28     | 100115    | ELECT-BLUE HERON CT             |
|              |            |               | Check Total.....          | 49.48        | .00             | 49.48      |           |                                 |

REPORT.: Jan 28 10 Thursday  
 RUN.....: Jan 28 10 Time: 12:30  
 Run By.: LORI

CITY OF CORNING  
 Cash Disbursement Detail Report  
 Check Listing for 01-10 Bank Account.: 1020

PAGE: 002  
 ID #: PY-DP  
 CTL.: COR

| Check Number | Check Date | Vendor Number | Vendor Name               | Gross Amount | Discount Amount | Net Amount | Invoice # | Payment Information Description |
|--------------|------------|---------------|---------------------------|--------------|-----------------|------------|-----------|---------------------------------|
| 010037       | 01/27/10   | S&W00         | S & W HEALTHCARE CORPORAT | 108.42       | .00             | 108.42     | 121560    | MAT & SUPPLIES-FIRE             |
| 010038       | 01/27/10   | SUB01         | SUBURBAN PROPANE          | 60.00        | .00             | 60.00      | 19995     | PROPANE-AIRPORT                 |
| 010039       | 01/27/10   | UNI02         | UNIFORMS, TUXEDOS & MORE  | 235.88       | .00             | 235.88     | 95540     | SAFETY ITEMS-POLICE             |
| 010040       | 01/28/10   | GAL02         | GALL'S INC                | 74.12        | .00             | 74.12      | 510372963 | Uniform/Cloth. Policedisp       |
| 010041       | 01/28/10   | NOR31         | NORM'S PRINTING           | 62.24        | .00             | 62.24      | 007912    | PRINTING/ADV-POLICE             |
| 010042       | 01/28/10   | SCH03         | SCHUTTER, CARLA           | 558.80       | .00             | 558.80     | 100128    | Training/Educ. Policedispat     |
| 010043       | 01/28/10   | TEH20         | TEHAMA CO DISTRICT APTY   | 200.70       | .00             | 200.70     | 100126    | ProfServices PoliceServic       |

Cash Account Total.....: 14639.50  
 Total Disbursements.....: 14639.50  
 Cash Account Total.....: .00

CITY OF CORNING  
 Cash Disbursement Detail Report - Payroll Vendor Payment (s)  
 Check Listing for 01-10 Bank Account.: 1025

| Check Number | Check Date | Vendor Number | Vendor Name               | Gross Amount | Discount Amount | Net Amount | Invoice # | Payment Information-Description |
|--------------|------------|---------------|---------------------------|--------------|-----------------|------------|-----------|---------------------------------|
| 4349         | 01/26/10   | BAN03         | POLICE OFFICER ASSOC.     | 350.00       | .00             | 350.00     | B00126    | POLICE OFFICER ASSOC            |
| 4350         | 01/26/10   | CAL37         | CALIFORNIA STATE DISBURSE | 138.46       | .00             | 138.46     | B00126    | WITHHOLDING ORDER               |
| 4351         | 01/26/10   | EDD01         | EMPLOYMENT DEVELOPMENT    | 4297.86      | .00             | 4297.86    | B00126    | STATE INCOME TAX                |
|              |            |               | Check Total.....          | 5541.92      | .00             | 5541.92    | 1B00126   | SDI                             |
| 4352         | 01/26/10   | ICM01         | ICMA RETIREMENT TRUST-457 | 275.00       | .00             | 275.00     | B00126    | ICMA DEF. COMP                  |
| 4353         | 01/26/10   | OEU03         | OPERATING ENGINEERS       | 625.00       | .00             | 625.00     | B00126    | CREDIT UNION SAVINGS            |
| 4354         | 01/26/10   | PERS1         | PUBLIC EMPLOYEES RETIRE   | 28304.36     | .00             | 28304.36   | B00126    | PERS PAYROLL REMITTANCE         |
| 4355         | 01/26/10   | PERS4         | Cal Pers 457 Def. Comp    | 345.25       | .00             | 345.25     | B00126    | PERS DEF. COMP.                 |
| 4356         | 01/26/10   | PRE03         | PREMIER WEST BANK         | 9170.90      | .00             | 9170.90    | B00126    | HSA DEDUCTIBLE                  |
| 4357         | 01/26/10   | STA04         | STATE OF CALIFORNIA       | 550.00       | .00             | 550.00     | B00126    | WAGEASN 1107012828              |
| 4358         | 01/26/10   | VAL06         | VALIC                     | 1025.00      | .00             | 1025.00    | B00126    | AIG VALIC P TAX                 |
| 4359         | 01/27/10   | AFL01         | AMERICAN FAMILY LIFE      | 1826.52      | .00             | 1826.52    | B00131    | AFLAC INS. PRE TAX              |
|              |            |               | Check Total.....          | 101.74       | .00             | 101.74     | 1B00131   | AFLAC INS. AFTER TAX            |
| 4360         | 01/27/10   | BLU02         | BLUE SHIELD OF CALIFORNIA | 12531.48     | .00             | 12531.48   | B00131    | MEDICAL INSURANCE               |
| 4361         | 01/27/10   | CIT01         | CITY OF CORNING           | 6.00         | .00             | 6.00       | B00131    | CHGS FOR WAGE ATCHMT            |
| 4362         | 01/27/10   | OEU01         | OPERATING ENGINEERS #3    | 10699.00     | .00             | 10699.00   | B00131    | MEDICAL INSURANCE               |
| 4363         | 01/27/10   | OEU02         | OPERATING ENG. (DUES)     | 225.00       | .00             | 225.00     | B00131    | UNION DUES MGMNT                |
|              |            |               | Check Total.....          | 572.00       | .00             | 572.00     | 1B00131   | UNION DUES POLICE               |
|              |            |               | Check Total.....          | 280.00       | .00             | 280.00     | 2B00131   | UNION DUES DISPATCH             |
|              |            |               | Check Total.....          | 600.00       | .00             | 600.00     | 3B00131   | UNION DUES-MISC                 |
| 4364         | 01/27/10   | PRI04         | PRINCIPAL                 | 3459.27      | .00             | 3459.27    | B00131    | DENTAL INSURANCE                |
|              |            |               | Check Total.....          | 633.13       | .00             | 633.13     | 1B00131   | VISION INSURANCE                |
| 4365         | 01/27/10   | TRA03         | TRANSAMERICA LIFE INS CO. | 1176.00      | .00             | 1176.00    | B00131    | LIFE INSURANCE                  |
|              |            |               | Cash Account Total.....   | 78436.03     | .00             | 78436.03   |           |                                 |
|              |            |               | Total Disbursements.....  | 78436.03     | .00             | 78436.03   |           |                                 |

REPORT.: Feb 03 10 Wednesday  
 RUN.....: Feb 03 10 Time: 14:16  
 Run By.: LORI

CITY OF CORNING  
 Cash Disbursement Detail Report  
 Check Listing for 02-10 Bank Account.: 1020

PAGE: 001  
 ID #: PY-DP  
 CTL.: COR

| Check Number | Check Date | Vendor Number | Vendor Name               | Gross Amount | Discount Amount | Net Amount | Invoice #  | Payment Information-Description |
|--------------|------------|---------------|---------------------------|--------------|-----------------|------------|------------|---------------------------------|
| 010055       | 02/01/10   | KIM01         | KIMBROUGH, STEPHEN J.     | 117.00       | .00             | 117.00     | 100128     | CONF/MTGS-CITY ADMIN            |
| 010056       | 02/01/10   | BRE01         | BREWER, JOHN              | 400.00       | .00             | 400.00     | 000B002011 | VEH OP/MAINT-                   |
| 010057       | 02/01/10   | CAR03         | CARDENAS, ANTHONY         | 400.00       | .00             | 400.00     | 000B002011 | ProfServices PoliceServic       |
| 010058       | 02/01/10   | COR07         | CORBIN WILLITS SYSTEMS    | 729.72       | .00             | 729.72     | 000B002011 | Finance Dept.                   |
| 010059       | 02/01/10   | COR09         | CORNING CHAMBER OF COMM.  | 1000.00      | .00             | 1000.00    | 000B002011 | CngChamberComm. Economic        |
| 010060       | 02/01/10   | HAL05         | HALL, ROBERT              | 104.70       | .00             | 104.70     | 000B002011 | ProfServices FireDepartme       |
| 010061       | 02/01/10   | KEN00         | KEN VAUGHAN & SONS        | 904.17       | .00             | 904.17     | 000B002011 | Landscape Maint-Parks           |
| 010062       | 02/01/10   | KEN01         | KEN VAUGHAN & SONS        | 800.00       | .00             | 800.00     | 000B002011 | Janitorial                      |
| 010063       | 02/01/10   | PIT01         | PIITNEY BOWES             | 241.84       | .00             | 241.84     | 000B002011 | Rents/Leases Finance Dept       |
| 010064       | 02/01/10   | S&L00         | S & L BREWER ENTERPRISES  | 200.00       | .00             | 200.00     | 000B002011 | K-9 PROGRAM-POLICE              |
| 010065       | 02/01/10   | TLD01         | TEDC                      | 208.33       | .00             | 208.33     | 000B002011 | Economic Devel                  |
| 010066       | 02/01/10   | TOM03         | TOMLINSON JR., ROBERT L.  | 54.70        | .00             | 54.70      | 000B002011 | PROF. SVCS-FIRE DEPT            |
| 010067       | 02/02/10   | PET03         | PETTY CASH                | 264.29       | .00             | 264.29     | 100128     | PETTY CASH-                     |
| 010068       | 02/03/10   | AND01         | ED ANDERSON               | 2850.00      | .00             | 2850.00    | 100131     | ProfServices-                   |
| 010069       | 02/03/10   | AND03         | ANDERS, JOANN             | 157.50       | .00             | 157.50     | 102015     | PROF SVCS-HOUSING REHAB         |
|              |            |               | Check Total.....:         | 245.00       | .00             | 245.00     | 102016     | GRANT ADMIN-HOUSING ELEME       |
| 010070       | 02/03/10   | ARA02         | ARAMARK UNIFORM SRV. INC. | 31.42        | .00             | 31.42      | 0406461    | Mat/Supplies-                   |
| 010071       | 02/03/10   | ATT02         | AT&T                      | 1139.14      | .00             | 1139.14    | 1129266    | COMMUNICATIONS-                 |
| 010072       | 02/03/10   | BAS01         | BASIC LABORATORY, INC     | 114.00       | .00             | 114.00     | 1000914    | ProfServices Water Dept         |
|              |            |               | Check Total.....:         | 280.00       | .00             | 280.00     | 1000960    | ProfServices Water Dept         |
| 010073       | 02/03/10   | CAL38         | CALIF PUBLIC EMPLOYERS RE | 400.00       | .00             | 400.00     | 00000499   | EE RELATIONS-LEGAL SVCS         |
| 010074       | 02/03/10   | CHE02         | CHEM QUIP, INC.           | 1049.80      | .00             | 1049.80    | 2063295IN  | MAT & SUPPLIES-WTR              |
| 010075       | 02/03/10   | COM01         | COMPUTER LOGISTICS, INC   | 24.00        | .00             | 24.00      | 47520      | COMMUNICATIONS-FIRE             |
|              |            |               | Check Total.....:         | 116.67       | .00             | 116.67     | 47765      | COMMUNICATIONS-POLICE           |

REPORT.: Feb 03 10 Wednesday  
 RUN...: Feb 03 10 Time: 14:16  
 Run By.: LORI

CITY OF CORNING  
 Cash Disbursement Detail Report  
 Check Listing for 02-10 Bank Account.: 1020

PAGE: 002  
 ID #: PY-DP  
 CTL.: COR

| Check Number | Check Date | Vendor Number | Vendor Name               | Gross Amount | Discount Amount | Net Amount | Invoice # | Payment Information Description |
|--------------|------------|---------------|---------------------------|--------------|-----------------|------------|-----------|---------------------------------|
|              |            |               | Check Total.....          | 140.67       | .00             | 140.67     |           |                                 |
| 010076       | 02/03/10   | COR01         | CORNING VETERINARY        | 291.65       | .00             | 291.65     | 24011     | ProfServices-                   |
| 010077       | 02/03/10   | COR03         | CORNING RENTALS           | 225.00       | .00             | 225.00     | 32272     | RENT/LEASES-COMM EVENTS         |
| 010078       | 02/03/10   | COR08         | CORNING LUMBER CO INC     | 247.03       | .00             | 247.03     | 100125    | Mat/supplies-                   |
| 010079       | 02/03/10   | COR12         | CORNING FORD MERCURY, INC | 68.40        | .00             | 68.40      | 18924     | Veh Opr/Maint-POLICE            |
|              |            |               |                           | 63.87        | .00             | 63.87      | 18989     | Veh Opr/Maint-WTR               |
|              |            |               |                           | 30.04        | .00             | 30.04      | 19483     | Veh Opr/Maint-                  |
|              |            |               |                           | 355.79       | .00             | 355.79     | 118634    | Veh Opr/Maint-POLICE            |
|              |            |               | Check Total.....          | 518.10       | .00             | 518.10     |           |                                 |
| 010080       | 02/03/10   | COR33         | CORNING VETERAN'S HALL    | 48.00        | .00             | 48.00      | 428963    | MAT & SUPPLIES-REC              |
| 010081       | 02/03/10   | DEP03         | DEPT OF TRANS/CAL TRANS   | 89.16        | .00             | 89.16      | 186921    | Equip.Maint. St&Trf Light       |
| 010082       | 02/03/10   | DEP12         | DEPT OF JUSTICE           | 70.00        | .00             | 70.00      | 774543    | PROF SVCS-POLICE                |
| 010083       | 02/03/10   | DIS01         | DISCOUNT DISPOSABLES      | 204.35       | .00             | 204.35     | 95056     | MAT & SUPPLIES-POLICE           |
| 010084       | 02/03/10   | FIR00         | FIRST BANKCARD            | 60.00        | .00             | 60.00      | 100128    | CONF/MTGS-CITY COUNCIL          |
| 010085       | 02/03/10   | FIR02         | FIRST BANKCARD            | 1272.41      | .00             | 1272.41    | 100128    | MAT & SUPPLIES-                 |
| 010086       | 02/03/10   | FIT01         | FITZPATRICK LAW OFFICES   | 90.94        | .00             | 90.94      | 100128    | City Attny Srvs LegalServ       |
|              |            |               |                           | 185.75       | .00             | 185.75     | 100201    | City Attny Srvs LegalServ       |
|              |            |               | Check Total.....          | 276.69       | .00             | 276.69     |           |                                 |
| 010087       | 02/03/10   | GAL02         | GALL'S INC                | 118.65       | .00             | 118.65     | 510296264 | SAFETY ITEMS-FIRE               |
| 010088       | 02/03/10   | HOM02         | HOME SECURITY STORE       | 85.70        | .00             | 85.70      | 0467612IN | BLD MAINT-FIRE                  |
| 010089       | 02/03/10   | INT00         | INTERSTATE BATTERY SYSTEM | 199.07       | .00             | 199.07     | 611450    | VEH OP/MAINT-                   |
| 010090       | 02/03/10   | INT01         | INTERLAND BUSINESS SUPPLY | 56.23        | .00             | 56.23      | 100201    | OFFICE SUPPLIES-                |
| 010091       | 02/03/10   | JES10         | JESSEE HEATING & AIR, INC | 356.00       | .00             | 356.00     | 49169     | MAT & SUPPLIES-BLD MAINT        |
| 010092       | 02/03/10   | KNI00         | KNIFE RIVER CONSTRUCTION  | 1653.62      | .00             | 1653.62    | 104807    | MAT & SUPPLIES-STR              |
| 010093       | 02/03/10   | NAP01         | NAPA AUTO PARTS           | 1173.28      | .00             | 1173.28    | 100124    | Veh Opr/Maint-                  |
|              |            |               |                           | 59.71        | .00             | 59.71      | 100124F   | Veh Opr/Maint-FIRE              |
|              |            |               | Check Total.....          | 1232.99      | .00             | 1232.99    |           |                                 |
| 010094       | 02/03/10   | NAT14         | NATIONAL TRAINING CONCEPT | 277.00       | .00             | 277.00     | 100126    | TRAINING/ED-POLICE              |

| Check Number | Check Date | Vendor Number | Vendor Name                 | Gross Amount | Discount Amount | Net Amount | Invoice # | Payment Information Description |
|--------------|------------|---------------|-----------------------------|--------------|-----------------|------------|-----------|---------------------------------|
| 010095       | 02/03/10   | NEX01         | NEXTEL COMMUNICATIONS       | 422.70       | .00             | 422.70     | 100129    | COMMUNICATIONS-                 |
| 010096       | 02/03/10   | NOR25         | NORTHERN LIGHTS ENERGY, INC | 2922.53      | .00             | 2922.53    | 17249     | VEH OP/MAINT-                   |
|              |            |               |                             | 1784.26      | .00             | 1784.26    | 17291     | MAT & SUPPLIES-                 |
|              |            |               |                             | 347.23       | .00             | 347.23     | 17292     | VEH OP/MAINT-FIRE               |
|              |            |               | Check Total.....            | 5054.02      | .00             | 5054.02    |           |                                 |
| 010097       | 02/03/10   | PAC16         | PACIFIC TELEMANAGEMENT SE   | 38.00        | .00             | 38.00      | 170979    | COMMUNICATIONS-GEN CITY         |
| 010098       | 02/03/10   | PGE01         | PG&E                        | 18868.78     | .00             | 18868.78   | 100122    | Electricity General City        |
|              |            |               |                             | 308.34       | .00             | 308.34     | 100127    | ELECT-                          |
|              |            |               | Check Total.....            | 19177.12     | .00             | 19177.12   |           |                                 |
| 010099       | 02/03/10   | PGE2B         | PG&E                        | 5454.81      | .00             | 5454.81    | 100125    | ELECT-WWTP                      |
| 010100       | 02/03/10   | PRI05         | PRIORITY DISPATCH           | 640.00       | .00             | 640.00     | 53869     | TRAINING/ED-FIRE                |
| 010101       | 02/03/10   | QUI02         | QUILL CORPORATION           | 29.62        | .00             | 29.62      | 3204606   | Office Supplies-FINANCE         |
|              |            |               |                             | 199.20       | .00             | 199.20     | 3215098   | Office Supplies-FINANCE         |
|              |            |               |                             | 112.62       | .00             | 112.62     | 3215303   | Office Supplies-                |
|              |            |               | Check Total.....            | 341.44       | .00             | 341.44     |           |                                 |
| 010102       | 02/03/10   | REC02         | RECOGNITION PRODUCTS        | 81.19        | .00             | 81.19      | 256768    | MAT & SUPPLIES-POLICE           |
| 010103       | 02/03/10   | SEI01         | SELLER, ROY R., CPA         | 1900.80      | .00             | 1900.80    | 23561     | ProfServices Finance Dept       |
| 010104       | 02/03/10   | TEH15         | TEHAMA CO SHERIFF'S DEPT    | 49.00        | .00             | 49.00      | 100201    | REC INSTRUCT-REC                |
| 010105       | 02/03/10   | THO01         | THOMES CREEK ROCK CO        | 357.24       | .00             | 357.24     | 100131    | Mat/Supplies-STR                |
| 010106       | 02/03/10   | UNI07         | UNION BANK OF CALIF         | 2945.00      | .00             | 2945.00    | 2608      | Bond Trustee-                   |
| 010107       | 02/03/10   | USB01         | US BANCORP                  | 868.98       | .00             | 868.98     | 143053130 | Rents/Leases-GEN CITY           |
| 010108       | 02/03/10   | VAL07         | VALLEY VETERINARY CLINIC,   | 75.53        | .00             | 75.53      | 59147     | K-9 PROGRAM-POLICE              |
| 010109       | 02/03/10   | WAR05         | WARREN, DANA KARL           | 194.72       | .00             | 194.72     | 100202    | REC INSTRUCT-REC                |
| 010110       | 02/03/10   | WES02         | WESTERN BUSINESS PRODUCTS   | 39.97        | .00             | 39.97      | 022175    | Equip.Maint.-FIRE               |
| 010111       | 02/03/10   | XER00         | XEROX CORPORATION           | 152.28       | .00             | 152.28     | 045910697 | EQUIP MAINT-POLICE              |
| 010112       | 02/03/10   | COR01         | CORNING VETERINARY          | 350.00       | .00             | 350.00     | 24013     | SPAY/NEUTER VOUCHER PROGR       |
|              |            |               | Cash Account Total.....     | 57099.23     | .00             | 57099.23   |           |                                 |
|              |            |               | Total Disbursements.....    | 57099.23     | .00             | 57099.23   |           |                                 |

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**CITY OF CORNING****JANUARY 2010****TREASURERS REPORT**

| <b>AGENCY</b>                     | <b>BALANCE</b> | <b>RATE</b> | <b>MATURES ON</b> |
|-----------------------------------|----------------|-------------|-------------------|
| LOCAL AGENCY<br>INVESTMENT FUND   | 2,052,700.14   | .60         |                   |
| PREMIER WEST BANK                 | 196,685.00     | 1.78        | 03/28/10          |
| PREMIER WEST BANK                 | 176,297.14     | 1.78        | 04/20/10          |
| <b>TRUST ACCOUNTS</b>             |                |             |                   |
| PREMIER WEST BANK<br>RIDELL TRUST | 207,790.49     | 2.52        | 06/13/10          |

Respectfully Submitted

Pala Cantrell  
City Treasurer

PERMITS ISSUED (sort by Permit #)

For the Period 1/1/2010 thru 1/31/2010

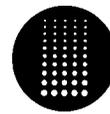
| Owner and Address  | Parcel Number   | Issued On | Valuation |
|--|---|-----------|-----------|
| JOHN HUTCHINSON<br>1484 TOOMES AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>4' FRONT YARD PICKET FENCE<br>(FRONT YARD PICKET FENCE amount was incorrectly entered as 35 dollars , actual correct paid cost was 25 dollars. | 7124016<br><br><b>Site Street Address:</b><br>1484 TOOMES AVE       | 1/4/2010  | 1,500.00  |
| CITY OF CORNING<br>930 N. MARGUERITE AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>ADD 200 AMP SERVICE  | 7508025<br><br><b>Site Street Address:</b><br>930 N. MARGUERITE AVE | 1/6/2010  | 400.00    |
| DIANNA WILLIAMS<br>918 FIFTH AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>INSTALL FREE STANDING GAS FURNACE  | 7117106<br><br><b>Site Street Address:</b><br>918 FIFTH AVE         | 1/6/2010  | 3,200.00  |
| DELORES HAWKINS<br>1428 YOLO ST<br>CORNING CA 96021<br><b>Permit Description:</b><br>TEAR OFF & REROOF WITH COMP   | 7110614<br><br><b>Site Street Address:</b><br>1428 YOLO ST          | 1/7/2010  | 5,245.00  |
| TEHAMA COUNTY FIRE DEPT.<br>920 COLUSA ST<br>CORNING CA 96021<br><b>Permit Description:</b><br>REMOVE FRONT OFFICE FOR PARKING   | 7303208<br><br><b>Site Street Address:</b><br>920 COLUSA ST         | 1/11/2010 | 100.00    |
| KIRK SILVERMAN<br>1960 BUTTE ST #24<br>CORNING CA 96021<br><b>Permit Description:</b><br>ELECT, DRYWALL & INSULATION   | 7108045<br><br><b>Site Street Address:</b><br>1960 BUTTE ST #24     | 1/11/2010 | 2,375.00  |
| YEVETTE ARELLANO<br>2152 BLOSSOM AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>4' WEST SIDE FRONT FENCE   | 7120232<br><br><b>Site Street Address:</b><br>2152 BLOSSOM AVE      | 1/12/2010 | 200.00    |

CITY OF CORNING  
PERMITS ISSUED (sort by Permit #)  
For the Period 1/1/2010 thru 1/31/2010

| Owner and Address   | Parcel Number   | Issued On | Valuation |
|---|---|-----------|-----------|
| TEHAMA HOTEL INVESTERS<br>3350 SUNRISE WAY<br>CORNING CA 96021<br><b>Permit Description:</b><br>REPLACE SIGNS & CHANNEL LETTERS   | 8709062<br><b>Site Street Address:</b><br>3350 SUNRISE WAY  | 1/27/2010 | 50,000.00 |
| CRANE MILLS<br>2120 LOLITA AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>ADD 800 TO 1000 AMP ELECT. SERVICE            | 7130026<br><b>Site Street Address:</b><br>2120 LOLITA AVE   | 1/19/2010 | 25,000.00 |
| DARYL SLATER<br>662 DEL NORTE AVE<br>CORNING CA 96021<br><b>Permit Description:</b><br>CHANGE OUT HVAC SYSTEM                     | 7322014<br><b>Site Street Address:</b><br>662 DEL NORTE AVE | 1/21/2010 | 5,866.00  |
| JAMES & MALLONY DAILY<br>2108 COLUSA ST<br>CORNING CA 96021<br><b>Permit Description:</b><br>CUT IN HVAC UNIT ON GROUND           | 7106108<br><b>Site Street Address:</b><br>2108 COLUSA ST    | 1/21/2010 | 10,000.00 |
| MARVIN PACE SR.<br>2187 NORTH ST<br>CORNING CA 96021<br><b>Permit Description:</b><br>VINAL SIDING WHOLE HOUSE                    | 7135008<br><b>Site Street Address:</b><br>2187 NORTH ST     | 1/22/2010 | 10,920.00 |
| UNITED METHODIST CHURCH<br>783 SOLANO ST<br>CORNING CA 96021<br><b>Permit Description:</b><br>REPLACE 2 GAS PACK HVAC'S ON GROUND | 7307101<br><b>Site Street Address:</b><br>783 SOLANO ST     | 1/27/2010 | 5,200.00  |

13 Permits Issued from 1/1/2010 Thru 1/31/2010 OR A TOTAL VALUATION OF \$ 120,006.00

\*\*\* END OF REPORT \*\*\*



**CITY OF CORNING  
WASTEWATER OPERATION SUMMARY REPORT  
January 2010**

Below is a summary of the Monthly Operations Report that will be available for City review on February 2010.

- 1) Filled out monthly reports.
- 2) Performed weekly Operator 10 maintenance on all plant equipment.
- 3) Changed flow disk.
- 4) Sent vehicle report to Texas.
- 5) Wasted to EQ basin
- 6) Pumped to beds from thickener.
- 7) Changed chart on So3 analyzer.
- 8) Safety meeting
- 9) Cleaned up shop.
- 10) Inspected eyewash and emergency showers.
- 11) Unloaded chlorine truck.
- 12) Cleaned So2 pump.
- 13) Checked storm water discharge sites at WWTP and airport
- 14) Temperature control on coliform water bath broke.
- 15) Tested all chlorine and So2 sensors.
- 16) River samples.

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FEB 02 2010  
CITY OF CORNING

- 17) Ordered new temperature control for coliform water bath.
- 18) Cleaned probe at lift station.
- 19) Calibrated So3 analyzer.
- 20) Tested alarms with Fire Dept.
- 21) Cleaned hot spots in collection system.
- 22) Sprayed weeds around plant.
- 23) Started decant pump in EQ basin.
- 24) Meet with John Brewer and Ed Anderson on SSO program
- 25) #1 lube pump motor bad
- 26) Called North State Electric to repair lube pump motor.
- 27) North State repaired and installed lube pump motor
- 28) Due to high influent flows caused from storms, shut down Bell Carter flow to outfall.
- 29) After 3 hours, flow dropped-turned Bell Carter back on
- 30) Sewer call- 608 Chestnut
- 31) Received and installed new temperature control for coliform water bath.
- 32) Cleaned city storm drain-South Ave. and 99W
- 33) Hooked up new air system for Bioassay.
- 34) Cleaned back room.
- 35) IIPP plant inspection.
- 36) Picked up fish for Bioassay test
- 37) Staff had ESMR training.
- 38) Patterson Electric installed new main breaker for WWTP.

Total daily plant flow for the month of January 2010 was 879,677 GPD.

Total daily plant flow for the previous month of December 2009 was 674,677 GPD

**January 2010**

Industrial Flow = 604,412 GPD  
(Flow into the Bell Carter Ponds)

Domestic Flow = 879,677 GPD

**December 2009**

Industrial Flow = 437,331 GPD

Domestic Flow = 674,677 GPD

ITEM NO: H-8  
**APPROVE PROGRESS PAY ESTIMATE  
 NO. 4 IN THE AMOUNT OF \$51,480 TO  
 TEICHERT CONSTRUCTION FOR THE  
 AIRPORT RUNWAY IMPROVEMENT  
 PROJECT  
 FEBRUARY 9, 2010**

**TO: HONORABLE MAYOR AND COUNCILMEMBERS  
 OF THE CITY OF CORNING**

**FROM: STEPHEN J. KIMBROUGH, CITY MANAGER  
 JOHN L. BREWER, AICP; DIRECTOR OF PUBLIC WORKS**

*STEP J  
 JB*

**SUMMARY:**

Attached for City Council review is a copy of Partial Pay Estimate No. 4 requesting payment of \$51,480 for the Corning Municipal Airport Runway Improvement Project. The Pay Estimate lists the original contract amount, any change orders/adjustments, work completed to date, retention amount and current amount due to Teichert Construction.

**FINANCIAL:**

Project Engineer Robert Wadell of Wadell Engineering Corporation and the Director of Public Works have reviewed and approved this request.

|                                      |                       |
|--------------------------------------|-----------------------|
| Original Construction Contract       | \$2,187,398.90        |
| Contract Change Order No. 1          | <u>\$ (45,730.00)</u> |
| Total Adjusted Contract Amount       | \$2,141,668.90        |
| <br>                                 |                       |
| PPE No. 1                            | \$ 830,806.30         |
| Retention held (10%)                 | <u>\$ (83,080.63)</u> |
| Amount previously paid to Contractor | \$ 747,725.67         |
| <br>                                 |                       |
| PPE No. 2                            | \$ 928,894.50         |
| Retention held (10%)                 | <u>\$ (92,889.05)</u> |
| Amount previously paid to Contractor | \$ 836,005.05         |
| <br>                                 |                       |
| PPE No. 3                            | \$ 254,243.10         |
| Retention to be held (10%)           | <u>\$ (25,424.31)</u> |
| Amount previously paid to Contractor | \$ 228,818.79         |
| <br>                                 |                       |
| PPE No. 4                            | \$ 51,480.00          |
| Retention to be held (10%)           | <u>\$ ( 5,148.00)</u> |
| <b>Amount due Contractor</b>         | <b>\$ 46,332.00</b>   |

The City requested reimbursement funds from the FAA for the amount of \$44,015 on February 4, 2010. By using the ECHO-Web payment request system, the City will receive reimbursement in a timely manner. The ECHO-Web is an official U.S. Federal Government web-based application and allows for prompt payment. The City will be responsible for the remaining difference of \$7,465 as part of the City's 5% match. (Budget Line Item No. 621-9360-3500) After this payment a balance of \$76,245 will remain in the overall contract.

**BACKGROUND:**

The contract for the Corning Municipal Airport Runway Improvement Project was awarded to Teichert Construction at the September 8, 2009 Regular City Council Meeting. Contract Change Order No. 1 eliminated three (3) distance signs and removed all fencing from the original contract.

The Federal Aviation Administration issued the City of Corning a Notice to Proceed on September 21, 2009.

**RECOMMENDATION:**

**Mayor and Council approve Progress Pay Estimate No. 4 in the amount of \$51,480 to Teichert Construction for the Airport Runway Improvement Project.**



INVOICE

TEICHERT CONSTRUCTION
P.O. BOX 1890 DAVIS, CA 95617-1890 530.406.4200
REMIT TO: P.O. BOX 13557 SACRAMENTO, CALIFORNIA 95833-9935

1300927

Invoice No: 2208977
Date: 1/23/2010

ATS Customer #: 288916

CUSTOMER NAME: City of Combing
ADDRESS: 194 Third Street
CITY, STATE, ZIP: Combing, CA 96021
ATTN: John L. Brewer/Robert Wadell

Estimate #4 Adjustment #
For work performed at: Runway 7 Taxiway Paving & Lighting Imp
Through: 1/23/10

Main invoice table with columns: QTY, CITY/LAST TO DATE, BILLING NO., ITEM NO., DESCRIPTION, ORIGINAL CONTRACT QTY, U, CHANGE ORDER NUMBERS, CHANGE ORDER QUANTITY, UNIT PRICE, ORIGINAL CONTRACT AMOUNT, REBID CONTRACT AMOUNT, REBID CONTRACT QUANTITY, AMOUNT THRU PERIOD, QUANTITY THRU PERIOD, AMOUNT TO DATE.

CONTRACT WORK
Type of Work

Summary table for Contract Work with columns: QTY, UNIT PRICE, ORIGINAL CONTRACT AMOUNT, REBID CONTRACT AMOUNT, REBID CONTRACT QUANTITY, AMOUNT THRU PERIOD, QUANTITY THRU PERIOD, AMOUNT TO DATE.

| QTY.    | LAST    | ITEM | DESCRIPTION   | U        | CHARGE  | CHARGE   | REVISED  | ORIGINAL   | UNIT  | ORIGINAL                             | REMOVED                | TOTAL                  | QUANTITY            | AMOUNT                 | QUANTITY               | AMOUNT |
|---------|---------|------|---|----------|---------|----------|----------|------------|-------|--------------------------------------|------------------------|------------------------|---------------------|------------------------|------------------------|--------|
| TO DATE | BILLING | NO.  |   |          | ORDER   | ORDER    | CONTRACT | CONTRACT   | PRICE | AMOUNT                               | CONTRACT               | CONTRACT               | THIS                | THIS                   | DATE                   | DATE   |
|         |         |      |   |          | NUMBERS | QUANTITY | QUANTITY | AMOUNT     |       |                                      | AMOUNT                 | AMOUNT                 | PERIOD              | PERIOD                 |                        |        |
| 1       | 0.95    | 101  | Additive Bid Item #1, Apron & 2 Exits                 |          |         |          |          |            |       |                                      |                        |                        | 0.00                | \$                     | 0.00                   | \$     |
| 1       | 1       | 102  | Mobilization (5% Max Of Additive Bid)                 | 1 LS     |         |          |          | 20,000.00  |       |                                      |                        | 20,000.00              | 0.00                | \$                     | 0.00                   | \$     |
| 1       | 1       | 103  | South Apron Access Subject Installation               | 1 LS     |         |          |          | 2,000.00   |       |                                      |                        | 2,000.00               | 0.05                | \$                     | 1,000.00               | \$     |
| 1       | 1       | 104  | North Apron Access Subject Installation               | 1 LS     |         |          |          | 2,100.00   |       |                                      |                        | 2,100.00               | 0.00                | \$                     | 0.00                   | \$     |
| 21353   | 21353   | 104  | 4" Thick Subgrade Prep. (In Out Under View Pavements) |          |         |          |          | 34,164.80  |       |                                      |                        | 34,164.80              | 0.00                | \$                     | 0.00                   | \$     |
| 875     | 875     | 105  | 6" Thick Subbase Course                               | 875 CY   |         |          |          | 4,375.00   |       |                                      |                        | 4,375.00               | 0.00                | \$                     | 0.00                   | \$     |
| 2985    | 2985    | 106  | 6" Thick Subbase Course (Borrow)                      | 2985 CY  |         |          |          | 32,835.00  |       |                                      |                        | 32,835.00              | 0.00                | \$                     | 0.00                   | \$     |
| 7050    | 7050    | 107  | 5" Thick Aggregate Base Course                        | 7050 TH  |         |          |          | 123,375.00 |       |                                      |                        | 123,375.00             | 0.00                | \$                     | 0.00                   | \$     |
| 2550    | 2550    | 108  | Plant Mix Alligulifer Base Course                     | 2550 TH  |         |          |          | 218,025.00 |       |                                      |                        | 218,025.00             | 0.00                | \$                     | 0.00                   | \$     |
| 2450    | 2450    | 109  | Shoulder Grading                                      | 2,450 SF |         |          |          | 857.50     |       |                                      |                        | 857.50                 | 0.00                | \$                     | 0.00                   | \$     |
| 2140    | 2140    | 110  | Pavement Marking                                      | 33 EA    |         |          |          | 3,210.00   |       |                                      |                        | 3,210.00               | 0.00                | \$                     | 0.00                   | \$     |
| 33      | 33      | 111  | Elevated Taxiway Reinforce/edge Mark/er               | 83 EA    |         |          |          | 2,705.00   |       |                                      |                        | 2,705.00               | 0.00                | \$                     | 0.00                   | \$     |
| 63      | 63      | 112  | Aircraft Tie-down Anchors                             | 63 EA    |         |          |          | 17,010.00  |       |                                      |                        | 17,010.00              | 0.00                | \$                     | 0.00                   | \$     |
|         |         | 113  | Allowances For Field Orders (\$10K)                   | 1 LS     |         |          |          | 15,000.00  |       |                                      |                        | 15,000.00              | 0.00                | \$                     | 0.00                   | \$     |
|         |         |      |   |          |         |          |          |            |       | <b>WORK SUBTOTAL</b>                 | <b>\$ 2,141,688.90</b> | <b>\$ 2,141,688.90</b> | <b>\$ 51,480.00</b> | <b>\$ 2,090,208.90</b> | <b>\$ 2,090,208.90</b> |        |
|         |         |      |   |          |         |          |          |            |       | <b>ORIGINAL CONTRACT SUB-TOTAL</b>   | <b>\$ 2,141,688.90</b> | <b>\$ 2,141,688.90</b> | <b>\$ 51,480.00</b> | <b>\$ 2,090,208.90</b> | <b>\$ 2,090,208.90</b> |        |
|         |         |      |   |          |         |          |          |            |       | <b>Extra Work</b>                    | <b>\$ -</b>            | <b>\$ -</b>            | <b>\$ -</b>         | <b>\$ -</b>            | <b>\$ -</b>            |        |
|         |         |      |   |          |         |          |          |            |       | <b>CONTRACT EXTRA WORK SUB-TOTAL</b> | <b>\$ -</b>            | <b>\$ -</b>            | <b>\$ -</b>         | <b>\$ -</b>            | <b>\$ -</b>            |        |
|         |         |      |   |          |         |          |          |            |       | <b>TOTAL</b>                         | <b>\$ 2,141,688.90</b> | <b>\$ 2,141,688.90</b> | <b>\$ 51,480.00</b> | <b>\$ 2,090,208.90</b> | <b>\$ 2,090,208.90</b> |        |

ORIGINAL CONTRACT SUB-TOTAL

Extra Work

CONTRACT EXTRA WORK SUB-TOTAL

TOTAL

AMOUNT THIS INVOICE ... \$ 51,480.00  
 LESS % RETENTION ... \$ (5,148.00)  
 AMOUNT DUE THIS INVOICE ... \$ 46,332.00

CONTRACT AMOUNT TO DATE... \$ 2,090,433.90  
 LESS % RETENTION... \$ (206,542.33)  
 EXTRA WORK AMOUNT TO DATE... \$ -  
 LESS EXTRA WORK RETENTION... \$ -  
 LESS PREVIOUS PAY TO DATE... \$ (1,812,549.51)  
 AMOUNT DUE TO DATE... \$ 46,332.00

Engineer's Recommendation for Payment

*Robert P. Wrasell*  
 By Robert P. Wrasell, PE

1-29-10 <sup>60</sup>  
 Date \$ 46,332.00  
 Amount

The following documents are included with this invoice:

THIS INVOICE IS DUE AND PAYABLE BY: 2/28/2010

ITEM NO.: H-9  
ACCEPT RESIGNATION FROM  
RECREATION COMMISSIONER  
SHANNON BOLES  
FEBRUARY 9, 2010

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER  
LISA M. LINNET, CITY CLERK

*STEVE*

*LML*

**SUMMARY:**

Recreation Commissioner Shannon Boles submitted her resignation from the Recreation Commission effective February 2, 2010.

**BACKGROUND:**

Recreation Commissioner Shannon Boles submitted her resignation from the Recreation Commission on February 2, 2010 due to conflicting commitments with another youth program. Mrs. Boles was appointed to the Commission on August 8, 2006.

**RECOMMENDATION:**

**MAYOR AND COUNCIL ACCEPT THE RESIGNATION OF RECREATION COMMISSIONER SHANNON BOLES EFFECTIVE AS OF FEBRUARY 2, 2010.**

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CORNING CITY CLERK

February 2, 2010

Corning Recreation Supervisor  
794 Third Street  
Corning, CA 96021  
Attention: Kim Beck  
Lisa Linnett

Regarding: Recreation Commission

To Whom It May Concern:

This letter is my official resignation from the Recreation Commission. Unfortunately my commitment to a youth program is conflicting with the commission meetings and I will no longer be able to attend. I wish the best to Kim and the department. I am very proud of the progress we have made during my time on the commission.

Thank you,

*Shanna Boles*

Shannon Boles  
23601 Hoag Rd.  
Corning, CA 96021  
530-824-2777

**ITEM NO: H-10  
RESOLUTION 02-09-10-01 APPROVING  
THE APPLICATION FOR THE  
STATEWIDE PARK PROGRAM GRANT  
FUNDS  
FEBRUARY 9, 2010**

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS  
OF THE CITY OF CORNING**

**FROM: STEPHEN J. KIMBROUGH, CITY MANAGER  
KIMBERLY L. BECK, RECREATION SUPERVISOR**

*Steve*  
*KB*

**SUMMARY:**

A requirement of the Proposition 84 Grant Application is that each applicant adopts the Statewide Park Program Grant Funds Resolution.

**BACKGROUND:**

City Staff has been working on completing the required tasks of the Statewide Park Development and Community Revitalization Program Application also know as Proposition 84. Each applicant must certify by resolution the approval of an application before submission of the application to the State.

The attached Resolution was formed from a template provided by the State. The adoption of the Resolution enters the applicant into a contract with the State of California to complete the grant scope project.

**RECOMMENDATION:**

**MAYOR AND COUNCIL ADOPT RESOLUTION 02-09-10-01, A RESOLUTION OF  
THE CITY COUNCIL OF THE CITY OF CORNING APPROVING THE APPLICATION FOR  
THE STATEWIDE PARK PROGRAM GRANT FUNDS**

**RESOLUTION NO. 02-09-10-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORNING  
APPROVING THE APPLICATION FOR THE  
STATEWIDE PARK PROGRAM GRANT FUNDS**

**WHEREAS**, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Statewide Park Program, setting up necessary procedures governing the Application; and

**WHEREAS**, said procedures established by the State Department of Parks and Recreation require the applicant to certify by Resolution the approval of applications(s) before submission of said application(s) to the State; and

**WHEREAS**, the applicant will enter into a contract with the State of California to complete the grant scope project; and

---

**NOW, THEREFORE, BE IT RESOLVED** that the City of Corning hereby approves the filing of an application for the City of Corning Community Park Project; and

1. Certifies that said applicant has or will have available, prior to the commencement of any work on the project included in this application, the sufficient funds to complete the project; and
2. Certifies that the applicant has or will have sufficient funds to operate and maintain the project(s); and
3. Certifies that the applicant has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Grant Administration Guide; and
4. Delegates the authority to the City Manager to conduct all negotiations, sign, and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope; and
5. Agrees to comply with all applicable federal, State and local laws, ordinances, rules, regulations, and guidelines.

**PASSED AND ADOPTED** by the City Council of the City of Corning on this 9<sup>th</sup> day of **February** **2010** by the following vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

---

**Gary R. Strack, Mayor**

**ATTEST:**

---

**Lisa M. Linnet, City Clerk**

**ITEM NO. H-11  
SECOND READING: ORDINANCE NO. 639;  
CULTIVATION OF MEDICAL MARIJUANA; AN  
ORDINANCE OF THE CITY OF CORNING ADDING A  
CHAPTER TO TITLE 17 OF THE CORNING  
MUNICIPAL CODE THAT WOULD REGULATE THE  
CULTIVATION OF MEDICAL MARIJUANA**

**February 9, 2010**

**TO: HONORABLE MAYOR AND CITY OF CORNING COUNCIL MEMBERS**

*STEVE*

**FROM: JOHN STOUFER, PLANNING DIRECTOR** *JS*

**PROJECT DESCRIPTION:**

On January 26, 2010, at a duly noticed public hearing, the City Council waived the first reading and introduced Ordinance No. 639 with changes as recommended by staff. If adopted the ordinance would add a chapter to Title 17 of the Corning Municipal Code that will regulate the cultivation of medical marijuana within the City of Corning. Adoption of the ordinance would regulate the cultivation of medical marijuana in the following ways:

- Cultivation of medical marijuana would be prohibited within any residential structure.
- Outdoor cultivation of medical marijuana would be prohibited.
- Cultivation of medical marijuana would be limited to a maximum area of 120 square feet.
- Cultivation of medical marijuana must be conducted within a secure detached structure, located in the rear yard of a parcel only, and a minimum 10 feet from any property line surrounded by a six (6) foot high solid fence
- A mechanical ventilation system approved by the Building Official must be installed within the detached structure.
- Adequate mechanical or electronic security system approved by the Building Official and Police Chief must be installed in and around the detached structure.
- Qualified patients or caregivers who wish to cultivate medical marijuana must annually register with the Corning Planning Department and provide a valid medical recommendation or State issued medical marijuana card.
- Non-conforming or "grandfathered" cultivation of medical marijuana must comply with this ordinance by December 31, 2010.

- Cultivation of medical marijuana is prohibited within 1000 feet of any school located within the City.
- Cultivation of medical marijuana within any zoning district not zoned residential must obtain a Use Permit prior to the commencement of cultivation activities.

The Planning Commission held a public hearing on December 15, 2009 to review and consider making a recommendation to the City Council regarding the adoption of Ordinance No. 639. After taking public comment the Planning Commission voted 4:0 to recommend that the City Council adopt Ordinance No. 639 with language added to the definition of a "Detached Structure" requiring the exterior walls to be constructed with non-transparent material.

It is now appropriate to adopt the ordinance that will regulate the cultivation of medical marijuana within the City of Corning.

**STAFF RECOMMENDS THAT THE CITY COUNCIL:**

**WAIVE THE SECOND READING AND ADOPT ORDINANCE NO. 639, WITH CHANGES AS DISCUSSED AT THE PUBLIC HEARING HELD BY THE COUNCIL ON JANUARY 26, 2010, ADDING A CHAPTER TO TITLE 17 OF THE CORNING MUNICIPAL CODE THAT WILL REGULATE THE CULTIVATION OF MEDICAL MARIJUANA IN THE CITY OF CORNING.**

**ORDINANCE NO. 639  
CULTIVATION OF MEDICAL MARIJUANA  
WITHIN THE CITY OF CORNING**

**WHEREAS**, California Government Code, Section 65850 (c) (4) provides the authority for the City of Corning to regulate, by ordinance, the intensity of land use; and

**WHEREAS**, the State of California approved Proposition 215 "The Compassionate Use Act of 1996" (Health and Safety Code Section 11362.5), which was to enable persons who are in need of marijuana for medical purposes; and

**WHEREAS**, the State also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

**WHEREAS**, under the Controlled Substances Act, the use, possession and cultivation of medicinal marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

**WHEREAS**, marijuana plants, as they begin to flower and for a period of two months or more during the growing season (August through October for outdoor cultivation), produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries; and

**WHEREAS**, the City has continually received complaints of odor related to the growing of medicinal marijuana; and

**WHEREAS**, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of a caregiver growing for numerous patients, a very large number of plants could be grown on the same legal parcel, or parcels, within the City of Corning; and

**WHEREAS**, the possession and cultivation of large quantities of marijuana has resulted in the armed robberies of residents living in nearby communities and residential areas surrounding the City of Corning; and

**WHEREAS**, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery, and the death of a man in the nearby community of Los Molinos; and

**WHEREAS**, it is the purpose and intent of this ordinance to implement state law by providing a means for regulating the cultivation of medicinal marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers and promotes the health, safety, morals and general welfare of the residents and businesses within the City of Corning. Nothing in this ordinance shall be constructed to allow the use of marijuana (cannabis) for non-medical purposes, or allow any activity relating to the cultivation, distribution,

or consumption of marijuana that is otherwise illegal; and

**WHEREAS**, the potential adverse secondary effects of allowing the cultivation of medicinal marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety of the community because currently the City has no rules or regulations governing the cultivation of medical marijuana; and

**WHEREAS**, it is the purpose and intent of this ordinance is to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets; and

**WHEREAS**, it is the purpose and intent of this ordinance to help law enforcement agencies perform their duties effectively and in accordance with California law; and

**WHEREAS**, the cultivation of marijuana within a residence has potential adverse affects to the structural integrity of the residence and the use of high wattage grow lights within a residence increases the chances of a fire which presents a clear and present danger to the occupants; and

**WHEREAS**, The indoor cultivation of substantial amounts of marijuana also requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and

**WHEREAS**, Areas surrounding schools attract large numbers of juveniles and the cultivation of any amount of marijuana at locations or premises within 1,000 feet of a school makes the site vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants; and

**WHEREAS**, The Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

**WHEREAS**, The City of Corning Planning Commission held a public hearing on December 15, 2009 and recommended by a 4 : 0 vote that the City Council adopt Ordinance No. 639 regulating the cultivation of medical marijuana within the City of Corning.

**Chapter 17.64**  
**Cultivation of Medical Marijuana**

**Sections:**

- 17.64.010 Purpose and Intent**
- 17.64.020 Definitions**
- 17.64.030 Cultivation of Medical Marijuana**
- 17.64.040 Non-Conforming Use**
- 17.64.050 Enforcement**

**17.64.010. Purpose and Intent:** It is the purpose and intent of this chapter to require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.

**17.64.020. Definitions:** Definitions: As used herein the following definitions shall apply:

A. CULTIVATION: The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

B. DETACHED FULLY ENCLOSED AND SECURE STRUCTURE: A building completely detached from a residence that complies with the California Building Code, as adopted in the City of Corning, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch (2" x 4") or thicker studs overlaid with three-eighths inch (3/8") or thicker plywood or the equivalent. Exterior walls must be constructed with non-transparent material. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

C. IMMATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

D. INDOORS: Within a fully enclosed and secure structure.

E. MATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

F. OUTDOOR: Any location within the City of Corning that is not within a fully enclosed and secure structure.

G. LEGAL PARCEL: Any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2, commencing with Section 66410, of Title 7 of the Government Code).

H. PREMISES. A single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

I. REAR YARD. As defined in Section 17.06.560 of the Corning Municipal Code.

J. SOLID FENCE. A six foot high structure, constructed with material approved by the Building Official that prevents viewing the contents from one side to the other.

K. SCHOOL. An institution of learning for minors, whether public or private, offering regular course of instruction for children attending kindergarten, elementary school, middle or junior high school or senior high school. A residence that provides home schooling and preschool or daycare centers are not included in this definition.

L. PRIMARY CAREGIVER: A "primary caregiver" as defined in Health and Safety Code section 11362.7(d).

M. QUALIFIED PATIENT: A "qualified patient" as defined in Health and Safety Code section 11362.7(f).

N. RESIDENTIAL STRUCTURE: Any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation as required by the building code.

**17.64.030. Cultivation of Medical Marijuana:** The following regulations shall apply to the cultivation of medical marijuana as allowed pursuant to Proposition 215 and Senate Bill 420.

A. Cultivation of medical marijuana shall only be conducted by verifiable qualified patients or primary caregivers as defined in the California Health and Safety Code.

B. Outdoor Cultivation: It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Corning to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

C. Residential Structure Cultivation: It is hereby declared to be unlawful for any person to cultivate marijuana in any residential structure, occupied or not. It is hereby declared to be unlawful for any person to cultivate marijuana on any legal parcel or premises containing two or more attached or detached residential structures.

D. Cultivation in non-residential zones: Cultivation of medical marijuana on any parcel that is not zoned residential must obtain a conditional use permit approved by the Planning Commission prior to the commencement of cultivation.

E. Proximity to Schools: It is hereby declared to be unlawful to cultivate medical marijuana on any legal parcel or premises within 1000 feet of a school as defined in this chapter. The 1000 foot distance shall be measured from the closet property line of the school to the closet property line of the cultivation parcel.

F. Cultivation Area: It is hereby declared to be unlawful for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Corning to cultivate medical marijuana, within a detached structure that meets the requirements for cultivation as described in this chapter, an area or areas larger than 120 square feet in size.

G Indoor Cultivation in residential zones: The indoor cultivation of medical marijuana in a residential zone must be conducted within a detached fully enclosed secure structure and shall conform to the following standards:

- 1) Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must obtain a building permit from the Building Official. Cultivation within this detached structure may not commence without final approval of the Building Official, Planning Director and Chief of Police.
- 2) Indoor grow lights shall not exceed 1200 watts and comply with the California Building, Electrical and Fire Codes as adopted by the City of Corning. Gas products (CO<sub>2</sub>, Butane, Propane, Natural Gas, etc) or generators may not be used within a detached structure used for the cultivation of medical marijuana.
- 3) Any detached structure used for the cultivation of medical marijuana must install a ventilation system that will prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3 Mechanical Ventilation. The ventilation system must be approved by the Building Official and installed prior to commencing cultivation within the detached structure.
- 4) A detached structure used for the cultivation of marijuana must be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10) foot setback from any property line, and the area surrounding the structure must be enclosed by a six (6) foot high solid fence. If the entire rear yard area is fenced by a six foot high solid fence, and access from the side yards are fenced by a six foot high solid fence that will suffice for the fencing requirement.

- 5) Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure prior to the commencement of cultivation.
- 6) Prior to commencing cultivation, and upon annual renewal of a qualified patients physicians recommendation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where a detached structure is used for the cultivation of marijuana must register with the Corning Planning Department. The following information will be required with the annual registration:
  - A. A notarized signature from the landowner consenting to the cultivation of marijuana within a detached structure on a legal parcel or premises. The City will supply the letter of consent for signature by the landowner.
  - B. The name of each person, owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated.
  - C. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana.
  - D. The original current valid medical recommendation or State issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
  - E. The physical site address of where the marijuana will be cultivated.
  - F. A signed consent form authorizing city staff, including the police department, authority to do a notified inspection of the detached structure used for the cultivation of marijuana. The City will supply the letter of consent for signature.

The information contained within the registration material shall be received in confidence, and shall be used or disclosed only for purposes of administration of this ordinance or State law, or as otherwise required by law.

#### **17.64.040 Non-Conforming Use**

**Non-Conforming Cultivation :** Any parcel or premises that was used for the cultivation of medical marijuana by a qualified patient or caregiver and had marijuana plants established and growing by March 12, 2010 and does not meet the requirements of this section shall be allowed to continue cultivation activities as established in accordance with regulations for non-conforming land uses in Section 17.52.010 of the Corning Municipal Code until December 31, 2010 at which time Section 17.52.010 will no longer be applicable and any non-conforming cultivation must cease and future cultivation of medical marijuana must comply with this chapter.

**17.64.050 Enforcement:**

A. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

B. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure:

a. The Chief of Police, Building Official, Planning Director, or a designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.

(2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

(3) State the date and time by which the required abatement actions must be completed.

(4) State that to avoid the civil penalty provided in subsection C.a.(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

(5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection E. of this section.

(6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection E. of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

D. The notice described in subsection C.a. of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

E. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city administrator or a hearing officer designated by the city administrator to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city administrator or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

F. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The enforcement official or the city administrator or hearing officer hearing an appeal pursuant to subsection C.a.(5) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

G. Violation: Cultivation of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in subsections C.a.(8) and F. of this chapter.

H. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

\* \* \* \* \*

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Corning, held on \_\_\_\_\_ and adopted at a regular meeting of the City Council of the City of Corning, held \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

Abstain:

It shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of Council persons voting for and against the same, in a newspaper of general circulation in the County of Tehama.

\_\_\_\_\_  
Gary R. Strack, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Linnet, City Clerk

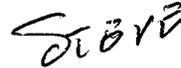
PUBLISH: \_\_\_\_\_

**ITEM NO. H-12  
SECOND READING: ORDINANCE NO. 640;  
AN ORDINANCE OF THE CITY OF CORNING  
PROVIDING AUTHORITY FOR THE CITY TO ADOPT  
WATER EFFICIENT LANDSCAPE REGULATIONS  
BY RESOLUTION OF THE CITY COUNCIL.**

**February 9, 2010**

**TO: HONORABLE MAYOR AND CITY OF CORNING COUNCIL MEMBERS**

**FROM:       STEPHEN J. KIMBROUGH, CITY MANAGER  
              JOHN STOUFER, PLANNING DIRECTOR**



**SUMMARY:**

Recent legislation requires Cities to adopt ordinances to insure that new landscaping is "water efficient". The State Department of Water Resources has compiled a model ordinance that cities may adopt. Staff recommends the City Council adopt the attached Ordinance No 640. If adopted, the ordinance authorizes the adoption and modification of the state's model Water Efficiency ordinance.

**BACKGROUND:**

The Water Conservation in Landscaping Act of 2006 (Assembly Bill 1881, Laird) requires cities and counties to adopt landscape and water conservation ordinances. In accordance with this law the Department of Water Resources (DWR) has prepared a Model Water Efficient Landscape Ordinance for use by cities and counties. If the city does not adopt the model ordinance prepared by DWR then they must adopt an ordinance with findings and evidence that its water efficient landscape ordinance is at least as effective at conserving water as the one prepared by DWR.

Staff feels with the amount of time and professional expertise that went into developing the model ordinance prepared by DWR it would be very difficult and expensive for the city to prepare an ordinance that would be as effective at conserving water as the model ordinance does. Regulations within the ordinance will apply to new construction and rehabilitation of developer-installed irrigated land of greater than 2,500 square feet. For new construction landscapes that are done by homeowners, the regulations will effect landscapes that are greater than 5,000 square feet. The regulations apply only to landscaping, and not the full footprint of the property.

The requirements set forth in the model ordinance will be implemented with the building permit application, therefore, staff recommends adopting an ordinance that references the model ordinance as a technical code, within Title 15, Building and Construction, applicable to the irrigation of landscaped areas in the City.

It is now appropriate to adopt the ordinance that references the model ordinance as a technical code, within Title 15, Building and Construction, applicable to the irrigation of landscaped areas in the City.

**STAFF RECOMMENDS THAT THE CITY COUNCIL:**

**WAIVE THE SECOND READING AND ADOPT ORDINANCE NO. 640, REFERENCING THE MODEL WATER EFFICIENT LANDSCAPE ORDINANCE AS A TECHNICAL CODE WITHIN TITLE 15, BUILDING AND CONSTRUCTION, OF THE CORNING MUNICIPAL CODE.**

**ORDINANCE NO. 640**  
**AN ORDINANCE AUTHORISING THE CITY OF CORNING TO ADOPT**  
**WATER EFFICIENT LANDSCAPE REGULATIONS**  
**BY RESOLUTION OF THE CITY COUNCIL.**

The City Council of the City of Corning, having conducted a public hearing in accordance with state law, on January 26, 2010 and having approved the findings recommended by staff, does hereby ordain as follows:

- A). To add Section 15.08.055 to Title 15 (Building and Construction) of the Corning Municipal Code to read as follows:

15.08.055 Water Efficient Landscape Regulations

The City of Corning shall adopt by reference, and may periodically amend by resolution, the Model Water Efficient Landscape Ordinance prepared by the California Department of Water Resources pursuant to California Code of Regulations, Title 23, Waters.

\* \* \* \* \*

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Corning, held on \_\_\_\_\_ and adopted at a regular meeting of the City Council of the City of Corning, held \_\_\_\_\_, by the following vote:

AYES:

NOES:

ABSENT:

Abstain:

It shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of Council persons voting for and against the same, in a newspaper of general circulation in the County of Tehama.

\_\_\_\_\_  
Gary R. Strack, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Linnet, City Clerk

PUBLISH: \_\_\_\_\_

ITEM NO: K-13  
SENIOR CENTER REQUEST FOR ADDITIONAL  
FUNDS  
FEBRUARY 9, 2010

TO: HONORABLE MAYOR AND COUNCILMEMBERS  
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER

*STEVE*

**SUMMARY:**

Mr. Joseph Russo, Board President of the Corning Senior Center, Inc. has sent the City Council a letter requesting an annual allocation of \$3,700 per year. The City Council received his letter at its meeting on January 26, 2010 and directed Staff to pay the budgeted amount of \$2,700 which has now been sent to the Center. The Center is requesting that the Council consider the \$1,000 increase in the annual allocation. Their request is supported with a long list of activities and fundraisers to offset their costs of operation. With the exception of the small annual commitment from the City of Corning, the Corning Senior Center, Inc. operates and funds the programs independently.

**BACKGROUND:**

Many years ago, the Corning Senior Center Leaders received a bequest from Mr. Ridell. The City contributed the land at the Flournoy Park and accepted ownership of the building once construction was completed. The Center is operated through funds received from rentals, the small annual commitment from the City of \$2,700 and the City providing water, sewer, refuse and major building maintenance.

The Center employs Linda Lima as the Center Manager, paying her minimum wage for five hours a day. The rental income alone will not cover the cost of the Center Manager's position.

One of the Center's achievements last year has been to have rented the Senior Center 39 weekends out of 52. The Center is already booked for January, all of February and most of March and April of 2010. The Center has provided the City Council with a "Yearend Review – 2009" and also their planned fundraisers for the calendar year 2010.

**RECOMMENDATION:**

**CITY MAYOR CONSIDER REQUEST BY CORNING SENIOR CENTER INC. FOR A BUDGET INCREASE OF \$1,000 PER YEAR FOR A TOTAL OF \$3,700.**

**CORNING SENIOR CENTER**  
**A YEAR IN REVIEW 2009**

**January**

Gene and Delores May Named Corning Seniors of the Year  
CSC Election of Executive Members  
Annual Membership Meeting  
Winter Dance (Fund Raiser)  
Legal Services  
CVFD Food Donation to the Elderly  
January Birthday Party and Ice Cream Social (Fund Raiser)

**February**

AARP Tax Program  
Valentine's Party (Fund Raiser)  
Valentine's Dinner Dance (Fund Raiser)  
Legal Services  
AARP General Meetings  
February Senior Center Month Proclamation  
Presentation by the Federation Communication Commission  
Lil' Smokey Raffle (Fund Raiser)

**March**

HICAP Medicare Counseling  
St. Patrick's Dinner Dance (Fund Raiser)  
St. Patrick's Day Luncheon (Fund Raiser)  
St. Patrick's Day Raffle (Fund Raiser)  
TRAX Field Trip  
Corning Exchange Club Donation (Four new tables)  
Ice Cream Social and Birthday Party (Fund Raiser)  
Social Security Quarterly Visit  
Legal Services

**April**

Senior Power Poker Run (Fund Raiser)  
Volunteer Appreciation Banquet  
Easter Dinner Dance (Fund Raiser)  
Senior Nutrition Evaluation (Excellent 99.95 %)  
RSVP Banquet (Three CSC Volunteers Attend)  
HICAP Medicare Counseling  
Legal Services  
Ice Cream and Birthday Party (Fund Raiser)  
AARP General Meeting

**May**

Mother's Day Luncheon (Fund Raiser)  
Revision and Price Increase in Rentals  
Calif. Dept. of Forestry Food Donation (Phone Campaign)  
StarBucks Donation  
CCA Collection and Donation  
HICAP Medicare Counseling  
Legal Services  
Ice Cream and Birthday Party (Fund Raiser)

**June**

Senior Hot Line Program/Eligibility Food Stamps (SNAP)  
Experience Works Program Offered  
CUHS Students Luncheon (Fund Raiser)  
Legal Services  
Volunteer Weekly Schedule Posted  
Grant Written to Rolling Hills Casino  
Ice Cream Social and Birthday Party (Fund Raiser)  
Chamber Membership Renewal  
HICAP Medicare Counseling  
Social Security Quarterly Visit

**July**

4<sup>th</sup> of July BBQ (Fund Raiser)  
Senior Nutrition Agreement  
Meeting with the City of Corning  
Legal Services  
HICAP Medicare Counseling  
Social Security Quarterly Visit  
Senior Nutrition Fund Raiser Participation  
Ice Cream and Birthday Party (Fund Raiser)  
Tehama County Commission on Aging Meeting

**August**

Olive Festival Parade Group Participation  
Olive Festival Corning Senior of the Year Entry  
Olive Festival Mixer Participation  
Fall Prevention Seminar  
AARP General Meeting  
Legal Services  
HICAP Medicare Counseling  
Ice Cream Social and Birthday Party (Fund Raiser)  
Senior Nutrition Site Assessment (Excellent Score)

**September**

Hawaiian Luau Luncheon (Fund Raiser)  
Senior Bake Sale (Fund Raiser)  
Chinese Raffle (Fund Raiser)  
Social Security Quarterly Visit  
Legal Services  
HICAP Medicare Counseling  
Redwood Burl Drawing (Fund Raiser)  
Ice Cream Social and Birthday Party (Fund Raiser)

**October**

Mardi Gras Luncheon (Fund Raiser)  
Chinese Raffle Drawing (Fund Raiser)  
World Food Day Food Donation to CCA  
Legal Services  
AARP General Meeting  
Ice Cream and Birthday Party (Fund Raiser)  
HICAP Medicare Counseling  
Floor Maintenance and Waxing (\$450.00)

**November**

Veteran's Day Parade and BBQ  
Hometown Christmas Vet's Hall (Fund Raiser)  
Hometown Christmas Parade Entry (CALFIRE Forester Adam Deem we Sponsored)  
SerSafe Senior Nutrition Seminar  
SerSafe Manual Created  
HICAP Medicare Counseling  
AARP General Meeting  
Legal Services  
Thanksgiving Party

**December**

CUHS Choir Program  
Christmas Party (Fund Raiser)  
Christmas Chinese Raffle (Fund Raiser)  
Chamber Christmas Mixer (Senior of the Year Announcement)  
Legal Services  
AARP General Meeting  
Social Security Quarterly Visit  
Tehama County Commission on Aging Meeting

Our weekly schedule consists of Senior cards four days a week, Bingo, Art and Bunko once a week and we rent our facility out on a monthly basis to three local organizations.

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**Corning Senior Center**  
**2010 Suggested Fund Raisers, Projects and Activities**

- January**      **CSC Annual Membership Meeting 1/20/10**  
**CSC Election of Officers 1/20/10**  
**Birthday and Ice Cream Social, Friday, January 29th** CSC Fundraiser
- February**    **Valentine's Day Party, Friday, February 12th - Senior Nutrition Luncheon and Raffle** CSC Fundraiser  
**Senior Pet Seminar and Presentation (Salisbury High School)**
- March**        **St. Patrick's Day Luncheon, Wednesday, March 17th** CSC Fund Raiser  
**Proclamation Signing at City Hall for Volunteer Appreciation Month**
- April**        **Easter Luncheon, Friday, April 2nd** CSC Fund Raiser  
**Volunteer Appreciation Luncheon, Friday, April 30th w/ HICAP & AARP**
- May**         **Mother's Day Luncheon and Tea, Friday, May 7th** CSC Fundraiser  
**Memorial Day, Monday, May 31st - Center is closed, Veteran's Parade**
- June**        **Father's Day Luncheon, Friday, June 18<sup>th</sup>** CSC Fundraiser  
**Lin's Vacation** Friday, June 18
- July**         **4th of July Party, Friday, July 2nd BBQ** CSC Fundraiser  
**Raffle** CSC Fundraiser
- August**      **Olive Festival Mixer and Parade (Week End of the 20<sup>th</sup>)**  
**Birthday Ice Cream Social, Friday, 27th** CSC Fundraiser
- September** **Labor Day, Monday the 6th**  
**Birthday Ice Cream Social, Friday, September 25<sup>th</sup>** CSC Fundraiser
- October**     **Halloween Party and Luncheon, Friday October 29th** CSC Fund Raiser  
**Raffle** CSC Fundraiser
- November**   **Hometown Christmas, Saturday, November 20th**  
**Thanksgiving Luncheon, Wednesday, November 17th** CSC Fundraiser
- December**   **CUHS Choir, Wednesday, December 1st**  
**Corning Senior of the Year, Thursday, December 10<sup>th</sup>**  
**Vet's Luncheon, Saturday, December 12<sup>th</sup>**  
**Christmas Party, Friday, December 17th** CSC Fundraiser

Because of the gracious gift of staples from the CVFD we are able to plan more fund raising events. However, because of fixed and low incomes our senior membership, the price of our lunches are at \$3.00 for seniors. Community volunteers and businesses are sought after to help serve and assist at all senior events.

ITEM NO: K-14  
CORNING SKATE AND BIKE PARK  
ASSOCIATION'S REPORT AND  
REQUEST FOR FUNDING  
FEBRUARY 9, 2010

TO: HONORABLE MAYOR AND COUNCIL MEMBERS  
OF THE CITY OF CORNING

STEVE

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER  
JOHN STOUFER, PLANNING DIRECTOR  
KIMBERLY L. BECK, RECREATION SUPERVISOR

**SUMMARY:**

Mr. John Richardson representing the Corning Skate and Bike Park Association Committee is presenting the committee's request for a commitment from the City of Corning for the development of a community skateboard park. The association is asking what commitment by the Volunteers will the City Council expect in order to receive a City financial commitment.

The Committee is at a point where they need further guidance and direction from City Council. The Committee recognizes that the cost of building the Park will exceed \$200,000 and the City may still need to buy land. They recognize that trying to raise \$200,000 privately is not an attainable goal for the Volunteers.

The Corning Skate and Bike Park Committee continues it's fundraising.

**BACKGROUND:**

On December 8, 2009, the City Council received the report from the Corning Skate and Bike Park Association Committee which had also presented their informational report to the Recreation Commission on December 1, 2009. After questions and feedback, the City Council accepted the informational report and promised to agendize another presentation by the Committee on February 9, 2010.

The Corning Skate and Bike Park Association Committee put a great deal of effort into forming a fully functional committee and creating the attached informational report. They are currently focusing on fundraising which have include a raffle, future benefit dinners, car washes, bake sales, and donations.

In the report submitted to the Council in December, the Committee included four of the properties they have considered. They are studying eight properties and volunteer Teresa Smith prepared property profiles that were included in the Association report.

## POTENTIAL SKATEBOARD SITES:

As promised, City Staff members Recreation Supervisor Kim Beck and Planning Director John Stoufer reviewed the following sites for potential development as a skateboard park.

**Proposition 84, Park Bond Act:** The City has now focused on two large adjacent parcels, one fronting on Toomes Ave. and one fronting on Houghton Ave. Together the parcels total 17.15 acres and are interconnected by Jewett Creek and the future Fig Lane right-of-way. Further consideration of the parcel along the Creek between Hwy 99W and Toomes has been abandoned due to the high price set by the major land owner. Without this parcel, there was no point in continuing to consider the smaller parcel on Fig Lane between the Storage business and the mobile home park.

Analysis of this park site makes the two Parcels worthy of acquisition even if the City does not receive Prop 84, Park Bond funding.

The review of the 7.15 acre parcel on Toomes indicates it is ideal for consideration as a skateboard park site. The 7.15 acre parcel, **APN: 71-250-35**, is located along east side of Toomes Ave. just north of the Toomes Ave. and future Fig Lane intersection, along the south side of Jewett Creek. North of Jewett Creek is a vacant parcel, south of the site is a 7.73 acre parcel developed with one single-family residence surrounded by olive trees, to the east is a 3.85 acre single family residential parcel currently owned by the City, and to the west of Toomes Ave. are mini-storage units and two single-family residential parcels.

This property is included in the Prop 84 grant funding project and has a willing property owner who would be interested in further discussions to sell the property to the City should the Prop 84 grant fund monies be denied.

### Potential Issues:

- Location not as centrally located as other sites
- Flood Zone
- Biological survey has identified elderberry bushes on the parcel

### Positive aspects of this site:

- This would be the first park in the southwest quadrant of the City.
- Existing utilities available
- Topography
- Size of Parcel, room for additional recreation features
- Visibility of site
- Potential to help with flood water detention
- Good access
- City would acquire right-of-way for Fig Lane extension

Other park sites reviewed include:

**APN: 71-250-28:** 10.87 acre parcel located between Hwy 99W and Toomes Ave. along the south side Jewett Creek. This parcel was being considered with the Prop 84 grant application but was removed due to the asking price. It's a long narrow parcel and in a Zone A Flood Zone. Access is not very good and an intersection at Hwy 99W could create site distance issues.

North of the parcel is developed as a small mobilehome park and single family residential. Directly south of the site is an older mobilehome park, commercial buildings, apartments, a vacant parcel and mini-storage units. East of the parcel is developed with single family residential.

Potential Issues:

- Access
- Noise impacts to surrounding residential uses
- Flood Zone
- Visibility of the site
- Setbacks from Jewett Creek

Positive aspects of this site:

- Existing utilities available
- Location
- Topography
- Size of Parcel, room for additional recreation features

**APN: 73-010-02:** 8.17 acre parcel located west side of First Street, directly north of Yost Park, south of Blackburn Ave. This parcel is currently developed with olive trees and is adjacent to the north side of Yost Park.

North of the site is currently vacant land and one single family residence, to the west is Blackburn-Moon drain, railroad tracks, Hwy 99W, and Bell Carter, east of the site Corning High School and residences, south of the site is Yost Park.

Potential Issues:

- Availability of parcel for purchase
- Noise impacts to residential uses to the north and east
- Safety issues associated with railroad tracks

Positive aspects of this site:

- Existing utilities available
- Location, adjacent to existing city park and high school
- Topography
- Size of Parcel, room for additional recreation features
- Visibility of site

- Potential to help with flood water detention
- Good access

**APN's 71-136-1,2,3,4:** .3 acre parcel located along south side of Solano St. across from City Hall, previous site of Corning Ford owned by the Foley family. Site has large warehouse style building and is covered in concrete.

City Hall is north of the site, Marin Ave. and residences are south of the site, Transportation Center is to the east and commercial buildings to the west.

Potential Issues:

- Potential liability associated with underground storage tanks
- Noise impacts to residential uses to the south
- Safety issues associated with being adjacent to Solano St.
- Unknown impacts to adjacent business and downtown area
- Not a lot of room for additional recreational features

Positive aspects of this site:

- Existing utilities available
- Location, adjacent to City Hall & Police Station that will help prevent vandalism
- Could use existing concrete reducing cost of construction
- Visibility of site
- Good access

**RECOMMENDATION:**

**MAYOR AND CITY COUNCIL hear the Corning Skate and Bike Park Association's Report in order to provide direction and objectives for the Corning Skate and Bike Park Committee.**

**ITEM NO. K-15  
ACCEPT OFFER OF DEDICATION OF EXCESS  
PROPERTY FROM SELF-HELP HOME  
IMPROVEMENT PROJECT; APN 71-250-36;  
APPROX. 0.22 ACRES**

**FEBRUARY 9, 2010**

**TO: CITY COUNCIL OF THE CITY OF CORNING, CALIFORNIA**

**FROM: STEPHEN J. KIMBROUGH; CITY MANAGER  
JOHN L. BREWER, AICP; PUBLIC WORKS DIRECTOR**

*Steve*  
*JB*

**SUMMARY:**

Staff recommends the City Council accept an offer of dedication of a 0.22 acre property located immediately south of the Blossom Avenue Infill Project Phase 2 from Self Help Home Improvement Project (SHHIP).

**BACKGROUND:**

In 2007, Self help Home Improvement Project proposed to develop the antiquated "Shasta View Tract" that had recorded in the early 1900's. Working closely with City staff, SHHIP merged and amended the 25' wide lots in order to develop an affordable housing project. In addition, SHHIP also offered a new 8-lot subdivision map. The map and development plans relocated the (then undeveloped) intersection of Blossom and Toomes Avenues to increase sight distance between the intersection and the adjacent Jewitt Creek bridge.

SHHIP now seeks to convey Assessor's Parcel 71-250-36 to the City of Corning (see the attached copies of Assessor's Maps showing the subject and adjacent properties). The property is located between the subdivision and Jewitt Creek and, due to topography and location, has little development potential. Please refer to the attached copy of the aerial photo, with contours showing the property location and characteristics. The best use for the property is public use as open space-essentially to protect the bank and north side of the bridge from undermining and to facilitate periodic cleaning of debris from beneath the structure.

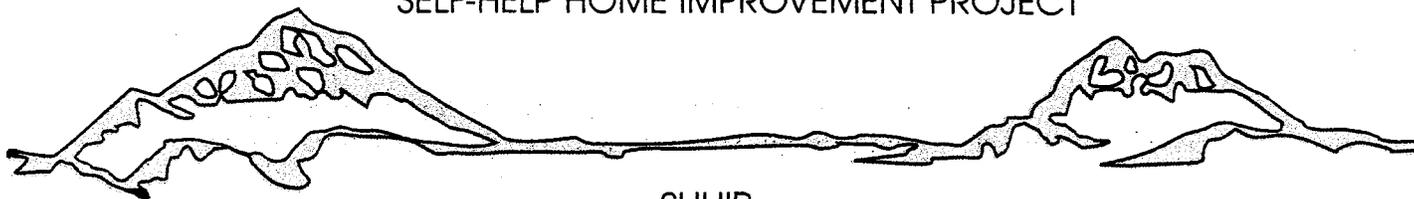
In their letter of January 27, 2010 (attached), SHHIP's Loan/Grant Packager Patty Vasquez, offers to deed the property to the City of Corning. Should the Council opt to accept the property, SHHIP would prepare a grant deed for subsequent recording.

**RECOMMENDATION:**

That the City Council:

- **ACCEPT AN OFFER OF DEDICATION OF ASSESSOR'S PARCEL 71-250-36 FROM SELF HELP HOME IMPROVEMENT PROJECT.**

SELF-HELP HOME IMPROVEMENT PROJECT



SHHIP

Established in 1973

A Private Non-Profit  
Corporation

January 27, 2010

City of Corning  
John Brewer, Planning Director  
794 Third Street  
Corning, CA 96021

**RECEIVED**  
JAN 28 2010  
CITY OF CORNING

RE: PARCEL #071-250-36-1

Dear Mr. Brewer:

With the purchase of the 44 lot subdivision on Blossom Avenue in Corning SHHIP ended up with a parcel along Jewett Creek. SHHIP would like to deed this parcel to the City of Corning.

I have enclosed the description and property tax information on this parcel for your review. Please let me know if the City will accept this parcel?

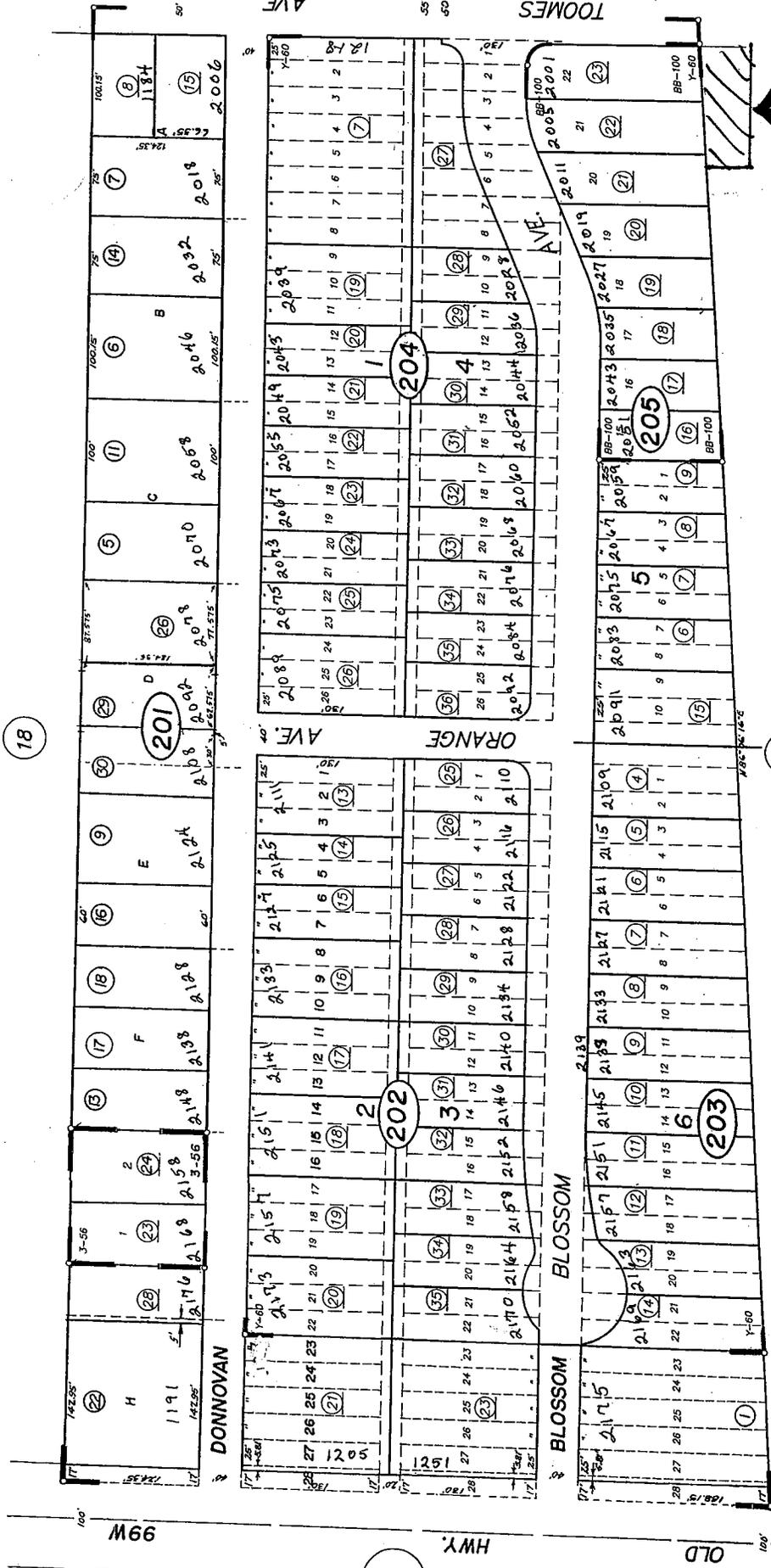
Sincerely,

Patty Vasquez  
Loan/Grant Packager  
(530) 378-6904  
[pvasquez@shhip.org](mailto:pvasquez@shhip.org)



9-19-08

1" = 100'



- P.M. Bk. 3, Pg. 56-P.M. No. 767
- R.M. Bk. B, Pg. 9-Shasta View Tract
- R.M. Bk. L, Pg. 2-Southwesterly ptn. Corning
- R.S. Bk. Y, Pg. 60
- R.M. Bk. BB, Pg. 100-Blossom Ave. Self Help Infill Project Phase 2, Tract No. 07-1001

NOTE-Assessor's Block Numbers Shown in Ellipses  
 Assessor's Parcel Numbers Shown in Circles

Assessor's Map Bk. 71 -Pg. 20  
 County of Tehama, Calif.

**SITE** →

Bk. 69

SEC. 21  
SEC. 22

OLD

HWY. 99W

M66

DONNOVAN AVENUE

ELIZABETH AVENUE

BLOSSOM

AVE.

SITE



275

TOOMES AVENUE

280

280

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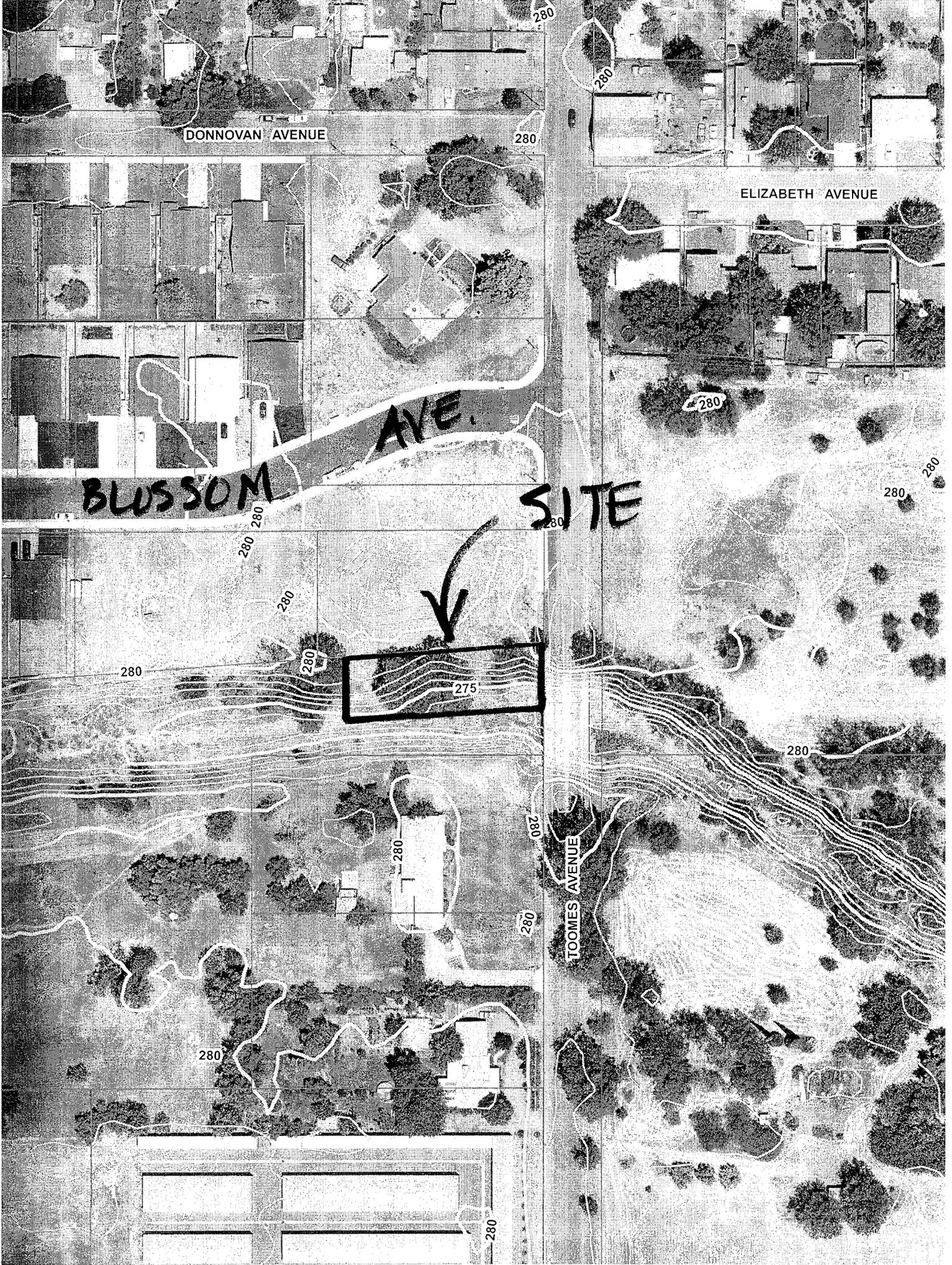
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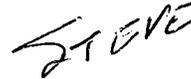
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ITEM NO.: K-16  
APPROVE PAYMENT OF CITY ATTORNEY  
RETIREMENT FUNDS HELD BY CITY  
FEBRUARY 9, 2010

TO: HONORABLE MAYOR AND COUNCIL MEMBERS  
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER



**SUMMARY:**

The City review of the citizen complaint about the legality of paying the City Attorney for his accrued retirement benefit is approaching resolution. At the 6:30 PM Closed Personnel Session at the beginning of the City Council Meeting, the City Council will receive the confidential opinion from the outside law firm of Liebert Cassidy and Whitmore; the Council may then consider payment of the accrued retirement contributions totaling \$46,970.18. No interest has been computed on these funds.

**CITY REVIEW:**

The California Public Employees Retirement System, CalPERS, has responded to the City by letter on January 19, 2010, confirming that **“There are no provisions in the CalPERS law which would prohibit the City from returning these funds to Mr. Fitzpatrick.”** The letter specifically addresses “both the employee contribution made by the City and the employer contribution to your City Attorney, Michael Fitzpatrick.”

The employment law and labor relations firm of Liebert, Cassidy and Whitmore in Los Angeles was retained in the attached letter dated February 1, 2010, to review the City Attorney Contract addressing the issue as directed by the City Council on November 24, 2009.

“Recognizing that the City Council has the authority to enter into Service Contracts and Employment Agreements, is the June 2005 employment agreement with Michael Fitzpatrick a valid and legal contract?”

Is the Agreement for Legal Services presented to the City Council on January 26, 2010, at the direction of the City Council, a Contract into which the City can legally enter?

The City of Corning works under the Employee Relations principal of “Total Compensation”. Total Compensation recognizes that all salary and the dollar value of all benefits are part of an employee’s compensation package. This represents the actual cost to the City Government for each employee. Given that principle, is it a legal decision of the City Council to alter the 2005 Employment Agreement of the City Attorney as done on January 26, 2010 in the new Agreement for Legal Services?”

Later in consultation with the “Liebert Cassidy” attorney, she suggested that they also provide their opinion on whether such a payment of accrued retirement funds to the City Attorney amounted to a “gift of public funds” as alleged by the citizen complaint.

The issues involving the problems with the retirement system were resolved on July 28, 2009, when the City Council met in closed session with the City Attorney and reviewed the documentation from CalPERS addressed to the City and the City Attorney, as well as the correspondence between the City Attorney and CalPERS.

Following the Closed Session on July 28, 2009, the Council reconvened and the Minutes reflect the following statement verbatim from the Mayor:

**“The Mayor announced that the Council reviewed the PERS issue that has been raised concerning our City Attorney. We see no documentation of any kind which would allow us to conclude that it would be illegal for the City now to pay the City Attorney these retirement funds. However, we’re willing to take no action on this matter at this time to allow adequate time for others to fully investigate this issue.”**

Based upon the complainant’s letters, he corresponded with the Tehama County District Attorney, The Tehama County Grand Jury, the CalPERS Compensation Review Department and the CA State Bar Association. Only the Grand Jury contacted the Mayor and City Staff to review this matter. The complainant has now been given over six months; Council may now consider if sufficient time has passed.

On January 26, 2010, the City Council approved a new part-time employment agreement with the City Attorney which ended the retirement compensation by incorporating it into his base salary. This stopped any accrual of additional benefits. The agreement extends automatically from year to year, but allows either the City Council or the City Attorney to terminate the services after notice. The City Attorney is employed by and is accountable only to the City Council.

**BACKGROUND:**

Corning City Attorney Michael Fitzpatrick joined the City on November 22, 1988. In June 2005, the City Council approved an “Employee Services Contract” with Mr. Fitzpatrick providing for the City Attorney to become a part-time employee and to receive CalPERS retirement based upon his part-time pay. The City saw this action as a benefit to the City by holding the cost of attorney services to a fixed monthly amount.

Some time later, CalPERS informed the City that multiple employers may not contribute to CalPERS. The City Attorney is also employed part time by the City of Anderson. CalPERS has returned to the City of Corning the City Attorney’s member earnings submitted to CalPERS by Corning since 2005.

The City has been holding the monthly retirement contributions until the complaint is resolved. When the City Council is satisfied that the issue is resolved, the funds may be paid by check.

**FINANCIAL:**

The funds accrued to the City Attorney total \$46,970.18 through December 31, 2009, are being held in the General Fund.

**RECOMMENDATION:**

**MAYOR AND CITY COUNCIL review and discuss the Legal Opinion of Outside Counsel, the firm of Liebert Cassidy and Whitmore and determine if it is now appropriate to pay Michael Fitzpatrick, Corning City Attorney, the accrued retirement funds totaling \$46, 970.18.**



# FITZPATRICK

L A W O F F I C E S

February 4, 2010

Mayor and Council  
City of Corning  
794 Third Street  
Corning, California

Re: City Attorney contract

Mayor and Council:

The questions which have been raised about my contract with the City of Corning have troubled me greatly for several reasons. I have now worked for the City of Corning for over 15 years. I have considered it a privilege to work for and on behalf of the fine people I've met and worked with in Corning with over these past many years. I'm, of course, troubled by the attacks which have been made on my integrity; not so much by the questioning of my professional skills and judgment. In the public arena, officials and employees certainly need to be prepared to deal with questions concerning the judgments they make on behalf of their constituents and my office is no exception. With regard to questions involving my competency, I would simply refer people to the past record where, at least in the legal arena, the City has suffered no significant set-backs during my tenure and has, in many respects, become proactive in handling legal issues. The record speaks for itself.

If the Council will recall, one of the reasons for leaving the "old arrangement" and bringing me on as an employee of the City was so I could receive some retirement benefits, and, as a "trade-off" I would no longer bill the City for "litigation services." Those services were primarily spent for preparation and presentations made in court and administrative hearings. If we were able to go back in time and calculate the number of hours I have put into "litigation services" for the City of Corning over these past 5 years and now pay me on an hourly basis for that time (since I have not billed the City of Corning for any of those hours) there's no question but that the City would be paying me well over the amount that is on tonight's agenda. In other words, in retrospect, it was a "good deal" for the City to have made this decision 5 years ago, but; if I'm not allowed to receive any compensation or retirement funds for the time I've invested, that's the same thing as saying "Thanks for your work. In the previous years with the City you had always billed us for your litigation services and we paid you by the hour. These past 5 years you've not been paid anything for those same services. We appreciate you working on those projects without being paid!"

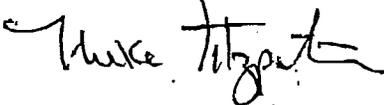
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With regard to the issue before the Council of my entitlement to now receive and reinvest the retirement funds the City agreed to begin giving me (by contributing to PERS on my behalf) almost 5 years ago, it's still my position that those funds were part of the compensation package agreed to by the City and therefore should now come to me. I have invited the Council to seek outside legal advice on this entitlement in that I don't want there to be any question about the legality of my now receiving these funds. If outside counsel determines that it would not be legal for me to receive the funds the City has been contributing to my retirement, I will accept that determination. I was disappointed to learn that those funds could not be left with PERS as I had hoped to minimize the tax effects on me by delaying the benefits until my retirement years, but it is acceptable to me to have those past retirement funds paid to me as taxable income this year, pay taxes on these funds and get this issue resolved. My new contract with the City recently approved by you, as you know, does not include any City contributions toward retirement on my behalf.

When my new contract with the City was approved recently, two of our Council members stated that they would like to wait until budget review time to make a decision on my contract with the City. I respect that position and understand the concern of all of our Council members in ensuring that all expenditures of the City are closely controlled and that our taxpayers' money is wisely spent. No department, and certainly not that of the City Attorney, should be overlooked or exempt from this type of review.

Let me therefore suggest that I meet with two Council members (and I would propose those be the two members who voted against approval of my new contract) in the next couple of months to review the amount of pay I am receiving and determine if it is fair and equitable. In meeting together, we could also review whether or not it would now make sense to go back to the "old arrangement" between me and the City, that being that I no longer be an "employee" of the City but rather I revert to being an independent contractor, billing for my time and services at the same rates charged by other attorneys working for surrounding communities. If there are adjustments which can be made to my working arrangement with the City for this upcoming fiscal year, adjustments which will be fair to me and save the City money, I'm certainly willing to work with the City in this regard. I enjoy working with Council and Staff of the City of Corning and consider it an honor to do so.

Sincerely,



Michael C. Fitzpatrick



Employer Services Division  
P.O. Box 942709  
Sacramento, CA 94229-2709  
Telecommunications Device for the Deaf - (916) 795-3240  
888 CalPERS (or 888-225-7377) FAX (916) 795-3005

January 19, 2010

Stephen J. Kimbrough  
City Manager  
City of Corning  
794 Third Street  
Corning, CA 96021

**RECEIVED**  
JAN 22 2010  
CORNING CITY CLERK

Dear Mr. Kimbrough:

This is in response to your letter of January 4, 2010 regarding your question whether or not there are any provisions in the California Public Employees' Retirement System (CalPERS) Law or Regulations which would prevent the City in returning both the employee contribution made by the City and the employer contribution to your City Attorney, Michael Fitzpatrick.

There are no provisions in the CalPERS law which would prohibit the City from returning these funds to Mr. Fitzpatrick.

If you have any questions, regarding this letter, please do not hesitate to contact me at 888 CalPERS (or 888-225-7377).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Arndt".

Sheila Arndt  
Employer Services Division  
Membership and Account Adjustment Unit



# City of Corning

794 Third St. Corning, CA 96021 (530) 824-7020 Fax (530) 824-2489

February 1, 2010

Ms. Melanie Poturica  
Managing Partner  
Liebert, Cassidy and Whitmore  
6033 West Century Blvd., Suite 500  
Los Angeles, CA 90045

RE: Request for review and opinion on Corning City Attorney Contract.

Dear Ms. Poturica:

Thank you for your willingness to help the City of Corning. The City Council and our City Attorney, Michael Fitzpatrick have asked that the City resolve the issues relating to the City Attorney Contract and the charges made by a citizen. A copy of the City Council approval of outside counsel is enclosed.

I appreciate your help and look forward to your response. Time is of the essence on this matter.

**Issue Needing Resolution:**

Recognizing that the City Council has the authority to enter into Service Contracts and Employment Agreements, is the June 2005 employment agreement with Michael Fitzpatrick a valid and legal contract?

Is the Agreement for Legal Services presented to the City Council on January 26, 2010, at the direction of the City Council, a Contract into which the City can legally enter?

The City of Corning works under the Employee Relations principal of "Total Compensation". Total Compensation recognizes that all salary and the dollar value of all benefits are part of an employee's compensation package. This represents the actual cost to the City Government for each employee. Given that principle, is it a legal decision of the City Council to alter the 2005 Employment Agreement of the City Attorney as done on January 26, 2010 in the new Agreement for Legal Services?

**Background:**

On June 10, 2005, the City Council met with the City Attorney and agreed to change his City contract from "Independent Contractor" to Part-time Employee. A copy of that signed contract is enclosed along with the Minutes of the June 14, 2005 City Council Meeting approving the part-time employment.

During a Closed Session with the City Attorney at a later date, the City Attorney and City Manager informed the City Council that PERS had rejected his part-time membership under the City's contract with PERS and refunded the contributions. The Council, recognizing that the retirement benefit was part of the Attorney's total compensation, directed the City Manager to work with the City Attorney to move his returned contributions into the City's 457 Deferred Compensation Plan.

At a future date the City Attorney explained to the City Council that the IRS limits on maximum contributions to multiple 401K and 457 Plans prevented the move of his retirement benefit. He discussed with the City Council the conversion of the retirement benefit to taxable compensation. Again, the Council recognized that the City views the retirement benefit as a part of total compensation, and they directed the City Manager to return with a Contract Amendment for the City Attorney reflecting this change.

That amendment was presented to the City Council on June 23, 2009. At that point, the citizen made his accusations that this was an illegal contract and a gift of public funds. The Council then continued the item for future review.

On July 28, 2009 the City Council met in Closed Session with the City Attorney and reviewed the documentation from PERS addressed to the City and the City Attorney, and also the correspondence between the City Attorney and PERS. Following the Closed Session on July 28, 2009, the Council reconvened and the Minutes reflect the following statement verbatim from the Mayor:

"The Mayor announced that the Council reviewed the PERS issue that has been raised concerning our City Attorney. We see no documentation of any kind which would allow us to conclude that it would be illegal for the City now to pay the City Attorney these retirement funds. However, we're willing to take no action on this matter at this time to allow adequate time for others to fully investigate this issue.

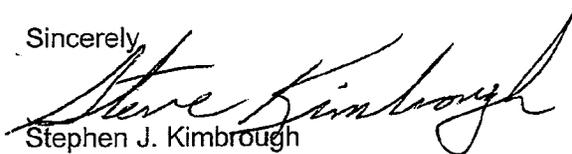
In January 2010, the City asked and received CalPERS written response that "There are no provisions in the CalPERS law which would prohibit the City from returning these funds to Mr. Fitzpatrick."

The City of Corning is not asking you, as an outside Counsel, to evaluate PERS Law, or the problems in communications which occurred between PERS and the City. The City Council has resolved that in their review of the documentation supplied by the City Attorney. The City is interested in resolving the allegation that the 2005 Contract and the 2010 Contract are not legal agreements which can be approved by the City Council.

Our correspondence will naturally be a part of the public record which means that the complaining citizen may contact you to engage you in a dialog. The City, of course, cannot authorize nor afford the expenditure of your time for such a dialog.

Again, thank you for your willingness to assist the City of Corning with this review.

Sincerely,



Stephen J. Kimbrough  
City Manager

Enclosures: Part-time Employee Contract  
June 14, 2005 City Council Meeting Minutes  
July 28, 2009 City Council Meeting Minutes  
November 24, 2009, City Council Agenda Staff Report  
January 19, 2010 Letter from CalPERS  
January 26, 2010, City Council Agenda Staff Report and Approved Contract  
Copies of Citizen Letters of Complaint and Requests for Documents

**CITY OF CORNING**  
**AGREEMENT FOR**  
**LEGAL SERVICES**

THIS AGREEMENT, made and entered into this 26th day of January 2010, is by and between the City of Corning, hereinafter referred to as "EMPLOYER" and MICHAEL C. FITZPATRICK, an individual, hereinafter referred to as "EMPLOYEE."

**RECITALS**

WHEREAS, CITY desires to continue using the professional services of a qualified person to perform the duties and responsibilities of City Attorney for the City of Corning; and

WHEREAS, CITY knowing that EMPLOYEE is qualified and experienced, and has the specialized skills, to perform the legal services required for the CITY, now wants to proceed with contracting with EMPLOYEE as its City Attorney, and EMPLOYEE is ready, willing and able to perform such services for the CITY.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein the parties agree as follows:

**SERVICES:** EMPLOYEE will provide to the CITY all necessary professional, administrative, and managerial services to perform the duties and responsibilities of the office of City Attorney to the satisfaction of the CITY, as set forth below. Such services shall include, but not be limited to the following:

To exercise the powers, have the privileges and immunities, and to perform the functions and duties of City Attorney as specified by the job description adopted by the CITY and as set forth and enumerated in the laws of the State of California and the ordinances of the CITY. The primary duties include managing the legal affairs of the CITY, working with the City Manager and department heads in addressing the legal issues related to City business, reviewing all City contracts, assisting in the preparation of City ordinances and resolutions, monitoring the administration of claims being handled by City claims administrators, advising the City Council on legal matters, engaging in preventive law to avoid City liability for its activities, participating in activities which promote projects designed to improve City government and representing the City in court on issues which don't require the involvement of outside specialized legal counsel. EMPLOYEE will attend all City Council meetings (2nd and 4th Tuesdays of each month) of the CITY. EMPLOYEE shall be the Primary Staff person advising and assisting the CITY Council on legal issues.

EMPLOYEE will represent the CITY in litigation before the local and appellate courts on all matters within his expertise at no added hourly fee to the CITY subject to the right of adjustment, upon Council approval, should the amount of litigation create an undue impact upon EMPLOYEE's workload for the CITY and other clients. Outside legal counsel may still be engaged at CITY expense, separate and apart from this agreement, when, in EMPLOYEE's judgment, the matter being handled is beyond his field of expertise or, for other reasons, specialized counsel are needed.

**WORK DAYS AND HOURS:** EMPLOYEE will work on a part time basis for the City of Corning and such work will be performed at various locations in City Hall, in EMPLOYEE'S private offices, in court as required and in other locations appropriate to the tasks being performed. The actual amount of time required of EMPLOYEE will vary from time to time depending on the projects and assignments which arise.

**REPORTING RELATIONSHIP:** EMPLOYEE shall report directly to the City Council.

**COMPENSATION:** CITY, for and in consideration of the promises, covenants, conditions and stipulations of EMPLOYEE set forth herein, hereby agrees to provide, as total compensation to EMPLOYEE, the following:

Basic Compensation: EMPLOYEE shall be considered a part-time employee and receive compensation at the following base salary as indicated (subject to any voluntary written agreements by EMPLOYEE together with other CITY employees to accept salary reductions during challenging economic times for CITY):

- Beginning 1-1-10 Base Salary of \$5,000/month  
plus \$961 in lieu of Retirement for a total of \$5,961
- Beginning 7-1-10 Base Salary of \$5,250/month  
plus \$1,009 in lieu of Retirement for a total of \$6,259
- Beginning 7-1-11 Base Salary of \$5,500/month  
plus \$1,133 in lieu of Retirement for a total of \$6,633

Compensation as agreed shall be paid to EMPLOYEE with payment made bi-weekly. The federal and state tax and Social Security withholdings applicable to all CITY employees shall also apply to EMPLOYEE.

Retirement: EMPLOYEE shall not receive PERS Retirement entitlements but, in return for his agreement to represent the City in litigation at no added hourly charge subject to the terms set forth above, EMPLOYEE shall receive the additional salary shown above. Beginning January 1, 2010, an amount of

money which will be the equivalent of what the CITY would pay into PERS on his behalf (calculated in the same manner as other employees of the CITY and prorated on a basis consistent with his compensation package) were he eligible to participate in that retirement plan.

EMPLOYEE's entitlement to additional retirement funds based upon services provided prior to January 1, 2010 is currently being reviewed and will be addressed separate and apart from any new terms set forth in this agreement.

Vacation: EMPLOYEE shall not accrue vacation time.

Health Insurance: EMPLOYEE shall not receive health insurance.

Sick Leave: EMPLOYEE shall not accrue sick leave.

Management Leave. EMPLOYEE shall receive full management leave entitlements, if any.

Disability and Life: EMPLOYEE shall not receive disability and life insurance coverage.

**REIMBURSEMENT OF EXPENSES:** EMPLOYEE shall be entitled to the same reimbursement for lodging, meals and other out-of-pocket expenses incurred during travel on CITY business as authorized for other employees of the CITY while traveling on CITY business. EMPLOYEE shall be entitled to attend at CITY expense continuing education classes and events subject to whatever budget constraints are in place annually. CITY will reimburse EMPLOYEE a reasonable amount for administrative expenses (telephone, stationary, computer research costs, ~~malpractice insurance~~, etc.) he incurs on behalf of the CITY, subject to sharing such expenses with the other cities represented by EMPLOYEE as has been past practice.

**TERM:** This agreement shall be for a period of time beginning on January 1, 2010 and ending on June 30, 2011 and extends automatically from fiscal year to year thereafter on the same terms and conditions as in the last fiscal year included above unless either party provides the other with notice of termination. Either party may terminate this Agreement at-will by providing the other party not less than sixty (60) calendar days written notice of termination. The termination shall become effective upon the 60<sup>th</sup> or later designated day following delivery of written notice thereof. EMPLOYEE shall be compensated for all services performed to the effective date of termination. If this contract is terminated for any reason, the maximum cash settlement that the Employee may receive shall not exceed the sum specified in Government Code section 53260.

**PERFORMANCE STANDARDS:** EMPLOYEE agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talent, perform all of the duties and functions that may be required of or from him pursuant to all terms of this Agreement in a manner reasonably satisfactory to the CITY, and in accordance with the standards reasonably expected of a professional person so engaged.

**INDEMNITY AND DEFENSE:** CITY agrees to extend to EMPLOYEE, as to any action or proceeding on account of any act or omission of EMPLOYEE within the course and scope of services for CITY provided pursuant to this Agreement, those rights of indemnification, including the right that CITY pay any judgment or make any compromise or settlement of an action, and the right to provision for a defense for actions or proceedings as are granted to employees of a public entity under the provisions of Division 3.6 (commencing with Section 810), Title 1, of the Government Code of the State of California. EMPLOYEE shall nevertheless continue to provide errors and omissions insurance through his private practice which extends coverage to the CITY in the event of a malpractice claim by a third party against the CITY.

**EMPLOYEE; NOT INDEPENDENT CONTRACTOR:** It is understood that EMPLOYEE is not an independent contractor. He is a part-time employee of the City of Corning.

**ENTIRE AGREEMENT; MODIFICATION:** This Agreement embodies the whole Agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations made or into by CITY or EMPLOYEE other than those contained herein. No modification, alteration, or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- a. To CITY: **Stephen J. Kimbrough, City Manager**  
City of Corning  
794 Third Street  
Corning, CA 96021
- b. To EMPLOYEE: **MICHAEL C. FITZPATRICK**  
11424 Easy Street  
Redding, CA 96003

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CORNING:

EMPLOYEE:

by \_\_\_\_\_  
Gary R. Strack, Mayor

\_\_\_\_\_  
Michael C. Fitzpatrick



CITY OF CORNING  
CITY COUNCIL MINUTES  
TUESDAY, JULY 28, 2009  
CITY COUNCIL CHAMBERS  
794 THIRD STREET

A. CALL TO ORDER: 6:30 p.m.

B. ROLL CALL:

Council:

Becky Hill  
Ross Turner  
Toni Parkins  
John Leach  
Gary Strack

Mayor:

All members of Council were present.

The Brown Act requires that the Council provide the opportunity for persons in the audience to briefly address the Council on the subject(s) scheduled for tonight's closed session. Is there anyone wanting to comment on the subject(s) the Council will be discussing in closed session? If so, please come to the podium, identify yourself and give us your comments.

C. ADJOURN TO CLOSED SESSION: 6:31 p.m.

PUBLIC EMPLOYEE PERFORMANCE EVALUATION: Gov't Code 54957

Title: City Attorney

Title: City Clerk

D. RECONVENE AND REPORT ON CLOSED SESSION: 7:30 p.m.

The Mayor announced that the Council reviewed the PERS issue that has been raised concerning our City Attorney. We have seen no documentation of any kind which would allow us to conclude that it would be illegal for the City now to pay the City Attorney these retirement funds. However, we're willing to take no action on this matter at this time to allow adequate time for others to fully investigate this issue.

Mayor Strack also stated that they gave the City Clerk direction on how to respond to Public Records Act Requests.

E. INVOCATION AND PLEDGE OF ALLEGIANCE:

Councilor Leach gave the invocation and City Manager Kimbrough led the Pledge of Allegiance.

F. PROCLAMATIONS, RECOGNITION'S, APPOINTMENTS: None.

G. BUSINESS FROM THE FLOOR:

Mr. Wolverton stated that he had addressed the City Manager and the Council regarding the pet rescue issue and wished to know the final outcome. Mayor Strack stated that Animal Shelter Caretaker Debbie Englebarger had withdrawn her request for the additional funding due to the current financial situation of the City.

Gene May addressed the Council in relation to the response by the Grand Jury regarding his complaint. Mr. May stated three people have finally come and talked to him after seven years and he is still waiting for the Police Chief to contact him. He announced that he is now a member of the Concerned Citizens Group and believes that both the Police Chief and City Manager should be removed from office.

H. CONSENT AGENDA: It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or members of the audience requests separate discussion and/or action.

1. Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.
2. Waive the Reading and Approve the Corrected Minutes of the June 18, 2009 Special Meeting with any necessary corrections.
3. Waive the Reading and Approve the Minutes of the June 23, 2009 Meeting with any necessary corrections.
4. Waive the Reading and Approve the Minutes of the June 30, 2009 Special Meeting with any necessary corrections.
5. Waive the Reading and Approve the Minutes of the July 7, 2009 Special Meeting with any necessary corrections.

6. July 22, 2009 Claim Warrant - \$266,949.07.
7. Business License Report – July 22, 2009.
8. Approve Resolution No. 07-28-09-02 Authorizing the Tehama County Sanitary Landfill Agency to Submit a Regional Used Oil Recycling Grant Application for FY 2009-2010.
9. Accept Resignation of Mr. Jerry Rindahl from the Airport Commission.
10. Appoint Mr. Tony Miller as City Representative to the Tehama County Airport Land Use Commission.
11. Approve Relocation and Remodel Plans for the Transportation Center, Suites B & D and City Hall Storage Room to Provide Accomodations for the PAL Program and the Recreation Supervisor.
12. Adopt Ordinance No. 635 – An Ordinance of the City of Corning adding a chapter to Title 5 of the Corning Municipal Code that would regulate street vending in the City. (Second Reading and Adoption).
13. Authorize Public Works Staff to Complete Weed Abatements on Non-Compliant Properties and Imposition of Liens for Cost Recovery.

Councilor Turner asked that Items 11 and 13 be removed for further discussion and Councilor Hill requested that Item 9 be removed for further discussion. Councilor Leach moved to approve Consent Items 1-8, 10 and 12. Councilor Hill seconded that motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

I. ITEMS REMOVED FROM THE CONSENT AGENDA:

9. Accept Resignation of Mr. Jerry Rindahl from the Airport Commission.  
Councilor Hill stated that she would like to publicly acknowledge Mr. Rindahl's importance to the City Airport and thank him for the contributions he has made to the City and the Airport during his years on the Airport Commission. It was announced that a formal presentation is being planned. Councilor Hill moved to regrettfully accept Mr. Jerry Rindahl's resignation from the Airport Commission. Councilor Leach seconded the motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

11. Approve Relocation and Remodel Plans for the Transportation Center, Suites B & D and City Hall Storage Room to Provide Accomodations for the PAL Program and the Recreation Supervisor.

Councilor Turner asked if the City is required to obtain State approval for the remodeling plans for the Transportation Center. The City Manager stated that in past discussions the State doesn't have a problem as long as the City maintains a bus waiting area. Public Works Director John Brewer stated that he has been in touch with the County Transportation Contact, Barbara O'Keeffe, and she has stated that she has no problem with this arrangement as long as the bus waiting area remains available to the public.

With no further questions, Councilor Turner moved to approve the relocation/remodel plans for the Transportation Center's Suites B & D and the City Hall Storage Room to accommodate the PAL Program and the Recreation Supervisor's relocation. Councilor Parkins seconded the motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

13 Authorize Public Works Staff to Complete Weed Abatements on Non-Compliant Properties and Imposition of Liens for Cost Recovery.

Councilor Turner asked why the City didn't use an outside contractor to do the weed abatement work rather than Public Works Personnel. City Manager Kimbrough stated that because General Fund dollars would be used for this, and it might take 1-2 years to recover these funds, it was better to spend it on our own employees.

With no further discussion, Councilor Turner moved to authorize Public Works Staff to complete the weed abatements on non-compliant properties and impose liens on these properties for cost recovery. Councilor Leach seconded the motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

J. PUBLIC HEARINGS AND MEETINGS: None.

K. REGULAR AGENDA:

14. Designation of Voting Delegate and Alternate for 2009 League Annual Conference.

After little discussion, Mayor Strack moved to appoint Councilor Hill to be the City's voting representative at the 2009 League of California Cities Annual Conference since she is the only member of Council that will be attending. Councilor Turner seconded the motion. Ayes: Strack,

THE CITY OF CORNING IS AN EQUAL OPPORTUNITY EMPLOYER

Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

**15. Ordinance 636 Amending the Dollar Amount Limits of Corning Municipal Code Chapter 15.32; Contract and Bidding Procedures for Public Projects (First Reading).**

Mayor Strack introduced this item by title and Public Works Director John Brewer explained that this is being proposed to raise the thresholds for Force Account Labor (Public Works Employees) from the existing \$25,000 to \$30,000 in response to State law.

Councilor Hill moved to waive the first reading and introduce Ordinance No. 636, an Ordinance to amend the dollar amount limits of Corning Municipal Code Section 15.32.010 from \$25,000 to \$30,000. Councilor Parkins seconded the motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

**16. Approval of Corning Municipal Airport Improvement Plans and Financing Plan, and Authorize Staff to Seek Bids for the Project; CEQA Notice of Exemption.**

Mayor Strack introduced this item by title. Public Works Director John Brewer then presented a brief explanation of the project explaining that the projected funding would be from FAA (\$2,375,000), the State (\$59,375), and what the City's match would be (\$65,625). He outlined the possible funding sources for the City's match and Staff's recommendations to Council. Councilor Leach suggested utilizing City Transportation Funds rather than seek funding via a loan. City Manager Kimbrough stated that if this is the Council's decision then he suggests the City draw up a loan note against these funds to be presented for Council approval.

Mayor Strack moved to:

- a. Find that the Corning Municipal Airport Runway and Taxiway Improvement Project is exempt from the California Environmental Quality Act (CEQA);
- b. Approve the Plans for the Corning Municipal Airport Runway and Taxiway Improvement Project, including the additive bid item;
- c. Authorize Staff to seek bids for the project, including the additive bid item, returning to Council for bid award; and
- d. Direct the City Manager, Consultant Bob Wadell and City Staff to pursue the Grant Funding for the Project from the Federal Aviation Administration and California Department of Transportation – Division of Aeronautics.

Councilor Turner seconded the motion. Ayes: Strack, Hill, Turner, Parkins and Leach. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.

By Council consensus, the funding source for the City's matching funds is to be decided by Council at a later date.

**17. Informational Item Only – Report on City Council Vote to Reduce Mayor and Council Monthly Stipend.**

Mayor Strack introduced this item by title. He informed the Council that the City Council may not reduce the salary of its members during their current terms of office. Mayor Strack asked to Agendize this item for the next Council Meeting on the Regular Agenda. Councilor Hill stated she would also like a legal opinion on whether Council can voluntarily take a reduction.

**18. City Attorney Employment Agreement – Modify Method of Providing Retirement Contribution.**

Council made the statement upon reconvening the meeting that no action would be taken on this item at this time.

**19. Approve Resolution No. 07-28-09-01 Adopting the 2009-2010 Budget and Program of Service for the City of Corning, Discussion and Action.**

Councilor Hill stated she would like to postpone a decision on the budget until the State finalizes their budget. By Council consensus this will be carried over to the next meeting.

Councilor Turner stated that he had heard that the City of Orland received some stimulus funds and asked Chief Cardenas if this was associated with the grants he had applied for. Chief Cardenas stated no, they were different kinds of grants. Chief Cardenas then announced that the City had received notification that they had received the funding for the vehicle, however we did not receive the funding for the officer at the elementary school.

L. ITEMS PLACED ON THE AGENDA FROM THE FLOOR: None.

M. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION: None.

N. REPORTS FROM MAYOR AND COUNCIL MEMBERS:

20. Hill: Reported on the League's Sacramento Valley Division Meeting in Paradise.

21. Turner: Nothing.

22. Parkins: Nothing.

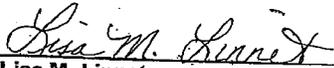
23. Leach: Stated that the Skateboard Committee had a meeting and have selected Leaders.

24. **Strack:** Discussion of proposed Museum Wall Mural. He stated that he would like one or two members of the Council to serve on a committee to select an artist. Councilors Leach and Hill have both stated they would like to serve on this.

Mayor Strack announced that the Airport Lease would be on the Council Agenda for August 28<sup>th</sup>.

Julie Johnson stated that Assembly Member Theona Ma would be visiting Tehama County including Lucero Olive Oil per Supervisor Robert Williams

O. **ADJOURNMENT:** 8:10 p.m

  
Lisa M. Linnet,  
City Clerk

ITEM NO.: K-9  
AUTHORIZE OUTSIDE COUNSEL REVIEW  
OF CITY ATTORNEY CONTRACT  
NOVEMBER 24, 2009

TO: HONORABLE MAYOR AND COUNCIL MEMBERS  
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER

*SAEVE*

**SUMMARY:**

City Attorney Michael Fitzpatrick has asked that the City resolve the issues relating to the City Attorney Contract through review by outside Counsel. If City Council concurs, City Staff will make contact with an Attorney by utilizing the resources of the Northern California Cities Insurance Authority. Based upon conversations with the Insurance Authority Claims Administrators, the hourly rate should be somewhere between \$200 and \$250. Funding for outside Counsel is budgeted.

The primary questions remaining are:  
Recognizing that the City Council has the authority to enter into Service Contracts and Employment Agreements, is the June 2005 Employment Agreement with Michael Fitzpatrick a valid and legal contract? Does the City Council have legal authority to amend this Agreement to substitute salary for the State retirement contribution to compensation?

**BACKGROUND:**

The issues involving the problems with the retirement system were resolved on July 28, 2009 when the City Council met in closed session with the City Attorney and reviewed the documentation from PERS addressed to the City and the City Attorney, as well as the correspondence between the City Attorney and PERS. Following the closed session on July 28, 2009, the Council reconvened and the Minutes reflect the following statement verbatim from the Mayor:

"The Mayor announced that the Council reviewed the PERS issue that has been raised concerning our City Attorney. We see no documentation of any kind which would allow us to conclude that it would be illegal for the City now to pay the City Attorney these retirement funds. However, we're willing to take no action on this matter at this time to allow adequate time for others to fully investigate this issue.

The City is still waiting to learn if there will be any responses received from the Agencies, Officials and Bar Association contacted by the complainant.

**FINANCIAL:**

The City budgets \$5,000 per year for professional services related to City legal services; \$4,160 remains available for outside Counsel. The expectation is a requirement for only a few hours of work on the part of outside Counsel. Though the City Attorney and City Manager have authority to consult outside Counsel, the decision in this instance needs to be deferred to the City Council.

**RECOMMENDATION:**

**MAYOR AND CITY COUNCIL AUTHORIZE STAFF TO SEEK THE REVIEW OF THE CITY ATTORNEY CONTRACT BY OUTSIDE COUNSEL.**



CITY OF CORNING  
CITY COUNCIL MINUTES

TUESDAY, JUNE 14, 2005  
CITY COUNCIL CHAMBERS  
794 THIRD STREET

A. **CALL TO ORDER: 6:35 p.m.**  
Meeting was called to order by Mayor Strack.

B. **ROLL CALL:**  
Councilmember: Hill  
Parkins  
Zuniga  
Dickison  
Strack  
Mayor:

All Council members were present.

C. **ADJOURN TO CLOSED SESSION: 6: 35 p.m.**

- 1. **CONFERENCE WITH LABOR NEGOTIATOR:**  
Pursuant to Section 54957.6. Agency negotiator: William May, Labor Relations Consultant; Negotiation with Public Safety Employees.

CITY OF CORNING  
CITY COUNCIL SPECIAL MEETING AGENDA  
TUESDAY, JUNE 14, 2005  
CITY COUNCIL CHAMBERS  
794 THIRD STREET

A-1. **Call to Order: 7:30 p.m.** with all Council members present.

C-3. **PUBLIC COMMENT:** At "Special Meetings" public comment and discussion are limited to items listed on the Agenda only.

The Mayor re-emphasized that action may only be taken on items listed on the Agenda.

D-4. **RATIFY MEMORANDUM OF UNDERSTANDING BETWEEN CITY AND OPERATING ENGINEERS LOCAL #3 - MISCELLANEOUS EMPLOYEES BARGAINING GROUP.**

Councilwoman Zuniga motioned to ratify the Memorandum of Understanding between the City and Operating Engineers Local #3 – Miscellaneous Employees Bargaining Group pending signature of the Memorandum of Understanding. Councilwoman Hill seconded the motion. Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion was approved by 5-0 vote.

E-5. **ADJOURN TO SCHEDULED COUNCIL MEETING: 7:40 p.m.**

D. **OPENING OF COUNCIL MEETING - CALL TO ORDER: 7:40 p.m.**

E. **RECONVENE AND REPORT ON CLOSED MEETING:**  
Council met with the Labor Negotiator and gave him direction.

F. **INVOCATION AND PLEDGE OF ALLEGIANCE:**  
City Manager Kimbrough led the Pledge of Allegiance.

G. **PROCLAMATIONS, RECOGNITIONS, APPOINTMENTS:** None.

H. **CORNING HIGH SCHOOL LIAISON REPORT - DURING THE SCHOOL YEAR:**  
Not present, no report.

I. **BUSINESS FROM THE FLOOR:**

Shawn Michaels, Ironstone Development spoke regarding impact fees requesting that the fee increase Ordinance be referred back to staff for reconsideration. Mayor Strack stated that only Ordinance 618 remains on the Agenda for the second reading and it is related to Traffic Mitigation. To consider the other Resolutions and Ordinance No. 619 related to the fee increases, it should be scheduled and added to the agenda for a future meeting in order to allow public comment and discussion. Mayor Strack confirmed that no action could legally take place tonight relating to these items. He then asked members of the audience if they would like to reschedule this item for the next Council meeting, it was confirmed that they would. Councilwoman Parkins motioned to pull item number 11 from the consent agenda for further discussion and schedule the fee increases to be agendized for the next Council Agenda. Councilwoman Zuniga seconded the motion. Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.

- J. **CONSENT AGENDA:** It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or a member of the audience requests separate discussion and/or action.
2. Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.
  3. Waive the Reading and Approve the Minutes of May 24, 2005 and the Special Meeting of June 3, 2005 with any necessary corrections.
  4. Recommend Appointment of Mrs. Darlene Haskins to the Corning Recreation Commission.
  5. June 2005 Claim Warrant - \$ 639,267.20.
  6. Business License Report – June 2005.
  7. ECO Resources, Inc. May 2005 Summary Report.
  8. May 2005 Building Permits – \$1,628,964.
  9. Wages and Salaries – May 2005: \$208,222.94.
  10. Request Authorization to fill the Vacant Accounting Assistant Position.
  11. Ordinance No. 618: An Ordinance to authorize the collection of "Traffic Mitigation" fees for street, bridge and traffic signalization improvements. **(Second Reading)**.
  12. Resolution 06-14-05-03 Authorization to Purge Police Personnel Records.
  13. Approval of Partial payment No. 3 for the Wastewater Treatment Plant Expansion Contingent Upon Rural Development Approval - \$311,185.
- With little discussion, Councilwoman Parkins motioned to approve items 2-10 and 12-13, (Item 11 was pulled for further discussion). Councilwoman Dickison seconded the motion. **Ayes: Strack Hill, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

K. **ITEMS REMOVED FROM THE CONSENT AGENDA:**

Councilwoman Hill noted correction to the minutes.

11. Ordinance No. 618: An Ordinance to authorize the collection of "Traffic Mitigation" fees for street, bridge and traffic signalization improvements. **(Second Reading)**. Councilwoman Hill asked a question relating to this fee and City Attorney Mike Fitzpatrick responded answering her question. Councilwoman Dickison motioned approval and adoption of Ordinance 618 with fee to be set by Resolution. Councilwoman Zuniga seconded the motion. **Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion approved by a 5-0 vote.**

L. **PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Mayor declares the Hearing open. ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.

14. Mitigated Negative Declaration; Resolution No. 06-14-05-01, General Plan Amendment 2005-1A; Tentative Tract Map 05-1003; Wold Subdivision; Assessor's Parcel No's. 73-120-09, 12, 30 & 35; Michael Wold ETAL; Located Between Carona Avenue and Solano Street and Approximately 660 Feet East of Marguerite Avenue. Approximately 24.68 Acres.

Councilwomen Zuniga and Parkins were excused due to the fact that both own property within 500 feet of this site. City Planning Director John Brewer gave a brief explanation of this item. Mayor Strack opened the public hearing. An audience member asked a question related to traffic, John Brewer responded explaining the conditions proposed to mitigate issues relating to Solano Street access and egress. A question relating to drainage possibly heading east was asked, Councilwoman Hill responded stating this was addressed in conditions number 18 and 25. Mr. Brewer also responded stating that drainage would be to the onsite retention pond and also stated that condition #26 also will apply. Mr. Dodd addressed the Council in relation to the masonry walls asking if the developer is to maintain these walls and have metal poles for stability; he also stated concerns about graffiti. Councilwoman Hill stated that some of this was addressed in condition number 33. Mr. Brewer stated that the lighting district would not be responsible for the graffiti, just the maintenance. Jeff Haney, resident of Carona Avenue asked if the road will be widened, his question was addressed and answered. Mr. Freeman asked about fencing of development, his question was answered. Councilwoman Hill asked about landscape maintenance, would the City be responsible for providing the maintenance; she was informed it would. Francis Hopping asked a question relating to the location of the end of sidewalk on Carona Avenue a short distance from the school intersection. His question was answered. Mayor Strack closed the public hearing. Councilwoman Hill asked if signage could be added stating "Slow Children Present" for example, she was told yes and possibly a crosswalk adjacent to Cassandra Circle. Councilwoman Dickison motioned to approve General Plan Amendment

2005-1A and Tentative Tract Map 05-1003, to adopt the six findings and adopt the attached 52 Conditions of Approval on the Wold Subdivision Tentative Tract Map 05-1003 adding an additional condition relating to signage. Councilwoman Hill seconded the motion. **Ayes: Strack, Dickison, and Hill. Opposed: None. Abstain: Parkins and Zuniga. Absent: None. Approved by vote of 3-0 w/2 Abstaining.** Ross Turner stated that the County might also add additional signage in the County to slow traffic for children.

15. Mitigated Negative Declaration; Resolution No. 06-14-05-02 General Plan Amendment 2005-2A; Rezone No. 2004-1; Tentative Parcel Map; John Eller; Located on the North Side of Fig Lane and Approximately 240 Feet East of Marguerite Avenue; APN 73-120-45; Approximately 2.81 Acres.

City Planning Director John Brewer gave a brief explanation of this item. Mayor Strack opened the public meeting. An audience member stated concerns related to the drainage that runs adjacent to the property. Councilwoman Hill stated that drainage is addressed in conditions 16 and 19. Mayor Strack then closed the public hearing. Councilwoman Hill asked Mr. Brewer for further explanation of condition number 16 related to drainage easements and confirmed that parcels 3 and 4 will be within the drainage. Mr. Brewer responded to Councilwoman Hill's request further explaining Condition number 16. Councilwoman Parkins asked what the Planning Commission's response to this item was; Mr. Brewer responded stating it was passed by a 5-0 vote. Councilwoman Dickison motioned to adopt the attached 9 findings, to adopt Resolution No. 06-14-05-02 Approving the General Plan Amendment 2005-2A amending the Land Use Designation of the site from Agricultural to Multi-Family Residential subject to the attached 24 Conditions of Approval, to adopt Ordinance No. 620 to Rezone the southern 1.4 acres of the site from R-1 Single Family Residential to R-2 Two-Family Residential subject to the attached 24 Conditions of Approval and approve the attached tentative Parcel Map to create four parcels subject to the attached 24 Conditions of Approval. Councilwoman Hill seconded the motion. **Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

**M. REGULAR AGENDA:**

16. Request from Park Improvement Committee to Purchase Playground Apparatus for Flournoy Park.

Chief of Police Tony Cardenas gave a brief explanation of this item requesting an appropriation of up to \$7,000 for new equipment for Flournoy Park. Councilwoman Zuniga motioned to approve the Park Committee's recommendation and authorize the purchase of the proposed park improvement equipment and appropriate additional funding up to \$7,000 to complete the proposed projects from fund 341. Councilwoman Hill seconded the motion. **Ayes: Strack, Hill Parkins, Dickison and Zuniga. Opposed: None. Absent/Abstain: None. Motion was approved by a vote of 5-0.**

17. 2005-2006 Annual Budget and Program of Service Presentation: Oral Presentation by City Manager.

City Manager Steve Kimbrough gave a brief explanation of the budget programming process. He stated that the budget was balanced utilizing most of the City's reserves. Mayor Strack stated that a study session is planned for Tuesday, June 21, 2005 at 7:30 p.m.

**N. ITEMS PLACED ON THE AGENDA FROM THE FLOOR: None.**

**O. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION:**

The City received a request from Mrs. Pat McFall, Board Member of the Corning Senior Center asking Council to consider restoring funding for the Corning Senior Center to the original level of \$5,400 as was once given. Mayor Strack stated that this request needs to be included in our budget study session.

**P. REPORTS FROM MAYOR AND COUNCILMEMBERS:**

- 18. Hill: None
- 19. Parkins: None
- 20. Zuniga: None
- 21. Dickison: Reported on the Lafco Meeting.
- 22. Strack: Mayor Strack has appointed Councilwoman Zuniga as the Council representative to the Healthcare District.

**Q. ADJOURN TO CLOSED SESSION Pursuant to Government Code section 54957: 8:49 p.m.**

23. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION:** City Manager

24. **PUBLIC EMPLOYMENT:** Consideration of Changing City Attorney from Independent Contractor to Part-time employee.

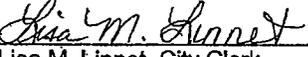
**R. RETURN TO OPEN SESSION TO CONSIDER CITY MANAGER AND CITY ATTORNEY COMPENSATION:**

Motion was made by Councilwoman Hill, and seconded by Councilwoman Parkins to accept the City Attorney as a Part-Time Employee per his proposal, and to accept the proposed

Agreement. Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None.  
Absent/Abstain: None. Motion approved by vote of 5-0.

Motion was made by Councilwoman Hill and seconded by Councilwoman Parkins to accept the Salary Survey for the City Manager plus increase his vacation accrual to 7.7 hours per pay period. Ayes: Strack, Hill, Parkins, Dickison and Zuniga. Opposed: None.  
Absent/Abstain: None. Motion was approved by a vote of 5-0.

5. ADJOURNMENT: 9:49 p.m.

  
\_\_\_\_\_  
Lisa M. Linnet, City Clerk

**CITY OF CORNING**  
**AGREEMENT FOR**  
**LEGAL SERVICES**

THIS AGREEMENT made and entered into in June of 2005 is by and between the City of Corning, hereinafter referred to as "EMPLOYER," and MICHAEL C. FITZPATRICK, an individual, hereinafter referred to as "EMPLOYEE."

**RECITALS**

WHEREAS, CITY desires to continue using the professional services of a qualified person to perform the duties and responsibilities of City Attorney for the City of Corning; and

WHEREAS, CITY knowing that EMPLOYEE is qualified and experienced, and has the specialized skills, to perform the legal services required for the CITY, now wants to proceed with contracting with EMPLOYEE as its City Attorney, and EMPLOYEE is ready, willing and able to perform such services for the CITY;

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein the parties agree as follows:

**SERVICES:** EMPLOYEE will provide to the CITY all necessary professional, administrative, and managerial services to perform the duties and responsibilities of the office of City Attorney to the satisfaction of the CITY, as set forth below. Such services shall include, but not be limited to the following:

To exercise the powers, have the privileges and immunities, and to perform the functions and duties of City Attorney as specified by the job description adopted by the CITY and as set forth and enumerated in the laws of the State of California and the ordinances of the CITY. The primary duties include managing the legal affairs of the CITY, working with the City Manager and department heads in addressing the legal issues related to City business, reviewing all City contracts, assisting in the preparation of City ordinances and resolutions, monitoring the administration of claims being handled by the City's claims administrators, advising the City Council on legal matters, engaging in preventive law to avoid City liability for its activities, participating in activities which promote projects designed to improve City government and representing the City in court on issues which don't require the involvement of outside specialized legal counsel. EMPLOYEE will attend all City Council meetings (2nd and 4th Tuesdays of each month) of the CITY. EMPLOYEE shall be the Primary Staff person advising and assisting the City Council on legal issues.

EMPLOYEE will represent the CITY in litigation before the local and appellate courts on all matters within his expertise at no added hourly fee to the CITY subject to the right to adjustment, upon Council approval, should the amount of litigation create an undue impact upon EMPLOYEE's workload for the CITY and other clients. Outside legal counsel may still be engaged at CITY expense, separate and apart from this agreement, when, in EMPLOYEE's judgment, the matter being handled is beyond his field of expertise or, for other reasons, specialized counsel are needed.

**WORK DAYS AND HOURS:** EMPLOYEE will work on a 1/8 time basis for the City of Corning (and such additional time as may be needed as governed by the workload of the office) and such work will be performed at various locations in City Hall, in EMPLOYEE'S private offices, in court as required and in other locations appropriate to the tasks being performed. The actual amount of time required of EMPLOYEE will vary from time to time depending on the projects and assignments which arise.

**REPORTING RELATIONSHIP:** EMPLOYEE shall report directly to the City Council.

**COMPENSATION:** CITY, for and in consideration of the promises, covenants, conditions and stipulations of EMPLOYEE set forth herein, hereby agrees to provide, as total compensation to EMPLOYEE, the following:

Basic Compensation: EMPLOYEE shall be considered a part-time employee and receive compensation at the following base salary adjusted as indicated:

Beginning 7-1-05 Base Salary of \$4,000/month

Beginning 7-1-06 Base Salary of \$4,250/month

Beginning 7-1-07 Base Salary of \$4,500/month

Compensation as agreed shall be paid to EMPLOYEE with payment made bi-weekly. The federal and state tax and Social Security withholdings applicable to all CITY employees shall also apply to EMPLOYEE.

Retirement: EMPLOYEE shall receive PERS entitlements (2% at 55) prorated on a basis consistent with his compensation package.

Vacation: EMPLOYEE shall not accrue vacation time.

Health Insurance: EMPLOYEE shall not receive health insurance.

Sick Leave: EMPLOYEE shall not accrue sick leave.

Management Leave. EMPLOYEE shall receive full management leave entitlements, if any.

Disability and Life: EMPLOYEE shall not receive disability and life insurance coverage.

**REIMBURSEMENT OF EXPENSES:** EMPLOYEE shall be entitled to the same reimbursement for lodging, meals and other out-of-pocket expenses incurred during travel on CITY business as authorized for other employees of the CITY while traveling on CITY business. EMPLOYEE shall be entitled to attend at CITY expense continuing education classes and events subject to whatever budget constraints are in place annually. CITY will reimburse EMPLOYEE a reasonable amount for administrative expenses (telephone, stationary, computer research costs, malpractice insurance, etc. ) he incurs on behalf of the CITY, subject to sharing such expenses with the other cities represented by EMPLOYEE as has been past practice.

**TERM:** This agreement shall be for three years beginning in July 1, 2005 and ending on June 30, 2008 and extends automatically from year to year thereafter on the same terms and conditions as in the last year specified above (but with the monthly compensation increasing by \$250 each new fiscal year) unless either party provides the other with notice of termination.

**AT-WILL EMPLOYEE:** Notwithstanding the "term" set forth in the preceding paragraph, either party may terminate this Agreement at-will by providing the other party not less than thirty (30) calendar days written notice of termination. The termination shall become effective upon the 30<sup>th</sup> or later designated day following delivery of written notice thereof. EMPLOYEE shall be compensated for all services performed to the effective date of termination. If this contract is terminated for any reason, the maximum cash settlement that the Employee may receive shall not exceed the sum specified in Government Code section 53260.

**PERFORMANCE STANDARDS:** EMPLOYEE agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talent, perform all of the duties and functions that may be required of or from him pursuant to all terms of this Agreement in a manner reasonably satisfactory to the CITY, and in accordance with the standards reasonably expected of a professional person so engaged.

**INDEMNITY AND DEFENSE:** CITY agrees to extend to EMPLOYEE, as to any action or proceeding on account of any act or omission of EMPLOYEE within the course and scope of services

for CITY provided pursuant to this Agreement, those rights of indemnification, including the right that CITY pay any judgment or make any compromise or settlement of an action, and the right to provision for a defense for actions or proceedings as are granted to employees of a public entity under the provisions of Division 3.6 (commencing with Section 810), Title 1, of the Government Code of the State of California. Employee shall nevertheless continue to provide errors and omissions insurance through his private practice which extends coverage to the CITY in the event of a malpractice claim.

**EMPLOYEE; NOT INDEPENDENT CONTRACTOR:** It is understood that EMPLOYEE is not an independent contractor. He is a part-time employee of the City of Corning.

**ENTIRE AGREEMENT; MODIFICATION:** This Agreement embodies the whole Agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations made or entered into by CITY or EMPLOYEE other than those contained herein. No modification, alteration, or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto.

9. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

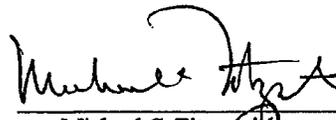
- a. To CITY: Stephen J. Kimbrough, City Manager  
City of Corning  
794 Third Street  
Corning, CA 96021
- b. To EMPLOYEE: MICHAEL C. FITZPATRICK  
1135 Pine Street, Suite 107  
Redding, CA 96001

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF Corning:

by   
Gary R. Strack, Mayor

EMPLOYEE:

  
Michael C. Fitzpatrick



Employer Services Division  
P.O. Box 942709  
Sacramento, CA 94229-2709  
Telecommunications Device for the Deaf - (916) 795-3240  
(888) CalPERS (or 888-225-7377) FAX (916) 795-3005

July 10, 2007

Michael Fitzpatrick  
11424 Easy Street  
Redding, CA 96003

Dear Mr. Fitzpatrick:

SUBJECT: Refund of Member Contributions – Overtime Position

A review of your file by the California Public Employees' Retirement System (CalPERS) indicates that because you are employed with the City of Anderson in the position of City Attorney, elected CalPERS membership on August 29, 1988 for this position and earning full-time service credit your position with the City of Corning and County of Trinity are in an overtime capacity and not subject to retirement deductions by Government Code Section 20635.

City of Corning and County of Trinity has been instructed to reverse all earnings and contributions reported to this system.

If your member contributions are **not employer paid member contributions**, you should be receiving a refund from City of Corning and County of Trinity for any member contributions reported in error.

You are responsible for notifying all of your employers of any employment change, such as a separation from either position, a change in time base, or an appointment with another CalPERS contracting agency. This will ensure that proper retirement deductions will be reported to CalPERS, that excess member contributions will not be reported, and that you will receive the service credit you are entitled to for each fiscal year.

If you have any questions regarding a possible refund of member contributions, please contact City of Corning and County of Trinity.

Sincerely,

Sheila Arndt  
Employer Services Division

cc: #1178 – City of Corning  
#1371 – County of Trinity



## MEMORANDUM

**TO: Steve Kimbrough/City Manager**

**FROM: Pala Cantrell/Account Technician**

**DATE: October 4, 2007**

**SUBJECT: Mike Fitzpatrick's Cal Pers**

---

I have been instructed by Cal Pers to reverse all earnings (\$ 112,192.24) and contributions (\$ 7,853.47) that have been reported for Mike Fitzpatrick since July 2005.

The City of Anderson elected Cal Pers membership for Mike Fitzpatrick in the position of City Attorney on August 29, 1988 earning full-time service credit. Mike's part-time position with the City of Corning is considered to be in an overtime capacity and not subject to retirement deductions under Government Code Section 20635.



**Employer Services Division**  
P.O. Box 942709  
Sacramento, CA 94229-2709  
Telecommunications Device for the Deaf - (916) 795-3240  
(888) 225-7377 FAX (916) 795-3005

October 24, 2007

Employer Code #1178  
Reply to Section: 102

Pala Cantrell  
Payroll Department  
City of Corning  
794 Third Street  
Corning, CA 96021

Dear Ms. Cantrell:

RE: Michael Fitzpatrick (xxx-x)

CalPERS notified the City of Corning on a Notice of Adjustment (MEM-155) July 17, 2007 that Mr. Fitzpatrick did not qualify for membership with the City from July 1, 2005 through current because he is full time with the City of Anderson. Therefore, the position with the City of Corning is considered overtime and not reportable.

The City reported payroll for Mr. Fitzpatrick during the above period. These entries are required to be reversed. Attached is a spreadsheet with the corrections required. Please submit these corrections on your next CalPERS report.

I am requesting you notify me of the service period in which the corrections will be submitted, either by fax at (916) 795-3005 or by mail to the address above by **November 26, 2007**.

If you have any questions, please call me at (916) 795-4155 or through our Employer Contact Center at (888) 225-7377.

Sincerely,

A handwritten signature in cursive script that reads "Amber Benton".

Amber Benton  
Retirement Program Specialist  
Payroll Processing

Attachment

**RECEIVED**  
OCT 26 2007  
CITY OF CORNING



Employer Services Division  
 P.O. Box 942709  
 Sacramento, CA 94229-2709  
 Telecommunications Device for the Deaf - (916) 326-3240  
 (888) CalPERS (or 888-225-7377) FAX (916) 795-3005

Reply to Section: ERSD:104:SA  
 Date: July 17, 2007

2007 SEP - 4 PM 3:59  
 #1 CALPERS MEMBERSHIP

PERS-MEM-155 (Rev. 1/94)

|  |  |
|--|--|
| <b>EMPLOYER</b><br>✓ #1178 - City of Corning | <b>EMPLOYEE</b><br>FITZPATRICK, MICHAEL<br>SS# XXX-XX-3521 |
|--|--|

| EMPLOYEE RECORD SHOULD READ: |                | DELETE FROM EMPLOYEE RECORD:     |                           |
|------------------------------|----------------|----------------------------------|---------------------------|
| MEMBER RATE OF CONTRIBUTION  | EFFECTIVE DATE | MEMBER RATE OF CONTRIBUTION 0700 | EFFECTIVE DATE 07-01-2005 |
| SOCIAL SECURITY              | COVERAGE GROUP | SOCIAL SECURITY YES              | COVERAGE GROUP 70001      |
| 1959 SURVIVOR BENEFIT        | ACCOUNT CODE   | 1959 SURVIVOR BENEFIT NO         | ACCOUNT CODE              |

**EMPLOYER ACTION:**

Please adjust by a full-line credit or full-line debit entry of earnings and contributions reported to this system from July 1, 2005 through current. These contributions were reported in error. (Contributions Code 3 or 13). If these contributions are not employer paid member contributions, please refund these contributions back to Mr. Fitzpatrick. This should be shown as a reversal of any entries previously recorded in error.

Mr. Fitzpatrick is employed on a full-time basis with the City of Anderson in the position of City Attorney, elected CalPERS membership and is earning full-time service credit. In my conversation with Steve Kimbrough, Mr. Fitzpatrick's part-time position as City Attorney for the City of Corning is considered to be in an overtime capacity and not subject to retirement deductions under Government Code Section 20635.

Mr. Fitzpatrick's account will be monitored to make sure the above mentioned contributions are reversed out of her account.

If you need assistance on reversing payroll, please refer to your CalPERS Procedure Manual or contact your payroll representative.

**RECEIVED**  
 OCT 29 2007  
 CITY OF CORNING

**COMMENTS:**



**SUMMARY REPORT  
MEMBER AND EMPLOYER CONTRIBUTIONS**

FOR INSTRUCTIONS ON COMPLETING THIS FORM, REFER TO THE MATERIAL ON THE SUMMARY REPORT FOUND IN THE PAYROLL REPORTING SECTION OF THE PROCEDURES MANUAL (PERS-ADM-DO-430)

| SERVICE PERIOD TYPE CODES |      |
|---------------------------|------|
| ITEM                      | CODE |
| MONTHLY                   | 0    |
| SEMI-MONTHLY—1ST HALF     | 1    |
| SEMI-MONTHLY—2ND HALF     | 2    |
| BI-WEEKLY—1ST PAYROLL     | 3    |
| BI-WEEKLY—2ND PAYROLL     | 4    |
| BI-WEEKLY—3RD PAYROLL     | 5    |
| QUADRWEEKLY—1ST PAYROLL   | 6    |
| QUADRWEEKLY—2ND PAYROLL   | 7    |

EMPLOYER CODE: 1178 EMPLOYER NAME: City of Corning OFFICE CODE: \_\_\_\_\_

COUNTY CODE: \_\_\_\_\_

| SERVICE PERIOD |           |           |
|----------------|-----------|-----------|
| MONTH          | YEAR      | TYPE      |
| <u>10</u>      | <u>07</u> | <u>3</u>  |
| BEGINNING DATE |           |           |
| MONTH          | DAY       | YEAR      |
| <u>09</u>      | <u>23</u> | <u>07</u> |
| ENDING DATE    |           |           |
| MONTH          | DAY       | YEAR      |
| <u>10</u>      | <u>06</u> | <u>07</u> |

I HEREBY CERTIFY THAT I AM THE DULY APPOINTED, QUALIFIED, AND ACTING OFFICER OF THE HEREIN NAMED EMPLOYER AND THAT THE DATA AS SET FORTH ON THIS FORM AND THE SUPPORTING DOCUMENTS ARE TRUE AND CORRECT.

SIGNATURE: [Signature] DATE: 10-11-07

NAME AND TITLE (PRINT OR TYPE): Rala Cantrell, Asst. Tech PHONE NO.: (530) 824-7030

SPECIAL PAYROLL

SUPPLEMENTAL PAYROLL REPORTING FORM (PERS-AESD-624) ATTACHED

| 1. COVERAGE GRP. | 2. EMPLOYER RATE | X | 3. MEMBER EARNINGS   | = | 4. EMPLOYER CONTRIBUTIONS |
|------------------|------------------|---|----------------------|---|---------------------------|
| <u>70001</u>     | <u>12.621%</u>   |   | <u>\$ 162,489.38</u> |   | <u>\$ 8,122.56</u>        |
| <u>75001</u>     | <u>45.165%</u>   |   | <u>\$ 27,432.39</u>  |   | <u>\$ 12,389.84</u>       |
| <u>74001</u>     | <u>45.165%</u>   |   | <u>\$ 2,793.52</u>   |   | <u>\$ 1,261.69</u>        |
|                  | %                |   | \$                   |   | \$                        |
|                  | %                |   | \$                   |   | \$                        |
|                  | %                |   | \$                   |   | \$                        |
|                  | %                |   | \$                   |   | \$                        |
|                  | %                |   | \$                   |   | \$                        |
|                  | %                |   | \$                   |   | \$                        |

| MEMBER CONTRIBUTIONS                  |                    |
|---------------------------------------|--------------------|
| 7. NORMAL:                            | \$                 |
| 8. TAX DEFERRED:                      | \$ <u>1,153.90</u> |
| 9. ADDITIONAL:                        | \$                 |
| 10. SUB-TOTAL (ITEM 7+ITEM 8+ITEM 9): | \$ <u>1,153.90</u> |
| 11. SURVIVOR BENEFIT:                 | \$                 |
| 12. TOTAL MEMBER CONTRIBUTIONS:       | \$ <u>1,153.90</u> |

5. TOTAL MEMBER EARNINGS: \$ 32,263.47 6. TOTAL EMPLOYER CONTRIBUTIONS: \$ 5528.97

13. TOTAL MEMBER AND EMPLOYER CONTRIBUTIONS: (ITEM 6 + ITEM 12) \$ 3875.07

ADJUSTMENTS:

14.A SURPLUS ASSET: MISCELLANEOUS CATEGORY \$

14.B SURPLUS ASSET: SAFETY CATEGORY \$

14.C ACC-344/ACC-1520 ATTACH ADJUSTMENT NOTICES TO SUPPORT AMOUNT SHOWN. NOTE: Do not enter in this space corrections of member earnings and contributions made on Payroll Listing. \$ 265.06

15. ADVANCE PAYMENT/EFT DATE PAID \$

16. BALANCE DUE: (ITEM 13 PLUS OR MINUS ITEM 14A, 14B, 14C OR 15) PREPARE ONE CHECK OR WARRANT PAYABLE TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM. \$ 3610.01

| FOR CALPERS USE ONLY           |             |         |                              |
|--------------------------------|-------------|---------|------------------------------|
| Control No. and Business Month | 100% Change | Audited | Remittance Amount \$         |
|                                |             |         | 17. Date Paid                |
|                                |             |         | 18. Previous Document Number |

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 13, 2009

RECEIVED

JUL 14 2009

CORNING CITY CLERK

Mrs. Lisa Linnet, City Clerk  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail. Original placed in U.S. Mail

**I am submitting the following information request pursuant to the Public Records Act, and other relevant sections of the CA Government Code.**

**I would appreciate receiving the requested information within the ten calendar days required by statute, or sooner if possible.**

1. *In a letter from CalPERS to Michael Fitzpatrick dated July 10, 2007 (with copies sent to the City of Corning and County of Trinity), Mr. Fitzpatrick was instructed, among other things, that "...You are responsible for notifying all of your employers of any employment changes, such as ... an appointment with another CalPERS contracting agency. This will ensure that proper deductions will be reported to CalPERS, that excess member contributions will not be reported..."* **Please provide a copy of any and all correspondence, and documents, from Fitzpatrick to the City of Corning – in written paper form or electronic format, or copies of notes or memorandums of conversations with City management or elected officials – showing that he (Fitzpatrick) complied with the instructions set forth in the letter of July 10, 2007.**

*No documents exist other than what has already been provided. (LML)*

2. *In the same July 10, 2007 letter, referred to above, Fitzpatrick (and the City of Corning) were advised that the "... City of Corning and County of Trinity has been instructed to reverse all earnings and contributions reported to the system..."* **Please provide any and all correspondence and documents, from Fitzpatrick (in his capacity as the City Attorney) to the City of Corning – in written form or electronic format, or notes or memorandums of conversations with City management or elected officials – advising them that the city was legally obligated to comply with the instructions to reverse all earnings and contributions reported to the system in his (Fitzpatrick's) name.**

*No documents exist other than what has already been provided. (LML)*

3. *In a letter (regarding Fitzpatrick) dated July 17, 2007, titled "EMPLOYER ACTION" it was noted that "...In my conversation with Steve Kimbrough, Mr.*

*Fitzpatrick's part-time position as City Attorney for the City of Corning is considered to be in an overtime capacity and not subject to retirement deductions under Government Code Section 20635. Mr. Fitzpatrick's account will be monitored to make sure the above mentioned contributions are reversed out of his account..."* Please provide any and all correspondence and documents from Kimbrough to the payroll department or any other city employee, or to any elected official – in written form or electronic format, or notes or memorandums of conversations with any city employee or elected official – regarding the instructions from CalPERS relayed to him in the conversation reported in the letter of July 17, 2007.

*No documents exist other than what has already been provided. (LML)*

4. In a letter dated October 14, 2007, CalPERS sent the city a letter reminding it of its July 17, 2007 instructions; and repeated its earlier instructions saying "...Mr. Fitzpatrick did not qualify for membership from July 1, 2005 through current because he is full time with the City of Anderson..." In this letter, CalPERS again repeated "...These entries are required to be reversed..." Please provide any and all correspondence and documents from either City Manager Kimbrough or City Attorney Fitzpatrick to any other city employee or elected official – in written form or electronic format, or notes of memorandums of conversations with any other city employee or elected official – whereby they informed other employees or elected officials of the CalPERS instructions to 'reverse Fitzpatrick's contributions, and the reasons therefore'.

*No documents exist other than what has already been provided. (LML)*



Lisa M. Linnet,  
City Clerk

Please let me know when this information is available and I will come to city hall and pick it up. Thank you.

Sincerely,

Dean Cofer

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 6, 2009

Mrs. Lisa Linnet, City Clerk  
794 Third Street  
Corning, CA 96021

**RECEIVED**  
JUL 13 2009  
CORNING CITY CLERK

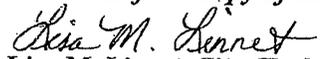
Copy sent via e-mail. Original placed in U.S. Mail

**I am submitting the following information request pursuant to the Public Records Act, and other relevant sections of the CA Government Code.**

**I would appreciate receiving the requested information within the ten calendar days required by statute, or sooner if possible.**

• Municipal Code Section 2.40.010 indicates that the agreement between the City and CalPERS is attached to the Ordinance as Exhibit A ... however, it is not attached. **Please provide me with a copy of the Agreement between CalPERS and the City of Corning.**

*It was not attached to the documents previously provided because it was not attached to the original official record of the Ordinance approved in 1978. I have contacted CalPERS for a copy of this Agreement.*

  
Lisa M. Linnet, City Clerk

Seeing as how the agreement was supposed to be attached as Exhibit A to Section 2.40.010, I wouldn't expect to pay a copying charge for the document. *Please advise if you see it differently?*

Please let me know when this information becomes available and I will come to city hall and pick it up. *Thank you.*

Sincerely,

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429;  
[deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 2, 2009

**RECEIVED**  
JUL 13 2009  
CORNING CITY CLERK

Mrs. Lisa Linnet, City Clerk  
City of Corning  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail to [llinnet@corning.org](mailto:llinnet@corning.org); original sent via U.S. mail.

**I am submitting this information request pursuant to the Public Records Act, and other relevant sections of the CA Government Code.**

**I would appreciate it if you would provide the requested information within the ten calendar days provided for in the statute, or earlier if at all possible.**

- Please provide me with a copy of the Fidelity Bond covering City Manager Steve Kimbrough. If Accounting Clerk Pala Cantrell and part-time City Attorney Fitzpatrick are covered by City paid Fidelity Bonds, then please provide copies of those Fidelity Bonds also.

Please let me know when this information is available, and I will come into city hall and pick it up. *Thank you.*

Sincerely,

*Dean Cofer*

Dean Cofer

1483  
4th  
Mike

Bonnie is facing  
Steve's & Pala's  
I City doesn't  
worry me  
on Mike

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

June 22, 2009

City Clerk Lisa Linnet  
City of Corning  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail to [llinnet@corning.org](mailto:llinnet@corning.org); original sent via U.S. Mail.

**I am submitting this information request pursuant to the Public Records Act and relevant sections of the CA Government Code.**

- 1. Provide me with a copy of any and all correspondence from and to PERS in regard to City Attorney Fitzpatrick no longer being eligible for PERS contributions, as a part-time employee, from two different city's at the same time.**
- 2. The letter from city manager Kimbrough to the council (attached to the 6/23/09 agenda) indicates that PERS has 'changed' its rules, and no longer allows PERS contributions for part time employees from more than one entity. Please provide me with any and all documentation from and to PERS that shows when this 'change' was adopted.**

Please let me know when your response is ready and I will come in to City hall and pick it up. *Thanks.*

Sincerely,

Dean Cofer

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

June 24, 2009

Mrs. Lisa Linnet, City Clerk  
City of Corning  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail to [llinnet@corning.org](mailto:llinnet@corning.org); original sent via U.S. mail.

I am submitting this information request pursuant to the Public Records Act, and relevant sections of the CA Government Code.

• Please provide a copy of the original application form for PERS participation (probably filled out sometime in 2002) completed by Michael Fitzpatrick for participation in the PERS retirement program as an employee of the City of Corning. *Also include any forms completed and sent to PERS on behalf of Mr. Fitzpatrick enrolling him as a participant of the PERS retirement program (as an employee of the City of Corning).*

Please let me know when this information is available, and I will come into city hall and pick it up. Thank you.

Sincerely,

  
Dean Cofer

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

June 23, 2009

Mayor, City Council Members, and City Clerk  
City of Corning

Copies sent via e-mail to addressees. Original mailed to City Clerk Lisa Linnet.

Mr. Mayor and Council Members;

**I respectfully request that the council, at its June 23, 2009 council meeting, NOT approve item "F6 City Attorney's Employment Agreement – Modify Method of Providing Retirement Contributions".**

*With all due respect, I don't believe the council has enough information to act on this matter; and I hereby offer up the following points that you may want to consider.*

Did the city attorney and/or the city manager check with PERS before entering into the agreement in 2005 to pay Mr. Fitzpatrick's retirement costs? *What position did PERS take at that time?*

Council members need to know exactly when the PERS 'rule' was changed, making it improper for part time employees to concurrently receive PERS contributions from more than one employer. *In other words, 'what did the city know, and when did it know'?*

PERS sends out 'rule change' notices to employers whenever it adopts a revision or change. Did the city ever receive such a notice in regards to this issue? *If so, what was the date on the notice, and when was it received?*

This 'rule change' issue and the date of the 'rule change' is a very important matter for you to consider. As an example, if the 'change' took place six months ago; then it would be questionable at best whether or not Mr. Fitzpatrick would be entitled to any portion of the money paid into PERS during that time period. PERS is apparently is saying that Mr. Fitzpatrick, as a part time employee, is not qualified to receive PERS contributions concurrently from both Corning and Anderson. *With that in mind, paying him any of the money that has been returned by PERS, or continuing to pay him the monthly equivalent of PERS contributions as salary, might be considered to violate public policy, and might be construed to be an illegal 'gift of public funds'.*

Was this really a 'rule change' or did a PERS audit uncover the dual contributions for Mr. Fitzpatrick by both Corning and Anderson? *If so, when did the audit take place – and what were its conclusions?*

I respectfully suggest that the council investigate this matter thoroughly before making a decision. The city attorney is an interested party, so it would be unethical for him to render any opinions involving this matter. *Therefore, it might be prudent for you to consult outside counsel, or ask PERS for a legal opinion, or perhaps even phone the Bar Association ethics hot line.*

In any event, why on earth would the city want to continue paying Mr. Fitzpatrick \$12,264 (retirement contributions + social security) in cash for retirement contributions that are duplicative of what he is receiving from the City of Anderson? *In these uncertain times and budget difficulties, this would be a good time to say enough; and advise Mr. Fitzpatrick that the city will not longer pay him anything beyond his salary.*

If the city and the city attorney have entered into an agreement that is contrary to PERS 'rules' then, in my opinion the agreement on its face would be null, void and unenforceable.

**In closing, I respectfully request that agenda item F6 be taken off the 6/23/09 agenda, and be rescheduled at a later date. This would give the council time to check this out thoroughly before taking it up for consideration. In addition, I hereby request that this letter be read into the minutes of the 6/23/09 council meeting.**

Thank you for your consideration.

Sincerely,

Dean Cofer

Cc: Public Employee Retirement System, Compensation Review Department

To Council - 6/2/09

**RECEIVED**  
JUN 01 2009  
**CORNING CITY CLERK**

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429

May 29, 2009

City Clerk Lisa Linnet  
City of Corning  
794 Third Street  
Corning, CA 96021

Copy sent via email to [llinnet@corning.org](mailto:llinnet@corning.org); original sent US Mail.

**I hereby request the following information pursuant to the CA Public Records Act, and relevant sections of the CA Government Code.**

1. Copies of all Forms 700 filed by City Attorney Michael C. Fitzpatrick for the years 2005 through 2008.
2. Copies of all Forms 700 filed in years prior to 2005 by attorney Michael C. Fitzpatrick, while working for the City of Corning under a retainer or fee arrangement.

Please let me know when this information is available and I will come into City hall and pick them up. *Thank you.*

Sincerely,

Dean Cofer

Wilbur L. (Bucky) Bowen  
599 Stanmar Drive  
Corning, CA 96029  
824-3725

April 10, 2009

**RECEIVED**

APR 13 2009

**CORNING CITY CLERK**

City of Corning  
794 Third Street  
Corning, CA 96021

Attention: Lisa Linnet, Corning City Clerk

I hereby request the following information pursuant to the provisions of the CA Public Records Act, and relevant sections of the CA Government Code.

1. Please provide the total dollar figure of separate billings the City Attorney has submitted to the City of Corning for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
2. In light of his status as a part-time employee, please provide a copy of the authority and qualifying conditions under which the City Attorney, as a part-time employee of the City of Corning, is receiving fully paid FICA/MEDICARE, ER PERS, EE PERS, and SDI.
3. Are any other part-time employees of the City entitled to and/or receiving fully paid FICA/MEDICARE, ER PERS, EE PERS, SDI, medical, life, or other benefits? If so, please identify them by Name and Classification, and specify what benefits they qualify for?
4. Please indicate how many PERS or similar retirement accounts, and other benefits (currently being provided by the City of Corning to the City Attorney) is he concurrently receiving from any other city where he works
5. Please provide the name of every filed case the City Attorney is currently handling for the City of Corning.

6. Please provide the name of every case the City Attorney has handled for the City of Corning for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
7. Does the City Attorney bill City departments separately? If yes, provide a copy of all such billings for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
8. In the event that the City Attorney bills the City directly (instead of by departments) then please provide a copy of all such billings for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
9. Please provide the name(s) of any all attorney(s) who have handled City legal affairs, other than the City Attorney, for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
10. Please provide a copy of every 1099 form and W-2 issued to the City Attorney from 2004 through 2008. (Redact the Social Security number if necessary).
11. Please provide a copy of every 1099 form issued to any attorney, other than the City Attorney from 2004 through 2008. (Redact social security numbers if necessary).
12. Please provide a copy of all expense vouchers, including receipts for all funds paid to, or for reimbursement to the City Attorney for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.
13. Please provide the receipts for reimbursed expenses that are shared by other cities that utilized or utilize the Fitzpatrick law firm for each of the following years: 2004, 2005, 2006, 2007, 2008, and to date in 2009.

When this information is ready, please let me know and I will come in to City Hall to pick it up. *Thank you.*

Sincerely,



RECEIVED

NOV 20 2009

CORNING CITY CLERK

CONCERNED CITIZENS

419 Marguerite Avenue  
Corning, CA 96021  
Co-Chairs Bucky Bowen 824-3725,  
or Dean Cofer 824-2429

November 23, 2009

To: Mayor Gary Strack; Council Members John Leach, Becky Hill, Ross Turner, Toni Parkins; City Clerk Lisa Linnet  
*(Sent via e-mail to each addressee; signed copy sent via U.S. mail to the attention of City Clerk Lisa Linnet)*

Subject: Fitzpatrick/CalPERS Retirement Controversy  
*(Please refer to letters dated July 14, 2009, November 4, 2009 and November 13, 2009 on this subject from CONCERNED CITIZENS, addressed to the Mayor and City Council)*

Those individuals responsible for preparing the CalPERS/outside counsel item shown on the November 24, 2009 Council meeting agenda should be ashamed of themselves – and need to be reminded that they ultimately serve at the pleasure of the voters. *Kimbrough's November 24<sup>th</sup> memorandum, in addition to being a complete sham, totally misstates the reasons why an independent review by an outside counsel is needed*

Kimrough's memo alleges that "The primary questions remaining are: Recognizing that the City Council has the authority to enter into Service Contracts and Employment Agreements, is the June 2005 Employment Agreement with Michael Fitzpatrick a valid and legal contract? Does the City Council have legal authority to substitute salary for the State Retirement contribution to compensation?"

Kimrough, as usual, has completely misstated the issues involved in the Fitzpatrick/CalPERS controversy. *What else can we expect, however, from a City Manager who "lied" to the council, taxpayers, and voters in his June 23, 2009 memo on this subject by stating "...CalPERS has changed its rules and no longer allows multiple employers to contribute for part time employees".*

**Shown below are the issues that should be investigated and reported on by an outside counsel (i.e., an "independent" outside counsel).**

- 1) CONCERNED CITIZENS has never questioned the right of the Council to enter into a Service Contract with Fitzpatrick. **We do, however, maintain that when a contract contains illegal provisions, those provisions are null and unenforceable.**

*Kimbrough and Fitzpatrick entered into an agreement to enroll Fitzpatrick in the CalPERS retirement program knowing full well or at least having a legal and fiduciary obligation to know – that Fitzpatrick was not eligible for said enrollment. Had they been doing their jobs, Fitzpatrick would never have been enrolled, nor would CalPERS retirement been included in his employment contract.*

- 2) CalPERS had a rule (from 1995 onward) that clearly prohibited Fitzpatrick from participation in CalPERS retirement as a City of Corning employee. *Kimbrough and Fitzpatrick either ignored or flaunted the rules in July of 2005 and enrolled him anyway ... and for good measure added CalPERS retirement as a clause in his (Fitzpatrick's) employment contract even though he was ineligible.*
- 3) In a letter, dated July 10, 2007, from CalPERS to City Attorney Fitzpatrick (with copies to Corning and Trinity County) he was advised that he was NOT entitled to have multiple contributions made concurrently by the City of Anderson, City of Corning, and Trinity County; and that the contributions were being returned to Corning and Trinity. The July 10, 2007 letter also indicated that Fitzpatrick was only entitled to a refund of the employee portion of the contributions, unless they were made by the employer. *Note: Corning pays the employer and employee contributions, and Fitzpatrick paid nothing out of his own pocket.*
- 4) In our letter to the Council, dated November 13, 2009, we pointed out that Trinity County has stated that “No payment was made to Fitzpatrick, since he had not made any contributions himself.” *Trinity County clearly understood and complied with the instructions from CalPERS; but, of course, Kimbrough and Fitzpatrick persist in their attempt to convince the Corning Council to reimburse Fitzpatrick for the CalPERS contributions that he was never eligible for in the first place*
- 5) Various public writings of Mr. Fitzpatrick could lead one to believe that he has already received some portion of the refunded contributions and paid taxes on them. *If Fitzpatrick has actually received any portion of these funds, CONCERNED CITIZENS believes that such payment constitutes an illegal gift of public funds – and we call upon the Council (pursuant to your individual and collective legal and fiduciary obligations to safeguard public funds) to take immediate steps to recover said money.*

The outside counsel should be provided with all the facts – without coaching, interference or any baloney given to him/her by either Kimbrough or Fitzpatrick.

**In order to ensure transparency and fairness (in our letter of November 13<sup>th</sup> to the Mayor and Council) CONCERNED CITIZENS recommended the following:**

1. The City Council should place the issue of seeking outside legal advice and the hiring of outside counsel on the next regular agenda; whereby the full council can act on it, *instead of it being done unilaterally by the Mayor and City Manager.*
2. To insure transparency and fairness, the selection and interviewing of an outside counsel should be done by a committee consisting of an equal number of City Council Members and members of the public. *Due to the interest and involvement shown in this matter by CONCERNED CITIZENS, we respectfully request that Mr. Bowen and the undersigned be named as members of this committee.*
3. The committee, referred to above, should also jointly task the outside counsel with reviewing all documents submitted by the City, Mr. Kimbrough, Mr. Fitzpatrick and CONCERNED CITIZENS bearing on this CalPERS controversy. *In this way the public will have some degree of confidence that nothing is withheld and/or misrepresented in the materials provided to the outside counsel for use in his/her investigation and report*

We still trust and sincerely hope that the Council and Mayor will do the right thing in both choosing and tasking an outside counsel by providing him/her with the all of the facts and the truth involved in the Fitzpatrick / CalPERS controversy. *However, please be aware that our patience is rapidly evaporating, and for that reason we must start looking at our legal options.*

Sincerely,

Dean Cofer, Co-Chair  
CONCERNED CITIZENS

Cc: Mr. Bucky Bowen, Co-Chair, CONCERNED CITIZENS; Mr. Gregg Cohen, District Attorney; Tehama County Grand Jury; CalPERS Compensation Review Department; California State Bar Association

RECEIVED

NOV 13 2009

CORNING CITY CLERK

CONCERNED CITIZENS

419 Marguerite Avenue  
Corning, CA 96021  
Co-Chairs Bucky Bowen 824-3725,  
or Dean Cofer 824-2429

November 13, 2009

To: Mayor Gary Strack; Council Members John Leach, Becky Hill, Ross Turner, Toni Parkins; City Clerk Lisa Linnet  
*(Sent via e-mail to each addressee; signed copy sent via U.S. Mail to the attention of City Clerk Lisa Linnet)*

Subject: Fitzpatrick/CalPERS Retirement Controversy  
*(Please refer to letters dated July 14, 2009 and November 4, 2009 on this subject from Dean Cofer, CONCERNED CITIZENS, addressed to the Mayor and City Council)*

**At the November 10<sup>th</sup> Council meeting, Mayor Strack – in response to a request by CONCERNED CITIZENS to agendize the Fitzpatrick / CalPERS controversy – indicated that he has requested the City Manager to refer this issue to outside counsel for review.**

*CONCERNED CITIZENS first suggested that this be done in our July 14, 2009 letter (i.e., "...I STRONGLY RECOMMEND THAT THE CITY COUNCIL ENGAGE OUTSIDE LEGAL ASSISTANCE TO INVESTIGATE AND RECOMMEND HOW YOU SHOULD LEGALLY PROCEED.").*

It has since come to our attention that this belated decision to engage outside counsel may have been improperly done without advance knowledge and approval of the City Council. *In any event, allowing or assigning the City Manager to have any role whatsoever in the selection or referral of this issue to outside counsel would be highly irregular, and certainly would do nothing to insure transparency or provide confidence in the fairness of the process. The City Manager and the City Attorney stand accused of inappropriate and possibly illegal behavior in regards to the Fitzpatrick / CalPERS controversy. Allowing the City Manager to have any role in contacting, selecting, tasking or directing outside counsel would be tantamount to 'setting the fox to watch the hen house'.*

**CONCERNED CITIZENS respectfully offers the following suggestions on how to handle the selection and tasking of an outside counsel:**

- 1. The City Council should place the issue of seeking outside legal advice and the hiring of outside counsel on the next**

regular agenda; whereby the full council can act on it, instead of it being done unilaterally by the Mayor and City Manager.

2. To insure transparency and fairness, the selection and interviewing of an outside counsel should be done by a committee consisting of an equal number of City Council Members and members of the public. *Due to the interest and involvement shown in this matter by CONCERNED CITIZENS, we respectfully request that Mr. Bowen and the undersigned be named as members of this committee.*
3. The committee, referred to above, should also jointly task the outside counsel with reviewing all documents submitted by the City, Mr. Kimbrough, Mr. Fitzpatrick and CONCERNED CITIZENS bearing on this CalPERS controversy. *In this way the public will have some degree of confidence that nothing is withheld and/or misrepresented in the materials provided to the outside counsel for use in his/her investigation and report.*

**CONCERNED CITIZENS** requests that the question of engaging the services of an outside counsel (to investigate and report on the legality and appropriateness of the involvement of Mr. Kimbrough and Mr. Fitzpatrick in this CalPERS controversy) be placed on the November 24, 2009 council agenda for public comment, discussion and action.

*In addition, on behalf of the many taxpayers and registered voters represented by CONCERNED CITIZENS, the courtesy of a written response to this letter would be appreciated.*

Sincerely,

Dean Cofer, Co-Chair  
CONCERNED CITIZENS

Cc: Mr. Bucky Bowen, Co-Chair, CONCERNED CITIZENS  
Mr. Gregg Cohen, District Attorney  
Tehama County Grand Jury  
CalPERS Compensation Review Department  
California State Bar Association

**CONCERNED CITIZENS**

419 Marguerite Avenue  
Corning, CA 96021  
Co-Chairs Bucky Bowen 824-3725,  
or Dean Cofer 824-2429

November 4, 2009

**City Council, City of Corning  
793 Third Street  
Corning, CA 96021**

To: Mayor Gary Strack and Council Members Ross Turner, John Leach, Toni Parkins, and Becky Hill

Subject: CalPERS contributions – Michael Fitzpatrick

**CONCERNED CITIZENS has received a response, dated October 19, 2009, from the Trinity County Grand Jury in regards to the results of its review and investigation of a complaint previously submitted. CONCERNED CITIZENS had enquired as to whether or not Trinity County returned contributions to Mr. Fitzpatrick that he may not have been entitled to.**

**In its letter the Trinity County Grand Jury indicated that, “We have determined that Trinity County has already recovered the PERS contributions made for Fitzpatrick. No payment was made to Fitzpatrick, since he had not made any contributions himself.”**

**Trinity County has correctly interpreted and implemented the CalPERS rules and regulations in regards to the return of contributions.**

**In light of this information – along with the facts presented to the City Council in our letter of July 14, 2009 – it is well past time for the Council to put an end to Kimbrough and Fitzpatrick’s campaign to give Fitzpatrick the CalPERS contributions that were returned to the city.**

**A letter dated July 10, 2007 from CalPERS notified Mr. Fitzpatrick (with copies sent to the City of Corning and the County of Trinity) that he was NOT entitled to have multiple contributions made concurrently by the City of Anderson, City of Corning, and County of Trinity; and that the contributions were being refunded to Corning and Trinity. The CalPERS letter of July 10, 2007 also indicated that Fitzpatrick was only entitled to a refund of the employee portion of the contributions, unless they were made by the employer. *Note: Corning pays the***

employer and employee contributions, and Fitzpatrick paid nothing into the PERS retirement plan.

In previous correspondence sent to the city council, CONCERNED CITIZENS pointed out that payment of any portion of the contributions (refunded to the City by CalPERS) to Fitzpatrick will, in our opinion, constitute an illegal gift of public funds.

Various public writings of Mr. Fitzpatrick could lead one to believe that he has already received some portion of the refunded contributions and paid taxes on them. If Fitzpatrick has received any portion of these funds, CONCERNED CITIZENS hereby requests that the City Council (pursuant to your individual and collective legal and fiduciary obligations to safeguard public funds) take immediate steps to recover said money.

CONCERNED CITIZENS respectfully requests that the council review the letter dated July 14, 2009 that the undersigned delivered to you, wherein CONCERNED CITIZENS pointed out, among other things that:

(1) City Manager Kimbrough 'lied' to the Council, taxpayers and voters when – in his June 23, 2009 memo – he stated "...CalPERS has changed its rules and no longer allows multiple employers to contribute to PERS for part time employees." *The rule has been in effect since 1995 – ten years prior to 2005 when Kimbrough and Fitzpatrick engineered Fitzpatrick's enrollment.*

(2) The City Manager and the City Attorney both failed to comply with the CalPERS rule prohibiting Fitzpatrick's 2005 multiple enrollments in the CalPERS retirement programs (we are now aware that he had at least three concurrent accounts – Anderson, Trinity and Corning). *Kimbrough and Fitzpatrick both had a legal and fiduciary obligation to know and comply with the rules and regulations but apparently chose to ignore them.*

**CONCERNED CITIZENS believes that these incidents of gross negligence, incompetency and/or malfeasance by Kimbrough and Fitzpatrick (e.g., failure of both Kimbrough and Fitzpatrick to comply with CalPERS rules and regulations, Kimbrough's written 'lie' to the Council, taxpayers and voters, and Kimbrough and Fitzpatrick persisting in their ill conceived attempt to convince the Council to pay Fitzpatrick for the contributions that he is not entitled to) are unconscionable and must be met with the severest of discipline.**

**CONCERNED CITIZENS respectfully request that the Council take immediate steps to finally resolve this bogus retirement fiasco and discipline Kimbrough and Fitzpatrick for their individual and cooperative involvement therein. Any further delays could unfortunately lead the public to conclude that some Council members (because of personal or other reasons) are failing to represent the best interests of the voters and taxpayers of Corning.**

**CONCERNED CITIZENS hereby renews the recommendation we made in our July 14, 2009 letter, that Mr. Kimbrough and Mr. Fitzpatrick be terminated forthwith.**

*On behalf of the many taxpayers and registered voters represented by CONCERNED CITIZENS, the courtesy of a response would be appreciated.*

**CONCERNED CITIZENS also requests that this issue be placed on the next council agenda for public comment and discussion.**

*Thank you for your consideration.*

Sincerely,

Dean Cofer, Co-Chair  
CONCERNED CITIZENS

Cc: Mr. Bucky Bowen, Co-Chair, CONCERNED CITIZENS  
Mr. Gregg Cohen, District Attorney  
Tehama County Grand Jury  
CalPERS Compensation Review Department  
CA State Bar Association

**Lisa Linnet**

---

**To:** Dean Cofer

**Subject:** RE: incomplete response to Public Records Act request

August 10, 2009

Dear Mr. Cofer:

As I previously stated, the City does not have or retain a copy of Mr. Fitzpatrick's personal "Errors and Omissions Insurance" policy, therefore I cannot provide you a copy of a document that the City does not have. The Public Records Act is designed to give the public access **to information in possession of public agencies**. I am not trying to be difficult or evasive, I have done my best to provide you with copies of the documents you requested, including invoices from Mr. Fitzpatrick that the City retains and are in our files. I cannot provide a copy of a document that the City does not retain and maintain.

Sincerely,  
Lisa M. Linnet  
City Clerk

-----Original Message-----

**From:** Dean Cofer [mailto:deancofer@sbcglobal.net]  
**Sent:** Tuesday, August 04, 2009 3:55 PM  
**To:** llinnet@corning.org  
**Subject:** RE: incomplete response to Public Records Act request

Mrs. Linnet:

Let's try this again, shall we. We both agree that Mr. Fitzpatrick is the City Attorney for the City of Corning. We also agree that his (Fitzpatrick's) malpractice insurance is paid, at least partially, by the City of Corning. Therefore, it follows that his malpractice insurance policy is discoverable under a Public Records Act request to the City of Corning.

**Please obtain a copy of Fitzpatrick's malpractice insurance policy from him and provide a copy to me ASAP per my PRA request.**

Thank you.  
Dean Cofer

-- On Tue, 8/4/09, Lisa Linnet <llinnet@corning.org> wrote:

From: Lisa Linnet <llinnet@corning.org>  
Subject: RE: incomplete response to Public Records Act request  
To: "Dean Cofer" <deancofer@sbcglobal.net>  
Date: Tuesday, August 4, 2009, 11:34 AM

-----Original Message-----

**From:** Dean Cofer [mailto:deancofer@sbcglobal.net]  
**Sent:** Tuesday, July 28, 2009 2:54 PM  
**To:** Lisa Linnet  
**Cc:** Bucky L. Bowen; Mayor Gary Strack; Becky Hill; John Leach  
**Subject:** incomplete response to Public Records Act request

City Clerk Lisa Linnet

08/10/2009

Mrs. Lisa Linnet:

In a response, received today, to an information request I submitted on July 3:

To item 2 asking if the City pays a portion of the part-time City Attorney's malpractice insurance you responded, "Yes - copies of monthly invoices have been previously provided."

However in response to my request for a full and complete copy of Mr. Fitzpatrick's malpractice insurance policy, you responded, "The City has no such document."

Your first response confirmed that the City pays a portion of the City Attorney's malpractice insurance. Therefore, the City - and by extension me as a taxpayer and voter making a Public Records Act request - have a legal right to have a copy of the City Attorney's malpractice insurance policy.

*I would appreciate it if you would obtain a copy of his malpractice insurance policy from Mr. Fitzpatrick, and provide me with a copy at your earliest convenience. Thank you.*

Sincerely,  
Dean Cofer

**8-4-09 Response: I have received your request dated July 28, 2009 regarding Mr. Fitzpatrick's "Malpractice Insurance". As I previously stated, the City does not have or retain a copy of this document. (LML)**

**/s/ Lisa M. Linnet**  
**Lisa M. Linnet, City Clerk**

**Lisa Linnet**

---

**From:** Dean Cofer [deancofer@sbcglobal.net]  
**Sent:** Monday, August 10, 2009 8:52 PM  
**To:** Lisa Linnet  
**Subject:** Fw: Municipal Code Section 2.44.090

Lisa:

This is a reminder that I previously requested that my letter of August 2 be included in tomorrow's minutes under 'correspondence' and also be attached to the minutes.

Thank you.  
Dean Cofer

--- On Sun, 8/2/09, deancofer@sbcglobal.net <deancofer@sbcglobal.net> wrote:

From: deancofer@sbcglobal.net <deancofer@sbcglobal.net>  
Subject: Municipal Code Section 2.44.090  
To: "Mayor Gary Strack" <gstrack@sbcglobal.net>  
Cc: "John Leach" <REVJOHN65@DM-TECH.COM>, "Becky Hill" <bchill84@gmail.com>, "Bucky L. Bowen" <buckylbowen@yahoo.com>  
Date: Sunday, August 2, 2009, 2:49 PM

Mayor Strack and Honorable Council Members

Attached is a letter reporting on what I believe are violations of the Municipal Code.

In the letter, I have requested: (1) a response, preferably from the Council; and, (2) that the letter be reported under 'correspondence' at the next Council meeting and be so noted in the minutes.

Sincerely,  
Dean Cofer

08/11/2009

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429;  
[deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

August 2, 2009

Mayor and Council Members;  
City of Corning  
794 Third Street  
Corning, CA 96021

Copies sent via e-mail to each addressee; and a signed original has been sent via U.S. mail to the City Clerk for City files.

I am concerned that individual Council Members and Mayor have often failed to conform to and follow the legal intent of the Municipal Code by making requests – which are then responded to as if they are orders or instructions – to the City Manager, or by directly accessing the City Attorney for legal opinions. *In this letter I am specifically pointing at two recent examples wherein Section 2.44.090 of the Municipal Code was seemingly violated.*

On July 28, 2009 the City Manager, in a memorandum presented to the Council as part of the July 28, 2009 Council agenda, stated, "...At the request of Vice Mayor Becky Hill, the City Manager contacted a Chico Attorney experienced in contract law and obtained an hourly rate of \$220 per hour. The attorney was chosen because he has considerable success representing the Northern California Cities Self Insurance Fund. He has not worked directly for Corning."

This request - i.e., orders and/or instructions – to the City Manager by Councilwoman Hill were subsequently carried out by the City Manager as evidenced by his own memorandum. *The Municipal Code requires that the City Manager only carry out orders or instructions given to him pursuant to a majority vote of the council, or a majority consensus of the council.* The City Manager is obligated NOT to comply with orders or instructions from an individual Council Member ... and he is further required to "promptly advise each member of the city council of orders or instructions received by him contrary to this section".

A second violation took place during the recent Council meeting, on July 28, 2009. Councilwoman Hill directly addressed the City Attorney and asked for a legal opinion. The City Attorney responded verbally with an affirmative answer to her question, and then indicated that he would follow up with a written memorandum. The City Manager and Mayor nor anyone else raised an objection to this violation of Section 2.44.090 of the Municipal Code.

It is my understanding (and I apologize if I'm mistaken) that the Council majority has been quick to correctly enforce Section 2.44.090 insofar as limiting the ability of Councilmen Turner and Leach to access the City Attorney directly for legal opinions; and have insisted that Mr. Turner and Mr. Leach first seek and get a majority vote or consensus before allowing the access. If true, I believe it is inappropriate to selectively interpret and/or enforce Section 2.44.090.

*I respectfully request that the Mayor and Council Members follow the Municipal Code and cease and desist from individually making requests directly to the City Manager, or anyone else on the City Staff, and further that the City Manager and Staff stop complying with individual requests and conform to the legal requirements set forth in Section 2.44.090. The Municipal Code is clear that the City Manager works directly for the Council as a whole, not for individual Council Members or the Mayor.*

I would appreciate a response from the City (preferably from the Council) to the concerns raised herein. Thank you.

I also respectfully request that this letter be reported as 'correspondence' at the next Council meeting and be so noted in the minutes.

Sincerely,



Dean Cofer  
Co-Chair,  
Concerned Citizens

Cc: ✓ City Clerk Lisa Linnet  
Wilbur (Bucky) Bowen, Co-Chair, Concerned Citizens

**Lisa Linnet**

**From:** Dean Cofer [deancofer@sbcglobal.net]  
**Sent:** Tuesday, August 04, 2009 3:55 PM  
**To:** llinnet@corning.org  
**Subject:** RE: incomplete response to Public Records Act request

Mrs. Linnet:

Let's try this again, shall we. We both agree that Mr. Fitzpatrick is the City Attorney for the City of Corning. We also agree that his (Fitzpatrick's) malpractice insurance is paid, at least partially, by the City of Corning. Therefore, it follows that his malpractice insurance policy is discoverable under a Public Records Act request to the City of Corning.

**Please obtain a copy of Fitzpatrick's malpractice insurance policy from him and provide a copy to me ASAP per my PRA request.**

Thank you.

Dean Cofer

--- On Tue, 8/4/09, Lisa Linnet <llinnet@corning.org> wrote:

RECEIVED  
AUG 04 2009  
CORNING CITY CLERK

From: Lisa Linnet <llinnet@corning.org>  
Subject: RE: incomplete response to Public Records Act request  
To: "Dean Cofer" <deancofer@sbcglobal.net>  
Date: Tuesday, August 4, 2009, 11:34 AM

-----Original Message-----

**From:** Dean Cofer [mailto:deancofer@sbcglobal.net]  
**Sent:** Tuesday, July 28, 2009 2:54 PM  
**To:** Lisa Linnet  
**Cc:** Bucky L. Bowen; Mayor Gary Strack; Becky Hill; John Leach  
**Subject:** incomplete response to Public Records Act request

City Clerk Lisa Linnet

Mrs. Lisa Linnet:

In a response, received today, to an information request I submitted on July 3:

To item 2 asking if the City pays a portion of the part-time City Attorney's malpractice insurance you responded, "Yes - copies of monthly invoices have been previously provided."

However in response to my request for a full and complete copy of Mr. Fitzpatrick's malpractice insurance policy, you responded, "The City has no such document."

Your first response confirmed that the City pays a portion of the City Attorney's malpractice insurance. Therefore, the City - and by extension me as a taxpayer and voter making a Public Records Act request - have a legal right to have a copy of the City Attorney's malpractice insurance policy.

*I would appreciate it if you would obtain a copy of his malpractice insurance policy from Mr. Fitzpatrick, and provide me with a copy at your earliest convenience. Thank*

08/04/2009

you.

Sincerely,  
Dean Cofer

**8-4-09 Response: I have received your request dated July 28, 2009 regarding Mr. Fitzpatrick's "Malpractice Insurance". As I previously stated, the City does not have or retain a copy of this document. (LML)**

**/s/ Lisa M. Linnet**  
**Lisa M. Linnet, City Clerk**

**RECEIVED**

JUL 30 2009

**CORNING CITY CLERK**

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 29, 2009

Mrs. Lisa Linnet, City Clerk  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail. Original placed in U.S. Mail

**I am submitting the following information request pursuant to the Public Records Act, and other relevant sections of the CA Government Code.**

**I would appreciate receiving the requested information within the ten calendar days required by statute, or sooner if possible.**

1. In a July 17, 2009 written statement City Attorney Michael Fitzpatrick stated, "...In mid-2007 ... The city council was informed of this and was fully aware that I would be taking steps to redirect my retirement funds..." *In response to my Public Records Act Request dated July 22, 2009, the City responded, "In response to both questions, there are no such documents; those funds have not been 'redirected', this issue is still pending City Council direction."*

In a second Public Records Act request of July 22, 2009, referring to documents showing the name and description of the retirement fund or 'trust', and when and how these funds (i.e., the payment of money, previously paid to CalPERS as retirement contributions, from 2007 through current) had been redirected into a retirement fund or 'trust' for City Attorney Fitzpatrick). *The City responded, "City General Fund."*

The City's response that "there are no such documents" clearly cannot be true, as it conflicts with the City's admission that the money is being placed in the "City General Fund". *The City, by its own admission, has clearly redirected money, previously paid to CalPERS as retirement contributions, into the City General Fund.*

**(a) Please, just provide any and all documentation – including internal memorandums or written instructions from the person or persons with the authority to do so, that directed the Payroll Department or any other employee or auditor to place this money into the General Fund – include copies of all e-mails, and any and all other written records directing that an amount of money, equal to PERS retirement contributions for Fitzpatrick, be redirected or placed into the General Fund.**

**(b) Provide any and all records and Council minutes showing the date the Council voted by majority vote to approve the redirection of retirement funds for Fitzpatrick into the General Fund.**

2. In a Public Records Act request, dated July 4, 2009, I asked, "Please provide a copy of the citation, and include the dollar amount of the fine that was assessed against the City of Corning..." *The City responded, "The City was not cited, chastised or fined...they were informed and there are no such documents to provide other than what has already been provided."*

**Please provide any and all documentation explaining what and who "they were informed" means. Who was 'informed', and what were they 'informed of', and what was their response to being 'informed'?**

3. In a Public Records Act request, dated July 4, 2009, I asked for documents showing the results of a PERS audit. *The City responded by indicating, "There was neither an audit nor an audit report by CalPERS. The "adjustments" requested by CalPERS pertaining to Fitzpatrick were provided with previous requests."*

**My Public Records Act request was NOT restricted to Fitzpatrick only. It also requested any and all documents from CalPERS showing any criticisms, recommendations for changes, or instructions to take corrective actions (including but not limited to: calculating and reporting future retirement income for retirees; reversal of any retirement formulas or retirement checks (if any) ... and compliance or non-compliance with, the CalPERS retirement program).**

**In order to avoid any misunderstanding regarding words, let me make my request clear: I want any and all correspondence, records, documents, e-mails, etc. (whether called audit, audit records, general information, Employer Notices, or just plain correspondence) from or to CalPERS bearing on any of the subject matter shown in the underlined portion shown above for 2007, 2008 to current.**

Please let me know when this information is available and I will come to city hall and pick it up. *Thank you.*

Sincerely,

Dean Cofer

**Lisa Linnet**

---

**To:** deancofer@sbcglobal.net

**Subject:** RE: failure to produce documents

-----Original Message-----

**From:** deancofer@sbcglobal.net [mailto:deancofer@sbcglobal.net]

**Sent:** Tuesday, July 28, 2009 3:32 PM

**To:** Lisa Linnet

**Cc:** Bucky L. Bowen; Mayor Gary Strack; John Leach; Becky Hill

**Subject:** failure to produce documents

City Clerk Lisa Linnet

Dear Mrs. Linnet:

Reference my July 22, 2009 Public Records Act request:

In item 2, bullet 1, I asked for "...copies of any and all letters (or other documentation) that City Attorney Fitzpatrick wrote to PERS or received from PERS in support of his statement (i.e., I have written PERS, called PERS and traveled to Sacramento to meet with PERS staff, hoping there might be some way I could leave my funds with them. Because of the lack of response from PERS, I recently elected to draw out my retirement funds, pay taxes on them and wait no longer on PERS to respond to my inquiries..." *You responded, "The City does not have copies of Mr. Fitzpatrick's correspondence to PERS and copies of all correspondence relating to this that the City has I have provided."*

Your response, while probably accurate, is far from acceptable. Mr. Fitzpatrick is an employee (even if part-time) of the City and brought up the subject of his correspondence with PERS in a memorandum to the Council and public. The correspondence was clearly a part of his duties as City Attorney (and he certainly chose to make it part of the public record by allowing his memorandum to be included in the Council agenda packet). The requested correspondence, therefore, is now part of the public record.

**I respectfully request that the City obtain copies of the letters (or other documentation) that City Attorney Fitzpatrick wrote to PERS or received from PERS ... supporting or proving the statement shown above (dated July 17, 2009, and addressed, From: Mike Fitzpatrick, City Attorney) that he distributed to the Mayor, Council and Citizens of Corning.**

Sincerely,

Dean Cofer

***8-4-09 Response: As I previously stated, the City does not have copies of these documents, they are Mr. Fitzpatrick's private documents and to my knowledge are not subject to the Public Records Act. (LML)***

**/s/ Lisa M. Linnet**

**Lisa M. Linnet, City Clerk**

08/04/2009

**To:** Dean Cofer

**Subject:** RE: incomplete response to Public Records Act request

-----Original Message-----

**From:** Dean Cofer [mailto:deancofer@sbcglobal.net]

**Sent:** Tuesday, July 28, 2009 2:54 PM

**To:** Lisa Linnet

**Cc:** Bucky L. Bowen; Mayor Gary Strack; Becky Hill; John Leach

**Subject:** incomplete response to Public Records Act request

City Clerk Lisa Linnet

Mrs. Lisa Linnet:

In a response, received today, to an information request I submitted on July 3:

To item 2 asking if the City pays a portion of the part-time City Attorney's malpractice insurance you responded, "Yes - copies of monthly invoices have been previously provided."

However in response to my request for a full and complete copy of Mr. Fitzpatrick's malpractice insurance policy, you responded, "The City has no such document."

Your first response confirmed that the City pays a portion of the City Attorney's malpractice insurance. Therefore, the City - and by extension me as a taxpayer and voter making a Public Records Act request - have a legal right to have a copy of the City Attorney's malpractice insurance policy.

*I would appreciate it if you would obtain a copy of his malpractice insurance policy from Mr. Fitzpatrick, and provide me with a copy at your earliest convenience. Thank you.*

Sincerely,  
Dean Cofer

**8-4-09 Response: I have received your request dated July 28, 2009 regarding Mr. Fitzpatrick's "Malpractice Insurance". As I previously stated, the City does not have or retain a copy of this document. (LML)**

**/s/ Lisa M. Linnet**

**Lisa M. Linnet, City Clerk**

**Lisa Linnet**

---

**From:** Dean Cofer [deancofer@sbcglobal.net]  
**Sent:** Tuesday, July 28, 2009 2:54 PM  
**To:** Lisa Linnet  
**Cc:** Bucky L. Bowen; Mayor Gary Strack; Becky Hill; John Leach  
**Subject:** incomplete response to Public Records Act request

City Clerk Lisa Linnet

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legal right to have a copy of the City Attorney's malpractice insurance policy.

*I would appreciate it if you would obtain a copy of his malpractice insurance policy from Mr. Fitzpatrick, and provide me with a copy at your earliest convenience. Thank you.*

Sincerely,  
Dean Cofer

08/04/2009



## failure to produce documents

Tuesday, July 28, 2009 3:32 PM

**From:** "deancofer@sbcglobal.net" <deancofer@sbcglobal.net>  
**To:** "Lisa Linnet" <llinnet@corning.org>  
**Cc:** "Bucky L. Bowen" <buckylbowen@yahoo.com>, "Mayor Gary Strack" <gstrack@sbcglobal.net>, "John Leach" <REVJOHN65@DM-TECH.COM>, "Becky Hill" <bchill84@gmail.com>  
**Bcc:** "Joe Descala" <c4setruscan@gmail.com>, "Susan Price" <susan.p8734@sbcglobal.net>, "Noble L. Engle" <eightquarks@gmail.com>

City Clerk Lisa Linnet

Dear Mrs. Linnet:

Reference my July 22, 2009 Public Records Act request:

In item 2, bullet 1, I asked for "...copies of any and all letters (or other documentation) that City Attorney Fitzpatrick wrote to PERS or received from PERS in support of his statement (i.e., I have written PERS, called PERS and traveled to Sacramento to meet with PERS staff, hoping there might be some way I could leave my funds with them. Because of the lack of response from PERS, I recently elected to draw out my retirement funds, pay taxes on them and wait no longer on PERS to respond to my inquiries..." You responded, "The City does not have copies of Mr. Fitzpatrick's correspondence to PERS and copies of all correspondence relating to this that the City has I have provided."

Your response, while probably accurate, is far from acceptable. Mr. Fitzpatrick is an employee (even if part-time) of the City and brought up the subject of his correspondence with PERS in a memorandum to the Council and public. The correspondence was clearly a part of his duties as City Attorney (and he certainly chose to make it part of the public record by allowing his memorandum to be included in the Council agenda packet). The requested correspondence, therefore, is now part of the public record.

I respectfully request that the City obtain copies of the letters (or other documentation) that City Attorney Fitzpatrick wrote to PERS or received from PERS ... supporting or proving the

for me  
per my  
July 22  
PRA  
request  
dl

statement shown above (dated July 17, 2009, and addressed,  
**From: Mike Fitzpatrick, City Attorney) that he distributed to the  
Mayor, Council and Citizens of Corning.**

Sincerely,  
Dean Cofer

A handwritten signature in cursive script that reads "Dean Cofer".



**Lisa Linnet**

---

**From:** Dean Cofer [deancofer@sbcglobal.net]  
**Sent:** Friday, July 24, 2009 9:17 AM  
**To:** Lisa Linnet  
**Subject:** 'for delivery to Council Members Ross Turner & Toni Parkins'

--- On Fri, 7/24/09, Dean Cofer <deancofer@sbcglobal.net> wrote:

From: Dean Cofer <deancofer@sbcglobal.net>  
Subject: examination of PERS files  
To: "Mayor Gary Strack" <gstrack@sbcglobal.net>, "John Leach" <REVJOHN65@DM-TECH.COM>, "Becky Hill" <bchill84@gmail.com>  
Cc: "Lisa Linnet" <lilinet@corning.org>, "Bucky L. Bowen" <buckylbowen@yahoo.com>  
Date: Friday, July 24, 2009, 9:15 AM

*Mayor Strack and Council Members:*

**This is a repeat of an earlier request asking that the Fitzpatrick/PERS matter and staff report be delayed and moved to the August 11 Council agenda ... unless I am provided documents, previously requested, prior to the July 28 Council meeting.** *This request was previously sent to City Clerk Linnet (see below) with copies to each of you.*

I would appreciate receiving a response to my request. Thank you for your consideration.  
*Dean Cofer*

--- On Wed, 7/22/09, Dean Cofer <deancofer@sbcglobal.net> wrote:

From: Dean Cofer <deancofer@sbcglobal.net>  
Subject: examination of PERS files  
To: "Lisa Linnet" <lilinet@corning.org>  
Cc: "Bucky L. Bowen" <buckylbowen@yahoo.com>, "Mayor Gary Strack" <gstrack@sbcglobal.net>, "Becky Hill" <bchill84@gmail.com>, "John Leach" <REVJOHN65@DM-TECH.COM>  
Date: Wednesday, July 22, 2009, 6:45 PM

City Clerk Lisa Linnet

Lisa:

Bucky and I will not be coming into tomorrow to examine the PERS files after all.

I will await your production of the documents that I have previously requested. *Hopefully you will be able to provide me with the documents prior to the July 28 Council meeting. **If it's not possible to produce the records prior to the July 28 council meeting, then I respectfully request that the Fitzpatrick/PERS issue be delayed and placed on the August 11 Council agenda.*** *I would appreciate verification that this request will be honored. Thank you.*

Sincerely,  
Dean Cofer

07/24/2009

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 22, 2009

RECEIVED

JUL 23 2009

CORNING CITY CLERK

Mrs. Lisa Linnet, City Clerk  
794 Third Street  
Corning, CA 96021

Copy sent via e-mail. Original placed in U.S. Mail

**I am submitting the following information request pursuant to the Public Records Act, and other relevant sections of the CA Government Code.**

**I would appreciate receiving the requested information within the ten calendar days required by statute, or sooner if possible.**

1. In a July 17, 2009 written statement City Attorney Michael Fitzpatrick stated, "...In mid-2007 ... The city council was informed of this and was fully aware that I would be taking steps to redirect my retirement funds..."

- **Please provide any and all documentation either in written hard-copy form or electronic format showing that it was legal for him (Fitzpatrick) as City Attorney, along with the assistance of City employees, to redirect his retirement funds, without a recorded majority vote of the City Council.**
- **Provide any and all records and Council minutes showing the date the Council voted by majority vote to approve the redirection of retirement funds for Fitzpatrick.**

*In response to both questions, there are no such documents; those funds have not been "redirected", this issue is still pending City Council direction. (LML)*

2. In the same statement referred to above, Fitzpatrick indicated, "...I have written PERS, called PERS and traveled to Sacramento to meet with PERS staff, hoping there might be some way I could leave my funds with them. Because of the lack of response from PERS, I recently elected to draw out my retirement funds, pay taxes on them and wait no longer on PERS to respond to my inquiries..."

- **Please provide copies of any and all letters (or other documentation) that City Attorney Fitzpatrick wrote to PERS or received from PERS in support of his statement.**

*The City does not have copies of Mr. Fitzpatrick's correspondence to PERS and copies of all correspondence relating to this that the City has I have provided. (LML)*

- **Provide the meeting date(s) and name(s) of the PERS personnel that he (Fitzpatrick) met with in Sacramento regarding this matter.**

*This is not a public records act request. (LML)*

- **Provide any and all records, including correspondence, phone records, bank statements, memorandums, e-mails and other documentation – including any**

recorded majority Council vote – showing the date, and upon what authority Fitzpatrick either withdrew or redirected his PERS retirement funds.

*These funds have not been redirected as it is still pending Council action. (LML)*

- Provide any and all records, including correspondence, or other documents showing the name(s) of the City employee(s) and/or elected official(s) who authorized and signed the check, warrant or instructions to make the payment either directly to Fitzpatrick or to a ‘trust’ account.

*These funds have not been disbursed or redirected as it is still pending Council action. (LML)*

- Provide a copy of the cancelled check for the payment to Fitzpatrick of his retirement fund, or to a ‘trust’ account.

*No check has been issued to Mr. Fitzpatrick to date as this issue is pending City Council’s action. (LML)*

3. In the same statement referred to above, Fitzpatrick said, “...Not only was the Council notified but the City’s finance staff back in 2007 stopped contributing any retirement funds to PERS on my behalf and, because PERS now had ‘my retirement funds’ already invested, the City of Corning was allowed to credit these contributions toward retirement payments the City was making for other employees. In other words, the City was considered to have ‘paid ahead’ with regard to its remaining employees once my retirement funds were treated as a credit for their benefit...”

- Provide any and all records, including correspondence, phone records, memorandums, e-mails and other documentation – including any recorded majority Council vote – showing that the Council ever at any time formally approved any of the things that Fitzpatrick alleges the Council knew about.

*To my knowledge, no such documents exist.*

- Provide any and all records either in written hard-copy form or electronic format from and to CalPERS and the City showing that PERS accepted and implemented the ‘paid ahead’ situation described by Fitzpatrick; and provide any and all documentation showing how CalPERS parceled out the money.

*Please review the CalPERS documents and Memo from City Accounting Technician Pala Cantrell dated October 4, 2007 provided in response to your request dated June 24, 2009. (LML)*

4. Please provide the following:

- Provide any and all written Statutes and/or authority – including any recorded majority Council vote – allowing or approving the payment of money, equal to PERS contributions from 2005 to 2007, either directly to City Attorney Fitzpatrick or into a ‘trust’, bank account or other investment vehicle.

*As stated previously, these funds have not be redirected or disbursed to Mr. Fitzpatrick as the issue is still pending action by the City Council. (LML)*

- Provide documentation of the total dollar amount to date, and specify if the money was paid directly to Fitzpatrick, or placed into a 'trust, bank account or other investment vehicle.

*Please review the documents provided in response to your request dated June 24, 2009. As stated previously, these funds have not be redirected or disbursed to Mr. Fitzpatrick as the issue is still pending action by the City Council. (LML)*

- If the money from 2005 to 2007 is being held in 'trust' by the City please provide documentation of that fact, including copies of the financial spread sheet showing the monthly contributions to the 'trust', and documentation showing where the 'trust' is, and identifying the holder of the 'trust' account, and any and all other documentation pertaining to the 'trust' account.

*No such documents exist. (LML)*

5. Please provide the following:

- Provide any and all Statutes and/or authority – including any recorded majority Council vote – that approves or allows the payment of money, equal to PERS contributions, from 2007 through current into a retirement fund or 'trust' for City Attorney Fitzpatrick.

*See the attached copy of the June 14, 2005 City Council Agenda, Meeting Minutes and the Agreement between the City and Mr. Fitzpatrick. (LML)*

- Provide any and all documentation showing where the contributions, equal to PERS contributions, for 2007 through current, is being 'redirected' to.

*As previously stated, these funds have not been "redirected" pending City Council action. (LML)*

- Provide any and all documents showing the name and description of the retirement fund or 'trust' where these funds are being held.

*City General Fund. (LML)*

- Provide documentation showing the current total amount of the money in the fund or 'trust', and the amount being paid into the fund or 'trust' on a monthly basis.

*See attached accounting Spreadsheet. (LML)*

Please let me know when this information is available and I will come to city hall and pick it up. *Thank you.*

Sincerely,

Dean Cofer

*(LML) Lisa M. Dunnet  
City Clerk*

Dean Cofer  
419 Marguerite Avenue  
Corning, CA 96021  
824-2429; [deancofer@sbcglobal.net](mailto:deancofer@sbcglobal.net)

July 14, 2009

City of Corning Council Members  
(Read, and then hand-delivered at the July 14, 2009 Council Meeting).

Subject: PERS Contributions for Michael Fitzpatrick

Shown herein is what I have found by researching the CalPERS Procedures Manual, and speaking with CalPERS representatives. The information contained in items 4, 5 and 6 was provided to us based on an information request submitted to the City of Corning.

1. **From 1995 onward employees have NOT been allowed to have two concurrent PERS retirement accounts.** *Page M40 of the CalPERS Procedures Manual clearly states that when an employee has more than one job with a public agency, "...the position with the highest pay should be reported to CalPERS, with the other position deemed the non-reportable 'overtime' position. (Government Code S. 20635).*
2. **CalPERS has NOT "...changed its rules and no longer allows multiple employers to contribute to PERS for part-time employees", as was falsely claimed by the City Manager in his June 23, 2009 memorandum. As stated above, the prohibition has been in effect since 1995.**
3. Page M40 of the CalPERS Procedures Manual instructs employers as follows: "NOTE: Check with your employee to see if they are currently employed at another CalPERS agency. If unsure, contact the Employer Contact Center at (888) CalPERS (225-7377)."
4. In a letter, dated July 10, 2007, from CalPERS to City Attorney Fitzpatrick (with copies to the City of Corning and the County of Trinity) he was told: (a) "A review of your file by CalPERS indicates that because you are employed with the City of Anderson in the position of City Attorney, (and) elected CalPERS membership on August 29, 1988 ... your position with the City of Corning and County of Trinity are in an overtime capacity and not subject to retirement deductions by Government Code 20635." (b) "City of Corning and County of Trinity has been instructed to reverse all earnings and contributions reported to the system." (c) "If your member contributions are **not employer paid member contributions**, you should be receiving a refund from City of Corning and County of Trinity for any member contributions..." (d) "You are responsible for notifying all of your employers of any employment changes, such as ... an appointment with another CalPERS contracting agency. This will ensure that proper

*deductions will be reported to CalPERS, that excess member contributions will not be reported...*"

5. **CalPERS sent the City of Corning a letter, dated July 17, 2007 (regarding Mr. Fitzpatrick) stating "EMPLOYER ACTION: Please adjust by a full-line credit or full-line debit entry of earnings and contributions to this system from July 1, 2005 through current. If these contributions are *not employer paid contributions*, please refund these contributions back to Mr. Fitzpatrick. Mr. Fitzpatrick is employed on a full-time basis with the City of Anderson in the position of City Attorney, elected CalPERS membership and is earning full-time service credit." The letter also states, "...In my conversation with Steve Kimbrough, Mr. Fitzpatrick's part-time position as City Attorney for the City of Corning is considered to be in an overtime capacity and not subject to retirement deductions under Government Code Section 20635. Mr. Fitzpatrick's account will be monitored to make sure the above mentioned contributions are reversed out of his account."**
6. **Under date of October 24, 2007, CalPERS sent the city another letter reminding it of its July 17, 2007 letter; and repeated its earlier instructions saying, "Mr. Fitzpatrick did not qualify for membership from July 1, 2005 through current because he is full time with the City of Anderson. Therefore, the position with the City of Corning is considered overtime and not reportable." Once again CalPERS indicated "... These entries are required to be reversed."**

**Here is what this information absolutely proves as indisputable:**

- **City Manager Kimbrough lied to the Council, and city taxpayers and voters when – in his June 23, 2009 memorandum – he stated "...CalPERS has changed its rules and no longer allows multiple employers to contribute to PERS for part time employees."**
- **The City Manager and the City Attorney both failed to follow the CalPERS rules prohibiting Fitzpatrick's 2005 enrollment in CalPERS retirement; and then failed to take any corrective action in 2007 after being ordered to do so. *Even if one is so naïve to believe that neither Kimbrough nor Fitzpatrick knew the rules in 2005, both individuals were advised in 2007 that the contributions had to cease but they failed to notify the Council or make the corrections demanded by CalPERS. The City Manager's and City Attorney's decision to start these contributions in 2005, and their failure to stop and reverse them in 2007 when instructed by CalPERS to do so, can only be viewed as evidence of collusion.***
- **Mr. Kimbrough and Mr. Fitzpatrick both knew, or certainly had a legal and fiduciary obligation to know in 2005 that Mr. Fitzpatrick was not legally entitled to have two concurrent retirement accounts (and, as we now know, Fitzpatrick had at least three concurrent retirement**

accounts). In 2007, when CalPERS sent Mr. Fitzpatrick the letter referred to above (with copies to Corning and Trinity County) Kimbrough and Fitzpatrick still failed to come clean with the City Council, taxpayers and voters of Corning. This, coupled with Kimbrough's and Fitzpatrick's recent attempt to get the council to illegally refund PERS contributions to Fitzpatrick -- and enter into an agreement to continue the charade indefinitely by paying him future cash in-lieu of retirement contributions -- is nothing less than an organized theft of public funds.

At this point, the question becomes how the City of Corning (i.e., the City Council) is going to handle this matter:

- (a) The agreement providing CalPERS retirement benefits that Kimbrough and Fitzpatrick entered into in 2005, must be declared null, void and unenforceable.
- (b) Mr. Fitzpatrick cannot be allowed to profit from his enrollment in PERS -- simply because he was never entitled to be so enrolled in the first place. NONE of the contributions (all of which were paid by the City of Corning) can legally be paid to Fitzpatrick.
- (c) Mr. Kimbrough's and Mr. Fitzpatrick's recommendation that the Council authorize them to enter into a new agreement -- continuing to pay Mr. Fitzpatrick in excess of \$12,000 annually (as additional income) to make up for the loss of future PERS retirement contributions -- should and must be met with a unanimous NO vote.

If the Council, in spite of the evidence before it, acts to pay the refunded PERS contributions to Mr. Fitzpatrick -- or authorizes future payments in excess of \$12,000 annually in-lieu of retirement contributions -- then you need to be aware that the payments will likely be found to be contrary to public policy, and construed to be an illegal gift of public funds.

**I STRONGLY RECOMMEND THAT THE CITY COUNCIL ENGAGE OUTSIDE LEGAL ASSISTANCE TO INVESTIGATE AND RECOMMEND HOW YOU SHOULD LEGALLY PROCEED. To do otherwise, would likely be viewed as a breach of your fiduciary obligations to the City, taxpayers and voters of Corning.**

I am sending copies of this letter to the Tehama County and Trinity County District Attorneys, the Tehama and Trinity County Grand Juries, and to the CalPERS Compensation Review Department. I believe that Mr. Kimbrough and Mr. Fitzpatrick should be investigated for possible violations of their legal, fiduciary, and ethical responsibilities owed to the taxpayers and voters of the City of Corning; and to determine if they have committed actionable criminal offenses.

***A complaint will also be filed with the CA State Bar Association, requesting that it investigate Fitzpatrick's initial and continuing conduct, ethical lapses, and failure to provide an acceptable and appropriate level of legal representation to his client (i.e., the City of Corning, taxpayers and voters).***

*The voters have elected each of you to represent us to the best of your abilities. However, to do so, you – and we – must have a city manager and a city attorney who can be counted on to tell us the truth, no matter how difficult; and who will research and follow the regulations and the law when carrying out the duties entrusted to them. I submit that all of us have been ill served by both the City Manager and the City Attorney in regards to this scandalous PERS debacle.*

***For the reasons cited herein, Mr. Fitzpatrick should be terminated forthwith as Corning's City Attorney. Fitzpatrick, in pursuit of his own selfish desire to have multiple retirement accounts failed to give his client (i.e., the City of Corning) proper legal advice and representation. In addition, his attempt – aided and abetted by the City Manager – to have contributions paid over to him that he clearly knew he was NOT entitled to, and to enter into a new agreement to receive future in-lieu cash payments, is unconscionable.***

***For the reasons cited herein, Mr. Kimbrough should be terminated forthwith as Corning's City Manager. Kimbrough lied to the Council and concealed and withheld the truth from the City, and its taxpayers and voters – and that cannot and should not be tolerated.***

Thank you for your consideration.

Sincerely,



Dean Cofer  
Co-Chair, Concerned Citizens

Cc: Tehama County District Attorney Gregg Cohen  
Tehama County Grand Jury  
Trinity County District Attorney Michael B. Harper  
Trinity County Grand Jury  
CalPERS Compensation Review Department  
California State Bar Association



**Employer Services Division**  
P.O. Box 942709  
Sacramento, CA 94229-2709  
Telecommunications Device for the Deaf - (916) 795-3240  
888 CalPERS (or 888-225-7377) FAX (916) 795-3005

January 19, 2010

Stephen J. Kimbrough  
City Manager  
City of Corning  
794 Third Street  
Corning, CA 96021

**RECEIVED**  
JAN 22 2010  
CORNING CITY CLERK

Dear Mr. Kimbrough:

This is in response to your letter of January 4, 2010 regarding your question whether or not there are any provisions in the California Public Employees' Retirement System (CalPERS) Law or Regulations which would prevent the City in returning both the employee contribution made by the City and the employer contribution to your City Attorney, Michael Fitzpatrick.

There are no provisions in the CalPERS law which would prohibit the City from returning these funds to Mr. Fitzpatrick.

If you have any questions, regarding this letter, please do not hesitate to contact me at 888 CalPERS (or 888-225-7377).

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheila Arndt".

Sheila Arndt  
Employer Services Division  
Membership and Account Adjustment Unit