



**CITY OF CORNING
SPECIAL CLOSED MEETING SESSION MINUTES**

**TUESDAY, JANUARY 25, 2011
CITY COUNCIL CHAMBERS
794 THIRD STREET**

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

B. ROLL CALL:

Council:

**Toni Parkins
John Leach
Vacant
Darlene Dickison
Gary Strack**

Mayor:

All members of the Council were present with one vacancy remaining pending verification of eligibility of Council Candidate Elect Jesse Lopez.

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. PUBLIC COMMENTS:

D. ADJOURN TO CLOSED SESSION:

**CONFERENCE WITH LABOR NEGOTIATOR PURSUANT TO SECTION 54957.6:
Agency Negotiator: William May, Labor Relations Consultant
Management, Miscellaneous, Dispatch and Public Safety Employees
Bargaining Units**

**CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Gov't. Code
Section 54956.9): Related to failure to seat City Council Candidate Elect Jesse
Lopez as a City Council Member.**

E. RECONVENE SPECIAL MEETING AND REPORT ON CLOSED SESSION:

Mayor Strack reported that Council met in Closed Session with Labor Negotiator Bill May and gave him direction.

Mayor Strack also reported that Council met with Legal Counsel regarding anticipated litigation in regards to the vacant Council seat; stating that further discussion of this issue will take place during the regularly schedule Council meeting when the Council addresses the agenda item 10 listed under the Regular Agenda.

F. ADJOURN TO REGULAR MEETING OF THE CITY COUNCIL: 7:37 p.m

Lisa M. Linnet, City Clerk



**CITY OF CORNING
CITY COUNCIL MINUTES**

**TUESDAY, JANUARY 25, 2011
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:36 p.m.

B. ROLL CALL:

Council:

Toni Parkins

John Leach

Vacant

Darlene Dickison

Mayor:

Gary Strack

All members of the Council were present with one vacancy remaining pending verification of eligibility of Council Candidate Elect Jesse Lopez.

C. PLEDGE OF ALLEGIANCE: Led by the City Manager.

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

Jerry Lequia updated the Council on the amount of money raised to date for the placement of the City Seal and "In God We Trust" in the Council Chambers. He stated that to date he has raised \$1,050 and plans to have the full amount by the next meeting.

1. Presentation: Branding Project by Kate Grissom of Rolling Hills Casino.

Ann Raymarch and Kristin Grey narrated a Power-point presentation on the Tehama County Branding Project. They stated that an Economic Development Plan for Tehama County around the fall of 2009 pinpointed visitor attraction, tourism, as one of our primary economic development strategies. Tourism brings in outside dollars into our communities, provides opportunities for existing businesses to prosper and new businesses to start up, however we were missing a "Brand". How can we promote the area if we don't even know what we want the area to be known for?

They informed the Council and members of the audience that Roger Brooks of Destination Development International has been hired to assist with the Tehama County Branding Project. Mr. Brooks will lead in the development of a Development and Marketing Action Plan at a cost of \$125,000. They emphasized that Mr. Brooks commits for two to three years to get us up and running with the "Brand" once developed. The goal is to raise \$200,000; to date \$47,300 has been raised for this project.

City Manager Kimbrough stated that we have placed the power-point presentation on the City's website as well as the Chabin Concepts Report that led to this. The City also has some hardcopy books available to lend.

E. BUSINESS FROM THE FLOOR:

Valanne Cardenas (Chamber of Commerce Manager): Presented a request for the City's "Corporate Donor Matching Funds" in an amount up to \$4,000. She announced that to date she has received donation commitments from: Bell Carter and Rabobank, \$1,500 each and \$1,700 from the County of Tehama.

Mayor Strack stated that no motion is necessary to approve the City's matching funds as this was approved and included in this year's budget.

- F. **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.
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 the January 11, 2011 City Council Meeting with any necessary corrections:**
 4. **January 19, 2011 Claim Warrant - \$211,184.58.**
 5. **January 19, 2011 Business License Report.**
 6. **Approve Contract Change Order No. 2 Increasing the Traffic Signal Installation Project by \$4,372.20 for a Total Project Cost of \$284,839.57.**
 7. **Approve Contract Change Order No. 4 Amending Scope of Work and Increasing the Rodgers Theater Improvement Project by \$7,517.67 for a Total Project Cost of \$188,902.36.**
 8. **Approve Project Pay Estimate No. 5 in the Amount of \$51,236.56 to Azevedo Construction for the 2010 Rodgers Theater Improvement Project.**
 9. **Approve Application for Indian Gaming Committee Grant Funds in the amount of \$19,320.**

Mayor Strack introduced each item listed on the Consent Agenda and asked if anyone from the Council or audience would like any of these pulled for further discussion; Councilor Leach asked to pull Consent Item 6.

With no further discussion, Councilor Dickison moved to approve Consent Items 2-5 and 7-9. Councilor Leach seconded the motion. **Ayes: Strack, Parkins, Leach and Dickison. Opposed: None. Absent/Abstain: None. Motion was approved by a 4-0 vote with one vacancy remaining on the Council pending verification of Candidate Elect Lopez's eligibility.**

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

6. **Approve Contract Change Order No. 2 Increasing the Traffic Signal Installation Project by \$4,372.20 for a Total Project Cost of \$284,839.57.**

Councilor Leach asked if this would be the final Change Order for this project. Public Works Director John Brewer stated that unforeseen items sometimes come up on projects such as this and he cannot guarantee that there won't be any future Change Order requests. Councilor Leach then moved to approve Contract Change Order No. 2 increasing the Traffic Signal Installation Project by \$4,372.20 and set the Budget Appropriation from Fund 116 to Street Projects Signal Improvements Account 116-9254-3001 at \$294,957.20. Councilor Parkins seconded the motion. **Ayes: Strack, Parkins, Leach and Dickison. Opposed: None. Absent/Abstain: None. Motion was approved by a 4-0 vote with one vacancy remaining on the Council pending verification of Candidate Elect Lopez's eligibility.**

H. **PUBLIC HEARINGS AND MEETINGS:** None.

I. **REGULAR AGENDA:**

10. **Consideration of Seating of Elected Council Member Jesse Lopez:**

Mayor Strack introduced this item by title and announced the three options listed below. He stated that this was the topic of discussion in the Closed Session. City Attorney Michael Fitzpatrick explained that at the last Council meeting this was discussed and questions arose as to where the City goes from here because as a result of the election, Mr. Lopez was the top vote getter to be elected to the City Council. Mr. Fitzpatrick explained that the question of Mr.

Lopez's eligibility to hold the position as a member of the Council due to a misdemeanor conviction for forgery. He stated that the City has done some research on that issue and it looked like he would not be eligible to hold the position. Whether it was a felony or a misdemeanor was not the significant issue, the issue had to do with it being a conviction of that particular offense. To further complicate the issue, Mr. Lopez went back to court in 2009 to obtain a Court Order from a Judge stating that he was released from all penalties and disabilities resulting from the offense, now, on the face of it, it looks like that means there are no repercussions that follow him as a result of that. Mr. Lopez has asked for time to seek a ruling from a Judge now to determine if he is eligible for this office. He is predicting that it will take 40-50 days to obtain that determination. The dilemma the Council faces is that we have now had this seat vacant for close to 60-days, the 60th day being February 4th.

Mr. Fitzpatrick stated that the Council has 60-days from the date a vacancy occurs to either make an appointment to fill that vacancy, or call a special election. The Council is coming up on that deadline. The Council could, if it wishes, declare him elected by adopting the Resolution that is before you tonight, swear him in, and then if he does resign as he has indicated is his intention, the Council would then have 60-days to allow him time to take the issue before a Judge, or the Council could do something else within the 60-days, or decide to make an appointment to fill that vacancy. It does give the Council more time to make their determination. If the Council doesn't swear Mr. Lopez into office, he stated it is his opinion that the Council only has the two days to make an appointment to that position. Mr. Fitzpatrick stated that Mr. Lopez is asking to be sworn in to office tonight.

Mayor Strack stated that Mr. Lopez was duly elected by the voters in the last election. There was some discussion on the possibility of an election contest being filed. It has been stated that there would be no guarantee that Mr. Lopez would be appointed to the vacant position should he receive a determination from a Judge.

Councilor Leach made the statement that he has no ill will towards Mr. Lopez, however according to the law he does not feel he is eligible.

Ross Turner asked some questions regarding City and taxpayers liability (responsibility) for any of Mr. Lopez's legal expenses should Mr. Lopez be seated tonight, or appointed in the future, whether retroactively, or for future legal expenses relating to his actions to obtain his Council seat? He was informed that there are no guarantees when it comes to lawsuits; however Mr. Fitzpatrick stated should an election contest be filed, and Mr. Lopez resigned, there would be no reason for a contest.

A member of the audience asked whether the City would obtain any liability should the City seat Mr. Lopez and he participate by voting on any issue before the Council. They were informed that there are no remaining issues other than this one on the Agenda to vote on. However, if Mr. Lopez were seated, remained on the Council, then yes, any items he voted on could come into question and could possibly lead to a lawsuit.

Jesse Lopez then spoke stating it was his intent tonight to resign stating that there is not enough time for him to take the seat to which he was elected and obtain a ruling from a Judge. He stated that he believes it is in his best interest, as well as that of the City, for the City to move forward. He stated that he has asked the City to consider him for appointment if he can obtain a ruling that is favorable, however he stated that they are in a position that they need to move forward. If the Council chooses to appoint someone to the vacant Council position during that 60-day window and not appoint him, then he is not going away, he is going to continue to fight this as long as he can and then in two years, if he is eligible he will run again. He stated he is not going anywhere. He stated that he knows there will be some people upset with him because of this; he stated he understands that, emphasizing that it was not his intent to be deceitful. He stated that he had a court document from the State of California and Tehama County that stated that he was released from all penalties and disabilities resulting from the offense. He stated he had no reason to believe that "all" didn't mean all, to him "all" meant all inclusive. He stated that he didn't have any

reason to believe otherwise and that is why he ran for this office. He stated that he has lived in Corning his entire life and wanted to be part of Corning and Corning's legacy and a part of the City Council. Mr. Lopez clarified that the City Council and the City Attorney have not been dragging their feet on this; he stated that it has been him because he had been elected by almost 600 people and he has a responsibility to those people to make sure he explored every option possible before giving in to the fact that yes, I may not be eligible to hold this office. He stated he felt it was his seat to say yes, I want to to be sworn in, or no I want to wait. He stated he was elected to it and felt it was his choice so he took as much time as he could to clear this up. It is getting to the end of the 60 days and we need to make a move, the City needs to move forward be it with me or without me. Hopefully he can get a ruling in his favor; he is not in any way saying he is above the law, however he has a legal document that is conflicting with everything else going on. He stated that he hopes that in the event that a Judge rules in his favor that the Council would consider him for appointment. He understands that the City has a business to run and they need to move forward, he has no ill will. He stated that the last five months have been pretty brutal for him and his family however he was not going to allow his past to define his future. He stated that he feels very strongly about this Community. He stated that he knew going in that there was a chance that his past would come up, and he chose to run anyway, however he didn't think it would go that far, with people sending anonymous letters about him, but it did. Mr. Lopez stated that Corning means something to him, this came out early on; and he specifically chose not to mention his past because his documents stated he was released from the disabilities...and the application didn't specifically ask about past histories, and if most of us are not asked we don't reveal the regrets of our past, why open the can of worms. He stated he didn't feel it was relevant, he made a mistake and he did everything he had to do to make up for that mistake and he moved on. Unfortunately some people can't. People will say that the law is clear; however some of those saying this are not Lawyers and Judges. To him it was not clear and he was going to fight it to the bitter end, however we are out of time. He stated that his intention was never to slow the process of this Community; he just wanted to be a part of it. He stated that it was his responsibility to the people that voted for him to go as far as he could; at this point he is there. Be it 60-days from now or two years from now, he is not going to quit fighting this and at the end of the day if comes out that he can't, he will concede that fact and be on the outside looking in and try to be as involved as possible and try to move on. In closing he stated that we have great leadership in this town and hopefully someday he can be part of it. He publically wanted to state that he has had tremendous support and it has been overwhelming at times in a good way. He stated that he hopes someday he can be a part of what the Council does; he is not turning his back or going away. He restated he would like to swear in at this time and will be resigning effective at the end of tonight or 10:00 p.m. whichever comes first. He also stated he has submitted his resignation from the Planning Commission. Mr. Lopez encourages anyone interested in serving on the Council to apply. He also apologized to the people that voted for him for not being able to fulfill their wishes.

City Clerk Lisa Linnet then read Resolution 01-25-2011-01, Seating of Elected Council Member Jesse Lopez.

10-1. Consider adopting Supplemental Resolution 01-25-2011-01 Seating of Elected Council Member Jesse Lopez; and

10-2. Administering Oath of Office and Seating Jesse Lopez on the City Council.

Councilor Dickison stated that she believes the people told the Council what they wanted when they voted for Mr. Lopez so she moved to adopt the proposed supplemental Resolution further declaring the results of the election and appointing Jesse Lopez to the Corning City Council. Councilor Parkins seconded the motion. **Ayes: Strack, Parkins, and Dickison. Opposed: Leach. Absent/Abstain: None. Motion was approved by a 3-1 vote with Leach opposing and one vacancy remaining on the Council pending verification of Candidate Elect Lopez's eligibility.**

Mr. Lopez then took the oath of office issued by City Clerk Lisa Linnet. Following taking the oath Mr. Lopez issued his letter of resignation from his position on the Council.

10-3. Consider Inviting Applications to be Submitted Now for Appointment to City Council Seat to Preserve Council's Options should Jesse Lopez either Resign or be determined to be ineligible to Hold Office.

Mayor Strack then called for Council's decision on how to fill the vacancy on the Council. After some discussion, Councilor Dickison moved to invite interested persons to submit applications for appointment to the Council. Councilor Parkins seconded the motion. **Ayes: Strack, Parkins, Leach and Dickison. Opposed: None. Absent/Abstain: None. Motion was approved by a 4-0 vote with one vacancy remaining on the Council.**

By Consensus of the Council all applications for the vacant Council seat must be received by the City Clerk no later than 5:00 p.m. on February 17, 2011. It was announced that applications are available tonight and will be available at City Hall and on the City's website.

Mayor Strack clarified with the City Attorney that it would be legal for a Council member to speak with the applicant prior to a Council discussion; Mr. Fitzpatrick stated yes they can as long as they don't discuss the applicant with other members of Council, however he will research and report back to the Council.

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

K. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION: None.

L. REPORTS FROM MAYOR AND COUNCIL MEMBERS: City Councilmembers will report on attendance at conferences/meetings reimbursed at City expense (Requirement of Assembly Bill 1234).

Parkins: Nothing.

Leach: Reported on Thursday's CAA stating they found out that they had some extra money for four of their agencies, one being Corning.

Dickison: Reported on her attendance at the Tehama County Heritage and Historical Records Meeting where they received a report from the group trying to purchase the State Theater and she was asked to report on our progress with the restoration of our Theater.

Strack: Nothing.

M. ADJOURNMENT!: 8:40 p.m.

Lisa M. Linnet, City Clerk