



**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

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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.

1st 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.

2nd 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.

3rd 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.

4th 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.

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

6th 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.

7th 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.

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

9th 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.

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

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

12th 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.

13th 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.

14th 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.

15th 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.

16th 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.

17th 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.

18th 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.

Lisa M. Linnet, City Clerk