

APPROVED BY THE CITY COUNCIL ON FEBRUARY 22, 2011

CITY COUNCIL MINUTES
OF A REGULAR MEETING

ORANGE, CALIFORNIA
February 8, 2011

The City Council of the City of Orange, California convened on February 8, 2011 at 4:30 p.m. in a Regular Meeting in the Council Chambers, 300 E. Chapman Avenue, Orange, California.

4:30 P.M. SESSION

1. OPENING

1.1 INVOCATION

Given by Pastor Dan Dunkerley, Child Evangelism Fellowship

1.2 PLEDGE OF ALLEGIANCE TO THE FLAG

Led by Councilmember Jon Dumitru

1.3 ROLL CALL

PRESENT - Whitaker, Smith, Cavecche, Dumitru, Bilodeau

ABSENT - None

1.4 PRESENTATIONS/ ANNOUNCEMENTS/ INTRODUCTIONS –

Mayor Cavecche announced that the City of Orange received recognition from the Orange County Business Council, for a program to defer fees for builders.

2. PUBLIC COMMENTS –

Bruce Weiner spoke on decision made at the Council meeting of January 25, to not award the American All Star Towing Company a towing contract.

Nick Feghali spoke on his role with the American All Star Towing Company.

3. CONSENT CALENDAR

All items on the Consent Calendar are considered routine and are enacted by one motion approving the recommended action listed on the Agenda. Any member of the City Council, staff or the public may request an item be removed from the Consent Calendar for discussion or separate action. Unless otherwise specified in the request to remove an item from the Consent Calendar, all items removed shall be considered immediately following action on the remaining items on the Consent Calendar.

3.1 Confirmation of warrant registers dated January 20 and January 27, 2011.

ACTION: Approved.

3.2 City Council Minutes, Regular Meeting of January 25, 2011. (C2500.D.4)

ACTION: Approved.

3.3 Waive reading in full of all ordinances on the Agenda.

ACTION: Approved.

AGREEMENTS**3.4 Award of Agreement for Emergency Response Services for traffic signal/flashers and street lighting maintenance services. (A2100.0 Agr-5713)**

ACTION: Awarded an agreement in an amount not to exceed \$40,000.00 to Republic ITS of Novato, CA, and authorized the Mayor and City Clerk to execute on behalf of the City.

BIDS**3.5 Bid No. 101-25; CDBG Project – Americans with Disabilities Act (ADA) Wheelchair Access Ramps at Various Locations, FY 2010-11. Approval of plans and specifications, and request for authorization to advertise for Bids. (S4000.S.3.2)**

ACTION: Approved the plans and specifications and authorized advertising for bid.

3. CONSENT CALENDAR (Continued)

3.6 Bid No. 101-26; Santiago Creek Bike Trail North Project – Collins Avenue Undercrossing: from Bond Avenue to Santiago Creek. Approval of plans and specifications and request for authorization to advertise for bids. (C2500.M)

ACTION: Approved the plans and specifications and authorized advertising for bid.

RESOLUTIONS

3.7 RESOLUTION NO. 10533 (S4000.S.3.1.2)

A Resolution of the City Council of the City of Orange rescinding Resolution No. 10514, and adopting a Revised Master Resolution of Permit Parking Areas within the City of Orange.

ACTION: Approved.

3.8 RESOLUTION NO. 10534 (C2500.N)

A Resolution of the City Council of the City of Orange expressing appreciation to Janice McGovney of the Community Services Department for 20 Years of valued, loyal and dedicated service.

ACTION: Approved.

MOTION - Dumitru

SECOND - Whitaker

AYES - Whitaker, Smith, Cavecche, Dumitru, Bilodeau

All items on the Consent Calendar were approved as recommended.

END OF CONSENT CALENDAR

4. REPORTS FROM MAYOR CAVECCHÉ –

With concurrence from Council, Mayor Cavecche asked staff to consider amending the Military Banner program to include military members killed in action, and veterans.

5. REPORTS FROM COUNCILMEMBERS –**5.1 Councilmember Dumitru - Consideration of removal of Matthew Cunningham from the Planning Commission and instruct the City Clerk to begin Maddy Act procedures. (C2500.G.2.5.1)**

MOTION - Dumitru

SECOND - Whitaker

AYES - Whitaker, Smith, Cavecche, Dumitru, Bilodeau

Moved to accept letter of resignation of Matthew Cunningham from the City Planning Commission, effective February 24, 2011; and directed the City Clerk to post notice of vacancy.

Councilmember Bilodeau –

Reported that the Orange County Transportation Authority has issued a call for projects to fund the emergency vehicle preemption program for installing apparatus on traffic signals and fire vehicles. He asked that a committee be assembled to prepare a plan. Staff was asked to look into deadlines and provide information to the Council.

6. REPORTS FROM BOARDS, COMMITTEES, AND COMMISSIONS –**6.1 Accept Resignation from Robert Imboden from the City Planning Commission, effective February 8, 2011. (C25090.G.2.5.1)**

MOTION - Smith

SECOND - Whitaker

AYES - Whitaker, Smith, Cavecche, Dumitru, Bilodeau

Moved to accept, with regrets, resignation of Robert Imboden from the City Planning Commission, effective February 8, 2011; and directed the City Clerk to post notice of vacancy.

7. ADMINISTRATIVE REPORTS - None**8. REPORTS FROM CITY MANAGER****8.1 Budget Status Report. (Continued from January 25, 2011.) (C2500.E.4)**

Discussion – City Manager John Sibley reported on overall budget reductions and impacts of budget reductions in the Administration offices; noting that as of January, departments are within budget targets. He also noted that vacant positions have not been removed from the books, so that they can more easily return in the future.

8. REPORTS FROM CITY MANAGER (Continued)

Assistant City Manager Rick Otto reported on the current deficit, and provided statistics on the impacts of budget reductions.

Presentations on impacts of budget reductions were given by Directors of Finance, Community Services, Community Development and the City Attorney.

Mayor Cavecche stated her concern for the risk management factor of reduced staffing, and asked that restructuring information be provided to Council.

Mayor pro tem Smith clarified with staff that City staff's involvement at Mary's Kitchen was to assist with hardscape needs since the building is owned by the City. She also wanted to ensure there was sufficient staffing at the newly-opened Grijalva Gymnasium to protect the City's investment and ensure its use.

Council explored with staff ideas for looking at departments differently, possibly combining those that have synergy in order to run more efficiently; benefits of utilizing volunteer interns; what factors determine the need to contract with outside attorneys for expertise in specific areas.

8.2 Report on requests by Councilmember Whitaker: (From December 14, 2010.)

1) Review of the Conditional Use Permit process for Cell Phone Towers.

Discussion – Community Development Director Alice Angus reported that a meeting occurred with staff from the City of Anaheim to compare processes. She stated that 25% of CUP requests require a hearing to address non-stealth antennas, antennas on public utility structures, and excessive height. She further stated that towers outside of Old Towne could be reviewed by a committee consisting of staff using set standards, and that the removal would be the responsibility of the operator or the landowner.

Council discussed the use of landscaping as a mitigating tool; that in the past, some plans have had to be corrected by the Design Review Committee; the idea of the creation of a booklet with standards; and issues with co-location. It was determined that there is interest in streamlining the process, which will require an ordinance amendment. Council asked for briefings on the issue along the process.

2) Report on Graffiti Joint Task Force.

Discussion – Public Works Director Joe DeFrancesco reported on a meeting with the City of Pico Rivera, noting that the City of Pico Rivera captures restitution that raises revenue for addressing the problem. He added that staff has identified practices to address graffiti on private property; and there is coordination between departments to efficiently handle calls, as well as notification of the utility companies.

8. REPORTS FROM CITY MANAGER (Continued)

Council discussed the use of standard colors; looking into increased collection of restitution to recoup costs; use of volunteers; creation of a policy to cover liability issues; response times by utilities; use of phones to document problems; and the need to involve the County of Orange to address issues around the El Modena High School area. It was determined to follow up in 30 days.

9. LEGAL AFFAIRS - None**10. RECESS TO THE MEETING OF THE ORANGE REDEVELOPMENT AGENCY****11. RECESS TO CLOSED SESSION**

The City Council recessed at 6:30 p.m. to a Closed Session for the following purposes:

a. Conference with Legal Counsel—Anticipated Litigation

Initiation of litigation pursuant to subdivision (c) of California Government Code Section 54956.9: One potential case.

b. To consider and take possible action upon such other matters as are orally announced by the City Attorney, City Manager, or City Council prior to such recess unless the motion to recess indicates any of the matters will not be considered in Closed Session.

7:00 P.M. SESSION**12. PUBLIC COMMENTS – None****13. PUBLIC HEARINGS****13.1 PROPOSED WATER RATE INCREASE. (A2500.0 Ord-02-11 Water Rates)**

The public hearing to consider adopting new rates for providing water service to residential, commercial, industrial, and institutional customers was continued to this time from January 25, 2011.

NOTE: THE PUBLIC HEARING IS CLOSED.

NOTE: Councilmember Bilodeau recused himself from the meeting, citing a possible conflict with his role as a Board Member on the Orange County Water District; and left the dais.

Discussion – Mayor Cavecche stated that she had spoken to members of the public since the last meeting, and reported that Council has been aware of this issue - a common misconception she was hearing from those she spoke to. She also stated that past Council actions to use reserves had occurred to keep rates low during the difficult economic times.

City Manager John Sibley stated that the costs associated with providing water, that has exceeded the reserve fund, has driven the need to raise the rates. He added that with the increases, the cost of water in Orange will still remain one of the lowest in the county.

Acting Water Manager Michael Wolfe responded to questions asked at the January 25, hearing:

1. The consultant is able to provide a revised water rate model, to include a water rate structure, a cost of service analysis, and a multi-family option that is Prop 218 compliant. He stated that the cost to provide this analysis would cost \$35,000 to \$50,000, and would take four to seven months to complete;
2. The percentage of rates that are related to the salary and benefits of the agencies is: OCWD – 16.4%, Metropolitan Water District – 23.6%, and Municipal Water District of Orange County – 62%;
3. The water model can be used to model any rate scenario to include rates that do not allow for the catastrophic unreserved fund balance to reach 25%;
4. The profit and loss statement has been updated to reflect the pure overhead expenditures separate from direct or billable expenditures. Currently, the ratio of overhead expenditures to revenue is 12.8%;
5. The water rate model has been constructed to model any combination of rates.

13. PUBLIC HEARINGS (Continued)

In response to questions by Councilmember Dumitru, Public Works Director Joe DeFrancesco and Mr. Wolfe stated that the City shares in the capacity and infrastructure costs for the MWD regional pipe delivery service; the choice of 800 megahertz radios was made due to cell phones going down in an emergency; the higher pump percentage saves \$170,000 for every 1% increase allowed; the decision to pay as you go v. debt financing is a policy determination; the Water Frontage fee is an infrastructure fee charged to developers for CIP; the out-of-town travel is used for required employee certification; the plan to replace the water warehouse on Almond Avenue is on hold; due to the 9-11 event, approximately \$80,000 per year is set aside for security equipment; the UC Irvine hospital water usage and system is not subsidized by the City.

Mayor Cavecche asked for a clarification of the CIP process for the public.

Mr. DeFrancesco reported the CIP plan is a seven year planning process, projected into the future, for maintaining infrastructure.

In response to questions by Councilmember Whitaker, Finance Director Rich Jacobs explained that various employees in Finance work on water-related tasks, but their time is not currently tracked to the minute. He added that the processing of payments has been outsourced, and that small portions of the utility billing process have also been outsourced to save costs to the water fund.

Mayor Cavecche stated that while the General Fund should not subsidize the water fund, water rate holders should also not subsidize non-water usage staff – that it goes both ways.

In response to questions by Mayor pro tem Smith, Public Works Director Joe DeFrancesco and Mr. Wolfe stated that the administrative fee on the City's water utility enterprise is 12.8%; and that currently there are fewer employees than in 1980 servicing a larger population.

THE MAYOR REOPENED THE PUBLIC HEARING.

The following speakers spoke on whether the water providers are governed by the PUC; whether the increase will affect property values and real estate taxes; the burden of the large rate increase; and incentive programs for conversion to waterless/water-efficient appliances and equipment:

Adolfo Zavala

Peter Friday

R. Sanchez

Marvin Sobel

THE MAYOR CLOSED THE PUBLIC HEARING.

13. PUBLIC HEARINGS (Continued)

Public Works Director Joe DeFrancesco and Mr. Wolfe addressed the questions posed by the speakers and answered questions from Council, stating that beginning in FY 07-08 the water fund reserve began its decrease; and that in 2009, a 4% rate increase took effect that was previously approved in 2007, and discussion and consultation began to assess the status of the water fund. Mr. Wolfe provided statistical information showing current and increased cost of water in other cities and agencies.

City Manager John Sibley reported that some of the cities showing very high water rates were including an administrative fee on their water rates that is deposited into their General Fund. City Attorney David DeBerry added that in some cities the second tier begins at a lower threshold than the one proposed for the City of Orange ratepayers.

The City Clerk noted there were 10 written protests received since the last meeting, bringing the total protests letters received to 93.

Mayor Cavecche reported that the City had received a call from a representative of the Apartment Association of Orange County stating they were removing their opposition to the proposed water rate increases, and asked for a joint ad hoc meeting on various related issues in the near future.

Council discussed various issues, such as increasing the rate over the next two years instead of four, with results of a water rate study brought back in 2012 to determine the next direction to pursue; being provided a profit and loss statement to be monitored on a regular basis; that an 11% increase would just cover the cost of water, but 15% is needed to include overhead; pros and cons of bond financing; whether a pass-through formula could be put in place with automatic increases when the cost of water increased; the amount of reserve needed to cover emergency repairs; floor to ceiling ratios; that a sale of the water enterprise would take control of rates out of Council's hands; and the need to offer incentives for conservation.

Council provided Acting Water Manager Michael Wolfe various combinations of rate increase percentages for modeling, and requested inclusion of a projected savings of \$1 million to compare results and consider best possible rates for customers. It was stated that the goal was to provide safe, low-cost water for customers without subsidizing its cost; and that Council has a fiscal responsibility to the residents and businesses.

Mayor pro tem Smith stated that past actions to raise rates were based upon not charging the rate payers more than what was needed at the time; however, outside costs have now forced the risk of running the ratepayers into a deficit.

13. PUBLIC HEARINGS (Continued)

City Attorney DeBerry reported there needs to be a 4/5 vote to adopt any rate increase per Prop 218; and since one Councilmember has been recused, there needs to be a unanimous 4-0 vote to increase the water rate.

ORDINANCE NO. 02-11 (FIRST READING)

An Ordinance of the City Council of the City of Orange Amending and Revising the Master Schedule of Fees and Charges for Water Rates.

MOTION - Whitaker
SECOND - Cavecche
AYES - Whitaker, Smith, Cavecche
NOES - Dumitru
ABSENT (RECUSED) - Bilodeau

Moved:

- 1) That Ordinance No. 02-11 be read by title only and same was set for second reading by the preceding vote;
- 2) To eliminate the annual transfer of 8% of the water rate revenues from Fund 600 (Water) to Fund 601 (Water Capital Projects) for Fiscal Years 2011-12 and 2012-13;
- 3) To authorize the annual transfer of 12% of the water rate revenues from Fund 600 to Fund 601 for Fiscal Years 2013-14 and 2014-15, returning to an 8% transfer starting with Fiscal Year 2015-16; and
- 4) To direct a **15%** rate increase each year for FY 11 and FY 12, conditioned on the city doing a new rate study as soon as possible that would produce a pass-through rate model for the city's external costs from outside water districts, as well as inflationary costs for infrastructure maintenance; also looking at capacity charges and multi-family housing rate structures; and staff also to come back with a proposal to save \$1,000,000, as well as other options including other operators or possibly selling the water fund, and water conservations programs for the public.

MOTION FAILED

Councilmember Dumitru started that although he realizes some increase is necessary, 15% is too high; and that he originally did not want more than a 10% increase, but would definitely not vote for 15% as he did not want to put a burden on the taxpayers.

Mayor pro tem Smith noted the rate increases over the past 10 years: 2001 – 9%, 2003 15%. 2005 – 19%, 2007 – 3%, 2008 – 4%. 2009 – 4%. She explained that even without major increases in the recent years, the water fund was not run into a deficit, which is what will happen without an increase at this time. Rates were kept low because that was what the Council thought was best for the city at the time, but outside variables have now impacted the city's rates.

13. PUBLIC HEARINGS (Continued)

Councilmember Whitaker explained that water users have to pay for the use of water; that the Council has a responsibility to not run the city into a deficit; and he would not vote for anything less than 14% as that would be irresponsible.

Mayor Cavecche stated that the Council is faced with two choices - to either put the Water Fund into insolvency and start to fund it with the General Fund which is already \$11 million in the red, or ask the ratepayers to pay for the water they use; and that the Council has a fiscal responsibility to figure out what the city can charge to maintain the system. She explained the city has no control over what they are being charged by outside agencies – that it “sucks”!

MOTION - Whitaker

SECOND - Smith

AYES - Whitaker, Smith, Cavecche, Dumitru

ABSENT (RECUSED) - Bilodeau

Moved:

- 1) That Ordinance No. 02-11 be read by title only and same was set for second reading by the preceding vote;
- 2) To eliminate the annual transfer of 8% of the water rate revenues from Fund 600 (Water) to Fund 601 (Water Capital Projects) for Fiscal Years 2011-12 and 2012-13;
- 3) To authorize the annual transfer of 12% of the water rate revenues from Fund 600 to Fund 601 for Fiscal Years 2013-14 and 2014-15, returning to an 8% transfer starting with Fiscal Year 2015-16; and
- 4) To direct a **14%** rate increase each year for FY 11 and FY 12, conditioned on the city doing a new rate study as soon as possible that would produce a pass-through rate model for the city’s external costs from outside water districts, as well as inflationary costs for infrastructure maintenance; also looking at capacity charges and multi-family housing rate structures; and staff also to come back with a proposal to save \$1,000,000, as well as other options including other operators or possibly selling the water fund, and water conservations programs for the public.

MOTION PASSES

Councilmember Dumitru stated that employee benefit costs must be brought under control, and pressure must also be placed on outside agencies to control their spending on employee benefits as well, because the city has to bear the burden of the irresponsible actions of others. He noted the importance of a healthy debate before any rate increase, proving the importance of differing opinions, to come to a reasonable decision. He stated that although he voted to approve the rate increase, he was still not happy with 14%.

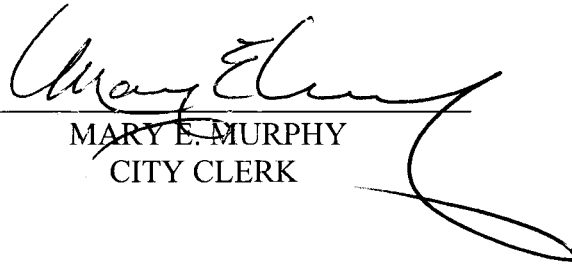
Mayor Cavecche agreed the city needs to continue looking at comprehensive pension reform; and suggested putting a new water model together for the future.

14. **PLANNING AND ENVIRONMENT** – None

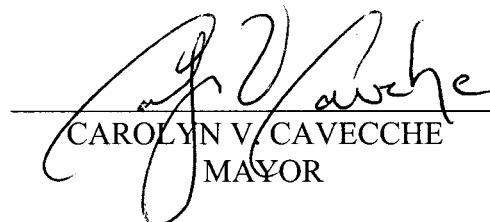
15. **ADJOURNMENT** – The City Council adjourned at 11:20 p.m.

The next Regular Council Meeting is scheduled for Tuesday, February 22, 2011 at 4:30 p.m.

Declaration of City Clerk, Mary E. Murphy, declaring posting of City Council agenda of a regular meeting of February 8, 2011 at Orange Civic Center kiosk, Police facility at 1107 North Batavia, and the Main Public Library at 407 E. Chapman; all of said locations being in the City of Orange and freely accessible to members of the public at least 72 hours before commencement of said regular meeting; and available at the Civic Center City Clerk's Office.



MARY E. MURPHY
CITY CLERK



CAROLYN V. CAVECCHÉ
MAYOR