

**CITY COUNCIL
CITY OF SONORA
NOVEMBER 6, 2017**

A Regular Meeting of the City Council of the City of Sonora was held this date in the Council Chambers at City Hall, 94 North Washington Street, at 5:00 p.m. The following members were present: Mayor Connie Williams, Mayor Pro-Tem Jim Garaventa, Councilmembers Matt Hawkins, Mark Plummer, George Segarini; City Administrator Tim Miller, City Clerk Marijane Cassinetta, City Attorney Tom Hallinan, Fire Chief Aimee New, Acting Police Chief Turu VanderWiel, Interim City Engineer Gerard Fuccillo and Community Development Director Rachelle Kellogg. Absent: None.

Mayor Williams announced that there was no Closed Session Meeting this date.

CITY CLERK'S REPORT ON POSTING OF AGENDA

City Clerk Cassinetta advised Council that at 12:30 p.m. on the 3rd day of November, 2017, the Agenda for the City of Sonora Council Meeting scheduled for this date was posted outside City Hall for public view.

APPROVAL OF THE AGENDA

No changes.

PRESENTATIONS

Administrator Miller introduced new Public Works Assistant Quinn Vanderwerff. Vanderwerff was welcomed by the Council.

Police Sergeant Glenn Roberts introduced and swore in new Police Explorer Clare Cosovich. Cosovich's father pinned her badge, and she was congratulated and welcomed by the Council.

Police Sergeant Glenn Roberts introduced the following new service volunteers who were thanked by the Mayor on behalf of the Council:

- George Marshall - Janitorial
- Ashley Kennedy - Explorer Advisor/Patrol
- Danny Hamilton - Explorer Advisor/Patrol
- Tomas Brickly - Patrol
- Jean Souther - Clerical (not present)
- Matt Roberts - Explorer Advisor/Patrol (not present)
- Aaron Moran - Patrol (not present)

PUBLIC COMMENT (Non-Agenda)

None

CONSENT CALENDAR

MOTION by Councilmember Hawkins, second by Mayor Pro-Tem Garaventa, that the Consent Calendar be approved as follows:

1. Approval of the Council Minutes for the Regular Session Meeting of October 16, 2017;
2. Approval to pay invoices for previously budgeted expenses on November 7, 2017, in the amount of \$583,990.63; and
3. Approval of disbursements in the amount of \$146,828.19 on October 27, 2017, for payroll, inclusive of employee salaries, employer and employee taxes and retirement contributions, and miscellaneous voluntary employee deductions. There was no public comment, and the Motion passed unanimously.

UNFINISHED BUSINESS

None

PUBLIC HEARINGS

None

NEW BUSINESS

Agreement with 55 Properties, LLC, For Utilization of Coffill Park. Mayor Williams recused herself as she sits on the Board of Directors for Stage 3 Theater which occupies a portion of the subject property, and she left the Chambers. Mayor Pro-Tem Garaventa assumed the Chair. The Council considered a request by 55 Properties, LLC, to amend its previously approved Agreement with the City to utilize the Coffill Parking Lot (Lot) to delete the requirement for construction of a storm drain manhole in said Lot subject to the property owner granting an easement for vehicular and City personnel access to the existing storm drain manhole at 198 Green Street and providing a portable hoist. Recommending approval, Administrator Miller presented the Staff Report noting that at its September 18, 2017, Meeting, the Council agreed to execute a Grant of Easement to PG&E, and authorized an Agreement with 55 Properties, LLC, to allow the installation, operation and maintenance of a PG&E transformer, grease interceptor, bike rack, and sewer, water, electrical and propane service lines/laterals as needed in consideration of improvements to the Lot including curb, gutter, sidewalk and driveway along Green Street; installing a sidewalk along the building and new planter curb in the Lot to the west and north; resurfacing and restriping the parking lot; adding handicapped parking; and installing a storm drain manhole.

Miller noted that the property owner now requests deletion of the storm drain manhole improvement from the scope of work due

to potential construction and liability issues. With the deletion of this item, the estimated value of the improvements the City will receive for granting the use of the Lot will be reduced from \$110,000 to \$90,000. Miller added that although the ease of access and convenience for the City to work on the public property will be lost, personnel can still maintain the storm drain through the existing manhole; the doorway would accommodate the City utility vehicle and possibly the small tractor, and that the property owner has agreed to provide a portable hoist including a tripod and winch to remove any debris from the drain.

Mayor Pro-Tem Garaventa asked for public comment.

Jerry Fuccillo, Interim City Engineer speaking as a member of the public, stated his opposition to the recommendation in the Staff Report to delete the requirement for the outside manhole, noting that the City drain has flooded before at this location. Fuccillo commented that the reason the existing manhole was put in was because of the failure of the City main drain that collapsed and lifted up the slab of the driveway of a prior business on that location. He stated that in the event of a blockage downstream, construction of a manhole in the Lot would protect the existing manhole from an overflow in the Beer Garden providing a point of overflow at a lower elevation, and provide an outside access for maintenance of the drain. Fuccillo cautioned that if the outside manhole requirement is removed from the project, the City should require 24/7, 365-day access and a release of liability from any damages or disturbance to project operations. He stated that it will flood again, and there will be collapses. He presented history on the drain and noted that in 1973 when the building at the corner of Church and Washington Streets was constructed over the City main drain, the developer replaced the rock lined main drain with a larger stronger concrete box structure under the building and parking lot with a point of access on each side, and there has never been a problem with this section of the drain. Fuccillo made note to the developer that if the outside manhole is deleted, there may be flooding damage within the building.

Councilmember Hawkins confirmed with Fuccillo that parts of the City's main drain were constructed in the 1880 to 1890's, and that portions of the top were constructed with old metal mine doors. Hawkins also confirmed with Fuccillo that parts of the main drain consist of pieces and parts that date before the Civil War.

Rubin Churnside of Land and Structure which is providing the engineering and design for the Project said that since the

beginning, the manhole has been a concern, and it was considered during the design process not to construct anything that was weight bearing on top of the manhole. He confirmed that the existing manhole is in the open air but access is through a roll-up door, and there is 10 to 15 feet of space around it. The supports to the construction were designed to span the manhole so no new loads would be placed on it. Churnside said that when looking at the storm drain after the condition was placed for construction of either a new manhole in the open Lot or access to the existing one, 55 Properties feels that developing a new manhole access provides a number of issues and difficulties so they would rather provide access to the existing manhole as needed.

Councilmember Plummer stated the importance of the City having access 24/7 if there is a need, and asked if the Agreement had been finalized, and also asked if it may become necessary due to failure for the City to rebuild the storm drain; he would not want the City to be liable. Administrator Miller responded that the Agreement has not been finalized in light of this item tonight; that the Grant of Easement from the property owner would also have to be included; he responded that there could be the possibility that the City may need to reconstruct the storm drain line if there is a catastrophic failure, and it would be on the City to fix irrespective of the location. Miller also commented that the City cannot impose a condition on a development project to fix an existing deficiency.

Councilmember Hawkins said it is responsible that the developer is making sure there is no weight on the manhole, and allowing the City 24/7 access. Councilmember Segarini asked Churnside's opinion as to whether he felt if the new manhole was constructed, would that prevent flooding. Churnside responded, no. Mayor Pro-Tem Garaventa asked Churnside if the existing cement slab in the area was going to stay the same. Churnside responded that it will, and a deck will be constructed over it with storm drain access. Councilmember Hawkins said that he has seen lots of storm drain accesses in buildings, and he does not see the big deal.

Robert Boyer, contractor for the Project, had concern about tying into a stacked rock wall, and that even if something new was installed, it would still end at a stacked rock wall. He said that OSHA will not allow him to put anyone down into the system to fix it; construction of another manhole does not supply anything; he does not want the liability, and he cannot control what goes on past the engineering. Boyer said that access to the existing manhole will be provided with a removable deck and be drivable, and that any flooding will not go into the

theater, kitchen or restrooms because they have lowered the mezzanine, and it will flow out.

Bill Seldon, retired Public Works Supervisor, presented pictures of the storm drain to the Council which are attached hereto as Exhibit "A", and incorporated herein by reference. Seldon gave history on the storm drain, its construction, condition and flooding, noting that the water is able to flow around the dry stacked wall because it is not cemented. He also commented on his discussion with Churnside about a year ago noting that at that time, Churnside said they wanted to close the area of the manhole off and change the elevation, and he responded that it needed to be kept open for access because the drain does fail, and is going to fail again. They discussed what could be done, and Churnside suggested putting a new manhole outside in the Lot which they agreed was a good idea, and that is where the discussion was when he retired and Staff recommendation was to make that a requirement. Seldon stated to the Council that the pictures he provided were taken when he was on the Mine Rescue Team, and they went into all of the City drainage lines, mapped them and checked for gasses and collapses. He has concerns about a deck being constructed and how access for heavy equipment would be possible. He referred to Pictures 1 and 2 on Page 1 showing the drain line under the Beer Garden, which he said will fall down eventually. He said he put in the drain on the SE corner of the building, but the hole is too small to hoist out material. He referred to Picture 4 on Page 2 showing the drain line that had a total collapse. He said that there are people who are confined space certified who can work in drains. He thinks that the Council should stick to the original plan reiterating that it is going to flood, it is going to collapse, and he cannot see that it is that big of deal to put in a new manhole. Seldon referred to the Pictures on Page 3 showing collapses in the drain system; pictures on Page 4 showing the iron doors used on the top; Pictures 13 and 14 on Page 5 showing narrowness of the drain and an area of total collapse; Picture 15 on Page 5 showing the outfall into Sonora Creek; the sole picture on Page 6 showing one truck load out of four of rock and debris that was removed from the drain under the Opera Hall. This picture was from a DVD of the storm drain that Seldon has, and it is available to the Council if they would like to view it.

Councilmember Plummer asked how the process was done. Seldon explained the two separate processes of the removals from under the Opera Hall and under the Beer Garden area. Seldon referred to Picture 7 on Page 3 and Picture 12 on Page 4 showing cement shoring and lack of footings. Plummer noted that if adequate equipment access and drive ability is given, the developer needs

to be willing to have his business interrupted for any fix. Seldon recommended it be in writing to protect the City and taxpayers. He noted that originally Churnside said they did not want a hole large enough for backhoe or dump truck access. Noting the developer's concern about constructing a new manhole, Councilmember Segarini asked Seldon his opinion on whether a new manhole could be put in. Seldon replied that if he can do it, he does not see why the professionals cannot.

Charles Segerstrom, City resident, spoke of his overarching concern that right decisions are made for the City and its taxpayers. He said the Council has heard from two people who have been in the storm drain and know what we are up against. It is not the City's issue that advanced engineering was not dealt with way up front; it's not the taxpayers' problem to reduce costs and engineer this. What is going to happen when 150 to 200 people are dancing to music creating harmonics that can transmit to that ancient structure? He commented that the option of an unfettered access outside makes the most sense; an abundance of caution as a City should be taken, and we need to think ahead of what it is going to take to deal with a crumbling structure.

Larry Coombs, City resident, commented that the Council has heard from two experts in the field and Mr. Segerstrom who is really qualified in the field to analyze the situation. He feels a decision would be rash and inadvisable; the City needs to look at the liability issues and put it in the contract; we should plan for the failure of the system; there could be serious liability in shutting down a business to remedy any failure; he asked that the matter be tabled until satisfaction is reached that will not create additional liability for the City and its taxpayers.

David Morgan, City resident, agreed with the public comments he has heard. He also had concern that with the prior Agreement that was authorized, saying it appears that there may be a financial issue with the developer and reneging on a financial agreement is odd. Administrator Miller responded that at present the Easement and Agreement exist in draft form, it has not been finalized. Until it is settled, there will not be a Grant of Easement, and we will not have an Agreement.

Councilmember Hawkins asked if Kennedy was willing to say "Come on in, bring your backhoes, we are not going to sue you for a billion dollars"? Kennedy responded that with the City Attorney we are going to line up an Agreement that allows for access in there; it is not an issue. Kennedy commented on where does the liability end if they put in a new manhole and the system fails

because they cut a hole in a 160 year old rock wall; what if it fails all the way to Stockton Road, or to Restano?

Attorney Hallinan responded that anything proximately caused by either party they will be responsible for unless the contract states otherwise. He assumes based on the comments, that there would be a reciprocal hold harmless based on the results of whatever the final engineering analysis is.

Councilmember Segarini asked Kennedy if he was not concerned that his business may be up and running and a catastrophic event happens. Kennedy responded that he would anticipate that would take place in a storm or series of storms, and the Beer Garden is not going to be operating during bad weather; he does not see people out drinking beer in the rain. Councilmember Plummer reiterated his concern that the City needs to be held harmless and not liable. Speaking in regard to a reciprocal hold harmless, Hallinan said that if the City requires another manhole, the developer would want assurance that he is not responsible, he would want indemnification like the City would ask for. Mayor Pro-Tem Garaventa commented on the need for a mutual hold harmless saying who knows what is going to happen; is mutual indemnity possible? Hallinan commented that as long as we can get mutual agreement, Staff can come up with creative ideas.

Kennedy asked if it was worth digging into an old structure to build a new one; we know what the integrity is now, is it worth the risk? He stated he cannot take responsibility. Councilmember Plummer asked what would be done in the event of a major collapse if it is kept like it is and where would the work be done. Administrator Miller responded that we would do the work where we need to do the work, and would need to be as close to the failure as possible.

There being no further public comment Mayor Pro-Tem Garaventa brought it back to the Council for discussion.

Councilmember Segarini suggested tabling the matter to allow the City Attorney to work out a hold harmless agreement to bring back to the Council. Administrator Miller said continuing the matter to a specific time, not tabling, is best, and asked what was the Council's preferred option for Staff to explore, or to look at both options? Segarini responded that his preference was using the existing manhole. Councilmember Plummer said that he has no problem with the request as long as adequate access is provided. Councilmember Hawkins stated that it is a City issue that has been going on for over a hundred years and should have been taken care of 70 years ago. He has had concerns for a

number of years about the drainage lines; he does not think its fair to ask a business owner to take care of this many year on-going issue; he recognizes the importance of both parties having indemnity. Mayor Pro-Tem Garaventa stated that he likes the original Agreement to require the parking lot manhole; he hopes there is a way to mutually agree upon a hold harmless.

MOTION by Councilmember Segarini, second by Councilmember Hawkins that the matter be continued to a time not later than 30 days (no later than the Council Meeting of December 4, 2017) for the City Attorney to sit down with the developer to work out a hold harmless agreement with the existing manhole where it is, and for access. The Motion passed three to one by the following vote: Ayes: Hawkins, Plummer, Segarini; No: Garaventa; Recused from Meeting: Williams.

Mayor Pro-Tem Garaventa stepped down from the Chair, and Mayor Williams entered the Chambers and assumed her seat at 6:45 p.m.

MONTHLY REPORTS

None. No public comment.

VISION SONORA COMMITTEE REPORT

Mayor Williams read her Vision Sonora Committee Report for the October 5, 2017, Meeting which is attached hereto as Exhibit "B", and incorporated hereby by reference. No public comment.

COMMUNICATIONS

None - No public comment.

COUNCILMEMBER/DEPARTMENT HEAD REPORTS

Fire Chief New thanked everyone who attended the 157th Annual Firefighter Ball and those who helped with the event. **Mayor Williams** thanked Chief New for the work she did. **Interim Engineer Fuccillo** reported that Mono Way would be paved this evening and tomorrow night, then the contractor will proceed with the extended portion of the paving on the other roads, and weather permitting, would be completed by the end of the week. **Administrator Miller** corrected a statement made in the *Union Democrat*, noting that the Council will be receiving a report of recommendation from the Marijuana Working Group, and the Council will be requested to give direction to Staff. He also reported that Staff is working with PG&E on the LED street light conversion throughout the City, and that the City is in discussion with PG&E on an agreement where the wooden light poles along Stockton Street will be changed out to match the metal poles downtown. **Mayor Pro-Tem Garaventa** noted that he attended the Chamber Mixer at Let'er Buck, ATCAA's Homeless Point-In-Time Count Meeting revealing 721 homeless in the

County, helped with the concession at the All Hallows Faire, and attended the Firefighter Ball which is the oldest continuing social event in Tuolumne County. **Councilmember Segarini** noted that he attended the Chamber Mixer, the Ribbon Cutting at the new County Transportation Center, and the Merchant/Townhall Meeting, and its next Meeting will be held on November 15, 2017, which is a week early due to Thanksgiving. **Councilmember Hawkins** said that his family attended *Trick or Treat Street*, and thanked all the merchants who participated. **Mayor Williams** reported that she attended the Ribbon Cutting for the new Transportation Center, and that it is a lovely facility, thanked Lowes for its Project Heroes program helping with the new plantings downtown to help beautify the City, and thanked the Fire Department for its work in putting on the Firefighters Ball that was lovely and commented on Chief New's creativity with the decorations.

ADJOURN

There being no further business to come before the Council at this time, the Regular Session Meeting was adjourned at 6:58 p.m. to the Regular Meeting on November 20, 2017, at 5:00 p.m. in the Council Chambers at City Hall.

Marijane Cassinetto, City Clerk Date