



**CLOSED SESSION/REGULAR MEETING  
LIVINGSTON CITY COUNCIL  
DECEMBER 1, 2009**

A Closed Session/Regular Meeting of the Livingston City Council was held in the City Council Chambers on December 1, 2009, with Mayor Varela presiding.

**CLOSED SESSION**

Mayor Varela opened the meeting.

**ROLL CALL**

- Mayor Daniel Varela, Sr.
- Mayor Pro-Tem Frank Vierra
- Council Member Rodrigo Espinoza
- Council Member Margarita Aguilar
- Council Member Martha Nateras (Excused)

Also in attendance were City Manager Richard Warne, Assistant City Manager/Finance Director Vickie Lewis, and City Attorney Jonathan Hobbs.

The Council went into Closed Session to discuss the following matters:

1. Conference with Legal Counsel—Existing Litigation.  
Government Code Section 54956.9(a).
  - a. *Merced County Farm Bureau v. City of Livingston, et al.*, California Superior Court, County of Merced, Case No. CU151754 [consolidated with *Valley Advocates v. City of Livingston, et al.*, Superior Court, County of Merced, Case No. CU151757].
  - b. *Foster Poultry Farms, Inc. v. City of Livingston, et al.*, California Superior Court, County of Merced, Case No. CV000292.

## **OPEN SESSION**

The Council came out of Closed Session and into Open Session.

## **REGULAR MEETING**

### **CALL TO ORDER**

Mayor Varela called the meeting to order at 7:19 p.m.

### **ROLL CALL**

- Mayor Daniel Varela, Sr.
- Mayor Pro-Tem Frank Vierra
- Council Member Rodrigo Espinoza
- Council Member Margarita Aguilar
- Council Member Martha Nateras (Excused)

### **CLOSED SESSION ANNOUNCEMENTS**

City Attorney Hobbs reported that the City Council, by a 2-1 vote, with Mayor Varela and Council Member Nateras absent, voted to have the case of Foster Poultry Farms v. the City of Livingston transferred from the firm of Kronick, Moskovitz, Tiedemann and Girard to the law firm of Best Best and Krieger contingent upon Best Best and Kreiger accepting the transfer. City Attorney Hobbs said he would call them this week and see if they are willing to accept the transfer. He said if they are willing to accept the case, the lawsuit will be transferred to that firm. The vote was 2-1 with Council Members Aguilar and Espinoza voting yes, and Mayor Pro Tem Vierra voting no.

### **CHANGES TO THE AGENDA**

None.

### **AWARDS, PRESENTATIONS, APPOINTMENTS AND PROCLAMATIONS**

None.

### **ANNOUNCEMENTS AND REPORTS**

Supervisor John Pedrozo Announcements and Reports.

Juan Corona, Administrative Assistant, to Supervisor Pedrozo made the following reports:

- Announced that Larry Homes has begun work as the new Chief Executive Officer (CEO) for Merced County.

- Stated that Supervisor Pedrozo's office has received a box of items from Operation Life Saver. The box includes pencils, coloring books and crayons. The items are available to the public. Supervisor Pedrozo is working with the railroads and Operation Life Saver to give these items out to promote safety around railroad tracks.
- Stated that every year Supervisor Pedrozo has town hall meetings in his district. He conducts these meetings in Planada, Le Grand, Livingston and South Merced. Livingston's town hall meeting will be held on January 28, 2010. Representatives from the various County government departments will be available to answer citizen questions.

#### City Council Members' Announcements and Reports.

##### Council Member Margarita Aguilar

- Thanked those that participated in the Veterans' Day parade. There was a great turnout. She thanked Dennis and Sue Wells who provided soup, coffee and treats. A meal was served for \$5.00. All proceeds from the sale of food went to support Veterans' events.
- Stated that for the second year she took time to make a monument for our prisoners of war (POWs). She thanked the brave, young men and women who serve our country. She is honored to have her son, Marine Sgt. Benito Aguilar and other young men from Livingston, serving in the military. She thanked everyone who participated in the event, including City staff.

##### City Council Member Rodrigo Espinoza

- Asked if tonight's meeting was being televised. City Manager Warne said yes. City Manager Warne also said Mario Campos is training the staff on how to use the equipment. Council Member Espinoza said to keep reminding people to attend the meetings.

##### Mayor Pro Tem Frank Vierra

- Reported that on November 21, four days before Thanksgiving, four families were displaced by a structure fire on Fourth Street. One of the families lost everything and half of their house. They are still in need of furniture for the living room and kitchen. He stated that if anyone had any items to donate to please contact him. Mayor Pro Tem Vierra said he was at the fire until 10:30 p.m. when the Red Cross arrived. In addition, he took the family a complete dinner, including turkey on Thanksgiving Day. He said the displaced families moved in with other families and were provided care right away.

#### Mayor's Announcements and Reports.

##### Mayor Daniel Varela, Sr.

- Reported that he made a presentation to the Livingston Union School District Board. He shared with the School Board some of the programs where the City and the School

District have partnered together. One of them is a youth golf program called Youth on Course. This youth golf program is for at-risk young people that need extra guidance. He has been working with the Livingston Middle School Vice-Principal and the Livingston Union School District Superintendent, who is an individual that works very hard to get our kids involved in our community. There will be golf lessons provided to the kids at the golf course by professionals. The program will give these kids a whole different outlook. Mayor Varela said to contact him or the Livingston Middle School Vice Principal if anyone was interesting in getting involved in this program.

- Stated that he received a phone call on Saturday about the fire at the apartments near the Alvernaz Ballfield. When he arrived he found Mr. Vierra trying to organize things for the fire victims. He said the Fire Department did an outstanding and professional job containing the fire and minimizing the damage done to the surrounding homes. Mayor Varela said City Public Works personnel brought some boards to board up the apartments to secure them. If anyone can help these families, please contact the City or Mayor Pro Tem Vierra.

Council Member Espinoza asked if the City Council could get an update on the activities of the Merced County Association of Governments (MCAG). He said that Mayor Varela is the City's representative on the MCAG Board. He noted that Mayor Pro Tem Vierra always gave the City Council an update. Council Member Espinoza said he believed that the Mayor was also the City's representative on the San Joaquin Valley Air District Board. Mayor Varela said he would give a report at the next meeting.

Council Member Aguilar stated that Council Member Nateras was absent from the City Council meeting this evening. She understood that two Planning Commissioners had resigned and asked Community Development Director Donna Kenney for a report. She wanted to know how we are going to go about filling these vacancies.

City Attorney Hobbs said Donna Kenney could make a report, but the City Council could not appoint anyone tonight. He said the City Council would do this at a later time.

Donna Kenney explained that staff received a letter from Leticia Soto resigning from the Planning Commission due to work constraints before the November Planning Commission meeting. She said that Ramon Avila resigned at the end of the November Planning Commission meeting. The term of Planning Commission chair David Blevins expires on December 31, 2009, so she put an advertisement in the newspaper recruiting for the positions with a closing date for applications of January 15, 2010.

## **PUBLIC HEARINGS**

1. Resolution Conditionally Approving Site Plan/Design Review 2009-04 for the Dr. Singh Mixed Use Project.

Community Development Director Donna Kenney presented the agenda item requesting

that the City Council approve Site Plan/Design Review 2009-04 for the Dr. Singh Mixed Use Project.

Donna Kenney stated that the project site is located on the vacant lot at 1222 B Street. She said the site formerly had a small residential unit on it, which was recently demolished with the proper permits. This is a mixed use project that includes a 1,300 square foot dental office on the first floor. On the second floor there is a proposed two bedroom apartment that has approximately 900 square feet. The building has a proposed courtyard that is approximately 1,200 square feet.

The Planning Commission, at their regular meeting of November 10, 2009, approved a conditional use permit (CUP) with the requirements for the apartment use on the second floor. The Planning Commission also recommended approval of the project to the City Council. Donna Kenney called the Council's attention to a site plan, landscaping plans and parking plans contained in their agenda packet. She noted that one of the conditions of approval, since the project is short some parking spaces, was that the applicant make a contribution of \$1,000 per parking space to provide for a future parking garage in the downtown.

Donna Kenney said it was her understanding that this is a problem for the applicant and he would like to discuss this further with the City Council. She said the Livingston Municipal Code allows for a reduction in parking requirements if the applicant can show that some of the employees would walk to work, ride a bike to work or if there is bus stop nearby. This is a centrally located building within walking distance of the downtown, bus stops, Las Casitas Del Sol apartments and other residential uses in the downtown area. Donna Kenney commented that there was a question of the right-of-way on B Street. She said the right-of-way does widen in front of the development to 70 feet, but it is not as wide as the portion of the street between Prusso Street and Winton Parkway according to the Traffic/Circulation Master Plan. She pointed out the landscaping on the site. The colors for the building were chosen from the recommended list that the Planning Commission had discussed a year-and-a-half or two years ago. Donna Kenney said that these colors were never officially approved by the City Council. She stated that since there was a building previously on the site, there were obviously no rare or endangered animals on the property. The project's environmental document would be a Notice of Exemption. She said the applicant and architect are here tonight to answer questions.

Council Member Espinoza asked what kind of fence are they going to have. Donna Kenney explained that fences were never discussed. Fences are not required for new development except when a commercial property is adjacent to a residentially zoned property. All properties around this development are zoned Downtown Commercial. However, she said, if you look at your landscaping plan, the applicant has proposed a large landscaping area around the property.

Council Member Espinoza asked if the applicant is not going to have to replace any fences. Donna Kenney said he is not required to.

Council Member Espinoza asked if the downtown commercial requirements would be the same for this project as for the entire street. Donna Kenney replied these are standard sidewalks, curbs, gutters and streets in accordance with the City Traffic/Circulation Master Plan.

Council Member Espinoza asked if the neighbors were notified of the project. Donna Kenney said yes. The meeting was publicly noticed. Her administrative staff person was out on medical leave, so she did all the public notifications herself. She has not received any phone calls, or written comments regarding the project.

Mayor Varela asked how many parking spaces were required. Donna Kenney said eight. Mayor Varela asked if the City requires handicap parking. Donna Kenney said yes. Mayor Varela asked if there is a public parking area for additional parking. Donna Kenney said yes. She said that the developer would be required to make a contribution to a downtown parking structure. This requirement was placed on the Jaime Fuentes' project. Mr. Fuentes has the lot next to the Winton Insurance building and he could only accommodate a few parking spaces. As a condition of approval, he was required to pay a fee in lieu of parking spaces. Mayor Varela asked where the parking garage is in question located. Donna Kenney replied that we do not have a location selected at this point in time.

Council Member Espinoza asked if the City has a special fund for the parking structure where the money will be held until the City decides to construct it. City Manager Warne commented that monies that are paid for restricted purposes will be placed in a restricted, separate accounting fund.

Mayor Varela said Dr. Singh is not willing to participate in the fee for the parking project. Donna Kenney said she had some concerns. She thinks it has something to do with bank financing, but she did not have all the details.

Carlos Vierra, 615 113th Street, Modesto, the architect for the project, explained his concern was the \$10,000 in parking fees for such a small structure. He thought \$10,000 was a little bit high. Mr. Vierra said he calculated that he was required to have 12 parking places based on the plan they submitted. He said that his client was providing eight parking places, and so they were only four parking places short.

Donna Kenney stated that the parking calculations include one parking space for every 200 square feet of office and adequate parking for employees. She said we can get an estimate on how many employees are in the dental office, but we do not know how many employees are in the general office space. Therefore, she rounded off the number of employees to 10 because she did not have a use for the general office space.

Mayor Varela asked if there was street parking and if the owner could use that in the parking calculations. Donna Kenney said the City does not use street parking in its parking calculations.

Mayor Pro Tem Vierra asked about the trash enclosure. Donna Kenney said that it would be a concrete block enclosure with a gate, and a standard washout with a hose.

Mayor Pro Tem Vierra asked if the parking lot size in this development and Mr. Fuentes' development were the same. He said that he did not think it was fair that Mr. Fuentes paid a parking fee and this applicant does not have to pay one. Donna Kenney stated that Mr. Fuentes did not move forward on his project and has not paid anything.

Carlos Vierra explained that Dr. Singh is not saying that he does not want to pay anything. He feels that \$10,000 is too high. He suggested that it should be less, maybe half that amount.

Mayor Pro Tem Vierra said if Mr. Fuentes does build, and he had to pay for 10 parking spaces and his project is the same size, it would not be fair to him to pay and Dr. Singh not to pay.

Council Member Aguilar agreed with Mr. Vierra. She said we do have side roads where people can park on the street. We already use the side roads, and if they start using these side roads, she thought there could be a problem for the businesses and schools. Council Member Aguilar felt Dr. Singh should pay. She said that person who takes on the plan also has to take on paying for parking. We need to make sure the fees are paid.

Mayor Varela asked if Mr. Fuentes had to participate in the future parking structure? Donna Kenney said yes. It was required by the City.

Mayor Varela asked that since the City does not have a parking lot or parking structure, how will it be built? Donna Kenney stated that the parking fees will be placed in a separate accounting fund for a future parking lot that the entire downtown can use. The parking fees are a contribution toward the parking structure. When there is enough money and a specific location for it has been found, then the City could move forward and actually construct it.

Mayor Pro Tem Vierra said there is a for sale sign in the front yard of this project, can someone answer why?

Carlos Vierra explained that one of the things that made Dr. Singh think twice about the project was the \$10,000 parking fee. He was already stretching things, so he decided to put the property up for sale in case the project did not get approved by the City Council because he already had the money invested in the land. Carlos Vierra said he called Dr. Singh and said that we would talk about the parking lot later and that we come before the City Council tonight. He said at this point maybe we can still work something out.

Council Member Espinoza stated that he tried to help Mr. Fuentes' project because it was located in the downtown. He recommended that we help Dr. Singh and that he pay only half the cost for parking. This will attract more businesses to Livingston, especially in the downtown. We are trying to encourage people to locate in the downtown.

Mayor Varela told Dr. Singh that he had a business that is needed in our community. He asked Dr. Singh and if he would like to speak.

Dr. Singh explained that the “for sale” sign on the property was an option. He said that the City Council should not take it seriously. The sign can be removed at any time. But the costs are too high and he never expected this when he started the project.

Mayor Varela commented that this is a project that is going to help our downtown, just like Mr. Espinoza has said. It is important that we start looking at revitalizing the downtown. This is a step we are going to take in this direction. It is a good step. He said as far as parking is concern, this is something we can look at a later time.

Mayor Pro Tem Vierra said we really need to look at the future. He said you go to the post office and you cannot get a parking space. You go to Liberty Market and you can hardly find a parking space. Downtown is going to need a parking structure in the next few years. If we do not plan for the future, then we are going to have people angry with us.

Dr. Singh said he was concerned with parking. He said that the residential parking will only be at night. He thought that he needed only three or four parking spaces. His dental customers are all scheduled appointments, and patients do not come in at the same time.

Mayor Pro Tem Vierra commented that if anyone has gone to the dental office on Peach Avenue, they will find that there is nowhere to park. Main Street has no parking on either side of the street. People are parking in the church parking lot. He said that there is no guarantee that there will be adequate parking for this development because nobody knows what the second business is going to be.

Mayor Varela said we need to start devising a plan for the future. He understood Dr. Singh’s concerns.

Carlos Vierra stated that the dental office would have only three chairs. There would be only four or five people by appointment at any time, so eight parking spaces would be enough. The other office only has an 800 square foot office, so there would not be a lot of office space.

Mayor Varela thanked Carlos Vierra and opened the public hearing at 7:57 p.m.

Bill Ingram, 656 F Street, stated we need businesses in the downtown. He said there is going to be an apartment on the second floor. He asked where was the dedicated parking for that residence? Mr. Ingram stated you are going to need parking places for the residents if there is a one or two bedroom apartment unit. Donna Kenney explained that one space is designated for the doctor on a 24-hour basis. He will be living in the upstairs apartment. Any guests he has at his residence will come after 5:00 p.m. when the dental office is closed.

Mike Torres, 1616 Eighth Street, said he attended the Planning Commission when this project was discussed. He had some concerns about the Code and he talked with Donna Kenney about it. You are talking about an in-lieu parking fee for a future parking garage at \$1,000 per parking spot. The new parking garage will need to be centralized when it is constructed so that other businesses can use it too. Mr. Torres said when the new Code



was put in place in 2005, it took away part of the downtown commercial area towards D Street. He felt that the downtown commercial area was for businesses. With a conditional use permit, you can now build a residence in the downtown. Businesses are going to be run out if you allow residential uses in the downtown. Are we striving for more businesses or having people demolish their old house and build a new one? The in-lieu parking fee is going to have to satisfy all the businesses and underground utilities on the mixed use developments and on commercial property. Mr. Torres said he did not know how they are going to have two meters, one for the residence and the other for the commercial use. The General Plan had downtown commercial and there is actually 50% of residential of downtown commercial and they are there because of the zone change.

Donna Kenney said the developer is required to underground the utilities on his site. She said we would have to talk to Pacific Gas and Electric Company to determine if two electrical meters were needed. She stated that two meters may not be required since Dr. Singh is living in the apartment and has his business in the same building. The General Plan does support mixed use in the downtown area whether it's two uses on the same parcel or whether it is a vertical use. It does recommend an apartment above the first floor commercial business.

Manuel Mercado, 1449 Second Street, stated that this is the first time he has heard about the project, even though it is a public project. Speaking from personal experience, the building that was built behind his backyard is a two story house. He and his neighbors were not even notified of the construction. He agreed with Mr. Torres that you are using two standards—one for business and one for residential. You cannot have a business and a residence at the same time. There has to be a difference. You cannot have a two-story building in the downtown, just because you want to have a business. Mr. Mercado said there should be some kind of a formal thing. He said you tore down half of Livingston for a parking lot and Rite-Aid. That was a big mistake. If it takes away a lot of the environment, someone has to step up. You have to look at the situation and say hey what are you doing?

Donna Kenney said that with global warming and green house gases laws and regulations, planning has more mixed uses. Mix uses encourage people get out of their cars and do more walking. She said it is a lot nicer to drop your kids off at the day care, and then walk to work or to school. The trend is to not have such strict zones as was in the past in the 1960's and 1970's. It is going back to the more livable and walkable communities.

Mayor Varela asked Donna Kenney: "You mailed notifications to the neighboring residents surrounding the project and you have not had any response?" Donna Kenney said that is correct. She mailed out letters to all residents in a 300 foot circle and posted the notice in all our usual places including Channel 2, City website and at the public library. Mayor Varela closed the public hearing at 8:08 p.m., there being no further public comments.

Mayor Pro Tem Vierra said Dr. Singh indicated that he was going to live upstairs, and have a dental office and another business downstairs. He asked if each one of these units

would have their own meter. He said we have problems now with multiple houses or businesses on the same meter.

Donna Kenney asked if he was talking about the electric, water, sewer or all of these services. Mayor Pro Tem Vierra said any meter that that the City is responsible for. Donna Kenney thought there would be separate water meters for the residential and business uses.

Kathryn Reyes said that separate meters would be best. Residential and business users have different rates. In addition, commercial uses such as the dental offices are required to install backflow protection to keep the water system from being contaminated.

City Manager Warne stated that it is the City policy to have every business and every residence on its own separate water meter. This way we insure each user is charged the appropriate fee based on usage.

Mayor Pro Tem Vierra said many cities are going to mixed use developments because it allows people that own their businesses to live above them. The owners can keep an eye on their business when it is not open. He thought that Mr. Fuentes is thinking of the same thing.

Donna Kenney said Mr. Fuentes' development includes a restaurant on the first floor and an office upstairs.

Mayor Pro Tem Vierra said none of the current members of the City Council had anything to do with the approval of Rite Aid. He remembers people in the audience asking why the Rite Aid building was being put in the middle of the parking lot with a moat around it? He said nobody on the current City Council voted on the Rite Aid project. He said there is a lady with a business in her home behind this lot. So there are already businesses in the neighborhood.

Council Member Espinoza stated that he knew that a lot of cities are building structures in the downtown that have businesses on the bottom floor and condominiums on the top floor. He said that we need to encourage more businesses to be downtown and encourage downtown shopping. This will bring jobs to the downtown. He said that this development is a bit different than a residential area, but eventually we want to change the downtown. We have to accommodate businesses. He said that he mentioned the fences for the privacy of the neighbors.

Mayor Varela said this is a business that is needed in our community. He appreciates Dr. Singh for considering Livingston, and for coming all the way from Tracy. He said the project would help create jobs in our community.

MOTION: M/S Espinoza/Varela to adopt a resolution conditionally approving Site Plan/Design Review 2009-04 for the Dr. Singh mixed use project and charge only half of the parking fees, \$5,000, for in lieu parking. The motion failed to carry by the following 2-2 split vote:

AYES: Council Members: Espinoza, Varela

NOES: Council Members: Aguilar, Vierra  
ABSENT: Council Members: Nateras

For the record, City Attorney Hobbs said there was no action on this item.

Mayor Pro Tem Vierra stated that if we are asking Mr. Fuentes to do something, how is he going to feel if he has to pay more than this person? He does not feel that you can accommodate one and not the other.

Council Member Espinoza said he tried to reduce the parking fees in half for Mr. Fuentes' project. Those were better times. Now is a hardship. He said that even if Dr. Singh decided to build, it does not mean he is going to rent his space right away.

Mayor Varela said we have to prepare for the future. He said that we do not have a lot of people knocking on our door, and so we have to be willing to work with the people that want to come in. He said downtown parking is something that we will have to look at in the future. Those issues can be negotiated and discussed. Policy changes can be made.

City Attorney Hobbs said that in lieu of a subsequent motion that this item is continued to the next meeting

Motion: M/S Vierra/Aguilar to continue this item to the regular meeting of January 5, 2010. The motion carried 4-0.

Council Member Aguilar said it would be a good idea for the residents to attend.

## **CITIZEN COMMENTS**

Ms. Millan, no address given, stated that she was here for the children who do not graduate. This is a serious problem and asked if there is something we can do about this. When she goes to the School District, they told her that we have to get parents involved. So how do we get parents involved with the education of the children? These children are the community's children. Why do we not stand up for these children? We cannot do everything. There are children of drug dealers and then foster children. What about her child? They go to school every day. Parents need counseling too. We need another kind of education. If it is not there, how do we get these parents there? Why don't they do something instead of hiding? The Police Chief and the kids need to get together. She knows the police help make the community safe and make people safe on the streets. She has gone around and around and it seems like nobody pays attention to her.

Mayor Varela said we put on a community event about four months ago to talk to parents about gangs and drugs. We announced it in the paper and on Channel 2. We had a representative from the Merced County Mental Health Department. We also had an ex-gang member and different people talk to parents. No one showed up. We have made the effort. We are also working to get the Boy Scouts of America back in Livingston.

Ms. Millan said you want to do the Boy Scouts and a youth golf program. This is not going to help the bad kids. It is only going to help the good ones.

Mayor Varela said these programs are ready to help those kids that are confused. That is what we are trying to do. He said we are not going to be able to save every child.

Ms. Millan said we can do something about it. She suggested a boxing program. Mayor Varela said that was something that could be looked into.

John Whitaker, staff member for the Merced Arts Council and Special Projects Coordinator for the Merced Art Hop, said he was here with Luis De La Cruz, a business owner and one of the founders of the Art Hop. He said every three months local artists are invited to come to the Merced downtown business district to display and sell their work. This is a win-win situation for the business owners and the artists. The Art Hop is quickly becoming one of the biggest events in downtown Merced. Mr. Whitaker said one their missions is to get state funds to expand the event. We want to diversify the event and get more people from the County to attend. Vickie Castro, from Livingston, had a small exhibit at the Art Hop last October. She donated several beautiful art pieces from the school in Livingston. It was great exposure for middle school children. He said that they want to have more artists and more people attending the Art Hop. We wanted to be here and introduce ourselves this evening. The next Art Hop will be January 23 starting at 5:00 p.m.

Luis De La Cruz said that Kimberly Zamora helped initiate the Art Hop and he wanted to recognize her and her fiancé. He said that all types of artists are welcome. John Witaker said that the Arts Council provides transportation and scholarships. Everyone is invited and all events are free. He said that it is a great thing. It is on the weekend. More information can be obtained at [Mercedarthop.com](http://Mercedarthop.com).

Kathryn Schell Rodriguez, P.O. Box 163, informed the public that they can donate a pint of blood and receive a pint of ice cream. A blood drive will be held December 3, 2009, from 3:00 p.m. to 7:00 p.m. at the Veterans' Hall. She encouraged everyone to take an hour out of their busy schedule to give someone else a chance to live. Donate the gift of life.

Ms. Schell Rodriguez said you can do some of your Christmas shopping with the Ladies of the VFW. They will be hosting a big rummage sale on December 7-9 at the Delhi Veterans' Hall located at 9799 Stevens Street, Delhi from 8:00 a.m. to 5:00 p.m. Call Sue Wells for more information. All proceeds will go to the programs sponsored by the Veterans of Foreign Wars (VFW).

Ms. Schell Rodriguez said the 2009 Hubble space advent calendar is up on the net everyday for the next 25 days. A new photo will be revealed from the Hubble space telescope every day for the next 25 days. Ms. Schell Rodriguez thanked the two members of our community who volunteered to translate at our last meeting. She said that volunteers like these make Livingston is a great place to live.

Luis Flores, 707 Almondwood, said that he was happy about the court decision regarding the challenge of the Merced Farm Bureau to the General Plan. Mr. Flores read portions of the decision.

## CONSENT CALENDAR

The following consent calendar item was presented for the City Council's consideration:

2. Approval of Warrant Register Dated November 20, 2009.

Council Member Espinoza pulled Warrant No. 69249 and No. 69266 from the November 20, 2009, Warrant Register.

Council Member Aguilar asked that Warrant No. 69266 be moved for discussion under Item No.7. She said there is a Warrant under Item No. 5 that Mr. Espinoza had pulled for the Police Chief recruitment costs. She asked if these expenditures should be discussed now or when the item come up on the agenda?

City Attorney Hobbs said discussion could wait until that item comes up for discussion,

City Manager Warne suggested that discussion on these Warrants be held after the November 20, 2009, Warrant Register was approved.

Motion: M/S Vierra/Aguilar to approve the November 20, 2009, Warrant Register with exception of Warrant Numbers 69249 and 69266. The motion carried 4-0.

Council Member Espinoza said that Warrant No.69249 for disc golf and four separate charges to water. He said although it was inaugurated months ago, there was never a disc golf project approved by the Planning Commission or the City Council. He said that this is the same as approving a permit for a house.

Donna Kenney explained that this warrant had nothing to do with the disc golf course. The disc golf course was built and paid for by the Livingston Rotary Club. This warrant was for discs with the City seal.

Council Member Espinoza stated that the description on the Warrant is for planning. He said that the community wants soccer fields and baseball fields. He said that he saw other Warrants for cement. He also saw Public Works working out there.

Vickie Lewis, Assistant City Manager/Finance Director, told Council Member Espinoza that he was going on and on about something that has nothing to do with this particular Warrant. She said that he was talking about something that was not even on the City Council Agenda. This Warrant that has nothing to do with the disc golf course. She said that his Warrant was for Frisbees given out to children at the Street Fair to promote and connect us with the children in the community. We would not bring a small item such as this to the City Council for approval. This expenditure was within the budget and has already been approved by the City Council.

Mayor Varela said that this project is part of our healthy communities program where people are encouraged to be active. We have soccer fields for people that want to play soccer. This park provides different functions for residents to be actively involved with their families.

Vickie Lewis stated that there was an error in coding and part of the invoice was charged to water. It has been corrected. Council Member Espinoza told Vickie Lewis that he knew she had made a coding mistake. She said that the coding error has been corrected.

Council Member Espinoza said it seemed to him that it was part of the project. He said we are going after citizens. Vickie Lewis asked if he was talking about the Warrants or something else now. She thought that the topic was warrants. Council Member Espinoza thought it was part of the project.

Rick Soria, 1526 Main Street, said that the Livingston Merced Union High School District was going to remove their soccer field this year to make way for the expansion of the high school. He said that he will have more people involved in the soccer next year, and needs more soccer fields. He encouraged the City to build more soccer fields. Other cities such as Merced and Turlock are building soccer fields.

City Manager Warne stated that the City was considering building a temporary soccer field in conjunction with the Blueberry Crossing project on the vacant land at the Sports Complex. He said we already have a survey of the property, and we could install a temporary soccer field.

Mayor Varela commented that it was a great idea to build out at our sports complex. We have basketball courts that will shortly be installed. We should look at how we can use the land and consider a temporary soccer field. He sees kids out there all the time, and this is an issue that we need to start dealing with.

City Manager Warne stated that all funds for the Frisbee golf course came from the Rotary Club. This was not something done under the table. It was in the City newsletter and was announced at City Council meeting. He said that the City does all kinds of improvements in its parks including installing benches other things consistent with the park plan. He wanted to thank the Rotary Club for what they did in the park and for the money and materials they donated.

Donna Kenney said that the Frisbee Golf Course rings the Arakelian park and does not interfere with baseball or other current park activities.

Motion: M/S Vierra/Aguilar to approve Warrant No. 69249. The motion carried 3-1, with Council Member Espinoza voting no.

## **DISCUSSION AND POTENTIAL ACTION ITEMS**

3. Memorandum of Understanding Between The Merced Union High School District and the City Of Livingston Regarding the Deferral of Improvements to Peach Avenue.

Mayor Pro Tem Vierra excused himself at 8:55 p.m. due to a conflict of interest. He is employed by the Merced Union High School District.

City Manager Warne presented the agenda. He said Merced Union High School District has purchased approximately 19 acres on the south side of Peach Avenue for expansion of the facilities at Livingston High School. Several alternatives have been considered by the City of Livingston and the Merced Union High School District to deal with the routing of Peach Avenue as part of this expansion.

At the January 20, 2009, City Council meeting, the City Council voted to eliminate the closing of Peach Avenue as an alternative. Three alternatives remained for dealing with Peach Avenue. The City and the Merced Union High School District have had numerous discussions regarding this issue.

Option #1 is to close Peach Avenue at Seventh Street and Main Street and reroute the street to the south. The School District will be required to construct the road at its ultimate width and install curb, gutter and sidewalk and other improvements required of all development. The School District proposed this alternative in a May 14, 2008, letter to the City. On June 3, 2008, representatives of the School District appeared before the City Council to request this alternative. The School District suggested that Peach Avenue be rerouted so that the campus would not be divided. The City Council made no decision on the School District's request pending a decision by the voters on the proposed school bond. After the bond was approved by the voters in November 2008, the City made it clear that it would not participate in the condemnation of property for this alternative if the District did not have willing sellers. At this time, there is at least one property owner that does not wish to sell.

Option #2 is to raise Peach Avenue at Seventh Street and Main Street. This alternative would require the School District to do the road setbacks and install curb, gutter, sidewalk and other improvements required by all development. Please see street cross section prepared by the City and the pictorial representation prepared by the Merced Union High School District.

Option #3 is to install a pedestrian overpass over Peach Avenue. This alternative would require the School District to do the road setbacks and install curb, gutter, sidewalk and other improvements required by all development.

There appears to be a growing consensus that a modified Option #3 would resolve this long-standing issue. The law does not permit the School District and the City of Livingston to make any final decisions regarding improvements to Peach Avenue or enter into any formal agreement until the California Environmental Quality Act (CEQA) document is completed and approved. However, both entities can tentatively agree on the scope of work for the environmental document as outlined in the proposed Memorandum of Understanding. Section II (C) of the proposed Memorandum of Understanding (MOU) states:

“The Parties agree: That with respect to the Improvements, including their design and construction, this MOU does not constitute a legally binding agreement between the Parties and does not create any right enforceable against either Party or any of their officers or employees or any other person. Instead, this MOU simply expresses the aspirations of the Parties regarding the

Improvements in an attempt to create an initial sketch regarding the scope and nature of the Improvements. The Parties acknowledge that they may enter into a legally binding agreement in the future and that environmental review of the Improvements, consistent with CEQA, will need to occur prior to any approval of the Improvements.”

The project description for the CEQA study will contain the following responsibilities for the Merced Union High School District as part of the Livingston High School Expansion project:

1. Improve Peach Avenue consistent with the City’s standards and General Plan to the reasonable satisfaction of the City Engineer and as depicted in Exhibit “B” of the MOU. Such improvements to Peach Avenue shall be substantially completed on or before the date the District’s improvements, as described in Exhibit “C” of the MOU are complete.
2. Construct a pedestrian bridge over Peach Avenue, centrally, located between Main Street and 7<sup>th</sup> Street with the proceeds from the final sale of bonds from Measure M General obligation bond of 2008. Currently, the final sale is projected to occur no later than 2026.
3. Construct a crosswalk across Peach Avenue with a pedestrian-activated traffic signal or flashing red traffic light (or multiple red traffic lights, if deemed necessary by the City) or other light as approved by the City Engineer and with lights imbedded in the asphalt of the crosswalk which flash when activated by a pedestrian, which shall be substantially completed on or before the date the District’s improvements to the District property are complete. The crosswalk improvements shall include all necessary signage and striping per the California Manual on Uniform Traffic Control Devices.
4. Paint all curbs red on both sides of Peach Avenue between Main Street and 7<sup>th</sup> Street and include appropriate signage designating this section of Peach Avenue as a no parking zone on or before the date the District’s improvements to the District property are complete.
5. Construct an 8-foot non-climbable wrought-iron fence on top of a brick or concrete base along the entire length of the south side of Peach Avenue between Main Street and 7<sup>th</sup> Street, except at the crosswalk location, on or before the date the District’s improvements to the District Property are complete.
6. Construct a lockable gate at the entrance of the parking lot on Peach Avenue that will remain closed except during the starting and ending times of Livingston High School when school is in session.
7. Dedicate right-of-way for a 110’ wide 4-lane Minor Arterial for Main Street/Lincoln Boulevard as required per the City of Livingston Traffic/Circulation Master Plan. All improvements fronting the school property



including roadway widening, curb, gutter, sidewalk, street lights, landscaping and required transitions for the roadway at the north and south boundaries of the District property shall be completed on or before the date the District's improvements to the District property are complete.

The staff is recommending that the Memorandum of Understanding (MOU) with the CEQA project description with these elements be approved so that the environmental document can be prepared. The City and the Merced Union High School District will enter into a final Memorandum of Understanding (MOU) after the environmental document is approved.

Council Member Espinoza said he would like to make a motion to continue this item since this has been going on for 3 or 4 years. He said that he has a lot of question. He read from the proposed Memorandum of Understanding and said that we are agreeing, but we are not agreeing. Council Member Espinoza said he would like to digest this information. Since the project is only in the planning stages he wanted like to continue this item to a future meeting.

Mayor Varela asked City Attorney Hobbs to give an explanation. He said that the reason it is written this way is that the City and the Merced Union High School District cannot enter into a legally binding agreement until the California Environmental Quality Act (CEQA) document has been approved. However, both entities can enter into an agreement regarding the project description upon which the environmental document is based. This is what is taking place here. The other provisions of the Memorandum of Understanding (MOU) such as bonding are legally binding.

Council Member Espinoza stated that one of his main reasons is public information. He said that this is a touchy situation. He just wants them to be aware.

Mayor Varela said that we have been to a number of Merced Union High School District Board meetings. We have made it clear to them when they were considering taking the pink store that we are not going to take property by eminent domain. These meetings were publicly noticed in the paper and the website. He and the City Manager went to these meetings and helped to provide direction to the School Board. The process has taken about six months to get to this point. These meetings have been in the paper and so if community members do not understand, it is because they have not sought the information. As a community leader we need to look out for the best interest and safety of the people.

The City Council has held public meetings and taken public comment on all three options. A notice of one of the meetings was placed in the envelope with the City water bill and sent to residents. We have heard from the public. If you do not like this option, you will have to choose one of the other options.

Mayor Varela said we came to this conclusion after we voted as a City Council that we would not support the closure of Peach Avenue. The decision was made after input from the Police Department and the Fire Department. This was because Peach Avenue is a major east-west thoroughfare in the community.

City Manager Warne said that the City Council had public meetings on this issue last January and February. People filled the City Council chambers and spoke on this topic. Mayor Varela stated that the City Council came to a consensus and made a conscious decision at the time that it would not close Peach Avenue.

Council Member Espinoza said he was only asking for a little more time. He said that the High School has a feeling of how we are going to vote.

City Manager Warne said that if the City Council does not move forward with the Memorandum of Understanding (MOU) tonight, the Merced Union High School District will not be able to move forward with the California Environmental Quality Act (CEQA) document. This will delay the widening of Peach Avenue and the installation of the off-site improvements, including curb, gutter and sidewalk. He said that the staff and the City Attorney are happy to address any City Council concerns tonight, but he said that the City Council should not delay the decision for another month. This is not a new issue and not a new option. The elements contained in the Memorandum of Understanding (MOU) have been previously discussed at City Council meetings.

Council Member Aguilar said that the School District does not have the money for the expansion. She said that waiting two weeks or until next month is not too much to ask. She told the Mayor not to lecture her.

Kathryn Schell Rodriguez, P.O. Box 163, stated that the City Council should decide this issue this evening. The preparation of the California Environmental Quality Act (CEQA) document cannot commence until this issue is decided by the City Council. The Merced Union High School District lawyers have been bothering Mrs. Ow about the acquisition of her property and possibility taking it by eminent domain. The re-route option will slice through her property and make the rest of it useless. This was going on when the previous City Council was here, and she is looking at people in this room that sat on the City Council when the information was presented. What this does is make a decision. We are deciding that we are not going to choose the reroute option. There are CEQA technicalities that must be met, but it puts things in the right direction. She said that she is tired of going to meetings and having the decision postponed. It is time to fish or cut bait. This has been going on since Council Member Espinoza and former Council Member Soria were on the City Council. The day is here and it is time to vote.

Mayor Varela said that he will support delaying a decision to January 5. He said that he does not mean to lecture anyone, but sometimes the public meeting is the only time to explain the process. It is nothing more than an explanation of the public process.

Mike Torres, 1616 Eighth Street, requested a map of the options. He said that he has been to all of the meetings and they have been advertised. He said that the City Council should vote on this item tonight.

Mayor Varela said that the City has had drawings and has shown them to the public at previous public meetings on this topic.

Mayor Gurpal Samra, 1034 J Street, said that this project has been going on a long time. He asked City Manager Warne if it was correct that the pedestrian overpass would not be built until the year 2026.

City Manager Warne said that the project description states that the pedestrian overpass would be built when the last set of bonds are issued. It may be 2026 or it may be 2015, depending on the assessed valuation within the Merced Union High School District boundaries. It depends when the Merced Union High School District issues its final set of bonds. He said that there was opposition by some School District representatives to constructing the overpass now. They felt that the current amount of traffic on Peach Avenue did not justify a pedestrian overpass at this time. In addition, they were also concerned about the cost of the pedestrian overpass. They wanted to put the maximum amount of money into school facilities rather than the overpass. The Memorandum of Understanding (MOU) also requires the Merced Union High School District to post a bond to guarantee that the pedestrian overpass would ultimately be constructed. In this way the School District is being treated like any other developer.

Mr. Samra stated that Livingston is always been treated like an afterthought or redheaded step child. In the past, Livingston has been forgotten while facilities have been constructed at other schools in the District. It troubles him that it could be another 16 years before the pedestrian overpass is built. He said that the City Council should ensure that safeguards are in place to be sure that the pedestrian overpass. Other communities should also provide funds for the construction of the pedestrian overpass.

Mayor Varela stated that the Merced Union High School District is only constructing facilities in Livingston and Merced High School. Mr. Samra said that he is aware of this. Mayor Varela said that the only project that is going to be delayed is the pedestrian overpass. Mr. Samra wanted the pedestrian overpass to be built when the traffic flow reached a certain level.

Manuel Mercado, no address given, stated that the Mayor needed to give respect if he wanted respect. He said that the Mayor did not care and that he was sorry he voted for him.

Council Member Espinoza said that he is being pushed into make a decision. There have been community meetings on and off on this topic. He knows that the high school is pushing different options and he has been asking for information. He said that if he had received the Memorandum of Understanding (MOU) a month ago, he probably could have made a decision this evening. He said that there was nothing wrong with continuing this item.

Rick Soria, no address given, said that the high school expansion construction project will eliminate the soccer fields. He said that he needed direction regarding about what is going to happen next year and the availability of soccer fields. Mayor Varela said that we need to meet with Principal Ralph Calderon on this topic.

Motion: M/S Espinoza/Aguilar to continue this item to the regular meeting of January 5, 2010. The motion carried 3-0.

4. Introduce and Waive First Reading of an Ordinance of the City Council of the City of Livingston Amending Title 2 (Government Organization) Chapter 3 (Citizens' Service Committee) of the Livingston Municipal Code Relating to the Organization and Duties and Responsibilities of the Citizens' Service Committee.

The agenda item was presented by Mayor Varela. It was moved by Mayor Varela, seconded by Council Member Espinoza to continue this item to the January 5, 2010, regular meeting. The motion carried 4-0.

5. Consideration of Approval and Request by Council Member Espinoza to Discuss Warrant Numbers 68840, 68984, 69096, and 69181.

Council Member Espinoza said that these warrants were primarily for attorney fees. He made a motion not to approve Warrant Numbers 68840, 68984, and 69181. Council Member Aguilar said that Warrants 68840 and 69181 were pulled and released. Vickie Lewis asked what does the City Council want us to do?

City Manger Warne said that there has been a lot of confusion on which warrants the City Council wants to pay or not pay. He said that no checks have been cashed without approval of the City council. City Attorney Hobbs said he did not know what Warrants may or may not have cleared. He said that Warrants sent to his office are being held in a trust fund awaiting City Council approval.

Council Member Aguilar seconded the previous motion made by Council Member Espinoza.

Mayor Pro Tem Vierra said that several of the City Attorney billings are reimbursable to the City. He said that it does not mean that the City is not getting any of the money back.

The motion failed to carry by a 2-2 split vote with Council Members Aguilar and Espinoza voting yes, and Mayor Varela and Mayor Pro Tem Vierra voting no. The City Attorney said that this item will be brought back when the full City Council is present.

6. Policy Regarding Council Member Excused and/or Unexcused Absences from Council Meetings and Related Sanctions or Penalties.

Council Member Espinoza asked if the City Council could get the City policy or State law regarding this item from the City Attorney. City Attorney Hobbs said that he was not aware of any State law or City policy governing this issue. He said that the City Council can impose penalties if they wished. However, the enforceability of this policy would be difficult. He suggested that the City Council have a discussion and he could provide guidance on the legality of what they might want to do.

Council Member Aguilar referred to an attendance record and said that it showed that she was absent twice, but she only missed one closed session. City Manager Warne said the attendance record was prepared by the City Clerk from the meeting minutes.

Mayor Varela said that things happen in public officials lives and they are not able to attend City Council meetings. This is a fact of life. It happens. He said that he has not missed a City Council meeting. Tonight we have a City Council Member that had an emergency. We can respect an absence as long as we can move forward.

Council Member Espinoza said that he thought it was an outrage that the citizens wanted Mayor Pro Tem Vierra to be present for a protest rally. Mayor Pro Tem Vierra did not attend the rally. Council Member Espinoza said that he was accused of committing a Brown Act violation.

Mayor Varela said that we all concur that there are days (for whatever reason) that we will not be able to attend City Council meetings.

Council Member Aguilar said that this item is being considered tonight at her request. She said that the City Council added a provision governing the attendance of Planning Commission members. That was a big issue. There was a Planning Commissioner that was absent for several meetings and had to resign. City Council Members should be held to a higher standard than Planning Commission Members. There should be something on paper. If a person is in the hospital or someone passes away, that is acceptable.

City Manager Warne said that there is nothing in the City's current ordinances or resolutions for absences of City Council Members. This was put on the agenda at the request of Council Member Aguilar. We are waiting for City Council guidance as what Council Members want staff to do. The City Council has the responsibility to police itself and decide what to do. We are here tonight to take guidance.

Someone in the audience asked why Mayor Pro Tem Vierra had missed a City Council meeting. Mayor Varela said that he should not have to give a reason. Council Member Nateras is not here tonight and she should not have to give a reason.

Mike Torres asked the Mayor why he did not practice what he preached. He said that rules were established for the Planning Commission. City Council Members have taken the position and should be dedicated to show up. If you did not want the position you should not have run. If you cannot police each other, who is going to police you? We thought you were the "cream of the crop" when we elected you. Now you have turned sour. He suggested that there need to be some kind of rule.

Mayor Pro Tem Vierra said that the reason he missed the last time was because he had been put on 36-hour bed rest by a doctor. The second absence was because he was at an awake. He said that he had not missed a single meeting for the year, he did not miss any meetings the first two years he was in office. He then got cancer and had to be hospitalized. He was at the first City Council meeting right after he got out of the hospital.

Mike Torres said that he was just questioning the thinking of Mayor Pro Tem Vierra. Mayor Pro Tem Vierra said that he had no problem bringing a motion to the City Council.

Gurpal Samra asked why not have the citizen's create a policy? Mayor Varela said that the only penalty that can be imposed against a City Council Member is censure. That is limited. Who is going to enforce it? City Attorney Hobbs agreed and said that there is an enforceability problem.

Mr. Samra said that this is only a suggestion. The people on the Council dias are the policemen.

Bill Ingram said that the first year he was in office several years ago, the Mayor (during that period) was absent more than he was present. He said that the concern with Mayor Pro Tem Vierra is that when you drove by the school, he was at work or running the concession stand. The Mayor should be the one to assume the responsibility to make sure people are in attendance.

Kathryn Schell Rodriguez commented that she was at the Planning Commission meetings when Planning Commissioners were absent. The reason that it became such an issue was because there were not enough Planning Commission Members present to have a quorum to conduct business on numerous occasions. People that came before the Planning Commission could not get their projects approved. She has not seen the City Council fail to function due to a lack of a quorum. She said there has always been a quorum of at least three City Council Members so business could get done.

Teresa Land, 995 Hilltop Avenue, said everything being voted on tonight is a 2/2 tie vote. Agenda items are being put off until January, and so it does make a difference.

Council Member Aguilar asked the City Attorney if there was some kind of policy that can be written. City Attorney Hobbs said that it is up to the City Council to determine what they want to do. She could make a motion and see what happens. Staff and the City Attorney can prepare something and bring it back for adoption once guidance is given.

Council Member Espinoza suggested that \$150 be deducted from the City Council Member's paycheck if they miss a meeting.

Council Member Aguilar asked City Manager Warne how he can guide her and suggest ways to help her with this. City Manager Warne stated that the conduct of a Council Member and the policing of a Council Member is the responsibility of the City Council. As the City Attorney has stated, enforceability of any policy at the City Council level is difficult. Other than deducting pay or censuring an individual there is not a lot that can be done to a member of the City Council. The problem is what is an excused or unexcused absence? This is where the enforceability is. If you want to make a blanket policy that says if you miss a meeting, the City is going to deduct your pay regardless of the reason, this can be done.

Council Member Aguilar stated that this is what she wanted to do.

City Attorney Hobbs clarified that Council Member Aguilar's desire was that any City Council Member that missed a meeting, regardless of the reason, would have their pay

deducted for that meeting. He asked her if this was her motion? Council Member Aguilar stated that this was her motion.

Mayor Pro Tem Vierra said that the City Council meeting is not the only thing a City Council Member does during the month. Are you saying that you are giving up this stipend because the City Council Member does not attend the meeting? Don't you do other things besides the meeting? Council Member Aguilar stated that you should be there. Mayor Pro Tem Vierra stated that he does not have the worst attendance record on the City Council.

Motion: M/S Aguilar/Espinoza that a City Council Member will not be paid if they are absent from a City Council meeting regardless of excuse.

Mayor Pro Tem Vierra said this last week he gave his \$150 to the family that was displaced from their home by a fire. He gives to a lot to the people in this community. However, he will go along with whatever the majority says.

City Manager Warne said that you can do this. He has never seen any City Council do this before. He does not see any City Council Member that is consistently absent. He does not see a problem if a member of the City Council misses one or two meetings a year due to a family emergency or similar issue. Many City Council Members spend a lot of time outside City Council meeting on City business.

City Attorney Hobbs said this would not be retroactive.

City Manager Warne said that it would be best to have the City Council approve this policy by ordinance or resolution. City Attorney Hobbs agreed and suggested that a resolution would be a cleaner way to do it.

Mayor Pro Tem Vierra noted that Martha Nateras is not here. Does she get a say into what this policy says?

Mayor Varela suggested this item be continued to the January 5, 2010, regular meeting.

City Manager Warne said the advantage of a resolution is that the policy would be clearly stated.

Council Member Aguilar thought the Council should vote tonight, without a written resolution.

A roll call vote on the Council Member Espinoza's motion resulted in a split vote of 2-2, with Council Members Aguilar and Espinoza voting yes, and Mayor Varela and Mayor Pro Tem Vierra voting no.

Motion: M/S Varela/Espinoza to continue this item to the regular meeting of January 5, 2010. The motion carried 3-1, with Council Member Aguilar voting no.

## 7. Police Chief Recruitment and Costs.

Council Member Espinoza stated we are spending over \$15,000 to recruit a Police Chief. He said the person serving as acting Police Chief is doing a good job. She is capable, and so we should not be spending all this money.

Mayor Varela asked how the process of selecting a Police Chief occurs. City Manager Warne said that the City took proposals from various executive search firms. These proposals were brought to the City Council and they voted to hire Bob Murray and Associates to assist with the recruitment and selection of the new police chief. The proposal was for \$18,000. When the previous police chief resigned, we moved forward with the recruitment for the new chief. The City has advertised the position and the applications have gone to the executive search firm. The executive search firm has extensive experience in recruiting and selecting police chiefs. He said that the Livingston Municipal Code states that the City Manager appoints all employees, including the police chief, except the City Clerk, City Treasurer and City Attorney. He said that we are in the recruitment process.

Council Member Espinoza said that the vote to hire the executive search firm took place under a previous City Council a year-and-half ago. The decision should have been brought back when the new City Council took office.

Council Member Aguilar said that many people might have the education, but do not have the experience of Lieutenant Silva. She would rather have a Police Chief that is known in the community and has been here for some period of time. Some people look good on paper, but do not have the background of Lieutenant Silva. It is nice to see her around. She does not see why we cannot keep her and allow her to get the education degrees to keep her job. Council Member Aguilar has not heard anything negative about Lieutenant Silva.

Mayor Varela said there is a process. It is not that we do not appreciate what Lt. Silva has done for the community. The City Council should not undermine the process. He noted the City Council does not select the chief of police. That person is hired by the City Manager. He said by doing this, Council Member Aguilar is undermining the process.

Council Member Aguilar said it is actually the City Manager's way of doing business. City Attorney Hobbs explained that under the City Municipal Code, the City Manager appoints the Police Chief. Council Member Aguilar asked the Mayor if Lieutenant Silva could speak. The Mayor agreed.

Interim Police Chief Sharon Silva stated that one of the first things that she was told was that Livingston is a very political City. She has been with the Livingston Police Department for 18 years and she appreciates the opportunity that the City Manager has given her to be the Interim Police Chief. Interim Chief Silva said that she is applying for



the job and is proud to be the Interim Police Chief. She said that, no matter what decision the City Manager makes, she will still be here in Livingston.

Council Member Espinoza said that the City Manager makes the decision on the appointment of the Police Chief. He said that he did not know the City Manager was hiring the new Police Chief, and said that the City Manager did not come to the City Council about this issue. He said that the economy is bad and the Interim Police Chief should be given the chance.

Katheryn Schell Rodriguez said that there is a website that shows jobs across the country. The posting of a job on the website does not mean that a person within the organization will not get the job. Sometimes jobs are posted for one reason or another, including legal reasons. This is a Warrant for services that are already rendered. She asked the City Attorney to explain what happens to a City that does not pay its bills.

City Attorney Hobbs explained that if the vendor chooses to they can sue the city for the debt.

Gurpal Samra said that the City Manager hires, but the City Council has to approve his employment contract. Mayor Varela said the City Manager still has to hire the individual.

Motion: M/S Espinoza/Aguilar not to pay Warrant No. 69096 and 69266. The motion failed due to a split vote of 2-2, with Council Members Aguilar and Espinoza voting yes, and Mayor Varela and Mayor Pro Tem Vierra voting no.

8. City Manager Announcements and Reports.

City Manager Warne reported the City received another grant from the U.S. Department of Housing and Urban Development for \$800,000 for housing rehabilitation and a first-time home buyer program. The City also received another Land and Water Conservation grant for restrooms and a picnic shelter at the Livingston Sports Complex. The \$100,000 check was received from the developer who took over the Kishi development for the design and engineering of a skateboard park. He said that we continue to see improvements throughout our community.

**ADJOURNMENT**

The meeting was adjourned by consensus at 10:25 p.m.

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City Clerk of the City of Livingston

APPROVED:

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Mayor or Mayor ProTempore

*The written meeting minutes reflect a summary of specific actions taken by the City Council. They do not necessarily reflect all of the comments or dialogue leading up to the action. All meetings are digitally recorded and are an official record of the meeting's proceedings. Digitally recorded verbatim minutes are available, upon request, and may be obtained at Livingston City Hall.*

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