

**MINUTES OF THE FOWLER CITY COUNCIL MEETING  
NOVEMBER 15, 2005**

Mayor Simonian called the meeting to order in the Council Chambers at 7:00 p.m.

Council members present: Simonian, Shaw, Aguayo, Cardenas, Nagata

City staff present: City Manager Elias, City Clerk Davis, Police Chief Jamgochian, Finance Director Wong, Community Development Director Deaver, Senior/Recreation Director Monis, Planning Consultant O'Neal, City Attorney Wolfe

The Flag Salute and the Pledge of Allegiance were followed by an invocation given by Mayor Pro-Tem Shaw.

**PUBLIC HEARINGS - Continued from 10/18/05:**

**A) FIRST READING OF ORDINANCE NO. 2005-05 (UCHIYAMA PROPERTY)**

Planning Consultant O'Neal stated that the City received a Tentative Tract Map application proposing to divide property, located at 339 S. Fowler Ave., into four lots. The property is currently zoned UR (Urban Reserve). He explained that the Subdivision Map Act requires zoning to be consistent with a General Plan, and a parcel map must be consistent with zoning. The General Plan designates the property as medium density residential, so the R-1-6 zone district would be the most appropriate zoning for this designation. Staff recommended approval of an ordinance amending the City's Zoning Map to designate the property as R-1-6, which would allow approval of the parcel map.

The Mayor opened the duly noticed public hearing on the matter at 7:08 p. m. There were no public comments and the hearing was closed at 7:08 p. m. Councilmember Nagata made a motion to waive the first reading and approve Ordinance No. 2005-05 "An Ordinance of the City Council of the City of Fowler Amending the Official Zone Map: Zoning Amendment No. 05-02" (Uchiyama Property at 339 S. Fowler Avenue). The motion was seconded by Mayor Pro-Tem Shaw and carried on a 5-0-0 roll-call vote.

**B) FIRST READING OF ORDINANCE NO. 2005-06 (ALVAREZ PROPERTY)**

Mayor Simonian left the Council Chamber due to a conflict of interest from owning property within 500 feet of property located at 210 N. 6th Street, and having a business relationship with the owner. Mayor Pro-Tem Shaw then chaired the discussion.

Planning Consultant O'Neal said that the City received a site plan for the subject property to construct a duplex. The current zoning is R-1-6, which would not allow for development of the duplex, so the zoning must be changed to R-2-A. The Planning Commission recently recommended approval of a Zoning Ordinance amendment to allow the project. Staff

recommended the Council's approval as an infill project that would increase the rental housing stock in the City.

Mayor Pro-Tem Shaw opened the duly noticed public hearing on the matter at 7:18 p. m. Romero Trujillo, project developer, stated that large trees would be used as a buffer zone for the neighbors, and that the project would enhance the area.

Fowler resident Linda Turpin spoke in favor of the project, stating that it would give people who cannot afford to purchase a home an opportunity to live in Fowler.

Norma Maza of Fowler spoke against the project, noting that tenants of the rental property could create problems, and neighbors in the area had signed a petition in opposition to the project.

Mr. Trujillo added that the original building plans called for constructing car ports, but due to concerns expressed about loitering, he would amend the plans and install garages instead. Security lighting would also be installed.

Raul Alvarez, property owner, stated that he understood the neighbor's concerns and affirmed that he would monitor the property because he lives nearby.

With no further comments, the public hearing was closed at 7:38 p. m.

The Council discussed the matter. It was mentioned that the duplex would create needed housing for those that are not able to afford a home, and that the property owners had confirmed that they would oversee the property.

Councilmember Cardenas made a motion to waive the first reading and approve Ordinance No. 2005-06 "An Ordinance of the City Council of the City of Fowler Amending the Official Zone Map: Zoning Amendment No. 05-01" (Alvarez Property at 210 N. 6th Street) with the inclusion of a closed garage requirement. The motion was seconded by Councilmember Aguayo. The motion carried on a 4-0-1 roll call vote, with Mayor Simonian absent from the Council Chamber and not participating due to a conflict of interest.

Mayor Simonian then returned to the Council Chamber.

**C) PUBLIC HEARING REGARDING MEDICAL MARIJUANA:**

**1) CONSIDER ADOPTION OF ORDINANCE NO. 2005-04 AND CONSIDER AND ADOPT WRITTEN REPORT**

City Attorney Wolfe explained that the Council was being asked to extend the City's urgency ordinance pertaining to Medical Marijuana, which was due to expire on December 6, 2005. A permanent ordinance was also on the agenda for the Council's consideration, however, the urgency ordinance must first be extended since it would expire before a permanent ordinance could go into effect. In addition, a written report defining what the City has done to address the

conditions that led to the adoption of Urgency Ordinance No. 2004-18 pertaining to Medical Marijuana, as extended by Urgency Ordinance No. 2005-01, must be adopted. The written report was the agenda staff report which explained what the City has done to address the matter, which was to draft a permanent ordinance.

The Mayor opened the duly noticed public hearing on Ordinance No. 2005-04 at 7:50 p. m. With no public comment, the public hearing was closed at 7:50 p.m.

Mayor Pro-Tem Shaw made a motion to adopt Ordinance No. 2005-04, “An Urgency Ordinance of the City of Fowler Further Extending Urgency Ordinance No. 2004-18 (Second Extension) Which Adopted Interim Regulations Governing Medical Marijuana Dispensaries and the Cultivation of Medical Marijuana,” and adopt the staff report as the required written report. The motion was seconded by Councilmember Aguayo, and carried on a 5-0-0 roll-call vote.

## **2) FIRST READING OF ORDINANCE NO. 2005-07**

City Attorney Wolfe explained the proposed permanent ordinance concerning Medical Marijuana. There exists a dichotomy between State and Federal law regarding the issue, and unless there is a ruling that State law is preempted by Federal law, a city would be bound by State law and therefore cannot be prosecuted under State law concerning the cultivation and dispensing of Medical Marijuana. However, it had been proven that communities that allow Medical Marijuana cultivation and dispensaries have experienced an increase in crime, including robberies of large sums of money from patients and dispensaries, fire hazards, violent encounters between growers and citizens, and other problems. He noted that the urgency ordinance adopted the prior year that the Council had just voted to extend, imposed interim regulations such as: prohibiting dispensaries that distribute Medical Marijuana to more than two persons, requiring cultivation to occur only in a secure, fully enclosed structure, and allowing cultivation only in industrial zones. To date, there have been no known violations of these regulations.

To address the adverse effects associated with the cultivation, distribution, and consumption, staff had presented three options to the Planning Commission at their recent public hearing that were now before the Council for consideration: Option 1: Adopt an ordinance that addresses the adverse effects associated with the cultivation, distribution, and consumption of Medical Marijuana while at the same time attempting to strike a balance between State and Federal law. Option 2: Adopt an ordinance that prohibits Medical Marijuana dispensaries and the collective or cooperative cultivation of medical marijuana as these activities are in violation of Federal law. This option is subject to challenge by Medical Marijuana advocates as a violation of State law. Option 3: Do nothing, as the cultivation, distribution, and consumption of Medical Marijuana are in violation of Federal law. Dispensaries which operate as a business selling marijuana to any person entitled to receive it are also likely in violation of State law. This option would require reliance on Federal, State, and local officials prosecutorial discretion.

Mayor Simonian opened the duly noticed public hearing on the matter at 8:50 p. m. Noah Rodriguez of Fowler spoke in favor of adopting Ordinance No. 2005-07 - Option 2. There were no further public comments and the hearing closed at 8:51 p. m.

After a discussion, Councilmember Cardenas made a motion to waive the first reading and approve Ordinance No. 2005-07 (Option 2), “An Ordinance of the City Council of the City of Fowler: (1) Adding Chapter 18, of Title 5, of the Fowler Municipal Code pertaining to Medical Marijuana; (2) Adding Section 9.6.1207, of Article 12, of Chapter 5, of Title 9, of the Fowler Municipal Code Defining Prohibited Uses to Include Those Uses Prohibited With the Addition of Chapter 18, of Title 5; and (3) Adding Unchaptered Health, Safety, and Welfare Ordinance Pertaining to Medical Marijuana Businesses. The motion was seconded by Mayor Pro-Tem Shaw. The motion failed on a roll call vote as follows: Ayes: Cardenas, Shaw; Noes: Aguayo, Nagata, Simonian; Absent: None.

Further discussion on the three options ensued. Councilmember Aguayo then made a motion to reconsider the vote, and waive the first reading and adopt Ordinance No. 2005-07 (Option 2), “An Ordinance of the City Council of the City of Fowler: (1) Adding Chapter 18, of Title 5, of the Fowler Municipal Code pertaining to Medical Marijuana; (2) Adding Section 9.6.1207, of Article 12, of Chapter 5, of Title 9, of the Fowler Municipal Code Defining Prohibited Uses to Include Those Uses Prohibited With the Addition of Chapter 18, of Title 5; and (3) Adding Unchaptered Health, Safety, and Welfare Ordinance Pertaining to Medical Marijuana Businesses. The motion was seconded by Councilmember Cardenas. The motion carried by the following roll call vote: Ayes: Aguayo, Cardenas, Shaw; Noes: Simonian, Nagata; Absent: None.

**STAFF REPORTS**

**A) ADOPTION OF RESOLUTION NO. 2022**

Community Development Director Deaver stated that staff recommended approval of Final Parcel Map No. 05-01 (Collins). The property, located near Temperance Avenue and Golden State Boulevard, will be divided into four parcels. Mr. Collins will have a trucking business on one of the parcels, and another may be sold to individuals that plan to build an ice manufacturing plant.

Councilmember Cardenas made a motion to adopt Resolution No. 2022, “A Resolution of the City Council of the City of Fowler Approving Final Parcel Map No. 05-01 (Collins) and Subdivision Agreement (short form with notice of land use restriction),” seconded by Councilmember Aguayo. The motion carried on a 5-0-0 roll-call vote.

**B) APPROVE CDBG LOAN AGREEMENT WITH DALE BRISCO, INC.**

Finance Director Wong gave background information on the request for a second business loan from Community Development Block Grant (CDBG) funds for Dale Brisco, Inc., in the amount of \$70,000. The funds would be used for the purchase of press brake equipment, which would generate 2 to 3 new jobs.

Mayor Pro-Tem Shaw made a motion to approve and authorize the City Manager to execute a CDBG Loan Agreement Between the City of Fowler and Dale Brisco, Inc., in the amount of \$70,000, seconded by Councilmember Aguayo. The motion carried on a 5-0-0 roll-call vote.

## **B) CITY MANAGER'S REPORT**

City Manager Elias asked to schedule a Redevelopment Agency meeting on December 6, 2005, at 5:00 p. m. to conduct a workshop on updating the Implementation Plan.

## **D - E) COMMUNITY DEVELOPMENT AND FINANCE DIRECTORS REPORT**

There was no report given from the Community Development Director or Finance Director.

## **E) POLICE AND FIRE DEPARTMENT REPORT**

Chief Jamgochian stated that he included a report in the agenda packet on Operation GOLDSTAR, held on November 5, 2005, which resulted in several felony narcotics, DUI, and other arrests.

## **CITY ATTORNEY'S REPORT**

City Attorney Wolfe reported that flat-rate parcel taxes are permissible if they are used for special purposes, such as public safety, but must have 2/3 voter approval.

## **CONSENT CALENDAR**

The Consent Calendar consisted of: A) Ratification of Warrants - November 15, 2005; and B) Approve Minutes of the City Council Meeting - November 1, 2005. Councilmember Aguayo made a motion to approve the Consent Calendar, seconded by Councilmember Nagata. The motion carried on a 5-0-0 roll-call vote.

## **COMMITTEE REPORTS**

Councilmember Aguayo attended a recent League of California Cities division meeting with Councilmember Cardenas and City Manager Elias. He was appointed to the League's Policy Committee for Transportation, Communication and Public Works. He attended a Planning Commission meeting on November 3, 2005 where they discussed the proposed Medical Marijuana ordinance. He attended a recent Golden State Corridor meeting and said that the next meeting would be held on January 11, 2006, in Selma. He also attended a Five Cities meeting in Sanger.

Councilmember Cardenas also mentioned the League division meeting in Tulare on November 2, 2005. He attended an SKF meeting on November 10, 2005 where they discussed improvements to the sewer line on 8th Street.

## **ADJOURNMENT**

Having no further business, Councilmember Aguayo made a motion to adjourn, seconded by Councilmember Cardenas. The meeting adjourned at 9:50 p.m.