



# **CITY OF ATASCADERO CITY COUNCIL**

---

## **DRAFT MINUTES**

**Tuesday, May 11, 2010**

**City Hall  
Council Chambers  
6907 El Camino Real, Atascadero, California**

**City Council Closed Session: 5:45 P.M.**

**Community Redevelopment Agency Special Meeting: 6:00 P.M.**

**City Council Regular Session: Immediately following  
conclusion of the Redevelopment Agency Meeting**

**CITY COUNCIL CLOSED SESSION: 5:45 P.M.**

**1. PUBLIC COMMENT – CLOSED SESSION – None**

**2. CALL TO ORDER**

- a. Conference with Labor Negotiators (Govt. Code Sec. 54957.6)**  
Agency designated representatives: Wade McKinney, City Manager  
Employee Organizations: Atascadero Firefighters Bargaining Unit;  
Atascadero Police Association; Service Employees International Union,  
Local 620; Mid-Management/Professional Employees; Non-Represented  
Professional and Management Workers and Confidential Employees

### 3. ADJOURN

#### CLOSED SESSION REPORT

City Attorney reported that there was no reportable action taken.

#### CITY COUNCIL REGULAR SESSION: 6:00 P.M.

Mayor Fonzi called the meeting to order at 7:10 p.m. and Mayor Pro Tem O'Malley led the Pledge of Allegiance.

#### ROLL CALL:

Present: Council Members Clay, O'Malley, Kelley, Béraud and Mayor Fonzi

Absent: None

Others Present: City Clerk / Assistant to City Manager Marcia McClure Torgerson

Staff Present: City Manager Wade McKinney, Assistant City Manager Jim Lewis, Administrative Services Director Rachelle Rickard, Community Development Director Warren Frace, Public Works Director Russ Thompson, Community Services Director Brady Cherry, Police Chief Jim Mulhall, Fire Chief Kurt Stone, and City Attorney Brian Pierik.

**APPROVAL OF AGENDA:** Roll Call

Mayor Fonzi stated that it has been suggested that Item #C-3 be moved to #A-4.

**MOTION:** By Council Member Clay and seconded by Council Member Béraud to approve the agenda as amended.

*Motion passed 5:0 by a roll-call vote.*

#### A. CONSENT CALENDAR:

1. [City Council Meeting Draft Minutes – April 13, 2010](#)
  - Recommendation: Council approve the Draft Meeting Minutes of April 13, 2010. [City Clerk]
2. [March 2010 Accounts Payable and Payroll](#)
  - Fiscal Impact: \$1,413,541.25

- Recommendation: Council approve certified City accounts payable, payroll and payroll vendor checks for March 2010. [Administrative Services]
3. [Transit Center Engineering Design Contract Award \(Contract for Professional Services\)](#)
- Fiscal Impact: Not to exceed \$71,972.00. SLOCOG has committed Proposition 1B funding for the design of the project
  - Recommendation: Council authorize the City Manager to execute a contract with Wallace Group, Incorporated to design the Transit Center improvements for an amount not to exceed \$71,972.00. [Public Works]
4. [On-site Alcohol Sales License Determination of Public Convenience - PLN 2010-1363 -- 6917 El Camino Real, Suite C "Galaxy Theater" \(Colony Square, LLC/Galaxy Theater\)](#)
- Fiscal Impact: Slight positive fiscal impact expected from increased sales tax.
  - Recommendation: Council adopt Draft Resolution A finding that a public convenience would be served by allowing the issuance of an on-site sale of *beer and wine* license for the Galaxy Theater, a new establishment located at 6917 El Camino Real (Colony Square). [Community Development]

**MOTION:** By Council Member Clay and seconded by Council Member Béraud to approve the Consent Calendar.  
*Motion passed 5:0 by a roll-call vote. (#A-3: Contract No. 2010-010, #A-4: Resolution No. 2010-038)*

#### UPDATES FROM THE CITY MANAGER:

City Manager Wade McKinney gave an update on the following issues:

- The City Council reviewed the quarterly Treasurer's report and the report from the Grand Jury about elected City Clerks and City Treasurers at the Finance Committee meeting earlier tonight.
- WalMart open house had over 100 people in attendance.
- Assistant City Manager Jim Lewis reviewed the Office of Economic Development webpage and Tools for Business Success site.

#### COMMUNITY FORUM:

Mitch Paskin asked that his questions concerning Oak Ridge Estates, that were asked at the last Council meeting, be answered. What building permits are outstanding? Who is going to pay for the damage to the road?

Jim Wilkins, President of the Atascadero Historical Society, announced an upcoming event at the Colony House.

Len Colamarino asked for an update on the FEMA appeal concerning the restoration of the City Hall.

Warren J. Sarvis, III, stated that the Council broke State law last month when they voted to ban medical marijuana facilities.

Joanne Main, Atascadero Chamber, announced upcoming Chamber events in Atascadero.

Chuck Ward, co-chairman of the Purple Heart Trail committee, gave the Council an update on their progress.

Steve Martin, Main Street Executive Director, announced upcoming Main Street events in Atascadero.

David Broadwater expressed his opinion concerning the events between two Council Members at the last meeting. He also asked the City Council to consider adopting a resolution, at their next meeting, against the International Whaling Commission's request to lift the moratorium on commercial whaling. (Exhibit A)

Ron Walters stated his opinion concerning the events between two Council Members at the last meeting.

Warren J. Sarvis, III, asked for permission to hand out business cards.

***Mayor Fonzi closed the COMMUNITY FORUM period.***

City Manager Wade McKinney responded to questions asked:

- Oak Ridge Estates – staff is acquiring the information and will respond to Mr. Paskin by the end of the week.
- FEMA appeal is not yet on the City's website, but it is available in City Hall
- City Attorney respectfully disagreed with the comment that the City violated State Law.

***There was Council consensus to have Mr. Broadwater submit more information concerning the whaling moratorium for the Council to review.***

**B. PUBLIC HEARINGS:**

**1. Weed Abatement – Hearing of Objections**

- Fiscal Impact: The costs and revenues associated with the Weed Abatement Program vary from year to year and are dependent on property owner non-compliance. The fees are placed on the San Luis Obispo County Special Tax Assessment for the fiscal year 2010-2011 Tax Roll.
- Recommendations: Council:
  1. Hear all objections to the proposed removal of vegetative growth and/or refuse and allow or overrule any objections; and,
  2. Authorize the Fire Chief to proceed and perform the work of abatement. [Fire]

Fire Chief Kurt Stone gave the staff report and answered questions from the Council.

**PUBLIC COMMENT:**

Jerry Williams stated he has a problem with the weed abatement program, and expressed his concerns.

***Mayor Fonzi closed the Public Comment period.***

- MOTION:** By Mayor Pro Tem O'Malley and seconded by Council Member Béraud to:
1. Hear all objections to the proposed removal of vegetative growth and/or refuse and allow or overrule any objections; and,
  2. Authorize the Fire Chief to proceed and perform the work of abatement.
- Motion passed 5:0 by a roll-call vote.***

**C. MANAGEMENT REPORTS:**

1. [PLN 2009-1341 -- CUP 2009-0244 / RAB 2010-0019 Conditional Use Permit for a 10 Screen Movie Theater / Retail / Restaurant building Request to Summarily Vacate a Portion of Atascadero Mall Ave. and El Camino Real -- 6320 - 6490 El Camino Real \(Hoff / Wysong\)](#)
  - Fiscal Impact: The applicant shall pay all fees and expenses to abandon the Right-of-Way. City Council will be considering issues regarding right-of-way compensation and final terms of the property transfer. The theater and retail portions of the project will be revenue positive to the City regarding sales tax and property tax increases.

- Recommendations: Planning Commission Recommends the City Council:
  1. Adopt Draft Resolution A approving Road Abandonment 2010-0019 to summarily vacate a 10-foot wide road and landscape easement along the El Camino Real right-of-way, and a portion of Atascadero Mall Ave based on findings and subject to conditions of approval; and,
  2. Adopt Draft Resolution B approving a Conditional Use Permit, height waiver, and Tree Removal Permit for the La Plaza Theater project based on findings and subject to conditions. [Community Development]

Community Development Director Warren Frace gave the staff report, Public Works Director Russ Thompson explained the requested easement and requested road abandonment, and they both answered questions from the Council.

#### Ex Parte Communications

Council Member Clay spoke to Larry Wysong who stated that none of the additional properties are tied down.

***Mayor Fonzi recessed the meeting at 8:35 p.m.***

***Mayor Fonzi reconvened the meeting at 8:45 p.m.***

#### **PUBLIC COMMENT:**

Michael Sherer, Applicant representative, explained the process they have followed and answered questions from the Council.

John Roush, theater owner, answered questions from the Council. He stated that he needs the City to approve the conditional use permit before he pulls all the additional properties together, acquire financing, etc. Mr. Roush said that he will not build the theater without the balance of the project.

Chuck Ward, Planning Commissioner, stated he is the one Commissioner who voted against this project. He explained that his reason was that this project just doesn't make sense. He suggested slowing this process down and conducting an economic analysis.

Alicia Hammond stated that everyone she has talked to says "Two theaters in Atascadero?" She urged the Council to deny this request.

Jim Wilkins, President of the Historical Society, said this project doesn't make sense. He urged the Council to not abandon the road.

Mike Zappas urged the Council to look very carefully at the parking. He stated he would love to see this block developed, but cautioned the Council on this proposal.

Len Colamarino, Planning Commissioner, said that when the Planning Commission heard this item, they did not have the information the Council received from the Galaxy Theater today. After reviewing this information, he asked the Council to slow down the process.

Tom Comar stated he is shocked because the City claims to be business friendly. He asked where their business friendly attitude has gone. He urged the Council to call Galaxy's bluff.

Michael Lautner told the Council they have a difficult decision to make. He strongly urged the Council to conduct an economic study before making this decision.

Lee Perkins said that she is aghast at how the Council has changed its attitude concerning this project.

George Schroff stated that he agreed with the suggestion of an economic study before approving this conditional use permit.

Ben Hoff, Applicant and property owner, said that in his experience as a City Attorney he has not seen such scrutiny on a proposed project. He asked the Council to approve the proposed conditional use permit.

Karyn Sturtevant, President of Main Street, read a prepared statement from their Board. The statement suggested that the following actions would benefit the retail development in the Colony District; the removal of the height restriction, vacate the 10 foot wide road and landscape easement along El Camino Real, and be mindful of the cumulative impacts on parking created by any downtown development.

Wesley Dodds said this project is beautiful but seems to be a concept, and not a prepared plan. This project seems to be moving through the process very quickly and asked the Council to slow down and be cautious.

David Bentz, Planning Commissioner, stated that the Commission approved a plan that requires John Roush to acquire a building permit before he builds his project. He believes both theaters would make a profit.

Warren J. Sarvis, III, urged the Council to do their homework on this issue.

Jim Shores, property owner of gas station, asked the Council to approve Mr. Roush's request for a conditional use permit.

Joanne Main, Executive Director of Chamber, read a prepared statement of their Board asking the Council to postpone making this decision to allow for the Council to acquire more information, such as an economic study. (Exhibit B)

Bruce Bevins stated that he thinks everyone here wants the Downtown to thrive but he is concerned about this proposal. He suggested postponing this decision.

Frank Rimkus, CEO of Galaxy Theater, gave a brief background of his educational and work history. He stated that he is concerned with how quickly this proposal has gone from initial proposal to approval tonight. Mr. Rimkus said, for example, that Galaxy should have over 400 parking spaces, and they will only have 166. This proposed theater will have much less. He asked the Council to create a level playing field and require La Plaza to comply with the City's conditions for approval of a CUP.

Sandy Jack, Planning Commissioner, said that the Colony Square was approved by a previous Council and the current Council is more business friendly. He stated that he doesn't see a CUP as a big deal. He urged the Council to consider approving this CUP.

Brian Sturtevant, Planning Commissioner, said that at the Joint Meeting he was skeptical of this project. However, the public comment was very supportive of the project. He stated that he feels this project will be a positive addition to the Downtown.

Alicia Hammond again listed her concerns.

***Mayor Fonzi closed the Public Comment period.***

**MOTION:** By Mayor Pro Tem O'Malley and seconded by Council Member Clay to go past 11:00 p.m.  
***Motion passed 5:0 by a roll-call vote.***

**MOTION:** By Mayor Pro Tem O'Malley and seconded by Council Member Clay to direct staff to bring back the initiation of a Zone Change to eliminate the height restriction across from Sunken Gardens, including the Downtown Revitalization Plan, to coincide with the balance of the Downtown.  
***Motion passed 5:0 by a roll-call vote.***

**MOTION:** By Council Member Clay and seconded by Mayor Fonzi to adopt Draft Resolution A approving Road Abandonment 2010-0019 to summarily vacate a 10-foot wide road and landscape easement along the El Camino Real right-of-way, and a portion of Atascadero Mall Ave based on findings and subject to conditions of approval.

City Attorney Pierik interrupted the Council to state that the recommended Draft Resolution refers to the 10-foot wide road and landscape easement along El Camino Real and the Atascadero Mall. If the Council is inclined to approve the El Camino Real

easement only, the Resolution will have to be re-drafted. He advised the Council to continue this item to a future date; staff could review any necessary public hearing requirements, and return to the Council with a Resolution limited just to the El Camino Real easement.

**There was City Council consensus to direct staff to:**

- **Bring back to Council additional information about the options available for the vacating of the road and landscape easement,**
- **Return to Council with a revised Resolution to abandon easement along El Camino Real,**
- **Work with Applicant to prepare a conceptual plan of entire project with authority to set boundaries and ultimate design,**
- **Provide additional detailed parking analysis**
- **Bring back a timeline**

**MOTION:** By Mayor Fonzi and seconded by Council Member Kelley to direct staff to prepare an economic analysis of 20 theaters in Atascadero with a cost up to \$10,000.00.  
*Motion passed 4:1 by a roll-call vote. (Béraud opposed)*

**MOTION:** By Mayor Fonzi and seconded by Council Member Clay to continue Draft Resolutions A & B, continuing the approval of the CUP to the Council meeting of June 8, 2010.  
*Motion passed 5:0 by a roll-call vote.*

***Mayor Fonzi recessed the meeting at 11:36 p.m.***

***Mayor Fonzi reconvened the meeting at 11:45 p.m.***

## **2. Bond Finance Team**

- Fiscal Impact: The fiscal impact of awarding the contracts is dependent upon the type and face value of the bonds being issued. The estimated total underwriting and bond counsel fees for a \$16 million bond issue is approximately \$250,000. These fees are due only upon sale of the bond and will be paid from bond proceeds.
- Recommendations: Council:
  1. Authorize the City Manager to execute an agreement with Piper Jaffray for underwriting services and;
  2. Authorize the City Manager to execute an agreement with Quint & Thimmig for bond counsel services. [Administrative Services]

Administrative Services Director Rachelle Rickard introduced Mark Curran from Piper Jaffray who gave a report and answered questions from the Council.

**PUBLIC COMMENT:**

David Bentz told the Council that there are at least a dozen other firms out there that will do the same work for the City as the team being proposed to you tonight.

***Mayor Fonzi closed the Public Comment period.***

**MOTION:** By Mayor Pro Tem O'Malley and seconded by Council Member Clay to:

1. Authorize the City Manager to execute an agreement with Piper Jaffray for underwriting services and;
2. Authorize the City Manager to execute an agreement with Quint & Thimmig for bond counsel services.

***Motion passed 5:0 by a roll-call vote. (#C-2.1: Contract No. 2010-011, #C-2.2: Contract No. 2010-012)***

3. **Stadium Park Fire Study**

- Fiscal Impact: None.
- Recommendation: Council receive and file this report on the grant staff received for the purpose of conducting a fire study for Stadium Park. [Fire]

Fire Chief Kurt Stone gave the staff report and answered questions from the Council.

**PUBLIC COMMENT:**

Lon Allan, Friends of Stadium Park, wants to be on the record by saying that they are concerned and want the Park to remain in as natural a state as possible. They support the need to study the fire potential in Stadium Park. Mr. Allan also stated that they would agree with the removal of ladder fuels, thinning, and even removal of some of the non-native plants and trees. He requested that both Atascadero Land Preservation Society and the Friends of Stadium Park be kept up to date and included in discussions concerning the Park.

***Mayor Fonzi closed the Public Comment period.***

**MOTION:** By Council Member Kelley and seconded by Mayor Fonzi to receive and file this report on the grant staff received for the purpose of conducting a fire study for Stadium Park.

***Motion passed 5:0 by a roll-call vote.***

4. **Atascadero Trail and Restoration Grant Status**

- Fiscal Impact: There is no fiscal impact to receive and file this report.

- Recommendation: Council receive and file staff report on the current status of the Atascadero Trail Project Grant. [Public Works]

Public Works Director Russ Thompson gave the staff report and answered questions from the Council.

**PUBLIC COMMENT: None**

**MOTION:** By Council Member Clay and seconded by Mayor Pro Tem O'Malley to receive and file staff report on the current status of the Atascadero Trail Project Grant.  
*Motion passed 5:0 by a roll-call vote.*

**COUNCIL ANNOUNCEMENTS AND REPORTS: None**

**D. COMMITTEE REPORTS: None**

**E. INDIVIDUAL DETERMINATION AND / OR ACTION: None**

**F. ADJOURNMENT:**

Mayor Fonzi adjourned the meeting at 12:47 a.m.

MINUTES PREPARED BY:

---

Marcia McClure Torgerson, C.M.C.  
City Clerk / Assistant to the City Manager

The following exhibit is available for review in the City Clerk's office:

Exhibit A – Information submitted by David Broadwater re: whale hunting  
Exhibit B – Prepared statement submitted by Joanne Main re: La Plaza Theater