



# **CITY OF EL PASO DE ROBLES**

*"The Pass of the Oaks"*

## **CITY COUNCIL MINUTES**

**Tuesday, April 6, 2010 7:30 PM**

**MEETING LOCATION: PASO ROBLES LIBRARY/CITY HALL  
CONFERENCE CENTER, 1000 SPRING STREET**

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**PLEASE SUBMIT ALL CORRESPONDENCE FOR CITY COUNCIL PRIOR  
TO THE MEETING WITH A COPY TO THE CITY CLERK**

### **7:30 PM – CONVENE REGULAR MEETING**

**CALL TO ORDER** – Downstairs Conference Center

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL** Councilmembers Nick Gilman, John Hamon, Ed Steinbeck, Fred Strong and Mayor Duane Picanco

**STAFF INTRODUCTIONS**

### **PUBLIC COMMENTS**

- **Jerry Boxer** – Representing City Library Board of Trustees. Commented on upcoming library week activities.
- **Cody Ferguson** – Encouraging approval of a Car Show event request coming to the Council. On April 20 for Labor Day Weekend.
- **Chuck Miller** – Announced "Wings and Wheels" event on May 8, 2010 from 10am to 3pm at the Warbirds Museum.
- **Ron Whisenand** – Announced that the Purple Belt Plan won an APA Award.
- **Annie Robb** – Introduced Youth Commission member, Lou Sehn.
- **Kathy Barnett** – Questioned the schedule and notification for the Oak Park EIR.

**AGENDA ITEMS TO BE DEFERRED (IF ANY)**

## **PRESENTATIONS**

**1. National Public Safety Telecommunicator's Week**

D. Picanco, Mayor

Mayor Picanco resented a proclamation honoring dispatchers, to Lt. Burton from the Police Department.

**2. Bone Marrow Matching Awareness Month**

D. Picanco, Mayor

Mayor Picanco presented a proclamation to Lyn Hanush.

**3. Paso Robles Unified School District Forecast**

Dr. Kathleen McNamara, Superintendent

Paso Robles Superintendent of Schools Kathleen McNamara and Gary Hoskins gave a presentation on the state of education in our community.

## **PUBLIC HEARINGS**

**4. Adoption of Uniform Water Rate Structure**

D. Monn, Public Works Director

For the City Council to conduct a public hearing, and if there is no majority protest, consider introduction of an ordinance establishing a uniform water rate structure.

Doug Monn introduced Christine Halley who gave an overview of the proposed Water Rate Structure.

Mayor Picanco opened the public hearing. Speaking from the public was Pat Shehan, Cody Ferguson, Kathy Barnett, Leigh Oliver, Carl Hansen, Tom Hardwick, Lou Beatty, Larry Lynch, Helena Berardi, Sharon Ross, Jean Ross, Al Garcia, Karen Reed, Tom Flynn, Chris Bausch, John Borst, Frank Mecham, Brenda McCorkle, Larry Werner, Dale Gustin, Robert Straun, Pasqual Padilla, and Don Voss. There were no further comments from the public, either written or oral and the protest ballot period and public discussion was closed. The City Clerk announced that there were a total of 609 protest ballots submitted.

Councilmember Strong, seconded by Councilmember Gilman, moved to establish the number of valid written protests that have been submitted per Proposition 218/Article XIID of the California Constitution; and introduce and read by title only, Ordinance No. 967 N.S.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco

NOES:

ABSENT:

ABSTAIN:

**5. VISITOR SERVING DIRECTIONAL SIGNS**

R. Whisenand, Community Development Director

For the City Council to consider authorizing winery directional signs at various locations within City limits.

Darren Nash introduced Stacy Jacob from the Wine Country Alliance, who gave the presentation.

Mayor Picanco opened the public hearing. Speaking from the public was Kathy Barnett and Tom Hardwick. There were no further comments from the public, either written or oral, and the public discussion was closed.

Councilmember Hamon, seconded by Councilmember Gilman, moved to adopt Resolution 10-034, approving the request to install visitor serving directional signs at 10 locations proposed by the applicant, and consistent with the design provided by Kraftwerks, inc., with a requirement that the sign size be consistent with the City's standard for street signs (6" x 24") with the use of the wine-bottle logo; that all poles will be consistent in color, shape and cap; and based on the design being consistent with the design described within the Gateway Plan in the proposed locations.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco

NOES:

ABSENT:

ABSTAIN:

**CONSENT CALENDAR**

**ITEMS ON THE CONSENT CALENDAR ARE CONSIDERED ROUTINE, NOT REQUIRING SEPARATE DISCUSSION.** However, if discussion is wanted or if a member of the public wishes to comment on an item, the item may be removed from the Consent Calendar and considered separately. Councilmembers may ask questions of clarification without removing an item from the Calendar. INDIVIDUAL ITEMS ARE APPROVED BY THE VOTE THAT APPROVES THE CONSENT CALENDAR, UNLESS AN ITEM IS PULLED FOR SEPARATE CONSIDERATION.

**6. Approve City Council minutes of March 16, 2010**

D. Fansler, City Clerk

**7. Approve Warrant Register: Nos. 89649-89809 (03/12/10); and 89810-89941 (03/19/10)**

J. Throop, Administrative Services Director

**8. Receive and file Advisory Body Committee minutes as follows:**

Library Board of Trustees Minutes of February 11, 2010

Airport Advisory Committee Minutes of February 25, 2010

**9. Schedule Thursday, April 22, 2010 for Housing Authority Board of Commissioners Interviews**

R. Whisenand, Community Development Director

**10. Approve grant applications for the Sustainable Planning Grant and Incentives Program and direct the Mayor to sign Letters of Intent to prepare and participate in these grant applications.**

R. Whisenand, Community Development Director

**11. Adopt Resolution No. 10-035 accepting grants received for Theatre Drive realignment and adopting a final budget for its construction.**

D. Monn, Public Works Director

12. Adopt Resolution No. 10-036 directing the Public Works Director to sign documents on behalf of the City for the ARRA \$2.8 million grant to realign Theatre Drive.  
D. Monn, Public Works Director

13. Adopt Resolution No. 10-037 accepting grants received for the Highway 46 East project and adopting a construction budget.  
D. Monn, Public Works Director

Consent Calendar Items No. 6-13 were approved on a single motion by Councilmember Strong, seconded by Councilmember Hamon.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco  
NOES:  
ABSENT:  
ABSTAIN:

## DISCUSSION

14. **Water Treatment for Sherwood Wells**

D. Monn, Public Works Director

For the City Council to consider purchase of replacement arsenic removal media for the Sherwood Wells.

Doug Monn introduced Christopher Alakel, who presented the report.

Mayor Picanco opened the public discussion. There were no comments from the public, either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Steinbeck, moved to adopt Resolution No. 10-038 authorizing purchase of replacement media for the Sherwood Wells in an amount not to exceed \$116,000.

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco  
NOES:  
ABSENT:  
ABSTAIN:

15. **Replace Mechanical Bar Screens at the Wastewater Treatment Plant**

D. Monn, Public Works Director

For the City Council to consider a contract to replace the in-channel mechanical bar screens at the Wastewater Treatment Plant (WWTP).

Mayor Picanco opened the public discussion. There were no comments from the public either written or oral, and the public discussion was closed.

Councilmember Strong, seconded by Councilmember Gilman, moved to adopt Resolution No. 10-039 awarding the contract to replace the in-channel mechanical bar screens at the Wastewater Treatment Plant to Spiess Construction in the amount of \$202,338;

Motion passed by the following unanimous roll call vote:

AYES: Gilman, Hamon, Steinbeck, Strong and Picanco

NOES:

ABSENT:

ABSTAIN:

**COUNCIL COMMENTS (Including oral reports on conferences attended)**

**ADJOURNMENT at 10:25 pm to:**

- JOINT PLANNING COMMISSION/CITY COUNCIL BREAKFAST AT 7:00 AM ON FRIDAY, APRIL 16, 2010 AT TOUCH OF PASO
- THE REGULAR MEETING AT 7:30 PM ON TUESDAY, APRIL 20, 2010 AT THE LIBRARY/CITY HALL CONFERENCE CENTER, 1000 SPRING STREET

Any writing or document pertaining to an open session item on this agenda which is distributed to a majority of the City Council after the posting of this agenda will be available for public inspection at the time the subject writing or document is distributed. The writing or document will be available for public review in the City Clerk's Office, 1000 Spring Street, Paso Robles, CA, during normal business hours, and may be posted on the City's web site at <http://www.prcity.com/government/citycouncil/agendas.asp>.

All persons desiring to speak on an agenda item are asked to fill out Speaker Information Cards and place them at the Staff Table prior to public discussion of that item. Each individual speaker will be limited to a presentation total of three (3) minutes per item.

**AMERICANS WITH DISABILITIES ACT** Any individual, who because of a disability needs special assistance to attend or participate in this meeting, may request assistance by contacting the City Clerk's Office (805) 237-3960. Whenever possible, requests should be made four (4) working days in advance of the meeting.

***THE DEADLINE FOR SUBMITTING ITEMS FOR THE NEXT  
REGULAR COUNCIL MEETING IS APRIL 9, 2010***

Submitted:

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Lonnie Dolan, Deputy City Clerk

Approved:

LAW OFFICES OF  
HUSKINSON, BROWN, HEIDENREICH & CARLIN, LLP  
865 MANHATTAN BEACH BOULEVARD, SUITE 200  
MANHATTAN BEACH, CA 90266-5119

ROBERT R. HUSKINSON  
[1935 - 2007]

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TELEPHONE (310) 543-5459  
FAX (310) 546-1019  
huskinsonbrown@att.net

DAVID W.T. BROWN  
PAUL E. HEIDENREICH  
BRIAN C. CARLIN

RECEIVED  
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CITY OF PASO ROBLES

March 11, 2010

Iris Yang  
McDonough, Holland & Allen PC  
555 Capitol Mall, 9<sup>th</sup> Floor  
Sacramento, CA 95814

RE: Borst v. Paso Robles  
City's On-Going Actions in Violation of Proposition 218

Dear Ms. Yang:

As I expressed to you and the Court during the March 9, 2010 status conference, my clients and I consider the City's present efforts to enact and impose new and additional charges to be assessed and collected with their water bills to be in violation of Proposition 218.

The City has stated that it is attempting to meet the Article XIII D, section 6 provisions to raise money for a specific project, the Nacimiento Water Project. While we believe that these are special taxes, what is clear is that the City's actions, even under the Requirements of the less stringent section 6 requirements, violate Prop 218.

Article XIID section 6 provides in relevant part as follows:

Property Related Fees and Charges.

(a) Procedures for New or Increased Fees and Charges.

An agency **shall** follow the procedures pursuant to this section in imposing or increasing **any fee or charge** as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to

the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, **the reason for the fee or charge**, together with the date, time, and location of a public hearing on the proposed fee or charge.

. . . .  
(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge **shall not be extended, imposed, or increased** by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge **shall not exceed the funds required to provide the property related service**.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership **shall not exceed the proportional cost of the service attributable to the parcel**.

(4) No fee or charge may be imposed for a service unless that service is ***actually used by, or immediately available*** to, the owner of the property in question. **Fees or charges based on potential or future use of a service are not permitted**. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

(5) ***No fee or charge may be imposed for general governmental services*** including, but not limited to, police, **fire**, ambulance or library services, where the **service is available to the public at large in substantially the same manner as it is to property owners**. Reliance by an agency on any parcel map, including, but not limited

to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. **In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.**  
[Emphasis added]

I am writing to address the propriety, sufficiency and legality of the City's present actions and to reiterate our intention to proceed with the Petition for Writ of Mandate that I mentioned to the Court on March 9 if resolution cannot be obtained. These are the issues that I again raised with you on a telephone call on March 11, 2010.

First, the City's Notice of Public Hearing does not comply with subsection (a) because it does not (1) identify or provide any information as to the basis upon which the amount of the proposed fee or charge was calculated or (2) the reason for the fee or charge. In fact, the contention that the fees that are to be imposed are to only pay for water presently consumed is false. Therefore, the City's efforts are violative of Prop 218 *if* it is accepted that the proposed charges are only property related fees.

Second, the City's proposals do not meet the subsection (b) requirements because the added fees are not for present water use but are for the Nacimiento Water Project. The charges are not for water either actually used or immediately available as required by the code for a "property related fee". [*"Fees or charges based on potential or future use of a service are not permitted"*]. Third, the project is patently a project for general governmental services available to the public at large.

As you know and as the Code provides, in any legal action, including a Petition for Writ of Mandate, contesting the validity of a fee or charge, the burden shall be on the City to demonstrate compliance with this Article XIII D.

Because the Notice is patently incomplete, it is improper for the City to continue its present actions. Further, because the purposes for charges do not meet the Section 6 criteria, it is improper for the City to continue its present actions.

Based upon the City's failure to meet the Article XIII D requirements, we request that the City cease and desist its present efforts to raise "water rates". If the City is willing to stop its present tact, the contemplated Writ would, of course, be unnecessary. We believe that litigating over obvious violations of the Constitution is inefficient and a waste of taxpayer dollars.

During our discussion on March 11, 2010, you stated that the City fully intends to continue the processes that it began and believes that it is satisfying the Constitutional requirements. Based upon your statements and assurances, we are pressing forward with the Writ. If the City changes its mind on this, please let me know as soon as possible.

As a final point, the fact that I primarily raise Article XIII D procedures as being violated by the City should not be taken as agreement that those are the correct procedures. However, if those are the provisions the City desired to satisfy, it failed to do so. The Writ will of course mention that pursuant to Prop 218, Article XIII C, the proposed charges are Special taxes for which voter approval is required.

Yours Truly,  
Huskinson, Brown, Heidenreich & Carlin LLP

Paul E. Heidenreich

C:\Users\heidenreich\Documents\1 Owners Documents\1 Documents\1 Litigation files\Borst - Dec Relief Action\Correspondence and emails\Letter to Yang 002.wpd

**To: Paso Robles City Council**  
**From: John Borst, Paso Robles Citizen and Taxpayer**  
**Date: April 6, 2010**  
**Subject: Water Rate Protest Public Hearing**

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(page 1 of 2)

Gentlemen,

This letter is written in regards to the lawfulness of the revenue raising/financing mechanism City staff has chosen and which appears on the Feb. 2010 Notice of Public Hearing that was sent to City water customers. Tonight the Council is asked to weigh and discuss the merits of that revenue raising mechanism, as well as the protest letters received during the last 45 days. I ask the Council to recognize that Notice and revenue raising mechanism represented therein as being legally insufficient and/or inappropriate to raise water customer's rates over the next 5 years (2011 - 2015), and to comply with Proposition 218 by submitting any similar proposed rate increase as a special tax for voter approval.

First, it is not evident from the City's February 2010 Notice of Public Hearing sent to water customers just what is the reason for the rate increase. As this is a requirement of Article XIII D, this lack of reason and/or information makes the Notice legally insufficient. From reading the proposed water rate Ordinance introduced at City Council tonight it now appears to me that the Nacimiento Water Project (NWP) and a water treatment plant (WTP) are the principal reasons for the rate increase and are for the specific purpose of public improvement project construction, which City staff are seeking your approval to fund. Assuming this is so, apparently someone on the City's staff believes the said projects can be lawfully funded by a series of yearly "fee" increases levied upon water customers, as evidenced by the revenue raising fee mechanism employed on the Notice of Public Hearing. Further, the Notice of Public Hearing is additionally defective because it states no benefits, general or special, accruing to present customers for these said projects. One can discern nonetheless from reading the proposed Ordinance that those benefits are general and provided for everyone who is or will be a City resident: helping to preserve the Paso Robles Groundwater Basin, enhance water quality and meet water demands required for future City growth.

Under current California state law, public improvement projects having a capital cost require either the levy of an assessment or a special tax. The California Supreme Court in *Knox v. City of Orland* (1992) explained the nature of a special assessment. A special assessment is a " 'compulsory charge placed by the state upon real property within a predetermined district, made under express legislative authority for defraying in whole or in part the expense of a permanent public improvement therein . . . . ' " The City has not claimed the proposed rate increase applies to a predetermined district or has any special/specific customer benefits, consequently this revenue raising mechanism clearly does not apply in the present situation. On the other hand, the Courts have explained the nature of a "tax," and a "special tax" in particular:

In general, taxes are imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted. (*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4<sup>th</sup>)

Under modern law, the central distinction between a tax and a fee appears to be that a tax is 'imposed for revenue purposes, rather than in return for a specific benefit conferred or privilege granted.' (*Sinclair Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4<sup>th</sup> 866,

874; Barratt American Inc. v. City of Rancho Cucamonga (2005) 37 Cal.4<sup>th</sup> 685, 727.)

The essence of a special tax “is that its proceeds are earmarked or dedicated in some manner to a specific project or projects” (Neecke v. City of Mill Valley [1995] 39 Cal.App.4<sup>th</sup> 946, 956).

Each of these statements cited above is consistent with Article XIII C of the California State Constitution, which defines a “special tax” as “any tax imposed for specific purposes, including taxes imposed for specific purposes, and placed into a general fund.” See Cal. Const., Article XIII C, § 1(d).

If the proceeds derived from the City’s proposed water rates are earmarked and dedicated largely to pay for the Nacimiento pipeline and a new City water treatment plant, consistent with California State law, the related capital costs identified in the Kennedy/Jenks 2010 Uniform Water Rate Study (which is cited in the proposed Ordinance) require funding through a special tax or funding from the City’s General Fund.

Finally, the City’s mailed Notice of Public Hearing and water rate proposal fails to meet the requirements for a fee or charge as identified in Article XIII D Sec. 6 (a) and (b) of the California State Constitution. Therefore, present efforts to impose the increase in water rates are illegal under the terms of the State Constitution.

For the above reasons, I protest the proposed water rate increases identified on the City’s February 2010 Notice of Public Hearing water rate mailer and request that the City officials reconsider their present course of action.

Thank you.  
John Borst  
209 Navajo Ave.  
Paso Robles, CA