Minutes

REGULAR MEETING
OF THE
CITIZEN STREET OVERSIGHT COMMITTEE

Monday, September 23, 2013, 7:00 p.m.
El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue

Call to Order at 7:00 p.m.

1. Roll Call
Present: Vice Chair Lynne Kessler, Committee Members Al Miller, Thomas Miller and Liz Ozselcuk,
Absent: none (Chair Aurelia Schultz had previously resigned)
Other Attendees: Staff Liaisons Jerry Bradshaw, Senior Engineer, and Yvetteh Ortiz, Public Works Director / City Engineer

2. Comments from the Public
None.

3. Approval of Minutes
Comment by Chair Al Miller – page 3-4, Item 7, second paragraph, the first appearance of the word “was” should be removed.

Committee Member Thomas Miller commented on Item #3 that, while the minutes are accurate, he is troubled with the allocation of funds to for things other than pavement, curbs and gutters was not consistent with the intent of the voters. The basic purpose of the Committee is to ensure that the public gets what they believed they were voting for. He would like to make a motion to that effect, although this was not the time. Al Miller would prefer to see a copy of the enabling ordinance before going along with any such motion. After some additional comments, Liaison Bradshaw noted that this topic was not agendized for this meeting and should be deferred until a meeting when it was put on the agenda per the Brown Act.

Action taken: M/S Ozselcuk/Thomas Miller to approve minutes as corrected. Approved unanimously.
4. **Review Fiscal Year 2012-13 Revenues & Expenditures**

Liaison Bradshaw described the revenues (page 4-1) and expenditures (page 4-2). The figures are preliminary (unaudited). If the final audited numbers are different, staff will go through all that at the January meeting.

Revenues are a little over $1 million, which is quite a bit short of past years and less than expended. Staff believes that there be adjustments due to the City after the Board of Equalization has attempted to correct for several past years of sale tax dispute between the cities of Richmond and El Cerrito. However, that pertains only to the normal sales tax, and should not affect the Measure A sales tax.

The long list of revenues at the bottom of Page 4-1 are fees paid for street moratorium impacts when encroachment permit work must be done in streets that are under a no-dig moratorium. The negative amounts represent refunds made – usually pertaining to permits that get cancelled before the work is done.

Expenditures are just over $1 million, too. The first two items on Page 4-2 are the annual debt service. The next three items are the amounts paid to the auditors. The remaining items are for work done on projects.

Planning and Engineering funds are for part-time staff and Avila Project Management charges.

The 2012 Pavement Rehabilitation Project was for some miscellaneous work – some slurry areas and a storm drain failure under Cutting Blvd. Committee Member Thomas Miller noted that storm drain work steps outside the pavement-curb-gutter scope that he mentioned earlier. Committee Member Al Miller asked whether the City had dedicated funds for storm drain repairs. Liaison Bradshaw explained that those funds are otherwise committed for a large debt service on the storm drain bonds. It was also questioned whether the City Council approved the expenditure on storm drain work. This particular item was not large enough to require Council action; however the 2009 project that the Council approved included storm drain work thereby setting a precedent. Committee Member Al Miller requested a future agenda item on using Measure A money on non-pavement work include the process for approving such projects by Council or staff.

Central Liberty Streetscape Project – the expenditures represent two transfers to the CIP fund for Council-approved use of Measure A. Committee Member Thomas Miller asked what a streetscape was. It was explained that they are typically projects to make the street areas more livable or walkable as in this case. Committee Member Thomas Miller reiterated his objection to this type of use of Measure A money.

Traffic Safety & Management Program was another program specifically authorized by Council. Only $40 thousand was spent last year.

The last two projects are straight forward paving projects using state and federal grants with Measure A funds as local match. Work was just beginning last fiscal year.
Committee Member Al Miller asked when we expect to have the answers on the Board of Equalization corrections? Hopefully before the January meeting.

5. Staff Liaison Report
   a. Review of work plan for FY 2013-14: Liaison Bradshaw distributed a 3-page handout (attached). It included an excerpt of the FY 2013-14 Capital Improvement Budget that showed the Street Improvement Capital Fund (211 – Measure A 2008) and described the five projects listed there.
       - Arlington Curve at Brewster Drive Safety lists $50,000 of matching funds for a state grant.
       - The Traffic Safety & Management Program was described earlier in Item #4.
       - The last two projects are grant-funded paving projects that include local matching funds from Measure A.
         ▪ For example, the State Paving – Prop 1B shows $354,000 under the “Inter-gov’l” column; this is the funding from Prop 1B. The $478,000 amount under the “Interest & Other Revenue” column shows the Measure A local match. Page 3 of the handout shows the list of streets included in this project. Lenave and Ivy will be deleted.
         ▪ Page 2 of the handout is a photocopy of the cover page of the plans for the Federal Project and shows the list of streets and a map. As a federal project it will require several approvals from Caltrans that may delay the actual construction well into next year.
       - The annual Paving Project has not been scoped out yet.
   b. Review of Brown Act: Liaison Ortiz passed out a 23-slide printout (attached) that was presented to City staff a few weeks earlier. She only went over a few slides that were of interest to the Committee.
   c. Review of Project Approval and Allocation Process: Liaison Bradshaw presented a slide show (handouts attached). Reviewed Section 4.60.150 of the EC Municipal Code that sets the authorized uses of Measure A and requires an Expenditure plan. The Expenditure Plan is modified annually through the adoption of the Capital Improvement Program (CIP) budget, which lists specific projects and programs. Reviewed the CIP page that lists the Measure A projects and programs, and described the detail pages that show the scope for each. For major projects, the Council sees the scope of work in the CIP adoption, and again when awarding the contract. Staff is given discretion for modest changes in scope. Minor projects may be awarded by City Manager or Public Works Director (instead of Council). The final step in the process is the financial closure and audit, which the Committee sees at its January meeting.
   d. Review of Committee Members Terms and Limits: Liaison Bradshaw handed out a table summarizing the Committee roster and member’s terms. The top table showed the most recent data from the City Clerk and revealed a discrepancy between Committee Members Thomas Miller and Ozselcuk term beginning yet both ending in 2014.
Liaison Bradshaw will work with City Clerk to clarify the discrepancy and get back to the Committee.

6. **Review of Committee Standing Rules**
This is a standing item and no action is requested by Staff. Committee Member Al Miller had a question on Rule #7, what is a “source document”? Liaison Bradshaw recalled that it referenced the documents from the State reporting the revenues (as opposed to City finance documents reporting the same information.) The Auditor receives independent documentation from the State that reports revenues and confirms that the City’s records matches. Committee Member Al Miller felt that paper trail is adequate at present.

**Action taken:** no action taken.

7. **Future Agenda Items and Meeting Schedule**
The next regular meeting is scheduled for November 11th, which is a City holiday (Veterans Day). By consensus the Committee decided to have a November meeting, not on November 11th, but rather on November 4th at the normal time and location.

The November 11th meeting will be cancelled. The next regular meeting will be on January 27, 2014.

Desired items for the November 4th agenda include:
- Discussion of the practice of allocating Measure A money to non-pavement/curb/gutter projects.

8. **Adjourner** at approximately 8:50 p.m.

Attachments:
- 3-page handout for Item 5a
- 12-page handout for Item 5b
- 6-page handout for Item 5c
- 1-page handout for Item 5d
# Table 12-3

## City of El Cerrito

### 2013-14 Capital Improvement Program Activity

<table>
<thead>
<tr>
<th>Description</th>
<th>Project Number</th>
<th>Inter-gov'l Revenue</th>
<th>Interest &amp; Other Rev</th>
<th>All Prior Years Funding</th>
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<tr>
<td><strong>Street Improvement Capital Fund (211 - Measure A 2008)</strong></td>
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<tr>
<td>Annual Paving Project</td>
<td>C3027</td>
<td>-</td>
<td>185,145</td>
<td>15,428,219</td>
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<td>Arlington Curve at Brewster Dr Safety</td>
<td>C3071</td>
<td>-</td>
<td>50,000</td>
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<tr>
<td>Traffic Safety &amp; Management Program</td>
<td>C3070</td>
<td>-</td>
<td>100,000</td>
<td>100,000</td>
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<td>State Paving - Prop 1B</td>
<td>C3072</td>
<td>354,000</td>
<td>478,000</td>
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<tr>
<td>Federal Paving - OBAG</td>
<td>C3074</td>
<td>630,000</td>
<td>311,000</td>
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<tr>
<td><strong>SUBTOTAL Street Impr Fund</strong></td>
<td></td>
<td>984,000</td>
<td>1,124,145</td>
<td>15,528,219</td>
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</table>
CITY OF EL CERRITO

PAVEMENT REHABILITATION AT:

ARLINGTON BOULEVARD - BREWSTER DR. TO ARBOR DR.
CENTRAL AVENUE - SANTA CLARA AVE. TO SAN PABLO AVE.
COLUSA AVENUE - TERRACE DR. TO EUREKA AVE.
FAIRMOUNT AVENUE - RICHMOND ST. TO COLUSA AVE.
MANILA AVENUE - KEARNEY ST. TO RICHMOND ST.

FEDERAL NO. ESPL -

LOCATION MAP

VICINITY MAP
State Prop 1B Paving Project (C3072)
List of Streets Presented to Council

**Asphalt Rubber Cape Seal Streets**
Bay Tree Lane
Carquinez Avenue – Barrett to Lagunitas
Cutting Blvd – Arlington to Junction
Ivy Court
Jordan Avenue – Nason to Alta Punta
Julian Drive
Julian Court
Lawrence Court
Leneve Place
Potrero Avenue – Arlington to Douglas
Regency Court
Scott Street
Tamalpais Court
Yuba Street – North City Limits to Zara
Waldo Avenue – Pomona to Ashbury

**Asphalt Concrete Inlay Streets**
Edwards Avenue – Barrett to Poinsett
Knott Avenue – San Pablo to Key
Meetings

"ALL MEETINGS
OF THE LEGISLATIVE BODY
OF THE LOCAL AGENCY
SHALL BE OPEN AND PUBLIC
AND ALL PERSONS SHALL BE PERMITTED TO
ATTEND ANY MEETING EXCEPT
AS OTHERWISE PROVIDED"
(Gov. Code § 54953)
Who Makes Up the Legislative Body?

- Local Governing Body (ex: Board of Directors, City Council), including newly elected members.
- Commission or Committee
  - Permanent or temporary
  - Decisionmaking or advisory

Committees Not Subject to Brown Act

An ad hoc advisory committee consisting solely of less than a quorum of the legislative body is not subject to the Brown Act.

- No continuing subject matter jurisdiction
- Limited term
- Compare standing committee, which has continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution or other formal action
What is a Meeting?

- "Any congregation of a majority of the members of a legislative body at the same time and location ... to hear, discuss, or deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body."

What is Not a Meeting?

- A "meeting" is NOT:
  - Individual contacts by members;
  - Attendance at a conference open to public
  - Attendance a community meeting;
  - Attendance at a social or ceremonial function;
  - Attendance at an open meeting of another public agency; or
  - Observing an open meeting of the body's standing committees.
Serial Meetings Are Prohibited

• Examples:
  – Daisy Chain – A calls B; B calls C; etc.
  – Hub and Spoke – Intermediaries (can be a person or a document)
  – Email – “Reply all”
  – Documents

Serial Meetings

• SB 1732: “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body”
Location of Meetings

- Accessible to persons with disabilities
- Free to members of the public
- Inside the public agency’s boundaries, unless:
  - No facility within boundaries
  - Complying with law or court order
  - Inspecting real or personal property
  - Multi-agency meeting in another jurisdiction
  - Meet with state or federal officials
  - Closed session with attorney on pending litigation
  - In facility owned by agency if agenda relates only to facility

Video or Teleconferencing

- Agenda posted at all locations, with teleconference locations specifically identified
- All locations open to the public with public participation possible at each location
- At least quorum of board must participate from locations within agency boundaries
- Roll call votes only
Meeting Rules

- No Required Sign-in
  - Voluntary sign-in permitted if sheet specifies it is voluntary
- Broadcasting, videotaping or photographs must be permitted
- No secret ballots

Regular Meeting Agendas

- 72 hours advance posting
- Time and location of meeting
- Description of each item of business—generally need not exceed 20 words
- Inform public of scope of body’s intended plans so public can decide whether to attend
- Alternate formats for disabled individuals
- Public comment period
Documents Distributed within 72 Hours of Meeting

- Anything that is distributed to the Commission after the agenda has been posted must be simultaneously made available to the public.

Adding Items to an Already-Posted Agenda

1. Commission finds an “emergency situation” exists.
   - Work stoppage, crippling activity or other severe situation; or
   - Dire emergency, crippling disaster, mass destruction or terrorist act (or threatened act)

2. Commission finds by 2/3 vote that there is a need to take immediate action, and the need came to the attention of the Commission after posting
Adding Items to an Already-Posted Agenda, cont.

3. Carry-over item was continued from prior meeting where agenda was already posted.
   - Continued meeting must be no more than five (5) calendar days after first meeting

Special and Emergency Meetings

- Special Meetings
  - Called by presiding officer or majority
  - 24 hour posting/notice
  - Content same as regular agendas
  - Public comment only on agenda items
  - No consideration of non-agendized matters
  - Notice to media that has requested notice
Public Right to Comment

- Regular meeting – any matter within body’s subject matter jurisdiction or listed on agenda
- Special meeting – agenda items only
- Comment opportunity occurs either before or during consideration by the legislative body, but before action by body
- May not limit “negative” comments

Limitation: Items not on Agenda

- Brief response to statements or questions
- Ask questions for clarification
- Brief announcement or report on own activities
- Refer to staff for information
- Request staff to report back
- Direct staff to place matter on future agenda
Adjourned Meetings

- Regular and special meetings may be adjourned to a future time and place
- Post notice of adjournment on or near door where meeting was held within 24 hours
- If re-adjourned meeting is not more than 5 days later, a new agenda need not be posted
- Less than a quorum may adjourn

Closed Sessions

- Regular agenda requirements
- "Safe harbor" language for:
  - Real estate negotiations
  - Pending litigation
  - Personnel
  - Labor negotiations
  - Public security
- Announcements of reportable actions in open session
Disclosure of Information from Closed Session

- Disclosure of information learned in closed session is prohibited
  - Injunctive relief, referral to grand jury
- Disclosure permitted
  - Legislative body grants consent
  - Confidential inquiry to DA or grand jury
  - Information that is not confidential
  - Opinion re legality of closed session actions taken

Penalties and Remedies

- Criminal Action
  Where "action taken" in violation of Act and
  Where member intends to deprive public of information to which the member knows or has reason to know the public is entitled under the Brown Act, member is guilty of a misdemeanor
Penalties and Remedies, Cont.

- Civil Remedies
  - DA or any interested person may begin action
  - Invalidation of Action
  - Demand to Cure
  - Injunctive Relief
  - Attorney’s Fees
Measure A Street Fund
Project Approval & Allocation Process

- Section 4.60.150. Use of Tax Proceeds and Expenditure Plan
- ... Pothole Repair, Street Improvement & Maintenance Services
- ... as set forth in the Expenditure Plan
- ... Updated Annually as part of CIP
- ... With itemized projects

Ordinance & Expenditure Plan
Overview

Council Adopts Budget

Budget Prep

Fiscal Year

Projects

Planning & Engineering

Capital Improvement Program

TABLE 12-1
CITY OF EL CERRITO
2013-14 Capital Improvement Program Activity

<table>
<thead>
<tr>
<th>Description</th>
<th>Estimated Revenue</th>
<th>Negative Assumption</th>
<th>All Fiscal Years</th>
<th>Budget Year</th>
<th>Estimated Expenditures</th>
<th>Rate</th>
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<tr>
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<td>$50,000</td>
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<td>$50,000</td>
<td>$50,000</td>
<td>$50,000</td>
<td>50%</td>
<td>$50,000</td>
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<td>Rawling Way - Selby Ave</td>
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<td>Park, Safe-Play/Neighborhood Park</td>
<td>$75,000</td>
<td>$75,000</td>
<td>$75,000</td>
<td>$75,000</td>
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<td>East/Pardee Ave</td>
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<td>$250,000</td>
<td>$250,000</td>
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### Capital Improvement Program

#### Annual Paving Program Scope

- Various pavement treatments (overlay, slurry seal, cape seal, reconstruction)
- Curb ramps (ADA)
- Curb-gutter-sidewalk as needed
- Traffic systems that pertain to paving work
- Road-related storm drains
- Bi-annual Pavement Management Program
- Council sees specific scope when awarding
- Usually determined with grant application
- Specified in CIP document
- City Council sees scope again when awarding
- Staff given discretion for modest changes in scope

Major Projects Scope

- Scope shown on plans, maps or tables

Bid Documents
May be awarded by City Manager or PW Director rather than by Council
May supplement Annual Paving Project
  - Minor paving work
May supplement other major projects
  - Moeser/Ashbury Bike Ped ($1.2M) Paving repairs & slurry work ($32k) by Meas A
May be stand-alone projects
  - Neighborhood traffic

Minor Projects (< $100k)

After work is done each fiscal year
Accounting and audit is compiled
Summary submitted to Citizen Street Oversight Committee in September
Final Audit and Agreed Upon Procedures in January

Final Step - Audit
Full Time Line

Questions
Roster

Citizen's Street Oversight Committee

Current

<table>
<thead>
<tr>
<th>Name</th>
<th>Term</th>
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</thead>
<tbody>
<tr>
<td>Lynne Kessler (Vice Chair)</td>
<td>01/01/12</td>
</tr>
<tr>
<td>Al Miller</td>
<td>01/01/12</td>
</tr>
<tr>
<td>Thomas Miller</td>
<td>01/01/11</td>
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<tr>
<td>Elizabeth Ozselcuk</td>
<td>01/01/10</td>
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<td>Aurelia Schultz (Chair)</td>
<td>01/01/12</td>
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Original

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