NOTICE AND CALL OF A
CITY OF RIVERBANK
SPECIAL CITY COUNCIL MEETING
City Hall Council Chambers
6707 Third Street • Riverbank • California 95367

choose civility

AGENDA

MONDAY, DECEMBER 17, 2012 – 5:30 P.M.

CALL TO ORDER: Mayor Richard O'Brien

FLAG SALUTE: Mayor Richard O'Brien

ROLL CALL: Mayor Richard O'Brien
Vice Mayor Dotty Nygard
Councilmember Darlene Barber-Martinez
Councilmember Jeanine Tucker
Councilmember (Vacant)

CONFLICT OF INTEREST
Declaration by Council Members and Staff who would have a direct Conflict of Interest on any scheduled agenda item to be considered.

1. PUBLIC BUSINESS FROM THE FLOOR (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the City Council. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time. Time cannot be yielded to another person. Under State Law, matters presented under this item cannot be discussed or acted upon at this time by the City Council. The public will be invited to make comments on agenda items when the item comes up for Council consideration. For Closed Session items, the public will be invited to make comments before the meeting is recessed to Closed Session. For record purposes, you must step up to the podium, state your name, and speak into the microphone when addressing the City Council.

2. CONSENT CALENDAR

All items listed on the Consent Calendar are to be acted upon by a single action of the City Council unless otherwise requested by an individual Councilmember for special consideration. Otherwise, the recommendation of staff will be accepted and acted upon by roll call vote.

Item 2.A: Waive Readings. All Readings of ordinances and resolutions, except by title, are waived.

Recommendation: It is recommended that City Council approve the Consent Calendar.

3. BUSINESS ITEMS

Item 3.1: **Resolution Appointing Joan Stewart, Patricia Hughes, Max Melendez, and Carlos Villapudua as Planning Commissioners on an Interim Basis** – It is recommended that City Council appoint Joan Stewart, Patricia Hughes, Max Melendez and Carlos Villapudua as Planning Commissioners on an interim basis until a formal selection process can be determined and completed.

Item 3.2: **Reconsider Proposed Appointment Options to Fill the Vacant Councilmember Seat –** At the regular meeting of December 10, 2012, the City Council agreed that they did not want to call for a special election to fill the vacant Councilmember seat due to costs. Therefore, it is recommended that the City Council reconsider the other options previously presented and give direction to staff. The options to consider are: 1) to appoint the candidate that received the next highest number of votes in the 2012 General Municipal Election; or 2) to conduct a recruitment process and appoint an applicant.

4. COMMENTS

Item 4.1: Staff Comments: (Information Only – No Action)

Item 4.2: Council Comments: (Information Only – No Action)

Item 4.3: Mayor's Comments: (Information Only – No Action)

ADJOURNMENT

Any documents produced by the City and distributed to a majority of the City Council regarding any item on this agenda will be made available at the City Clerk's counter at City Hall located at 6707 Third Street, Riverbank, CA

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted on the City Hall bulletin board 24 hours prior to the meeting.

Dated this 14th day of December, 2012

Annabelle Aguilar, CMC, City Clerk

Notice Regarding Americans with Disabilities Act:

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (209) 863-7122. Notification 48-hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA Title II].

Notice Regarding Non-English Speakers:

Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank City Council shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

General Information:	The Riverbank City Council meets in the Council Chambers on the second and fourth Mondays of each month at 6:00 p.m., and at 12:00 Noon for every first meeting of the month of each quarter (January, April, July, and October); unless otherwise noticed.
Council Agendas:	The City Council agenda is now available for public review at the City's website at www.riverbank.org and City Clerk's Office, 6707 Third Street, Riverbank, California on the Friday, prior to the scheduled meeting. Copies and/or subscriptions can be purchased for a nominal fee through the City Clerk's Office.
Public Hearings:	In general, a public hearing is an open consideration within a regular meeting of the City Council, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.
Questions:	Contact the City Clerk at (209) 863-7122

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 2.A

SECTION 2: CONSENT CALENDAR

Meeting Date:	December 17, 2012
Subject:	Waiver of Readings
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION:

It is recommended that the City Council approve the waiver of readings of Ordinances and Resolutions, except by title.

SUMMARY:

The approval of the waiver of readings will allow Ordinances and Resolutions to be introduced by title only and acted upon without the need to read the entire text of the item into the public record. The documents related to proposed Ordinances and Resolutions are available for review by the public on the City's website and in the City Clerk's office at City Hall (North).

FINANCIAL IMPACT:

There is no financial impact.

ATTACHMENTS:

There are no attachments to this report.

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.1

SECTION 3: BUSINESS ITEMS

Meeting Date:	December 17, 2012
Subject:	**Resolution** Appointing Joan Stewart, Patricia Hughes, Max Melendez, and Carlos Villapudua as Planning Commissioners on an Interim Basis
From:	Jill Anderson, City Manager
Submitted by:	J.D. Hightower, Development Services Director

RECOMMENDATION

It is recommended that City Council appoint Joan Stewart, Patricia Hughes, Max Melendez and Carlos Villapudua as Planning Commissioners on an interim basis until a formal selection process can be determined and completed.

SUMMARY

A resolution is needed to continue the terms of four out of the five current Planning Commissioners until an open recruitment process can take place. The terms of Chairperson Joan Stewart and Commissioners Patricia Hughes and Max Melendez expired on August 31, 2012. Former Commissioner Clint Bray has moved out of the City leaving one seat vacant. Commissioner Villapudua was appointed as an Alternate Planning Commissioner and is proposed to fill the vacancy created by Commissioner Bray's departure.

Section 32.36 of the Riverbank Code of Ordinances requires that the Planning Commission have five members and that all reside within the city postal code area. The City has received residency affidavits from Commissioners Stewart, Degele and Villapudua as of the writing of this report. Commissioner Melendez has not been attending meetings and attempts to reach him have not been successful, so it is uncertain if he is interested in continuing to serve as a Planning Commissioner. The Planning Commission may choose to recommend that Mr. Melendez be removed from the Commission if he does not submit the affidavit based on his lack of participation during 2012.

Given the number of current development applications and permits, it is recommended that the City Council reappoint the Planning Commissioners and, at a later meeting, determine the desired process to use for recruitment and selection of future

Commissioners. The first step of the recruitment process will be to evaluate the current adopted Planning Commission ordinance and evaluate the selection options. Per previous direction, staff has researched this matter and will be bringing this forward in early 2013. The proposed reappointment of existing commissioners would only be until the recruitment process can be completed. Each current Commissioner would be eligible to file for reappointment.

PENDING APPLICATIONS

The appointment of Planning Commissioners is critical to continue the timely processing of permits and development applications. The City has a use permit for the rehabilitation of the apartment building on the northwest corner of Topeka Street and Santa Fe Street tentatively scheduled for December 18, 2012. On January 15, 2013, the Planning Commission is scheduled to hear a Site Plan Review for the relocation of Taco Bell to the lot between Cool Hand Lukes and Delta Bank as well as a Use Permit for the sale of alcoholic beverages for Bev Mo in the Crossroads Shopping Center. In addition to demonstrating that Riverbank is business ready, the Planning Commission provides for an appeal process to the City Council.

BACKGROUND

The Planning Commission plays an important role in the City by assisting in the implementation of public policy, especially those issued related to community and economic development. State Government Code Section 65101 enables cities to create Planning Commissions. Locally, Section 32.40 of the Riverbank Code of Ordinances (Code) spells out the important duties of the Planning Commission. Section 32.37 of the Code states that, “the terms of the Planning Commission members shall be established by resolution of the City Council and may be changed from time to time in the same manner. All vacancies shall be filled for the unexpired term. A member of the Commission may be removed from the office by a majority vote of the Council, or by the Mayor, subject to approval of the Council”.

The Alternate Planning Commissioner position was created in 2008 to ensure that Planning Commission meetings had a quorum. It was not known in 2008 that an un-codified ordinance had been adopted in 1995. The proposed appointment of Commissioner Villapudua would clarify his position as a standing Planning Commissioner and would eliminate the Alternate Planning Commissioner consistent with the un-codified ordinance.

FINANCIAL IMPACT

There is no financial impact associated with the recommended action.

ATTACHMENT

1. Attachment A - Codified Planning Commission Ordinance
2. Resolution

development, and further, the new and alternative method of capital finance that industrial development authorities can provide will aid in satisfying that need.
('67 Code, § 2-3-2)

§ 32.22 DECLARATIONS.

(A) *Need.* There is a need in the city for an industrial development authority to provide industry with an alternative and additional method of finance in accordance with state policy as set forth in the Act.

(B) *Organization.* The industrial development authority of this city established by the Act is hereby declared organized and shall function under the name "Industrial Development Authority of the City of Riverbank," and be authorized to transact business and exercise all of the powers and other authority conferred upon industrial development authorities in such Act.
('67 Code, § 2-3-3)

§ 32.23 FILING.

The City Clerk is hereby directed to cause a certified copy of this subchapter to be filed in the office of the Secretary of State.
('67 Code, § 2-3-4) (Ord. 83-11, passed 9-26-83)

PLANNING COMMISSION

§ 32.35 COMMISSION ESTABLISHED.

A Planning Commission is hereby established in and for the city.
('67 Code, § 2-2-1) (Ord. 81-18, passed 12-14-81)

§ 32.36 MEMBERS.

(A) The Planning Commission shall have five voting members, all of whom shall be registered voters in the county, and all shall reside within the city postal zip code area, and such ex officio members as are so designated by the Council. Ex officio members shall be city officers and city employees and shall be nonvoting members.
(Ord. 87-17, passed 9-14-87; Am. Ord. 95-09, passed 8-28-95; Am. Ord. 96-07, passed 11-12-96)

(B) The members shall be appointed by the Mayor and approved by the Council. The members shall receive reasonable expenses incurred in performing the duties of the Commission. The members may receive compensation. The amount of the compensation shall be fixed by the Council from time to time.

(C) The Planning Commission shall select a Chairperson and Vice Chairperson from among its appointed members. The term of these offices shall be one year. These officers shall perform such duties as required by the city code.

(D) The Community Development Director shall act as Secretary to the Commission when the position has been filled by appointment and authorization of the City Council. In the absence of a Community Development Director, the Commission shall select a Secretary who need not be a member of the Commission.
(Ord. 81-18, passed 12-14-81)
('67 Code, § 2-2-2)

§ 32.37 TERM OF OFFICE.

(A) The terms of the Planning Commission members shall be established by resolution of the City Council and may be changed from time to time in the same manner. All vacancies shall be filled for the unexpired term. A member of the Commission may be removed from office by a majority vote of the Council, or by the Mayor, subject to approval of the Council.

(B) A member who fails, without the authorization or permission of the Commission, to attend three consecutive meetings in a row or four meetings in one calendar year is subject to removal, and the Mayor and City Council shall be so notified by the Commission.
('67 Code, § 2-2-3) (Ord. 92-01, passed 3-9-92)

§ 32.38 MEETINGS.

(A) The Planning Commission shall meet at least once a month at such time and place as it may fix by resolution.

(B) Special meetings may be called at any time by the Chairperson or by any three members by written notices served upon the members 24 hours before the proposed time of such meetings.
('67 Code, § 2-2-4)

§ 32.39 RULES; STAFF SUPPORT.

(A) The Planning Commission shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations which record shall be on file in the Clerk's office and shall be a public record.
(Ord. 81-18, passed 12-14-81)

(B) Staff support services shall be provided by a Community Development Director who shall be appointed by the City Manager with the approval of the City Council.
(Ord. 81-18, passed 12-14-81; Am. Ord. 85-08, passed 7-22-85)
('67 Code, § 2-2-5)

§ 32.40 POWERS AND DUTIES.

The Planning Commission shall have the power and it shall be its duty:

(A) To cause to be prepared and recommend for adoption a comprehensive long term general plan for the physical development of the city, and of any land outside its boundaries, as provided for by the conservation and planning laws of the state. Such plan shall be known as the general plan of the city, and may comprise any, all or any combination of the plans specified in Cal. Gov't Code §§ 65300 *et seq.*

(B) To cause to be prepared plans based on the general plan and drafts of such regulations, programs and legislation as may in its judgment be required for the systematic execution of the general plan and to recommend such plans and measures to the Council for adoption.

(C) To act as the advisory agency for the city in connection with the administration of the Subdivision and Map Act of the state.

(D) To investigate and recommend to the Council plans for the improvement and beautification of the city, such as the opening, straightening, widening, closing or parking of public streets; the location and improvement of public buildings and public works.

(E) To perform the duties of Planning Commission required under Cal. Gov't Code §§ 65000 *et seq.* and the city code.

(F) To perform such other duties as may be imposed upon it by the Council by ordinance or resolution.
('67 Code, § 2-2-6) (Ord. 81-18, passed 12-14-81)

CITY OF RIVERBANK

RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERBANK APPOINTING PLANNING COMMISIONERS JOAN STEWART, PATRICIA HUGHES, MAX MELENDEZ AND CARLOS VILLAPUDUA ON AN ITERIM BASIS

WHEREAS, Section 32.37 (A) of the Riverbank Code of Ordinances specifies that, "the terms of the Planning Commission members shall be established by resolution of the City Council and may be changed from time to time in the same manner."; and

WHEREAS, there is a need to reappoint Planning Commissioners Joan Stewart, Patricia Hughes, Max Melendez and Carlos Villapudua on an interim basis to continue the conduct of the City's business at hand.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Riverbank appoints Joan Stewart, Patricia Hughes, Max Melendez and Carlos Villapudua as Planning Commissioners on an interim basis until such time that an open recruitment process can take place.

PASSED AND ADOPTED by the City Council of the City of Riverbank at a regular meeting held on the 17th day of December, 2012; motioned by Councilmember _____, seconded by Councilmember _____, and upon roll call was carried by the following vote of ___:

AYES:
NAYS:
ABSENT:
ABSTAIN:

ATTEST:

_____
Annabelle Aguilar, CMC
City Clerk

APPROVED:

_____
Richard O'Brien
Mayor

SPECIAL RIVERBANK CITY COUNCIL AGENDA ITEM NO. 3.2

SECTION 3: BUSINESS ITEMS

Meeting Date:	December 17, 2012
Subject:	Reconsider Proposed Appointment Options to Fill the Vacant Councilmember Seat
From:	Jill Anderson, City Manager
Submitted by:	Annabelle Aguilar, CMC, City Clerk

RECOMMENDATION

At the regular meeting of December 10, 2012, the City Council agreed that they did not want to call for a special election to fill the vacant Councilmember seat due to costs. Therefore, it is recommended that the City Council reconsider the other options previously presented and give direction to staff. The options to consider are: 1) to appoint the candidate that received the next highest number of votes in the 2012 General Municipal Election; or 2) to conduct a recruitment process and appoint an applicant.

INTRODUCTION

At the December 10th City Council meeting, the City Council reviewed provisions of State law governing the filling of a City Council vacancy, as well as the options to appoint or call for a special election to fill the vacant Councilmember position created by the election of former Councilmember O'Brien to the position of Mayor. The City Council unanimously agreed to not call for a special election, however, did not agree on the appointment process to pursue in filling the vacancy.

BACKGROUND

Pursuant to Government Code Section 36512(b), if a vacancy occurs in an elective office, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call for a special election.

The 60-day period to fill the vacancy began on December 10, 2012, when Mayor O'Brien took his office seat and vacated his Councilmember seat with a remaining two-year term that will expire December 2014. As of today, 53 days remain to make an appointment and failure to do so by February 8, 2012, will invoke the provision to fill the vacancy through a special election.

State laws do not define the process by which an appointment must be made; rather it is left to the discretion of the City Council to determine by consensus what method will be used to make an appointment. The two methods that City Councils throughout the state have utilized are to conduct a recruitment, interview, and applicant selection process or appoint the next highest vote getter from a recent election.

ALTERNATIVES TO RECONSIDER

Alternative 1: Select the Candidate with the Next Highest Number of Votes Cast

City Council may reconsider appointing the candidate from the November 6, 2012, General Municipal Election who received the next highest number of votes cast for the office of Councilmember; if offer is declined, City Council may continue through the list of candidates by number of highest votes, or stop the process and reconsider options.

- The certified results confirm that Mr. Cal Campbell is the candidate with the next highest number of votes cast.

Alternative 2: Recruitment and Selection Process

At the December 10th meeting, Members of the City Council proposed two options for this process: 1) to conduct this process by only soliciting applications from the unelected candidates of the 2012 General Municipal Election; or 2) to conduct this process by soliciting applications from all eligible Riverbank residents. (Applicants must be a registered voter and Riverbank resident.)

The interview and selection process would be conducted in an open and public meeting, either collectively or one-by-one. The following is a proposed schedule to consider:

DATE	ACTION
December 18 (Tuesday)	▪ Staff finalizes recruitment materials ▪ Staff publicizes recruitment
December 17 – January 2	Open recruitment period: ▪ Opens Wednesday, December 19, 2012, at 8:00 a.m. ▪ Closes Wednesday, January 2, 2013 at 5:00 p.m.
January 3-7 (Thu – Mon)	City Council Members individually receive and review applications ▪ Call and Notice a Jan 7, special meeting
January 7 (Monday)	Special City Council meeting to determine: ▪ who to select to interview
January 8-9 (Tue – Wed)	Staff arranges interview process with interviewees
January 10 (Thursday)	Special City Council meeting to: ▪ interview and appoint an applicant to the vacancy
January 14 (Mon: 12 noon)	Regular City Council Meeting at 12:00 p.m.: ▪ install the appointed Councilmember

Call for a Special Election

Although there was consensus by City Council to not call for a special election, the following information is provided for information purposes.

Pursuant to the Government Code, if a special election is called to fill the vacancy, the election shall be held on the next regularly established election date not less than 114 days from the call of the special election.

- Tuesday, June 4, 2013, is the following established election date, which meets the 114-day requirement.
    - A temporary appointment may be made (4-5 months) up to the installation of the elected official, however, must be done by the 60-day deadline of February 8, 2013. (Consider Alternatives 1 and 2.)
    - The office seat could remain vacant until the installation of the elected officer.
    - Cost of a special election is approximately $38,000 to $57,000; depending on several factors to conduct the election.
        - Riverbank's March 8, 2011 Special Election cost the City $30,000.
    - If an election were conducted, the anticipated installation of the elected officer would be at the regular City Council meeting of Monday, June 24, 2013.

FINANCIAL IMPACT

There is minimum direct cost in conducting the appointment process to fill the office vacancy. The history of costs for the rendering of election services from the Stanislaus County Elections Division, have typically been less than what has been anticipated. Based on the number of registered voters and approximate cost per voter, it is anticipated the special election would cost approximately $38,000 to $57,000.

ATTACHMENT

1. Draft Application

APPLICATION
For Appointment to Fill Councilmember Vacancy
City of Riverbank

APPLICANTS MUST BE RESIDENTS AND REGISTERED VOTERS OF THE CITY OF RIVERBANK

For Official Use
Riverbank Resident Yes ___ No ___
Registered Voter Yes ___ No ___

Please type or print

Name ☐ Mr. ☐ Ms. _____
Last *First* *Middle Initial*

Home Address _____
Address *City* *Zip*

Home Phone (_____) _____ Cell Phone (_____) _____(optional)

Work/Alternate Phone (_____) _____ Email _____

Current Employment Information

Employer _____

Address _____

Position _____ Dates of Employment _____

Responsibilities _____

_____

_____

Questionnaire

(A separate sheet may be attached)

Please describe your education, training, and/or any special certifications:

_____

_____

_____

_____

_____

_____

(Upon submission to the City of Riverbank, this document becomes a public record.)

DRAFT

Please explain why you want to be appointed to the City Council:

Please list any previous City of Riverbank Board, Commission, or Committee on which you have served and/or local government process:

Please list any community organizations to which you belong or have belonged:

Please provide any additional information you wish which covers your qualifications, interests, or training related to this appointment:

I have sufficient time to devote to this responsibility and will attend the required meeting(s) if I am appointed. I am also aware that this application is a public document. If appointed, I will file the necessary disclosure documents as required under the Political Reform Act.

I declare under penalty or perjury that all statements in this application and any attached responses are true and complete to the best of knowledge and belief.

Signature _____ Date _____

Please return your application by **5:00 p.m. on Wednesday, January 2, 2013** to:

Office of the City Clerk
City of Riverbank
6707 Third Street
Riverbank, CA 95367

No application will be accepted after the deadline.

(Upon submission to the City of Riverbank, this document becomes a public record.)

DRAFT