CALL TO ORDER: Mayor Villalta called the City Council Meeting to order at the hour of 7:01 p.m.

PLEDGE OF ALLEGIANCE: The pledge of allegiance was led by Police Chief Brizzee.

ROLL CALL – MEMBERS OF THE CITY COUNCIL PRESENT: Council Members Tom Faria, Deborah Lewis, Scott Silveira, Elizabeth Stonegrove, Mayor Michael Villalta; Absent: None.

STAFF MEMBERS PRESENT: City Attorney Vaughn, City Clerk/Human Resources Director Mallonee, City Treasurer/Accountant II Brazil, City Manager Carrigan, Police Chief Brizzee, Fire Chief Guintini, Assistant Planner Elms, Assistant Public Works Director Hutsell, Information Technology Director Spalding.

CONSIDERATION OF APPROVAL OF AGENDA: Motion by Faria, seconded by Silveira to approve the agenda as submitted. The motion carried by the affirmative action of all City Council Members present.

PUBLIC FORUM: MEMBERS OF THE PUBLIC MAY ADDRESS THE CITY COUNCIL MEMBERS ON ANY ITEM OF PUBLIC INTEREST THAT IS WITHIN THE JURISDICTION OF THE CITY; INCLUDES AGENDA AND NON-AGENDA ITEMS. NO ACTION WILL BE TAKEN ON NON-AGENDA ITEMS. SPEAKERS ARE LIMITED TO A FIVE (5) MINUTE PRESENTATION. DETAILED GUIDELINES ARE POSTED ON THE COUNCIL CHAMBER INFORMATIONAL TABLE. JESS MEDRANO, Los Banos, new Commander of American Legion Post No. 166 in Los Banos and spoke regarding the new projects they are working on in regards to Girls State and Boys State; RICK TOSCANO, Los Banos, Chairman of the Boys State Committee and spoke and as promised for this year there will be two spots for a Girls State being sponsored by Gustine/Newman American Legion Auxiliary and spoke to how there are plans to establish a Los Banos American Legion Auxiliary, he then introduced the ladies taking the lead on that regard Ann McCauley, Marianne Paradiso and Mary Boesch; ANN McCauleY, Los Banos, spoke regarding establishing a Los Banos American Legion Women’s Auxiliary, stating that the new members will be counted as not just new members but founding/charter members which is a special distinction and they welcome as many members that are eligible to join and explained who is eligible, the will jointly work with the American Legion Post and look for toward appointing students to Girls State; GENEVA BRETT, Los Banos, President of the Los
Banos Chamber of Commerce, spoke regarding the Tomato Festival and encouraged the community to come out and participate this weekend and support your community, encouraged all to shop local; JERRY KNEUSTER, Interim Executive Director for Los Banos Chamber of Commerce, spoke regarding the Tomato Festival and how they are looking for volunteers to help out, she also spoke regarding Obamacare/Affordable Care Act (ACA) and how Western Valley Insurance will be conducting a free workshop on ACA on October 9, 2013 at Bethel Community Church 10-11:30 a.m. noting that this is open to the public; STEVE HAMMOND, Los Banos Bethel Community Church, stated that it is that time of year again getting close to Harvest of Fun Event being held on October 31, 2013 from 5-8:00 p.m. at Henry Miller Plaza and spoke to all that will be going on that night; BILL KNOFF, Los Banos, spoke regarding how rural America is in crisis; CORINA TAITO, mother of Bidel Taito who was murdered this July 2013 and spoke regarding justice and how the Los Banos Police Department ruled it a justified homicide, certain police officer statements, wonders why Reed was telling so many different stories, doesn’t see how a District Attorney can read what she has read and feels that this was justified homicide; Mayor Villalta spoke to how this is now in the District Attorney’s authority and any comments should be made to them, he also commended them for their orderly conduct and respect in the Council Chambers; LUANA MEJIA, stated that she has read the reports and how there was a death statement, Bidal stated that he was in alley way and how he ran, he was shot in the back, she has been going through the reports tearing them apart, doesn’t understand how this is happening; ARI TAITO, Bidal’s younger sister, doesn’t like how the Police Department keeps threatening how they are going to take all the things off my brothers site. No one else came forward to speak and the public forum was closed.

Mayor Villalta called for a five minute recess.

CONSIDERATION OF APPROVAL OF CONSENT AGENDA. Motion by Lewis, seconded by Silveira to approve the consent agenda as submitted: Check Register for #143383 – #143713 in the Amount of $1,014,423.23; City Council Minutes for the Meeting of July 17, 2013; Street Closure Request from Los Banos Fellowship of Believers to Close Off H Street, between 5th & 7th Streets, and at the End of 6th Street in Front of the Henry Miller Plaza from 3:00 p.m. to 8:00 p.m. on Thursday, October 31, 2013 for the Annual Harvest of Fun Event; City Council Resolution No. 5526 – Awarding the Bid for the Purchase of Two New 2013/2014 Medium Duty Trucks and Authorizing the Public Works Director/City Engineer to Issue the Purchase Order; City Council Resolution No. 5527 – Approving the Acceptance of Grant Funds in the Amount of $35,768 Awarded by the State of California Through the Board of State Community Corrections Relating to the Supervision of Assembly Bill 109, the Public Safety Realignment Act and Amending the Fiscal Year 2013/2014 Budget by Increasing the Appropriation Amount of the State Grant Revenue by $35,789 and Expenditure Accounts in the Amount of $67,018. The motion carried by the affirmative action of all City Council Members present.
PUBLIC HEARING – TO RECEIVE PUBLIC COMMENT AND APPEAL OF NEGATIVE DECLARATION (SCH# 2013071063) AND SITE PLAN REVIEW #2013-02 – PROPOSED CIRCLE K LOCATED AT THE NORTHWEST CORNER OF OVERLAND AVENUE AND MERCED SPRINGS ROAD, ASSESSOR’S PARCEL NUMBER 424-120-015. Assistant Planner Elms presented the staff report, which included a PowerPoint presentation.

Council Member Lewis inquired in regards to Condition No. 34, the 20 foot pole, do they understand the 2-tier pricing system and is the applicant okay with that. Assistant Planner Elms stated yes they are okay. Council Member Lewis spoke to the vines on the wall and inquired as to which side of the wall. Assistant Planner Elms stated it would be Circle K’s side of the wall. Council Member Lewis inquired as to what about the north side of the wall. Assistant Planner Elms stated that they would need to check with the applicant and legal counsel on that issue. Council Member Lewis inquired Condition No. 46, the no left turn sign and plans for a ‘pork chop’ median and spoke in regards to the preferred design Agrarian style. Assistant Planner Elms stated that all standards have been met. Mayor Villalta inquired as to why plant one side of the wall with vines and not the other and how do you determine private property. City Attorney Vaughn spoke to who would be responsible for each side of the wall.

Mayor Villalta invited the Circle K applicant to present any relevant information they may have. RONA DHRUU, Real Estate Development Manager for Circle K, stated that the proposed Los Banos store will be the first store of this size and type on the west coast, how they are excited about the project and they have been working on this for quite some time with staff, have reached out to the neighboring church and pastor and would love to discuss the issues further, has other Circle K Stores in Los Banos and feels that this new store would benefit the area of town and community on whole, she also thinks that this would help beautify the City; DAN DOBSON, representing Circle K, spoke regarding the operations of the proposed Circle K, opportunity to expand ourselves as employers in the City of Los Banos, currently eight (8) employees which could go up to twenty (20), both full time and part time employees, how Circle K staff are passionate in the business and serving the community, well trained on robbery presentation and alcohol sales, expanding fuel pumps, and how the proposed 4,500 sq. ft. building will allow much more in regards to merchandising and food offerings.

Council Member Lewis spoke to the signage, anticipated two-tier selling pricing, would like to add to Condition No. 30 that there will only be one (1) sign 20-foot sign; the landscaping schematics proposed planting palettes, are only two-tier dimensional and how she couldn’t find a single shrub, wants to make sure that we just don’t have vines and trees coming out of the ground, wants to make sure shrubs will be a part of the project. RONA DHRUUV stated that those are just conceptual and they will ensure the three-dimensional look. Mayor Villalta invited Pastor Jenkins to come forward and speak. PASTOR JENKINS stated that they are not coming before the City Council to try and stop or hinder the growth of los Banos. He spoke to what the future of New Canaan Baptist Church may look like and handed out renderings. He has concerns for the wall, who will need to take care and maintain, the future plans are for that area,
doesn’t want to stop their progress but we do not want Circle K to stop their progress.

SENIOR PASTOR EVANS stated that 35 years ago a cornerstone was placed at the current New Canaan Baptist Church location; spoke regarding RLUIPA (Religious Land Use and Institutionalized Persons Act), how there are several unsubstantial burdens placed on the church, i.e. crime, alcohol, and this would cause a great substantial hardship on their progress in this community, spoke to Pacific Justice in Sacramento, the Church is concerned about smoking use, sales, the safety of their children in Sunday schools, how you have to be very protective of the environment; RON EARLS, Merced, stated that he is concerned about the distraction or detracting from worship, spoke to 17 years ago a major outbreak of violence at the high school and how that had to be dealt with and how he encouraged the Council to think this decision through.

Mayor Villalta invited Council Members to ask questions of either side. Council Member Lewis inquired as to this specific law mentioned, RLUIPA.

Mayor Villalta opened the public hearing. TONYA, Assistant Manager of Circle K, spoke in support of Circle K, he understands the church’s concerns, they do not just sell alcohol, they sell gasoline and food too, how they are such a tiny spot, there currently are lines to pay, lines for gas, Circle K will be right near the church and not have to go across the street, the “pork chop” will help control traffic, the new Circle K it is going to be really good, and he feels that the church will be able to grow as planned; DOLORES LOVETT, Los Banos, Youth Choir Director, had her choir sing a quick song and spoke in opposition of the proposed Circle K, and read from a prepared statement (on file with the City Clerk), noting that they get a time of peace at church, no worries about gangs, the last thing they need to see is a wall of graffiti full of gang signs, and she handed out pictures she had taken of the graffiti; JAMES ANTHONY, Los Banos, caretaker of the New Canaan Baptist Church, spoke in opposition of Circle K and how there are already liquor bottles everywhere; NANCY, Manager of the Circle K by the hospital, spoke in support of Circle K and the pride they take in their stores and keep them free of graffiti, we pick up our lot and the surrounding area, they feel they are the community store; VONEEN SMITH, Los Banos, stated that she frequents the Circle K by the hospital and they do not sell hard liquor they sell 10% volume or less, she spoke in opposition of the Circle K, she is concerned with the parking lot, how New Canaan Baptist Church is safe haven for the kids, the Circle K brings vagrancy, more traffic to the area will make it very dangerous, not right to have a sanctuary next door to a place that sells alcohol or adult magazines; MS. McKENZIE, spoke in opposition to Circle and how she has spoke to the Mayor about what we can do to not have so much gang activities, what about putting it in another location, is concerned with the graffiti on the wall that faces the Church, could turn into a place for people to hide out, will our church still look beautiful when people go behind the church to smoke and drink and do whatever they want to do, concerned with the signs and if this project positive for us, and how they won’t see our church sign just the gas signs; DR. HENRY SMITH, Los Banos, member of New Canaan Baptist Church, spoke in opposition to the Circle K, how he is concerned about the noise footprint that the car wash will create, when people come to church they expect a sanctuary and the noise pollution interferes with our ability to administer to the spiritual needs of our community; INEDA KAETA, Los Banos, spoke in opposition of the
proposed Circle K and how Circle K’s are big money makers, how you need to treat all equal and the same no matter how much money they have, how this would not happen by the Catholic Church, how the church could become a landmark, her concerns for health concerns, CalTrans concerns, sewer concerns, pollution concerns; FREDERICK TODD, Los Banos, spoke in opposition to the Circle K Project and how the church will not moving their sewer line, he spoke regarding all the issues he has with Circle K, handed out pictures of the Circle K’s in town, how there are hundreds of pages of crime that happened at Circle K and read a few instances and alcohol is everywhere in the store; CRAIG MYRTLE, Marketing Manager for Circle K, stated that safety is a big concern, we have a great relationship with the Los Banos Police Department; Council Member Lewis asked for the addresses of the Circle K stores in Los Banos for which she was provided; MICHAEL FARIAS, Los Banos, spoke in opposition of Circle K, stating that is was not a good idea for another store, do we really need another store selling liquor, noting how his friend got killed last year by a drunk driver; JERRY BEARDEN, Modesto, land-owner of the adjacent land to the current Circle K, stated that he believes in the commercial future of los Banos, spoke to the improvements he has done on his property near the proposed Circle K and the history he has with the, and how he is willing to start direct negotiations. RONA DHRUV spoke to the masonry wall and how they didn’t have to put it up, but they did that in consideration of the church, how the traffic of the current store is a mess and the new layout will allow for better access, safety is a big concern for them too and the new store will have 17 cameras, state of the art equipment, and how the new Circle K would be enhancing the area not a detriment, how the negotiations with the southwest corner did not work for them; DAN DOBSON spoke to the safety and image of our stores, how the most important thing is to have good visibility in and out of the store, there will be many more windows with the new store, they will be lighting up the area around the store and they will maintain/clean the graffiti. The public hearing was closed.

Mayor Villalta inquired as to if the gas station was put on the other side of the street, how would the gas trucks get out, for which Assistant Planner Elms explained. Council Member Silveira inquired as to why no access, for which Assistant Planner Elms explained the need for the pork chop median to address traffic issues and concerns. Council Member Silveira inquired as to why does the corner location not work for which it was stated that it did not allow for a right in right out. Council Member Lewis stated that when Mercey Springs Road widened, to create the acceleration lane, CalTrans said there could be no ingress or egress off that corner, how she has concerns that even with the pork chop access, the acceleration lane is still there and a possible traffic accident could occur, why is it okay now with CalTrans now for which it was explained that two traffic studies have been done to determine the safest route. Council Member Lewis is concerned about the traffic issues, her community, if the proposed location is the most appropriate location, if there is lots of lighting and wondered if there is concern for that for which it was stated that the lights will shine on the back of the building and the canopies will have lights over the gas tanks. Council Member Lewis spoke regarding the crime statistics for the last 12 months and how Circle K has the most criminal activity compared to others and Circle K explained how they handle criminal activity. Council Member Stonegrove inquired as to the issues with the sewer line for
which the engineer stated that they can relocate the sewer line and do not need the churches permission. City Manager Carrigan clarified that the calls for service from Circle K to the Los Banos Police Department came from the store/employees regarding issues they needed assistance on. Council Member Silveira inquired as to when Circle K leaves the current location would the gas tanks be removed and would like to know that they would be removed for which it was explained that it is their intention to work with the landlord to remove them. Mayor Villalta inquired as to if you can render the gas tanks inoperable when you leave and then the property owner will have to choice but to remove them. City Attorney Vaughn stated that that is a very complex question, involving many government agencies, what is at issue tonight is to hear the purpose of the site plan review, design site plan and the issue of relocation is a side issue. The applicant meets all the requirements/criteria of the proposed site plan as set forth in the ordinance. Council Member Lewis inquired again regarding the religious land use legal issue brought up earlier and if it has any effect on our decision tonight, for which City Attorney Vaughn stated that the City cannot oppose regulations on the church does not think it extends on the neighbor; BILL ABBOTT, Special Legal Counsel, stated that Mr. Vaughn is correct, land use law requires the City to be neutral and adhere to zoning regulations and the focus should be on impact and regulations. Council Member Lewis inquired to the City's noise ordinance and if this project is in compliance with that for which staff noted that this project is zoned highway commercial allows higher noise levels than for residential. Mayor Villalta deferred to legal counsel on how the City should proceed with this action based on the information presented tonight. Mr. Abbott stated that a decision on the negative declaration needs to be made and direction to staff in a motion of intent to approve the project or motion to deny. Council Member Lewis stated that she would like to add conditions. City Attorney Vaughn explained what a negative declaration is and how it is okay as proposed, there was no comments tonight that would go against the approving the negative declaration. Council Member Lewis stated that she is looking at an environmental report and has concerns regarding the traffic study on Highway 165 regarding the ingress and egress heading north, noise concerns because it is a 24 hour operation and a car wash can be noisy and how she would like to see them stipulate the car wash hours to be 7:00 a.m. -9:00 p.m., and she is concerned about the aesthetics and issues with the landscape plan. Council Member Faria agrees with the limitation of the car wash hours and will not support the motion without it. Mr. Abbott stated that if the applicant offered the stipulation the issue goes away.

Motion by Stonegrove, seconded by Silveira to state that the Negative Declaration is adequate and a motion of intent to approve the Negative Declaration (SCH# 2013071063). The motion carried by the following vote: AYES: Faria, Silveira, Stonegrove, Villalta; NOES: Lewis.

Council Member Lewis noted that she voted no because of the traffic study concerns she has.

Mayor Villalta spoke regarding the wall and moving it in 2 feet and for Circle K to maintain both sides of the wall and what about an 8 foot wall as opposed to a 6 foot
wall, would Circle K raise it to reduce the noise level. RONA DHHRUV will maintain both side of the wall and raise the wall to an 8 foot variation. Council Member Silveira inquired as to what is going on with the sewer line for which the church has stated that they will not allow anything to happen with their sewer line. Staff explained the sewer line situation and that the sewer line is a private easement that crosses the property and the City cannot deal or resolve private property issues, this is outside the City’s scope.

Motion by Lewis, seconded by Faria to make a motion of intent to approve Site Plan Review #2013-02 – Proposed Circle K located at the Northwest Corner of Overland Avenue and Mercay Springs Road, APN 424-120-015, with the moving of the wall and 8 foot variation, one sign for gas prices, maintain both sides of the wall, and all landscape types to be listed on the plans. The motion carried the affirmative action of all Council Members present.

It was noted that staff will bring back City Council Resolutions at the next Council Meeting for approval as stated above by the motion of intents to approve.


Mayor Villalta stated that he would like to bring forward everything that was stated at the previous public hearing to this public hearing.

Mayor Villalta called for a ten minute recess.

Assistant Planner Elms presented the staff report, which included a power point presentation.

DAN DOBSON, spoke regarding the training Circle K employees receive, mystery shoppers, chimes on the doors, liquor behind the counter, state of the art camera system, and how they are doing their part to be responsible. CRAIG MYRTLE, spoke regarding how the alcohol is locked up at 2:00 a.m. and unlocked at 6:00 a.m. in the Circle K stores.

PASTOR JENKINS pointed out that that they are not just a church, but we are also a school and daycare, how the new store will increase gas pumps which will increase sales, so in turn they will increase sales of alcohol, he stated that the only spirits he wants floating around or near the church is the Holy Spirit, this is a place of worship, why make it bigger if you don’t plan on selling more, and feels it will adversely affect the church. RON EARLS, wondered if they could consider blocking sales on Sundays and/or times of worship and if relocation allows the City to impose additional restrictions; an unidentified male, stated that he would like to see security guards and no alcohol
sales on Sundays; DORIS LOVETT, Los Banos, concerned for Los Banos as a whole, we currently have 33 off site liquor licenses and 29 on sale liquor licenses, lots of DUIs in this town, can ABC control what is happening in our town, and how sales is going to double at the new Circle K location, how many beer caves do we need in Los Banos; FREDERICK TODD, spoke regarding how the people buying beer are already drunk or getting ready to get drunk, the noise issues, car wash issues, people arguing, requesting that the City say no to the liquor license; MS. MCKENZIE spoke regarding a finding in Marietta, GA, to have 600 feet between church and business, there is nothing to separate Circle K and the church, it would be better if they went across the street, consider giving us some space in between; ANITA KAEDA, asking the Council to consider the church, you might want to do an independent investigation to find out what they sell more of – liquor, beer or gas, it’s been stated the damage that alcohol does in the community, she has made the decision tonight that you can do right regardless. No one else came forward to speak and the public hearing was closed.

RONA DHRUV with Circle K reiterated that we are not asking for a new license but transferring it from one location to another and that this location was previously approved for a license (Rite Aide); DAN DOBSON, spoke to Circle Ks track record, how they are trained to prohibit selling to minors and people who are intoxicated, it is an issue they take very seriously and the oversight on this issue.

Council Member Silveira inquired as to the "beer run" incidences and have the new Circle K prototypes been successful for deterring that for which he was told that there is no comparable stats, but the new security in the store will deter the crime. Council Member Lewis inquired as to if it were a 24 hour operation and how ABC allows for restrictions on hours of sales for which it was noted that all alcohol is locked up from 2:00 – 6:00 a.m.. Council Member Lewis feels that alcohol sales will increase, just as gas will. Mayor Villalta inquired as to if it is appropriate that additional conditions can be added if something is not working for which staff indicated that yes they could be added, but that we only have control over the proposed Circle K not the other 2 Circle K’s. Mayor Villalta would like to review the crime statistics in this in six months to see how things are going. Council Member Stonegrove doesn’t think this is a new standard that we are going to start applying or just for this location. Council Member Faria stated that if he had his druthers he wouldn’t put this by a church, but Circle K has met the requirements and he will make sure we look at the numbers again in six months, wants to make sure Circle K is not having a negative impact on this area/community. Council Member Lewis stated that the general use criteria will not be a nuisance, but goes against her comfort, she has issues with alcohol licenses issued near schools and churches, needs to evaluate this for the sake of the community, concerned about the senior housing going in near this project, and hoping something can be worked out with Circle K and the church. Council Member Stonegrove stated that this area is commercially zoned, has real qualms about putting stipulations on this business but not on others, and how it would put them at an unfair advantage.
Motion by Stonegrove, seconded by Silveira to make a motion of intent to adopt City Council Resolution No. 5528 – Approving Use Permit #2013-11 for the Off-sale of General Alcohol for Circle K Located on the Northeast Corner of Overland Avenue and Mercey Springs Road. The motion carried by the following vote: AYES: Faria, Silveira, Stonegrove, Villalta; NOES: Lewis.

ADVISEMENT OF PUBLIC NOTICES. (ONE REPORT)  Assistant Planner Elms reported that a Public Hearing will be held at the Planning Commission on October 9, 2013 to consider a Tentative Parcel Map No. 2013-01 to subdivide approximately 22.3 acres into 2 parcels in the Professional Office and Low Density District located at 1840 S. Center Street, APN 431-270-001.

CITY MANAGER REPORT.  City Manager Carrigan stated that on September 18-20, 2013 he, Mayor Villalta, Council Members Lewis & Silveira and City Attorney Vaughn attended the League of California Cities Conference held in Sacramento, where a lot of information was gathered and well worth the trip; spoke regarding attending the recent 2x3 Meeting with the Los Banos Unified School District and their relationship is excellent; he attended a recent Chamber Mixer at the Movie Theater; the Tomato Festival is this weekend and commended all involved for their hard work; he spoke regarding how he, Fire Chief Guintini, and Police Chief Brizzee are going around talking to different groups about Measure K.

CITY COUNCIL MEMBER REPORTS.

TOM FARIA: Encouraged all to support Measure K and spoke to all the events planned for the Tomato Festival.

DEBORAH LEWIS: Made a plea to move forward with the Design Review Board Committee and bring it to Council for consideration.

SCOTT SILVEIRA: Reminded all about the Hospital Gala coming up November 2, 2013 at the Los Banos Community Center, and how he is going to be a judge for the Bloody Mary Contest at the Tomato Festival.

ELIZABETH STONEGROVE: Reminded all about the CASA Dinner being held on October 12, 2013 at the Los Banos Community Center and the Harvest of Fun event on October 31, 2013.

MAYOR MICHAEL VILLALTA: Spoke regarding how the signal light at the corner of West I Street and Pacheco Boulevard seemed a bit long, so he called Caltrans to fix it and they found a sensor was broken; reminded all about the Harvest of Fun event on October 31, 2013, it is a nice fun safe event; how the League of California Cities Conference in Sacramento was well worthwhile, what he found interesting was the discussion on air quality and grant money; he went on the Valley Voice Trip to Washington, DC but it did not cost the City a dime, while on the trip there were talks about international goods move, California in need of cleaner air, gas tax is going down;
he also attended leadership conference for Healthy Communities where they talked about the affects of sweets and sugars on our kids and mentioned how Pacheco High School is looking at creating a school farm.

CLOSED SESSION – PUBLIC EMPLOYEE PERFORMANCE EVALUATION, PURSUANT TO GOVERNMENT CODE SECTION 54957, TITLE: CITY MANAGER.
No action taken.

ADJOURNMENT. The meeting was adjourned at the hour of 12:25 a.m.

APPROVED:

/s/ Michael Villalta
Michael Villalta, Mayor

ATTEST:

/s/ Lucille L. Mallonee
Lucille L. Mallonee, City Clerk