

# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Request that City Join Amicus Brief in the case of Haas v. County of San Bernardino, Supreme Court Case No. S076868

**MEETING DATE:** May 18, 1999 Actual Date: 8/18/99

**PREPARED BY:** City Attorney

**RECOMMENDATION:** That the City join the amicus brief in the case of Haas v. County of San Bernardino.

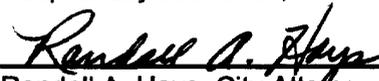
**BACKGROUND:** *Amicus* Briefs are filed in various actions which involve matters of wide ranging concerns to provide information and additional argument to the court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

This case involves a challenge to the manner in which the County of San Bernardino selected a hearing officer to handle a particular matter. You may remember that during the Council hearing on the M&P Investments matter Mr. Salazar on behalf of M&P Investments questioned Lodi's methodology for selecting its hearing officer in that case based upon the decision in the Haas case. Until the decision in the Haas case, it was necessary for someone challenging a hearing officer's position to demonstrate that there was actual bias existing and that the hearing officer should therefore be replaced or prohibited from handling a matter. Typically, a jurisdiction, be it a city, county or the state appoints or hires hearing officers and compensates them for the work that they do. The court in the Haas case decided that it was a violation of due process when an agency unilaterally selects and compensates a hearing officer even if there is no proof of actual bias.

This case is important to the City, because it represents a considerable departure from the current requirement of the California Supreme Court that actually bias exists as a precedent to disqualification of a hearing officer. The ability of the City to select hearing officers under the Fourth District's ruling would basically prohibit the City from appointing hearing officers without involving the parties subject to the hearing in the selection of the hearing officer. Further if the ruling of the Court of Appeal is allowed to stand, it would open literally thousands of local government decisions to attack and require changes in the administrative practices of every local government in the State with respect to a wide range of matters in the land use, labor and employment and other contexts. In particular, the selection of planning commissioners and other commissioners who have hearing functions would be called into question.

**FUNDING:** Not applicable.

Respectfully submitted,

  
Randall A. Hays, City Attorney

APPROVED: \_\_\_\_\_

  
H. Dixon Flynn -- City Manager