

# CITY OF LODI

# COUNCIL COMMUNICATION

**AGENDA TITLE:** Request that the City Join Amicus Briefs in Four Cases  
**MEETING DATE:** December 1, 1999  
**PREPARED BY:** City Attorney

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**RECOMMENDATION:** That the City Council authorize City participation in the Amicus Briefs for the following designated cases.

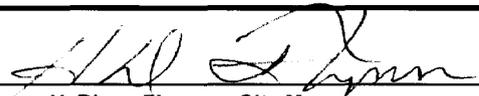
**BACKGROUND:** Amicus Briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

**Friends of Mammoth et al v. The Mammoth Lakes Redevelopment Project**, California Court of Appeal, Third Appellate District, Case No. C031043. The town of Mammoth Lakes adopted its Redevelopment Plan in July 1997. Based upon the detailed report of its redevelopment consultant, the Town Council concluded that the project area suffered from conditions of economic blighting and conditions of physical blighting. No state or local taxing agency affected by the plan objected to its adoption. A local citizens group and several residents of the town brought suit challenging the validity of the plan. The trial court concluded that substantial evidence existed in the administrative record supporting the Town Council's findings of physical and economic blight, thereby finding in favor of the Town Council's action and concluding that it substantially complied with the Community Redevelopment law and therefore was valid.

This particular case will deal with three particular issues that are of significance to the City. Those issues are an analysis of the physical blighting criteria, an analysis of the combination of blighting conditions as they constitute serious physical and economic burdens on the community, and the standard of review to be used at the appellate level in assessing the validity of a redevelopment plan. This particular case is one of the first to reach the appellate level since the redevelopment law in California was amended a few years ago. It is therefore important to all cities to have the issues before this Court resolved in favor of cities.

**Marguerite Treweek v. City of Napa**, California Court of Appeal, First Appellate District, Case No. A087820. The issue in this case is fairly easily framed and is as follows. Does a publicly maintained boat ramp qualify for the immunity provided in Government Code §831.4 as a path or trail which provides access to recreational activities? The trial court in this matter found that in deed a publicly maintained boat ramp qualified for the immunity contained in Government Code §831.4. This case is significant to us as well as other cities because just about every city and town in California can boast about maintaining recreational paths and trails within its jurisdiction. These areas provide much needed recreational activities for their own residents as well as tourists. The Legislature in enacting Government Code §831.4 sought to encourage the construction of such recreational paths and trails by providing immunity to cities

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

  
H. Dixon Flynn -- City Manager

and towns which do so. Since its enactment, courts have tended to expand this area of law into the area of paved bicycle paths and other walkways. It is tremendously important to all cities and towns to monitor and have input into the decisions of the courts of this state in terms of the expanding nature of the application of this immunity. The impact of the decision to be made in this case may have far reaching implications, in deed statewide implications in terms of the enthusiasm with which cities and towns will thereafter be willing to create and construct areas of access to recreational activities. Specifically, this case is on point since the City of Lodi does maintain a boat ramp at Lodi Lake that clearly is used to facilitate recreational activities. This City would directly benefit from a decision which upholds the trial court finding in this case.

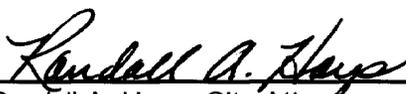
**Zelig v. County of Los Angeles**, California Supreme Court, Case No. S081791. This case while being one against a county is really a case involving public buildings. Dr. Zelig shot and killed his wife in the Los Angeles County Courthouse. Mrs. Zelig's heirs sued the county for negligence and dangerous condition liability because the county did not use a metal detector to screen persons entering the courthouse. The trial court found in favor of the county. However, the Appellate Court held that the heirs in fact could sue the county. The case has been granted review by the California Supreme Court. The California Supreme Court will hand down an important decision on governmental tort liability. If the Supreme Court sustains the Appellate Court position, a substantial new duty and burden will be placed upon local governmental entities relative to creating a duty for the acts of citizens over which they have absolutely no control.

**Utility Cost Management v. East Bay Municipal Utility District (EBMUD)**, Court of Appeals, First Appellate District, Case No. A087191. This particular case involves the application of a statute of limitations contained in California Government Code §66022 and Public Utilities Code §14402 which sets forth the procedures that public utility customers should use to challenge a decision by a water or wastewater provider who adopts or amends certain fees and services charges for water and sewer service. These particular sections set forth that a challenge to the adoption of certain fees or service charges must be made within 120 days of the effective date of the ordinance, resolution or motion that establishes them. This particular statute of limitations is based upon important policy considerations. Principal among those is that it is necessary to insure stability and finality to governmental fiscal decisions and to deter delayed raids on public treasuries. Public agencies do not accumulate profits and as a result the Legislature has recognized that belated claims for monies that have been collected and spent will penalize not only the agency but also the public since rates would have to be further adjusted in order to address and satisfy untimely claims. In this particular action, suit was brought against EBMUD in 1997 arguing that portions of water and wastewater service rates paid since 1986 should be refunded. The Superior Court of Alameda County found that the 120 days statute of limitations applied thereby resolving the matter in favor of EBMUD. That particular decision has now been appealed by Utility Cost Management to the Appellate Court. Clearly the public policy behind the 120-day statute of limitations deserves support.

The Legal Advocacy Committee of the League of California Cities requests participation in all of the above-mentioned cases.

**FUNDING:** Not applicable.

Respectfully submitted,

  
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Randall A. Hays, City Attorney