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CITY COUNCIL MEETING  
DECEMBER 4, 1985

cc HC

REPORT BY CITY ATTORNEY  
ON L.I.F.E. VS CITY OF  
LODI

City Attorney Stein presented a report regarding the outcome of the L.I.F.E. vs City of Lodi (Green Belt Initiative) suit. Following discussion, Council requested that this matter be placed on the agenda for the Regular Meeting of December 18, 1985.

MEMORANDUM

To: Honorable Mayor and Council Members  
From: City Attorney  
Re: L.I.F.E. vs. City of Lodi (Green Belt Initiative)  
Date: December 3, 1985

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On November 25, 1985, Superior Court Judge James P. Darrah ruled on a Summary Judgment Motion by the L.I.F.E. Committee (hereinafter referred to as "Petitioner") that Measure A (Green Belt Initiative) was invalid. The ruling has as its basis that the measure interfered with the process of annexation, which is a matter of compelling State interest in which the State has preempted the field, not allowing cities by their councils or voters to prescribe any requirement relating to annexation.

A number of questions have been asked of this office since the decision was rendered, and I feel that it would be very important, in order for this Council to make a decision regarding the appeal process, to have these questions answered. I am sure that these are not the only questions, and obviously I will make myself available to answer any additional questions regarding this matter. I felt that the format to use should be a question and answer type format that would simplify and clarify the issues:

(1) Q. What did the Court decide?

A. Before the Court were two lines of cases which the Court was required to apply to its decision on the constitutionality of Measure A. The first line of cases, in effect, disallowed citizens of a municipality from voting on annexations, discussed in Ferrini v. The City of San Luis Obispo (Ferrini). The second line of cases allowed the citizens of a municipality to vote on zoning matters, including general plans discussed in Associated Home Builders of the Greater Eastbay v. City of Livermore (Livermore).

In the Judge's decision, he determined that Measure A was in effect, an initiative which would allow the citizens to vote on annexations, an area which has been preempted by State law (Ferrini). The Judge looked at the initiative itself and determined that the language of the initiative, the arguments in favor thereof, and the impartial analysis by the City Attorney, all referred to annexations. The Judge was of the opinion that the initiative was in effect to allow a vote on annexations by the citizens (a precondition to annexation); and therefore was invalid.

- (2) Q. What is the cost to date of defending Measure A?
- A. Approximately \$32,000.
- (3) Q. What would be the cost of an appeal?
- A. Approximately \$10,000 - \$15,000. Most of the work has already been done Superior Court. The cost of briefing and arguing will be somewhat limited.
- (4) Q. What would be the issues on appeal?
- A. On appeal, the Third Appellate Court would have to decide whether Judge Darrah's decision should in fact be sustained. It would be my understanding that the City would be arguing that the second line of cases allowing the citizens of the City to vote on general plans (Livermore), is in fact the cases that the Judge in the lower Court should have applied. What we would be arguing would be that the Court should have looked at the way the City interpreted Measure A, i.e., in our Measure A elections over the years, rather than the initiative language itself.
- (5) Q. What is the time frame for appealing the decision?
- A. Within 60 days of the issuance of the final Judgment and Order of the Court. Attorney Steve Herum who represents the Petitioners in the case, is in the process of preparing the Order at this time.
- (6) Q. What if we don't appeal? Can others appeal?
- A. Yes, another party could attempt to intervene on behalf of the citizens of the City of Lodi to pursue the appeal.
- (7) Q. What options does the City Council have as it relates to the Measure A litigation?
- A. The City Council may:
1. Appeal the decision.
  2. Do nothing and assume that some other person may or may not appeal.
- (8) Q. What happens if we go on appeal and Petitioner is successful on appeal? What can the City Council then do?
- A. If the Petitioner is successful on appeal, the City Council can at that time ask for a hearing before the California State Supreme Court.
- (9) Q. What if the City wins on appeal and Measure A is sustained?
- A. At that time, Petitioners can ask for a hearing before the Supreme Court. Further, in the lower Court, there were two issues

that were not resolved, because Judge Darrah felt that the major issue was whether or not the measure was valid as it relates to the aforementioned lines of cases. The two other issues were not resolved and it is possible that the Petitioners can go back to the Superior Court and have those two issues resolved. Both issues were on a summary judgment motion and the City's defense to that was that there were facts in dispute and therefore they were issues that should be tried. The two issues were:

- a) Whether or not Measure A was unconstitutional in that it limited the City's ability to take its regional share of housing for low and moderate income people; and
- b) Whether Measure A was invalid because it made the other elements of our General Plan inconsistent.

It should be noted that even if the City were to win on the above-mentioned issues in the Superior Court, this would not stop the Petitioner from appealing those issues or from going to trial and then having those issues decided after a trial in an Appellate Court.

(10) Q. Are annexation requests stayed pending appeal?

A. Yes. Until the Order of the Court is final, Measure A is still in effect and once the order of Court is final and if the City Council chooses to appeal or if someone else chooses to appeal, Measure A would still be in effect pending the outcome of appeals.

(11) Q. Can the Petitioner make a motion for the City to pay Petitioner's attorney's fees since Petitioner is the successful party?

A. Yes they can according to Code of Civil Procedure Section 1021.5.

(12) Q. If the City Council should choose not to appeal the Judge's decision, at what point and time could the City resume accepting applications for annexations?

A. The City Council could again accept applications for annexation 60 days from the date of the issuance of the final Judgment and Order of the Superior Court.

(13) Q. Assuming the Judge's decision is not appealed, what effect does the Judge's decision have on the City's General Plan?

A. It places the areas between the Lodi City Limits and the former growth limits back into the City's land use element of the City's General Plan.

I hope that these few questions and answers give you some insight into the Court's decision, and some of the questions that have been brought

up regarding this matter. If you have any other questions or comments,  
please feel free to contact me.

*Ron Stein*

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RONALD M. STEIN  
CITY ATTORNEY

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