

CITY COUNCIL, CITY OF LODI .
CITY HALL COUNCIL CHAMBERS
WEDNESDAY, SEPTEMBER 20, 1989
7:30 P.M.

ROLL CALL Present: Council Members - Hinchman, Olson, Reid,
Pinkerton and Snider (Mayor)
Absent: Council Members - None
Also Present: City Manager Peterson, Assistant City
Manager Glenn, Public Works Director Ronsko,
City Attorney McNatt, and City Clerk Reimche

INVOCATION The invocation was given by Pastor John Cockram, St.
Paul's American Lutheran Church.

PLEDGE OF ALLEGIANCE The Pledge of Allegiance was led by Mayor Snider.

PRESENTATIONS

FIELD AND FAIR DAY,
1989 UPDATE

CC-27(e) Community Center Director Charlene Lange gave an update
regarding Field and Fair Day, 1989.

PROCLAMATIONS Mayor Snider presented the following proclamations:

- CC-37 a) "Conservation Day"
- b) "National Emblem Club Week"
- c) "Rideshare Week"

CONSENT CALENDAR In accordance with report and recommendation of the City
Manager, Council, on motion of Council Member Reid,
Pinkerton second, approved the following items hereinafter
set forth.

Mayor Snider abstained from voting because of a possible
conflict of interest on Agenda item No. E-12 - "Final Map
and Subdivision Agreement for Sunwest Unit No. 10, bounded
by Lower Sacramento Road on the west, St. Moritz Drive on
the south, Interlaken Drive on the east, and undeveloped
land on the north".

CLAIMS CC-21 (a) Claims were approved in the amount of \$851,181.63.

MINUTES The minutes of August 16, 1989 and August 30, 1989 were
approved as written.

Continued September 20, 1989

DESTRUCTION OF
RECORDS APPROVED

RES. NO. 89-122 The City Council adopted Resolution No. 89-122 approving
the destruction of budget records retained by the City
Manager's Office in accordance with State of California
CC-6 Government Code No. 34090.
CC-300

SPECIFICATIONS AND
ADVERTISEMENT FOR BIDS
TO PURCHASE VACUUM
CIRCUIT BREAKERS,
INSTRUMENT VOLTAGE
TRANSFORMERS, DISCONNECT
SWITCHES, STATION BATTERIES
AND BATTERY CHARGERS,
AND 60-KV INSTRUMENT
SWITCHBOARDS

CC-12.1(b) The City Council approved the specifications for the
purchase of 8 - 15-kv Vacuum Circuit Breakers, 2 -
12-kv Instrument Voltage Transformers, 155 - 15-kv
Disconnect Switches, Batteries and 2 Battery Chargers,
60-kv Instrument Switchboards and authorized
advertisement for bids thereon. The bid opening date has
been set for Tuesday, October 17, 1989.

The City Council was advised that the above equipment will
be installed at the new Industrial Substation. This group
of materials is being bid at this time based on anticipated
delivery time in order to be available for the scheduled
construction of the station in early 1990. The estimated
cost of this purchase is \$140,000, \$2,500, \$95,000, \$23,000
and \$260,000 respectively, for a total of \$520,500.

Funding for this purchase is available within the overall
funding for the Industrial Substation project.

PURCHASE OF STATION
AND LINE INSULATORS

RES. NO. 89-123

CC-20 The City Council adopted Resolution No. 89-123 awarding the
CC-47 bid for the purchase of 477 station and line insulators to
CC-300 Western States Electric, Inc. of Portland, Oregon in the
amount of \$46,207.52.

The City Council was advised that the insulators will be
installed at the new Industrial Substation 12-kv and
69-kv bus structures and on three new 69-kv overhead
lines connecting the new substation to the existing system.

Continued September 20, 1989

Due to the fact that the Industrial Substation is needed for service by June 1, 1990, and indications at time of bid preparation that porcelain insulators would not be available in time for construction to meet this date, bids were requested for both porcelain and polymer-type insulators. The polymer insulator would be considered as an acceptable alternate to porcelain in the event porcelain could not be obtained within the time constraint. Porcelain is the preferred insulator; it is a time-proven insulating material and is highly recommended by the City's consultant (Power Engineers, Inc.), as well as the Department's engineering staff, for this location and application. Porcelain insulators were utilized by PG&E in the recent construction of transmission lines leading to this substation.

Evaluating the received bids, including the quoted lead times, and based on the above endorsement of porcelain insulators, it was recommended that this bid be awarded utilizing porcelain as the insulating media. It was further recommended that Item 1 (69-kv station post) and Item 3 (69-kv vertical post) be awarded to the next lowest bidder based on the 6 and 14 weeks, respectively, improvement in lead time with this bidder. The additional cost to the City is \$570.66 or 2.4%. The construction schedules for the substation and the transmission lines require that insulators be available by March 1, 1990, a date not achievable with the lead time of the low bidder on these two items.

Listed below are the subject bid evaluators:

<u>Bidders</u>	<u>Location</u>	<u>Item No.</u>	<u>Amount</u>
Western States Electric	Portland	1	\$22,323.60
		2	\$ 5,694.85
		3	\$ 1,856.27
Maydwell & Hartzell, Inc.	Brisbane	1	\$21,779.29
		2	\$ 6,223.90
		3	\$ 1,829.92
General Electric	Emeryville	1	\$24,115.00
		2	\$ 8,087.80
		3	\$ 2,425.28

Continued September 20, 1989

PURCHASE OF INSTRUMENT
VOLTAGE TRANSFORMERS

RES. NO. 89-124

CC-20 The City Council adopted Resolution No. 89-124 awarding the
CC-47 bid for 15 - 60-kv instrument voltage transformers to the
CC-300 low bidder Sierra Sales Engineering of Pleasanton,
 California in the amount of \$66,423.84.

Listed below is the subject bid evaluation. This equipment
will be installed on the 60-kv bus at the new Industrial
Substation.

BID EVALUATION - EUD-89-660-KV INSTRUMENT VOLTAGE TRANSFORMERS

<u>Supplier</u>	<u>Price w/tax</u>	<u>Delivery (weeks)</u>	<u>Manufacturer</u>
Sierra Sales Engineering Pleasanton, CA	\$66,423.84	12-16	Associated Engineering Co., Matthews, NC
Westinghouse Elec. Supply Co. Concord, CA	71,922.06	12-18	Westinghouse ABB Pittsburg, PA
Square D Company Clearwater, FL	74,571.00	18-22	Square D Company Clearwater, FL
General Electric Supply Co. Emeryville, CA	124,656.00	7-12	General Electric Co. Schenectady, NY

PURCHASE OF 69-KV
DISCONNECT SWITCHES

RES. NO. 89-125

CC-20 The City Council adopted Resolution No. 89-125 awarding the
CC-47 bid for the purchase of 31 (total) 69-kv Disconnect
CC-300 Switches, arranged in three groups, to the low bidder in
 each group as follows:

Group 1 and 2:

Maydwell & Hartzell, Inc. Brisbane, CA	\$102,797.74
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Continued September 20, 1989

Group 3:

Sierra Sales Engineering
Pleasanton, CA 17,335.24

This equipment will be installed on the 60-kv bus at the
new Industrial Substation.

Bidder	Group No.	Amount	Delivery (Weeks)	Manufacturer
Maydwell & Hartzell Brisbane, CA	1	\$ 95,733.90	20-26	Kearney Atlanta, GA
	2	\$ 7,063.84		
	3	NO BID		
Howard A. Dunn Co. San Mateo, CA	1	\$104,463.00	22-30	Siemens Energy & Automation, Inc. Richland, MS
	2	\$ 8,162.00		
	3	\$ 17,596.00		
Sierra Sales Engineering Pleasanton, CA	1	\$156,408.30	22-24	USCO Power Equip. Birmingham, AL
	2	\$ 12,115.80		
	3	\$ 17,335.24		

PURCHASE OF 54-KV
SURGE ARRESTERS

RES. NO. 89-126

CC-20
CC-47
CC-300

The City Council adopted Resolution No. 89-126 awarding the bid for the purchase of 15 - 54-kv Station Class Surge Arresters to the second low bidder, General Electric Supply Company, in the amount of \$16,854.

This equipment will be installed on the high voltage bus at Industrial Substation. The apparent low bidder (Bowthorpe EMP, Ltd., England) submitted a very vague proposal without any specific electrical characteristics for evaluation purposes. This bidder, upon request of a users list, was not able to demonstrate performance with this equipment on any United States electric utility system, nor does any support (service) facility exist, at present, in the U.S. In addition, the equipment does not have the standard U.S. mounting configuration and would require modification to the support structures in the event a replacement from another source would be necessary.

Therefore, based on the above, it was recommended by the City's consultant as well as City staff that the City does not take the risk associated with this bidder's equipment in a substation installation of this importance to the City's system, but award the bid to the next lowest bidder, a proven U.S. manufacturer.

Continued September 20, 1989

The subject bid evaluation is listed below:

BID EVALUATION - EUD-89-8
STATION CLASS SURGE ARRESTERS

Supplier	Price w/tax	Delivery (weeks)	Manufacturer
General Electric Supply Co. Emeryville, CA	\$16,854.00	10-12	General Electric Co.
Westinghouse Elec. Supply Co. Concord, CA	18,762.00	10	Westinghouse
Western States Electric Portland, OR	19,906.80	--	McGraw Edison
Cooper Power Systems Burlingame, CA	22,371.30	--	McGraw Edison
Geo. E. Honn Co. Emeryville, CA	10,473.60	8	Bowthorpe EMP, Ltd. England
Power Com Orinda, CA	No Bid		

PURCHASE OF SUBSTATION
60-KV STEEL STRUCTURES

RES. NO. 89-127

CC-20
CC-47
CC-300

The City Council adopted Resolution No. 89-127 awarding the bid for the purchase of various substation steel structures and a tubular steel transmission pole to the low bidder in each category as follows:

Substation Steel Structures:

Dis-Tran Products, Inc. Alexandria, LA	\$167,519.22
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Tubular Steel Transmission Pole:

Power Structures, Inc. Belle Chasse, LA	\$ 6,938.76
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This equipment will be installed to support the Industrial Substation 60-kv bus structure and a transmission line entering the station.

The subject bid evaluation is listed below:

BID EVALUATION EUD-89-9
SUBSTATION 60-KV STEEL STRUCTURES

Price Including Tax				
Supplier	Substation Structures	Tubular Steel Transmission Pole	Delivery (Weeks)	Manufacturer
Dis-Tran Products, Inc. Alexandria, LA	\$167,519.22	No Bid	20-26	Dis-Tran Products Alexandria, LA
Power Structures, Inc. Belle Chasse, LA	220,840.40	\$6,938.76	18-26	Power Structures Belle Chasse, LA

PURCHASE OF
ELECTRICAL LINE HARDWARE

RES. NO. 89-128

CC-20
CC-47
CC-300

The City Council adopted Resolution No. 89-128 awarding the bids for the purchase of Items 1, 3, and 4 of electrical line hardware to the low bidders in each category, as listed below. The low bidder for Item 2, G.E. Supply, qualified their bid with an "award all or none" stipulation; therefore it was recommended that Item 2 be awarded to the second-lowest bidder, General Pacific. Item 5 was not awarded at this time, pending Engineering review, as recommended by staff.

Item No.	Bidder	Amount	Manufacturer
1	General Pacific, Inc. Portland, OR	\$1,667.59	Joslyn Corporation Chicago, IL
2	General Pacific, Inc.	\$2,425.55	Joslyn Corporation
3	Wesco Utilities Concord, CA	\$1,553.11	Florida Wire & Cable Jacksonville, FL
4	General Pacific, Inc.	\$ 699.90	Preformed Line Prod. Cleveland, OH

The City Council was apprised that the Electric Utility Department has requested that line materials be purchased for use in construction of three 69-kv overhead lines connecting the new Industrial Substation to the City's existing system.

Continued September 20, 1989

The City Council approved specifications on August 16, 1989, and bids were opened on September 6. Bid results are shown on Attachment 1.

Total cost of Items 1-4 is \$6,346.15, funding for which is available in the Industrial Substation budget. Upon completion of Engineering review of Item 5, requests for quotation will be issued and materials will be purchased from the lowest responsible bidder, using the informal bid procedure. Total cost for Item 5 is not expected to exceed \$2,500.

FINAL MAP AND SUBDIVISION
AGREEMENT FOR SUNWEST
UNIT NO. 9 APPROVED

CC-46

The City Council approved the final map for Tract No. 2112, Sunwest Unit No. 9, and directed the City Manager and City Clerk to execute the subdivision agreement and map on behalf of the City.

The City Council was apprised that Chris R. Keszler, et al., the developers of this subdivision, have furnished the City with the improvement plans, the necessary agreements, guarantees, insurance certificates, and fees for the proposed subdivision.

The subdivision is located at the southeast corner of Lower Sacramento Road and St. Moritz Drive and contains a total of 12 single-family lots.

FINAL MAP AND
SUBDIVISION AGREEMENT
FOR SUNWEST UNIT
NO. 10 APPROVED

CC-46

Because of a possible conflict of interest, Mayor Snider abstained from discussion and voting on this matter.

The City Council approved the final map for Tract No. 2274, Sunwest Unit No. 10, and directed the City Manager and City Clerk to execute the subdivision agreement and map on behalf of the City.

The City Council was advised that Chris R. Keszler, et al., the developers of this subdivision, have furnished the City with the improvement plans, the necessary agreements, guarantees, insurance certificates, and fees for the proposed subdivision.

The subdivision is located at the northeast corner of Lower Sacramento Road and St. Moritz Drive and contains a total of 24 single-family lots.

Continued September 20, 1989

ACCEPTANCE OF IMPROVEMENTS
IN MOKELUMNE VILLAGE
EAST LOCATED AT THE
NORTHWEST CORNER OF
TURNER ROAD AND HIGHWAY 99

RESOLUTION NO. 89-129

CC-46 The City Council adopted Resolution No. 89-129 accepting
CC-300 the development improvements for Mokelumne Village East,
 Tract No. 2182.

Improvements at Mokelumne Village East have been completed in substantial conformance with the requirements of the Development Agreement between the City of Lodi and FHA Properties dated August 12, 1988, and as specifically set forth in the plans and specifications approved by the City Council.

The streets to be accepted are as follows:

<u>Streets</u>	<u>Length in Miles</u>
Yokuts Drive	0.19
Yokuts Court	<u>0.04</u>
 TOTAL NEW MILES OF CITY STREETS	 0.23

"NO PARKING ON THE
NORTH SIDE OF OAK
STREET, WEST OF
CHEROKEE LANE

RES. NO. 89-130

CC-45(i) The City Council adopted Resolution No. 89-130 approving
CC-48(e) the installation of 40 feet of "no parking" on the north
CC-300 side of Oak Street, west of Cherokee Lane.

The City Council was advised that at the August 2, 1989 City Council meeting, Mr. Bullard, a resident on Oak Street, stated that it is difficult to enter westbound Oak Street from Cherokee Lane when vehicles are parked on both sides of Oak Street.

Oak Street is only a 30-foot roadway. Due to narrow street width, there is a problem created at the intersection when parking exists on both sides of Oak. There have been no accidents due to parked vehicles in the past 3-1/2 years. Staff feels that 40 feet of "no parking" on the north side would eliminate this problem without creating a hardship for vehicles parking in the area.

Continued September 20, 1989

"NO PARKING" ON
CHEROKEE LANE AT
VICTOR ROAD

RES. NO. 89-131

CC-45(i) The City Council adopted Resolution No. 89-131 approving
CC-48(e) the installation of 78 feet of "no parking" between the
CC-300 crosswalks on the west side of Cherokee Lane at Victor Road.

The City Council was advised that the Public Works Department staff had received a complaint that trucks parking between the crosswalks on the west side of Cherokee Lane at Victor Road are blocking the view of two traffic signals and two warning signs. These traffic control devices regulate the movement of westbound traffic. We have verified the problem; a parked truck completely blocks the view of the signals.

Parking is currently allowed at this location and the truck drivers may not be aware that they are creating a problem. Staff felt that "no parking" should be installed in this area.

INTENTION TO VACATE
A PORTION OF THE
PUBLIC UTILITY
EASEMENT AT 210 SOUTH
SCHOOL STREET

RES. NO. 89-132

CC-52(b) The City Council adopted Resolution No. 89-132 a Resolution
CC-300 of Intention to abandon a portion of the public utility
 easement at 210 South School Street, referred the matter to
 the Planning Commission; and set it for public hearing at
 the regular Council meeting of November 1, 1989.

This public utility easement abandonment has been requested by the owner of 210 South School Street so that an addition can be made on his retail building.

The owner is aware that the relocation of all utilities in this public utility easement will be done at his expense. He has also agreed to dedicate any new public utility easements needed for the relocation of these utilities.

The owners have paid the required fees to process this abandonment. Pacific Bell, PG&E, King Videocable Company, and City utilities have been notified of this proposed abandonment and their approval will be secured prior to the final action.

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CLASS SPECIFICATIONS
FOR PARKING ENFORCEMENT
ASSISTANT AND POLICE
SERGEANT AMENDED

RES. NO. 89-133

CC-34
CC-300

The City Council adopted Resolution No. 89-133 amending the Class Specifications for Parking Enforcement Assistant and Police Sergeant. The City Council was advised that these amendments were proposed in order to accurately maintain the City of Lodi's current classification plan.

These are routine updates of existing classifications.

The Finance and the Police Department have worked with the Personnel Department and concur with these changes.

PUBLIC HEARING SET
TO CONSIDER THE
INTRODUCTION OF AN
ORDINANCE SETTING AND
ESTABLISHING INCREASED
RATES FOR SEWER
SERVICE AND CONNECTION
FEES

CC-56

The City Council set a public hearing for Wednesday, October 4, 1989 at the hour of 7:30 p.m. to receive public input regarding consideration of the introduction of an ordinance setting and establishing increased rates for sewer service and connection fees.

This action sets the matter for public hearing as required by law. The proposed ordinance is for the usual and current expenses of the City and if approved, would be adopted pursuant to Government Code § 36937(d). This would require a second reading at the regular Council meeting of October 4, 1989. If approved, the new fee schedule for sewer service and connection fees would become effective immediately, and would be shown on sewer service bills prepared on or after November 1, 1989.

SET PUBLIC HEARING
TO CONSIDER ELECTRIC
RATE INCREASED

CC-6

The City Council set a public hearing for Wednesday, October 4, 1989 at the hour of 7:30 p.m. to receive public input regarding consideration of the introduction of an ordinance setting and establishing increased rates for electric utility service.

Continued September 20, 1989

This action sets the matter for public hearing as required by law. The proposed ordinance is for the usual and current expenses of the City and if approved, would be adopted pursuant to Government Code § 36937(d). This would require a second reading at the regular Council meeting of October 4, 1989. If approved, the new rate structure would be effective immediately, and the increase would appear on utility bills prepared on or after November 1, 1989.

COMMENTS BY CITY
COUNCIL MEMBERS

The following comments were received under the "Comments by City Council Members" segment of the agenda:

REPORT ON RECENT
CONFERENCE OF MAYORS
NATIONAL MEETING ON
CRIME AND DRUGS
ATTENDED BY COUNCIL
MEMBER PINKERTON

CC-7(r)
CC-24(b)

Council Member Pinkerton gave a report on the United States Conference of Mayors National Meeting on Crime and Drugs he recently attended in Washington D. C.

LODI GRAPE AND
WINE FESTIVAL

Council Member Olson thanked the community for its support of this years Lodi Grape and Wine Festival.

COMMENTS BY THE PUBLIC
ON NON AGENDA ITEMS

The following comments were received under the "Comments by the public on non-agenda items" segment of the agenda:

UNITED WAY LODI
CAMPAIGN

Mr. Phil Pennino, United Way Lodi Campaign Chairman, addressed the City Council regarding this year's United Way Campaign.

FUNDING FOR LODI
UNIFIED SCHOOL DISTRICT

CC-7(e)
CC-43

Mr. David Worfolk, 430 Eureka Street, Lodi addressed the City Council asking that in view of the defeat of Measure F, what can the City Council do to assist the school district in acquiring the needed funding for schools.

Continued September 20, 1989

PUBLIC HEARINGS

There were no public hearings scheduled for this meeting.

PLANNING COMMISSION REPORT City Manager Peterson presented the following Planning Commission Report of the Planning Commission Meeting of September 11, 1989:

CC-35 The Planning Commission -

FOR ACTION OF THE CITY COUNCIL

1. Recommended the approval of the request of Dillon Engineering on behalf of Dave Vaccarezza to rezone a portion of the parcel at 1333 East Turner Road (APN's 049-020-17 and 20) from F-P, Flood Plain to M-2, Heavy Industrial to allow construction of a caretaker's/owner's residence on a lot which will be raised above the 100 year flood plain elevation.
2. Recommended certification of a Negative Declaration as filed by the Community Development Director as adequate environmental documentation on the above project.

On motion of Mayor Pro Tempore Hinchman, Reid second, the City Council set the heretofore listed matters for public hearing on October 18, 1989.

Further, the Planning Commission -

OF INTEREST TO THE CITY COUNCIL

1. Conditionally approved the request of Dillon Engineering on behalf of Dave Vaccarezza for a Tentative Parcel Map to (1) divide APN 049-020-19 into two parts; (2) join portions of APN 049-020-17 and 20; and (3) create a parcel which will be the site for a single-family residence.
2. Continued consideration of the following items until 7:30 p.m., Monday, September 25, 1989:
 - a. Request of Roxanne Marie Hess for a Use Permit to conduct a licensed day care center for 12 children at 1127 Dover Drive in an area zoned R-2, Single-Family Residential;

- b. Request of Mr. Trucker Inc. for a Use Permit to install a temporary office trailer at 1533 South Stockton Street in an area zoned M-2, Heavy Industrial.
- c. Consider recommending to the City Council the certification of the Final Environmental Impact Report for Sunwest Plaza Shopping Center, a 23.68 acre commercial project proposed for the southeast corner of West Kettleman Lane and Lower Sacramento Road.
- d. Consider recommending to the City Council that Sunwest Plaza Shopping Center, a 23.68 acre project proposed for the southeast corner of West Kettleman Lane and Lower Sacramento Road be rezoned C-S, Commercial Shopping Center.
- e. Consider recommending to the City Council the certification of the Final Environmental Impact Report for Kettleman Properties, a 51 acre commercial/industrial project located at the northeast corner of East Kettleman Lane and Beckman Road.
- f. Consider recommending to the City Council that Kettleman Properties, a 51 acre project located at the northeast corner of East Kettleman Lane and Beckman Road be rezoned M-1, Light Industrial.

COMMUNICATIONS
(CITY CLERK)

CLAIMS CC-4(c)

On motion of Mayor Pro Tempore Hinchman, Olson second, the City Council denied the following claim and referred it back to ADJUSTCO, the City's Contract Administrator.

- a) Grace S. Alcorn, Date of loss, 3/22/89

ABC LICENSE
APPLICATION

CC-7(f)

City Clerk Reimche presented the following application for Alcoholic Beverage License which had been received:

Continued September 20, 1989

Roger S. and Tamara E. Patching, Video Fun, 2525 S. Hutchins Street, #9, Lodi, On Sale Beer and Wine Eating Place, new license.

KING VIDEOCABLE COMPANY
RATE ADJUSTMENT

CC-22(c) City Clerk Reimche presented a letter from Deanna Enright, General Manager, King Videocable Company, advising of a rate adjustment effective October 1, 1989.

REQUEST FOR FUNDS
RECEIVED FROM
STOCKTON EAST WATER
DISTRICT

CC-6 Following receipt of a letter from Edward M. Steffani, General Manager of Stockton East Water District requesting that the City of Lodi, along with other entities, share the costs of Phase 2 of the Stockton East Water District Ground Water Quality Study, the Mayor referred the matter to staff.

LETTER OF APPRECIATION
RECEIVED FOR SANITARY
CITY DISPOSAL COMPANY

CC-9 The City Council received a letter from John Kindseth
CC-22(b) thanking Sanitary City Disposal Company for their recent assistance and complimenting their operation.

RECESS

Mayor Snider declared a five-minute recess, and the City Council reconvened at 8:30 p.m.

REGULAR CALENDAR

REPORT CONCERNING
RECENT STATE OF
CALIFORNIA THIRD
DISTRICT COURT OF APPEAL
DECISION REGARDING MEASURE A

CC-4(a) The following report regarding the recent State of
CC-6 California Third District Court of Appeal Decision
CC-30 regarding Measure A was given by City Attorney McNatt:

BACKGROUND

Measure A, the City's growth control measure, was adopted by voters as an initiative ordinance on August 25, 1981. In August 1984, the ordinance was challenged by Lodians In Favor Of Free Enterprise (L.I.F.E.) which sought to have Measure A declared invalid upon several grounds. In

November 1985, the San Joaquin County Superior Court granted Summary Judgment in L.I.F.E.'s favor, and on February 20, 1986, a Peremptory Writ of Mandate was issued, prohibiting enforcement of Measure A. An appeal by the City followed, and after extensive briefing, the matter was submitted to the Third District Court of Appeal in April 1988. The Court's decision, affirming the trial court, was handed down September 6, 1989.

TRIAL COURT DECISION

In November 1985, Summary Judgment by the Court found (as to Count I of the Petition) that Measure A impermissibly interfered with the State provisions for annexation by adding a separate requirement of voter approval before annexation could occur. The Court relied on a case entitled Ferrini v. City of San Luis Obispo (1983) 150 C.A.3d 238, choosing to view the Measure as something other than just a zoning ordinance, as the City had argued. Since the Measure was invalidated on that ground alone, other issues raised were not addressed by the Court.

Although the Court acknowledged the broad power of the City's voters to pass or repeal ordinances affecting the City itself, it also pointed out that where the Legislature has adopted comprehensive legislation on a certain topic of statewide concern, local government cannot adopt inconsistent or additional requirements. Annexation, according to the Court, is a matter of statewide concern, and thus local regulation is preempted.

THE DISTRICT COURT OF APPEAL OPINION

The District Court of Appeal (DCA), in a 16-page opinion, upheld the trial court's action, also relying on the Ferrini case, above. Specifically, Paragraph 5 of Measure A was singled out as being inconsistent with State law because it said "Before land in the Green Belt area can be annexed by the City if (sic) Lodi, an amendment to the City's Land Use Element of the General Plan must be made and approved by a majority of the people voting in a city-wide election."

Paragraph 5 is the only part of Measure A specifically ruled invalid by the DCA (Decision, Footnote 2). The Court made no findings on the balance of the ordinance, but acknowledged Paragraph 9, a severability clause which says if any part of the Measure is found invalid, the balance shall remain in effect. However, the remainder of Measure A appears moot without Paragraph 5. This was apparently why the City took an "all or nothing" position early in the litigation (Decision, Footnote 2).

ANALYSIS

As noted, only Paragraph 5 was overturned. An examination of the rest of Measure A is necessary. The other provisions of Measure A do the following:

Paragraphs 1 and 2:

These established the policy of a "green belt" around Lodi.

Paragraph 3:

Requires a City Council finding that development in the "green belt" will not interfere with productive use of agricultural land, or that a buffer exists for the agricultural land.

Paragraph 4:

Removes the "green belt" area from the General Plan.

Paragraph 6:

Requires City Council findings before annexation that the area to be annexed is contiguous, and that the City services are available. (Similar language exists in State law; see e.g., Government Code §56841, 56031.)

Paragraph 7:

Allows no expansion or extension of facilities without City Council findings of consistency with policy.

Paragraph 8:

Allows consolidation of Measure A elections with other elections.

Paragraph 9:

The severability clause.

The first critical question is, what, if anything, is left of Measure A which might be enforceable? It appeared to the City Attorney that Paragraph 5 was the heart of Measure A. This is the provision that purportedly placed in the hands of the voters the controls on growth. Without this paragraph, the balance of Measure A is simply a statement embodying the philosophy that the agricultural nature of the areas around Lodi should be retained to the extent possible. This conclusion is based on several factors, including the arguments of proponents in the election material.

It has been held that where the invalid parts of a law are inseparable from the main body, the whole statute fails (County of Orange v. Harris (1893) 32 P. 594; Rittenband v. Cory (1984) 205 Cal.Rptr. 576)) This rule of construction applies to city ordinances as well (Ex parte Christiansen (1890) 24 P. 747). If it is concluded that Measure A is thus entirely invalid, general State law would again apply, leaving the responsibility for land use planning with the City Council.

If it should be assumed that the rest of Measure A remains in effect, what result? Paragraph 4 removes the green belt lands from the General Plan, but with Paragraph 5 gone, there is no way provided by the Measure to bring land back in. This being so, there are only two apparent possibilities; first, either general law would apply and the Council would then have authority to modify the General Plan (Government Code §65350 et seq.) or the second possibility is, that since Measure A was intended to give the voters exclusive authority to change the City's General Plan boundaries, and the method to bring land back into the General Plan (voter approval) has been stricken, the General Plan boundaries would be fixed and could not be changed at all. While this theory might appeal to some growth limitation proponents, it almost certainly would fail legally.

Measure A is or was a part of the City's General Plan, limiting growth. While growth control measures have been held to be within the police power of cities (Construction Industry Assn., Inc. v. City of Petaluma (1975) 522 F.2d 897; cert. denied 424 U.S. 934), these measures must still meet certain standards.

In Associated Homebuilders, Inc. v. City of Livermore (1976) 18 Cal. 3d 582, the California Supreme Court said growth control measures must satisfy a three-part test. Those criteria are:

- a. What is the probable effect and duration of the ordinance?
- b. What are the competing interests affected by the ordinance (for example, environmental protection versus the opportunity of people to settle where they choose)?
- c. Does the ordinance, in light of its probable impact, represent a reasonable accommodation of the competing interests?

The City Attorney stated he believed an attempt to freeze Lodi's boundaries by applying the rest of Measure A, with no way remaining in the Measure to return land to the General Plan, would fail all three parts of this test. This means Lodi's General Plan would be inadequate. In addition, an attempt to freeze the boundaries for an unstated period of time would probably fail under Government Code §65302.8, which requires cities to explain or justify reduction in housing opportunities.

Without Paragraph 5, it appears logical to conclude that there is nothing left of Measure A. This was the position taken by the City through the trial and on appeal, as noted in Footnote 2 of the DCA decision. Even if the balance of Measure A was assumed to remain in effect, the authority to amend the Land Use Element of the General Plan would probably still be with the City Council. This would defeat the purpose for which it is assumed that Measure A was adopted initially.

FURTHER ACTION/APEAL BY THE CITY

It has already been suggested by Measure A supporters that the City Council consider appeal of the DCA decision. That is a matter for Council discretion. While there is case law referring to the City's duty to defend an initiative ordinance (Building Industry, Inc. v. City of Camarillo (1986) 226 Cal.Rptr. 81), just how far that duty goes is unclear. The City Attorney believes the City Council has done all that is legally required in defending the ordinance through the DCA. Although the Council could seek appeal with the Supreme Court, the City Attorney finds nothing which requires further appeal, viewed in light of the analysis above.

Dan Selmi and Mark Weinberger, the attorneys who represented the City throughout the litigation have concurred with this position in a telephone conference. Both agreed that there appeared to be little hope that the Supreme Court would agree to hear an appeal. It is the consensus that while the DCA's language may be broader than necessary on some points, there is no apparent ground, procedural or substantive, which would be likely to cause the California Supreme Court to accept the case. No new questions or points of law are raised by the DCA's opinion, which were not already addressed in the Ferrini v. San Luis Obispo decision (above).

CONCLUSIONS

This report should not be viewed as passing judgment on the philosophy embodied in Measure A. How much and in what

fashion Lodi should grow is a question that should properly be left to the elected policy makers or the people of Lodi.

However, the City Attorney indicated he does not believe it best to appeal Measure A, because of the delay and expense involved, and the likelihood of being turned down by the Supreme Court. Rather, he believes the City should proceed with all due diligence in adopting a new General Plan which will address growth issues. In his opinion, the DCA accurately identified flaws in the methods of Measure A's operation, and an attempt to appeal would only leave Lodi vulnerable to numerous other problems, because we would remain without an operational General Plan during the appeal period.

Even if the Supreme Court took the case and reversed the DCA (which he believes is unlikely), there is another problem with Measure A which has not heretofore been addressed, but which could provide separate grounds for overturning the ordinance.

Evidence Code §669.5(a) says:

"Any ordinance enacted by the governing body of a city, county, ... which (1) directly limits, by number, the building permits that may be issued for residential construction or the buildable lots which may be developed for residential purposes, or (2) changes the standards of residential development on vacant land so that the governing body's zoning is rendered in violation of Section 65913.1 of the Government Code, is presumed to have an impact on the supply of residential units available in an area which includes territory outside the jurisdiction of the city, county, or city and county.

(b) With respect to any action which challenges the validity of an ordinance specified in subdivision (a) the city ... enacting the ordinance shall bear the burden of proof that the ordinance is necessary for the protection of the public health, safety or welfare of the population of the city"

This sets up a presumption of a flaw in the general plan if certain findings cannot be shown. It applies to ordinances enacted by either the council or the voters (Building Industry Assn. v. City of Camarillo,

supra; Lee v. City of Monterey Park (1985) 219 Cal.Rptr. 309).

Based on the Measure A ordinance itself and the history of its impact on the supply of residential units available, the City Attorney believes Lodi would find it difficult to rebut the presumption found in this section if challenged. It should also be remembered that the trial court found it unnecessary to consider other grounds for challenge. We would still face those challenges even if the DCA was reversed on the annexation issue.

A more practical approach may be to adopt as soon as possible, an updated General Plan with growth control provisions included if desired. If the Council wishes to embody the 2% growth cap or some other figure, it will be necessary to make findings at the time of adoption, justifying such limitation as required by Evidence Code §669.5.

Assuming that a growth limitation such as 2% is adopted, it will also be necessary for the Council to establish the criteria under which the specified number of building permits to be issued shall be allocated among applicants. Based on past history and the number of inquiries received, competition for the permits will likely be intense.

If desired, it is also possible to include a "right-to-farm" element in the General Plan, as some other cities have done. This type of provision is intended to help preserve agricultural uses in "green belt" areas of a city. The City Attorney believes that the City of Manteca is presently in the process of developing such an ordinance. The City Attorney has no prior experience with this type of provision, but would be happy to explore further if the Council directs.

Should the Council decide to appeal, the decision to proceed must be made no later than September 20, 1989. Under Rules of Court, the Petition for Rehearing must be filed not later than 15 days after the DCA's decision became final. Since that date was September 6, 1989, the 15 days will run September 21, 1989.

A lengthy discussion followed with questions being directed to the City Attorney and to staff.

Addressing the City Council regarding the matter were:

- 1) Janet Pruss, 2421 Diablo Drive, Lodi
- 2) Ann Cerney, 900 W. Vine Street, Lodi
- 3) Wilbur Ruhl, 3933 Almond Drive, Lodi

Continued September 20, 1989

Following additional discussion, on motion of Mayor Pro Tempore Hinchman, Pinkerton second, the City Council by unanimous vote voted not to file a petition for reconsideration. Further, the City Attorney was asked to look into the decertification process of the decision, and to look into the possibility of including a "right-to-farm" element in the General Plan.

CONTRACT AWARD FOR
ELM STREET PARKING
LOT, 207 AND 211
WEST ELM STREET

RES. NO. 89-134

CC-12(a)
CC-300

On motion of Council Member Pinkerton, Hinchman second, the City Council awarded the contract for Elm Street Parking Lot, 207 and 211 West Elm Street to Gooden Paving Company in the amount of \$33,846.00.

This project is the construction of a 41-space parking lot located at 207 and 211 West Elm Street. Landscaping and lighting will be done separately at a later date. The parking lot will be used by City employees and County court jurors.

The City contacted San Joaquin County regarding participation in the project. The County recently sent a letter of concurrence contributing \$80,000 toward the construction cost. The City will construct and maintain the parking lot and retain ownership.

Plans and specifications for this project were approved on September 6, 1989.

The City received the following two bids for this project:

<u>Bidder</u>	<u>Location</u>	<u>Bid</u>
Engineer's Estimate		\$48,553
Claude C. Wood Company	Lodi	\$41,931
Gooden Paving Company	Acampo	\$33,846

PURCHASE OF BEAR
ALIGNMENT EQUIPMENT
AND ANNUAL TEST
PACKAGES FOR EQUIPMENT
MAINTENANCE DIVISION

RES. NO. 89-135

CC-12(a)
CC-(d)
CC-300

On motion of Council Member Reid, Hinchman second, the City Council adopted Resolution No. 89-135 approving the purchase of BEAR alignment equipment and annual test

Continued September 20, 1989

packages for the Equipment Maintenance Division in the amount of \$15,941.13.

BEAR Automotive Service Equipment Company supplied the City's existing equipment analyzer; therefore, the annual update packages and the alignment equipment must be purchased from them since they are the sole supplier.

The cost breakdown is as follows:

Alignment equipment	\$13,538.80
Annual update packages	1,500.00
Tax	<u>902.33</u>
	\$15,941.13

Funds were budgeted in the 1989/90 fiscal year budget for this purchase.

1989/90 CAPITAL IMPROVEMENT PROGRAM FOR WATER, WASTEWATER, MASTER DRAINAGE, AND PUBLIC FACILITIES

ORDINANCE NO. 1461

CC-15
CC-149

The recommended 1989/90 Capital Improvement Program (CIP) for water, wastewater, master drainage, and public facilities was presented for City Council approval. This matter was reviewed by the City Council at the September 12, 1989 "Shirtsleeve" Session and was determined to be in conformance with the City's General Plan by the Planning Commission at its meeting of August 14, 1989.

Following discussion, with questions being directed to Staff, the City Council, on motion of Council Member Pinkerton, Olson second, introduced Ordinance No. 1461 - Ordinance adopting the 1989-90 Capital Improvement Program for Water, Wastewater, Master Drainage, and Public Facilities.

VOTING AND ALTERNATE VOTING DELEGATES SELECTED FOR ANNUAL CONGRESS OF CITIES

CC-7(r)

On motion of Mayor Snider, Reid second, the City Council designated Mayor Pro Tempore Hinchman as the voting delegate and Council Member Olson as the voting alternate for the Annual Congress of Cities, to be held in Atlanta, Georgia, November 25 - 29, 1989.

ORDINANCES

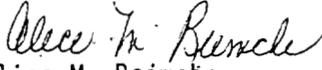
There were no ordinances presented for adoption.

Continued September 20, 1989

ADJOURNMENT

The meeting was adjourned at approximately 10:10 p.m. to a Special Meeting of the City Council.

ATTEST:


Alice M. Reimche
City Clerk