

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, MARCH 3, 2004**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of March 3, 2004, was called to order by Mayor Hansen at 5:07 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual Litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al.*, Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with Labor Negotiator, Human Resources Director Joanne Narloch, regarding Association of Lodi City Employees concerning Maintenance and Operators pursuant to Government Code §54957.6

C-3 ADJOURN TO CLOSED SESSION

At 5:07 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

C-4 RETURN TO OPEN SESSION/DISCLOSURE OF ACTION

At 7:03 p.m., Mayor Hansen reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), staff requested approval of the status report due on March 8 and approval was granted. In addition, the matter will be further discussed in a continuation of the closed session at the conclusion of tonight's regular meeting.

In regard to Item C-2 (b), no action yet taken; the closed session has been continued to immediately follow the conclusion of tonight's regular meeting.

In regard to Item C-2 (c), no action yet taken; the closed session has been continued to immediately follow the conclusion of tonight's regular meeting.

In regard to Item C-2 (d), negotiation direction was sought from Council and given.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of March 3, 2004, was called to order by Mayor Hansen at 7:03 p.m.

Present: Council Members – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

Absent: Council Members – None

Also Present: City Manager Flynn, Interim City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Reverend Kevin Suess, Lodi Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hansen.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 (a) Police Chief Jerry Adams thanked the awards committee members, provided the following narrative reports and presented the Police Appreciation Awards for 2004 as noted below:

Teresa Perry ~ Citizen Service Award

Ms. Perry came upon a motorcycle vs. pick-up traffic accident on Lower Sacramento Road. Other citizens were on scene, but it was Ms. Perry who stepped forward to assist the critically injured motorcyclist until emergency medical personnel arrived. Without Ms. Perry's assistance the motorcycle rider may have suffered greater consequences.

Grant Plath ~ Citizen Service Award

Mr. Plath, a Park Program Coordinator for the Lodi Parks and Recreation Department, happened to be conducting business at the Finance Department when he observed a toddler playing in the lobby area. As Mr. Plath was leaving the building he noticed the toddler had strayed away from his mother and went outside. The toddler started for the street as his mother called for him to stop. The toddler continued to move toward the street. Mr. Plath quickly ran and grabbed the toddler pulling him from the path of an oncoming vehicle.

Scott Bratton ~ Life Saving Citation

While working patrol, Officer Bratton found a stabbing victim near the City library. The victim had lost a great deal of blood. Officer Bratton quickly provided first aid until emergency medical personnel arrived. Emergency medical personnel stated that the victim may have died if it were not for Officer Bratton's quick aid.

Mike Kermgard and Mike Manetti ~ Meritorious Service Award

Officers Kermgard and Manetti devoted a tremendous amount of work to improve the Police Department's Web site.

Larry Manetti and David Main ~ Chief's Award

Captains Manetti and Main provided significant contributions toward the recently completed Police Department Building.

Val Chaban ~ Life Saving Award

Corporal Chaban responded to a shooting incident between rival gangs and was the first officer on scene. Two victims had been shot, one critically. There was a third victim suffering from facial injuries. Information was that the shooting suspects were in the adjacent residence. Emergency medical personnel would not enter the area due to the risk. Corporal Chaban carried one of the shooting victims out of the area to a safe zone so paramedics could attempt to save the victim's life.

Charlie Gardella ~ Volunteer of the Year

Mr. Gardella has served as a Police Partner for over ten years and has volunteered for all activities for which the Partners are responsible.

Jennifer Root ~ Employee of the Year

Jennifer Root was hired as a Dispatcher/Jailer in January 1998 and was promoted to a lead position in June 2001. She volunteers for Special Olympics and is the department's liaison. She assists with such benefits as Tip-A-Cop, fire engine pull, summer games, golf tournament, and Buck-for-Badges to aid the Special Olympics. Ms. Root is a trainer for the California Law Enforcement Technology System (CLETS) Computerized Users Group and is currently the Assistant Director for the Northern Chapter. Ms. Root has also participated in the Relay for Life, which aids in the research of cancer.

John Whisler ~ Officer of the Year

Officer Whisler has been a police officer for the City of Lodi over 26 years. He earned the Officer of the Year award due to his contributions toward the Major Accident Investigation Team, as a Field Evidence Technician (FET), and School Resource Officer. Officer Whisler has also organized several "Meet the Beat" events, which partnered the Police Department with elementary schools.

Council Member Howard recognized Officer Whisler and Carla Cole, Dispatcher/Jailer, who spoke on the topic of crime scene investigation at last Friday's annual career day hosted by the Lodi Youth Commission at Lodi Academy, at which 800 Lodi Unified School District students attended.

RECESS

At 7:26 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 7:33 p.m.

D. PRESENTATIONS (Continued)

D-2 (a) Mayor Hansen presented a proclamation to Glory Hudson, Learning Link Coordinator, proclaiming the week of March 1 to 6, 2004, as "Learning Link Week" in the City of Lodi.

D-3 (a) Mayor Hansen recognized Parks and Recreation Commissioner Scott Davis with a Certificate of Appreciation for his service as the 2003 Parks and Recreation Commission Chairman. (NOTE: Mr. Davis was unable to attend the meeting.)

D-3 (b) Mayor Hansen recognized former Parks and Recreation Commissioner Victor Schuh with a Certificate of Appreciation for his service as a Parks and Recreation Commissioner. (NOTE: Mr. Schuh was unable to attend the meeting.)

COMMENTS BY THE PUBLIC ON CONSENT CALENDAR ITEMS

- In reference to Item E-12, Robin Knowlton reported that she was one of over 100 people who attended the two recent Planning Commission meetings, at which the topic of design standards for large retail establishments was discussed. Many of the people attending the meetings had come to request that the Commissioners consider a size limitation on future retail establishments; however, at both meetings the public was denied the opportunity to speak on the issue except during the general public comment period.

In response to Ms. Knowlton, Community Development Director Bartlam stated that the Planning Commission has a meeting scheduled for March 24 to discuss the issue of a size limitation and other possible alternatives. He assured Ms. Knowlton that all interested persons would have an opportunity to speak on the matter.

Council Member Hitchcock believed that the size of a building is an integral part of design standards. She recommended that Council set the public hearing to follow the March 24 Planning Commission meeting and consider both issues at the same time.

Mr. Bartlam replied that it could take several months for the Planning Commission to be prepared to make a recommendation to Council on the size issue. He reported that an application is currently pending on a project, which would be impacted if a size limitation were imposed. The expansions of Raley's Shopping Center and Lakewood Mall both have principle buildings over 25,000 square feet and would be affected by the proposed design standards for large retail establishments.

Mayor Pro Tempore Beckman suggested that Council address the size issue initially, rather than having it go before the Planning Commission.

Council Member Hitchcock preferred that the Planning Commission consider the design standards, including the size issue, and forward its recommendation on both issues to Council.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Howard, Beckman second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$5,608,732.00.
- E-2 The minutes of February 4, 2004 (Regular Meeting), February 10, 2004 (Shirtsleeve Session), February 10, 2004 (Special Meeting), February 17, 2004 (Shirtsleeve Session), and February 17, 2004 (Special Meeting) were approved as written.
- E-3 Adopted Resolution No. 2004-31 approving the plans and specifications and authorizing advertisement for bids for the Cochran Road Street Improvements from Peach Street to Willow Avenue and authorizing the City Manager to award the contract up to \$50,000.
- E-4 Approved the plans and specifications and authorized advertisement for bids for White Slough Water Pollution Control Facility Year 2004 Improvement Project and authorized the City Manager to purchase construction trailer up to \$21,000.
- E-5 Adopted Resolution No. 2004-32 approving the specifications and authorizing advertisement for bids for White Slough Water Pollution Control Facility purchase of fiberglass effluent troughs and authorizing the City Manager to approve the purchase up to \$15,000.
- E-6 Adopted Resolution No. 2004-33 awarding the purchase of 384 watthour meters to the low bidder, Sensus Metering Systems, c/o Young & Company, of Oakland, in the amount of \$22,963.68.
- E-7 Adopted Resolution No. 2004-34 awarding the purchase of three Digger/Derrick line trucks to Altec Industries, Inc., of Dixon, through its contract with the California Multiple Award Schedule, in the amount of \$609,000.
- E-8 Accepted the improvements under the "Fire Station 1 HVAC Design/Build Project, 210 West Elm Street" contract.
- E-9 "Adopt resolution accepting a portion of the improvements in Almondwood Estates, Tract No. 3273" was **pulled from the agenda pursuant to staff's request**.
- E-10 Adopted Resolution No. 2004-35 authorizing the City Manager to execute a master professional services agreement for engineering support services with DJH Engineering, of Placerville, for the irrigation system at White Slough Water Pollution Control Facility and appropriated funds in the amount of \$25,000.
- E-11 Set public hearing for March 17, 2004, to consider the Planning Commission's recommendation of approval to the City Council for a Rezoning for 5952 E. Pine Street; the Rezoning is from San Joaquin County A-U, Agricultural Urban Reserve to M2, Heavy Industrial; the request also includes a recommendation that the City Council certify Negative Declaration ND-03-13 as adequate environmental documentation for the project and initiate annexation of the property into the City.
- E-12 "Set public hearing for March 17, 2004, to consider the Planning Commission's recommendation of approval to the City Council to adopt a Zoning Ordinance amendment adding Chapter 17.58 regarding design standards for large retail establishments" was **removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar**.

- E-13 Set public hearing for April 7, 2004, to consider adopting resolution adjusting water/wastewater and refuse rates.
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ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

- E-12 "Set public hearing for March 17, 2004, to consider the Planning Commission's recommendation of approval to the City Council to adopt a Zoning Ordinance amendment adding Chapter 17.58 regarding design standards for large retail establishments"

MOTION / VOTE:

The City Council, on motion of Council Member Howard, Beckman second, set public hearing for March 17, 2004, to consider the Planning Commission's recommendation of approval to the City Council to adopt a Zoning Ordinance amendment adding Chapter 17.58 regarding design standards for large retail establishments. The motion carried by the following vote:

Ayes: Council Members – Beckman, Howard, Land, and Mayor Hansen

Noes: Council Members – Hitchcock

Absent: Council Members – None

Discussion ensued about whether public comments regarding a size limitation could be made during the March 17 public hearing regarding design standards. It was ultimately determined that there would be no restriction on public comments.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Bradley Litz stated that he lived across the street from the Vinewood Dog Park. He complained about the following:
 - Dogs are not leashed;
 - When the gates are locked people let their dogs in and around the park and school grounds; and
 - Feces are not picked up and disposed of properly, creating foul order and drawing flies.

Mr. Litz stated that he addressed all of these issues with the Parks and Recreation Department in October 2003 and nothing has been resolved. He questioned whether an environmental study had been done to determine the amount of bacteria that is going into the river from the Vinewood Park water basin from animal feces and urine. He asked that the City relocate the dog park to a site that is not in a residential area in order for property owners to maintain the value of their homes and good air quality.

Mayor Hansen asked the City Manager to look into the matter and report back to Council.

- Sean Burrows agreed with Mr. Litz' comments. Mr. Burrows stated that he has three small children who play outside and expressed concern for their safety due to unleashed dogs in and around the dog park. He reported that on at least three occasions unleashed dogs crossed the street toward his home.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider community input and proposals and adopt resolution for uses of the City's 2004-05 Federal allocation of Community Development Block Grant and HOME Program funds and the reallocation of available funds from previous program years.

NOTE: Due to a potential conflict of interest, Council Member Land abstained from discussion and voting on issues relating to the San Joaquin Housing Authority and the LOEL Foundation. He noted that his employer, F & M Bank, is the owner of the property for LOEL Foundation's senior housing project, and that he serves as a commissioner on the Housing Authority.

Community Development Director Bartlam reported that staff anticipates receiving \$836,133 in Community Development Block Grant (CDBG) funds and \$292,556 in HOME funds from the Federal government. Mr. Bartlam made the following recommendations for CDBG funds:

- \$1,500 – Emergency Food Bank for planning and design costs;
- \$150,000 – Public Works/Engineering for handicap ramp retrofits;
- \$10,000 – Second Harvest Food Bank for food distribution services to low-income residents and seniors;
- \$65,000 – Public Works/Transit for bus shelters and benches on the eastside;
- \$200,000 – Salvation Army for acquisition of property for a new shelter (Mr. Bartlam noted that this represents the remaining balance of the City's \$250,000 obligation);
- Zero – One-Eighty Teen Center for building improvements, denial due to unresolved issues;
- Zero – Senior Service Agency for Meals on Wheels Program; staff has not been able to determine that it meets requirements for CDBG funding;
- Zero – El Concilio for first-time home buyers' classes, not recommended because it is better suited to Housing and Urban Development funding;
- \$112,500 – County Department of Aging for Lodi Community Center property acquisition and site work;
- Zero – Community Medical Centers for building repairs on leased property, which does not qualify for CDBG funds;
- Zero – Boys & Girls Club for nonessential building maintenance and repairs;
- Zero – Child Abuse Prevention Council for First Step Children's Center in Stockton, which does not meet the readiness criteria for spending the funds;
- \$200,000 – Lodi Parks and Recreation Department for Hale and Blakely Parks playgrounds;
- \$28,075 – Fair Housing for services to low-income residents; and
- \$69,058 – CDBG/HOME programs administration costs.

Mr. Bartlam made the following recommendations for HOME funds:

- \$89,875 – Housing Authority for property acquisition; and
- \$202,681 – LOEL Foundation acquisition for senior housing.

Mayor Pro Tempore Beckman pointed out the irony in the fact that if the Federal government did not overtax the citizenry to pay for CDBG and HOME programs there would be a significant savings in administration costs, which would be better served having gone into the projects.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION #1 / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Howard second, unanimously adopted Resolution No. 2004-36 approving the projected use of funds for the 2004-05 Federal allocation of CDBG Program funds (with the exception of the Housing Authority and LOEL Foundation requests).

MOTION #2 / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Howard second, adopted Resolution No. 2004-37 approving the projected use of funds for the 2004-05 Federal allocation of HOME Program funds for the Housing Authority and LOEL Foundation requests. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Mayor Hansen
Noes: Council Members – None
Absent: Council Members – None
Abstain: Council Members – Land

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

a) The City Council, on motion of Council Member Land, Beckman second, unanimously made the following appointments:

Site Plan and Architectural Review Committee

Donald Kundert Term to expire January 1, 2008

Roger Stafford Term to expire January 1, 2008

H-4 Miscellaneous – None

I. REGULAR CALENDAR

NOTE: The following matters were discussed and acted upon out of order.

I-3 “Report to the City Council – Financial Audit for Fiscal Year 2002-03

Receive: 1) The Combined Annual Financial and Single Audit Report and 2) Report on Applying Agreed-upon Procedures”

Finance Director McAthie noted that the implementation of Governmental Accounting Standards Board Statement 34 (GASB34) created challenges in performing the annual audit this year. She introduced representatives of the City’s new audit firm Macias, Gini & Company, President Ernest Gini, and Director Scott Brunner.

Mr. Gini reported that his firm audited the financial statements of the City, conducted an audit of the Federal funds as required by the Single Audit Act, and prepared the Appropriations Limit Report that is required by the State Constitution. He noted that Council has received the Comprehensive Annual Financial Report for the year ended June 30, 2003, and the Report to Management (both filed). Mr. Gini explained that the primary objective in the audit of financial statements is to express an opinion on the fairness of the presentation. That opinion provides reasonable assurance that the financial statements were fairly stated; it does not provide absolute assurance. There is the possibility that immaterial misstatements may have occurred and not been detected. The firm also did tests of controls as required by the Single Audit Act of Federal programs. Mr. Gini stated that the biggest part of the challenge this year was the implementation of GASB34, which changed the reporting of all governments in the United States. The Statement of Net Assets encompasses all the assets of the City, including infrastructure and all other capital assets, which had previously been shown in a separate group of accounts. The Statement of Activities is designed to show the cost of the different services provided by the City, which are funded primarily by operating grants and contributions and those that are funded by general revenues of the City. As part of the implementation of the new standard there was a technical bulletin regarding derivatives that the City had engaged in, e.g. interest rate swap executed in order to fix the variable interest rate that the City had on some of its debt and convert it to fixed rate. Mr. Gini noted that those types of transactions are fairly

complex, so all the different risks associated with the interest rate swaps were disclosed in the footnotes. Mr. Gini stated that here are various different types of risks in connection with interest rate swaps and he encouraged Council to read those notations carefully.

In reference to page 11, General Fund, Council Member Land expressed concern with the 39% increase in PERS rates in 2003-04 and 61% increase in 2004-05. Medical costs are increasing 20.9% and Workers' Compensation is increasing 37.4%. Mr. Land recalled reading that the PERS rate of return was 18.3% last year and asked if this would effect the projections. In addition he noted that the State has withheld three months of the Vehicle License Fee backfill totaling \$554,692 beginning August 2003 through October 2003. According to the state Controller's Office, this would be considered a loan. Mr. Land expressed apprehension that this "loan" would be repaid.

Mr. Brunner explained that the increase in the PERS rate of return would affect the City's contributions in the future. The City is now seeing the effects of the bad years with the market, which results in increased contributions to the PERS system.

Mr. Gini clarified that on the financial statements for 2003 the contributions for that year were based on the actuarial valuation that ended June 30, 2000. The June 30, 2002 and 2003 valuations are the ones that will be reflected in next year's contribution and the year after. He believed those would show increases in contribution rates because of the stock market declines. Results from the 18.3% referred to by Mr. Land would not be reflected in the City's contribution rates until June 30, 2006 or 2007.

In response to Council Member Land, Mr. Brunner pointed out that pages 22 and 23 show the financials of the Electric Utility fund. The net assets of the Electric Fund increased by \$3.5 million this past year.

Council Member Land asked whether any of the proposed Wastewater Fund rate increases were to pay for costs related to the Environmental Abatement Program (EAP) PCE/TCE cleanup. He also noted that the Water Fund balance decreased from \$2.5 million to \$350,000. He recalled that in the last three and a half years no money from the Water Fund was used for litigation, and asked where the money had been spent.

City Manager Flynn replied that the proposed Wastewater rate increases are only for the requirements being imposed from the State to upgrade the White Slough facility. He explained that the decrease in the Water Fund was due to some major projects and infrastructure improvements. Ms. McAthie added that the Water Fund cash flow situation is also affected by the time lag between when EAP bills are paid and the quarterly draw downs are made.

Council Member Hitchcock noted that the Other governmental fund, which includes Transportation Development Act funds, is borrowing from the Capital Outlay reserve fund. She was not aware that Council approved street projects in the amount of \$763,000 out of that budget.

Ms. McAthie explained that, if at the end of the fiscal year, the City is in a negative cash position in any fund, it must borrow the money from another fund and show it as a short term "due to, due from" from another fund. It is usually paid back within 60 days at the end of the fiscal year.

Ruby Paiste, Accounting Manager, reported that the Capital Outlay reserve fund also includes impact fees, general administration, and Parks and Recreation. She acknowledged that funds were lent to the Lower Sacramento Road project.

Council Member Hitchcock pointed out that \$2 million was borrowed from the Electric Fund and asked what it was for.

Ms. Paiste explained that a provision exists in the budget to transfer \$350,000 from the Electric fund for capital contributions. This amount is in addition to the 12% in lieu of tax transfer. It is recorded as a loan from Electric to General Capital.

Council Member Hitchcock suggested that this matter be further discussed in the future, as she felt that it burdens ratepayers for capital projects that have nothing to do with Electric funds. She also noted that \$889,000 was borrowed from the Water Fund to put into the Transit Fund.

Mr. Brunner stated that it was for financial statement presentation purposes only, because the City is not allowed to present a negative cash position in a fund.

Council Member Hitchcock asked how much of the \$9 million borrowed has been paid back, to which Ms. Paiste replied she would conduct an analysis and report her findings to Council.

Mr. Gini stated that some of the balances outstanding as of June 30 represent short-term loans, but others, like the Electric Fund, represent long-term loans. He recommended that they be segregated for better visibility of numbers, as to when they are going to be paid back. He suggested that one solution to the problem on the long-term loans would be to charge interest so that the ratepayers are earning something on it. Mr. Gini explained that during the audit, when a misstatement to the financial statements is found, it is included in the Schedule of Uncorrected Misstatements.

Council Member Hitchcock suggested that a Shirtsleeve Session be held to review and discuss the Schedule of Uncorrected Misstatements. In addition, Ms. Hitchcock noted that the adopted budget indicates that revenues were \$30.3 million, and expenditures were \$34.2 million. It is balanced out with Other Sources and Uses in an amount of \$4.4 million. She expressed concern that the City is not fully disclosing to the public what Other Sources and Uses represents. A general description is shown, e.g. carryover of unexpended unencumbered funds, value of E-step versus the actual, anticipated additional revenues, labor relations, etc., but there is no breakdown of the individual amounts totaling \$4.4 million. She read the following statement from page 8, *"The deficit in the Transit fund resulted from not only overages/underfunded capital projects, but also due to a reduction of overall revenue, creating shortages in the operations account as well. Staff is now working on several ways to eliminate the deficit. One of these options would be to request a loan from the Measure K Transit account."*

Public Works Director Prima acknowledged that there is a problem with the Transit fund and it involves the Transportation Development Act (TDA) fund as well, having to do with transfers made back and forth for street projects. He reported that staff has moved money through the years between TDA and Transit for projects, in anticipation of receiving Federal funding for capital projects that was overly optimistic. He reported that Measure K has a special funding category set up for advances on projects, which staff is considering to help resolve the current situation. He stated that some of the projects that were spent out of TDA could have been funded through impact fees, but were not, and now staff is looking at transferring that expense to the impact fee fund. He assured Council that staff would resolve the issue in this fiscal year. The current deficit in the Transit fund is approximately \$1.5 million.

In reply to Council Member Hitchcock, Ms. McAthie explained that the investment revenue was not as projected because of a combination of having less cash to invest and a drop in the interest rate.

In response to Council Member Hitchcock, Interim City Attorney Schwabauer clarified that the question addressed in the second paragraph on page 70 refers to a claim for fees by Envision Law Group. It was his understanding that the \$6.8 million claim is contingent upon the outcome of the EAP litigation. Envision billed the City for a percentage of services rendered under a three-tiered system. The remaining percentage was accrued, but not to be paid until the litigation was settled. Under the agreement, if there is no settlement, there would be no payment due to Envision.

MOTION / VOTE:

There was no Council action necessary on this matter; information was received for file.

RECESS

At 10:10 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 10:18 p.m.

I. REGULAR CALENDAR (Continued)

- I-1 "Updates from Mayor Larry Hansen regarding the following issues: 1) Barger & Wolen audit of Envision Law Group's billings; 2) progress on Request for Proposals for special counsel to represent the City of Lodi in its Environmental Abatement Program litigation; and 3) legal proceedings relative to the Environmental Abatement Program litigation"

Mayor Hansen reported that Public Works Director Prima has sent out a Request for Qualifications in an effort to obtain a new technical consultant for the City. Council will need to decide whether to hire a new technical consultant separately, or to allow the new legal team to bring in a firm they are comfortable working with. An outcome from the settlement hearings with mediator Lester Levy was that an independent person has been brought in to give a second opinion on the work plan that has been done by defendants from Guild Cleaners.

Council Member Land asked who would be paying for the second opinion on Guild Cleaners' strategy.

Mayor Hansen replied that the City would share some of the cost; however, it was the mediator who hired him. He also confirmed that the Department of Toxic Substances Control must approve the remedial action plan.

Council Member Hitchcock emphasized the importance of Council checking the references of the technical consultants prior to making a hiring decision.

MOTION/ VOTE:

There was no Council action necessary on this matter.

- I-2 "Receive report from the Boosters of Boys/Girls Sports Review Committee"

City Manager Flynn commented that Council is to receive the report from the Boosters of Boys/Girls Sports (BOBS) Review Committee and it will then be forwarded to the Parks and Recreation Director for review and appropriate recommendations.

Committee Chairman Bob Johnson recalled that the former City Attorney opined that the City has no control over the BOBS. He believed that as long as that position remains unchanged, the only thing that might change the contentious situation that created the problems would be public pressure.

Mayor Hansen stated that he would like a second opinion about that issue from the Interim City Attorney and outside counsel, Kronick Moskovitz Tiedemann & Girard. He expressed hope that the Committee's recommendations could be implemented.

Interim City Attorney Schwabauer stated that, as a contractual issue, the City has the power to set standards by which, and with whom, it does business.

Council Member Hitchcock asked Mr. Schwabauer to draft a new contract incorporating the Committee's recommendations.

Mr. Johnson reviewed the Final Report of Committee Activities (filed). He stated that the Committee felt strongly that all current and future BOBS Board members should meet the background investigation and fingerprint requirements that are required of all volunteer coaches. Past Board members have confirmed that BOBS meetings were open to the public and there was an appeal process in place for disputes. Its minutes are also available to the public. The Committee recommended that BOBS staff liaison, Tom Alexander, not be a voting member of the Board. He indicated that this change has already taken place. Some part-time Parks and Recreation Department staff sit on the BOBS Board and serve as volunteers, which the Committee did not see as a conflict. The Committee and the BOBS both agreed that it was inappropriate for the City and the BOBS to share the same mailing address. The BOBS have secured a post office box for its purposes. In addition, they both agreed that it was unsuitable for the City liaison to be listed as the contact to receive legal documents on behalf of the BOBS. A BOBS Board member has now been assigned this responsibility. The Committee has also recommended that BOBS update and improve its Web site. Both the BOBS and the Parks and Recreation Director agree that the following statement in the 1987 agreement between the City and the BOBS should be eliminated, "the Parks and Recreation Director is authorized to assign and direct the members of the BOBS." The only suggestion that was received by the Committee from a member of the public was that an audit of the BOBS account should take place periodically to provide public confidence. The BOBS has agreed to do this and will pay the cost. Funding for scholarships will be contributed by the BOBS, Parks and Recreation, and the Lodi Sports Foundation. The BOBS, through its programs, has insurance that covers participants and provides errors and omissions insurance for its Board members. The Committee recommends that the City continue to provide an insurance indemnification for the BOBS because it is also being utilized by other groups.

At the request of Council Member Hitchcock, Interim City Attorney Schwabauer stated that he would ask the City's Risk Manager to prepare a comprehensive list of entities that the City provides indemnification for.

PUBLIC COMMENTS:

- Ron Bernasconi stated that he had reviewed all the minutes of the Committee's meetings and encouraged the Council to do so as well. He recalled that at the November 10, 2003 Special Joint City Council meeting with the Recreation Commission, former Parks and Recreation Director DeBenedetti informed Council that the lines of authority, control, custom, and practice between the City and the BOBS had worked well over time. Previous Directors were very involved in the BOBS and actively addressed problems when they arose. Mr. Bernasconi strongly encouraged Council not to remove the following statement, which is included in the 1987 agreement, "It is acknowledged and agreed that the Director of the City's Parks and Recreation Department shall be the authorized person to assign and direct the members of BOBS in their participation of the sports and recreation programs of City." Mr. Bernasconi believed that the statement makes the City's delegation of authority to the BOBS legal. The BOBS bylaws establish that its specific purpose is to act as an advisor to the Parks and Recreation Department. The Committee's minutes reflect that BOBS Board member Rick Castelanelli stated that the City can mandate changes to

the BOBS at any time and the BOBS bylaws allow for the board to dismiss a board member. Mr. Bernasconi noted that the Committee recommended that the City continue to indemnify the BOBS; however, at the Committee meeting of February 17, Jim Martin stated that if it meant being under the City's authority, then the Board would reject indemnification by the City. Mr. Bernasconi believed that this represented the mindset that was harming the BOBS organization. He felt that in order for the City's agreement with the BOBS to be valid it must retain sufficient control over the operations. He was not in favor of the BOBS having a separate address, because it is an extension of the Parks and Recreation Department. He provided Council with a packet of information (filed), in which a copy of a letter to Bob Asklof gave an overview of the practices in terms of the handling of grievances, complaints, etc. Mr. Bernasconi believed that given the enormous liability that can be created by an entity, which is acting on public property on behalf of the City, they must have reciprocal indemnifications and based on lawful conduct without negligence. He contended that the BOBS Board meetings are not always open to the public. He stated that the City has the ability to appoint one voting member and should strengthen the authority of the Parks and Recreation Director to administer Lodi youth sports programs. He suggested that the City return to the model that was in existence under former Directors DeBenedetti and Williamson, with delineated authority and open governance of public assets so that people would have better oversight authority. In conclusion, Mr. Bernasconi stated that he agreed with the recommendations of the Committee with the exception of those that tend to sever the relationship between the City and the BOBS, or move it farther apart.

In reply to Council Member Hitchcock, Mr. Schwabauer suggested that he ask an attorney from the firm of Kronick Moskovitz Tiedemann & Girard to draft a contract, which could be brought back to Council for consideration in approximately three weeks.

Mayor Hansen offered the following alternatives: 1) continue the relationship with the BOBS as it is currently and make no changes, 2) totally sever the relationship with the BOBS and make them a separate entity, or 3) bring them under the umbrella of the City. Mr. Hansen was opposed to spending funds for outside counsel to draft a new contract and preferred that the matter wait until the Interim City Attorney or new City Attorney have time to prepare it.

Council Member Hitchcock suggested that Mr. Schwabauer obtain an Attorney General's opinion before the contract is amended regarding whether the City has the ability to sever the relationship with the BOBS and what liability there is.

Mr. Schwabauer expressed doubt that the Attorney General's Office would provide an opinion on a purely private issue, i.e. whether the City has civil liability for the actions of the BOBS. He stated that, as a legal matter, the City can sever itself from the BOBS.

Council Member Hitchcock clarified that she did not think the Council wanted to sever the relationship with the BOBS. She recommended that Mr. Schwabauer communicate with the Parks and Recreation Department, consider the legality of the current relationship between the City and the BOBS, and amend the contract accordingly. Also she asked that Mr. Schwabauer make a recommendation to Council as to whether the BOBS should be under the City's umbrella.

Mayor Hansen asked Mr. Schwabauer to consider the three options he previously iterated, outline the pros and cons, and report back to Council by its regularly scheduled meeting on May 19.

Mayor Pro Tempore Beckman and Council Member Howard agreed that funds should not be expended for outside counsel to analyze the issue and/or amend the contract.

MOTION / VOTE:

There was no Council action taken on this matter.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hansen, Beckman second, unanimously voted to continue with the remainder of the meeting following the 11:00 p.m. hour.

I. REGULAR CALENDAR (Continued)

- I-4 “Introduce ordinance repealing and reenacting Lodi Municipal Code §16.40.050 establishing subdivision reimbursement agreements for construction”

Public Works Director Prima explained that this ordinance would change the reimbursement agreement public hearing notification requirement from registered mail to regular first-class mail. He confirmed that there is no legal requirement for the notifications to be sent via registered mail.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Howard second, unanimously introduced Ordinance No. 1743 repealing and reenacting Lodi Municipal Code §16.40.050 establishing subdivision reimbursement agreements for construction.

- I-5 “Introduce ordinance amending Title 9 – Public Peace, Morals and Welfare, Chapter 9.08, ‘Offenses Against Property,’ by repealing and reenacting Section 9.08.150 of the Lodi Municipal Code relating to vehicles”

Interim City Attorney Schwabauer stated that an error was made when originally drafting an amendment to this section of the Lodi Municipal Code. On January 21, 2004, the ordinance was adopted with the language, “Vehicles parked in violation of this requirement shall be removed at the vehicle owner’s expense.” The language should have read “may” be removed. This change would allow Police Officers to cite the vehicles one day and return a day or two later giving the owners the opportunity to remove their vehicle(s), and then proceed to have the vehicles towed that still remain. The amendment also allows flexibility for the Police Officers, in that they would not be required to stay and wait for the tow truck and immediately proceed with towing the vehicle.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously introduced Ordinance No. 1744 amending Title 9 – Public Peace, Morals and Welfare, Chapter 9.08, “Offenses Against Property,” by repealing and reenacting Section 9.08.150 of the Lodi Municipal Code relating to vehicles.

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Council Member Howard reported that at its February meeting the San Joaquin Council of Governments (SJCOG) Board supported the concept of placing Measure K on the ballot in November. In order for this to be accomplished, there must be an approved expenditure plan. She asked a Council representative to attend the March 19 SJCOG meeting in her absence, at which the Measure K expenditure plan would be discussed.

- Mayor Pro Tempore Beckman submitted to Council a document entitled “Proposed Lodi Greenbelt – recharge pond concept” (filed). Mr. Beckman reported that he had discussed the idea with representatives of East Bay Municipal Utility District, the City of Stockton, and agricultural interests including the Farm Bureau, and Woodbridge Irrigation District (WID). During these discussions no one had indicated opposition and many expressed support of the concept. In summary, the concept is to resell the water Lodi is purchasing from WID and use the proceeds to purchase land between Lodi and Stockton for the purpose of a community separator and use the land as recharge ponds to get the water back into the ground. He asked Ms. Hitchcock to bring the matter to the Greenbelt Task Force for its consideration.
- Mayor Hansen reported that 30 Requests for Information – Legal Services packets were mailed to interested law firms and 16 responses have been received. He and Ms. Hitchcock will review the proposals, narrow them down, and Council can then begin the interview process.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that Janet Keeter’s birthday is March 29. He expressed staff’s condolences to Council Member Hitchcock on the recent loss of her father.
- Interim City Attorney Schwabauer reported that he learned today that Envision Law Group had been suspended as a law corporation since the summer of 2000. The effect is that they do not have limited liability and therefore would be treated as a law partnership. Individual owners would have full liability for the firm and would not have the protection of a limited liability partnership.

ADJOURN TO CLOSED SESSION

At 11:43 p.m., Mayor Hansen adjourned the meeting to the continued Closed Session to discuss the following matters.

- a) Actual Litigation: Government Code §54956.9(a); one case; People of the State of California; and the City of Lodi, California v. M & P Investments, et al.; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al., Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with Labor Negotiator, Human Resources Director Joanne Narloch, regarding Association of Lodi City Employees concerning Maintenance and Operators pursuant to Government Code §54957.6

The Closed Session adjourned at 1:04 a.m.

RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 1:04 a.m., Mayor Hansen reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), direction was provided by Council.

In regard to Item C-2 (b), direction was provided by Council.

In regard to Item C-2 (c), direction was provided by Council.

NOTE: Disclosure regarding Item C-2 (d) was reported prior to the regular meeting.

Continued March 3, 2004

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 1:04 a.m., Thursday, March 4, 2004.

ATTEST:

Susan J. Blackston
City Clerk