

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JUNE 16, 2004**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of June 16, 2004, was called to order by Mayor Pro Tempore Beckman at 5:34 p.m.

Present: Council Members – Beckman, Hitchcock (arrived at 5:36 p.m.), Howard, and Land

Absent: Council Members – Mayor Hansen

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 legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual Litigation: Government Code §54956.9(a); one case; City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM
- f) Actual Litigation: Government Code §54956.9(a); one case; Sanchez v. City of Lodi et al., San Joaquin County Superior Court, Case No. CV 022301

C-3 ADJOURN TO CLOSED SESSION

At 5:34 p.m., Mayor Pro Tempore Beckman adjourned the meeting to a Closed Session to discuss the above matters.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:06 p.m., Mayor Pro Tempore Beckman reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), on two votes of 4-0, Council approved a \$44,000 work plan for studying indoor air contamination in the area of the central plume and approved a \$55,000 work plan to characterize the northern contamination plume.

In regard to Item G2 (f), on a vote of 3-1 with Council Member Hitchcock dissenting, Council approved a settlement in the Sanchez v. City of Lodi case allowing an industrial disability retirement and \$25,000 in attorney's fees for the claimant's lawyer.

In regard to Item C-2 (b), (c), (d), and (e), no reportable action was taken in closed session and the matters were continued to the conclusion of the regular calendar.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of June 16, 2004, was called to order by Mayor Pro Tempore Beckman at 7:06 p.m.

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

Absent: Council Members – Mayor Hansen

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

B. INVOCATION

The invocation was given by Pastor Richard Wheeler, Living Truth Christian Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance/presenting the colors was led by Boy Scouts of America Troop 291.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) “United States Army Week” was ***pulled from the agenda at the request of the US Army.***

D-3 (a) Merle Warner, representing the Lodi Area All Veterans Plaza Foundation, presented a check in the amount of \$10,000 to Mayor Pro Tempore Beckman, who accepted on behalf of the City, toward the quarterly payment on loan from the City of Lodi.

D-3 (b) Mary Goad, member of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Katelin Grant from Lodi High School.

D-3 (c) Janet Hamilton, Management Analyst, thanked sponsors and volunteers who assisted with the May 16 Celebration on Central event.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Howard second, approved the following items hereinafter set forth by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hansen

E-1 Claims were approved in the amount of \$4,551,317.05.

E-2 The minutes of May 5, 2004 (Regular Meeting), June 1, 2004 (Shirtsleeve Session), June 1, 2004 (Special Meeting), June 4, 2004 (Special Meeting), and June 7, 2004 (Special Meeting) were approved as written.

E-3 Authorized the advertisement of request for proposals for Design/Build Services for Municipal Service Center Public Works Locker Room Expansion.

E-4 Adopted Resolution No. 2004-116 rejecting all bids, authorizing advertisement for bids for the Henning Substation Heavy Load Access and Driveway, 1345 West Kettleman Lane, and further authorizing the City Manager to award or reject the contract up to \$22,000.

E-5 Adopted Resolution No. 2004-117 authorizing the award of contract for rental and cleaning of uniforms for certain field and warehouse employees to Unifirst Corporation, of Stockton, in the amount of \$20,454.10.

E-6 Approved additional task orders for West Yost & Associates for White Slough Facility improvements and appropriated funds in the amount of \$258,000.

E-7 Accepted the improvements under the “Communication Conduit Installation (Carnegie Forum at 305 West Pine Street to 300 West Pine Street)” contract.

- E-8 Adopted Resolution No. 2004-118 accepting Harney Lane and Mills Avenue street frontage improvements in Century Meadows Three, Unit No. 4, Tract No. 2769.
- E-9 Adopted Resolution No. 2004-119 amending the City of Lodi Public Works Transit Policy and Procedure for use of transit services outside of regular operations.
- E-10 Adopted Resolution No. 2004-120 approving the transfer of General Fund Capital Improvement funds to the Transit fund to correct the deficit of \$887,238.
- E-11 Adopted Resolution No. 2004-121 authorizing the City Manager to allocate \$55,000 in Public Benefits Program funds to extend for one year the Lodi Solar Schoolhouse Program and authorizing the City Manager to execute a contract with The Rarus Institute to assist in administering elements of this program.
- E-12 Adopted Resolution No. 2004-122 authorizing the City Manager to allocate \$25,000 in Public Benefits Program funds for Lodi's first annual Electronic Waste Clean-Up Day and authorizing the City Manager to execute a contract with Teris LLC/MSE Environmental to provide disposal and recycling services for this program.
- E-13 Adopted Resolution No. 2004-123 authorizing renewal of IBM Operating System Software for AS400 from Logical Design, Inc., of Rancho Cordova, CA, in the amount of \$29,200.25.
- E-14 Set public hearing for July 21, 2004, to consider adoption of the amended Impact Mitigation Fee for Streets and Roads and amended Exhibits I and J of the Development Impact Fee Update Study, October 2001.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Terri Hamilton stated that she was speaking on behalf of her neighbors on Mission Street between Central Avenue and Garfield Street. She complained of speeding traffic and expressed concern for the safety of the children and residents in the area. She requested that a stop sign be installed at the corner of Mission Street and Wellswood Avenue. She reported that Public Works previously placed a traffic counter on the street and counted 422 cars in a 24-hour period.
Public Works Director Prima indicated that Ms. Hamilton would receive a reply from staff within a week.
- Nancy Beckman, Executive Director of the Lodi Conference and Visitors Bureau, presented a copy of an article on Lodi that was recently published in the Fairfield Daily Republic.
- Robin Rushing stated that he lives on \$700 a month from social security and the City's utility rate increases have amounted to \$10 more a month on his bill, which has placed a hardship on him. Mr. Rushing stated that he is a participant in the City's discount programs.
Council Member Howard suggested that Mr. Rushing contact the Salvation Army regarding its assistance programs.
- Frank Alegre felt that it was a waste of City resources to have given employees a day off to observe memorial services for former President Reagan. He spoke in opposition of the City creating a 911 fee. He commended Council for hiring Steve Schwabauer as the City Attorney.
Council Member Hitchcock recalled that she had asked City Manager Flynn if the day off would cost the City money and his answer was that it would not.
City Manager Flynn confirmed that there would not be any additional cash outflow due to observing a day of remembrance for President Reagan.
Mr. Alegre countered that the City will wind up paying overtime for work that did not get done during the day off. He expressed agreement with a recent Forbes magazine article that referred to the Lodi Council as "rubes" in relation to its handling of Lehman Brothers.

G. PUBLIC HEARINGS

None.

H. COMMUNICATIONS

H-1 On recommendation of the City's contract administrator and Human Resources staff, the City Council, on motion of Council Member Hitchcock, Beckman second, rejected the following claims by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hansen

a) Lehman Brothers by Helen Duncan, Esq., date of loss 2000-04

b) James L. Byard, Ph.D., date of loss November 2003

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 Hitchcock, Land second, made the following appointments by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hansen

Lodi Arts Commission

Laura Heinitz Term to expire July 1, 2007

Margie Lawson Term to expire July 1, 2007

Library Board of Trustees

Cynthia Neely Term to expire June 30, 2007

Ken Vogel Term to expire June 30, 2007

Planning Commission

Eduardo Aguirre Term to expire June 30, 2008

Dennis White Term to expire June 30, 2008

H-4 Miscellaneous

a) City Clerk Blackston presented the cumulative Monthly Protocol Account Report through May 31, 2004.

I. REGULAR CALENDAR

I-1 "Presentation of the San Joaquin County Housing Authority's Annual Report"

Ed Sido, Interim Executive Director of the San Joaquin Housing Authority, stated that it has been in operation for 60 years. The Housing Authority offers a Section 8 rental assistance program to 5,000 low- to moderate-income families. There are 8,000 on the waiting list for the Section 8 program. Ten families participate in a home ownership assistance program. The Housing Authority owns 1,050 units in San Joaquin County as part of its public housing program. Assistance with job training and seeking employment is also offered through the Housing Authority. He commented that a Grand Jury report was issued recently, in which the Commission is not fully in agreement with its findings and recommendations.

In response to Council Member Hitchcock, Mr. Sido reported that 90% of the Housing Authority's funding comes from the federal government and 10% from the State for the Migrant Farm Worker Program. The Department of Housing and Urban Development (HUD)

has decreased funding to August 2003 levels. This has resulted in reducing the utilities allowance for the elderly and disabled by 50%, and no utility cost assistance will be provided any longer for others.

Council Member Land reported that the San Joaquin Housing Authority has been rated by HUD as a high performer and has found no exceptions or discrepancies in audits. Three of the four recommendations by the Grand Jury have already been implemented.

MOTION / VOTE:

There was no Council action necessary on this matter.

- I-2 "Adopt resolution approving regulations pertaining to the candidates' statements for the November 2, 2004, General Municipal Election"

Interim City Attorney Schwabauer recalled that Council had asked whether the existing practice of the City paying candidate statements is legal, or whether it violates Government Code Section 85300, which prohibits the use of public money for the purpose of running for political office. He found an Attorney General opinion and Fair Political Practices Commission opinion, which conclude that the prohibition in Section 85300 does not apply to paying for candidates' statements and it is legal for a city to pay the cost of candidates' statements as is suggested in Elections Code Section 13307.

Mayor Pro Tempore Beckman noted that the two cases referenced in the opinions were school districts or small entities, in which there generally is not a lot of competition for the seats. He surmised that in those instances they likely wanted to increase the number of candidates in the pool.

At the request of City Manager Flynn, City Clerk Blackston reported that in an informal survey conducted in 2002, of 75 cities that responded, only 9 cities paid for candidates' statements.

Mr. Schwabauer reported that he recently conducted a similar survey, and of the four responses, none of the cities paid for the candidates' statements.

In reply to Council Member Hitchcock, Ms. Blackston confirmed that candidate statements were not a requirement to run for public office.

Mayor Pro Tempore Beckman interpreted Government Code Section 85300 as it being illegal for the City to pay for the cost of printing candidates' statements.

Council Member Hitchcock concurred and stated that it seems like a contribution to candidates to pay for the statements. She recommended that the City begin charging candidates for the actual cost of printing the statements beginning in 2004, due to budget constraints.

Council Member Land agreed that, due to budget constraints, it should be implemented for the 2004 election.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, adopted Resolution No. 2004-124 approving regulations pertaining to candidate's statement of qualifications; stipulating that candidates shall be required to pay all costs associated with printing the candidate's statement in the voters' pamphlet for the November 2, 2004, election, and setting the word limit at 200. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hansen

- I-3 "Adopt resolution authorizing the continuation of expenditures from July 1 to 31, 2004, or until adoption of the 2004-05 Financial Plan and Budget"

Finance Director Krueger explained that in accordance with budget policies there are two options available when it is not possible to adopt the budget by July 1: 1) give the City Manager continuing resolution authority to approve bills, payroll, and operations in accordance with the plan adopted for 2003-04, or 2) require staff to obtain prior approval for the expenditure or disbursement of City funds, which would mean coming forward to Council on a regular basis for approval until the budget is adopted.

Council Member Howard felt that it was important to adopt the budget by June 30, noting that there is a quorum to do so and the anticipated delay is due only to vacation schedules.

Council Member Hitchcock stated that waiting until the meeting of July 21 to adopt the budget would not disrupt anything in the City.

MOTION:

Council Member Hitchcock made a motion to adopt a resolution authorizing the continuation of expenditures from July 1 to 31, 2004, or until adoption of the 2004-05 Financial Plan and Budget. The motion **died** for lack of a second.

City Manager Flynn asked Ms. Hitchcock if she could participate in a June 30 meeting by teleconference, to which it was determined not to be feasible.

Council Member Land agreed that adopting a budget on time is important and recalled that during his eight years on the Council it has been accomplished. He recommended that budget approval be considered at a Special meeting on June 30.

Council Member Hitchcock requested that she be allowed to participate in the process, noting that she would have to live with the budget for the remainder of her term on the Council, whereas two Council Members terms would be ending in December.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Beckman, Hitchcock second, adopted Resolution No. 2004-125 authorizing the continuation of expenditures from July 1 to 31, 2004, or until adoption of the 2004-05 Financial Plan and Budget. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Howard, and Land

Noes: Council Members – None

Absent: Council Members – Mayor Hansen

- I-4 "Receive the Impact Mitigation Fee Program Annual Report for fiscal year 2002-03"

Public Works Director Prima reported that the City has an impact mitigation fee program, in which it charges new development fees for capital facilities in accordance with state law. One of the requirements is that an annual report is done regarding monies collected. He noted that Council has received a "blue sheet" listing adjustments (filed). The fee amount is based per acre of development. Fees are adjusted automatically every January. The Police Impact Fee fund balance of June 30, 2003 was \$901,000. During the current fiscal year that money was transferred into the General Fund Capital Program to reimburse it for the police building that was constructed last year. Fire Impact Fees has a negative balance of \$1.4 million and the Water Fund has a positive balance of \$2.5 million. Council had approved an interfund loan from Water to Fire to pay for Fire Station #4.

Council Member Hitchcock recalled that for over a month she had asked for a report on what the cash balances were.

Mr. Prima acknowledged that the amounts listed were fund balances, not cash balances. He stated that the next presentation to Council would include the cash balances.

Council Member Hitchcock asked that Council receive a report on all cash balances each month, to which Finance Director Krueger indicated that it was already being done.

In reply to Council Member Hitchcock, Mr. Prima explained that the ordinance now in place provides two mechanisms for updating the fees. The construction cost index is an automatic adjustment and would take into account increases in costs of materials. The price of land is not covered. He noted that staff is considering coming to Council in September with a mid-year update to consider the amount of land purchases that are in the program, do a break out calculation of how much land costs are in the total program, and recommend a prorated increase for that portion.

MOTION / VOTE:

There was no Council action necessary on this matter.

J. ORDINANCES

J-1 Following reading of the title of Ordinance No. 1748 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Chapter 12.12 – Parks – by Adding Article IV, 'Skate Parks,' Relating to Skate Park Regulations," having been introduced at a regular meeting of the Lodi City Council held June 2, 2004, the City Council, on motion of Council Member Land, Beckman second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

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

J-2 Following reading of the title of Ordinance No. 1749 entitled, "An Ordinance of the City Council of the City of Lodi Amending Title 10, Chapter 10.44, 'Stopping, Standing, and Parking,' by Adding Section 10.44.170 Related to Disabled Parking Regulations," having been introduced at a regular meeting of the Lodi City Council held June 2, 2004, the City Council, on motion of Mayor Pro Tempore Beckman, Howard second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

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

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

- Council Member Howard announced that she presented a certificate of recognition on behalf of the Council last weekend to Grace Montgomery for her 100th birthday on June 11.
- Council Member Hitchcock congratulated Steve Schwabauer on his recent appointment as City Attorney. Addressing City Manager Flynn, she recalled that when the City borrowed money for capital projects and for the new police building, it borrowed more money than what was needed so that it could be put toward other projects. She asked whether this money was placed in the General Fund to be used to cover the deficits that are now occurring in operating expenses.

City Manager Flynn recalled that four years ago the City began putting aside \$1.5 million a year to demonstrate that it had the capacity in the General Fund operating budget to absorb additional debt. Approximately \$4.5 million was accumulated and went into the General Fund. Prior to last year, the City's debt service was \$1.3 million. When the refinancing was done, it increased to \$1.7 million. There was \$350,000 a year that was being transferred from Electric

Utility to the General Fund, as well as interest earnings. In addition, \$4 million was obtained through the state toward the new police building. In total, all of this money was being accumulated for the police building, the animal shelter, the indoor sports facility, the aquatics center, DeBenedetti Park, and reconstructing Fire Station #2. At approximately this time last year, the State had informed the City that Lodi would be giving up \$2.3 million on an ongoing basis from its Vehicle License Fees. In January 2004, staff recommended that all the capital projects be placed on hold. Mr. Flynn stated that, in total, approximately \$6.1 million has accumulated and staff is now recommending that the money be used to meet debt service needs for 2004-06 and that money not be transferred from the property tax to General Fund Capital for the next two years, which would amount to a savings to the General Fund Operating of \$1.9 million.

Interim City Attorney Schwabauer cautioned Council that it was going beyond the limitation of "Council Comments on non-agenda items" and advised that this was not an opportunity to allow discussion and deliberation to this extent on issues facing the Council.

Council Member Hitchcock asked Mr. Schwabauer to research the matter and report back to Council on whether the money that was borrowed for projects can be placed into the General Fund to offset operating expenses.

City Manager Flynn answered that Certificates of Participation money cannot be used for any other purpose than what it was intended for.

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

- City Manager Flynn announced that Alan Vallow's birthday was July 2 and he thanked everyone who attended the memorial service for former President Reagan.

M. ADJOURNMENT

The City Council meeting was adjourned at 8:44 p.m. in memory of former President, Ronald Reagan, who passed away on June 5.

ADJOURN TO CLOSED SESSION

At 8:47 p.m., Mayor Pro Tempore Beckman 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
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- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
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- f) Actual Litigation: Government Code §54956.9(a); one case; Sanchez v. City of Lodi et al., San Joaquin County Superior Court, Case No. CV 022301

The Closed Session adjourned at 9:14 p.m.

Continued June 16, 2004

RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 9:14 p.m., Mayor Pro Tempore Beckman reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed that no reportable action was taken in closed session.

ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 9:14 p.m.

ATTEST:

Susan J. Blackston
City Clerk