

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, OCTOBER 1, 2003**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of October 1, 2003, was called to order by Mayor Hitchcock at 5:05 p.m.

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

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Threatened Litigation: Government Code §54956.9(b)(3)(E); statement made to City Manager threatening relationship between City and Booster of Boys and Girls Sports (BOBS) (CA)
- b) Actual Litigation: Government Code §54956.9(a); one case; *Friedrich v. City of Lodi et al.*, Court of Appeal, Third Appellate District, Case No. CV 013678 (CA)

PUBLIC COMMENTS:

- Eunice Friedrich distributed and reviewed 13 pages of documentation regarding Case CV 013678 (filed). Ms. Friedrich stated that she was 63 years of age and had been disabled for the past 13 years. Two of her vehicles were tagged by Code Enforcement as inoperable. One vehicle was a 1974 Plymouth, which she later sold. Her 1991 Ford Taurus was towed away on July 6, 2001. She stated that the car had current registration, was in perfect working order, and she had just renewed the insurance at the end of June. Ms. Friedrich explained that she resided on East Oak Street; however, because of the narrowness of the street, she parked the Ford Taurus on North Pleasant Avenue. Ms. Friedrich phoned the City on July 6 to inform them that nothing was wrong with the vehicle and to ask that it be returned to her. Community Improvement Manager Joseph Wood denied her request. She then spoke with City Attorney Hays and asked where the vehicle was located so that she could retrieve the contents. Ms. Friedrich stated that Mr. Hays told her he did not know where the vehicle was, as the City uses many different companies to tow vehicles, and the car was likely being crushed. One month later Ms. Friedrich discovered that the vehicle was still at J&D Towing and she was able to retrieve the contents. An employee of J&D Towing informed her that the car would not be demolished because it was in good condition. Ms. Friedrich believed that the City was wrong to have towed her vehicle and asked that she receive reimbursement.
- Debby O'Dell stated that she lived across the street from Ms. Friedrich and knew that her car had been running through June 2001.
- Ginny Shults reported that she had signed an affidavit stating that Ms. Friedrich's vehicle was operable and that she used the car to transport items to be sold at animal fundraisers. She commented that Ms. Friedrich was the most honest person she knew.
- Toyah Shults stated that she witnessed Ms. Friedrich driving the car.
- Wilma Deen stated that she had known Ms. Friedrich for ten years and described her as a Christian and person of integrity. She read her affidavit: "I, Wilma Deen, pick up my mail every day at 325 N. Pleasant Avenue. I know that Eunice Friedrich parked her car at this address to avoid vandalism hit and run. She used it for special purposes. Many times I came there when the car was not in the driveway because she was using it. I also saw it parked on the street under the shade tree last summer."

- Linda Griffith stated that she had known Ms. Friedrich for eight and a half years and described her as the kindest person she ever met. She stated that Ms. Friedrich gave her rides to the store in the vehicle on several occasions. Ms. Griffith had helped her with transporting sale items in the car just a few days before it was tagged by Code Enforcement. She believed that Ms. Friedrich was being singled out by Mr. Wood.
 - Lona Frederick introduced herself as Ms. Friedrich's sister in law. Her late husband had helped Ms. Friedrich obtain the vehicle. She stated that the car was in excellent running condition and Ms. Friedrich had planned to travel to North Dakota in it. Ms. Friedrich had come to Stockton in the car on many occasions to visit her.
 - Georgianna Reichelt said that she visited Ms. Friedrich at her home for many months and knew that the car was registered. She felt that Code Enforcement should have given Ms. Friedrich an opportunity to prove that the car was operable while it was at J&D Towing and have been allowed to take possession of the vehicle after paying for the towing and storage fees. She believed it was unfair to force a person with so little income to fight a court case and noted that she had never known Ms. Friedrich not to tell the truth.
 - Fred Schmierer introduced himself as Ms. Friedrich's brother and stated that she had driven the car to his home in Galt on several occasions.
 - Wang Nguyen stated that she had known Ms. Friedrich for 23 years. She recalled that ten days before the car was towed, Ms. Friedrich took her to an appointment in Stockton and the vehicle had been running perfectly. She felt that Ms. Friedrich should be compensated for the loss of her vehicle.
 - Charlotte Perman stated that she witnessed Ms. Friedrich use the vehicle to transport sale items from an animal fundraiser and she overheard her phone conversation with Mr. Wood in which she told him the car was operable and she wanted it returned.
 - Dorothy Mehrer stated that she knew Ms. Friedrich and believed she was an honest person. She felt that the City's actions were unfair, and due to Ms. Friedrich's limited income and disability, she is unable to fight the bureaucracy.
- c) Authorization to negotiate building lease for 300 West Pine Street (APN 037-280-33); negotiating parties are Russell and Kathryn Munson (Government Code §54956.8)

C-3 ADJOURN TO CLOSED SESSION

At 5:53 p.m., Mayor Hitchcock adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:15 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:22 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Hays disclosed the following actions.

Item C-2 (a) was not discussed by Council.

In regard to Item C-2 (b), on a 3-2 vote, with Mayor Pro Tempore Howard and Council Member Land dissenting, staff was directed to tender a settlement proposal to Ms. Friedrich.

In regard to Item C-2 (c), on a 3-2 vote, with Council Members Hansen and Land dissenting, staff was directed to undertake negotiations.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of October 1, 2003, was called to order by Mayor Hitchcock at 7:22 p.m.

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

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Chris Chavez, Heartland Community Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hitchcock presented a proclamation to Tea Silvestre, Arts Coordinator, proclaiming the month of October 2003 as “National Arts and Humanities Month” in the City of Lodi.

D-2 (b) Mayor Hitchcock presented a proclamation to Merry Donahue, President of Soroptimist International of Lodi, proclaiming the month of October 2003 as “End Domestic Violence Month” in the City of Lodi.

D-3 Presentations – None

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, unanimously approved the following items hereinafter set forth:

E-1 Claims were approved in the amount of \$3,555,869.80.

E-2 The minutes of September 2, 2003 (Shirtsleeve Session), September 3, 2003 (Regular Meeting), September 16, 2003 (Shirtsleeve Session), September 16, 2003 (Special Meeting), September 23, 2003 (Shirtsleeve Session), and September 23, 2003 (Special Meeting) were approved as written.

E-3 Received report of the sale of scrap metal.

E-4 Adopted Resolution No. 2003-180 approving the Annual Investment Policy and Internal Control Guidelines.

E-5 Accepted the improvements under the “Turner Road Asphalt Concrete Resurfacing, 200 Feet West of Pleasant Avenue to Highway 99 Overpass” contract.

E-6 Accepted the improvements under the “Well 10C Drilling, 790 North Guild Avenue” contract.

E-7 Adopted Resolution No. 2003-181 awarding the purchase of 150 “Lodi Replica” concrete streetlight standards to the sole bidder, Sierra West Lighting, of Hayward, California, representing Ameron International, in the amount of \$182,797.88.

E-8 Adopted Resolution No. 2003-182 rescinding Resolution 82-107, which currently closes a portion of Pleasant Avenue between Chestnut Street and Tokay Street at Needham School during school hours.

E-9 Approved the Improvement Agreement for the public improvements for Lodi Tire Service, 250 North Cherokee Lane, directed the City Manager and City Clerk to execute the agreement on behalf of the City, and appropriated funds in the amount of \$100,000 for the required reimbursements.

- E-10 "Approve the Improvement Deferral Agreement for 1290 North Lilac Street (Woodbridge Middle School)" was *removed from the Consent Calendar and discussed and acted upon under the Regular Calendar.*
- E-11 Adopted Resolution No. 2003-183 authorizing the City Manager to allocate funds, not to exceed \$25,000, from the Public Benefits Program to fund a City of Lodi Parks and Recreation lighting maintenance project and to execute a contract with Eagle Electric & Energy Management to conduct the project work.
- E-12 Authorized the City Manager to sign the service/maintenance agreement for current police computerized information systems with Data 911 in the amount of \$58,265.
- E-13 Set public hearing for November 5, 2003, to consider Intention to Vacate public street right of way at 30-60 Neuharth Drive and 1800-1901 Ackerman Drive, a portion of Maxwell Industrial Park.
- E-14 Set public hearing for November 5, 2003, to consider Reimbursement Agreement RA-03-02 establishing an area of benefit and reimbursable costs for public improvements for Tienda Place, Unit No. 1, Tract No. 3141.
- E-15 Set public hearing for November 5, 2003, to consider Reimbursement Agreement RA-03-03 establishing an area of benefit and reimbursable costs for public improvements for 1816 Tienda Drive (APN 031-040-39), a portion of the former parcel known as 1811 West Kettleman Lane.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Larry Mallory stated that he had been a homeowner in the Kristmont Acres area for 40 years. Recently residents of the area received notification from the City of its intent to install streetlights and sidewalks. He recalled that when Chris Keszler developed the area he had an agreement with the City that sidewalks and streetlights would not be required unless 51% of the homeowners were in favor of it. Mr. Mallory reported that the residents were opposed to the idea and preferred that the area's rural setting remain intact. Mr. Mallory stated that he and other individuals in the neighborhood were asked to sign an agreement, as a condition to being issued building permits, stating that they would not petition or make public comments against the City installing streetlights and sidewalks.
- Steven LaViola stated that he was asked to speak on behalf of the residents of Kristmont Acres. He submitted copies of a petition signed by 76 residents who were opposed to streetlights and sidewalks being installed (filed).
- Jane Lea stated that she was concerned for public safety because underground gas tanks have not been removed from properties located on the northwest end of Almond Drive between the KB Homes and Kirst subdivisions. She warned that the gas tanks have the potential of leaking and contaminating the water, collapsing, exploding, and seeping fumes through the ground. She reported that the ground around the old barn was stained by chemicals, spills from maintenance, and equipment leaking. She believed that future children could be at risk playing in their backyards and could become ill due to toxins. Their symptoms would go undetected because no one would have suspected the soil being saturated with dumped hazardous waste. Surface fuel pumps were observed by citizens before their removal, and clean looking material was placed over the hazardous ground stains. She expressed concern that the environmental report was waived for this development at the last Planning Commission meeting. In addition, Ms. Lea voiced concern about traffic problems on Almond Drive. She reported that at the recent Planning Commission meeting, Community Development Director Bartlam stated that Almond Drive was a thoroughfare and in order to alleviate traffic congestion, more side streets needed to be exiting and entering onto Almond Drive. He admitted that no conclusive traffic reports had been done on Almond Drive. The Planning Commission asked if a stop sign could be installed to slow traffic, and Mr. Bartlam's reply, according to Ms. Lea, was that a stop sign would not reduce speed, it would only cause

drivers to go faster to make up for the loss of time. In 1996 property owners were shown a proposed subdivision plan for a vacant lot, which they were led to believe would complement their neighborhood. Since that time the subdivision plans changed; however, the residents were not notified. Ms. Lea stated that at the Planning Commission meeting, Mr. Bartlam stated that the practice of drawing fictitious plans to fill in vacant lots was common practice and they were subject to change. Ms. Lea felt that the residents were misled and the fabrication of drawings appears to be done to coerce property owners. She asked Council to reevaluate this policy and to make sound decisions about the concerns she raised based on facts and objective studies, and that the Planning Commission do likewise.

Mayor Hitchcock asked the City Manager to look into this matter, as well as the Kristmont Acres issue and report back at the next meeting.

- Violet Stojanovic stated that she purchased her home on Almond Drive in 1980 when there were vineyards all around her property. Since that time subdivisions have been developed, traffic has increased, and the neighborhood has deteriorated. She asked Council to protect the area from further decline.

Mayor Pro Tempore Howard suggested that Ms. Stojanovic review the City's master plan and general plan map.

Mayor Hitchcock asked the City Manager to ensure that notification is given to Ms. Lea, Ms. Stojanovic, and residents of Kristmont Acres regarding when their concerns would be discussed and responded to.

- Debra Falcon stated that residents on Almond Drive were having difficulty getting in and out of their driveways. Residents were originally promised a brick wall, and one week ago, they were notified that a street would be placed there instead.

City Manager Flynn replied that Ms. Falcon's concern had been noted, the matter would be brought back for discussion, and she would be notified.

- James Waitley recalled that in March 2002 residents of the Almond Drive area received a map which indicated that a cul-de-sac would be located across the street with a wall facing them. Subsequently Mr. Kirst purchased the property and changed the design. Residents were informed of this only a few days before the Planning Commission meeting; however, they did appear and voice their concerns. He stated that there were already three side streets intersecting onto Almond Drive from nearby subdivisions. In addition, the east west traffic makes it difficult for residents to get out of their driveways. He believed that the traffic problem would be exacerbated if Cherrywood Way was allowed to connect to Almond Drive. Mr. Waitley expressed concern for the safety of children walking to the school bus stop next to his home. Crosswalks are currently located only on each end of the street. He complained of trash being thrown in the yards of residents on Almond Drive. Mr. Waitley asked Council to reconsider the Planning Commission decision made on September 24.

In response to Council inquiries, Community Development Director Bartlam explained that the deadline to appeal the Planning Commission's decision was on September 29 at 5:00 p.m. He stated that the right of appeal is announced at Planning Commission meetings and is published on each agenda.

Mr. Waitley stated that he did not know anything about the appeal process and was under the impression that he could appear before Council to make the request.

Addressing Council, City Attorney Hays advised that because the appeal deadline had lapsed there was an expectation on the part of the parties who received the approval by the Planning Commission. He warned that it could put the Council in jeopardy to do something contrary to its own appeal process.

Mr. Bartlam stated that the action of the Planning Commission was related to the 2003 growth management allocation process, which would be brought before Council for consideration at its next regularly scheduled meeting.

Council Member Land felt that Mr. Waitley and others at the Planning Commission meeting heard that they could appeal the decision to the Council and that is what they were attempting to do tonight. For this reason he believed that the matter should be looked into.

Mr. Hays pointed out that because the appeal period had expired, the developer had an approved project for a subdivision. He suggested that if Council intends to hear the matter regardless of its rules, it would be prudent to first get in writing that the developer would waive his rights.

Council Member Land noted that the citizens came to the first meeting of the Council following the Planning Commission meeting. He believed that they deserved consideration and felt that the matter should be placed on the agenda of the next regularly scheduled meeting. In reference to the Kristmont Acres issue, Council Member Land recalled that at the last meeting he had asked that a town hall meeting be scheduled and the residents invited to attend.

Mayor Hitchcock felt that the Kristmont Acres streetlights and sidewalk matter could be discussed during a regular City Council meeting and asked that the topic be scheduled for October 15.

- Kirby Lawson asked what prompted the City to want to place streetlights and sidewalks in the Kristmont Acres area and where the funding came from.

Council Member Land explained that a number of years ago, the Council and Electric Utility set a goal to place streetlights on every street in the City that did not have them.

Rob Lechner, Customer Programs Manager, noted that it is accomplished with Electric Utility funds.

- Ynez Lawson stated that she had been a resident on La Vida Drive for more than 40 years. She was opposed to the City's proposal due to aesthetic reasons, noting that part of the beauty of the area are the large trees, many of which would have to be removed to accommodate the sidewalks. She asked whether the City arborist had been consulted.

G. PUBLIC HEARINGS

None.

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 directed the City Clerk to post for the following vacancy:

Lodi Arts Commission

Andrea Tonkin Term to expire July 1, 2004

H-4 Miscellaneous – None

I. REGULAR CALENDAR

I-1 "State Budget update"

City Manager Flynn stated that he had nothing to report on this topic.

MOTION/ VOTE:

There was no Council action necessary on this matter.

- I-2 "Adopt resolution authorizing the City Manager to execute new contracts between current industrial contract customers and/or new contract customers and the City of Lodi that will transition these customers to a standard rate over a three- or four-year period"

Mayor Hitchcock pointed out that a "blue sheet" was submitted on this item (filed).

Electric Utility Director Vallow recalled that seven years ago staff came to Council with a new form of rate structure intended for economic development, i.e. to bring companies to Lodi or allow existing customers to grow their businesses in a favorable price environment. The contracts were set at what was then the Utility's marginal cost of power. The plan was to terminate the contracts after a five-year period, and the customers would transition to the rate for which they would otherwise qualify. He reported that the contracts have now expired and the price being charged on the contracts is less than the Utility's procurement cost for the commodity on the open market.

Rob Lechner, Customer Programs Manager, reported that Lodi Iron Works, CertainTeed, Schaefer Systems, Inc., and Pacific Coast Producers were afforded a utility incentive contract. Staff recommends that they be transitioned effective today through the end of September 2006, and beginning October 1, 2006, they would be on I-1 Industrial rate. Epic Plastic is a new industrial customer and has been offered a two-year rate transition, which begins July 1, 2003 through June 30, 2005. Cottage Bakery also has a utility incentive contract; however, its owner is overseas on business at this time, so the matter will be back separately for Council to consider at its next regularly scheduled meeting.

In response to questions posed by Council Member Hansen, Mr. Vallow stated that there had been "reluctant agreement" on the part of the businesses to the rate transition. Utility staff are very sympathetic to the fact that many of these businesses are competing nationally and internationally. Mr. Vallow stated that if any of these businesses left Lodi, it would not be caused by the electric rates. He noted that these customers have been asked to participate with the Utility over the next six months in a pilot program to attempt to get them into a group self generation. Currently the Utility is losing money with these contract customers. The proposal under consideration would bring the average rate up to slightly below what SMUD's current industrial rate is.

At the request of Mayor Hitchcock the following disclosures were made:

- Council Member Beckman met with Cottage Bakery; however, it was not related to this matter.
- Council Member Hansen met with Cottage Bakery who expressed concern for balancing the scale between the number of jobs it brings to Lodi and the cost of running its business; in addition, the possibility of leaving Lodi was mentioned.
- Council Member Land stated that he responded to a letter from CertainTeed; however, they never returned his call. He met with Cottage Bakery. He noted that the city of Stockton offers tax incentives through its enterprise zone.
- Mayor Pro Tempore Howard met with a representative of Cottage Bakery. She stated that they are comparing rates between Lodi and outside of California. Financial impacts to the business of workers compensation, etc. are overwhelming. Cottage Bakery brings many jobs to Lodi and is very charitable to the community.

In reply to a question by Mayor Hitchcock about equity, City Manager Flynn recalled that several years ago Council gave staff direction to promote economic development within the community. Electric Utility targeted industries which operated 24 hours a day. In addition, businesses with a workforce of 50 or more employees were sought as a way of bringing more jobs to Lodi. Similar incentives, phased out over a five-year period, were in place to attract businesses to the downtown area.

Council Member Hansen asked how much money the City was losing overall because of these industrial contracts, to which Mr. Vallow replied approximately \$1,025,000 a year.

In response to questions posed by Council, Community Development Director Bartlam explained that enterprise zones were set up to help socio-economically disadvantaged communities attract jobs, and Lodi does not qualify. It is based on income levels within the community, not the percentage of minority population.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Howard, Beckman second, unanimously adopted Resolution No. 2003-184 authorizing the City Manager to execute new contracts between current industrial contract customers and/or new contract customers and the City of Lodi that will transition these customers to a standard rate over a three- or four-year period.

RECESS

At 9:00 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:12 p.m.

I. REGULAR CALENDAR (Continued)

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

- I-5 "Conduct a public meeting to allow testimony regarding the proposed Almondwood Estates Assessment District Zone 1 of the Lodi Consolidated Landscape Maintenance Assessment District No. 2003-1"

Public Works Director Prima stated that this matter involved a single developer who wants to have a Landscape Maintenance Assessment District formed. A public hearing will be conducted on October 15 to establish the district. Purchasers of homes in the subdivision will pay for the cost of maintaining a wall and street trees.

In reply to Council Member Hansen, Mr. Prima stated that citizens speaking earlier this evening were referring to the Kirst development, which is immediately east of this property.

MOTION / VOTE:

There was no Council action necessary on this matter.

- I-3 "Discussion and possible action related to obtaining the additional opinion of the PCE/TCE (Environmental Abatement Program) matter"

City Manager Flynn stated that it is staff's preference not to be directly involved in this matter, but to give Council as much support as it would like.

Council Member Hansen reported that he reviewed a transcript of the discussion which took place at the September 17 Council meeting related to this topic. He compiled the following questions presented by various Council Members and the public at that meeting, for which he suggested an additional opinion be sought:

1. Does the requirement of not accepting non-cash settlements without a corresponding reduction in the outstanding Certificates of Participation limit the City from any strategy it would otherwise pursue?
2. Is it a valid assumption that the costs will triple in a period of time and are there safeguards for the City to prevent that from happening?

Council Member Hansen recalled that he had asked City Attorney Hays to respond to this question at the last meeting.

City Attorney Hays replied that he had not had adequate time to research the matter. Council Member Hansen hoped that by the next meeting an answer would be prepared.

3. Is there any scenario that puts City dollars at risk?
4. Is the concept of utilizing the nuisance provisions of California Law a sound concept that provides a direct link to the insurance companies?
5. Have the City's attorneys brought forth all settlement offers that fit the parameters established by the former Council?
6. Are the parameters of accepting an offer reasonable and do they protect the City's dollars?
7. Is the financial agreement as iron clad as it is being presented to the City Council?
8. Do we have any financial liability whether we win or lose?
9. What happens if we settle this case with some defendants and not others? What happens if we go all the way and lose?
10. Are there any other strategies the City could have pursued to recover the costs of cleaning up the soil, other than going after the businesses or the taxpayers?
11. If the court decisions go against us what type of exit strategies do we have and what are the cost implications?
12. Can the interest rates be recaptured with a judgment in our favor?

Council Member Hansen clarified that he was referring to accumulated interest in the financial agreement. He requested that City Attorney Hays and Michael Donovan also provide an answer to Council on question 12.

13. To what degree does the City have to indemnify Lehman Brothers and does this clause jeopardize City dollars?

Council Member Hansen requested that City Attorney Hays and Michael Donovan also provide an answer to Council on question 13.

14. Can the City be led into a situation where the loan structure somehow inhibits the funds, which would be available for cleanup?

Council Member Hansen requested that City Attorney Hays also provide an answer to Council on question 14.

15. Does the City and Lehman Brothers have different interests and do those interests conflict in the event of limited recovery of cleanup costs?

Council Member Hansen requested that City Attorney Hays and Michael Donovan also provide an answer to Council on question 15.

16. At any point does the City's obligation to proceed with litigation disappear if no settlement or judgment is achieved?

Council Member Hansen requested that City Attorney Hays also provide an answer to Council on question 16.

17. Is it reasonable for the City to assume that the interest rates on this loan represent a return on equity versus a typical loan?

Council Member Hansen requested that City Attorney Hays also provide an answer to Council on question 17.

18. How do delays in receiving funds significantly affect the loan balance?

Council Member Hansen requested that City Attorney Hays also provide an answer to Council on question 18.

19. At this point are there any bases for the lender to challenge the City's compliance with the terms and conditions of the loan?

Council Member Hansen requested that City Attorney Hays also provide an answer to Council on question 19.

20. Is the City's case likely to succeed within a timeframe that is reasonable and provides the opportunity to pay off all legal and financial obligations and put financial resources toward cleanup?

In reference to Mr. Flynn's earlier statement, Mayor Hitchcock agreed that it is important that this matter be Council driven to avoid any issue of impropriety. Mayor Hitchcock reported that she had been searching the internet for environmental law firms. She spoke in favor of obtaining suggestions from the following sources for qualified law firms to provide the additional opinion:

- Envision Law
- Entities on "the other side"
- California State Department of Toxic Waste Substances
- California State Water Resources Board
- Judge Infante
- Judge Levy
- University of California Law School (environmental expert)
- Nature Conservancy
- City staff
- General public

Mayor Hitchcock recommended that a Request for Proposal process be instituted. She suggested that a committee be formed to conduct the initial interviews, to include interested members of the public and two Council Members. After narrowing down the field of candidates, the Council as a whole would conduct final interviews. She outlined the following qualifications that should be looked for in a law firm:

- Must be a firm that can deal with multiple party litigation;
- Has experience with insurance company litigation;
- Environmental law oriented;
- Municipal law experience; and
- Has the capability to understand and analyze public finance.

Mayor Hitchcock recommended that the following questions be asked of the firm selected to provide an additional opinion:

- Opinion on the litigation and settlement strategy;
- What approach would they propose;
- Should we continue to pursue the direction we are going;
- What other options are available and might be more attractive for cleanup;
- What obligation or exposure do we have with regard to the Lehman Brothers financing agreement and the Envision Law agreement; and
- What is the value of the insurance assets out there and is it sufficient to be able to pay off everything that the City needs to do in terms of effecting cleanup; and
- Ask about their experience.

Mayor Pro Tempore Howard distributed packets of information to Council regarding Meyers Nave Professional Law Corporation and asked that it be considered as a firm to provide an additional opinion.

In response to Ms. Howard, Mayor Hitchcock stated that she would like to move as quickly as possible on selecting a firm to provide an additional opinion and estimated that it would take a couple of months.

Mayor Pro Tempore Howard reminded Council that the City is in active litigation and believed it was important to continue meeting with and listening to the City's legal representatives. The case would not be on hold while the interview process is taking place for a firm to provide an additional opinion. She believed that interviews should be conducted only by Council Members because there might be questions that come up, which are generally discussed in closed session.

In answer to Ms. Howard, City Attorney Hays explained that there would be no attorney-client privilege during the interview process because they would not yet be the City's lawyers. Substantive issues involving the case would not be covered by any kind of attorney-client privilege.

Council Member Land stated he was certain that all the questions raised this evening have already been asked during the seven years he had served on the Council. He asked the three Council Members who supported the motion to obtain an additional opinion, whether the outcome would be public or remain confidential, and if they would abide by whatever decision is ultimately made based on the opinion. He believed that if 25 law firms were selected to provide an additional opinion on the Environmental Abatement Program, that 25 different answers would be given. He expressed concern about finding a law firm that did not have a conflict of interest in the matter. He suggested that the City contact the legal representatives who assisted Anniston, Alabama in its ten-year litigation regarding cleaning solvent contamination. He reported that they recently received a \$700 million settlement for the cleanup. He felt that the Council was playing into the hands of the insurance companies by seeking another opinion on the litigation strategy and expressed concern about the effect it may have on the judge's perception of the case.

Council Member Hansen replied that he intends to abide by any decision the Council makes. He countered that if all the questions had been asked and answered already, then something had been lost in the translation to the citizens of Lodi. He suggested that perhaps the questions had not been answered correctly. In response to Mr. Land's statement about the effect that this would have on the judge's viewpoint, he noted that the judge had already expressed concern, and it was documented in the court transcripts. Mr. Hansen reported that he happened to meet John McCray-Goldsmith, Vice President from the Lehman Brothers San Francisco office, at a conference he recently attended. He had expressed the Council's desire to have a representative from Lehman Brothers come to a Council meeting to answer some questions related to the financing agreement. Mr. Goldsmith stated that he would look into it and phone Mr. Hansen with a response. Mr. Hansen felt that the results of the additional opinion should be as public as possible. He cautioned the Mayor that her proposal to form a committee would likely serve to slow down the process and pointed out that there were no members of public present in the audience this evening to hear or provide additional input on this matter. He agreed with Ms. Howard's earlier comment that the litigation is not being put on hold, and until there is good reason to do otherwise, the City should continue on its current course.

City Attorney Hays reported that state bar rules require that firms do a conflict analysis to ascertain if they are able to participate in a case, and staff is currently compiling a list to present to Council.

Mayor Pro Tempore Howard recommended that firms be asked what suggestions they may have for the City to improve press releases, educational comments, and releases to the newspaper. In addition, she suggested that teams of two Council Members rotate and participate in the interview process.

Mayor Hitchcock asked if the Council as a whole could interview potential firms, to which City Attorney Hays replied that it could possibly be done in closed session. Mr. Hays indicated that he would look into the matter.

In response to Council Member Land's earlier question, Council Member Beckman envisioned that Council would first get a briefing of the firm's opinion on the City's legal strategy in closed session, and other matters would be addressed in open session. He agreed with Council Member Hansen that forming a committee would slow down the process.

Mr. Flynn offered that staff could develop a list of "headhunter" firms who could assist Council with the Request for Qualifications process.

Council Member Hansen suggested that he and Council Member Beckman look into potential "headhunter" firms to provide assistance to Council in this endeavor and to formulate a list of questions incorporating all the suggestions made this evening.

Mayor Hitchcock stated that she would like to be involved in the process, and Council Member Beckman ceded his participation to her.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously voted that Mayor Hitchcock and Council Member Hansen compile questions that have been presented this evening into a formal format and pursue searching for a "headhunter" firm to provide assistance in finding a qualified attorney/financial expert to offer another perspective on the Environmental Abatement Program litigation.

I-4 "Adopt resolution authorizing fee adjustments for various police services"

Police Captain Main reported that the fee adjustments include four areas: 1) cost recovery, 2) fees for services, 3) animal services, and 4) parking citation fees. He reviewed each of the fee adjustments as outlined in the staff report (filed) and highlighted the following information.

- The vehicle impound release fee originated in 1994. When vehicles are impounded by Police Officers, the owner is required to obtain a release from the Police Department before getting their vehicle from the tow yard. The fee adjustment is due to increased personnel costs.
- Vehicle repossession fees are controlled by statutory requirements that cannot be adjusted.
- The fee increase for fingerprinting is related to the Livescan process, which takes more staff time to enter the data.
- Council approved cost recovery measures for DUI in 1999; however, the Police Department only recently devised a mechanism to recover the costs. He pointed out an error in the original staff report for the DUI arrest fee of \$250, which should have been listed as \$200. He noted that DUI-related investigations are very labor intensive.

In reference to mechanical citation sign-off fees, Council Member Land questioned whether only residents outside of Lodi were charged.

Captain Main believed that there was no charge for citations issued by the Lodi Police Department; however, he indicated that he would report back with a definite answer. He stated that parking enforcement personnel are now handling mechanical citation sign offs.

In reviewing the Permit Fee Schedule, Captain Main reported that considerable staff time is involved in massage proprietor and technician background checks and inspections. He noted that a portion of the \$400 goes to state fees. Captain Main stated that most of the other permit fee increases are to recover the \$25 Livescan fingerprint fee. Since the Office of Professional Standards was created in the Police Department, there has been more oversight done of taxi drivers, second-hand dealers, card dealers, and card room owners.

Captain Main explained that the Animal Services related fee increases are to recover costs and establish parity with other cities.

In reply to Council Member Hansen, Terri Arbuckle, Animal Services Supervisor, did not believe that the fee for spay and neutering would discourage people from adopting animals from the Shelter. She explained that the only time the deposit is charged is when an animal cannot be altered prior to leaving the Shelter, and in this case the owner has 30 days in which to have it done.

Captain Main recommended a \$5 increase in most municipal code parking violations. He noted that the court is also considering a flat \$5 increase for all Vehicle Code violations.

Council Member Beckman was in agreement with all of the fee increases presented with the exception of the Permit Fee Schedule, which he believed was tantamount to raising business licenses.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously adopted Resolution No. 2003-185 authorizing fee adjustments for various police services and parking citation fines, with the exception of the Permit Fee Schedule.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Land, Howard second, adopted Resolution No. 2003-186 authorizing an increase for Lodi Police Department permit fees. The motion carried by the following vote:

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

Noes: Council Members – Beckman

Absent: Council Members – None

- E-10 "Approve the Improvement Deferral Agreement for 1290 North Lilac Street (Woodbridge Middle School)"

Council Member Land read the following excerpt from the City Council meeting minutes of February 7, 2001: "In reply to Council Member Land, Ms. Starr stated that Lodi Unified School District is aware that they will have to put in curb, gutter, and sidewalk if the annexation is approved and she assured him that these improvements have been budgeted." Mr. Land stated that his vote at that meeting was based on the decision that all improvements would be done during LUSD's 2001 budget year.

City Manager Flynn explained that LUSD plans to convert Woodbridge Middle School to an elementary school, once the new Millswood Middle School is completed. It would be more cost effective for them to do it as one project. Staff is also looking into whether state or federal funding is available to assist with the cost of curb, gutter, and sidewalks.

In response to Council Member Land, Public Works Director Prima stated that the improvement deferral agreement puts the commitment in writing by the District that they will make the improvements upon the City's request.

Mayor Hitchcock asked whether the annexation occurred prior to the City changing its policy on the use of Measure K dollars for sidewalks.

Mr. Prima explained that discussion took place in 1999 regarding the use of Measure K funds for sidewalk installation on Turner Road; however, a formal policy was never adopted.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, unanimously approved the Improvement Deferral Agreement for 1290 North Lilac Street (Woodbridge Middle School) and authorized the City Manager and City Clerk to execute the agreement on behalf of the City.

J. ORDINANCES

None.

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

- In reply to questions posed by Council Member Beckman, Community Development Director Bartlam reported that he had sent a letter to the Stockton Community Development Director requesting that they remove the Lodi White Slough Facility property from its general plan data gathering area. Mr. Bartlam stated that staff is currently working on the Housing Element update and the City's General Plan would be done in 2005-07.

Council Member Beckman asked City Attorney Hays to provide him with the amount that would be billed to the City for Michael Donovan and another individual to attend tonight's meeting.

- Council Member Land stated that it was recently reported at a Local Agency Formation Commission meeting that Stockton's preferred site for a proposed water treatment plant is the northwest corner of Lower Sacramento and Eight Mile Roads.
- Council Member Hansen reported that the Northern California Power Agency (NCPA) would be sending a letter to Secretary of Energy Abraham in support of the creation of a federal control area by Western Area Power Administration. A signature by Mayor Hitchcock will be requested for this purpose. He thanked Congressman Pombo and staff for their assistance in finding a resolution to this matter. He announced that Lodi native, Jim Pope would be taking over as the new general manager of NCPA on January 1, 2004. Mr. Hansen and Sondra Huff, Manager of Governmental Affairs, were on the winning foursome of an NCPA golf tournament. He congratulated the Lodi High School girl's varsity golf team who are now 12-0.
- Mayor Pro Tempore Howard stated that the City should look at purchasing some key parcels of land between Lodi and Stockton. In order to meet state mandates for the wastewater treatment plant there is a likelihood in the future that the City would need to purchase acreage south of the facility for the purpose of a wetlands component. Ms. Howard stated that Stockton Mayor Podesto expressed concern about the negative effect that might have on homeowners of property in new subdivisions proposed north of Eight Mile Road and Interstate 5. She believed that if the City did not take steps to secure property soon, it may find itself locked in.
- In reply to Mayor Hitchcock, Community Development Director Bartlam reported that property on the southwest corner of Lower Sacramento Road and Harney Lane is a Priority 3 area and is designated as Planned Residential in the City's General Plan. He stated that priority areas would be considered as part of the General Plan update to occur in 2005-07, which he noted would be a \$1 million project. He reported that the draft Housing Element had not yet been completed. Several meetings on the topic have taken place with the Planning Commission. The draft Environmental Impact Report (EIR) is currently in process. Notices have been mailed and newspaper ads published soliciting input; however, there had been little turnout at meetings. Mayor Hitchcock suggested that a presentation on staff's progress related to the Housing Element be given at a regularly scheduled City Council meeting.

Mayor Hitchcock announced that a representative from Senator Poochigian's office would be at the Carnegie Forum tomorrow from 1:00 to 4:00 p.m.

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

- City Manager Flynn noted that the Street Fair would be held on Sunday and the Mayor's State of the City Address is scheduled for October 10. He announced the following birthdays:
 - Fire Chief Pretz – October 2
 - Mayor Hitchcock – October 3
 - Council Member Land – October 13

City Attorney Hays noted that Council had received an internal memorandum regarding a positive court decision pertaining to United States Fidelity and Guaranty (USF&G) Company's obligation to fund extensive environmental site investigation.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:10 p.m.

ATTEST:

Susan J. Blackston
City Clerk