

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, FEBRUARY 2, 2005**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of February 2, 2005, was called to order by Mayor Beckman at 6:00 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, 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; Lehman Brothers Inc., v. City of Lodi and Lodi Financing Corporation, United States District Court, Eastern District of California Case No. CIV-S-04-0850 FCD/JFM
- g) Actual litigation: Government Code §54956.9(a); one case; Fireman's Fund Insurance Company v. City of Lodi, et al., United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM

C-3 ADJOURN TO CLOSED SESSION

At 6:00 p.m., Mayor Beckman adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:53 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:01 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed that there was no reportable action taken in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of February 2, 2005, was called to order by Mayor Beckman at 7:01 p.m.

Present: Council Members – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

Absent: Council Members – None

Also Present: City Manager King, City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Pastor Dale Edwards, Century Assembly.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Beckman.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Beckman presented a proclamation to Barbara McWilliams, Assistant District Governor for Rotary District 5220, in celebration of Rotary International's 100th Anniversary.

D-3 (a) Mayor Beckman presented a Resolution of Appreciation to Janet Keeter for her hard work and dedication in serving as Interim City Manager since August 2004.

D-3 (b) Following introductory comments and presentation by Arts Commissioner Pat Stockar, Mayor Beckman presented a Certificate of Appreciation to outgoing Arts Commissioner, Reverend William Crabtree.

D-3 (c) Mayor Beckman presented a Certificate of Appreciation to Peter Westbrook for his years of service to and participation in the Downtown Lodi Business Partnership.

D-3 (d) Mayor Beckman presented a Certificate of Recognition to Boy Scout Kyle Kreig Williams for obtaining the rank of Eagle Scout.

D-3 (e) Joan Morrison of Soroptimist International of Lodi Sunrise presented a check in the amount of \$4,250 to the City as a donation toward the purchase of Blakely Park playground equipment.

D-3 (f) Rob Lechner, Manager of Customer Service & Programs, gave a presentation to the City Council regarding Lodi's 2nd annual Electronic Waste Clean-up Day, to be held on February 5.

E. CONSENT CALENDAR

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

E-1 Claims were approved in the amount of \$7,399,365.19.

E-2 The minutes of January 5, 2005 (Regular Meeting), January 11, 2005 (Shirtsleeve Session), January 11, 2005 (Special Meeting), January 18, 2005 (Shirtsleeve Session), and January 18, 2005 (Special Meeting) were approved as written.

E-3 Adopted Resolution No. 2005-17 awarding contracts for Maintenance of Landscape Areas for Calendar Year 2005 to: 1) Odyssey Landscape Company, Inc., for maintenance and irrigation for Group A and maintenance for Group C for a total annual cost of \$77,540 and 2) Greenline Landscaping, Inc., for maintenance and irrigation for Group B for a total annual cost of \$51,180.

E-4 Adopted Resolution No. 2005-18 approving Improvement Agreement for Public Improvements for 1020 South Beckman Road, directing the City Manager and City Clerk to execute the agreement on behalf of the City, and appropriating funds in the amount of \$4,385 for the required reimbursements.

- E-5 Adopted Resolution No. 2005-19 amending Resolution 2003-213 to authorize the following actions for the Legacy Estates Unit 1, Tract No. 3260, subdivision:
- a) Allow acceptance of the public improvements for the subdivision prior to completion of the street pavement and appurtenant public improvements in Harney Lane required under the terms of the Improvement Agreement for the Public Improvements for Legacy Estates Unit No. 1 executed by FCB Building Partners II, L. P., and approved by Council on November 19, 2003;
 - b) Relieve FCB Building Partners II, L. P., from responsibility for completion of the street pavement and appurtenant public improvements in Harney Lane and deem its responsibilities for the installation of public improvements under the terms of the above referenced improvement agreement complete; and
 - c) Approve the Improvement Agreement for the Public Improvements of Harney Lane executed by DSS Company covering the completion of the street pavement and appurtenant public improvements in Harney Lane.
- E-6 Adopted Resolution No. 2005-20 approving services agreement with ABD Insurance and Financial Services for benefits administration consulting services for the period of March 1, 2005 to February 28, 2006, in the amount of \$28,500, with an administrative option to renew for another one-year period.
- E-7 Adopted Resolution No. 2005-21 authorizing the City Manager to execute a one-year contract for telephone switch maintenance service and repair with NextiraOne LLC in the amount of \$21,203.51.
- E-8 Adopted Resolution No. 2005-22 authorizing the purchase of retired police canine "Tosca" from Officer Brian Freeman in the amount \$2,000 from the Police Canine Trust Fund.
- E-9 Accepted memorial plaque donation from MaryAnn Porterfield.
- E-10 Accepted donation of three Japanese lanterns for Lodi Lake from Hugo and Earlene Wiessner.
- E-11 Adopted Resolution No. 2005-23 supporting legislation amending the Americans with Disabilities Act to require notice prior to filing legal action.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

None.

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

- Council Member Mounce asked that a Shirtsleeve Session be scheduled to discuss the feasibility of expanding the Police Partners program to address basic code enforcement issues via the distribution of multilingual educational material. She felt that a better partnership between the Police Department and Community Development might be the first step in improving the conditions in older neighborhoods in Lodi by a simple outreach program.
- Mayor Beckman and Council Member Johnson expressed an interest in hearing the matter described by Ms. Mounce.

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

- City Manager King voiced his enthusiasm for his new position and noted that during his brief tenure the first citywide power outage in four years occurred, there was a gas line break and evacuation of a school, and four consecutive City Council meetings were scheduled.

I. PUBLIC HEARINGS

- I-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 Beckman called for the public hearing to consider resolution establishing an area of benefit and reimbursable costs for design and construction required to underground aerial facilities for 1833 West Kettleman Lane (APN 031-040-20) and 1811 West Kettleman Lane (APN 031-040-40).

Lyman Chang, Associate Civil Engineer, reported that this project was initiated by the development of a professional dentists' office at 1745 West Kettleman Lane. The developer was required to provide the design and construction required to underground all aerial facilities along the Kettleman Lane frontage of the project site. Staff has requested that the developer also obtain the costs to underground the aerial facilities for the adjacent properties west of the development site at 1811 and 1833 West Kettleman Lane. Referencing Exhibit B of the staff report (filed), Mr. Chang explained that reimbursable costs for each of the benefiting properties have been calculated based on the length of frontage of each parcel. Reimbursable costs will be due at the time of development of the respective parcels. The reimbursable amount will be adjusted annually to include an amount attributable to interest, which will be based on the change in the Engineering News Record Construction Cost Index.

Hearing Opened to the Public

- Alan Freize stated that he represented the developer in this matter. He clarified that the developer is funding all the expense. When the work is completed in approximately 90 days, the developer will be reimbursed for the portion that was *not* attributable to its project. The reimbursement to the City from the area of benefit that is being established would come at the time of development and is adjusted by the Construction Cost Index.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously adopted Resolution No. 2005-24 establishing an area of benefit and reimbursable costs for design and construction required to underground aerial facilities for 1833 West Kettleman Lane.

J. COMMUNICATIONS

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

- J-2 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Hitchcock, Hansen second, unanimously approved recommending to the San Joaquin County Board of Supervisors appointment of the following Delegate and Alternate to the San Joaquin County Flood Control and Water Conservation District – Water Advisory Commission:

San Joaquin County Flood Control and Water Conservation District – Water Advisory Commission

John Beckman Delegate
Wally Sandelin, Alternate

NOTE: The San Joaquin County Board of Supervisors is scheduled to make appointments at the end of February.

- J-3 Miscellaneous – None

K. REGULAR CALENDAR

- K-1 "Adopt resolution approving the reallocation of one Administrative Clerk to Administrative Secretary in the Library"

Amy Flores, Management Analyst Trainee, reported that the Human Resources Department has conducted a classification study in accordance with the City's rules for personnel administration. It was determined from the study that the position of Administrative Clerk in the Library should be reallocated to Administrative Secretary. This action will not impact the number of positions in the department. The cost will be absorbed from salary savings from this fiscal year (due to a Library Assistant vacancy). The cost for next year will be sustained by the Library Fund.

Mayor Pro Tempore Hitchcock expressed concern that this action was premature in light of current budget discussions regarding possible reduction in force. She felt it would be fairer to existing staff to wait until next year's budget when reclassifications are being considered. She recommended that, in the interim, out-of-class pay be given.

Library Director Martinez reiterated that Library Funds are sufficient to cover these expenses.

Council Member Hansen asked why this request was coming forward at this time.

Ms. Martinez recalled that in 2001 the Library obtained part-time clerical help for administration. The position was introduced at the Administrative Clerk level; however, the employee has been doing the duties of an Administrative Secretary for some time.

MOTION/ VOTE:

The City Council, on motion of Council Member Hitchcock, Hansen second, unanimously denied the request to reallocate one Administrative Clerk to Administrative Secretary in the Library and authorized payment of 5% out of class pay until the matter can be addressed during future budget discussions.

- K-2 "Approve addendum to Lower Sacramento Road Project plans and specifications"

Public Works Director Prima reported that the Lower Sacramento Road reconstruction project and widening from Kettleman Lane to Harney Lane is now out to bid. One of the bid alternates in the specifications was to allow the contractor to close the road to through traffic during construction. The specifications were written with the base bid to build the roadway under traffic with an alternate for a cost savings if the City allowed the road to be closed. Staff's belief is that with the alternate a substantial amount of money can be saved and the project will get done quicker, which is a benefit to the traveling public. The project would be awarded based on the base bid unless the deduction for closing the road is \$350,000 or greater in which case staff would consider the base bid plus the deduction and select who has the lowest price under those criteria. Council received a "blue sheet" (filed) on this item from San Joaquin County expressing its opposition to the road closure. Staff feels the safety benefits for both drivers and workers of the road closure and decreased construction time would be significant.

In reply to Mayor Pro Tempore Hitchcock, Wally Sandelin, City Engineer, explained that under the open road specification the contractor is allowed 180 days. It is anticipated that the onset of construction would be in May, with completion of the project to occur in the latter part of 2006. If the road were closed it would be for a period of four months. If not, the period of time would extend from 14 to 18 months. He noted that after the closure the roadway would be reopened, with some controls, and the completion of construction would take an additional two months.

Mayor Beckman and Council Member Hansen voiced support for road closure to expedite the project.

PUBLIC COMMENTS:

- Henrietta Bell stated that she lived near the intersection of Harney Lane and Lower Sacramento Road. The area has been under construction for two years. She expressed hope that this project could be completed in 4 months versus 14.

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Beckman second, unanimously approved the addendum to Lower Sacramento Road Project plans and specifications.

K-3 "Mid-year budget adjustments and financial review as of December 31, 2004"

City Manager King stated that the mid-year budget adjustments discussed this evening are related to the General Fund only. Staff's intention is to review the remaining funds at the Council meeting of February 16.

Finance Director Krueger reviewed "blue sheet" spreadsheets (filed) showing revenues and expenditures in the General Fund from 1993-94 through 2004-05 (expected). He reported that in 1993-94 the total revenues were \$23,665,848 and in 2003-04 were \$37,587,189. He mentioned that there would be a change in the way insurance for health, workers compensation, liability, etc. is accounted for. "Transfers In" last year were \$3,664,058 and year to date are \$2,812,594. He explained that one of the ways the City was balancing its General Fund budget was to transfer money out of reserves. He reported that these transfers will not be made in 2004-05. He stated that the City has taken a reduction in the current year of \$700,000 in Vehicle License Fees, which will get paid back from the State at some point. The Fire Department's First Responder Fee had been included in the budget in the amount of \$258,000; however, it has not yet come to fruition.

In answer to Mayor Pro Tempore Hitchcock, Mr. Krueger explained that the \$5,966,300 shown in "Transfers In" for 2004-05 (expected) are for amounts owed to the General Fund for services provided to Electric Utility, Water, Wastewater, and street maintenance. Approximately \$3 million is transferred from the three utility funds into the General Fund to reimburse the Finance Department for costs of services. Public Works Director Prima added that the gas tax is also included in the figure.

Mr. Krueger pointed out that the property tax for 2003-04 shows \$3,473,886 and in 2004-05 it is \$5,318,000. He explained that a portion of property taxes that would have been used to pay for debt service on the new police facility were allocated to the General Fund. He recommended that this not be done again.

Referencing the expenditures spreadsheet, Mr. Krueger noted that in 1993-94 expenditures totaled \$22,496,028 for all departments in the General Fund and in 2003-04 the amount was \$36,909,433. Year to date expenditures total \$19,884,111 with a total amount approved of \$41,153,139. Operating transfers out in the amount of \$4,267,642 include health, liability, and workers compensation insurance. He stated that, in the past, it has been "below the line" as a transfer out. Mr. Krueger stated that the full cost associated with operating departments should be shown, so he has reallocated all the insurances to departments. He reiterated that in the past, the departments were not paying for insurance costs, as it was a transfer amount. He reported that the amount of \$12,037,000 includes an allocation of health insurance, workers compensation, and all other insurances. He stated that the amount is larger than what was anticipated when the budget was first done because of the insurance transfers. Also included in the figures were Other Sources and Uses, which included salary savings from vacancies, contract increases, etc. Mr. Krueger stated that, in the future, there would no longer be a category for Other Sources and Uses, as all these costs associated with individual departments will be "above the line."

Mr. Krueger expressed concern that the Fire Department would come within budget. He explained that the Memorandum of Understanding for Firefighters was done two years ago; however, when the 2003-05 budget was prepared the associated dollar amount was not included.

In answer to Council Member Mounce, Mr. Krueger stated that the expenditure total does include the requested addition of one Community Development Planner position.

Council Member Hansen suggested that a policy be developed on criteria for increasing staff and build into the budget a way to ensure that the positions are funded in the future. A long-term policy is needed to protect the City's fund balance and maintain fiscal solvency.

City Manager King stated that staff's goal is to end June 30, 2006, at the same position as June 30, 2005, which will amount to a 5% General Fund reserve. During the period of July 1, 2005 to June 30, 2006, options will be considered for increasing the reserve to 15%. Mr. King agreed that a city should have the equivalent of three months of operating funds available to protect it against a catastrophic natural disaster. A 15% reserve for Lodi equates to three months of operating expenses. He commented that cities that were prudent had a Public Employees Retirement System (PERS) stabilization/reserve fund. Even when there was no call on the PERS payments, these cities understood the cycle and still paid themselves into a reserve, so when PERS again asked for payment it was not difficult for them to do. Mr. King stated that he would like such a policy instituted for Lodi. With regard to vacancies, Mr. King stated that he intends to make case-by-case decisions for all General Fund positions. He had asked the Human Resources Department to prepare a chart showing the percentage of vacancies in each department, which he would share with the City Council.

Mr. Krueger reported that at the end of fiscal year 2003-04, there was \$1,721,356 in the fund balance. Thus far, year to date, the City's revenues are less than expenditures. The City has a deficit of just under \$6 million for the first six months of the fiscal year. He believed, however, that by the end of the fiscal year the City would have in excess of \$2 million in its fund balance. He projected that revenues would catch up and surpass expenditures for the second half of the fiscal year.

In reply to Council Member Johnson, Mr. Krueger reported that there is a "good" cash balance in the Electric Utility fund, which is being used to deal with the deficit. He noted that the means to replace this cash in a short period of time needs to be ensured.

Mr. King stated that staff is seeking approval from Council to fill a Planner position in the Community Development Department. It would be funded by the General Fund for the remainder of this fiscal year. Next fiscal year the position would be funded via revenue through impact fees on new development.

MOTION / VOTE:

The City Council, on motion of Council Member Johnson, Beckman second, unanimously approved the mid-year budget adjustment of filling one of the vacant positions in the Community Development Department in order to commence work on the City's General Plan.

RECESS

At 9:35 p.m., Mayor Beckman called for a recess, and the City Council meeting reconvened at 9:45 p.m.

K. REGULAR CALENDAR (Continued)

- K-4 "Adopt resolution approving the California Statewide Communities Development Authority Vehicle License Fee Gap Loan Financing Program Application"

Finance Director Krueger recalled that Council approved the application for financing on January 5. The action now requested is to sell the receivable of \$1,026,272 from the state for Vehicle License Fees it retained in fiscal year 2003-04 and sell the receivable to use it as security for a financing instrument. He recommended that Council approve this financing mechanism that would have a base interest rate of 3.75%, which establishes what the ceiling amount of debt proceeds would be. He reported that the debt proceeds would range between \$941,800 and \$925,837.

MOTION:

Council Member Hitchcock made a motion, Johnson second, to adopt Resolution No. 2005-25 approving the form of and authorizing the execution and delivery of a purchase and sale agreement and related documents with respect to the sale of the City of Lodi's Vehicle License Fee receivable from the State and directing and authorizing other actions in connection therewith.

DISCUSSION:

In response to Council Member Hansen, Mr. Krueger reported that the State has said the repayment to cities would occur in August 2006. The risk is that they may not be able to pay at that time and it could be delayed until 2008 or later.

In answer to Mayor Pro Tempore Hitchcock, City Attorney Schwabauer noted that the agreement expressly states that, as between the City and California Statewide Communities Development Authority (CSCDA), which is floating the bonds, the City is selling its receivable to them and if the receivable does not come to fruition that is the risk that CSCDA takes. He had been concerned that if CSCDA was sued by the bond purchasers that they could issue a cash call to the City because it is a member of the Joint Powers Authority (JPA). Review of the documents the City entered into when it joined the JPA specifically state that the individual members of CSCDA do not have liability for the bond issuances that are issued through CSCDA. It expressly states in the preliminary offering statement, and now in the indenture, that neither CSCDA nor the cities nor the State of California are liable for the repayment of the bonds if the State does not make the payment. The bondholders will have recourse against the insurers and against the State's promise to repay it. Mr. Schwabauer believed that the prospect of the cities having liability was so low as to be discountable because the documents in themselves expressly state participants (cities) do not have liability for the issuance of the notes.

VOTE:

The above motion carried by a unanimous vote.

- K-5 "Discussion and appropriate action regarding authority of the City Manager relating to salary adjustments"

Human Resources Director Narloch briefly reviewed the staff report and four accompanying exhibits (filed).

Council Member Hansen felt it was important that the City Manager, who works directly with department heads, has the ability to recognize individual performance.

Mayor Pro Tempore Hitchcock stated that it did not come as a surprise that the City Manager had authority to grant salary increases to department heads. What was alarming to her was that the former City Manager did so two weeks before he resigned and at a time when budget cuts were being considered due to a deficit situation. In addition, the former

City Manager increased the salary ranges just before the pay increases were given. Ms. Hitchcock agreed with Mr. Hansen that the City Manager needs the authority to recognize performance, otherwise department heads would be working for the Council instead of the Manager. Ms. Hitchcock stated that she was comfortable with the current system. She asked what other monetary authorities the City Manager has that could affect the budget.

Council Member Mounce agreed with Ms. Hitchcock and expressed disappointment over the actions taken by the former City Manager. She asked what could be done to prevent a similar occurrence from happening in the future.

Council Member Johnson noted the incident would never have come to light if not for information provided by a disgruntled City employee. He suggested that the City Manager report to Council on a regular basis any changes that take place with regard to salary matters. Mr. Johnson stated that he would like department heads held to standards that the City Manager creates.

Council Member Hansen agreed with Mr. Johnson's suggestion regarding regular reports. In reference to a broader review of all monetary authorities of the City Manager (as recommended by Ms. Hitchcock), he expressed support. He offered that it may be beneficial to have, in the case of contracts, a maximum amount during a specific period over which the City Manager must seek Council approval.

City Manager King stated that his preference would be to keep the current policies in place with regard to his authority to grant pay increases. Currently, the Council sets the cost control point and allows the City Manager discretion to grant salary increases to department heads in the range of 10% above and below the cost control point. Other positions in the City have a five-step pay plan with 5% between each step. Mr. King stated that, over time, he would like to see all executive management employees migrated to contracts. Currently, there are only four executive management employees who have contracts. In that scenario, the City Manager would negotiate the contracts, make a recommendation, and Council would ratify the contract and subsequent amendments. This would be a way for Council to remain informed. The drawback would be that it would politicize the process, and perhaps erode the City Manager's authority to some degree. Mr. King pledged greater communication to Council.

Council Member Johnson stated that he was intrigued by the contract concept and suggested that at some future time it might be beneficial to explore it further.

Mayor Pro Tempore Hitchcock expressed agreement with Mr. Johnson.

Addressing the City Manager, Mayor Beckman encouraged him to bring the matter of creating a policy to require executive management employee contracts back to Council for consideration when he felt comfortable in doing so.

MOTION / VOTE:

There was no Council action taken on this matter.

L. ORDINANCES

None.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 10:32 p.m.

ATTEST:
Susan J. Blackston, City Clerk