

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

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of November 2, 2005, was called to order by Mayor Beckman at 5:55 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) Conference with Blair King (Acting Labor Negotiator) regarding International Brotherhood of Electrical Workers and Lodi Police Officers Association, pursuant to Government Code §54957.6
- b) 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
- c) 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
- 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; *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
- f) Actual litigation: Government Code §54956.9(a); one case; *City of Lodi v. Michael C. Donovan, an individual; Envision Law Group, LLP, et al.*, San Joaquin County Superior Court, Case No. CV025569

C-3 ADJOURN TO CLOSED SESSION

At 5:55 p.m., Mayor Beckman adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:50 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:02 p.m., Mayor Beckman reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions:

In regard to Item C-2 (a), on a vote of 3-2 with Council Member Johnson and Mayor Pro Tempore Hitchcock dissenting, Council approved an amendment to the list of survey cities for the purpose of determining police officer salaries to include: Fairfield, Vacaville, Tracy, Roseville, Manteca, Modesto, Turlock, Galt, and Ripon.

In regard to Items C-2 (b), (c), (d), (e), and (f), no reportable action was taken in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of November 2, 2005, was called to order by Mayor Beckman at 7:02 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 Chaplain Barbara Taylor, Lodi Police Chaplain.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Beckman.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations – None

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E. CONSENT CALENDAR

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

E-1 Claims were approved in the amount of \$3,434,418.06.

E-2 The minutes of September 27, 2005 (Shirtsleeve Session), September 27, 2005 (Special Meeting), October 4, 2005 (Shirtsleeve Session), October 18, 2005 (Shirtsleeve Session), and October 25, 2005 (Special Shirtsleeve Session) were approved as written.

E-3 Adopted Resolution No. 2005-226 awarding two-year contract for Elevator Services for City Facilities to Elevator Technologies, Inc., of El Dorado Hills, CA, in the amount of \$19,975, and authorized extension of the contract up to two years.

E-4 Accepted improvements under the "Hale Park Playground Improvements, 209 E. Locust Street" contract.

E-5 Adopted Resolution No. 2005-227 accepting the development improvements at 1020 South Beckman Road.

E-6 Adopted Resolution No. 2005-228 accepting the development improvements at 1349 East Kettleman Lane.

E-7 Accepted improvements under the "Construction of the Lodi Unified School District Compressed Natural Gas and Fueling Station" contract and authorized an additional Change Order.

E-8 Adopted Resolution No. 2005-229 authorizing the City Manager to execute a professional services agreement with T. Mitchell Engineers & Associates for facility upgrades for Fleet Services shop and compressed natural gas fueling station expansion at the Municipal Service Center in the amount of \$15,400.

E-9 Adopted Resolution No. 2005-230 adopting the 2005-06 Federal Program of Transit Projects Lodi Urbanized Area.

E-10 Adopted Resolution No. 2005-231 amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan development fee.

- E-11 Authorized the City Attorney to execute a letter in support of the petition for Supreme Court review in the case of Macpherson v. City of Hermosa Beach, Case No. B174240 on behalf of the City of Lodi.
  - E-12 Set public hearing for November 16, 2005, to consider an appeal of the Planning Commission's decision to deny the request of Kirk Smith on behalf of Velvet Grill for a Use Permit (U-05-011) to allow a Type 41 Alcoholic Beverage Control license for on-sale beer and wine with a restaurant at 1421 South Ham Lane, Suite A.
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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Bill Crow commented that the article in the Lodi News-Sentinel regarding the Mayor's State of the City Address made it appear as though the City was in very good condition; however, it is contrary to what one hears during City Council meetings. Mr. Crow expressed concern about Lodi businesses, particularly those that will be significantly affected by increasing electric rates.

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

- Council Member Hansen reported that on October 27 the San Joaquin Council of Governments (SJCOG) voted unanimously to add one additional member for Stockton and one additional member for the County. The governance group will now consist of 12 members, rather than 10. He congratulated the Lodi City Swim Club and the 85 swimmers who participated in the Pumpkin Swim Meet a few weeks ago. Phillips Farms and A&W Rootbeer contributed to the event. Mr. Hansen stated that he and City Manager King attended a workshop in San Francisco last week on the topic of governing electric utilities in a changing marketplace. He recalled that, when first contacted by a reporter regarding his opinion on whether Lodi's Electric Utility should be sold, he felt that all options should be considered. Since that time, he has thoroughly researched and considered the matter and is now adamantly opposed to selling the Electric Utility. He read the following statement from the minutes of February 14, 1910, "Whereas, the said Board of Trustees, after long and thorough investigation and consideration, that it will be for the best interest of the City of Lodi and its inhabitants..." to acquire the Cary Brothers Water and Light Plant (now Lodi Electric Utility). Mr. Hansen noted that Lodi has benefited for nearly 100 years by owning the Utility. He referenced a memorandum distributed today from Finance Director Krueger outlining benefits of the Electric Utility to the City (filed). Mr. Hansen acknowledged that the Utility was going through a difficult financial period; however, he believed it would be a mistake to even consider selling it. Further, he suggested that if an invitation were extended to discuss selling the Utility, the City should respectfully decline.

City Attorney Schwabauer interjected that the discussion was becoming substantive and would likely elicit a response from other Council Members. The topic of whether or not to sell the Electric Utility should be agendaized if further discussion and debate is to proceed. He explained that Item "G" is an opportunity for Council to make announcements, briefly report on a topic, or ask staff to look into a matter.

City Manager King agreed that pursuant to the Brown Act, the Electric Utility topic should be agendaized before debate ensues.

- Mayor Pro Tempore Hitchcock asked the City Attorney to provide additional information from a legal standpoint regarding limits and parameters of Council comments. She expressed disappointment regarding the SJCOG vote to change the size of its governance body. She asked that when the matter comes to Council for ratification, that it be placed on the regular calendar for discussion.

Mr. Schwabauer explained that "Comments by Council Members on Non-Agenda Items" are regulated by the same provisions that regulate the ability of citizens to speak on non-agenda items. Council members, as policy makers, do not have the ability to inject a topic into the agenda that is going to be debated.

Mayor Pro Tempore Hitchcock requested to be provided with any research or opinions that have been made on the subject.

- Council Member Mounce stated that she attended the November 1 meeting of the Lodi Improvement Committee, which is working on alley cleanup, Hale Park upgrades, and general community improvement. She thanked the Committee for its work and encouraged citizens to attend the meetings. Ms. Mounce expressed agreement with Mr. Hansen's opinion regarding the Electric Utility.
- Council Member Johnson also expressed opposition to the vote to increase the number of Stockton and County governance representatives on SJCOG.

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

None.

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 the Planning Commission's recommendation of approval of the request of John Costamagna for a Negative Declaration ND-05-04 and rezone from R2, Residential Single Family, to PD(37), Planned Development Number 37, for Luca Place, a 17-lot, low-density, single-family residential subdivision located at 1380 Westgate Drive.

Community Development Director Hatch reported that this matter was considered by the Planning Commission on September 28 as part of a larger project to approve the rezone, environmental documentation, and tentative map that would create 17 parcels, 12 half-plex units, and 5 single-family homes. He explained that the rezoning was necessary because it is utilizing some flexibility that is allowed in the PD zone, but not in the single-family zone, i.e. having zero lot line homes as part of the half-plex and no set back on the common property line. It would also allow a lot size smaller than the required minimum (5,000 square feet in a standard R2 zoning district). Mr. Hatch noted that the Planning Commission approved the vesting tentative map conditioned upon Council's approval of the overlying rezoning.

In reply to Mayor Pro Tempore Hitchcock, Mr. Hatch explained that, in the approval of the tentative map the Planning Commission granted, it had a condition that the configuration of the cul-de-sac would go back to staff and planning/engineering would work with the applicant to try to reduce the amount of paving to allow additional parking within the proposal. Staff is currently working with the applicant regarding this matter.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, unanimously approved the request of John Costamagna and took the following actions:

- Adopted Resolution No. 2005-232 adopting the Negative Declaration (ND-05-04) as adequate environmental documentation for the rezone of property located at 1380 Westgate Drive (APN 027-420-09); and
- Introduced Ordinance No. 1766 amending the Official District Map of the City of Lodi and thereby rezoning 1380 Westgate Drive (APN 027-420-09) from R-2, Residential Single Family, to PD(37), Planned Development Number 37, for Luca Place.

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 Mayor Pro Tempore Hitchcock, Mounce second, unanimously made the following appointment:

Lodi Animal Shelter Task Force

Hazel Jackson Unspecified term limit

- b) The City Council, on motion of Mayor Pro Tempore Hitchcock, Beckman second, unanimously directed the City Clerk to post for the following expiring terms:

Lodi Senior Citizens Commission

Winona Ellwein Term to expire December 31, 2005

Phyllis Rabusin Term to expire December 31, 2005

San Joaquin County Mosquito & Vector Control District

Jack Fiori Term to expire December 31, 2005

Site Plan and Architectural Review Committee

Mitchell Slater January 1, 2006

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 “Adopt resolution approving the Americans with Disabilities Act Transition Plan and formulate a method to seek broad input for the purpose of obtaining community consensus regarding future use and improvements for the Grape Bowl”

Jerry Herzick, Building Official, recalled that this matter was reviewed at the October 4 Shirtsleeve Session. He stated that the Americans with Disabilities Act (ADA) requires public agencies to perform a self-evaluation of barriers to be removed and to develop a Transition Plan. He reported that the City’s initial ADA Committee completed the self-evaluation of barriers in 1992; however, a Transition Plan was never approved by Council. He reviewed the proposed Transition Plan (filed) and relevant laws affecting it. Appendix one of the Plan lists the barriers that have been corrected. There were 45 projects and 400 curb ramps at a cost of \$7 million. Mr. Herzick reviewed projects that were scheduled to be completed in 2005 and those that would require more than a year to complete, as were outlined in the Plan.

PUBLIC COMMENTS:

- Barbara Flockhart felt that \$4 million was a high amount for renovating the Grape Bowl. She suggested making disabled parking on the Calaveras Street side, taking out the first two rows of bleachers, and constructing a cement ramp for seating in the front row.

Mr. Herzick reported that in 2002 consulting firm ELS Architecture and Urban Design prepared a report on making the Grape Bowl ADA compliant. One option was to have an entry plaza on the southwest corner (current cost estimate is \$3.8 million). Another option was to have new entries at the north and south berms (current cost estimate is \$4.3 million). Mr. Herzick stated that the playing field needs surface improvements and drainage, and some of the bleachers and stairs are damaged. The ramps are too steep and there is a lack of handrails and landings. Restrooms, concessions, and field houses are dilapidated and not accessible. He emphasized that staff’s primary concern is the lack of an accessible path of travel and safety exit way. It is not financially feasible to use modular units for concessions and restrooms due to the cost of correcting the severe slope on the eastside of the Grape Bowl and connecting water, sewer, and electricity. Staff recommends a three-phase approach to the Grape Bowl, with phase one beginning immediately:

*Phase 1 – Explore the opportunities, constraints, and costs associated with upgrading the Grape Bowl. Encourage public input and community involvement in the decision process. The scope of the project should not be limited to only accessibility, but improvement based on the desired use. Interim remediation measures should be discussed in this phase. The recommended forum for these discussions is the Parks and Recreation Commission. A special ad hoc committee shall be formed to obtain community input regarding future use and improvements under the direction of the Parks and Recreation Commission. The commission shall invite representatives from Lodi Unified School District and other school-affiliated organizations to be participating members of the ad hoc committee. All committee appointees will be subject to Council approval. The Commission will make a recommendation to the Council. This phase should be completed by June of 2006.*

Discussion ensued regarding formation of a Grape Bowl Ad Hoc Committee.

- Ken Sasaki, Parks and Recreation Commissioner, confirmed that the Commission would like to take the lead roll in the Ad Hoc Committee and facilitating public input regarding the Grape Bowl.

In answer to Council Member Johnson, City Attorney Schwabauer explained that any committee assigned the task of making a recommendation that would involve the expenditure of money would be required to file a Statement of Economic Interest form.

Parks and Recreation Director Goehring noted that, in addition to the Ad Hoc Committee, public workshops would also be held.

City Manager King mentioned that, yesterday, former Parks and Recreation Director Ed DeBenedetti commented to him that he believed this was a worthy project to resolve a long-standing issue.

MOTION #1 / VOTE:

The City Council, on motion of Mayor Beckman, Johnson second, unanimously adopted Resolution No. 2005-233 approving the Americans with Disabilities Act Transition Plan as presented with the exclusion of the section related to the Grape Bowl.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Johnson, Hitchcock second, adopted Resolution No. 2005-234 authorizing the Parks and Recreation Commission to formulate a Grape Bowl Ad Hoc Committee comprised of a broad cross section of the community and to bring membership recommendations to the City Council for approval *(as outlined in Phase 1 of the Grape Bowl Section, page 7, of the ADA Transition Plan)* and that, during the interim, uses of the Grape Bowl shall not be expanded beyond the current schedule of events and organizers of these events shall be advised of their responsibility to provide assistance for persons with disabilities as reasonably appropriate for the planned activity. The motion carried by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mayor Beckman

Noes: Council Members – Mounce

Absent: Council Members – None

K-2 “Adopt resolution approving the Impact Mitigation Fee Program Annual Report for Fiscal Year 2004-05”

Wally Sandelin, City Engineer, reported that the following projects were constructed using the Impact Mitigation Fee Program:

- Expanded restroom and locker facilities at the Municipal Service Center;
- Constructed major storm drain trunk lines through the Century Meadow project;
- Widened Harney Lane and constructed a new crossing of the Woodbridge Irrigation District canal; and
- Widened Stockton Street.

Mr. Sandelin explained that there were several loans between internal and external funds. The Fire Fund made a loan payment to the Water Fund in the amount of \$171,590 and a lease payment on the ladder truck in the amount of \$110,183. The Regional Street Fund made a loan payment to the Parks Fund in the amount of \$40,000 and to the San Joaquin Council of Governments in the amount of \$96,106.

In answer to Mayor Pro Tempore Hitchcock, Mr. Sandelin reported that the current loan amount from the Water Fund to build Fire Station 4 is \$1,225,172. He explained that once the lease payment was made on the ladder truck, all the residual funds and interest in the Fire Fund account was paid against the Water Fund. Funds generated through payment of fees are used to pay off the principle on the loan to Fire Station 4. He noted that Fire Station 4 was the last fire station according to the master planning done when the current fee program was adopted.

Mayor Pro Tempore Hitchcock noted that impact fees are a huge revenue source to the City and when maximum development was occurring, the City did not take advantage of it by collecting fees for actual costs. She stated that when land was selling for \$300,000 an acre, the City was collecting fees for \$150,000 an acre.

Mr. Prima believed that much of the problem with the Impact Mitigation Fee Program is that the City has gone a long way through the General Plan without adding any additional land and now there are two large projects that will nearly fill the remaining area. He acknowledged that the General Plan and Impact Mitigation Fee Program in its entirety needs to be updated.

Mayor Pro Tempore Hitchcock recalled when the Impact Mitigation Fee Program was initially set up, \$1 million was borrowed to “jump start” it. At the conclusion of the Program, there should be \$1 million remaining. She stated that the land presently referred to as “residential reserve” is not in the General Plan for development at this time and was not included in the policies that were in the General Plan that aligned with the Impact Mitigation Fee Program. She noted that projects listed in the fee study should have been paid for within the life of the program; however, adequate funds have not been available.

Council Member Johnson asked staff for clarification regarding whether proposed Fire Station 5 would be built in the southeast or southwest area of the City.

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hitchcock, Beckman second, unanimously adopted Resolution No. 2005-235 approving the Impact Mitigation Fee Program Annual Report for Fiscal Year 2004-05.

K-3 “Adopt resolution approving the policy and procedure guidelines for naming of parks, recreation facilities, and park features”

Parks and Recreation Director Goehring stated that the draft policy for naming of parks, etc. has been used since 1990; however, it has never been adopted by Council. The Parks and Recreation Commission unanimously approved the policy on June 7, 2005.

Council Member Hansen preferred that Council be given more than one option when nominations come forward for approval.

Council Member Johnson stated that he has received comments from others that it is inappropriate to name a park for a City employee, as they are compensated for their efforts. He suggested that when recommendations for naming parks and facilities come before Council, that priority be given to private citizens who volunteer their time.

Mayor Pro Tempore Hitchcock preferred to accept staff's recommendation as presented.

Council Member Mounce concurred with Mr. Johnson's position on the matter.

Council Member Hansen stated that he has witnessed a high level of commitment, dedication, and love for the community demonstrated by certain City employees that extends well beyond what they are compensated for. He was adamantly opposed to a policy that would not allow the City to recognize decades of service by City employees who devote hours far above what their duties require.

PUBLIC COMMENTS:

- Tom Sanchez pointed out that City employees are also citizens of the community who volunteer their time and should not be excluded from consideration in the policy.
- Ed Beswick implored Council not to take away the opportunity for individuals to be recognized in this way who dedicate their lives working for the City, merely because they received compensation. He noted that some City employees devote tremendous amounts of time above and beyond the call of duty and cited former Parks and Recreation Director Ed DeBenedetti as an example.
- Baubie Fox, Parks and Recreation Commissioner, asked that Council not rule out anyone from being a nominee. She felt there should be no limitations set in the policy and that the Commission be allowed to consider what the public submits.

MOTION #1

Mayor Pro Tempore Hitchcock made a motion to adopt a resolution approving the policy and procedure guidelines for naming of parks, recreation facilities, and park features, as presented by staff. The motion **died** for lack of a second.

Mayor Beckman preferred that Council be presented with more than one name to consider when the matter comes before it for approval.

MOTION #2 / VOTE:

The City Council, on motion of Council Member Johnson, Mounce second, adopted Resolution No. 2005-236 approving the policy and procedure guidelines for naming of parks, recreation facilities, and park features with amendments to 1) allow the Parks and Recreation Commission an opportunity to submit multiple nominees to the City Council for consideration and that 2) priority be given to private citizens. The motion carried by the following vote:

Ayes: Council Members – Hansen, Johnson, and Mounce  
Noes: Council Members – Hitchcock and Mayor Beckman  
Absent: Council Members – None

RECESS

At 9:05 p.m., Mayor Beckman called for a recess, and the City Council meeting reconvened at 9:15 p.m.

K. REGULAR CALENDAR (Continued)

- K-4 "Adopt resolution establishing procedures for the consideration of pre-annexation and development agreements"

City Manager King reported that several developments are planned that may be subjects of development agreements. The resolution before Council would put policies in place that would allow the City to enter into negotiations in the future if Council so directed.

City Attorney Schwabauer explained that development agreements are governed by Government Code 65865 b), which requires cities to adopt policies to consider development agreements if they are requested. Development agreements are a written contract between a developer and the City that, in many cases, replace the traditional development standards that are used to govern project approval. A developer does not have a vested right to develop according to a set group of standards, fees, conditions, and zoning until such time as they actually begin development. A development agreement guarantees what the developer's standards are going to be. The primary benefit to the City is that it can, through negotiation, achieve greater benefits than it could exact through traditional development processes. Development agreements can be negotiated before the property is annexed into the City; however, it becomes effective only if the property is actually annexed. The policy before Council requires the City Attorney to review proposed agreements and confirm that they comply with the City's needs and requirements. Development agreements also require: 1) the Community Development Director to consider and report on the agreement and make a recommendation to the Planning Commission, 2) the Planning Commission to review the development agreement and make a recommendation to Council, and 3) the Council to consider the development agreement and make a final decision regarding approval at a noticed public hearing. Development agreements must be reviewed annually and revised or abandoned as appropriate. The cost of processing the development agreement is paid by the developer. There is a \$5,000 initial deposit that can be increased or decreased depending upon the complexity of the project.

In reply to questions posed by Mayor Pro Tempore Hitchcock, Mr. Schwabauer reiterated that the policy has language which requires the City's benefits to be above and beyond that which could be exacted through the normal development process. He clarified that the policy outlines how development agreements will be processed; it does not require the Council to approve a development agreement.

City Manager King stated that development agreements imply a quid pro quo and stated that both parties receive benefits by the arrangement. Developers want greater assurance and help to perfect a vesting right. Staff anticipates that, due to the size and magnitude of the Frontier Community Builders project, they will eventually ask for a development agreement.

Community Development Director Hatch commented that, in the last two cities he has served as director, he heavily used development agreements and felt that they were a beneficial tool for cities.

MOTION:

Council Member Hansen made a motion, Beckman second, to adopt Resolution No. 2005-237 establishing procedures for the consideration of pre-annexation and development agreements.

DISCUSSION:

In answer to Council, Mr. Hatch replied that one developer cannot take all the allocations, as there is a maximum percentage.

Mayor Pro Tempore Hitchcock asked what would happen if a developer wanted a development agreement for a future residential reserve that was not yet part of the City's General Plan, to which Mr. Hatch replied that is what "pre-annexation development agreements" contemplate.

Discussion ensued regarding whether property south of Harney, referred to as planned residential reserve, is or is not included in Lodi's General Plan. Council asked staff to provide clarification on the matter.

PUBLIC COMMENTS:

- Barbara Flockhart believed that a fifth fire station would be needed in the southwest area, due to the large developments that have been proposed. She felt that the developer should pay for the fire station and a neighborhood park for that area. She noted that new developments often have very narrow streets and questioned how fire trucks could maneuver in such limited spaces.

Council Member Mounce suggested that eastside reinvestment be considered, where large developers are required to develop certain empty lots on the east side as part of their project.

VOTE:

The above motion carried by a unanimous vote.

- K-5 "Approve expenses incurred by outside counsel relative to the Wal-Mart Supercenter Store litigation and miscellaneous general counsel advice (\$2,433.51) and approve Special Allocation covering these expenses"

City Attorney Schwabauer reviewed invoices from outside counsel as outlined in the staff report for this item (filed).

MOTION / VOTE:

The City Council, on motion of Mayor Pro Tempore Hitchcock, Mounce second, unanimously approved the expenses incurred by outside counsel relative to the Wal-Mart Supercenter Store litigation and miscellaneous general counsel advice in the amount of \$2,433.51 and approved Special Allocation covering these expenses, as detailed below:

**Kronick, Moskovitz, Tiedemann & Girard**

Matter No.	Invoice No.	Date	Description	Total Amount	Distribution 100351.7323
11233.001	221874	09/25/05	General advice	257.45	257.45
11233.026	221874	09/25/05	Lodi First v. City of Lodi	592.26	592.26
11233.027	221874	09/25/05	Citizens for Open Govt. v. City of Lodi	1,583.80	1,583.80
				<u>2,433.51</u>	<u>2,433.51</u>

L. ORDINANCES

L-1a Following reading of the title of Ordinance No. 1765 entitled, "An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code Title 13 – Public Services – Chapter 13.20, 'Electrical Service,' by Repealing and Reenacting Sections 13.20.175 (D)-(1), (5), and (6) Relating to Market Cost Adjustment Billing Factor; and Further Repealing Section 13.20.185 in its Entirety Relating to Preexisting Electric Rates," having been introduced at a regular meeting of the Lodi City Council held October 19, 2005, the City Council, on motion of Council Member Johnson, Hitchcock second, waived reading of the ordinance in full and adopted and ordered it to print by the following vote:

Ayes: Council Members – Hansen, Hitchcock, Johnson, and Mayor Beckman  
Noes: Council Members – Mounce  
Absent: Council Members – None  
Abstain: Council Members – None

L-1b "Adopt resolution establishing Market Cost Adjustment(s) for electric utility rates to be effective December 2, 2005"

Interim Electric Utility Director Dockham reported that power costs have increased by 29% over the last year. The Electric Utility has been operating in a deficit condition since 2003. Expenses this year will exceed revenues by \$9.2 million. Electric fund balances, i.e. a savings account available for operations, will be eliminated if a Market Cost Adjustment (MCA) is not implemented this year. Any delay in implementation of a MCA would result in a 1.2% greater rate increase to customers and equates to \$800,000 in losses each month. At the October 19 City Council meeting, staff was directed to eliminate any rate decreases and to reduce increases to industrial customers by 50% of what was proposed. Based on that direction there is a \$1.5 million shortfall.

Mayor Pro Tempore Hitchcock was opposed to continuing large subsidies to industrial customers on a long-term basis and felt that 28% to 30% was a reasonable discount amount to offer.

Mr. Dockham stated that, in general, cost of service is the basis for setting electric rates.

Council Member Hansen stated that the City needs to find a way to determine the value of job retention. He reported that some cities have requirements on industrial customers where they must refund incentives if they relocate. He felt that electric rate discounts should be tied directly to retaining jobs for Lodi residents.

Council Member Mounce suggested that there be an enterprise zone where credits (toward a rate discount) are given to industrial customers based on how many Lodi citizens they employ.

Mr. Dockham stated that staff now proposes that the customers who (in the October 19 proposal) were not going to receive any rate increase, now be imposed a rate increase of at least 10% on a short-term basis so that \$500,000 can be captured toward the \$1.5 million shortfall and that the remaining \$1 million be made up through City sources.

City Manager King was uncertain where the \$1 million would come from; however, a recommendation would be brought forward at the time of the mid-year budget process. He stated that for the remainder of this fiscal year, no additional rate increases are anticipated for industrial customers. Council will be asked to adopt a resolution establishing Market Cost Adjustments at its next regularly scheduled meeting, which would reflect Council's direction on October 19, as well as the proposal recommended tonight.

Mayor Pro Tempore Hitchcock felt that the remaining \$1 million shortfall should come from Electric Utility's budget, as that is the area where rates do not cover the cost of service.

*Continued November 2, 2005*

PUBLIC COMMENTS:

- Bill Crow commented that ratepayers have to subsidize businesses so that Lodi's economy can grow.

MOTION / VOTE:

There was no action taken by the Council on this matter.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:15 p.m.

ATTEST:

Susan J. Blackston  
City Clerk