

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, NOVEMBER 5, 2008**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of November 5, 2008, was called to order by Mayor Mounce at 5:45 p.m.

Present: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Absent: None

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

C-2 Announcement of Closed Session

- a) Prospective Acquisition of Real Property Located at 232 North Washington Street (APN #043-087-17), 242 Rush Street (APN #043-090-13), and 420 East Lockeford Street (APN #043-202-29), Lodi, California; the Negotiating Parties are City of Lodi and Union Pacific Railroad Company; Government Code §54956.8
- b) Actual Litigation: Government Code §54956.9(a); One Case; Pacific Bell Telephone Company, a California Corporation Doing Business as AT&T California, v. City of Lodi et al., San Joaquin County Superior Court, Case No. CV028523
- c) Conference with Blair King, City Manager (Labor Negotiator), Regarding Unrepresented Executive Management - Deputy City Manager/Internal Services Director - Pursuant to Government Code §54957.6
- d) Review of Council Appointee - City Clerk (Government Code §54957)

C-3 Adjourn to Closed Session

At 5:45 p.m., Mayor Mounce adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 6:55 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:01 p.m., Mayor Mounce reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), direction was given to terminate the acquisition of the properties located at 232 Washington Street, 242 Rush Street, and 420 East Lockeford Street.

In regard to Item C-2 (b), settlement direction was given.

Item C-2 (c) was not discussed, and Item C-2 (d) was continued to the regular meeting of December 17, 2008.

A. Call to Order / Roll call

The Regular City Council meeting of November 5, 2008, was called to order by Mayor Mounce at 7:01 p.m.

Present: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Absent: None

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

B. Invocation - Pastor Ken Owen, Christian Community Concerns

C. Pledge of Allegiance

D. Presentations

D-1 Awards - None

D-2 Proclamations - None

D-3 Presentations - None

E. Consent Calendar (Reading; Comments by the Public; Council Action)

Council Member Johnson made a motion, second by Council Member Katzakian, to approve the following items hereinafter set forth, **except those otherwise noted**, in accordance with the report and recommendation of the City Manager.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

E-1 Receive Register of Claims in the Amount of \$11,040,754.30 (FIN)

Claims were approved in the amount of \$11,040,754.30.

E-2 Approve Minutes (CLK)

The minutes of October 1, 2008 (Regular Meeting), October 6, 2008 (Special Meeting), October 7, 2008 (Shirtsleeve Session), October 14, 2008 (Shirtsleeve Session), October 15, 2008 (Regular Meeting), October 21, 2008 (Shirtsleeve Session), and October 28, 2008 (Shirtsleeve Session) were approved as written.

E-3 Accept Quarterly Investment Report as Required by Senate Bill 564 (CM)

Accepted the quarterly report of the City of Lodi pooled money investments as required by Senate Bill 564 and the City of Lodi Investment Policy.

E-4 Adopt Resolution Awarding Contract for Architectural Services for Grape Bowl Phase I Renovation to 360 - CA Schrock Architects, of San Francisco (\$117,500) (PW)

This item was pulled for further discussion by Council Member Hitchcock.

Council Member Hitchcock expressed her concerns regarding the large size of the overall project, the lack of a funding source, and whether the \$117,000 should be spent on the project at the

current time.

In response to Council Member Katzakian, Mr. King stated the County committed to providing funds in two different phases and the allocated Community Development Block Grant funds will need to be expended as well.

A brief discussion ensued between Council Member Johnson and Council Member Hitchcock regarding the Council previously considering the subject matter of Americans with Disabilities Act (ADA) improvements to the Grape Bowl facility and the understanding at the time.

In response to Council Member Johnson, Public Works Director Wally Sandelin stated staff is working on the ADA improvements at the facility based on the previously Council-approved timeline.

In response to Mayor Mounce, Mr. Sandelin confirmed that the project requires multiple phases and staff is working on step one of many.

In response to Council Member Hitchcock, Mr. Sandelin stated the current project does not bring full ADA compliance as it is only the first step.

In response to Council Member Hitchcock, Mr. King stated the basic premise is to achieve an entrance into the facility that is ADA compliant since the current entrance is not. He stated staff is also considering other issues such as constructing new ADA compliant restrooms, which would be less expensive than upgrading the old restrooms.

In response to Mayor Pro Tempore Hansen, Mr. Sandelin stated the architect was counseled on designing the project to budget due to the limited funding and making the facility ADA compliant to meet requirements.

Council Member Hitchcock made a motion, second by Mayor Pro Tempore Hansen, to adopt Resolution No. 2008-211 awarding the contract for architectural services for Grape Bowl Phase I Renovation to 360 - CA Schrock Architects, of San Francisco, in the amount of \$117,500 and authorize the City Manager to execute the contract.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

E-5 Adopt Resolution Awarding Construction Contract for Library Phase 1 Remodel Project to World Tech, dba Geigle Electric, of Stockton (\$243,879), and Appropriating \$105,000 (Total Project \$360,000) (PW)

Adopted Resolution No. 2008-207 awarding the construction contract for Library Phase 1 Remodel Project to World Tech, dba Geigle Electric, of Stockton, in the amount of \$243,879.25 and appropriating \$105,000 for a total project cost of \$360,000.

E-6 Adopt Resolution Awarding Contract for Computerized Maintenance Management System Software Purchase and Installation to CarteGraph Systems, Inc., of Dubuque, Iowa (\$28,441) (PW)

Adopted Resolution No. 2008-208 awarding the contract for computerized maintenance

management system software purchase and installation to CarteGraph Systems, Inc., of Dubuque, Iowa, in the amount of \$28,441.

E-7 Adopt Resolution Approving Improvement Deferral Agreement for 1313 South Stockton Street (PW)

This item was pulled for further discussion by Council Member Hitchcock.

In response to Council Member Hitchcock, Public Works Director Wally Sandelin provided an overview of Valley Industries, the business located at 1313 South Stockton Street, and the fall off on sales revenue for the business. Mr. Sandelin stated the improvements are on the vacant part on the frontage site.

In response to Council Member Hitchcock, Mr. Sandelin stated the identified improvements reflect the new design for the intersection of Stockton and Kettleman to accommodate the STAA truck route.

In response to Council Member Hitchcock, Mr. Sandelin stated the value of the improvements is approximately \$120,000 and the City is responsible for 25% while the owner is responsible for 75%. Mr. Sandelin stated that, while there is a culture of not requiring bonds, the City Attorney has suggested that bonds be obtained to secure the improvements.

In response to Mayor Mounce, Mr. King confirmed that the corner is the one for which a City park was previously explored and there has been ongoing dialogue regarding the condition of the site.

General discussion ensued between the City Council, Mr. King, and Mr. Schwabauer regarding the need for a bond and the practice of requiring bonds to insure proposed site improvements.

In response to Mayor Mounce, Mr. Sandelin stated the City is not doing improvements until the owner completes certain requirements and the current condition of the site has been existing for some time.

Mayor Mounce made a motion, second by Council Member Katzakian, to adopt Resolution No. 2008-212 approving the Improvement Deferral Agreement for 1313 South Stockton Street and authorize the City Manager to execute the agreement on behalf of the City.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: Council Member Hitchcock

Absent: None

E-8 Adopt Resolution Amending the 2007-2011 Memorandum of Understanding between the City of Lodi and the Lodi Police Mid-Management Organization Relating to Opt-Out Provision for Medical Benefits and Approving Said Provision for Confidential Employees (CM)

Adopted Resolution No. 2008-209 amending the 2007-2011 Memorandum of Understanding between the City of Lodi and the Lodi Police Mid-Management Organization relating to opt-out provision for medical benefits and approving said provision for Confidential employees.

E-9 Adopt Resolution Approving Year 2008 Amendments to Conflict of Interest Code (Government Code §87306.5) (CA)

Adopted Resolution No. 2008-210 approving Year 2008 amendments to Conflict of Interest Code (Government Code §87306.5).

E-10 Set Public Hearing for November 19, 2008, to Consider Unmet Transit Needs in Lodi (PW)

Set public hearing for November 19, 2008, to consider unmet transit needs in Lodi.

E-11 Set Public Hearing for December 17, 2008, to Consider Resolution Approving Reimbursement Agreement No. RA-08-01 for Public Improvements Constructed with the Vintner's Square Shopping Center (PW)

Set public hearing for December 17, 2008, to consider resolution approving Reimbursement Agreement No. RA-08-01 for public improvements constructed with the Vintner's Square shopping center.

F. Comments by the Public on Non-Agenda Items

THE TIME ALLOWED PER NON-AGENDA ITEM FOR COMMENTS MADE BY THE PUBLIC IS LIMITED TO FIVE MINUTES.

The City Council cannot deliberate or take any action on a non-agenda item unless there is factual evidence presented to the City Council indicating that the subject brought up by the public does fall into one of the exceptions under Government Code Section 54954.2 in that (a) there is an emergency situation, or (b) the need to take action on the item arose subsequent to the agenda's being posted. Unless the City Council is presented with this factual evidence, the City Council will refer the matter for review and placement on a future City Council agenda.

Jennifer Jones, Program Manager for the San Joaquin Youth Services Safe House, provided the public and City Council with a general overview of the program to help youth and runaway statistics. She invited the public to participate in the Green Light Project designed to help runaway youth by lighting green porch lights for the month of November.

Bill Crow spoke of his concerns regarding utility rates and requested information be provided as to billing for the water and wastewater accounts. Mayor Mounce invited Mr. Crow to attend the upcoming Shirtsleeve Session on November 11, at which the topic will be discussed.

G. Comments by the City Council Members on Non-Agenda Items

Council Member Hitchcock congratulated Council Member Johnson and Mayor Mounce on their reelection to the City Council.

Council Member Johnson congratulated Mayor Mounce, thanked his supporters, and requested that the meeting be adjourned in memory of former Mayor and Council Member Ted Katzakian.

Mayor Pro Tempore Hansen reported on his attendance at Northern California Power Agency (NCPA) and San Joaquin Council of Governments (SJCOG) meetings and specifically discussed funding for projects, the City's ranking of 2 out of 8 for project funding, the \$750,000 allocation for the Lodi Avenue improvement project between Cherokee Lane and the railroad tracks, and issues of SWAP termination and variable rates being faced by NCPA. He invited the Council to participate in the NCPA 101 and strategic planning sessions and congratulated Council Member Johnson and Mayor Mounce on their reelection to the City Council. In response to Council Member Johnson, Mayor Pro Tempore Hansen stated SJCOG will be reassessing some projects in light of State budget woes and Measure K funding.

Mayor Mounce thanked her supporters on the election, commended the Youth Commission on its latest events and activities, and thanked Council Member Johnson for serving on a League Policy Committee in response to her request as Central Valley League Division Chair.

H. Comments by the City Manager on Non-Agenda Items

None.

I. Public Hearings

I-1 Public Hearing to Consider Adoption of a Resolution Amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan Development Fees for 2009 (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Mounce called for the public hearing to consider adoption of a resolution amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan development fees for 2009.

City Manager King briefly introduced the subject matter of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan.

Senior Planner David Morimoto provided a brief presentation discussing the development fees for 2009 for the conservation and open space plan. Mr. Morimoto specifically discussed the review process for the development fees, habitat easements, fee schedule, maintenance, and enhancement of the program in a manner that is consistent with the County's time schedule for development fee implementation.

In response to Council Member Johnson, Mr. King stated there is no obligation for the City to participate in the process, the City can opt out of the program at any time; although, if that were the case certain mitigation options would not be available to the development community in the City.

Mayor Pro Tempore Hansen made a motion, second by Council Member Hitchcock, to adopt Resolution No. 2008-213 amending the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan development fees for 2009.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

J. Communications

J-1 Claims Filed Against the City of Lodi - None

J-2 Appointments - None

J-3 Miscellaneous - None

K. Regular Calendar

K-1 Uphold City Manager's Decision to Not Remove City Tree at 431 West Elm Street (PW)

City Manager King briefly introduced the subject matter of the City tree removal at 431 West Elm Street.

Streets & Drainage Manager George Bradley provided an overview of the subject matter and discussed specifics of the trees and concrete types at the location, the older maple tree with extensive surface roots, before and after pictures upon work completion, and the policy to preserve healthy trees when possible.

In response to Council Member Hitchcock, Mr. Bradley stated the distance of the rubber for the sidewalk is generally determined by the roots.

Tony Vice, owner of the subject property, discussed the status of the sidewalk repairs and possible removal of the trees, stating there are three different types of sidewalks surrounding his home. He also discussed the appeals process and various conversations he had with the Public Works Department, City Manager, and Council since the repairs began.

In response to Mayor Mounce, Mr. Vice stated that, while he is somewhat satisfied with the line placement in the sidewalk, he is concerned that even with the rubberized repairs, the sidewalk is uneven and the root base growth goes over rubber sidewalk.

In response to Mayor Pro Tempore Hansen, Mr. Bradley stated the concrete had minor damage in scratching which could be scuffed, there was effort to compromise in an offer to replace the sidewalk with traditional concrete, and the unevenness would be addressed in the follow-up visit after settling has occurred, which has not been done to date in light of the matter coming to Council.

In response to Mayor Pro Tempore Hansen, Mr. Bradley stated he offered to replace the concrete portion if the owner would accept the rubberized portion to save the tree and a temporary could last anywhere from 5 to 15 years.

In response to Mayor Mounce, Mr. Bradley stated as a part of the follow-up visit the dirt edge would be cleaned and flat.

In response to Council Member Johnson, City Attorney Schwabauer stated that, if the City provided the sidewalk and someone tripped and sued the property owner, the City would be on the hook as well. Mr. King provided a brief overview of the sidewalk policy, stating the standard is a smooth and safe sidewalk for walking pedestrians.

In response to Council Member Hitchcock and Mayor Mounce, Mr. Vice stated that, while he is fine with the concrete scuffing resolution, he still has a safety concern about the rubberized sidewalks.

In response to Council Member Katzakian, Mr. Bradley stated staff will return to do the follow-up visit for the scuffing and final adjustment.

Council Member Katzakian made a motion, second by Mayor Pro Tempore Hansen, to uphold the City Manager's decision to not remove the City tree at 431 West Elm Street, do the final adjustment with the rubberized sidewalk, and scuff out the marks from the concrete as described.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson,

Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

- K-2 Receive Information and Take Action(s) Relating to Pigs Lake:
a) Report on Mokelumne River Erosion near Pigs Lake (PR)
b) Adopt Resolutions Approving Applications for California River Parkways and Urban Streams Restoration Grant Funds for the Lodi Lake Park Nature Area Protection Project (CM)

City Manager King briefly introduced the subject matter of Pigs Lake and the related grant application.

Interim Parks and Recreation Director Jim Rodems provided a PowerPoint presentation regarding the subject matter of the Mokelumne River erosion near Pigs Lake. Specific topics of discussion included the riverbank project, report highlights, and possible fund sources. Mr. Rodems also discussed a related grant application.

In response to Mayor Pro Tempore Hansen, Mr. Rodems stated the boathouse is the recipient of a favorable bid and staff is in the process of confirming that the unused funds can be used for the Pigs Lake project. Mr. King stated the project should be consistent and staff is going through the paperwork to put those funds toward the current project. In response to Mayor Pro Tempore Hansen, Mr. Rodems stated that, while the solution is the third and most expensive option, it was determined after thoroughly reviewing the engineer's report and speaking with various agencies, that it is the only option that is acceptable to the State agencies environmentally.

In response to Mayor Pro Tempore Hansen, Mr. Rodems stated while speed is a factor it is not a predominant factor as there are a combination of factors causing the erosion.

Discussion ensued between Council Member Johnson, Mr. King, and Mr. Rodems regarding the lack of enforcement for a speeding zone at the Lake, the hand placement of riprap along the embankment, the opportunity to recover costs and get labor assistance from the California Conservation Corps, and continuing exploration of funding sources and other resources to recover costs from the project.

Ann Cerney expressed her concerns regarding review of only the Pigs Lake erosion as there may be a greater application to Lodi Lake in general. She also suggested a review of the previously considered funding sources from prior years, which included possible State and federal grants.

Council Member Hitchcock made a motion, second by Mayor Pro Tempore Hansen, to adopt Resolution No. 2008-214 approving applications for California River Parkways and Urban Streams Restoration Grant funds for the Lodi Lake Park Nature Area Protection Project and adopt Resolution No. 2008-215 endorsing said application.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

- K-3 Set Public Hearing to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Lodi Shopping Center Environmental Impact Report (CLK)

City Manager King provided an overview of the possibility of dates to hear the appeal of Browman Development Company and Wal-Mart Stores, Inc.

Discussion ensued amongst the Council regarding the need to hear the matter at a special meeting to allow for enough time and televising the meeting.

Ann Cerney spoke of her concerns regarding the public hearing process and time constraints to allow the appellants and public to be heard. City Attorney Schwabauer stated it is suggested that the proponents and opponents each collectively have 15 minutes for their presentation, rebuttal time if reserved, and the public will then have 3 minutes each. City Clerk Johl stated the public hearing process will also be mailed along with correspondence notifying the appellants of the hearing date.

In response to Council Member Johnson, Mr. Schwabauer stated that, if there is more than one proponent or representative, they will need to work out the 15 minutes amongst themselves.

Mayor Pro Tempore Hansen made a motion, second by Mayor Mounce, to set the public hearing for 6:30 p.m. on Wednesday, December 10, 2008, to consider the appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Lodi Shopping Center Environmental Impact Report.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

K-4 Adopt Resolution Approving Amendment No. 1 to the Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center (EUD)

City Manager King briefly introduced the subject matter of the new Lodi Energy Center (LEC).

Electric Utility Director George Morrow provided a PowerPoint presentation regarding the Lodi Energy Center Phase II, Amendment No. 1. Mr. Morrow specifically discussed the background of the project, participants, project aerial, Phase II status, LEC status generally, problem regarding equipment, impact of LEC delay, solution, amendment one, risk, Phase II budget, cost recovery, financing schedule, and summary.

In response to Council Member Johnson, Mr. Morrow stated the proposals will reflect the existing market conditions and the action before the Council provides staff with flexibility to make a move if needed.

In response to Council Member Johnson, Mr. Morrow stated every vendor is going to have to take into consideration the cost of a project and regardless of what the City pays now, there will be ultimate savings after the project is built and in use.

In response to Mayor Pro Tempore Hansen, Mr. Morrow stated the terms of the payment may be one lump sum or monthly depending upon the negotiations and amendments will be made only as necessary.

In response to Mayor Mounce, Mr. Morrow stated the current reserves are \$11.3 million with another \$3 million pay out leaving approximately \$8 million.

In response to Council Member Johnson, Mr. Morrow stated his expectation was that the effect on the relationship with rating agencies will remain neutral because the Lodi Energy Center project is strategically consistent with obtaining power and closing open positions. Mr. Morrow stated Tom Dunfee agrees with the City Manager's comments regarding the same.

Ann Cerney spoke of her concerns regarding the public's understanding of the project and costs. Mr. King clarified that the subject action does not involve increased costs, but only preparation to purchase a piece of equipment in light of the delay and long lead time for the same.

In response to Mayor Mounce, Mr. Morrow confirmed that the amount being spent was going to be spent regardless on the equipment, and the current action allows to spend earlier than anticipated due to the lead time and provide for savings in the long run.

In response to Council Member Hitchcock, Mr. Morrow stated the new project should fill about 30 megawatts of open position and there should be approximately \$2 million in transmission savings because the location of the project is local. Council Member Hitchcock suggested doing a newspaper story to explain the project to the citizens.

Mayor Pro Tempore Hansen made a motion, second by Mayor Mounce, to adopt Resolution No. 2008-216 approving Amendment No. 1 to the Second Phase Agreement for Funding the Planning and Development Activities of the Lodi Energy Center and appropriate \$1.765 million from Electric Utility reserves.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

K-5 Consider Offer by North San Joaquin Water Conservation District to Purchase 500 Acre-Foot of Woodbridge Irrigation District Water for \$25,000 (PW)

This item was continued to the City Council meeting of November 19, 2008, at the request of the representative present from the North San Joaquin Water Conservation District.

K-6 Approve Expenses Incurred by Outside Counsel/Consultants Relative to the Environmental Abatement Program Litigation and Various Other Cases being Handled by Outside Counsel (\$93,162.91) (CA)

Mayor Pro Tempore Hansen made a motion, second by Council Member Hitchcock, to approve expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation and various other cases being handled by outside counsel in the amount of \$93,162.91, as further detailed in the staff report.

VOTE:

The above motion carried by the following vote:

Ayes: Mayor Pro Tempore Hansen, Council Member Hitchcock, Council Member Johnson, Mayor Mounce, and Council Member Katzakian

Noes: None

Absent: None

L. Ordinances - None

M. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 10:19 p.m. in memory of former Mayor and Council Member Ted Katakian.

ATTEST:

Randi Johl
City Clerk