

**LODI CITY COUNCIL
SPECIAL CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, JULY 21, 2020**

A. Call to Order / Roll Call

The Special City Council meeting of July 21, 2020, was called to order by Mayor Kuehne at 7:01 a.m.

Due to the COVID-19 pandemic and pursuant to Executive Order N-29-20, all Council Members participated in the meeting via teleconference and the meeting was available for viewing by the public via livestream at <https://www.facebook.com/CityofLodi/> and <https://zoom.us/j/94531814801?pwd=aDgreW9lZDlVU1I1Zk5HV3lMQnM1dz09>; the opportunity for public comment was available through councilcomments@lodi.gov and <https://zoom.us/j/94531814801?pwd=aDgreW9lZDlVU1I1Zk5HV3lMQnM1dz09>.

Present: Council Member Chandler, Council Member Mounce, Mayor Pro Tempore Nakanishi, and Mayor Kuehne

Absent: None

Also Present: City Manager Schwabauer, City Attorney Magdich, and Assistant City Clerk Farris

B. Regular Calendar

B-1 Provide Direction on COVID-19 Response for Economic Development by Offering No Cost Permitting Options for Certain Outdoor Business Operations Allowed Under Current Health Orders (CM)

Deputy City Manager Andrew Keys provided a presentation regarding COVID-19 response to economic development by offering no-cost permitting options for certain outdoor business operations. Specific topics of discussion included new guidelines issued by the Governor and the San Joaquin County Public Health Officer; prohibition of activities within buildings, including gyms, places of worship, restaurants, personal care services, and malls; allowance of retail businesses with exterior facing exit; process to allow businesses to operate outdoors within COVID orders and Municipal Code; success of current no-cost permit program for Downtown restaurants; request from a place of worship to operate within a park; temporary changes to Business Code 7317 allowing outside operation of barbershops, hair salons, and nail salons while following California Department of Public Health guidelines; staff suggestions of permitting in private parking lots, public right-of-ways, and City parks; and potential costs, including k-rail rental and staff time.

City Manager Schwabauer stated that gyms may also request the same type of program to allow operation within City parks.

Council Member Mounce indicated support, stating the City needs to provide as many options as possible.

Council Member Chandler concurred but expressed concerns regarding liability. Mr. Schwabauer clarified that the encroachment permit process includes insurance and indemnification requirements.

In response to Council Member Mounce, Mr. Schwabauer stated staff would discuss lowering insurance requirements with CJPRMA. City Attorney Magdich clarified that most businesses

already have existing insurance that would cover the requirement.

Mayor Pro Tempore Nakanishi indicated support of the proposal, stating the cost is not prohibitive and funding would come through the CARES Act.

Jeremy Duncan, member of the public, commented via Zoom, indicating support for the program but stating the State is seizing private property by not allowing businesses to operate, and further requesting that the City advocate for the public health orders to be ignored.

Mayor Pro Tempore Nakanishi made a motion, second by Council Member Chandler, to approve COVID-19 response for economic development by offering no-cost permitting options for certain outdoor business operations allowed under current health orders, including cosmetology businesses, within parking lots, public right-of-ways, and City parks.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Chandler, Council Member Mounce, Mayor Pro Tempore Nakanishi, and Mayor Kuehne

Noes: None

Absent: None

ROLL CALL VOTE

The City Council held a ROLL CALL vote (all voiced their votes).

B-2 Provide Enforcement Direction to Staff on COVID-19 Public Health Orders in Light of Threats to the Loss of State Funding (CM/CA)

City Manager Schwabauer provided a presentation regarding enforcement of COVID-19 public health orders. Specific topics of discussion included current open status of Downtown retail stores; previous Council direction of no enforcement outside letters from Partners; need to certify compliance with public health orders to receive CARES Act reimbursement; jeopardy of Great Plates Delivered program and \$870,000 in CARES Act funding; enforcement through posting notices of non-compliance followed by legal action; no plan to close businesses; bars may require Police Department involvement; lack of resources to police face coverings; and request for staff to have some discretion on enforcement.

In response to Council Member Mounce, City Attorney Magdich stated enforcement would be through letters from Partners, cease and desist notices, and posting properties as a public nuisance; there is no intention to arrest people or issue criminal citations. She stated if, for example a bar remains open, the City would notify and educate the business; post the property as a public nuisance; send a cease and desist notice, including notification the violation would be reported to the State Department of Alcoholic Beverage Control (ABC); and then notify ABC which would take enforcement action. Ms. Magdich also noted that similarly if a restaurant serves meals inside, the City would provide notification and education, send a cease and desist letter, and post the property. The City found during the initial phase of the stay-at-home order that these actions were very effective, with only one citation being written and only two properties being posted. She further stated that complaints have been received from citizens and employees of businesses regarding people not wearing face coverings, in which case the City has sent letters stating the public health order requiring masks must be followed.

In further response to Council Member Mounce, Ms. Magdich stated the plan was for the Police Department to do the posting, but Code Enforcement could be used for posting and hand deliveries; in addition, certified mail would be used.

Council Member Mounce expressed opposition to using sworn officers to deliver any of the notices, stating the officers should be handling real crime and that criminalizing business owners is overreach. She further expressed unhappiness with the Governor's letter to elected officials regarding enforcement of public health directives and read a portion of the letter into the record.

Council Member Chandler concurred with Council Member Mounce.

Mayor Pro Tempore Nakanishi stated that he agrees with many of Council Member Mounce's statements; he supports staff using discretion in enforcement of the orders; he agrees that not using the Police Department would be preferable, if possible; another city hired a specific person for enforcement; the City is under duress as there is no fund to pay for these expenses and to not get the funding would be an injustice; and he feels the City needs to comply in a gentle manner.

Council Member Chandler stated that he likes the action plan described by the City Attorney; the most egregious offenders are bars, and the State agency can enforce those violations. He further stated that if restaurants or other businesses can be enforced by a State agency, then let them handle it.

Mayor Kuehne stated he felt that it is punitive for the Governor to take this stance, but the City needs to proceed with caution due to the funding. He further stated he is not opposed to the Police Officers distributing the citations or warnings, but it needs to be handled gently; most businesses are trying to comply and there has only been one citation and a few warnings; and there are millions of dollars of tax payer money on the line, but enforcement should be kept to a minimum.

Mr. Schwabauer stated that staff's intention is to be as cooperative as possible; the City does not have the resources to actively seek out violations, but it needs to be able to show that it is addressing the concerns so that it can certify to the State that the orders are being enforced so the funding is not put at risk.

The following members of the public made comments via email. All comments were read into the record and filed.

Monica Fritz - Against enforcement of Governor's orders

Sean Covell, Fitness System Health Clubs - Against enforcement of closure and restrictions placed on gyms

Nathan Dellinger - Against enforcement of Governor's orders

Tom Roehrich - Against enforcement of Governor's orders

Theresa Delp - Against enforcement of Governor's orders

Douglas Duncan - Against enforcement of Governor's orders

Alex Aliferis - Against enforcement of Governor's orders

Greg & Keli Degenstein - Against enforcement of Governor's orders

Jeremy Duncan - Against enforcement of Governor's orders

Mary Sumrall - Against enforcement of Governor's orders

Philip & Wendy Diaz - Against enforcement of Governor's orders

Greg Baroni - Against enforcement of Governor's orders

Jenny Miller - Against enforcement of Governor's orders (two emails)

Lisa Baroni - Against enforcement of Governor's orders

Council Member Mounce stated she feels the City should maintain the same level of enforcement and not move forward with additional enforcement.

Council Member Chandler concurred and stated that the City has taken a middle path of enforcement that preserves both people's rights and the budget.

Mayor Pro Tempore Nakanishi stated that staff has received guidelines to use discretion in enforcement; the funding must not be jeopardized.

Council Member Mounce emphasized that her direction is that Police Department assets will not be utilized in any way to enforce the orders.

Mayor Pro Tempore Nakanishi stated his direction is that the enforcement be left to the discretion of staff and the Police Chief, unless funds exist to hire someone for enforcement.

Mr. Schwabauer stated it is not staff's intention to utilize the Police Department for enforcement, except where it may be necessary if violence is incurred during the posting of a property, for example. He further stated that staff has received direction that should ensure that the City is not being exposed to a loss of funding; he noted that the cost of the Great Plates Delivered program is about \$1 million per month, and the program is providing an important service to the community.

C. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 8:22 a.m.

ATTEST:

Pamela M. Farris
Assistant City Clerk