



## LODI CITY COUNCIL

Carnegie Forum  
305 West Pine Street, Lodi

## AGENDA – SPECIAL MEETING

Date: May 5, 2010

Time: 7:00 p.m.  
(Concurrent with Regular Meeting)

For information regarding this agenda please contact:

**Randi Johl**

**City Clerk**

**Telephone: (209) 333-6702**

*NOTE: All staff reports or other written documentation relating to each item of business referred to on the agenda are on file in the Office of the City Clerk, located at 221 W. Pine Street, Lodi, and are available for public inspection. If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof. To make a request for disability-related modification or accommodation contact the City Clerk's Office as soon as possible and at least 24 hours prior to the meeting date.*

**A. Roll call**

**B. Regular Calendar**

- B-1 Nominate Lodi Youth Commission for League of California Cities' Ruth Vreeland Award for Engaging Youth in City Government (CM)
- B-2 Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition to Assembly Bill 155 (Mendoza) Local Government: Bankruptcy Proceedings (CM)
- Res. B-3 Adopt Resolution Ratifying Employment Agreement Entered into Between City Manager Blair King and Electric Utility Director Elizabeth "Liz" A. Kirkley (CM)

**C. Adjournment**

Pursuant to Section 54956.2(a) of the Government Code of the State of California, this agenda was posted at a place freely accessible to the public 24 hours in advance of the scheduled meeting.

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Randi Johl  
City Clerk

**\*\*NOTICE:** Pursuant to Government Code §54954.3(a), public comments may be directed to the legislative body concerning any item contained on the agenda for this meeting before (in the case of a Closed Session item) or during consideration of the item.\*\*



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Nominate Lodi Youth Commission for League of California Cities' Ruth Vreeland Award for Engaging Youth in City Government

**MEETING DATE:** May 5, 2010

**PREPARED BY:** City Manager

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**RECOMMENDED ACTION:** Nominate Lodi Youth Commission for League of California Cities' Ruth Vreeland Award for Engaging Youth in City Government.

**BACKGROUND INFORMATION:** The City is preparing an application nominating the Lodi Youth Commission for a Helen Putnam award. The award recognizes cities that deliver the highest quality and level of service in the most effective manner possible. A draft version of the nomination is attached.

The Lodi Youth Commission's performance during the past 15 years makes it an ideal candidate for the "Ruth Vreeland Award of Engaging Youth in City Government." The Commission, which is made up of nine teens and seven adult advisors, plans youth events ranging from dances to outdoor activities that draw hundreds of participants. The Commission also has a "Teen of the Month" award for a youth who shows outstanding leadership, community involvement or academic achievement, with the honoree appearing before the Council.

In addition to the draft attached, the nomination will include pictures from various Youth Commission activities. The nomination requires review and signatures from the Mayor and City Manager before submittal to the League. The deadline is May 13, 2010.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** Not applicable.

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Blair King  
City Manager

**Attachment:** Nomination draft

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APPROVED: \_\_\_\_\_  
Blair King, City Manager

## **Vreeland Award nomination**

### **Summary**

The Lodi Youth Commission is a shining example of what happens when a community's leaders put their trust and some decision-making authority in the hands of their youth. With guidance from adult advisors, the Commission has become a self-supporting entity that offers year-round activities for youth. The Commission's goals are to 1) assist in developing future leaders and community supporters; 2) provide an opportunity for youth to have fun, safe and social activities; 3) visibly and positively represent the youth of the Lodi area; 4) inform and involve youth about the rewarding and challenging relationships between business and government; 5) inspire and motivate Lodi's youth to achieve their greatest leadership potential and to serve their community; and 6) recognize the community's youth for their strong individual successes and personal achievements.

### **Narrative**

#### **The challenge**

On May 11, 1995, Lodi's adults turned the job of planning activities and events for the city's youth over to the youth themselves with the first meeting of the Greater Lodi Area Youth Commission.

Lodi's leaders had hoped to address some of the issues facing Lodi's youth with the creation of the original Youth Commission in 1993, such as the problems associated with a geographically large school district, a high drop-out rate, pressures for young teens to join gangs and a generations-old complaint: "There's nothing to do!"

#### **The solution**

The original commission was composed entirely of adults. By 1995, Lodi's then-mayor and a local school district trustee together approached their boards to support the formation of a Commission with youth members, assisted by adults.

"A lot of decisions made in the community are made from the point of view of adults," Lodi teen Carie Crain told the Lodi News-Sentinel newspaper on the eve of the commission's first meeting. "We need to have a voice, too."

In the 15 years since, the commission – comprising nine teens (ages 13 to 19) and seven adult advisors -- has organized social events for teens, raised money for scholarships, lobbied to give civic-minded youth the same opportunities as adults, and publicly recognized teens for their community work, leadership or academic achievement.

Commission meetings are held monthly at the Hutchins Street Square Community Center, the same facility that houses the LYC office. Commissioners consider event proposals, event budgets and financing, and responsibilities of the individual or group as well as the Commission. If the Commission agrees to support an event, at least one

Commission youth member and one adult advisor must volunteer to participate in the event or program, otherwise the vote to approve the project is rescinded until an adult advisor and commissioner steps forward.

Commission members are appointed by Lodi's mayor, with youths serving two-year terms and the adults three-year terms. The commission meets monthly, where it makes plans for annual events and discusses youth issues with help from adult advisors, including a member of the Lodi City Council. The result is plenty to do for Lodi's youth!

### **The results**

Annual events include:

- The Teen of the Month, an award to recognize and honor excellence and leadership in high school.
- "Crush" dances, held three times during the school year to benefit the Lodi Youth Commission Scholarship program, which provides for one \$1,000 and two \$500 scholarships.
- "Take the Lake," a back-to-school summer event for junior high students at the Lodi Lake Park beach that includes fun on the beach, inflatable toys, food, beverages and music.
- Lodi Youth Conference, a one-day event that includes a keynote speaker, lunch and workshops for teens.
- Fall Formal and Spring Fling, dances the LYC continued after its traditional sponsor notified the commission it was discontinuing the events.
- "Teen Lead," a monthly program for selected teens to learn more about their community, preparing them for leadership roles.
- Participation in the annual Light Parade with a decorated float.

The LYC's success also can be measured financially, with event proceeds offsetting the cost of a part-time staff member assigned to the board.

As recently as the 2005/06 fiscal year, the LYC had annual revenue of \$13,290, half of the \$26,703 in support it received from Lodi's General Fund. Since then, even with the onset of the worst economic downturn in eight decades, revenue from Commission activities has allowed it to become self-supporting, paying for the help of a part-time staff member. Revenue has gone from \$20,092 in FY 06/07 to \$51,625 in FY 07/08, \$48,379 in FY 08/09 and \$55,000 projected for FY 09/10. For those last three years, revenue has exceeded expenses.

The Commission's activities are easily found through its website, [www.lodiyouthcommission.com](http://www.lodiyouthcommission.com), which is donated by a local business. Visitors can learn about the LYC, read about upcoming activities and the Teen of the Month, receive information about scholarships and download an application.

Not only does the LYC impact the lives of the Lodi area's youth by providing recreation and activities, its impact on members is long-lasting, according to one of the original

commissioners, Suzanne Woolfolk. Woolfolk, now an assistant principal at San Mateo High School, said being appointed to the Commission in 1995 gave her opportunities and skills she uses to this day.

“I think it was a big reason I got into college,” Woolfolk, a Stanford University graduate, said recently. “It taught me organizational skills, which I still use. Not as many towns have these opportunities for kids to become leaders. For Lodi to supply so many resources, and to have the support of the City Council, it was something pretty important.”

Draft



# CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Opposition to Assembly Bill 155 (Mendoza) Local Government: Bankruptcy Proceedings

**MEETING DATE:** May 5, 2010

**PREPARED BY:** Blair King, City Manager

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**RECOMMENDED ACTION:** Authorize the Mayor, on behalf of the City Council, to send a letter of opposition to Assembly Bill 155 (Mendoza) Local Government: Bankruptcy Proceedings.

**BACKGROUND INFORMATION:** The City was asked by the League of California Cities, and League Representative Council Member Mounce, to oppose AB 155 (Mendoza) and send a letter of opposition regarding the same to specific members of the Legislature.

Under existing law, any taxing agency or instrumentality of the State may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States. This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, and sets forth specific conditions and processes for the same.

A copy of the proposed bill and a draft letter of opposition, are attached for your consideration.

**FISCAL IMPACT:** Not Applicable.

**FUNDING AVAILABLE:** Not Applicable.

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Blair King  
City Manager

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APPROVED: \_\_\_\_\_  
Blair King, City Manager

CITY COUNCIL

PHIL KATZAKIAN, Mayor  
SUSAN HITCHCOCK,  
Mayor Pro Tempore  
BOB JOHNSON  
JOANNE MOUNCE  
LARRY HANSEN

# CITY OF LODI

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BLAIR KING, City Manager  
RANDI JOHL, City Clerk  
D. STEPHEN SCHWABAUER  
City Attorney

May 5, 2010

The Honorable Tony Mendoza  
Member of the Assembly  
State Capitol, Room 2188  
Sacramento, California 95814

SUBJECT:     Notice of Opposition to AB 155 (Mendoza) Municipal Bankruptcy  
—Inserts Politics Into the Bankruptcy Process

Dear Assembly Member Mendoza,

The City of Lodi regrets to inform you that the City strongly oppose any attempt to remove our ability to make our own financial decisions. That is exactly why we oppose AB 155—the bill attempts to prevent any local government from filing for bankruptcy under Chapter 9 of the federal bankruptcy code without first receiving the permission of the State of California.

This On Top of the State Budget? The State, this past year, adopted a budget that borrowed \$2 billion in property taxes from local governments, confiscated more than \$2 billion in local redevelopment revenues, and included a variety of delays, cost shifts, and program cuts to locals. Like the state, this economic recession has had a profound impact on local governments' revenues. The very local agencies that may need to seek the protections of federal bankruptcy court are likely ones that the state has helped put in that circumstance.

Inserts Politics Into a Financial Decision. AB 155 inserts politics into the bankruptcy process. The bill gives a state appointed commission the authority to deny, approve, or set conditions on a city's application to proceed into bankruptcy. This is a process that is currently conducted by neutral and expert bankruptcy judges who are not subject to political pressure. AB 155 substitutes a deliberative process for what will become a political one.

State Liability Question Sill Unanswered. The State cannot afford to be liable to a local agency's creditors in the event CDIAC denies an entity's petition. Who will provide the services that a city will no longer be able to provide if CDIAC denies or imposes erroneous conditions on a city's legitimate petition to file for bankruptcy? What will happen to a city that cannot restructure its debt under Chapter 9? This bill puts all local services dangerously at risk by denying or restricting a local agency's ability to restructure debt through the bankruptcy process.

Municipal Bankruptcy is Rarely Used. The record shows that cities will use any means necessary to avoid bankruptcy. Since the adoption of Chapter 9 of the state Bankruptcy Code in 1949—60 years ago—only two cities have petitioned for its use: the City of Desert Hot Springs in 1994, and in 2008 the City of Vallejo. Bankruptcy is not an

attractive alternative for local communities, nor is it an easy process. In fact, it is an option of last resort.

For these reasons the City of Lodi is opposed to your AB 155.

Sincerely,

Phil Katzakian  
Mayor

C: Brian Weinberger, Consultant, Senate Local Government Committee  
Michael Proso, Secretary & Deputy Chief of Staff, Governor's Office  
Natasha Karl, Legislative Representative, League of California Cities

DRAFT

BILL NUMBER: AB 155      AMENDED  
BILL TEXT

AMENDED IN SENATE    JULY 1, 2009  
AMENDED IN ASSEMBLY    JUNE 1, 2009  
AMENDED IN ASSEMBLY    MARCH 27, 2009

INTRODUCED BY    Assembly Member Mendoza  
                  (Principal coauthor: Assembly Member Torrico)  
                  (Coauthors: Assembly Members Brownley, Coto, De Leon, Fuentes,  
Furutani, Krekorian, Lieu, Ma, Nava, John A. Perez, V. Manuel Perez,  
Price, and Yamada)  
                  (Coauthors: Senators DeSaulnier, Liu, and Wiggins)

JANUARY 26, 2009

An act to amend Section 53760 of, and to add Sections 8860, 8861, 8862, 8863, ~~and 8864~~ 8864, and 8865 to, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 155, as amended, Mendoza. Local government: bankruptcy proceedings.

Under existing law, any taxing agency or instrumentality of the state may file a petition and prosecute to completion bankruptcy proceedings permitted under the laws of the United States.

This bill would provide that a local public entity may only file under federal bankruptcy law with the approval of the California Debt and Investment Advisory Commission, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) The California Constitution and current statutory law provide for a continuity and interdependence between state and local government entities. Seeking financial relief through the provisions of Chapter 9 (commencing with Section 901 of Title 11) of the United States Code imposes costs on a municipality, potentially exceeding \$1 million. It can reduce service levels to the taxpayers and residents of a municipality. In some circumstances, it can have major short- and long-term fiscal consequences to the municipality, the surrounding local public entities, and the state. In 2009, bond counsel stated that "filing for bankruptcy protection under Chapter 9 should be considered a last resort, to be effected only after every effort has been made to avoid it."

(b) The Legislature has an interest in monitoring the conditions under which local entities seek Chapter 9 protection. The relief provided through the federal courts can affect state and municipal government service levels, debt, and contracts. The Legislature also has a strong interest in ensuring adequate disclosure of the conditions under which a municipality may seek Chapter 9 protection.

(c) To the extent financial relief granted through Chapter 9 can affect debt service payments, the state's investors and bondholders

have a direct interest in the Bankruptcy Court's decisions.

(d) The state has established a statewide system of public employee collective bargaining for state and local government employers and employees intended to protect the state's interest in promoting peaceful and harmonious labor relations and preventing work stoppages. The validity and enforceability of contracts arrived at through collective bargaining are essential to maintaining labor peace and the uninterrupted delivery of vital public services, and these agreements may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(e) The state has established and administers statewide pension systems that provide retirement and health benefits to state and local agency employees, many of whose benefits rely on contracts negotiated between local agencies and the California Public Employees' Retirement System, and that may be subject to review and amendment or rescission in the event of a Chapter 9 bankruptcy proceeding.

(f) California is one of only 12 states that grants blanket authority for its municipalities to petition for bankruptcy and offers no opportunity for its municipalities to receive state-level, prebankruptcy guidance, oversight, or assistance for those jurisdictions that are truly insolvent and face no other alternative to bankruptcy.

(g) State intervention in local affairs should only occur in exceptional circumstances and not without a compelling interest of statewide concern.

(h) Given the connection between state allocations and local budgets, the state has a role in mitigating possible local bankruptcy.

(i) It is the duty of all state and local elected officials to ensure that governments provide essential services to the communities they are elected to serve.

(j) California's taxpayers who rely on public safety, senior, park, and library services, as well as those who own and operate businesses in our communities deserve every effort that state and local government can make to avoid the long-term devastation of bankruptcy.

(k) The California Debt and Investment Advisory Commission is the appropriate body to provide the expert oversight and guidance sought by local public agencies who find themselves in a fiscal crisis, given its current statutory duties to collect municipal finance data, conduct research, administer educational seminars, and provide information and technical assistance on behalf of local public agencies and their finance professionals, and given the commission's diverse membership that includes state and local government financial experts.

SEC. 2. Section 8860 is added to the Government Code, to read:

8860. (a) The commission shall, upon request of a local public entity, advise and, if deemed appropriate by the commission, grant approval to the entity to exercise its rights pursuant to Section 53760, which may include conditions prescribed by the commission.

(b) Upon request under subdivision (a), the local public entity shall submit all of the following to the commission:

(1) A resolution or ordinance, adopted by that governing body at a public hearing held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5), that does both of the following:

(A) Requests authority pursuant to Section 53760 to petition the federal bankruptcy court for financial relief under the provisions of Chapter 9 (commencing with Section 901 of Chapter 11) of the United States Code.

(B) Acknowledges that the state's fiscal and financial responsibilities are not changed by the application or the commission's decision pursuant to Section 8861.

(2) A thorough analysis of the entity's request to petition under Chapter 9 (commencing with Section 901 of Title 11) of the United States Code. In addition to any other information it may provide, the entity shall do all of the following:

(A) Demonstrate that it is or will be unable to pay its undisputed debts.

(B) Demonstrate that it has exhausted all options to avoid seeking relief under Chapter 9.

(C) Detail a specific plan for restoring the soundness of the entity's financial plans.

(3) An itemization of creditors that may be impaired or may seek damages as a result of the proposed plan.

(4) Evidence of irreparable harm that may result during the 30-day evaluation period, pursuant to subdivision (d), and the 15 days allotted for a hearing, pursuant to subdivision (e).

~~(c) The local entity may request, and the commission chair may approve, an expedited evaluation. The commission chair may approve the expedited evaluation if the entity sufficiently demonstrates a need for improved cashflow or protection from creditors claims. If the request is approved, the expedited evaluation shall be completed within 5 days.~~

~~(d)~~

(c) (1) Upon receipt of the information required by subdivision (b), the commission shall evaluate the information presented and within 5 days, notify the local public entity of one of the following results:

(A) Approval of the request.

(B) The commission intends to proceed with a further evaluation based on a finding that the local public entity did not provide sufficient evidence pursuant to paragraph (4) of subdivision (b).

(2) If the commission determines that it will proceed with a further evaluation, pursuant to subparagraph (B) of paragraph (1), the commission shall publish its evaluation within 30 business ~~days, or, in the case of an expedited request pursuant to subdivision (c), within 5 days. In conducting its evaluation,~~ days. If the commission does not respond to the request within five days of receipt of the request, the request shall be deemed approved.

(d) After noticing the local public agency of the commission's intent to further evaluate the request, the commission staff shall specifically evaluate the extent to which the local public entity has done the following:

(1) Demonstrated that it has exhausted other remedies.

(2) Demonstrated that it has taken sufficient steps to reduce the negative consequences of its proposed bankruptcy relief.

(3) Has anticipated the transfer of service responsibility to other governments or parties and to what extent the entity has documented the consequences for the transfer of municipal and other government services.

(4) Documented the likely effect a successful petition will have on state and local finances, including the impact on credit access and debt service.

(5) Has proposed a remedy that is appropriate and proportionate to the entity's fiscal problems.

(e) ~~The~~ After the commission conducts the evaluation, pursuant to paragraph (2) of subdivision (c) and

*publishes its evaluation, the commission shall conduct a hearing and publish a decision within 15 days of, but not less than 10 days after, the publication of the staff evaluation conducted pursuant to subdivision (d). The hearing shall be conducted according to the provisions of Section 8861. The commission hearing on the application shall be held in convenient proximity of the entity filing the application.*

(f) A governing board of a local public entity may reapply if its request was denied pursuant to Section 8861. In making the reapplication, the local public entity shall adopt another resolution and submit documentation to address the deficiencies identified by the commission pursuant to Section 8861.

(g) A county that has requested approval to file under subdivision (a) may require local agencies with funds invested in the county treasury to provide a five-day notice of withdrawal before the county is required to comply with a request for withdrawal of funds by that local agency.

~~(g)~~

(h) As used in this chapter, "local public entity" means any city, county, city and county, district public authority, public agency, or other entity that is a "municipality" within the meaning of paragraph (40) of Section 101 of Title 11 of the United States Code, or that qualifies as a debtor under any federal bankruptcy law applicable to local public entities.

SEC. 3. Section 8861 is added to the Government Code, to read:

8861. (a) The commission shall hold a public hearing to consider a request made pursuant to Section 8860. The hearing shall provide sufficient time for public testimony.

(b) The commission shall, in a recorded vote on the date of the hearing, approve or deny the request.

(c) If the commission approves a request, it may order the entity, as a condition of approving the request, to limit the nature and extent of relief provided through Chapter 9 bankruptcy proceedings, including all of the following:

- (1) The commission may limit the changes to a contract.
- (2) The commission may prohibit the abrogation of contracts.
- (3) The commission may limit the amount of relief to ensure the protection of debt service payments.

(d) If the commission disapproves a request, the commission shall adopt specific findings that address the deficiencies of the application.

(e) The hearing shall be subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2). At the same time that the notice and agenda for the hearing is posted to comply with the requirements of the Bagley-Keene Open Meeting Act, then the commission shall do all of the following:

- (1) Post the notice in a location in the entity that is freely accessible to members of the public.
- (2) Deliver the notice personally, by United States mail, or by facsimile transmission, to each local newspaper of general circulation whose circulation area reasonably includes the local public entity.

(3) Deliver the notice by United States mail, or by facsimile transmission, to each radio or television station that has requested notice in writing.

(4) Request publication of the notice in the daily file of each house of the Legislature at least 24 hours prior to the date of the meeting, if the Legislature is in session.

SEC. 4. Section 8862 is added to the Government Code, to read:

8862. (a) After the commission receives a request pursuant to Section 8860, the executive director shall record costs incurred by the commission to make and publish the evaluation pursuant to Section 8860 and conduct the hearing required under Section 8861. The director shall report those costs to the commission at the next regularly scheduled commission hearing.

(b) Upon denial of the request, the executive director or commission may assess the requesting entity a fee to cover some or all the costs associated with making the findings and conducting the hearing. Fee revenue shall be deposited in the California Debt and Investment Advisory Commission Fund.

(c) The commission may propose regulations to govern the request and review process required under Sections 8860 and 8861.

SEC. 5. Section 8863 is added to the Government Code, to read:

8863. In enacting Sections 8860, 8861, 8862, and the changes in Section 53760, the state assumes no new or additional fiscal responsibilities for local entities that may apply to the commission for review pursuant to this chapter.

SEC. 6. Section 8864 is added to the Government Code, to read:

8864. This chapter shall only apply to a local public entity on or after the effective date of this chapter.

SEC. 7. Section 8865 is added to the Government Code, to read:

8865. If a member of the California Debt and Investment Advisory Commission is also employed as a local government finance officer by an entity requesting approval pursuant to Section 8860, the Treasurer shall replace that member, for purposes of the application of the local government that also employs the member, with a person employed by a city, county, or city and county, within the state, experienced in the issuance and sale of municipal bonds and nominated by associations affiliated with these agencies, to preside over that application.

~~SEC. 7.~~ SEC. 8. Section 53760 of the Government Code is amended to read:

53760. (a) Except as otherwise provided by statute, a local public entity in this state may, with the approval of the California Debt and Investment Advisory Commission, under the terms and conditions that the commission may impose pursuant to Section 8861, file a petition and exercise powers pursuant to applicable federal bankruptcy law.

(b) As used in this section, "local public entity" means any county, city, district, public authority, public agency, or other entity, without limitation, that is a "municipality," as defined in paragraph (40) of Section 101 of Title 11 of the United States Code (bankruptcy), or that qualifies as a debtor under any other federal bankruptcy law applicable to local public entities.



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Adopt Resolution Ratifying Employment Agreement Entered into Between City Manager Blair King and Electric Utility Director Elizabeth “Liz” A. Kirkley

**MEETING DATE:** May 5, 2010

**PREPARED BY:** City Manager

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**RECOMMENDED ACTION:** Adopt resolution ratifying the terms of the employment agreement entered into between City Manager Blair King and Electric Utility Director Elizabeth “Liz” A. Kirkley.

**BACKGROUND INFORMATION:** Lodi Municipal Code Section 2.12.060 vests with the City Manager the power to select subordinate staff. As a result of an open and competitive selection process, the City Manager has selected the City of Healdsburg’s Electric Utility Director, Liz Kirkley, as Lodi’s next Electric Utility Director.

The City Manager wishes to provide Ms. Kirkley with certain terms and conditions related to employment that extend beyond the Manager’s authority and therefore requests ratification by the City Council.

The proposed agreement is an “at-will” agreement and contains a base salary of \$155,000 annually, six-month severance payment for termination other than cause, relocation expenses for moving household goods to Lodi, vacation accrual at 15 days per year, and benefits similar to what other executive management and regular City employees enjoy. A copy of the agreement is attached.

The position of Electric Utility Director has been vacant since the resignation of George Morrow in August, 2009. The City used the services of the executive search firm of Avery Associates of Los Gatos. An extensive recruitment was conducted. A total of 26 applications were received. Interviews and assessments were conducted of the top-rated applicants. Two members of the Council selected by the Council as a whole participated in the interviews.

Ms. Kirkley holds of Bachelor of Science degree in Electrical Engineering from the University of Illinois at Champaign-Urbana. She has worked for the cities of Ukiah and Healdsburg and has strong interpersonal and management skills.

**FISCAL IMPACT:** The position is within budget.

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Blair King, City Manager

**Attachments:** Employment Agreement

## EMPLOYMENT AGREEMENT

**Executive Management  
Exempt Service**

**Electric Utility Director**

**THIS AGREEMENT** entered into on \_\_\_\_\_, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City") and Elizabeth A. Kirkley, an individual (hereinafter referred to as "Employee").

**WHEREAS**, Employee desires to be employed as Electric Utility Director and City desires to employ the services of Employee as Electric Utility Director; and

**WHEREAS**, City and Employee agree in writing to the terms and conditions of employment as Electric Utility Director; and

**WHEREAS**, Employee and City agree and acknowledge that Employee's employment as Electric Utility Director is her sole and exclusive employment with City, and that their employment relationship is governed solely and exclusively by this Agreement.

**NOW, THEREFORE**, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

1. **Employment:** City agrees to employ Employee as Electric Utility Director, in accordance with the following provisions:

(a) Employee shall serve as Electric Utility Director, and shall be responsible for managing and directing the operations of the Electric Utility Department in accordance with an agreed upon performance plan.

(b) Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(c) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with her reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC).

(d) Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate her full energies and qualifications to her employment as Electric Utility Director, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

2. **Start Date:** Employee shall begin work between May 5, 2010 and July 5, 2010 upon one weeks notice from employee.

**3. Maintenance of Professional Expertise:** To promote continued professional growth and benefit to the City, Employee shall, at City expense and consistent with budgetary constraints: maintain membership in professional organizations related to city utility administration and related professional disciplines; attend workshops, seminars and other similar activities designed to advance Employee's professional development; and, represent the City in professional associations and other organizations.

**4. Resignation or Termination:**

(a) Employee may resign at any time and agrees to give City at least 30 days advance written notice of the effective date of her resignation. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

(b) The parties recognize and affirm that Employee may be terminated by the City Manager with cause, which shall mean gross insubordination, incapacity, dereliction of duty, conviction of a crime involving acts of moral turpitude or involving personal gain to her, or material breach of this Agreement. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

(c) The parties recognize and affirm that Employee may be terminated by the City Manager without cause. In such event, Employee shall be entitled to severance pay as provided in Paragraph 5 herein.

(d) In the event of termination and in recognition of Employee's professional status and integrity, Employee and the City Manager shall prepare a joint public statement to be made by the City Manager. This employment relationship is based on the mutual respect between the parties and a desire to maintain the highest degree of professionalism. In communicating with third parties about the parties' employment relationship and the circumstances under which it may have been severed, the parties shall (a) protect and advance their mutual respect and professionalism, and (b) refrain from making statements that would negatively impact either party.

(e) Employee may choose to resign or retire her office instead of being terminated if agreed to by the City Manager. In such an event the public announcement, as provided for in Paragraph 3 (d) above, will note Employee has resigned or retired. The provisions of Paragraph 3 (d) shall remain applicable. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

**5. Severance Pay:** If Employee is terminated by the City Manager without cause while still willing and able to perform the duties of Electric Utility Director, City agrees to pay Employee a cash payment equal to six (6) months' aggregate salary and the City's cost of six (6) months' health insurance benefits subject to reduction as set forth in this Paragraph 4. The severance payment will be paid over time at the same time as other employees of the City are paid and subject to customary withholdings. In the event Employee retains new employment during the six month severance period, any remaining severance payment will be forfeited as of the date Employee begins her new Employment. To be eligible for such severance pay, Employee shall fulfill all of her obligations under this Agreement, and shall sign an Acknowledgment and Release of Claims against the City. Payment under this paragraph will release City from any further obligations under this Agreement, or any other transaction between the parties.

6. **Employment as Department Head is Sole Employment with City:** Employee further represents and acknowledges that her employment as Electric Utility Director is her sole and exclusive employment with the City. Employee has no right to any other exempt position with the City, or to any employment in the classified service.

7. **Relocation Expenses:** City agrees to pay costs of moving Employee's household goods to Lodi to a maximum of the lowest of three bids.

8. **Salary:**

(a) City agrees to pay Employee \$155,000 in salary per annum for her services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding. The City may reduce base salary compensation or other financial benefits of Employee as part of general salary reduction in pay among and common to all management employees. Currently, the City has instituted and Employee agrees to accept the following two reductions:

a) one unpaid furlough day per month through June 30, 2011; and

b) elimination of deferred compensation matches employee would otherwise be entitled to through the pay period in which July 1, 2011 falls.

9. **Benefits:** The City shall provide Employee the same benefits as provided to management employees in accordance with the terms of the Executive Management Statement of Benefits dated 1998 and as they may be amended, increased or decreased, except as modified herein. These are the sole and exclusive benefits to be provided to Employee. Any improvement or modification of such benefits may only be made by written instrument signed by the City Manager. As used herein, benefits include, but are not limited to: vacation, sick leave, holidays, administrative leave, retirement, vision insurance, health insurance, dental insurance, long term disability insurance and life insurance. Employee's vacation leave shall be calculated as if Employee was in her sixth year of employment (i.e., Employee shall accrue fifteen days of vacation per year increasing from there as provided in the Executive Management Statement of Benefits.) In addition, Employee shall be granted a 10 day vacation/sick leave bank that can only be used during Employee's first 12 months of employment. This secondary bank shall expire upon Employee's first anniversary with the City. Employee will also earn and accumulate sick leave and vacation as provided in the Executive Management Statement of Benefits.

10. **Performance Evaluation:** The City Manager shall review and evaluate the performance of Employee each year and set goals and objectives for the ensuing year. Such review and evaluation shall be in accordance with specific criteria developed in the performance plan in consultation with Employee and the City Manager.

11. **Assignment:** Employee shall not assign any of the duties and responsibilities, or obligations of this Agreement except with the express written consent of the City Manager.

**12. Authority to Work in the United States:** Employee represents, under penalty of perjury, that she is authorized to work in the United States. In accordance with §274A (8 USC 1324) of the Immigration Reform and Control Act of 1986 before this Agreement can become effective, Employee must provide documentary evidence to City consistent with the Act, that she is legally entitled to work in the United States, and must execute the verification required by that Act.

**13. Cell Phone/Vehicle:** Employee will be provided with a Cell Phone for employment related use at the City's expense on terms consistent with other Executive Managers. Employee will be provided with a City vehicle for work related use.

**14. Notice:** All notices required herein shall be sent first class mail to the parties as follows:

To CITY: City of Lodi  
P. O. Box 3006  
Lodi, CA 95241-1910

To EMPLOYEE: Elizabeth "Liz" A. Kirkley  
748 University Street  
Healdsburg, CA 95448

Notice shall be deemed effectively served upon deposit in the United States mail. Either party may change the address notices are to be sent to them by notifying the other party in writing of such change.

**14. Entire Agreement:** This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may only be amended by written instrument signed by Employee and the City Manager and specifically approved by the City Council in open session.

**15. Severability:** If any provision of this Agreement is invalid or unenforceable, it shall be considered deleted herefrom and the remainder of this Agreement shall be unaffected and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

EMPLOYEE

By: 

RESOLUTION NO. 2010-\_\_\_\_

A RESOLUTION OF THE LODI CITY COUNCIL  
RATIFYING THE EMPLOYMENT AGREEMENT  
BETWEEN THE CITY MANAGER AND ELECTRIC  
UTILITY DIRECTOR ELIZABETH "LIZ" A. KIRKLEY

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the Employment Agreement entered into between the City Manager and Electric Utility Director Elizabeth "Liz" A. Kirkley, as shown on Exhibit "A" attached hereto and made a part hereof.

Dated: May 5, 2010

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I hereby certify that Resolution No. 2010-\_\_\_\_ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 5, 2010, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES: COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL  
City Clerk

2010-\_\_\_\_