



LODI CITY COUNCIL

Carnegie Forum

305 West Pine Street, Lodi

AGENDA – REGULAR MEETING

Date: May 20, 2009

Time: Closed Session 5:30 p.m.
Regular Meeting 7:00 p.m.

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.

C-1 Call to Order / Roll Call

C-2 Announcement of Closed Session

- a) Conference with Dean Gualco, Human Resources Manager (Labor Negotiator), Regarding Unrepresented Executive Management, Lodi City Mid-Management Association, Unrepresented Confidential Employees, AFSCME General Services and Maintenance & Operators, Police Mid-Managers, Lodi Police Officers Association, Lodi Police Dispatchers Association, International Brotherhood of Electrical Workers, Fire Mid-Managers, and Lodi Professional Firefighters and Conference with Larry Hansen (Labor Negotiator) Regarding City Council Appointees, Pursuant to Government Code §54957.6
- b) Prospective Lease of a Portion of 218 West Pine Street and 211 Oak Street, Lodi; the Negotiating Parties are the City of Lodi, Odd Fellows Hall Association of Lodi, and Beckman Capitol Corporation for Placement of Environmental Cleanup Equipment; Price and Terms are under Negotiation; Government Code §54956.8

C-3 Adjourn to Closed Session

NOTE: THE FOLLOWING ITEMS WILL COMMENCE NO SOONER THAN 7:00 P.M.

C-4 Return to Open Session / Disclosure of Action

A. Call to Order / Roll call

B. Invocation – Pastor Phil Orosco, Lodi Police Chaplains

C. Pledge of Allegiance

D. Presentations

D-1 Awards – None

D-2 Proclamations – None

D-3 Presentations

- a) Presentation Regarding Youth Energy Summit (EUD)

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

E-1 Receive Register of Claims in the Amount of \$4,719,354.82 (FIN)

E-2 Approve Minutes (CLK)

- a) May 5, 2009 (Shirtsleeve Session)
- b) May 12, 2009 (Shirtsleeve Session)

E-3 Approve Specifications and Authorize Advertisement for Bids for 500 Tons of Asphalt Materials for Fiscal Year 2009-10 (PW)

- E-4 Approve Specifications and Authorize Advertisement for Bids for Curb, Gutter, and Sidewalk Replacement Annual Contract for Fiscal Year 2009-10 (PW)
- E-5 Approve Specifications and Advertisement for Bids for Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department (EUD)
- Res. E-6 Adopt Resolution Authorizing a Sole Source Procurement of Engineering Analysis Software from Milsoft Utility Solutions, Inc., of Abilene, TX (\$29,444.06) (EUD)
- Res. E-7 Adopt Resolution Accepting Improvements at 3021 South Cherokee Lane (Blue Shield) (PW)
- Res. E-8 Adopt Resolution Accepting Improvements at 2 East Tokay Street (PW)
- Res. E-9 Adopt Resolution Approving Application for CALFED Water Use Efficiency Grant Program from the United States Department of the Interior, Bureau of Reclamation (PW)
- E-10 Approve Summer Transit Pass Program (PW)
- Res. E-11 Adopt Resolution Accepting Fire Apparatus from the California Emergency Management Agency and Authorizing the City Manager to Execute the Contract (FD)
- Res. E-12 Adopt Resolution at the Request of the League of California Cities Declaring Fiscal Hardship Due to State's Ongoing Seizure of Local Property Tax Funds for the Educational Revenue Augmentation Fund and its Continued Adoption of Unfunded Mandates (CM)
- Res. E-13 Adopt Resolution Initiating Proceedings for the Levy and Collection of Assessments, Resolution Approving the Annual Report, and Resolution Declaring Intention to Levy and Collect Assessments for the Lodi Consolidated Landscape Maintenance District No. 2003-1 for Fiscal Year 2009-10; and Set Public Hearing for June 17, 2009 (PW)

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.

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

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

I. Public Hearings

- Ord. I-1 Public Hearing to Consider Adopting Urgency Ordinance to Extend Interim Ordinance No. 1822, (Adopt Urgency) an Uncodified Urgency Interim Ordinance to Establish a Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries (CA)

J. Communications

- J-1 Claims Filed Against the City of Lodi – None
- J-2 Appointments
 - a) Post for One Vacancy on the Greater Lodi Area Youth Commission (Adult Advisor) (CLK)
- J-3 Miscellaneous
 - a) Monthly Protocol Account Report (CLK)

K. Regular Calendar

- K-1 Consider Waiving CPI Increase for Water Fund for Fiscal Year 2009/10 and/or Amend Water Rate Schedule as Approved on April 16, 2008 (PW)
- K-2 Approval to Use the Grape Bowl Outside of Council-Approved Restrictions for a Concert (COM)
- K-3 Receive and Review the Draft Fiscal Year 2009/2010 Financial Plan and Budget (CM)
- K-4 Approve Legal Expenses Incurred by Outside Counsel Relative to the Environmental Abatement Program Litigation (\$2,839.72) and the Lodi First Litigation (\$7,333.92); and Further Provide Direction to City Attorney Regarding Desired Procedures for Future Litigation Billings (CA)

L. Ordinances – None

M. Adjournment

Pursuant to Section 54954.2(a) of the Government Code of the State of California, this agenda was posted at least 72 hours in advance of the scheduled meeting at a public place freely accessible to the public 24 hours a day.

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Presentation Regarding Youth Energy Summit (EUD)
MEETING DATE: May 20, 2009
PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Receive presentation by Electric Utility Department staff.

BACKGROUND INFORMATION: In January, Lodi Electric Utility, in partnership with the California Energy Commission, LegiSchool-Sacramento State University, Roseville Electric Utility, and Sacramento Municipal Utility District, sponsored the first-ever Youth Energy Summit or Y.E.S. The event introduced high school juniors and seniors to energy innovations, legislation regarding renewable and sustainable energy, careers in the utility and “green” profession, alternative-fueled vehicles, and much more during a two-day training session in Sacramento.

Once the students and their team mentors completed the two-day training session, they returned to their respective communities (Lodi, Roseville and Sacramento city/county area) and developed a “community service learning project.” The teams of students and their adult mentors then returned to the grounds of the State Capitol on Earth Day (April 22), and presented their service learning project to a panel of judges from the California Energy Commission. A total of 12 teams of students participated in the Earth Day contest, all vying for college scholarships, ranging from \$200 per team member to \$1000 per team member (a total of five teams received various scholarship funds, with a combined \$10,950 in scholarship monies distributed on Earth Day after the judging was completed).

Two Lodi area high schools formed teams and participated in this year’s Y.E.S.: Jim Elliot Christian High School and Lodi High School. Lodi High’s team captured fourth place in the event, earning each of the team members \$300 scholarship, while Jim Elliot Christian High School’s team received an Honorable Mention.

Lodi Electric Utility wishes to recognize the local students who participated, and thank them for their dedication to California and America’s energy future. Stephen Lechner and Elizabeth Thiesen represented Jim Elliot Christian High School and Jessie Kong, Jeanette Orta, Nathalie Rochert, and Luis Velazquez represented Lodi High School with adult mentor/teacher Dave Greulich.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None.

 George F. Morrow
 Electric Utility Director

Prepared By: Rob Lechner, Manager, Customer Service & Programs

APPROVED: _____
 Blair King, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Receive Register of Claims Dated April 23, and April 30, 2009 in the Total Amount of \$4,719,354.82

MEETING DATE: May 20, 2009

PREPARED BY: Financial Services Manager

RECOMMENDED ACTION: Receive the attached Register of Claims for \$4,719,354.82.

BACKGROUND INFORMATION: Attached is the Register of Claims in the amount of \$4,719,354.82 dated 04/23/09, and 04/30/09. Also attached is Payroll in the amount of \$1,253,388.82.

FISCAL IMPACT: n/a

FUNDING AVAILABLE: As per attached report.

Ruby R. Paiste, Financial Services Manager

RRP/rp

Attachments

APPROVED: _____
Blair King, City Manager

Accounts Payable
Council Report

Page
Date
Amount

- 1
- 05/01/09

As of Thursday	Fund	Name	Amount
04/23/09	00100	General Fund	201,932.38
	00160	Electric Utility Fund	3,233,740.15
	00164	Public Benefits Fund	972.67
	00170	Waste Water Utility Fund	3,718.50
	00172	Waste Water Capital Reserve	203.82
	00180	Water Utility Fund	5,033.46
	00182	IMF Water Facilities	88.36
	00210	Library Fund	3,494.38
	00211	Library Capital Account	1,979.00
	00260	Internal Service/Equip Maint	732.03
	00270	Employee Benefits	20,311.08
	00300	General Liabilities	4,257.10
	00310	Worker's Comp Insurance	82,474.24
	00321	Gas Tax	227.02
	00325	Measure K Funds	147.62
	00332	IMF (Regional) Streets	112.88
	00340	Comm Dev Special Rev Fund	625.20
	00345	Community Center	10,868.88
	00346	Recreation Fund	4,319.76
	01211	Capital Outlay/General Fund	1,669.67
	01212	Parks & Rec Capital	148.48
	01218	IMF General Facilities-Adm	23,072.48
	01250	Dial-a-Ride/Transportation	11,286.94
	01252	Transit-Prop. 1B	2.54
	01410	Expendable Trust	5,116.56

Sum			3,616,535.20

Total for Week			
Sum			3,616,535.20

Accounts Payable
Council Report

Page - 1
Date - 05/01/09

As of Thursday	Fund	Name	Amount
04/30/09	00100	General Fund	819,047.99
	00130	Redevelopment Agency	2,758.51
	00160	Electric Utility Fund	1,532.83
	00161	Utility Outlay Reserve Fund	115,951.55
	00170	Waste Water Utility Fund	8,621.59
	00172	Waste Water Capital Reserve	5,942.32
	00180	Water Utility Fund	2,644.85
	00182	IMF Water Facilities	1,493.76
	00210	Library Fund	5,897.03
	00211	Library Capital Account	240.95
	00260	Internal Service/Equip Maint	11,030.92
	00321	Gas Tax	200.61
	00338	IMF-Regional Transportation	20,606.27
	00340	Comm Dev Special Rev Fund	3,082.50
	00345	Community Center	9,685.87
	00346	Recreation Fund	1,606.78
	00550	SJC Facilities Fees-Future Dev	1,035.78
	01211	Capital Outlay/General Fund	36,846.88
	01212	Parks & Rec Capital	1,770.00
	01218	IMF General Facilities-Adm	3,082.50
	01250	Dial-a-Ride/Transportation	162.23
	01410	Expendable Trust	11,497.68
Sum			1,064,739.40
	00190	Central Plume	38,080.22
Sum			38,080.22
Total for Week			1,102,819.62

Council Report for Payroll

Payroll	Pay Per Date	Co	Name	Gross Pay
Regular	04/19/09	00100	General Fund	744,821.85
		00160	Electric Utility Fund	159,602.16
		00164	Public Benefits Fund	5,354.43
		00170	Waste Water Utility Fund	83,486.58
		00180	Water Utility Fund	714.60
		00210	Library Fund	33,260.30
		00235	LPD-Public Safety Prog AB 1913	1,635.00
		00260	Internal Service/Equip Maint	20,353.60
		00321	Gas Tax	54,238.78
		00340	Comm Dev Special Rev Fund	26,696.64
		00345	Community Center	29,075.11
		00346	Recreation Fund	42,356.79
		01250	Dial-a-Ride/Transportation	6,740.10
Pay Period Total:				
			Sum	1,208,335.94
Retiree	05/31/09	00100	General Fund	45,052.88
Pay Period Total:				
			Sum	45,052.88



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Approve Minutes
a) May 5, 2009 (Shirtsleeve Session)
b) May 12, 2009 (Shirtsleeve Session)

MEETING DATE: May 20, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Approve the following minutes as prepared:
a) May 5, 2009 (Shirtsleeve Session)
b) May 12, 2009 (Shirtsleeve Session)

BACKGROUND INFORMATION: Attached are copies of the subject minutes marked Exhibit A through B.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

Attachments

APPROVED: _____
Blair King, City Manager

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, MAY 5, 2009**

The May 5, 2009, Informal Informational Meeting (“Shirtsleeve” Session) of the Lodi City Council was canceled.

ATTEST:

Randi Johl
City Clerk

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, MAY 12, 2009**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, May 12, 2009, commencing at 7:03 a.m.

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

Absent: None

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

B. Topic(s)

B-1 General Discussion Regarding California Emergency Management Agency Fire Apparatus Benefits and Related Costs (FD)

City Manager King briefly introduced the subject matter of the California Emergency Management Agency (Cal-EMA) fire apparatus benefits and related costs.

Fire Chief Mike Pretz provided a presentation regarding the Cal-EMA fire apparatus benefits and related costs. Specific topics of discussions included an overview of the Office of Emergency Services program, Statewide mutual aid system, distribution of fire apparatus, County rotation on mutual aid, primary costs being paid by the State, reimbursements for deployments, full payment to date by State, and late payment in light of the State budget.

In response to Council Member Hitchcock, Chief Pretz stated the new truck would be stored at either Stations 2 or 4 or the old Municipal Service Center so long as the space is sheltered.

In response to Council Member Hitchcock, Chief Pretz stated the City has full use of the fire truck when needed as a reserve piece of equipment.

In response to Council Member Hitchcock, Chief Pretz stated the State reimburses the City for staffing at the rate of time and a half and the City also receives a 16% administrative fee.

In response to Mayor Hansen, Chief Pretz confirmed that the fire truck will not have the City of Lodi on it and will instead have the State Cal-EMA designation.

In response to Mayor Hansen, Chief Pretz stated that, while there is an expectation that the City will send out people if it has the truck, there is also an opportunity to opt out if the City is already committed without any financial penalties. Chief Pretz stated the primary difference between the current and future practice will be the State truck being used instead of the City truck.

In response to Council Member Johnson, Chief Pretz stated the City is currently set up on a rotational basis with the County for call outs and there really would not be any change to that process. He stated the decision to actually go out can be made at the time of call out based on brown outs or if any of the three existing teams are already out.

In response to Mayor Hansen, Chief Pretz confirmed that the worst case scenario could be that the State takes the engine back if the City cannot go out and the City remains a part of the State mutual aid program.

In response to Mayor Pro Tempore Katzakian, Chief Pretz stated the City currently gets reimbursed for staffing at time and a half plus the additional 16% and the fire truck based on a certain rate.

In response to Council Member Johnson, Chief Pretz stated the City is expected to participate on a rotational basis and for call outs that exceed a certain time period teams are rotated through on a County basis. Chief Pretz provided a brief overview of the mechanics of the fire truck and the equipment on the same.

In response to Mayor Pro Tempore Katzakian, Deputy City Manager Jordan Ayers stated the reimbursements for the previous year totaled approximately \$135,000.

In response to Mayor Hansen, Chief Pretz stated issues of reimbursement are discussed Statewide among agencies, including through the League Fire Chiefs Department. He stated the State is aware of the problem and has represented that it is working on the matter because participation may be affected by untimely reimbursements.

In response to Council Member Hitchcock, Mr. King stated he believes that the State does use local government for cash flow purposes as seen by the recent stall in capital improvement projects and park bond funds. Mr. King stated 15% reserves is a fair amount for the City to ensure proper cash flow through dry periods.

In response to Council Member Mounce, Chief Pretz stated the delayed reimbursement for the previous year was extraordinary in light of the State budget and on average an initial invoice is received within 60 days with payment being made within an additional 60 days.

In response to Council Member Johnson, Chief Pretz stated there are approximately five engines in the County currently, the engines typically remain with the training agency, and the level of need dictates how quickly and how the City responds.

In response to Council Member Mounce, Chief Pretz stated it is highly unlikely that the State would incorporate terms for reimbursement, including payment prior to the next rotation, into the agreement. Council Member Mounce requested information regarding the number of call outs and costs for reimbursement in the 2004 year.

In response to Council Member Hitchcock, Mr. King stated he asked Central Valley League Representative, Stephen Qualls, to research the matter of timely reimbursement for local government.

In response to Mayor Hansen, Chief Pretz confirmed the City Attorney's office has reviewed the contract and staff will be bringing the matter back to Council for acceptance of the fire truck.

In response to Myrna Wetzel, Chief Pretz confirmed that the fire truck will be available for the City to use as a reserve piece of equipment as needed and it is not likely that more than one truck would be out on a State call out.

B-2 General Presentation - General Fund Revenue Estimates (CM)

City Manager King provided a PowerPoint presentation regarding the fiscal year 2009-10 Draft Budget General Fund Revenue Estimates. Specific topics of discussion included unemployment rates in March, poor job market, sales tax in decline, steep drop in retail sales, business closures, 13-year sales history, businesses hurting, property values declining, little home buying, State woes, Educational Revenue Augmentation Fund (ERAF) shift, fiscal sustainability, average

general fund revenues, general fund reserve history, City policy regarding reserves, general fund by major sources, general fund history, property tax, property tax per capita, property tax distribution, sales and use tax, sales tax per capita, in-lieu franchise for electric (PILOT), in-lieu vehicle license fees, business license tax, transient occupancy tax, cable television franchise, natural gas franchise, and department overview of 2009-10 budget.

In response to Mayor Hansen, Mr. King stated the uniqueness of the current recession is how quickly things started to fall and, while the numbers may be getting better, it will take time due to the steep decline over a short period of time.

In response to Council Member Hitchcock, Mr. King stated unemployment rates could continue to go up and unemployment would likely be the last item to rebound from the current recession.

In response to Mayor Hansen, Mr. King stated the numbers reflecting the decline in property tax are based on the ERAF shift and Michael Coleman's calculated numbers for the State and cities throughout the State as the expert in the field.

In response to Council Member Mounce, Mr. King stated if the May 19 propositions fail it is likely that the State will be looking to take approximately \$2 billion from local government and the City's share would be approximately \$700,000.

In response to Mayor Hansen, Mr. King stated that, based on the charts, the last time the housing market was so negatively affected was in the 1982-1983 years.

Council Member Hitchcock requested information regarding average general fund revenues for other cities.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:16 a.m.

ATTEST:

Randi Johl
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Specifications and Authorizing Advertisement for Bids for 500 Tons of Asphalt Materials for Fiscal Year 2009/10

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve specifications and authorize advertisement for bids for 500 tons of asphalt materials for fiscal year 2009/10.

BACKGROUND INFORMATION: The asphalt materials purchase is needed to carry out the annual street maintenance program. This program is guided by the Pavement Management System used by the Streets and Drainage Division and is consistent with past practice. The street maintenance program includes the thin overlay program and routine pavement repairs at an estimated cost of \$39,000. This is a simple purchase of materials that has traditionally been bid on by the only two asphalt suppliers in the area.

The amount of asphalt used by the Streets and Drainage Division has been reduced significantly, from 3,000 tons to 500 tons due to anticipated budget shortfalls. The amount of asphalt requested for Fiscal Year 2009/10 is only enough to do preventative maintenance work. As the 2009/10 budget has not yet been finalized, should the full amount of funding needed not be made available, staff will reduce the amount of asphalt purchased to the level of funding.

Trucking services will be dealt with on an informal bid basis, as the individual costs will be less than \$5,000 per event. This has been the accepted past practice and will allow us to obtain services from multiple sources on an as-needed basis rather than relying on one provider for the entire season. The proposed operating budget has sufficient funds to cover these items.

FISCAL IMPACT: This budget expense will assist the Streets and Drainage Division in its continuing effort to maintain the City of Lodi's asphalt paving.

FUNDING AVAILABLE: The money for this material will be coming from the Street Measure K Capital (325) for Fiscal Year 2009/10.

Project Estimate:	\$39,000
Budgeted:	2009/10 fiscal year
Planned Bid Opening Date:	June 10, 2009

F. Wally Sandelin
Public Works Director

Prepared by Curtis Juran, Assistant Streets and Drainage Manager
FWS/GMB/CJ/dsg
cc: George M. Bradley, Streets and Drainage Manager

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Approve Specifications and Authorize Advertising for Bids for Curb, Gutter and Sidewalk Replacement Annual Contract for Fiscal Year 2009/10

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve specifications and authorize advertising for bids for the curb, gutter and sidewalk replacement annual contract for Fiscal Year 2009/10.

BACKGROUND INFORMATION: Curb, gutter and sidewalk replacement is an annual contract administered by the Streets and Drainage Division and is consistent with past practices. This contract is for replacement of miscellaneous concrete work as guided by the sidewalk replacement program and sidewalk inventory. This contract is typically accomplished by issuing purchase orders in small increments. The prices from this contract are used for work ordered by the City for sidewalks which are the property owner's responsibility, which are to be reimbursed to the Street fund.

The specifications are on file in the Public Works Department at the Municipal Service Center.

FISCAL IMPACT: Should funding for this contract not be made available, it would severely compromise the continuously increasing risk of liability to the City and adversely affect the Streets and Drainage Division's ability to perform necessary maintenance.

FUNDING AVAILABLE: The money for this contract will be coming from Street (320) and Transportation Development Act (TDA) Bike/Ped (1241) funds in the proposed 2009/10 budget. Actual amounts will be consistent with the adopted budget.

Project Estimate: \$50,000

F. Wally Sandelin
Public Works Director

Prepared by Curt Juran, Assistant Streets and Drainage Manager
FWS/CJ/dsg
cc: George Bradley, Streets and Drainage Manager
Purchasing

APPROVED: _____
Blair King, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Approve Specifications and Advertisement for Bids for Annual Tree Trimming Contract (Power Line Clearing) for Electric Utility Department (EUD)

MEETING DATE: May 20, 2009

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Approve specifications and advertisement for bids for annual tree trimming contract (power line clearing) for Electric Utility Department

BACKGROUND INFORMATION: The Electric Utility Department (EUD) has utilized a tree trimming contractor for its line clearing requirements since November 1988. The current contract with Trees, Inc. of Houston, Texas is due to expire on June 30, 2009 at the conclusion of the final extension year. It is necessary to advertise for bids for line-clearing services after this date.

The specifications for tree trimming have been updated. It has been prepared on a 12 month basis with the option to extend annually thereafter, at the City's sole discretion, for a maximum of three additional years. The specifications would provide the City with a three-person backyard crew and a three-person street crew, including vehicles, equipment and other expenses for two crews.

Maintaining an adequate line clearance program is a critical element to electric system reliability. Due to the excellent results the Department has experienced with contracting out this service (i.e. significant reduction of outage time and overall cost effectiveness), it is recommended that the contracting program be continued. The proposed tree trimming program covers the period of July 1, 2009 to June 30, 2010 with the option for up to three additional one-year extensions covering fiscal years 2010/11 and 2011/12 and 2012/13. The specifications are on file in the City Clerk's Office.

FISCAL IMPACT: Estimated electric utility cost of \$375,000, with additional, unquantifiable benefit to customers from reduced outages.

FUNDING AVAILABLE: The projected cost is included in the proposed budget for Fiscal Year 2009/10 under Account No. 160654 – Tree Trimming. Funding for contract extensions shall be approved on a year-to-year basis.

Jordan Ayers
Deputy City Manager/Internal Services Director

George F. Morrow
Electric Utility Director

PREPARED BY: Barry Fisher, Construction/Maintenance Supervisor

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Authorizing a Sole Source Procurement of Engineering Analysis Software from Milsoft Utility Solutions, Inc. of Abilene, Texas (\$29,444.06) (EUD)

MEETING DATE: May 20, 2009

PREPARED BY: Electric Utility Director

RECOMMENDED ACTION: Adopt a resolution authorizing a sole source procurement of Engineering Analysis Software from Milsoft Utility Solutions, Inc. of Abilene, Texas in the amount of \$29,444.06.

BACKGROUND INFORMATION: Sound utility practice is to perform comprehensive power system studies every three to five years. Such studies verify that existing components of the network are within safe operating limits.

On April 15, 2009, the City Council awarded a service contract to RW Beck, Inc. (RW Beck) of Sacramento, CA to perform power systems studies on the existing substations, 12kV and 60kV line facilities. RW Beck will use the Engineering Analysis Software of Milsoft Utility Solutions (Milsoft) in performing these studies.

The models and databases received from RW Beck will enable EUD staff to perform most future system studies internally. However, EUD does not have any type of power systems analysis software. Previous studies were contracted to outside power engineering consultants. Availability of the software will provide significant cost savings to EUD by doing studies in-house. It will enhance the technical expertise and skill of EUD staff.

Milsoft is a business partner of Hometown Connections, Inc., a utility services subsidiary of the American Public Power Association (APPA) that supports APPA members by securing national group pricing and service arrangements from leading industry suppliers.

EUD's acquisition of Milsoft engineering analysis software will provide cost savings by performing system studies internally; enhance in-house ability to evaluate power outages and operating limits of power equipment, and simulate protective device response to fault conditions. Staff can make quick system adjustments, increasing the reliability of electric service. A copy of Milsoft's price proposal is attached.

FISCAL IMPACT: Not to exceed \$29,500.

FUNDING: Fiscal Year 2008-09 Budget Account No. 160612.7313 with transfers from Object Code 7358.

APPROVED: _____
Blair King, City Manager

Jordan Ayers
Deputy City Manager/Internal Services Director

George F. Morrow
Electric Utility Director

Prepared By: Demy Bucaneg, Jr., P.E., Assistant Electric Utility Director
Weldat Haile, P.E., Senior Power Engineer

GFM/DB/lst

Attachments



Proposal

Quote Number: 3332
 Date: 02/10/2009
 Account Manager: Nick Rude
 Email: nick.rude@milsoft.com
 Phone: 800.344.5647
 Valid Until: 04/10/2009

Bill To	Ship To
Weldat Haile Lodi Municipal Electric System PO Box 3006 Lodi, CA 95241-1910 USA	Weldat Haile Lodi Municipal Electric System 1331 S Ham Lane Lodi, CA 95242-3995 USA

Engineering Analysis

Quantity	Product	List Price	Ext. Price
1	WindMil - 1st Seat	\$20,000.00	\$20,000.00
1	LightTable - 1st Seat	\$5,000.00	\$5,000.00
1	LandBase - 1st Seat	\$3,500.00	\$3,500.00

Engineering Analysis Total: \$28,500.00

Grand Total

Subtotal:	\$28,500.00
Discounts Applied:	(5%) -\$1,425.00
Reason:	Hometown Connections Member Discount
Total:	\$27,075.00

Terms and Conditions

Milsoft IVR - Porche/TeleLink/CrewCommand

Price Inclusions/Exclusions

Total price includes all hardware (except remote hardware) and software, additional options or enhancements and documentation. Not included are associated travel expenses, pre-installation meeting expenses, applicable taxes, insurance, freight, telephone lines or telephone system equipment.

Terms

(New Systems)

- 50% upon quote acceptance
- 40% upon installation
- 10% upon final acceptance of the system (30 days after completion)

(Upgrade Items)

- 75% upon quote acceptance
- 25% upon installation

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

Installation & Training

MUS agrees to install the hardware & software at Customers place of business at a rate of One Thousand US Dollars (\$1000.00) per day plus all travel and out of pocket expenses. Training shall be performed the week following installation under the same terms and conditions.

DisSPatch - OMS

Price Inclusions/Exclusions

This quote includes the CORBA Orb and associated software needed to run the application on one (1) server. If Customer decides to run the application on multiple servers, Customer will be responsible for the additional cost of \$2,500.00 per server. This quote does not include hardware or Microsoft SQL Server.

Terms

- 50% upon quote acceptance
- 40% upon installation
- 10% upon final acceptance of the system (30 days after completion)

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the retail system cost and setup fee annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to stop payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

Installation & Training

MUS agrees to install the software at Customers place of business at a rate of One Thousand US Dollars (\$1,000.00) per day plus all travel and out of pocket expenses. Training is included and shall be performed the same week as installation.

Crew Management

Terms: 100% due upon receipt of invoice

Support & Maintenance: Support/Maintenance will be billed at the rate of 20% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

WindMilMap / Milsoft Field Engineering

Price Inclusions/Exclusions

Total price includes WindMilMap and for Milsoft Field Engineering Applications. ESR1 components and customer database are not included.

Terms

- 100% upon receipt of invoice

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the retail system cost annually. Milsoft Field Engineering Support/Maintenance will be billed at the rate of \$.02 per meter per month billed annually. Meter count will be updated annually. Invoicing will begin 60 days after installation is complete.

Installation & Training

MUS agrees to install the software at Customers place of business at a rate of One Thousand US Dollars (\$1,000.00) per day plus all travel and out of pocket expenses. Training is included and shall be performed the same week as installation.

WindMil / LightTable / LandBase / Reliability Analysis / Contingency Study / Enterprise / Poles - FM

Shipping

VIA US Priority Mail included.

Terms

- 100% due upon receipt of invoice

Support & Maintenance

Support/Maintenance will be billed at the rate of 18% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. First year of support is included in the licensing fee.

Training

Available upon request. Please contact MUS for current training rates and schedule.

Database Conversions and Conversion Tools

Price Inclusions/Exclusions

Conversion pricing is standardized and assumes the geodatabase and customer information system are 1. Linked with static unique identifier and 2. Provide detailed connectivity from the source to the consumer level. A detailed review process and statement of work for the conversion will be accomplished upon quote signature. Data deficiencies found to adversely affect product functionality or timeline to deployment will be addressed during the review process and may, in rare cases, drive additional costs.

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the Database conversion tool licensing fee. The first year of support is included.

Training

Available upon request. Please contact MUS for current training rates and schedule.

Multi-Speak Testing Harness

Terms

- 100% due upon receipt of invoice

Support & Maintenance

Support/Maintenance will be billed at the rate of 25% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

AVL

Terms

- 100% due upon receipt of invoice

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

Unplugged - Viewer

Terms

- 100% due upon receipt of invoice

Support & Maintenance

Support/Maintenance will be billed at the rate of 20% of the retail system cost annually. Payment of support charges will be at the option of the Customer. If for any reason Customer decides to discontinue payment of support, Customer will not receive technical support, software fixes/patches or any software upgrades. Invoicing will begin 60 days after installation is complete.

Quote Acceptance

This Quote constitutes the entire understanding and agreement between the parties and supersedes any and all prior and contemporaneous, oral or written representations, communications, understandings and agreements between the parties with respect to the subject matter hereof. The parties acknowledge and agree that neither of the parties is entering into this Quote on the basis of any representation or promise not expressly contained herein.

Account: Lodi Municipal Electric System

Accepted By:

Print Name:

Date:

PO# (if required):

To submit this form, please fax it to 325.690.0338.

If you have any questions regarding this quote, please call 800.344.5647 and ask for Nick Rude or email Nick at nick.rude@milsoft.com.

Weldat Haile (Lodi EUD)

From: Nick Rude [nick.rude@milsoft.com]
Sent: Tuesday, February 10, 2009 10:40 AM
To: Weldat Haile (Lodi EUD)
Cc: sales; Randy Carlson; Ed Carlson; Leon Giesecke; Jeff Kirkes; Bill Smart
Subject: Quote for Milsoft WindMil Engineering Analysis

Weldat,

Here is an updated quote to what I had previously sent to you. It includes the WindMil Engineering Analysis package, LightTable Curve Coordination Software and LandBase. I have included the 5% discount that Lodi gets for being a Hometown Connections Member.

Windmil includes all of the ability to build a model using your ACAD backgrounds as a template and gives you the ability to create your complete model from tracing the background and defining the elements. WindMil also includes everything you need for transformer load management and distribution analysis including arc flash.

LightTable allows you to view the protective curves from devices such as fuses, breakers, and more. It allows you to put in settings for electronic and mechanical breakers and see the effect on your system.

LandBase allows you to bring in backgrounds such as .dxf and .dwg files and many other types of files to use as a background.

We have an 800 number that gives you support for your questions and we have training available in our Abilene office on a regular basis.

Please call me with any questions.

Sincerely,

Nick Rude
Regional Account Manager
Milsoft Utility Solutions, Inc.
325-513-2607 Cell
325.690.0338 Fax
nick.rude@milsoft.com
www.milsoft.com

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE SOLE SOURCE PURCHASE OF
ENGINEERING ANALYSIS SOFTWARE FROM
MILSOFT UTILITY SOLUTIONS, INC.

=====

WHEREAS, Lodi Municipal Code §3.20.070 authorizes dispensing with bids for purchases of supplies, services, or equipment when it is in the best interest of the City to do so; and

WHEREAS, sound utility practice is to perform power systems studies every three to five years to verify that existing distribution system components are within safe operating limits; and

WHEREAS, on April 15, 2009, the City Council awarded a service contract to RW Beck, Inc. of Sacramento, CA to conduct power systems studies on the City's existing electric distribution facilities for approximately \$95,800; and

WHEREAS, models, configurations and databases received from RW Beck, Inc. will enable EUD staff to perform future systems studies internally; and

WHEREAS, EUD's acquisition of the Milsoft engineering analysis software will provide significant cost savings and enhance in-house ability to evaluate power outages and operating limits of power equipment thereby increasing reliability of electric service; and

WHEREAS, staff recommends that the Engineering Analysis Software be purchased sole source from Milsoft Utility Solutions, Inc. of Abilene, Texas, which is the same software that RW Beck, Inc. will be using in their recently awarded service contract to perform systems studies on the City's electric distribution facilities.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves the sole source purchase of Engineering Analysis Software from Milsoft Utility Solutions, Inc. of Abilene, Texas in the amount of \$29,444.06.

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Accepting Improvements at 3021 South Cherokee Lane (Blue Shield)

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution accepting the improvements at 3021 South Cherokee Lane (Blue Shield).

BACKGROUND INFORMATION: Improvements at 3021 South Cherokee Lane (Blue Shield) have been completed by the developer, Blue Shield of California, in substantial conformance with the requirements as approved by City Council on November 21, 2007, and as shown on Drawings No. 007D009-01 through 007D009-06.

Public improvements include the installation of a public water main on the Blue Shield site.

No public streets were dedicated to the City as part of this project.

FISCAL IMPACT: The developer's warranty period of two years will begin on the date of Council acceptance. There will be a slight increase in long-term maintenance costs for the public water main.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer

cc: City Attorney
Senior Civil Engineer – Development Service
Streets and Drainage Manager
Senior Engineering Technician
Building Official

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
ACCEPTING IMPROVEMENTS AT 3021 SOUTH
CHEROKEE LANE (BLUE SHIELD) INCLUDED IN THE
IMPROVEMENT AGREEMENT BETWEEN THE CITY OF
LODI AND BLUE SHIELD OF CALIFORNIA

=====

The City of Lodi finds:

1. That all requirements of the Improvement Agreement between the City of Lodi and Blue Shield of California for the improvements at 3021 South Cherokee Lane have been substantially complied with. The improvements are shown on Drawings No. 007D009-01 through 007D009-06 on file in the Public Works Department and as specifically set forth in the plans and specifications approved by the City on November 21, 2007.
2. No new City streets were dedicated as part of this project.

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Accepting Improvements at 2 East Tokay Street
MEETING DATE: May 20, 2009
PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution accepting the improvements at 2 East Tokay Street.

BACKGROUND INFORMATION: Improvements at 2 East Tokay Street have been completed by the developer, Bernard C. Kooyman and Donna K. Kooyman as Trustees of the Bernard C. Kooyman and Donna Kundert Kooyman Revocable Living Trust dated January 30, 1995 and Diede Construction, Inc., in substantial conformance with the requirements as approved by City Council on October 1, 2008, and as shown on Drawings No. 008D005-01 through 008D005-12.

The public improvements were installed in conformance with the conditions of approval for a final parcel map which divided an existing parcel into three parcels. The improvements included water, wastewater and storm drain facilities to serve the three parcels and street improvements along the frontage of the project site.

The streets to be accepted are as follows:

Streets	Length in Miles
A corner cutoff at the intersection of School Street and Tokay Street	0.00
Total New Miles of City Streets	0.00

FISCAL IMPACT: Per Item 11, "Warranty Security", of the improvement agreement, the developer's two-year warranty period will begin on the date of Council acceptance. There will be a slight increase in long-term maintenance costs for the public infrastructure improvements.

FUNDING AVAILABLE: Not applicable.

 F. Wally Sandelin
 Public Works Director

Prepared by Wesley K. Fujitani, Senior Civil Engineer
 cc: City Attorney
 Senior Civil Engineer – Development Service
 Streets and Drainage Manager
 Senior Engineering Technician
 Building Official

APPROVED: _____
 Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL ACCEPTING IMPROVEMENTS AT 2 EAST TOKAY STREET INCLUDED IN THE IMPROVEMENT AGREEMENT BETWEEN THE CITY OF LODI AND BERNARD C. KOOYMAN AND DONNA K. KOOYMAN AS TRUSTEES OF THE BERNARD C. KOOYMAN AND DONNA KUNDERT KOOYMAN REVOCABLE TRUST AND DIEDE CONSTRUCTION, INC.

=====

The City Council of the City of Lodi finds:

1. That all requirements of the Improvement Agreement between the City of Lodi and Bernard C. Kooyman and Donna K. Kooyman as Trustees of the Bernard C. Kooyman and Donna Kundert Kooyman Revocable Trust dated January 30, 1995 and Diede Construction, Inc., have been substantially complied with. The improvements are shown on Drawings No. 008D005-01 through 008D005-12 on file in the Public Works Department and as specifically set forth in the plans and specifications approved by the City Council on October 1, 2008.

2. The streets to be accepted are as follows:

Streets	Length in Miles
A corner cutoff at the intersection of School Street and Tokay Street	0.00
Total New Miles of City Streets	0.00

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Approving Application for CALFED Water Use Efficiency Grant Program from the United States Department of the Interior, Bureau of Reclamation

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution approving the application for a CALFED Water Use Efficiency Grant Program from the United States Department of the Interior, Bureau of Reclamation.

BACKGROUND INFORMATION: One of the goals of the City is to deliver projects that benefit the City and enhance the community. Grant programs are a beneficial step in achieving that goal. The CALFED grant, if approved, will supplement staff's efforts to comply with the Water Conservation in Landscaping Act of 2006 (AB 1881). This is a 50-percent matching grant which, if awarded, will provide for the installation of water meters and "Smart" irrigation controllers for over 200 sites maintained by the City's Streets and Drainage Division. Approximately 100 water meters and irrigation controllers will need to be installed at an estimated cost of \$250,000.

If the City grant application is successful, staff will return to the City Council for approval of the plans and specifications for installation.

FISCAL IMPACT: By utilizing grant funds, the City will be able to update existing landscape sites and meet the requirements set by AB 1881.

FUNDING AVAILABLE: The grant requests a local match. The local 50-percent match will be between \$100,000 and \$125,000 and will be provided by Water Capital (181) funds.

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Curtis Juran, Assistant Streets and Drainage Manager
FWS/CJ/pmf
cc: Water Services Manager

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING
APPLICATION TO UNITED STATES DEPARTMENT OF THE
INTERIOR, BUREAU OF RECLAMATION FOR CALFED
WATER USE EFFICIENCY GRANT PROGRAM AND
FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE
GRANT AGREEMENTS ON BEHALF OF THE CITY OF LODI

WHEREAS, one of the goals of the City is to deliver projects that benefit the City and enhance the community, and grant programs are a beneficial step in achieving that goal; and

WHEREAS, the CALFED grant, if approved, will supplement staff's efforts to comply with the Water Conservation in Landscaping Act of 2006 (AB 1881). This is a 50-percent matching grant which, if awarded, will provide for the installation of water meters and "Smart" irrigation controllers for over 200 sites maintained by the City's Streets and Drainage Division. Approximately 100 water meters and irrigation controllers will need to be installed at an estimated cost of \$250,000; and

WHEREAS, if approved, the local 50-percent match will be between \$100,000 and \$125,000 and will be provided by Water Capital (181) funds.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the application for a CALFED Water Use Efficiency Grant Program from the United States Department of the Interior, Bureau of Reclamation; and

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the grant agreement on behalf of the City of Lodi.

Dated: May 20, 2009

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Approve Summer Transit Pass Program

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Approve the Summer Transit Pass Program.

BACKGROUND INFORMATION: At its meeting on May 6, 2009, Council accepted the City of Lodi Short Range Transit Plan (SRTP). One recommendation included in the SRTP was to initiate a transit marketing program that would, among other things, include a Summer Transit Pass Program. The purpose of the pass program is to increase ridership during the summer months and provide children with an alternative transportation mode during the daytime.

At a recent 2 X 2 meeting with the Lodi Unified School District (LUSD), City staff presented the Summer Transit Pass Program and LUSD staff supported the proposed pass program.

The program details are as follows:

- Cost is \$15 per pass
- Unlimited rides for two months on GrapeLine (not valid on Dial-A-Ride)
- Valid from June 15 through August 15, 2009
- For youth ages 5 to 17 years old
- GrapeLine service hours: Monday through Friday from 6:15 a.m. to 6:55 p.m.; Saturday/Sunday from 7:45 a.m. to 3:10 p.m.
- Purchase passes at City of Lodi Transit Station and Finance Department

With City Council's approval, staff will proceed with publicizing the program in the June Electric Utility bill.

FISCAL IMPACT: Funds are available in FY 2008/09 budget for the proposed marketing program. The pass program cost is estimated to be \$500.

FUNDING AVAILABLE: Transportation Development Act (TDA) funds (125056)

Jordan Ayers
Deputy City Manager/Internal Services Director

F. Wally Sandelin
Public Works Director

Prepared by Paula Fernandez, Transportation Manager/Senior Traffic Engineer
FWS/PJF/pmf
cc: Management Analyst Areida

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Accepting Fire Apparatus from the California Emergency Management Agency and Authorizing the City Manager to Execute the Contract (FD)

MEETING DATE: May 20, 2009

PREPARED BY: Michael E. Pretz, Fire Chief

RECOMMENDED ACTION: Adopt a resolution accepting fire apparatus from the California Emergency Management Agency (CalEMA) and authorize the City Manager to execute the contract.

BACKGROUND INFORMATION: CalEMA formerly known as the California Office of Emergency Services (OES) provides fire protection throughout the State and utilizes resources from municipal fire departments under a state-wide mutual aid system. The City of Lodi Fire Department participates in this statewide mutual aid system. Periodically, CalEMA distributes fire apparatus to fire districts and city fire departments to be used during the activation of the mutual aid system.

The City of Lodi was approached by CalEMA to house their fire apparatus in 2008. After a thorough review of the program and cost analysis by the Internal Services Department, staff determined accepting the fire apparatus was in the City's best interest (see attachment).

The City is responsible for the first \$100 of maintenance/repair. The State will reimburse the City for repair costs above \$100 with the State paying full costs for hoses, batteries and tires. Moreover, the City will see a reduction in maintenance costs to City apparatus used in wildland fire response.

The State will continue to reimburse the City for personnel costs for deployments including an additional 16 percent administrative fee. In 2008-09, the State faced a prolonged budget impasse in the Legislature. During this budget impasse, reimbursement payments to fire agencies were delayed until the passage of a State budget. Reimbursement checks began arriving in February 2009, with the last reimbursement check received May 1, 2009. The City of Lodi has received payment in full for wildland fire response in 2008.

The fire engine is a Type I fire apparatus, similar to the fire apparatus currently used by the Lodi Fire Department. The engine is valued at \$340,000 and housing it with the City of Lodi is part of the state-wide Blue Ribbon Commission on Fire Safety recommendation. The Fire Department will operate the engine as a reserve apparatus. The engine will not replace current front-line apparatus and will not relieve the need to continue the fire apparatus replacement program.

APPROVED: _____
Blair King, City Manager

Adopt Resolution Accepting Fire Apparatus
from the California Emergency Management
Agency and Authorizing the City Manager to
Execute the Contract (FD)
May 20, 2009
Page 2

FISCAL IMPACT: Annual Insurance; \$ 748 and Minor Repairs (cost unknown)

FUNDING AVAILABLE: Vehicle Maintenance # 102012.7333

Jordan Ayers, Deputy City Manager/
Internal Services Director

Michael E. Pretz, Fire Chief

MEP/lh

Attachments

cc: City Attorney



**Internal Services Department
Budget Division**

MEMORANDUM

TO: Blair King, City Manager

FR: Susan Bjork, Management Analyst II 

DATE: August 1, 2008

SUBJ: Use of OES Engine – Budgetary Concerns

Per your request, I have met with Fire personnel on the acquisition of an OES Engine for use in Lodi. From information I have obtained through the OES website and staff, it is the intent of OES to reimburse mutual aid agencies when called upon for deployments greater than 12 hours.

Background facts that exist regardless of using a City engine or an OES engine:

Reimbursements for OES dispatches:

- Staff is reimbursed at 1½ times the average classification's straight time rate, plus a rate for worker's compensation and unemployment. These rates are provided to the state by the Fire Department and kept on file until an update is needed. An administrative reimbursement of 16% is allowed and added.
- For deployments of less than 12 hours, there is no reimbursement. For deployments over 12 hours, reimbursement occurs from time of dispatch to return.
- Incremental costs for incentive pay and Medicare on overtime are not reimbursed.

Budgetary Considerations:

- The City is responsible for the first \$100 of maintenance/repair of each individual item of repair – wear and tear type items. State will reimburse City maintenance/repair costs over \$100; State pays for full replacement of hoses, batteries and tires.
- Current backup engine #06-032, a 1976 VanPelt, costs the City roughly \$6,000 per year in maintenance/repairs. Using the \$100 deductible for the OES engine, the City would reach the break even point at 60 repairs; however it is expected the new engine would have significantly less individual repairs, thus saving the City on maintenance costs. The VanPelt would be surplus.



Internal Services Department Budget Division

- State assumes responsibility for repair/replacement during State dispatched mutual aid or when reassigned; City assumes responsibility for repair/replacement if engine is consumed; lost, stolen, damaged or destroyed in other operations. Damage due to negligence is City's responsibility. Estimate for adding this engine to the vehicle schedule is \$1000.00 per year.
- A credit card is kept in the engine for Strike Team usage, eliminating the need for staff to use their own or City resources for gas and maintenance to/from incidents.
- It is expected there will be an increase in the number of mutual aid calls if the City possesses an OES engine but there is no method for accurately predicting this number. Current deployments average 3 per year, with each deployment lasting approximately 1 week; however, a deployment could last up to 14 days. Reimbursement for staff is the average classification rate at time and a half, plus a percentage for worker's compensation and unemployment. Not covered are the incremental costs for incentives and Medicare on the paid overtime; however, there is a 16% administrative allowance that may cover, at least in part, these costs. Additionally, meals en route are not covered.
- Loss of reimbursement revenue for use of Lodi's engine on an OES incident; however, there is a counter balancing decrease in wear/tear of Fire's fleet since the backup engine (the VanPelt) is not the one sent on OES deployments. There would also be no depreciation charges or need to build reserves for replacement of the backup engine.
- Additional burden on staff for record keeping and approval processes.
- General liability on the engine en route to/from incident. Adding the new engine to the vehicle schedule is approximately \$1000.00 per year.

Summation:

The City appears to break even or come out slightly ahead on staff cost reimbursement (due to not back-filling for dispatched staff, whenever possible, and the 16% administrative fee). It is expected that at least initially, maintenance costs will be reduced by eliminating the old engine from the fleet. From a break-even point, annual costs or savings to the City is minimal.

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

**AGREEMENT FOR
TEMPORARY TRANSFER OF VEHICULAR EQUIPMENT**

THIS AGREEMENT, entered into this 21st day of May, 2009, by and between the **STATE OF CALIFORNIA** whereas the Governor's Office of Emergency Services (OES) is referenced in this agreement falls under the authority acting by and between its duly appointed and qualified Secretary of the California Emergency Management Agency (CalEMA), hereinafter called the "**STATE**," and the Lodi Fire Department, acting by and through its duly appointed, qualified and acting officers, hereinafter called "**TRANSFEREE**",

W I T N E S S E T H:

IT IS HEREBY MUTUALLY AGREED between the parties hereto as follows:

1. The **STATE** hereby transfers possession to **TRANSFEREE** and **TRANSFEREE** hereby accepts possession from **STATE** of the fire apparatus and equipment listed on the attached Exhibit "A" which is by this reference made a part hereof, for the period commencing May 21, 2009, for the following all-risk events, emergency incidents, civil defense and disaster purposes, namely:

Mutual aid, multiple alarm events and emergency incidents, emergency incidents threatening properties vital to national defense or important military installations, parades and displays, training of regular, volunteer and auxiliary firefighters and temporary standby for assignee's regular apparatus and the regular apparatus of other departments while out of service for repairs.

- a. Vehicle Description: 07 Westates Type 1 Fire Apparatus
Vehicle Designation: OES 338
Vehicle License Number: 1319033
Vehicle Identification Number: 44KFT42886WZ20938
Value of Vehicle: \$309,000.00
Value of Hose and Appliances: \$31,000.00

b. Equipment inventories (Exhibit "A") may by mutual concurrence of the **STATE** and **TRANSFEREE** be changed during the term of this agreement, utilizing property accountability procedures established or approved by the State.

2. Housing, Maintenance, Repair and Replacement. During the term of this transfer, **TRANSFEREE** agrees to adequately house in a enclosed secure structure, staff, operate, maintain and repair (consistent with section 2 b.) said fire apparatus and equipment (hereinafter collectively referred to as "the apparatus" except where it is desired to refer to equipment alone, in which case the term "equipment" is used) at its sole cost and expense, save as otherwise expressly provided in this agreement. Apparatus shall be housed on property of the **TRANSFEREE** in a manner to provide reasonable protection against inclement weather, sabotage, theft or malicious damage. Apparatus shall be maintained in such condition that it is available for immediate emergency use, and at the same standard as other emergency apparatus

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

operated by **TRANSFEEE**. Maintenance shall include care of hose, batteries, tires, appliances, lubrication and fuel, general cleaning and polishing, minor body repairs and periodic testing. Repairs shall include, without being limited to, motor tune-ups, pump repairs, transmission, differential and all running gears, brake and exhaust systems, cooling devices including radiator, pump packing, equipment assigned to apparatus and so forth.

a. Repairs to the extent of \$100.00 for each individual item of repair shall be the responsibility of **TRANSFEEE**.

b. Repairs to the extent that they exceed \$100.00 for each individual item of repair shall be the responsibility of **STATE** on a \$100.00 deductible basis, unless in the judgment of the **STATE** the same results from misuse or negligence on the part of **TRANSFEEE** in the maintenance or use of the apparatus, in which event the cost of each such item of repair above \$100.00 shall also be the responsibility of **TRANSFEEE**. In no event shall **TRANSFEEE** arrange for repairs costing above \$100.00 for any item of repair, whether it deems the same to be the responsibility of **STATE** or **TRANSFEEE**, without first obtaining authorization in writing from the CalEMA Fire & Rescue Branch.

c. Notwithstanding the foregoing, replacement of hose, batteries and tires shall be the responsibility of **STATE**, save to the extent **STATE** deems damage thereto to be the result of negligence or misuse on the part of **TRANSFEEE**, in which event **TRANSFEEE** will bear such portion of the replacement cost thereof as the **STATE** deems equitable. Procurement of tires, hose and batteries is subject to State fiscal policies and procedures, and written approval must be obtained from the CalEMA Fire & Rescue Branch prior to procurement.

d. Maintenance and repairs must be requested and authorized pursuant to the CalEMA Fire & Rescue Branch Operations Bulletin #18, which is here by incorporated into this agreement by reference.

e. Repair or replacement of the apparatus transferred hereunder which is consumed, lost, stolen, damaged or destroyed during mutual aid operations when **STATE** has dispatched or directed the dispatch of said apparatus through Regional or Operational Area Fire & Rescue Coordinators, or when **STATE** has reassigned said apparatus pursuant to the provisions of paragraph 10 of this agreement, shall be the responsibility of **STATE**, providing that any such loss or damage is due to the negligence of **TRANSFEEE** under such circumstances, **TRANSFEEE** shall be liable therefore to the extent that the **STATE** deems equitable. **TRANSFEEE** agrees that it will assume responsibility in full for the repair or replacement of equipment which has been consumed, lost, stolen, damaged or destroyed in operations other than referred to in this paragraph.

3. Inspection of Apparatus. **TRANSFEEE** agrees that representatives of the CalEMA Fire & Rescue Branch and other authorized State personnel may inspect the apparatus at any time

4. Staffing. Reasonable and continual training shall be carried on so that trained personnel shall at all times be available to staff and operate said apparatus. The **TRANSFEEE** shall

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

provide personnel to staff the assigned apparatus per FIRESCOPE ICS standards. The CalEMA engine may be assigned to out of area assignments for up to 14 days, plus travel time. When local government personnel, staffing CalEMA apparatus, are committed to extended assignments there may be a need to replace or rotate personnel. Personnel rotation will follow the direction outlined in the California Fire Assistance Agreement when assigned to an incident within California. Crew rotation for incidents outside of California shall be consistent with the appropriate forest's agencies policy and coordinated by CalEMA.

5. Training. Personnel assigned shall meet wildland fire and ICS standards established in the California Incident Command Certification System (CICCS) or NWCG 310-1 (August 2002 version). Personnel assigned to OES Engine 253 and above shall meet Rescue System I standards as certified by the California State Fire Marshal, or have completed an equivalent course that meets or exceeds Rescue System I curriculum.

6. Dispatching. All movement of the apparatus shall be handled through the official dispatching channels of **TRANSFEREE**. **TRANSFEREE** dispatchers will recognize and act on all official requests for movement of the apparatus in conformance with the Fire & Rescue Annex (California Fire & Rescue Mutual Aid System) to the State Emergency Plan and its subsequent revisions. **STATE** reserves the right to dispatch, direct the dispatch of, or temporarily reassign the said apparatus and equipment whenever, in the opinion of the Secretary of CalEMA, his representatives or Operational Area and Regional Fire & Rescue Coordinators, such equipment and apparatus is essential to the protection of life and property in another jurisdiction or in the best interest of the STATE.

7. Mutual Aid Response. Procedures for mutual aid response shall be in accordance with California Fire Service and Rescue Emergency Mutual Aid Plan.

8. Reimbursable Response. Reimbursement for mutual aid may be provided pursuant to a governor's disaster proclamation or when conditions warrant invoking the California Fire Assistance Agreement, the State of Nevada Cooperative Agreement, or the Interstate Compact as appropriate. There is no other existing provision for mutual aid reimbursement.

9. Temporary Use. **TRANSFEREE** shall be permitted to use their assigned apparatus for temporary cover of fire stations when emergency conditions warrant, or when regular apparatus is out of service for repairs. In either case the **ASSIGNEE** shall immediately notify the Operational Area Dispatch Center. The **ASSIGNEE** further agrees that Cover-in or Standby of said fire apparatus exceeding 90 days is at the discretion of the **STATE**

10. Temporary Transfer.

a. An assignment of the apparatus or any portion thereof by **TRANSFEREE** for any period not exceeding seven consecutive days within a given Operational Area may be made with the consent of the Operational Area Fire & Rescue Coordinator and the **STATE**, providing that at the time such apparatus is received, such assignee furnish **TRANSFEREE** and **STATE** a letter to the effect that he assumes all obligations of **TRANSFEREE** with respect to such apparatus under this agreement during the period of assignment, including insurance coverage in

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

accordance with Paragraph 13 or 14, as appropriate. Any assignment by **TRANSFEE** for a period of more than seven consecutive days shall be subject to authorization by the **STATE** and execution of an "Agreement for the Temporary Transfer of Vehicular Equipment", with the agency requesting the transfer.

b. Whenever apparatus is assigned in accordance with the provisions of this paragraph, regular **TRANSFEE** shall be relieved of its obligations under this agreement during such period of assignment.

c. Complete a written Temporary CalEMA Apparatus Assignment Record, Exhibit "B". The **TRANSFEE** will retain one copy, the Temporary Assignee will retain one copy, and one copy will be forwarded to the CalEMA Fire & Rescue Branch.

11. Reports and Records. **TRANSFEE** shall maintain daily and monthly reports on the details of Apparatus Use on OES F-101 Form. A Smoke Opacity Test, Pump Test, and Hose Test, shall be completed annually. Written results of all tests and reports shall be forwarded to the CalEMA Fire & Rescue Branch, by the end of the calendar year. A recent copy of the tests and reports shall be maintained in the vehicle logbook.

12. Report of Accidents. **TRANSFEE** shall immediately notify the CalEMA Fire & Rescue Branch following any and all accidents involving this apparatus. It shall be the responsibility of **TRANSFEE** to fill out State Form 270, "Report of Automobile Accident," and file the report with the California Emergency Management Agency. A copy of this report shall be retained by the **TRANSFEE** and the original and four copies forwarded to CalEMA.

13. Insurance Protection. (Non- State Agencies)

a. **TRANSFEE** agrees forthwith to furnish evidence of insurance protecting the legal liability of the **TRANSFEE** and the **STATE** for liability and/or property damage with a combined single limit of 1,000,000.00 per occurrence, by means of a Certificate of Insurance naming State of California as Additional Insured. Said certificate shall contain an agreement by the insurance company that it will not cancel said policy without 15 days prior written notice to the **STATE** and that the **STATE** is not liable for the payment of any premiums or assessments thereon. Said certificate must include the description of the apparatus including VIN, state license number and OES unit number.

b. In the event the **TRANSFEE** is self-insured, **TRANSFEE** in lieu of a certificate of insurance shall furnish the **STATE** a written statement of such fact. In such event **TRANSFEE** agrees to hold the **STATE** harmless from any personal injury or property damage claims arising out of its maintenance, use or operation of the apparatus under the terms of this agreement.

c. Physical damage insurance, including collision coverage and comprehensive coverage, shall be obtained. The **STATE** will be named as a loss payee. The description of the vehicle and the necessary amount of insurance required is outlined in attached Exhibit "C" which is by this reference made a part hereof.

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

14. Insurance Protection. (State Agencies) Any insurance necessary for coverage of the apparatus shall be the sole responsibility of the department having custody of the vehicle. **TRANSFEREE** agrees to report apparatus as being under its control to the Insurance Officer, Department of General Services.

15. Termination of Agreement.

a. Either party may terminate this agreement upon 14 days written notice to other party, or **TRANSFEREE** may relinquish or **STATE** may repossess any portion of the apparatus upon like notice to the other party, except that **STATE** may repossess any portion thereof without written notice whenever it deems the same is not being maintained in accordance with this agreement.

b. Upon the termination of this agreement, **TRANSFEREE** agrees to return said apparatus in the same condition as received, reasonable wear and tear, acts of God, and conditions over which he has no control excepted.

c. As inventory changes occur, or items of equipment are replaced, deleted or added by the **STATE** or replaced by **TRANSFEREE**, it is mutually agreed that no amendment to this agreement need be made at the time of the change; provided however, at the termination of this agreement a complete reconciliation of all equipment will be made. **TRANSFEREE** further agrees that all replacements for equipment or apparatus will be made with identical or substantially like items as approved by the **STATE**.

d. Nothing in this agreement shall be construed to create a new property interest or right of action for the **TRANSFEREE**.

16. Unauthorized Use of CalEMA Apparatus and Equipment. Use of this apparatus other than as specified in paragraph 1 will be considered a breach of this agreement.

17. Use of Radio Equipment

a. **STATE** will furnish at **STATE'S** sole cost, radio equipment installed in the apparatus to be operated on the following frequencies: 151.145 - 170.925 .

b. **STATE** agrees to maintain said equipment without cost to **TRANSFEREE**.

c. The **TRANSFEREE** agrees to operate said radio equipment in accordance with the Rules and Regulations of the Federal Communications Commission.

d. Ownership of said equipment is in the **STATE**, and all applications to the Federal Communications Commission seeking authority to add, modify or replace radio equipment covered by this agreement shall be made by and in the name of the State of California. To activate this agreement and in compliance with the control requirements of the Communications Act of 1934, as amended, the **STATE** hereby deputizes the Chief of the agency of said

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

TRANSFEEE, and such volunteers, regularly employed and salaried assistants as shall be designated by the Chief of the agency as his agents to operate said radio equipment as specified in paragraph "c" above.

e. **STATE** assumes no liability hereunder for claims or losses accruing or resulting to any person, firm or corporation furnishing or supplying work, services or material or services in connection with the performance of this agreement or for any claims and losses accruing or resulting to any person, firm or corporation injured or damaged by performance of either party hereunder.

18. All notices herein provided to be given, or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the U.S. mail, registered and postage prepaid and addressed as follows: To the **TRANSFEEE** at Lodi Fire Department, 25 E. Pine Street, Lodi, CA 95240-2127, and to the **STATE** at California Emergency Management Agency, Fire & Rescue Branch, 3650 Schriever Ave., Mather, CA, 95655. The address to which notices shall or may be mailed as aforesaid to either party shall or may be changed by written notice given by such party to the other, as hereinabove provided; but nothing herein contained shall preclude the giving of any such notice by personal service.

19. It is mutually understood and agreed that no alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreements not incorporated herein, and no alterations or variations of the terms hereof unless made in writing between the parties hereto shall be binding on any of the parties hereto.

20. The **STATE** may in its sole discretion and for such good cause as it determines waive in writing in whole or in part any requirement of this agreement that apparatus and/or equipment shall be maintained in operating condition, or repaired, or replaced, providing that any such waiver shall be applicable only to the specific apparatus or equipment to which it refers.

IN WITNESS WHEREOF the parties hereto have executed this agreement upon the date first above written.

TRANSFEEE:
City of Lodi
Lodi Fire Department

STATE OF CALIFORNIA:
Matthew Bettenhausen
Secretary
California Emergency Management Agency

By _____
Blair King, City Manager

By Kim Zagaris 5/11/09
Kim Zagaris, State Fire and Rescue Chief

ATTEST:

Approved as to form [Signature]
City Attorney

RANDI JOHL
City Clerk

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
 Fire and Rescue Branch

EXHIBIT "A" - EQUIPMENT INVENTORY: OES-335 thru 338

ENGINE NUMBER: OES 338	LICENSE NUMBER: 1319033	VIN NUMBER: 44KFT42886WZ20938
1 Adapter, 6" x 2-1/2", DF Hydrant		1 Reflector Kit, 3-Unit
1 Adapter, 6" x 4", DF Hydrant		2 Rope, 1/2" x 100', Utility
1 Adapter, 6" x 4-1/2", DF Hydrant		1 Shovel, Long Handle, Round Point, Fiberglass Handle
1 Axe, Pickhead		1 Siamese, 2-1/2"
2 Block, Chock		2 Soft Suction Hose, 3" x 12'
2 Cans, Fuel		1 Strainer, Class A Foam (in fill tower)
4 Cap, 2-1/2" Discharge		1 Strainer, 6" Hard Suction Hose
1 Chain, Tow 25', w/Grab Hooks		4 Strap, Hose and Ladder
1 Clamp, Hose (Hebert)		2 Wrench, Adjustable Hydrant
2 Coupling, 2-1/2", DF		2 Wrench, 1 1/2", Forestry
2 Coupling, 2-1/2", DM		1 Wrench, Suction Hose Spanner
1 Crank, Hose Reel		4 Wrench, Hose Spanner
1 Cutter, Bolt, 30"		1 Wye, Gated 2-1/2" NSF x 2-1 1/2" NSM
1 Fire Extinguisher, 5#		*****US&R INVENTORY:*****
1 First Aid Kit		1 Axe, Flathead
1 Floto Pump, OES# 156637 Serial# 09FL0108		1 Backboard, w/4 Straps
1 Backpack, Thermo-Gel		2 Bar, Claw, Wrecking, 3'
1 Gel - Pick-up Tube		4 Bar, Pinch Point, Pry, 60"
1 Gel - Eductor & Nozzle		3 Belt, Carpenter
2 Gel - Concentrate, 5 Gal.		12 Blade, Hacksaw, Carbide
1 Generator, 3500 Kw, OES# 156638 Serial# EZGA 1204904		2 Blanket, Disposable
2 Hammer, Sledge, 8-10 lb.		27 Carabiner, Locking, "D", 11 mm
8 Hose, 1" x 100', NST		1 Chainsaw, w/ carbide chain and tool kit, OES# 156636 Serial# 170374640
1 Hose, 1-1/2" x 35', Truck Protection Line		
12 Hose, 1-1/2" x 50', NST		2 Chisel, Cold, 1" x 7-7/8"
8 Hose, 1-1/2" x 100', Forestry		2 Chemical Light Kit
24 Hose, 3" x 50', NST		2 Cribbing & Wedge Kit
2 Hose, Booster 1" x 100'		2 Edge Protectors
2 Hose, Hard Suction 6" x 10'		1 Emergency Signaling Device
1 Hose, Soft Suction 6" x 12'		2 Friction Device, (Fig. 8 w/ Brake Bar Rack)
1 Increaser, 1" IPF to 1-1/2" NSM		2 Hacksaw
1 Intercom Set		2 Handsaw, Crosscut, 26"
1 Ladder, 10' Attic		3 Hammer, Framing, 24 oz
1 Ladder, 14' Roof		4 Hammer, Sledge, 3-4 lb., Short
1 Ladder, 24' Extension		2 Harness, Commercial (Class 2 or better)
1 Lantern, Hand, 12 Volt		2 Haul Bag
1 Log Book, w/Credit Card		2 Jack, Hydraulic w/Handle (8 ton)
1 Mallet, Rubber		2 Kernmantle, 1/2" x 150', Static, NFPA Approved
2 McCleod		1 Knife, Utility
1 Mount, Ground, Deluge		1 Level, 6"
2 Nozzle, 1", Combination		1 Litter & Litter Cover
5 Nozzle, 1 1/2", Combination		1 Litter Pre-rig
1 Nozzle, Deluge Set w/Stream Straightener and Tips 1-3/8", 1-1/2", 1-3/4", 2"		2 Load Release
1 Nozzle, 1 1/2", Foam, Air Aspiration		6 Loop, Prusik
1 Nozzle, 2 1/2", Fog		1 Marking Kit, Building
2 Nozzle, 2 1/2", Shutoff w/Tips		2 Multipoint Collection Plate
1 OES Operations/Maintenance Bulletins		3 Nails, (25 lbs. Each: 16p, 8p, 16p Duplex)
1 Pike Pole		6 Picket, Steel, 1" x 4'
2 Plug, 2-1/2" Suction		3 Pulley, Rescue, Prusik Minding
1 Pulaski		1 Shovel, Scoop, "D" Handle, Fiberglass Handle
1 Radio, Bendix-King, Handheld Serial# GPH5102XCMD0907308 OES# 156640 DGS# N/A		1 Shovel, Long Handle, Square Point, Fiberglass Handle
1 Radio, Kenwood, Mobile Serial# A9100041 OES# 156639 DGS# N/A		3 Square, (Tri or Speed)
		1 Square, Framing, 24"
		3 Tape Measure, 25'
		2 Tape, Barrier
		2 Tape, Duct
		1 Took Kit
1 Reducer, 1-1/2" NSF to 1" IPM		1 Trauma Kit
1 Reducer, 2-1/2" NSF to 1-1/2" NSM		1 Webbing Kit, (6 ea: 1"x5', 1"x12', 1"x15', 1"x20')

REMARKS: _____

ACCEPTED BY: _____

TITLE: _____

DEPARTMENT: _____

DATE: _____

State of California
 CALIFORNIA EMERGENCY MANAGEMENT AGENCY
 Fire and Rescue Branch

EXHIBIT "B"
TEMPORARY OES APPRATUS ASSIGNMENT RECORD

NO.	ARTICLE	OES DECAL	QUANTITY
1.	1000 <i>or</i> 1250 gpm Triple Combination Fire Engine, complete with equipment per attached Exhibit "A" of Agreement for Temporary Transfer of Vehicular Equipment.	OES 338	1
2.	License No: <u>1319033</u>		
3.	VIN No: <u>44KFT42886WZ20938</u>		
4.	Engine No: <u>OES 338</u>		
5.	Proof of Insurance: _____		
6.	Inventory Completed: _____		
7.			
8.			
9.			
10.			
11.			

REASON FOR TEMPORARY TRANSFER: New Assignee

SIGNATURES:

 PERMANENT TRANSFEREE

Date _____

 TEMPORARY ASSIGNEE

Date _____

State of California
CALIFORNIA EMERGENCY MANAGEMENT AGENCY
Fire and Rescue Branch

EXHIBIT "C"
INSURANCE REQUIREMENTS

Part of the agreement through which the State makes a temporary transfer of vehicular equipment is the agreement on the part of the transferee to furnish certain evidence of insurance. Your organization, as a transferee of equipment, will want to be mindful of these requirements and assure they are complied with.

Liability Insurance

A certificate of insurance shall be furnished to the State providing minimum limits of insurance as follows:

BODILY INJURY and PROPERTY DAMAGE LIABILITY \$1,000,000.00 PER OCCURANCE

A certificate of insurance will have the following provisions included:

1. The State of California shall be named Additional Insured.
2. The insurance company shall agree that in the event of cancellation, 15 days prior written notice will be given to the State.
3. The State shall not be responsible for premium or assessments.
4. Certificate of Insurance must include the description of the apparatus including identification number, State license number and OES unit number.

Physical Damage Insurance

The transfer agreements place certain responsibilities upon your organization for the safekeeping of the vehicle and equipment. The State will look to your organization for reimbursement for repair or replacement cost in the event the vehicle or equipment is damaged by misuse or negligence or by other causes, except normal wear and tear, acts of God and conditions over which your organization has no control.

Description of Apparatus

<u>VEHICLE</u>	<u>VALUE</u>
<u>07 Westates Type 1 Fire Apparatus</u>	<u>\$309,000.00</u>

License Number:	<u>1319033</u>
VIN Number:	<u>44KFT42886WZ20938</u>
Engine Number:	<u>OES 338</u>

EQUIPMENT

Hose and Appliance	<u>\$31,000.00</u>
--------------------	--------------------

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
ACCEPTING TEMPORARY TRANSFER OF FIRE
APPARATUS FROM THE CALIFORNIA EMERGENCY
MANAGEMENT AGENCY TO THE CITY OF LODI,
AND AUTHORIZE THE CITY MANAGER TO
EXECUTE THE AGREEMENT

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby accept the temporary transfer of Fire Apparatus known as OES Fire Engine No. 338 from the California Emergency Management Agency to the City of Lodi; and

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute the Agreement on behalf of the City of Lodi.

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk



CITY OF LODI COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution at the Request of the League of California Cities Declaring Fiscal Hardship Due to State's Ongoing Seizure of Local Property Tax Funds for the Educational Revenue Augmentation Fund and its Continued Adoption of Unfunded Mandates

MEETING DATE: May 20, 2009

PREPARED BY: City Manager

RECOMMENDED ACTION: Adopt resolution at the request of the League of California Cities declaring that the City of Lodi is experiencing a severe fiscal hardship due to the state's ongoing seizure of local property tax funds for the Educational Revenue Augmentation Fund and the continued adoption of unfunded mandates by the State of California.

BACKGROUND INFORMATION: The League of California Cities has requested Lodi take a stand in opposition to the state's transfer of property tax. Due to the current economic crisis, the State Department of Finance has proposed to the Governor that the state "borrow" over \$2 billion in local property taxes from cities, counties, and special districts to balance the state budget.

It is recommended that Council adopt the attached resolution opposing this proposal and urging the State legislature and Governor to suspend the enactment of any new mandates on local governments until such time as the economy has recovered and urging the State to provide complete funding for all existing and any new mandates.

FISCAL IMPACT: This proposal would take 8% of the City's property tax, including secured and unsecured property tax, supplemental and unitary tax, Vehicle License Fee adjustment, and property tax in lieu of sales tax via the triple flip. Pursuant to the attached worksheet from the League of California Cities, Lodi's share is \$1,390,137.

FUNDING AVAILABLE: N/A

Blair King
City Manager

BK/JMP

Attachment

APPROVED: _____
Blair King, City Manager

Estimated FY09-10 City & County Impacts of the State Dept of Finance Draft Proposed Local Property Tax Borrowing Under Proposition 1A(2004)

Note: Prop 1A stipulates a maximum amount that may be borrowed statewide. It does not specify how that amount might be allocated.
These figures assume an 8% per jurisdiction allocation as implied in the DOF proposal.

See notes page 15.

City/County	Property Taxes Allocated - FY2008-09 estimated			Total Est. 2008-09	Total Impact at 8%
	Sec/Unsec PropertyTax ¹	Prop Tax in Lieu of VLF ²	SalesTax TripleFlip ³		
SAN DIEGO COUNTY					
CARLSBAD	41,607,688	7,820,791	6,892,563	56,321,043	4,505,683
CHULA VISTA	21,988,509	19,001,820	7,423,698	48,414,026	3,873,122
CORONADO	18,248,732	2,175,595	619,712	21,044,039	1,683,523
DEL MAR	3,676,418	385,806	400,416	4,462,640	357,011
EL CAJON	7,315,300	7,293,362	5,836,998	20,445,660	1,635,653
ENCINITAS	28,006,266	5,174,859	2,821,587	36,002,712	2,880,217
ESCONDIDO	17,625,005	11,285,853	7,471,533	36,382,391	2,910,591
IMPERIAL BEACH	2,091,817	2,302,651	208,623	4,603,090	368,247
LA MESA	6,112,756	4,610,603	2,897,132	13,620,492	1,089,639
LEMON GROVE	2,264,812	2,070,968	1,104,426	5,440,206	435,216
NATIONAL CITY	3,481,563	5,048,140	3,897,114	12,426,817	994,145
OCEANSIDE	35,515,662	14,669,727	4,488,719	54,674,109	4,373,929
POWAY	8,680,011	3,806,958	3,144,937	15,631,905	1,250,552
SAN DIEGO	293,185,640	106,054,809	57,185,462	456,425,911	36,514,073
SAN MARCOS	6,086,214	6,206,632	3,982,200	16,275,046	1,302,004
SANTEE	8,701,242	4,450,191	2,091,862	15,243,295	1,219,464
SOLANA BEACH	5,533,020	1,131,829	737,173	7,402,021	592,162
VISTA	10,825,381	7,196,335	3,402,348	21,424,064	1,713,925
County of SAN DIEGO	562,283,894	310,877,256	6,205,634	879,366,783	70,349,343
SAN FRANCISCO COUNTY					
SAN FRANCISCO	951,574,357	61,821,670	40,597,046	1,053,993,072	84,319,446
SAN JOAQUIN COUNTY					
ESCALON	1,351,351	531,486	216,609	2,099,446	167,956
LATHROP	3,991,558	1,388,218	590,518	5,970,294	477,624
LODI	10,540,671	4,415,819	2,420,218	17,376,708	1,390,137
MANTECA	6,243,712	4,831,633	2,097,864	13,173,208	1,053,857
RIPON	1,239,146	1,107,332	707,385	3,053,863	244,309
STOCKTON	37,254,232	22,307,523	10,275,983	69,837,739	5,587,019
TRACY	14,726,664	5,969,170	3,178,349	23,874,183	1,909,935
County of SAN JOAQUIN	127,261,316	68,927,057	4,087,491	200,275,864	16,022,069
SAN LUIS OBISPO COUNTY					
ARROYO GRANDE	4,075,524	1,249,592	858,302	6,183,418	494,673
ATASCADERO	5,664,579	2,267,771	917,772	8,850,122	708,010
EL PASO DE ROBLES	6,216,143	2,416,720	1,963,452	10,596,315	847,705
GROVER BEACH	4,943,529	1,394,347	283,763	6,621,638	529,731
MORRO BAY	2,652,951	821,647	402,953	3,877,551	310,204
PISMO BEACH	3,315,914	726,412	561,030	4,603,356	368,268
SAN LUIS OBISPO	9,338,533	3,466,716	3,472,294	16,277,542	1,302,203
County of SAN LUIS OBISPO	101,999,142	26,054,197	2,404,813	130,458,152	10,436,652

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE LODI CITY COUNCIL
DECLARING THAT THE CITY IS EXPERIENCING A
SEVERE FISCAL HARDSHIP DUE TO THE STATE'S ONGOING
SEIZURE OF LOCAL PROPERTY TAX FUNDS FOR THE
EDUCATIONAL REVENUE AUGMENTATION FUND AND THE
CONTINUED ADOPTION OF UNFUNDED MANDATES BY THE
STATE OF CALIFORNIA

=====

WHEREAS, the current economic crisis has placed cities under incredible financial pressure and caused city officials to reopen adopted budgets, furlough city workers, and reduce services and programs to keep spending in line with declining revenues; and

WHEREAS, since the early 1990s, the state government of California has seized over \$8.6 billion of city property tax revenues statewide to fund the state budget even after deducting public safety program payments to cities by the state; and

WHEREAS, in fiscal year 2007-08 alone, the state seized \$895 million in city property taxes statewide to fund the state budget after deducting public safety program payments and an additional \$350 million in local redevelopment funds were seized in fiscal year 2008-09; and

WHEREAS, the Educational Revenue Augmentation Fund (ERAF) shift is \$3,095,166 annually for Lodi; and

WHEREAS, in 2004, the voters, by an 84% vote margin, adopted substantial constitutional protections for local revenues, but the legislature can still "borrow" local property taxes to fund the state budget; and

WHEREAS, on May 5, the Department of Finance announced it had proposed to the Governor that the state "borrow" over \$2 billion in local property taxes from cities, counties, and special districts to balance the state budget, causing deeper cuts in local public safety and other vital services; and

WHEREAS, in the past, the Governor has called such "borrowing" proposals fiscally irresponsible because the state will find it virtually impossible to repay and it would only deepen the state's structural deficit, preventing the state from balancing its budget; and

WHEREAS, the legislature is currently considering hundreds of bills, many of which would impose new costs on local governments that can neither be afforded nor sustained in this economic climate; and

WHEREAS, state agencies are imposing, or considering, hundreds of regulations imposing unfunded mandates on local governments without regard to how local agencies will be able to comply with these mandates while meeting their other responsibilities; and

WHEREAS, the City of Lodi simply cannot sustain the loss of any more property tax funds or be saddled with any more state mandates as they will only deepen the financial challenge facing our city.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby declare that the City is experiencing a severe fiscal hardship due to the following factors:

1. The state government's ongoing seizure of city property tax funds since the early 1990s to fund the state budget and the \$3,095,166 annual ERAF shift; and
2. The continued adoption of unfunded mandates by the state legislature and state agencies without any consideration for the economic hardships such mandates impose on cities and their residents.

BE IT FURTHER RESOLVED that the City Council strongly and unconditionally opposes the May 5 proposal of the Department of Finance and any other state government proposals to borrow or seize any additional local funds, including property tax and the City's share of Proposition 42 transportation sales tax; and

RESOLVED FURTHER that the City Council strongly urges the state legislature and Governor to suspend the enactment of any new mandates on local governments until such time as the economy has recovered and urges the state to provide complete funding for all existing and any new mandates; and

RESOLVED FURTHER that the City Clerk shall send copies of this resolution to the Governor, state senator, state assembly member, and the League of California Cities.

Date: May 20, 2009

=====

I hereby certify that Resolution No. 2009-____ was passed and adopted by the Lodi City Council in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk



CITY OF LODI

COUNCIL COMMUNICATION

TM

AGENDA TITLE: Adopt Resolution Initiating Proceedings for the Levy and Collection of Assessments, Resolution Approving the Annual Report, and Resolution Declaring Intention to Levy and Collect Assessments for the Lodi Consolidated Landscape Maintenance District No. 2003-1 for Fiscal Year 2009/10; Set Public Hearing for June 17, 2009

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt the following resolutions and set a public hearing for June 17, 2009:

1. A resolution of the City Council of the City of Lodi, California, initiating proceedings for the levy and collection of assessments for the Lodi Consolidated Landscape Maintenance District No. 2003-1 for Fiscal Year 2009/10
2. A resolution of the City Council of the City of Lodi, California, approving the Annual Report for the Lodi Consolidated Landscape Maintenance District No. 2003-1 for Fiscal Year 2009/10
3. A resolution of the City Council of the City of Lodi, California, declaring its intention to levy and collect assessments for the Lodi Consolidated Landscape Maintenance District No. 2003-1 for Fiscal Year 2009/10

BACKGROUND INFORMATION: Over the past six years, the City Council has formed a total of 16 zones of the Lodi Consolidated Landscape Maintenance District No. 2003-1 (District). The scope of maintenance activities funded by the District includes 1) landscape and irrigation, 2) masonry block walls, 3) street parkway trees, and 4) public park areas. The activities and levy amount vary by zone, as described in the City of Lodi, Lodi Consolidated Landscape Maintenance District No. 2003-1, Annual Report (Report), Fiscal Year 2009/10 that is on file in the Public Works Department.

The Report describes the general nature, location and extent of the improvements to be maintained and an estimate of the costs of the maintenance, operations, and servicing for the improvements. The Report includes a diagram for the District showing the area and properties proposed to be assessed; an assessment of the estimated costs of the maintenance, operations and servicing for the improvements; and the net levy upon all assessable lots and/or parcels within the District.

The action requested of the City Council is to initiate proceedings for the levy and collection of assessments for Fiscal Year 2009/10, approve the Annual Report, to declare its intention to levy the assessments and to set a public hearing for June 17, 2009, to receive public comments. After the public hearing, City Council will be asked to confirm the Final Report and order the levy and collection of the assessments.

FISCAL IMPACT: Funding for preparation of the Report is included in the assessments.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

Prepared by Sharon Welch, Senior Civil Engineer
FWS/SAW/pmf

Attachment

cc: City Attorney
Streets & Drainage Manager

Interim Parks and Recreation Director
NBS

APPROVED: _____
Blair King, City Manager

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LODI, CALIFORNIA, INITIATING PROCEEDINGS FOR
THE LEVY AND COLLECTION OF ASSESSMENTS FOR THE
LODI CONSOLIDATED LANDSCAPE MAINTENANCE DISTRICT
NO. 2003-1 FOR FISCAL YEAR 2009-10

=====

WHEREAS, the Council previously completed its proceedings in accordance with and pursuant to the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* ("Act") to establish the *Lodi Consolidated Landscape Maintenance District No. 2003-1* ("Assessment District"); and

WHEREAS, the City has retained NBS Government Finance Group, DBS NBS, for the purpose of assisting with the annual levy of the Assessment District, and to prepare and file an Annual Report, in accordance with §22567 of the Act.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE COUNCIL, AS FOLLOWS:

1. Annual Report: The Council hereby orders NBS to prepare and file with the City Clerk the Annual Report concerning the levy and collection of assessments within the Assessment District for the fiscal year commencing July 1, 2009 and ending June 30, 2010.
2. New Improvements or Changes to Existing Improvements: There are no changes to existing improvements nor are there any items being added to the list of improvements previously approved at the formation of the Assessment District.

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF LODI, CALIFORNIA, APPROVING THE
ANNUAL REPORT FOR THE LODI CONSOLIDATED
LANDSCAPE MAINTENANCE DISTRICT NO. 2003-1
FOR FISCAL YEAR 2009-10

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WHEREAS, the Council previously completed its proceedings in accordance with and pursuant to the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* (“Act”) to establish the *Lodi Consolidated Landscape Maintenance District No. 2003-1* (“Assessment District”); and

WHEREAS, the City has retained NBS Government Finance Group, DBS NBS, for the purpose of assisting with the annual levy of the Assessment District, and to prepare and file an Annual Report, in accordance with §22567 of the Act; and

WHEREAS, the Council has, by previous resolution, ordered NBS to prepare and file such Annual Report; and

WHEREAS, NBS has prepared and filed such Annual Report with the City Clerk.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE COUNCIL, AS FOLLOWS:

- 1. Approval of Report: The Council hereby approves the Annual Report concerning the levy of assessments as submitted by NBS for the fiscal year commencing July 1, 2009 and ending June 30, 2010.

Dated: May 20, 2009

=====

I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

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

RANDI JOHL
City Clerk

RESOLUTION NO. 2009-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LODI, CALIFORNIA, DECLARING ITS INTENTION
TO LEVY AND COLLECT ASSESSMENTS FOR THE
LODI CONSOLIDATED LANDSCAPE MAINTENANCE
DISTRICT NO. 2003-1 FOR FISCAL YEAR 2009-10

=====

WHEREAS, the Council previously completed its proceedings in accordance with and pursuant to the *Landscape and Lighting Act of 1972, Part 2, Division 15 of the California Streets and Highways Code (commencing with Section 22500)* ("Act") to establish the *Lodi Consolidated Landscape Maintenance District No. 2003-1* ("Assessment District"); and

WHEREAS, the City has retained NBS Government Finance Group, DBS NBS, for the purpose of assisting with the annual levy of the Assessment District, and to prepare and file an Annual Report, in accordance with §22567 of the Act.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED BY THE COUNCIL, AS FOLLOWS:

1. Intention: The Council hereby declares its intention to levy and collect assessments within the Assessment District to pay the costs of the Improvements for the fiscal year commencing July 1, 2009 and ending June 30, 2010. The Council finds that the public's best interest requires such action.
2. Improvements: The Improvements include, but are not limited to: turf, shrubs, plants and trees, landscaping, irrigation and drainage systems, graffiti removal, and associated appurtenances within the public right-of-ways or specific easements. Services provided include all necessary service, operations, administration and maintenance required to keep the improvements in a healthy, vigorous, and satisfactory condition.
3. Assessment District Boundaries: The boundaries of the Assessment District are as shown by the assessment diagram filed in the offices of the City Clerk, which map is made a part hereof by reference.
4. Annual Report: Reference is made to the Annual Report prepared by NBS, on file with the City Clerk, for a full and detailed description of the improvements, the boundaries of the Assessment District and the zones therein and the proposed assessments upon assessable lots and parcels of land within the Assessment District.
5. Notice of Public Hearing: The Council hereby declares its intention to conduct a Public Hearing concerning the levy of assessments in accordance with §22629 of the Act. All objections to the assessment, if any, will be considered by the Council. The Public Hearing will be held on Wednesday, June 17, 2009, at 7:00 p.m. or as soon thereafter as is feasible in the Council Chambers located at 305 West Pine Street, Lodi, CA, 95240. The Council further orders the City Clerk to publish notice of this resolution in accordance with §22626 of the Act.

6. Increase of Assessment: The maximum assessment is not proposed to increase from the previous year above that previously approved by the property owners (as "increased assessment" is defined in §54954.6 of the Government Code).

Dated: May 20, 2009

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I hereby certify that Resolution No. 2009-_____ was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 20, 2009, by the following vote:

AYES: COUNCIL MEMBERS –

NOES: COUNCIL MEMBERS –

ABSENT: COUNCIL MEMBERS –

ABSTAIN: COUNCIL MEMBERS –

RANDI JOHL
City Clerk

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.

Comments by the City Council Members on non-agenda items



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Hold Public Hearing to Consider Adopting Urgency Ordinance to Extend Interim Ordinance No. 1822, which established a Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries.

MEETING DATE: May 20, 2009

PREPARED BY: Deputy City Attorney

RECOMMENDED ACTION: Adopt Urgency Ordinance to Extend Interim Ordinance No. 1822, which Established a Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries, for a period of 10-months and 15-days.

BACKGROUND INFORMATION: On April 15, 2009 the Council adopted Interim Ordinance No. 1822 establishing a 45-day moratorium on the establishment and operation of medical marijuana dispensaries within the City. The Ordinance was adopted in response to the recent inquires from members of the public about opening medical marijuana dispensaries in the City. In addition, the City's Municipal Code does not address the issue, which given undecided questions over the conflict between California and federal marijuana laws may (or may not) mean that such dispensaries are a prohibited use within the City of Lodi.

Staff recommends that provisions should be added the City's Municipal Code that either regulate medical marijuana dispensaries or prohibit such uses if that is the desire of the Council. To do so, however, staff will need adequate time to study the current status of State and federal law governing the distribution of medical marijuana, to review the City's General Plan and the zoning ordinances, and to make recommendations for the Council's consideration. Unfortunately, it is clear that the initial 45 days will be inadequate to prepare a comprehensive approach for Council consideration.

Continuation of the moratorium does not preclude medical marijuana patients or their primary caregivers from associating in order to collectively or cooperatively cultivate marijuana for medical purposes as provided under existing California law (see Health & Safety Code Section 11362.775). As more fully explained in the guidelines issued by the office of Attorney General Edmund G. Brown, Jr., entitled "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" (August 2008), "Collectives" and "Cooperatives" are permitted under California law, in contrast to storefront dispensaries which are not (a copy of the Guidelines are attached).

Government Code Section 65858 provides that the Council, may, after notice to the public pursuant to Government Code Section 65090 and a public hearing, extend Interim Ordinance No. 1822 for a period of 10-months and 15-days. The extension requires a minimum four-fifths vote to be adopted. (An additional one-year extension is permissible under Section 65858(a)).

As proposed, the recommended extension of Interim Ordinance No. 1822 would extend the current 45-day moratorium on the issuance of use permits, variances, building permits, business licenses, or any other entitlement for the establishment or operation of medical marijuana dispensaries to April 14, 2010.

APPROVED: _____

Blair King, City Manager

Without the proposed extension, Ordinance 1822 will be of no further force and effect after May 30, 2009.

FUNDING: None.

Janice D. Magdich
Deputy City Attorney

cc: Rad Bartlam, Community Development Director
David Main, Police Chief

Attachments: California Attorney General's Guidelines
for the Securitized Non-Diversion of Marijuana
Grown for Medical Use.



**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for

¹ Unless otherwise noted, all statutory references are to the Health & Safety Code.

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. **Physician's Recommendation:** Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. **Primary Caregiver:** A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) **MMP:**² Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

² On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is "reasonably related to [their] current medical needs." (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. **State of California Medical Marijuana Identification Cardholders:** When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. **Non-Cardholders:** When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines:** If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. **Return of Seized Medical Marijuana:** If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. **Collectives:** California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”].)
2. **Business Licenses, Sales Tax, and Seller’s Permits:** The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.
3. **Membership Application and Verification:** When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:
 - a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
 - b) Have the individual agree not to distribute marijuana to non-members;
 - c) Have the individual agree not to use the marijuana for other than medical purposes;
 - d) Maintain membership records on-site or have them reasonably available;
 - e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
 - f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. **Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana:** Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed-circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to non-medical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. **Distribution and Sales to Non-Members are Prohibited:** State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. **Possession and Cultivation Guidelines:** If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. **Security:** Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. **Enforcement Guidelines:** Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. **Storefront Dispensaries:** Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. **Indicia of Unlawful Operation:** When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

ORDINANCE NO. _____

AN UNCODIFIED INTERIM URGENCY ORDINANCE OF THE
CITY COUNCIL OF THE CITY OF LODI EXTENDING
ORDINANCE NO. 1822 IMPOSING A TEMPORARY
MORATORIUM ON THE ESTABLISHMENT OR OPERATION
OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF
LODI

=====

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, which was codified as Health and Safety Code Section 11362.5, *et seq.* and entitled the Compassionate Use Act of 1996 (“the Act”); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, under the U.S. Controlled Substances Act, marijuana is classified as a Schedule 1 drug, meaning it has no accepted medical use; and

WHEREAS, the City of Lodi (the “City”) has received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and

WHEREAS, medical marijuana dispensaries raise issues of first impression for the City, which currently does not address or regulate in any manner the existence or location of medical marijuana dispensaries in its Municipal Code; and

WHEREAS, based on recent trends, the City believes that it may receive a growing number of inquiries for such businesses, including an application in the immediate future; and

WHEREAS, other California cities that have permitted the establishment of medical marijuana dispensaries have witnessed an increase in crime, such as burglaries, robberies, and the sale of illegal drugs in the areas immediately surrounding such dispensaries; and

WHEREAS, the City must study and analyze concerns about the potential negative impacts on the public health, safety, and welfare arising from medical marijuana dispensaries, including, but not limited to, criminal incidents, loitering, disturbing the peace, and property damage; and

WHEREAS, the City must study the scope of the City’s police power and draft the necessary municipal code provisions; and

WHEREAS, if medical marijuana dispensaries were allowed to be established in the City without appropriate regulation, such uses might be established in areas that would conflict with the General Plan currently under consideration by the Planning Commission and the City Council, be inconsistent with surrounding uses, or be detrimental to the public health, safety, and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries; and

WHEREAS, the issuing of permits, business licenses, or other applicable entitlements providing for the establishment and/or operation of medical marijuana dispensaries, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare, and that a temporary moratorium on the issuance of such permits, licenses, and entitlements is thus necessary; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and Section 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated General Plan adoption and zoning ordinance review; and

WHEREAS, California Government Code §65858 authorizes cities to adopt moratoriums on land use entitlements in order to study any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City Council on April 15, 2009, adopted Ordinance No. 1822 entitled an Uncodified Urgency Interim Ordinance of the City Council of the City of Lodi making findings and imposing a forty-five (45) day moratorium on the establishment or operation of medical marijuana dispensaries in the City of Lodi; and

WHEREAS, the City Council desires to extend Ordinance No. 1822 for a period of ten (10) months and fifteen (15) days, as permitted by Government Code Section 65858, to maintain the current status quo and to provide time for the City to study applicable law, a permit or licensing procedure, the appropriate zoning districts for such uses, and adopt regulatory standards and conditions to be imposed on such operations.

NOW, THEREFORE, BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

Section 1. The City Council finds that in accordance with the terms and provisions of Section 65858 of the Government Code, and following notice given in the time and manner required by law, it held a public hearing on the extension of Ordinance No. 1822 on May 20, 2009. After hearing all applicable evidence, the City Council finds that the conditions and findings cited in Ordinance 1822 continue to exist and that further study by City staff is necessary in order to study applicable law, a permit or licensing

procedure, the appropriate zoning districts for such uses, and to adopt regulatory standards and conditions to be imposed on such operations.

Section 2. Imposition of Moratorium.

A. In accordance with Government Code Section 65858, from and after the date of the expiration of Ordinance No. 1822, no use permit, variance, building permit, business license, or other applicable entitlement for use shall be approved or issued for the establishment or operation of a medical marijuana dispensary for a period of ten (10) months and fifteen (15) days.

B. For purposes of this Ordinance, “medical marijuana dispensary” shall mean any facility or location where a primary caregiver intends to or does make available, sell, transmit, give, or otherwise provide medical marijuana to two or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. For purposes of this ordinance, the terms “primary caregiver,” “qualified patient,” and “identification card” shall have the same meaning as that set forth in Health and Safety Code Section 11362.7, *et seq.*

C. For purposes of this Ordinance, a medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by applicable law and as long as such use complies strictly with applicable law, including, but not limited to, Health and Safety Code Section 11362.7, *et seq.*: (1) a clinic, licensed pursuant to Chapter 1, Division 2 of the Health and Safety Code (commencing with §1200); (2) a health care facility, licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code (commencing with §1250); (3) a residential care facility for persons with chronic life-threatening illness, licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code (commencing with §1568.01); (4) a residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code (commencing with §1569); or (5) a hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code (commencing with §1725), the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

D. This Ordinance is an urgency ordinance adopted pursuant to the authority granted to the City of Lodi by Government Code Section 65858 and is for the immediate preservation of the public health, safety, and welfare. The City Council of the City of Lodi hereby finds and declares that there is a need to enact an urgency ordinance establishing a moratorium on medical marijuana dispensaries, based upon the following findings:

- (1) California cities that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in negative and harmful secondary effects, such as an increase in crime, including robberies, burglaries, and sales of illegal drugs in the areas immediately surrounding medical marijuana dispensaries. This potential for increased risk of crime and violence presents a clear and immediate danger to the public health, safety and welfare of the residents of the City of Lodi; and

- (2) The City has recently received inquiries from members of the public as to the permitting process and zoning regulations for operating medical marijuana dispensaries within the City; and
- (3) The City does not currently have standards in its Municipal Code relating to the location, operation, and concentration of medical marijuana dispensaries within the City; and
- (4) If medical marijuana dispensaries were allowed to be established without appropriate review of location and operational criteria and standards, such uses might be established in areas that would conflict with the General Plan under consideration by the Planning Commission and the City Council, be inconsistent with surrounding uses, or could have potential adverse secondary effects on neighborhoods in the City and be detrimental to the public health, safety, and welfare; and
- (5) The failure to extend the existing moratorium may result in significant irreversible change in the character of the community and the neighborhood surrounding any marijuana dispensary that would be allowed to open under the City's Municipal Code; and
- (6) Permitting a marijuana dispensary to open while the City is studying and considering a new General Plan as well as zoning regulations to regulate and/or prohibit this use would defeat the purpose of studying these impacts in the first place; and
- (7) As a result of the negative and harmful secondary effects associated with medical marijuana dispensaries and the current and immediate threat such secondary effects pose to the public health, safety, and welfare, it is necessary to extend the existing moratorium on the establishment and operation of medical marijuana dispensaries in the City for a period of ten (10) months and fifteen (15) days from and after the date of the expiration of Ordinance No. 1822, to allow for the completion of the City's study of the potential impacts of medical marijuana dispensaries and possible amendments to the City's Municipal Code.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council of the City of Lodi hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

Section 4. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the

City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6. Conflict. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

Section 7. Effective Date. This urgency Ordinance shall be published one time in the "Lodi News Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi, and shall be in force and take effect immediately upon its passage and approval by at least four-fifths vote of the City Council the expiration of Ordinance No. 1822 (May 30, 2009), and shall be in effect for a period of ten (10) months and fifteen (15) days (April 14, 2010), unless repealed or extended by further action of the City Council as provided by Government Code Section 65858

Approved this ____ day of _____, 2009

LARRY D. HANSEN
Mayor

ATTEST:

RANDI JOHL
City Clerk

State of California
County of San Joaquin, ss.

I, Randi Johl, City Clerk of the City of Lodi, do hereby certify that Ordinance No. ____ was adopted as an urgency ordinance at a regular meeting of the City Council of the City of Lodi held May 20, 2009, and was thereafter passed, adopted, and ordered to print by the following vote:

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

I further certify that Ordinance No. ____ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

RANDI JOHL
City Clerk

Approved to Form:

JANICE D. MAGDICH
Deputy City Attorney



Please immediately confirm receipt of this fax by calling 333-6702

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT: PUBLIC HEARING TO CONSIDER EXTENDING INTERIM ORDINANCE NO. 1822, AN UNCODIFIED URGENCY INTERIM ORDINANCE TO ESTABLISH A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

PUBLISH DATE: SATURDAY, MAY 9, 2009

LEGAL AD

TEAR SHEETS WANTED: Three (3) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, MAY 7, 2009

ORDERED BY: RANDI JOHL
CITY CLERK


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS Faxed to the Sentinel at 369-1084 at 1:30pm (time) on 5/7/09 (date) 2 (pages)
Phoned to confirm receipt of all pages at _____ (time) _____ CF _____ MB _____ JMP (initials)



DECLARATION OF POSTING

PUBLIC HEARING TO CONSIDER EXTENDING INTERIM ORDINANCE NO. 1822, AN UNCODIFIED URGENCY INTERIM ORDINANCE TO ESTABLISH A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

On Friday, May 8, 2009, in the City of Lodi, San Joaquin County, California, a copy of a Notice of Public Hearing to consider extending interim Ordinance No. 1822, an uncodified urgency interim ordinance to establish a moratorium on the establishment and operation of medical marijuana dispensaries (attached hereto, marked Exhibit "A") was posted at the following four locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 8, 2009, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Carnegie Forum
305 West Pine Street, Lodi

NOTICE OF PUBLIC HEARING

Date: May 20, 2009

Time: 7:00 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, May 20, 2009**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following item:

- a) **Extend interim Ordinance No. 1822, an uncodified urgency interim ordinance to establish a moratorium on the establishment and operation of medical marijuana dispensaries.**

Information regarding this item may be obtained in the City Attorney's Office, 221 West Pine Street, Lodi, (209) 333-6701. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: **May 6, 2009**

Approved as to form:

D. Stephen Schwabauer
City Attorney



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Post for One Vacancy on the Greater Lodi Area Youth Commission (Adult Advisor)

MEETING DATE: May 20, 2009

PREPARED BY: City Clerk

RECOMMENDED ACTION: Direct the City Clerk to post for one vacancy on the Greater Lodi Area Youth Commission (Adult Advisor).

BACKGROUND INFORMATION: The City Clerk's Office received notification of resignation from Greater Lodi Area Youth Commission Adult Advisor, Imtiaz (Roger) Khan. It is, therefore, recommended that the City Council direct the City Clerk to post for the vacancy shown below.

Greater Lodi Area Youth Commission

(Adult Advisor)

Imtiaz (Roger) Khan Term to expire May 31, 2010

Government Code Section 54970 et seq. requires that the City Clerk post for vacancies to allow citizens interested in serving to submit an application. The City Council is requested to direct the City Clerk to make the necessary postings.

FISCAL IMPACT: None.

FUNDING AVAILABLE: None required.

Randi Johl
City Clerk

RJ/JMP

APPROVED: _____
Blair King, City Manager



TM

CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Monthly Protocol Account Report
MEETING DATE: May 20, 2009
PREPARED BY: City Clerk

RECOMMENDED ACTION: None required, information only.

BACKGROUND INFORMATION: The City Council, at its meeting of July 19, 2000, adopted Resolution No. 2000-126 approving a policy relating to the City's "Protocol Account." As a part of this policy, it was directed that a monthly itemized report of the "Protocol Account" be provided to the City Council.

Attached please find the cumulative report through April 30, 2009.

FISCAL IMPACT: N/A

FUNDING AVAILABLE: See attached.

Randi Johl
City Clerk

RJ/JMP

Attachment

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Consider Waiving CPI Increase for Water Fund for Fiscal Year 2009/10 and/or Amend Water Rate Schedule as Approved by Council on April 16, 2008

MEETING DATE: May 20, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Consider waiving the CPI increase for the Water Fund for Fiscal Year 2009/10 and maintain the water rate schedule as approved by Council on April 16, 2008. (Alternative - direct staff to prepare resolution to amend the water rate schedule as approved by Council on April 16, 2008.)

BACKGROUND INFORMATION: Under normal circumstances, a recommendation for a Consumer Price Index (CPI) adjustment would be brought to the City Council at this time. However, uncertainties relative to funding of future activities within the utility including but not limited to PCE cleanup, accelerated water meter installation, and infrastructure replacement suggest a rate increase nor decrease may not be justifiable. An increase in the water rate schedule at this time would require a Proposition 218 validation procedure. A rate decrease can take place by resolution of the City Council.

Over the period from 2002 to the present, the City Council has adopted a series of water-rate increases required to fund specific activities within the utility. Background information on each of these rate increases is provided below and a summary is presented in Exhibit A.

January 2002 The first of two 25-percent rate increases was put into effect to fund the water infrastructure replacement program. This rate has been adjusted using the Consumer Price Index for the past four years and is currently \$7.83 for a three-bedroom home.

May 2004 A 35-percent increase was put into effect to fund the Woodbridge Irrigation District (WID) water purchase and to fund ongoing PCE/TCE litigation-related expenses. Including CPI adjustments, this component of the rate is currently \$7.34 for a three-bedroom home and is divided \$4.12 for WID water purchase and \$3.22 for PCE/TCE expenses. The PCE/TCE component of the rate increase was also added to the wastewater rates at the same time. Resolution No. 2004-77 setting these new rates is provided as Exhibit B. Please note in Section 4 it states, "the rates associated with the Environmental Abatement (PCE/TCE) Program shall sunset in 2014."

January 2006 The first of three \$3.50 increases was put into effect to fund the PCE/TCE Cleanup Program, and this component of the rate is currently \$10.90 for a three-bedroom home. After reviewing the background report in which it assumed legal expenses would end in fiscal year 2008, it is clear the revenue from 2004 PCE/TCE increase was utilized to minimize this 2006 rate increase.

A breakdown of the current flat rate for a three-bedroom home into components of Base Rate, WID Water Purchase, Infrastructure Replacement and PCE/TCE Clean Up is provided in Exhibit C. Justifications for maintaining the current rates are provided below.

APPROVED: _____
Blair King, City Manager

Consider Waiving CPI Increase for Water Fund for Fiscal Year 2009/10 and Amend Water Rate Schedule as Approved by Council on April 16, 2008

May 20, 2009

Page 2

The Base, WID Water Purchase, and Infrastructure Replacement components of the rate comprise almost 75 percent of the total rate. The Infrastructure Replacement funds are at minimum levels to fund the replacement of old pipes and water services in the City in order to meet the 2026 State mandate to install water meters on all residential services. Also, as the City transitions to usage-based rates, there needs to be a reserves buffer to accommodate unknown revenue reductions resulting from user conservation.

The City is just entering the PCE/TCE cleanup phase and has yet to receive State approval of any required elements of the cleanup plan. Approval of three milestone documents is required over the next couple years. The Engineering Evaluation and Cost Analysis (EECA) and the Clean Up and Abatement Order (CAO) were submitted this year, and we are awaiting State comments. The final milestone is the Remedial Action Plan (RAP) and this will be started after approval of the EECA and CAO. State approval of the RAP is anticipated approximately 12 months after starting. Following State approval of the RAP, the City's cleanup requirements will be fully defined and documented, but until that happens there is insufficient new information relative to State cleanup requirements to set aside any portion of the 2006 rate action by the City Council.

In summary, waiving of the CPI adjustment at this time is predicated upon wide-ranging uncertainties over the funding requirements of future activities within the water utility and the lack of strong justification to either increase or decrease the rates. Any increase in the rate would trigger a Proposition 218 procedure. Any decrease is not justifiable due to the lack of any new information supporting a retreat from past City Council action.

FISCAL IMPACT: Deferral of the annual adjustment will reduce budgeted Fiscal Year 2009/10 revenues by 3 percent.

FUNDING AVAILABLE: Not applicable.

F. Wally Sandelin
Public Works Director

FWS/pmf

Attachments

Exhibit A

Water Rate Increase History

- July-08 3.84% CPI based
- July-07 3.44% CPI based; plus \$3.50 PCE/TCE final charge (total \$10.50)
- July-06 1.95% CPI based; plus \$3.50 PCE/TCE second charge (total \$7.00)
- January-06 \$3.50 PCE/TCE first charge
- July-05 2.2% CPI based
- May-04 35 % WID purchase and PCE/TCE expenses
- July-02 25% Infrastructure replacement program second step
- January-02 25% Infrastructure replacement program first step

RESOLUTION NO. 2004-77

A RESOLUTION OF THE LODI CITY
COUNCIL ESTABLISHING WATER SUPPLY,
WASTEWATER DISPOSAL, AND REFUSE
COLLECTION SERVICES RATES

WHEREAS, the Council of the City of Lodi finds as follows:

1. The City of Lodi provides water supply, wastewater disposal, and refuse collection services to its citizens;
2. The City charges customers of these utilities a charge to fund the on-going operation and maintenance of the water supply, wastewater disposal, and refuse collection services;
3. The City Public Works Director and staff have prepared a plan outlining the costs of operating these utilities, and the City Public Works Director has recommended increases to the current water, wastewater disposal, and refuse collection rates;
4. The Council directed that notice of a hearing thereon be given to the property owners in the City, with such notice to include, among other matters, the information required to be included pursuant to California law;
5. Such notice has been mailed to those property owners, at least 45 days before the hearing, as evidenced by a Certificate of Mailing on file with the City Clerk;
6. The Council also directed that notice of a hearing thereon be given with such notice to include the information required to be included pursuant to Government Code section 54354.5;
7. Such notice has been published once each week for two weeks, in accordance with Government Code section 54354.5, in the Lodi News-Sentinel as evidenced by Proofs of Publication on file with the City Clerk;
8. On April 27, 2004, the City Council conducted said public hearing, at which time the City Council heard all objections and protests to the proposed increased rates;
9. Written protests against the proposed increased rates were not presented by a majority of the property owners; and
10. The proposed water, wastewater disposal, and refuse collection service rates are not discriminatory or excessive, are sufficient under Government Code section 54515, comply with the provisions or covenants of any outstanding revenue bonds of the City payable from the revenues of the respective enterprise, comply with the provisions of Title 5, Division 2, Chapter 6 of the Government Code, and are in compliance with all other applicable law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

Section 1. Recitals. The foregoing recitals are true and correct.

Section 2. Levy of Charges. Pursuant to Sections 13.08.010, 13.12.240, and 13.16.110 of the Lodi Municipal Code, the increased water, wastewater disposal, and refuse collection service rates as attached hereto as Exhibits "A, B & C" are hereby approved.

Section 3. Subsequent Adjustments. The rates shown in Exhibits A, B, & C may be adjusted periodically by resolution, with Council approval following a public hearing, in an amount not to exceed the percentage change in the Consumer Price Index since the previous adjustment. The index used shall be the unadjusted San Francisco – All Urban Consumers Index as published by the United States Bureau of Labor Statistics or other index as approved by the City Council by resolution.

Section 4. Termination/Sunset Rate. The portion of attached rates representing an increase from immediately proceeding rates related to the 1) water purchase contract shall sunset in 2044, 2) rates related to the White Slough Water Pollution Control Facility improvements shall sunset in 2044, and 3) the rates associated with the Environmental Abatement (PCE/TCE) Program shall sunset in 2014.

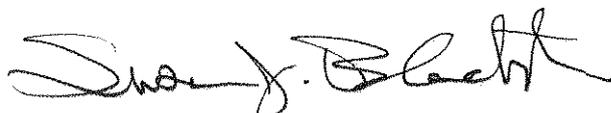
Section 5. Effective Date. This resolution shall take effect from and after the date of its passage.

Dated: April 27, 2004

=====

I hereby certify that Resolution No. 2004-77 was passed and adopted by the City Council of the City of Lodi in a special meeting held April 27, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, and Mayor Hansen
NOES: COUNCIL MEMBERS – Beckman
ABSENT: COUNCIL MEMBERS – None
ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

Table A: Water Utility

	<u>Present Rate</u>	<u>May-04</u>
Residential Flat Rate (per month):		
Single Family Unit (one bedroom)	\$13.51	\$18.24
(two bedrooms)	\$16.22	\$21.90
(three bedrooms)	\$19.45	\$26.26
(four bedrooms)	\$23.36	\$31.54
(five bedrooms)	\$28.04	\$37.85
(six bedrooms)	\$33.64	\$45.41
(seven bedrooms)	\$40.35	\$54.47
Multiple Family Unit (one bedroom)	\$11.60	\$15.66
(two bedrooms)	\$13.91	\$18.78
(three bedrooms)	\$16.69	\$22.53
		+ 20% for ea. add'l. bedroom
Commercial/Industrial Flat Rate	varies	add: 35%
(Existing accounts only. New accounts are metered.)		
Metered Rate	\$0.524 per 100 cu. ft. approx. \$0.70 per 1,000 gallons	\$0.707 approx. \$0.91 per 1,000 gallons
plus monthly base charge:	\$11.43 ¾" meter	\$15.43
	\$17.14 1" meter	\$23.14
	\$22.85 1½" meter	\$30.85
	\$28.58 2" meter	\$38.58
	\$40.00 3" meter	\$54.00
	\$51.43 4" meter	\$69.43
	\$74.29 6" meter	\$100.29
	\$97.16 8" meter	\$131.17
	n/a 10" meter	\$162.04
Construction Water Charges:	\$0.524 per 100 cu. ft.	\$0.707

Note: Charges are total, including infrastructure replacement charge, which will remain the same and increase will be shown in the service charge.

Exhibit C

Water Rate Summary Three-Bedroom Home

Rate Component	Amount
Base Rate	\$17.43
WID Water	\$4.12
Infrastructure Replacement	\$7.83
PCE/TCE Clean Up	\$10.90
Total	\$40.28



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Approve One-Time Use of Grape Bowl as a Concert Venue
MEETING DATE: May 20, 2009
PREPARED BY: James M. Rodems – Interim Director/Parks and Recreation

RECOMMENDED ACTION: Approve the staff recommendation for one-time use of the Grape Bowl as a concert venue.

BACKGROUND INFORMATION: A local promoter has offered to bring a nationally known performer to the Grape Bowl in late July 2009 for a concert that will be made accessible to disabled concert-goers.

The promoter estimates attendance for a proposed concert will be between 4,000 and 6,000. Although the City Council in 2005 restricted the Grape Bowl's use to existing events and organizations, Parks and Recreation Department staff believes the facility's limitations can be mitigated through the use of wheelchair-accessible restroom trailers and concession stands.

Revenue from this event could be used to defray the cost of permanent improvements to make the Grape Bowl more accessible, or for Parks and Recreation Department operating revenue. In light of the scarcity of funding and Department's desire to leverage existing assets for maximum public benefit, staff requests the City Council allow this one-time use as long as the promoter provides the facilities needed to meet Americans With Disabilities Act requirements.

The Grape Bowl has previously been used as a concert venue, with entertainers such as Lawrence Welk and the band Foreigner, which drew a crowd of more than 10,000 in 1978.

Staff is awaiting City Council approval before it discusses financial terms with the promoter.

FISCAL IMPACT: Allowing the Grape Bowl to be used as a concert venue has the potential to increase available funds for facility improvements or the Parks and Recreation Special Revenue Fund.

FUNDING AVAILABLE: None Required

Jordan Ayers, Deputy City Manager


James M. Rodems
Community Center Director

Attachments

APPROVED: _____
Blair King, City Manager



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Receive and Review the Draft Fiscal Year 2009/2010 Financial Plan and Budget

MEETING DATE: May 20, 2009

PREPARED BY: City Manager

RECOMMENDED ACTION: Receive and review the Draft Fiscal Year 2009-2010 Financial Plan and Budget.

BACKGROUND INFORMATION: With this communication, the Draft Fiscal Year (FY) 2009/10 Financial Plan and Budget is hereby provided to the City Council.

The General Fund Budget for FY 2009/10 is balanced without the use of reserves. However, it is expected that expenditures incurred during the current FY 08/09 will exceed revenues and General Fund reserves will be drawn on.

Improvements have been made to the budget document itself. Summaries of full department budgets are provided vs. a collection of division budgets. Narratives are clearer and more concise. Additional supplemental information is included. This budget introduces the use of footnotes to explain variances and key items.

FISCAL IMPACT: The draft 2009-10 budget provides an expenditure plan for all funds. The All Funds Budget is \$171,592,000, a decrease of \$14 million, or a 7 ½ % from the previous year, and a two-year decline of approximately \$42.1 million. The General Fund Budget is \$39,870,901, \$2.4 million less than the previous year and \$5.8 million less than two years ago.

Blair King, City Manager

APPROVED: _____
Blair King, City Manager



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Approve Legal Expenses Incurred by Outside Counsel Relative to the Environmental Abatement Program Litigation (\$2,839.72); and the Lodi First Litigation (\$7,333.92); and further Provide Direction to City Attorney Regarding Desired Procedures for Future Litigation Billings.

MEETING DATE: May 20, 2009

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: Approve Legal Expenses Incurred by Outside Counsel Relative to the Environmental Abatement Program Litigation (2,839.72) and the Lodi First Litigation (\$7,333.92); and further Provide Direction to City Attorney Regarding Desired Procedures for Future Litigation Billings.

BACKGROUND INFORMATION: Listed below are invoices from the City's outside counsel, Folger, Levin & Kahn; and Kronick, Moskovitz, Tiedemann & Girard for services incurred relative to the Environmental Litigation and the Lodi First v.

City of Lodi litigation relating to the Wal-Mart Supercenter Project, that are currently outstanding and need to be considered for payment.

Folger Levin & Kahn - Invoices Distribution

Matter No.	Invoice No.	Date	Description	Water Acct.
8002	114783	Apr-09	People v. M&P	1,680.00
8003	114784	Apr-09	Hartford v. Col	300.00
8008	114786	Apr-09	City of Lodi v. Envision	859.72
Total				\$2,839.72

Kronick Moskovitz Tiedemann & Girard - Invoices Distribution

Matter No.	Invoice No.	Date	Description	100351.7323
11233.026	244020	04/25/09	Lodi First v. City of Lodi	\$7,333.92

While the City was in the depths of the environmental litigation, the City Council requested to be informed of all legal costs associated with that litigation. However, with the environmental litigation winding down, and in the instance of the Lodi First and Citizens for Open Government billings, in which the City is being totally reimbursed by Wal-Mart, it may not be necessary for Council to approve each and every legal billing. My recommendation to Council would be to allow staff to process the indemnified Wal-Mart billings for payment and provide the City Council a quarterly report on all legal expenses paid during the preceding period. However, PCE-related invoices will continue to be agendized for prior Council approval.

FISCAL IMPACT: Expenses in the amount of \$7,333.92 will be paid out of the General Fund and billed to Wal-Mart for City's defense of the Lodi First litigation; the remaining expenses will be paid out of the Water Fund.

FUNDING AVAILABLE: 100351.7323 - \$7,333.92
184010.7323 - \$2,839.72

D. Stephen Schwabauer, City Attorney

APPROVED: _____
Blair King, City Manager