LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, FEBRUARY 1, 2006

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of February 1, 2006, was called to order by Mayor Pro Tempore Johnson at 5:35 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock (arrived at 5:40 p.m.)

Absent: Council Members – None

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

C-2 ANNOUNCEMENT OF CLOSED SESSION

a) Prospective lease of 215 West Elm Street, Lodi; the negotiating parties are the City of Lodi and County of San Joaquin relating to Court L-1 and L-3; price and terms are under negotiation; Government Code §54956.8

b) Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al*., Superior Court, County of San Francisco, Case No. 323658

c) Actual litigation: Government Code §54956.9(a); one case; *Peter Rose et al. v. the City of Lodi, et al*.; United States District Court, Eastern District of California, Case No. CIV.S-05-02229

C-3 ADJOURN TO CLOSED SESSION

At 5:35 p.m., Mayor Pro Tempore Johnson adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 6:43 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:00 p.m., Mayor Hitchcock reconvened the City Council meeting, and City Attorney Schwabauer disclosed the following actions:

In regard to Item C-2 (a), Council gave conceptual approval to begin negotiating a lease with the County to place a new San Joaquin County courtroom chamber in the Lodi Police building at 215 West Elm Street. The lease would be $1.35 per square foot for five years and adjusted to market in the fifth year.

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

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of February 1, 2006, was called to order by Mayor Hitchcock at 7:00 p.m.

Present: Council Members – Beckman, Hansen, Johnson, Mounce, and Mayor Hitchcock

Absent: Council Members – None

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

B. INVOCATION

The invocation was given by Pastor Bill Sherrill, Lodi Police Chaplains.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hitchcock.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 Proclamations – None

D-3 (a) Mayor Hitchcock presented a Certificate of Recognition to Ken Sasaki for his 2005 Parks and Recreation Commission Chairmanship. Mr. Sasaki was unable to attend the meeting, and accepting on his behalf was his wife, Kathy.

D-3 (b) Mayor Hitchcock presented a Certificate of Recognition to Tea Silvestre, Community Center Director, for her service to the City of Lodi community. In addition, Pat Stockar, representing the Lodi Arts Commission, presented a plaque to Ms. Silvestre in appreciation for her work with the Commission.

D-3 (c) Following introductory comments by Art Raab, coordinator of the Lodi Breakthrough Project, Mayor Hitchcock presented Certificates of Recognition to the following winners in the Lodi Breakthrough Project's essay contest, "Building Harmony in My School":

7th Grade Winners

1st Place	Emily Highsmith
2nd Place	Joey Melo
3rd Place	Ajay Paul

8th Grade Winners

1st Place	Macy Boschee
2nd Place	Rebecca Gilbert
3rd Place	Linh Doan

D-3 (d) City Clerk Blackston announced upcoming Centennial activities being planned throughout the year.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Beckman, Hansen second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

E-1 Claims were approved in the amount of $3,878,440.04.

E-2 The minutes of December 21, 2005 (Regular Meeting) and January 17, 2006 (Shirtsleeve Session) were approved as written.

E-3 Received the quarterly report of purchases between $5,000 and $20,000.

E-4 Accepted the Quarterly Investment Account report as required by law SB 564.

E-5 Accepted the improvements under "Pine Street Overlay Project – Ham Lane to Church Street" contract.

E-6 Received for informational purposes Contract Change Order – Kettleman Lane Gap Closure Project, Lower Sacramento Road to Ham Lane and Stockton Street to Cherokee Lane.

E-7 Adopted Resolution No. 2006-22 approving Technical Services Task Order Agreement with RMC, Water Consultants, for preparation of a State grant application for a Recycled Water Master Plan and appropriating funds in the amount of $10,000.

E-8 "Authorize the City Manager to enter into a contract with Moore Iacofano Goltsman, Inc. in the amount of $80,450 for contract services related to the preparation of the Eastside Mobility and Accessibility Plan" was ***removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar***.

E-9 Adopted Resolution No. 2006-23 authorizing the destruction of certain records retained by the Lodi Police Department.

E-10 Set public hearing for February 15, 2006, to consider the Planning Commission's recommendation regarding the request to award 65 medium density growth management allocation units; a zone change from Residential Multiple-Family to Planned Development and the associated development plan; and adoption of a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for 65 single-family dwelling units on the north side of Harney Lane between Panzani Way and Melby Drive (File numbers: ND-05-01, GM-05-03, Z-05-04; Jeffrey Kirst on behalf of Tokay Development, applicant).

E-11 Set public hearing for February 15, 2006, to consider resolution approving new rates for solid waste collection.

ACTION ON ITEM REMOVED FROM THE CONSENT CALENDAR

E-8 "Authorize the City Manager to enter into a contract with Moore Iacofano Goltsman, Inc. in the amount of $80,450 for contract services related to the preparation of the Eastside Mobility and Accessibility Plan"

Peter Pirnejad, Planning Manager, reported that Moore Iacofano Goltsman was selected through a competitive bid process as the consultant for the Eastside Mobility and Accessibility Plan. In 2004, the City was approved for a grant of $80,000 from the Department of Transportation. It included an in-kind match of $14,000. The purpose of the Plan is to provide safe access for pedestrians, motorists, and bicyclists to make their way to the multi-model station from eastside locations. The planning guideline document must be completed by May 2. The steering committee for this project will include representatives from the Lodi Improvement Committee, Hispanic Chamber of Commerce, Lodi Unified School District, faith based organizations located on the eastside, business owners, and City staff.

In reply to Mayor Hitchcock, Community Development Director Hatch confirmed that the Eastside Mobility and Accessibility Plan will be acknowledged in the updated General Plan document as an ongoing program and design guideline.

MOTION / VOTE:

The City Council, on motion of Council Member Mounce, Beckman second, unanimously authorized the City Manager to enter into a contract with Moore Iacofano Goltsman, Inc. in the amount of $80,450 for contract services related to the preparation of the Eastside Mobility and Accessibility Plan.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Chuck Easterling, President of the Downtown Lodi Business Partnership, asked that the following events be included on the Centennial events calendar: Farmers Market, April 29 car show to benefit Lodi Adopt-A-Child, Kiddies Parade, Safe Halloween, Dance Under the Stars (July 22), and Winterfest.

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

- Council Member Hansen reported that the San Joaquin Council of Governments (SJCOG) is considering changes to the renewal program funding priorities and requested that this matter be scheduled for Council's consideration at its next regularly scheduled meeting. He stated that the SJCOG Board voted to allocate $285,000 on a direct mail budget to send information to 188,000 registered voters in San Joaquin County regarding the Measure K renewal measure on

the November election ballot. Mr. Hansen expressed his opinion that an underpass on Lodi Avenue should be seriously considered. The San Joaquin Family Partnership, Cowell Foundation, and others will be meeting on February 15 to discuss possible funding to benefit the community's low-income and disadvantaged population, youth, schools, and to help build a new resource center adjacent to the Boys and Girls Club. Mr. Hansen reported that he received a phone call regarding the LOEL Foundation's difficulty with the City in receiving Community Development Block Grant (CDBG) funding that it was previously awarded and asked the City Manager to look into it.

- Mayor Hitchcock announced that a group of volunteers have formed the "*Disaster Recovery Coalition*" to help Louisiana hurricane victims. Funds in the amount of $8,000 are needed for fuel, delivery, and storage of furniture. The cities of Lodi and Galt will challenge each other to see who can raise the most money. A kick-off event will be held on February 10 at the Wine and Visitors Center.

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

- City Manager King reported that the LOEL Foundation CDBG matter would be addressed at the February 15 City Council meeting. He introduced newly hired Electric Utility Director, George Morrow, and reviewed his background.

I. PUBLIC HEARINGS

I-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hitchcock called for the public hearing to consider resolution adopting the San Joaquin County Regional Transportation Impact Fee and authorizing the City Manager to execute Fee Program Operating Agreement.

NOTE: Due to a potential conflict of interest related to his employment with the Building Industry Association of the Delta, Council Member Beckman abstained from discussion and voting on this matter and vacated his seat at dais.

Public Works Director Prima explained that the Measure K ordinance passed by the voters in 1990 required cities to have fees on new development for transportation improvements and a goal for a regional fee program. A technical report was presented to Council previously that established the linkage between the fee and new development. The operating agreement, which is now before Council for approval, describes how the City would collect the fees and work with the San Joaquin Council of Governments (SJCOG) on distribution of the fees. Previously, Council adopted Ordinance 1767 that established the Regional Transportation Impact Fee Program. The final step in the process is adoption of a resolution that sets the fees. The fees will be indexed to the Engineering News-Record Construction Cost Index and adjusted each July. Fees can only be used on the projects identified in the technical report. Ten percent of the funds are transferred to the County for projects in the unincorporated area, 10% is transferred to SJCOG for State highway projects, and 5% goes to SJCOG for transit improvements. Lodi would retain 75% of the funds to apply to its selected regional projects. Up to 2% of the first $1 million can be retained by the City for administrative costs and 1% of the amount over $1 million. The agreement provides for no interfund borrowing. There is a requirement for semi-annual and annual reporting.

City Manager King mentioned that if a city thought it was in its best interest to allow SJCOG to administer a project on its behalf, it would be allowable.

In reply to Mayor Pro Tempore Johnson, Andrew Chesley, Executive Director of SJCOG, confirmed that money could be borrowed in advance of receiving it to do a project.

Hearing Opened to the Public

- Ron Addington, President of the Business Council, and Phil Pennino asked for Council's support of this item.
- Jeffrey Kirst, Director of the Building Industry Association, stated that the BIA is supportive of this matter and asked Council for its favorable consideration.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Hansen, Mounce second, adopted Resolution No. 2006-24 adopting the San Joaquin County Regional Transportation Impact Fee and authorizing the City Manager to execute the Fee Program Operating Agreement. The motion carried by the following vote:

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

NOTE: Council Member Beckman returned to his seat at the dais at 8:17 p.m.

J. COMMUNICATIONS

J-1 On recommendation of the City's contract administrator and Human Resources staff, the City Council, on motion of Council Member Hansen, Beckman second, unanimously rejected the following claim:

a) Curtis and Rhonda Gokey, date of loss 12/31/05

J-2 The following postings/appointments were made:

a) The City Council, on motion of Council Member Beckman, Mounce second, unanimously directed the City Clerk to post for the following vacancy:

Lodi Arts Commission
Donald Rosebaugh Term to expire July 1, 2006

b) The City Council, on motion of Council Member Mounce, Beckman second, unanimously made the following appointment:

Greater Lodi Area Youth Commission

Student Appointee:
Larissa Boyer Term to expire May 31, 2007

c) The City Council, on motion of Mayor Pro Tempore Johnson, Beckman second, unanimously made the following appointments for unspecified terms:

Grape Bowl Ad Hoc Committee

Don Bricker	Bill Meehleis
Richard Dean	Russ Munson
Ed DeBenedetti	Terry Piazza
Dean Devine	Kevin Suess
Jack Fiori	

J-3 Miscellaneous – None

K. REGULAR CALENDAR

K-1 "Review of the City's Annual Financial Report (Fiscal Year 2004-05) by Macias, Gini & Company"

Deputy City Manager Krueger reviewed "blue sheets" (filed) representing an overview of the City's financial condition. He reported it was anticipated the City would have $1,565,000 in unreserved monies available and the actual amount at year end was $1,506,926. He stated that the City did not end the year with a positive cash balance in the General Fund; however, it had other assets available to render a positive fund balance in total. In order to be in good financial condition, the General Fund should have a balance of $6.2 million (15% of expenditures), unreserved, unrestricted funds, available for ongoing activities.

In the Electric Fund, it was anticipated to have just over $6 million, which included $3.7 million as unreserved and $2.4 million reserved for specific purposes. Actual figures were $4,896,000 in cash and $2,572,000 in other assets. Principally, the other assets involved a receivable related to spending some of the bond proceeds that had not been reimbursed from the City's fiscal agent as of June 30 and $1.9 million that was available from the general operating reserve with the Northern California Power Agency. The total fund balance was $7,469,000. A forecast of what the financial condition should be over the next several years was given to both of the City's rating agencies. In the forecast, it was shown that as a result of the rate increase recently approved by Council, in conjunction with other factors, there is projected to be a cash balance of $18 million available within the next six to seven years. That equates to approximately half of what the depreciable assets are, i.e. assets that are used to transmit power throughout the City.

In the Wastewater Fund, it was anticipated to have $2.8 million and the actual year end figure was $2,273,000. In the Water Fund, it was anticipated to have $1.4 million and the actual year end balance was $4.3 million. A rate increase was implemented earlier in the fiscal year, which was needed for the remediation of PCE/TCE. Water and Wastewater have an infrastructure replacement charge. As progress is made in the groundwater contamination cleanup, funds that were collected previously for infrastructure replacement will be made available to use toward that purpose.

In the Library Fund, it was anticipated to have $757,000 and the actual figure at the beginning of this fiscal year was $697,000. In the Capital Outlay Fund, it was anticipated to have $4.7 million and actual year end figure was $6.5 million. Money set aside for the replacement of vehicles and computer equipment was $152,000 and the actual need is estimated at $1.5 million annually.

Council Member Hansen asked if the Electric Utility Rate Stabilization Fund amount was included in the $18 million projection, to which Mr. Krueger reported it was not.

In reference to the Self Insurance Fund (Workers Compensation and liability coverage), Mr. Krueger stated that a charge is made to individual departments as part of their operating costs. It was anticipated to have $2.9 million and the actual figure at the beginning of this fiscal year was $3,261,000.

In the Street Fund, it was anticipated to have $3.7 million and the actual year end figure was $4.9 million. The Transit Fund ended the year with $230,000 and the Transportation Development Act Fund had $108,000.

Total Funds were anticipated to be $25.7 million and the actual fund balance was $33.3 million. The cash balance was stated at $23.4 million, which did not include amounts held by the City on a custodial basis of $1.1 million. In total, with assets netted against obligations, the amount is $8.8 million. Referencing the Comprehensive Annual Financial

Report (CAFR) management analysis on page 3, Mr. Krueger reported that net assets are $26.6 million more at the end of 2004-05 than they were in fiscal year 2003-04. He explained that this was the result of settlement with Lehman Brothers that reduced the City's liability which had been outstanding in the previous year.

Council Member Hansen pointed out that the report states, *"the City is implementing a phased deficit reduction plan recommended by an actuary to gradually eliminate the deficit in the Internal Service Fund"* and he asked when this would be completed.

Mr. Krueger replied that the deficit in the previous fiscal year of $3.5 million has been decreased to $1.8 million. He estimated that it would be three or four years before the deficit is eliminated.

In answer to Council Member Mounce, Mr. Krueger reported that, due to increases in interest rates, he did not expect property taxes to continue to increase as it has during the past three years, though he did anticipate a continued growth in sales taxes.

Council Member Mounce asked what attributed to the increase in Capital Outlay over the estimate, to which Mr. Krueger replied he would research the matter and provide the information at a later time. Ms. Mounce noted that the report indicates that the fixed asset model of the City's financial software program was not being utilized, to which Mr. Krueger estimated that staff would have a recommendation as to how to fund an integrated financial system package within the next 12 months.

Scott Bruener, representing Macias, Gini & Company, reported that his firm rendered an unqualified opinion in its audit of the City's financial records. He stated that at the end of the year the City had $188 million in net assets. The single audit report pertains to federal dollars that are reported in the intergovernmental revenue line item on the City's financial statements. The City expended $2.2 million in Federal funds during fiscal year end 2005. A risk assessment was performed on the six programs that the City participated in. Compliance tests and procedures were performed on the Community Development Block Grant and Federal Transit programs. Mr. Bruener stated that the findings, reported on pages 127 through 131, should be addressed during this fiscal year. The Management Report (filed) identifies areas that could be improved, and Mr. Bruener suggested that they be considered for implementation when funding and staffing become available. He mentioned that, in the future, it may be required for the City to account for environmental remediation liability. Mr. Bruener stated that, of all the recommendations, the most important is the City's computer room, which currently has a sprinkler system in place that would damage vital equipment should it be activated.

Greg Matayoshi of Macias, Gini & Company suggested that, if funds are not available to install a dry fire suppression system, a mitigating control that could be put in place would be a business continuity and disaster preparedness plan. He cautioned that as computers become more important for the daily operation of the City, it is incumbent upon the City to protect its information technology assets.

Steve Mann, Information Systems Division Manager, reported that the City's computer equipment has always been unprotected. There are back up tapes; however, if the sprinkler system were activated there would be no equipment to run the tapes on until it was replaced.

Mr. Bruener mentioned that many of the recommendations in the Management Report were given verbally to staff a couple of years ago. Because there had been no progress, the recommendations were added to the written report.

Mayor Hitchcock asked that all recommendations be in writing henceforth.

In answer to Mayor Pro Tempore Johnson, Mr. Matayoshi reported that he knew of only one or two other government agencies that used the JDEdwards financial software package.

Mayor Hitchcock and Council Member Mounce suggested that the Management Report be further reviewed at a Shirtsleeve Session.

In reply to Council Member Hansen, Mr. Bruener explained that the City is potentially losing money by not claiming Federal Transit Administration indirect costs; however, the City should determine if the benefit would outweigh the cost of creating a plan.

MOTION / VOTE:

There was no Council action taken on this matter.

RECESS

At 9:35 p.m., Mayor Hitchcock called for a recess, and the City Council meeting reconvened at 9:46 p.m.

K. REGULAR CALENDAR (Continued)

K-2 "Introduce ordinance amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by adding Chapter 12.03, "Sidewalks," to place liability on the adjoining property owner as permitted under state law"

City Attorney Schwabauer reported that the City's policy states that property owners have a duty to repair the sidewalk abutting their property unless the defect is caused by a City tree. Homeowners own the fee title to the property underneath the sidewalk; however, they cannot remove it because they are required to maintain the easement for the benefit of the public consistent with City standards. When sidewalks are initially installed in new developments, the homeowner, within the cost of the house, ultimately pays for the cost of the sidewalk fronting their home. Since 1911, the California Streets and Highways Code has provided that the sidewalk maintenance obligation is on the property owner. The City has routinely done patch and grinding work on sidewalks without charging homeowners. Property owners are required to repair/replace sidewalks when there are significant defects or if the defect caused an accident to occur. In addition, when a property owner takes out a home improvement permit, defects to sidewalks must be repaired. The City does not actively enforce the maintenance obligation on property owners unless it has received a complaint. Mr. Schwabauer noted that the rules are the same with regard to curbs and gutters. Water and Wastewater utilities are replaced through fees charged for the infrastructure replacement program. Streets are paid for through gas tax money. Mr. Schwabauer reviewed the court cases of Williams v. Foster and Gonzales v. City of San Jose. Ultimately the court felt that because the property owner is the one who is financially required to do the maintenance, it would then be appropriate for them to have the liability because it would encourage them to perform the maintenance. The proposed ordinance for Council to consider was modeled from the City of San Jose's. Mr. Schwabauer explained that in a circumstance where it is not clear whether the City or property owner is at fault for a defect, the proposed ordinance would transfer liability to the property owner.

In answer to Mayor Hitchcock, Mr. Schwabauer reported that, currently, when it is not clear who is at fault, the City and the property split the bill.

City Manager King stated that if the City is notified that there is a tripping hazard and does not respond to it, its liability can increase significantly.

In reply to Mayor Pro Tempore Johnson, Mr. Schwabauer recalled that sidewalk claims have been as high as $100,000. He noted that people who tend to trip on sidewalk defects are often older individuals who sustain greater injuries when they fall. He believed that over the past ten years, on average, the City pays $20,000 annually in trip and fall claims. He

reiterated that the main change being proposed by the ordinance is placing the risk of loss, in an event of an accident, on the party who has the maintenance obligation. Currently, the property owners are liable for repair, but not liable to a third party.

Public Works Director Prima reported that staff tries to do citywide sidewalk inspections every three years. Over the past two years, $200,000 has been spent on sidewalk repair that was the City's responsibility. He believed that there were no outstanding situations where patch or grinding work needed to be done on sidewalks where defects were the City's responsibility. There are areas where sidewalks need to be replaced. He noted that all sidewalk replacements must be done by a licensed contractor.

PUBLIC COMMENTS:

- Violet Froehlich stated that one of the trees in front of her home died and was removed. Since then the sidewalk has dropped where roots underneath have decayed. She pointed out that sidewalks in older sections of town are in poor condition. She questioned who is at fault in the event of an earthquake that damages the sidewalk. She noted that many older persons on fixed income cannot afford to repair or replace their sidewalk.
- Claire Lima reported that her next door neighbor leaves his garbage cans in front of her house for as long as 48 hours and she has not been able to do anything about it because there is no municipal code section addressing that placement of the cans must be in front of the individual's own home. Ms. Lima felt it was unfair that she must absorb the liability that her neighbor is imposing on her.

  Mayor Hitchcock referred Ms. Lima's concern to the City Attorney.

- Richard Clark stated that he purchased his home on Elm Street 40 years ago. The City planted a Modesto Ash tree in the front yard of every home sold in the development at that time. Roots from the tree raised the sidewalk in front of his home and the City patched it. During a windstorm, the tree cracked down its trunk. Mr. Clark feared the tree would fall on someone so he called the City; however, no assistance was rendered. He cut the tree down himself, but the stump still remains. Mr. Clark stated that he would send a letter and photos to the City about this matter. He was opposed to the ordinance because of the burden it places upon citizens and particularly to elderly persons with limited incomes. He asked why something has not been done sooner if the law has been in place since 1911. He recommended that the City do more research before planting trees in the City and believed that the Sycamore trees on School Street would cause many problems in the decades to come.

  Addressing Mr. Clark, City Attorney Schwabauer replied that if it was the City's tree, the City should remove it and he encouraged Mr. Clark to forward documentation to the City about the situation.

- Christopher Vigil noted that many changes have taken place since 1911. To maintain uniformity, sidewalks, curbs, and gutters should be maintained by the City. He pointed out that many public utilities are on sidewalks. Foot traffic is unequal in certain neighborhoods and increases near parks, stores, etc., which places additional liability on those who own homes in those areas.

- Michele Levin stated that she recently moved to a new development and large trucks have damaged the curb and sidewalk in front of her home.

- Phil Frieders stated that he was representing himself as a homeowner as well as the Lakeshore Village Homeowners Association, of which he is the President. He noted that there are 205 homes in the Association. He had submitted written communication addressing objections to the proposed ordinance. He stated that it was unreasonable to require property owners to absorb the cost of maintenance and third party liability for

public assets. He maintained that streets and sidewalks were public assets and should be maintained by public funds. The ordinance has to be in place before the City can pass the third party liability on to homeowners. He believed this was a way for the City to cover itself for something it had been doing in the past without the ordinance. Mr. Frieders asked that if Council adopts this ordinance then all sidewalks needing repair or replacement by the City should be brought up to code before enforcing the ordinance.

- Edward Hallisey stated that the purpose of the ordinance is to defer civil liability to the property owners where there is a gray area. He inquired whether the burden of proof to show cause falls solely on the property when the fault is unknown. He asked if the City would hold itself to the same timeline for repair that it imposes on property owners.

- Tim Howard asked that real estate agencies be notified so they can inform potential homebuyers that they will assume partial responsibility of the sidewalk.

- Chuck Easterling, President of the Downtown Lodi Business Partnership, pointed out that business owners often have skateboarders, bicyclists, etc. causing damage to sidewalks. He asked if it would still be necessary to name the City as additionally insured for sidewalk encroachments. He thanked the City and Public Works for increased efforts in street cleaning in the downtown area.

- Barbara Miller asked what to do about large heavy trucks parking on sidewalks and damaging it. She asked whether it would cost more to ask the City to repair the sidewalk or hire a contractor herself. She reported that the sidewalk on the eastside of Central Avenue is in poor condition.

  Public Works Director Prima stated that in situations where handicap ramps are installed, utilities are being changed, or street widening done, if the adjacent sidewalk is in need of repair, it is done at the same time regardless of what caused the defect. Gutters are sometimes repaired as part of paving projects. He mentioned that the average sidewalk repair cost ranges from $500 to $1,500.

In answer to questions previously posed by citizens, Mr. King stated that the proposed ordinance will have no effect on encroachment permit requirements. He stated that the purpose of the ordinance is to provide the City Council a mechanism to avoid payment of liability in the event of a catastrophic claim. Mr. Schwabauer explained that it is illegal to park on a sidewalk and if a homeowner can prove someone damaged the sidewalk by parking on it the person doing so would be liable to repair the damage. He reiterated that the public has an easement to use the right of way, so the sidewalk cannot be obstructed.

MOTION:

Council Member Beckman made a motion, Hitchcock second, to introduce Ordinance No. 1770 amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by adding Chapter 12.03, "Sidewalks," to place liability on the adjoining property owner as permitted under state law.

DISCUSSION:

Council Member Mounce stated that, as a result of City trees, the sidewalks on the eastside are uneven and in disrepair. She felt that the City had an obligation to repair them all before it asked citizens to correct sidewalk defects and assume liability.

In answer to Council Member Hansen, Mr. Schwabauer explained that it is not a "transfer" of liability ordinance; it is a liability "establishment" ordinance. It does not immunize the City from liability; it creates liability on behalf of the property owner. The San Jose court stated that if it cannot be proven that the property owner caused the damage to the sidewalk that caused someone to trip and fall, then the property owner does not have tort

liability. It exposes the property owner to liability if they do not fulfill their preexisting obligation to maintain and repair the sidewalk. It provides a second party, who is liable, for the City to share the damages with. Mr. Schwabauer stated that he had intended to remove provision 12.03.040, as he believed it was inconsistent with case law, and asked that the motion be amended to remove it.

AMENDED MOTION:

The above motion was **amended** to introduce Ordinance No. 1770 amending Lodi Municipal Code Title 12 – Streets, Sidewalks, and Public Places – by adding Chapter 12.03, "Sidewalks," to place liability on the adjoining property owner as permitted under state law, with the deletion of Section 12.03.040.

VOTE:

The above amended motion carried by the following vote:

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

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

Council Member Beckman made a motion, Hansen second, to hear only Items K-4, K-6, and L-1 following the 11:00 p.m. hour. The motion **failed** by the following vote (requires two-thirds vote):

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

K. REGULAR CALENDAR (Continued)

K-3 "Adopt resolution establishing and adjusting rental fees for Parks and Recreation facilities" was ***pulled from the agenda pursuant to the above vote***.

K-4 "Adopt resolution approving amendment to San Joaquin Council of Governments Joint Powers Agreement to add two additional voting members to the Board, one each from the San Joaquin County Board of Supervisors and the city of Stockton" was ***pulled from the agenda pursuant to the above vote***.

K-5 "Reconsideration of the January 4, 2006, Council action taken regarding the future direction of the Community Separator/Greenbelt Task Force" was ***pulled from the agenda pursuant to the above vote***.

K-6 "Approve fee contract with Angelo, Kilday & Kilduff for representation of City of Lodi in *Peter Rose et al. v. the City of Lodi, et al*.; United States District Court, Eastern District of California, Case No. CIV.S-05-02229" was ***pulled from the agenda pursuant to the above vote***.

K-7 "Adopt resolution adopting and establishing rules for the conduct of meetings, proceedings, and business, thereby rescinding Resolution 2004-282" was ***pulled from the agenda pursuant to the above vote***.

L. ORDINANCES

L-1 "Ordinance No. 1769 entitled, 'An Ordinance of the City Council of the City of Lodi Amending Lodi Municipal Code, Title 12, Chapter 12.12. – Parks – by Adding Article VI, "Waterfowl and Migratory Birds'" was ***pulled from the agenda pursuant to the above vote***.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 11:56 p.m.

ATTEST:

Susan J. Blackston
City Clerk