

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, APRIL 20, 2016**

- C-1 Call to Order / Roll Call - N/A
- C-2 Announcement of Closed Session - N/A
- C-3 Adjourn to Closed Session - N/A
- C-4 Return to Open Session / Disclosure of Action - N/A
- A. Call to Order / Roll Call

The Regular City Council meeting of April 20, 2016, was called to order by Mayor Chandler at 7:02 p.m.

Present: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Absent: Mayor Pro Tempore Kuehne

Also Present: City Manager Schwabauer, City Attorney Magdich, and City Clerk Ferraiolo

B. Presentations

B-1 Library Volunteer of the Year Award (LIB)

Mayor Chandler recognized Nancy Potts for her service with the Library Foundation, Gene Chow for his service as a Homework Help volunteer, and Diane Freggiaro for her service with Friends of the Library and the Friends Bookstore.

Ms. Potts announced that the Library Foundation's annual dinner is October 1 and that the Library is accepting donations for its Teen Scene and many other Library programs. She encouraged the public to take advantage of the Homework Help Program and to donate used books to the Friends of the Library bookstore.

Mr. Chow stated he initially began tutoring adults, but eventually migrated toward tutoring youth because of the greater benefit, value, and longer-lasting affect tutoring young people has on a community. He further stated he was proud of the City's efforts on cost control.

Ms. Freggiaro stated she was proud of what the Friends of the Library and all of its dedicated, hard-working volunteers do on an on-going basis. She encouraged the public to visit the Friends' bookstore and to donate used books.

Radhika Rao, Vice President of the Library Foundation, thanked Council and staff for their continued support of the Library; presented each with homemade cookies; and congratulated the three well-deserving award recipients.

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

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

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler  
Noes: None  
Absent: Mayor Pro Tempore Kuehne

C-1 Receive Register of Claims in the Amount of \$3,334,493.30 (FIN)

Claims were approved in the amount of \$3,334,493.30.

C-2 Approve Minutes (CLK)

The minutes of March 16, 2016 (Regular Meeting), April 5, 2016 (Shirtsleeve Session), April 6, 2016 (Regular Meeting), and April 12, 2016 (Shirtsleeve Session) were approved as written.

C-3 Approve Plans and Specifications and Authorize Advertisement for Bids for White Slough Water Pollution Control Facility 2016 Improvements Corrosion Repair Project (PW)

Approved plans and specifications and authorized advertisement for bids for White Slough Water Pollution Control Facility 2016 Improvements Corrosion Repair Project.

C-4 Approve Plans and Specifications and Authorize Advertisement for Bids for Shady Acres Stormwater Pump Replacement Project (PW)

Approved plans and specifications and authorized advertisement for bids for Shady Acres Stormwater Pump Replacement Project.

C-5 Adopt Resolution Awarding Bid for Purchase of One 60/12kV Power Transformer from Virginia Transformer Corporation, of Roanoke, Virginia (\$476,814) (EU)

Adopted Resolution No. 2016-48 awarding the bid for purchase of one 60/12kV power transformer from Virginia Transformer Corporation, of Roanoke, Virginia, in the amount of \$476,814.

C-6 Adopt Resolution Awarding Contract for Lodi Public Library Children's Area Expansion Project to Swierstok Enterprise, Inc., dba Pro Builders, of Orangevale (\$263,000), Accepting Donation from Library Foundation (\$152,000), and Appropriating Funds (\$304,000) (PW)

Adopted Resolution No. 2016-49 awarding the contract for the Lodi Public Library Children's Area Expansion Project to Swierstok Enterprise, Inc., dba Pro Builders, of Orangevale, in the amount of \$263,000; accepting donation from Library Foundation in the amount of \$152,000; and appropriating funds in the amount of \$304,000.

C-7 Accept Public Improvements for Saint Anne's Plaza Project (PW)

Accepted public improvements for Saint Anne's Plaza Project.

C-8 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Solenis, LLC, of Wilmington, Delaware, to Purchase Dewatering Polymer for White Slough Water Pollution Control Facility and Authorizing Public Works Director to Execute Extension (\$250,000) (PW)

Adopted Resolution No. 2016-50 authorizing the City Manager to execute a Professional Services Agreement with Solenis, LLC, of Wilmington, Delaware, to purchase dewatering polymer for White Slough Water Pollution Control Facility and authorizing the Public Works Director to execute an extension, in the amount of \$250,000.

C-9 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with WMB Architects, Inc., of Stockton, for Design Services for Lodi Library Teen Scene

Project (\$50,000), Accepting Donation from Library Board of Trustees (\$50,000), and Appropriating Funds (\$50,000) (PW)

Adopted Resolution No. 2016-51 authorizing the City Manager to execute a Professional Services Agreement with WMB Architects, Inc., of Stockton, for design services for the Lodi Library Teen Scene Project in the amount of \$50,000; accepting donation from Library Board of Trustees in the amount of \$50,000; and appropriating funds in the amount of \$50,000.

C-10 Authorize City Manager to Execute Amended Option to Lease and Associated Ground Lease with Pacific Gas and Electric Company for the Location of a Compressed Air Energy Storage Facility at White Slough Water Pollution Control Facility (CM)

This item was pulled from the Consent Calendar at the request of the City Manager in order to respond to a citizen's concerns expressed in the Blue Sheet item (filed).

City Manager Schwabauer stated that he met with citizen Mike Lusk regarding his contention that lease revenue from the White Slough Water Pollution Control Facility is enterprise fund revenue and, as a result of Proposition 218, required to be kept in the enterprise fund. He explained that staff's position is that it is general fund revenue based on the purchase documents for the land, which coincides with the issuance of the tax-funded bonds. The taxing power was exercised by Council to create a number of revenue sources for projects, which included the acquisition of the land that is proposed to be leased. The tax is a function of the general fund and the source of revenue was general fund revenue. Mr. Schwabauer stated that documents submitted by Mr. Lusk in the Blue Sheet item do not substantiate his position. The fact that the land was acquired through a bond supported by a tax measure supports staff's argument.

In response to Council Member Mounce, Mr. Schwabauer stated this measure was a property tax from 1965 to 1995. With regard to the Blue Sheet item that referenced a 1997 staff report stating that lease revenue would go to the sewer utility reserves, Mr. Schwabauer opined that, at the time, the budget process and fiscal situation was such that a characterization of how to fund projects was unnecessary; however, the current fiscal situation requires that an evaluation be done to ensure the general fund collects the monies it is entitled to. Council Member Mounce questioned how Mr. Lusk's concerns could be eased in this regard, stating she too does not want to make a misstep by putting the money into the general fund if it rightfully belongs in the utility fund or by burdening the ratepayers with increased rates. Mr. Schwabauer believed that neither staff nor Council will convince Mr. Lusk otherwise, but he was willing to meet with him further to review the information and documentation. He pointed out that his concern is not an issue for today because the lease option commences in 2021 at the earliest and the lease revenue will not be realized for many years. The reason for entering the lease now is because this is a complicated construction project that requires environmental and engineering review with a lengthy public approval process. In order to begin the review process, PG&E needs site control today. Mr. Schwabauer believed there was significant time to further analyze Mr. Lusk's concerns, but for the time being nothing has been presented that changes his opinion that the land was purchased with general fund revenue. In further response to Council Member Mounce, Mr. Schwabauer confirmed that, if Mr. Lusk's argument was proven, there would be time to amend the issue relating to lease revenue.

City Attorney Magdich stated that the City would receive option income of \$50,000 per year for six years, so the only exposure would be \$350,000. She further confirmed that staff has discussed this matter and reviewed the documents and concur that the property was purchased with general fund money and the revenue can be returned to the general fund reserve. Further, this is not a Proposition 218 issue because it was not adopted by voters until 1996 and there is no provision that Proposition 218 is retroactive.

Council Member Johnson commended Mr. Lusk for his perseverance on this issue and suggested staff review the bond documents with the underwriter. Mr. Schwabauer stated that bond counsel reviewed this opinion in context with the most recent bond issue and confirms staff's characterization, but he stated that staff could hire another attorney for a second opinion.

Council Member Nakanishi stated he was satisfied with staff's opinion and it would be counterproductive to continue researching the matter.

At Council Member Mounce's suggestion, Mr. Schwabauer stated he would contact the Assessor's Office to locate tax records with the line item regarding the taxes imposed by the City. Council Member Mounce also commended Mr. Lusk for taking the time to research the issue and study City budgets.

Mike Lusk stated he is uncertain about whether or not staff's supposition is correct and explained that his motivation stems from the citizen outcry regarding electric utility rates and the hope they could be reduced. He disagrees with the argument that it is a general tax, stating the documentation he reviewed indicated it would be an additional tax added to the tax and placed into a fund solely designated for the sewer building. He believed there were too many unanswered questions that affect both the PG&E and NCPA leases and that he will continue to review the documents.

In response to Council Member Nakanishi, Mr. Schwabauer stated that the water utility paid the Parks and Recreation Department for the land at the Surface Water Treatment Plant.

In response to Council Member Mounce, Mr. Schwabauer stated that PG&E needs to move forward with site control or find another site; therefore, he requested that Council take action on this item tonight, adding that staff can still address Mr. Lusk's concerns in the future.

Council Member Johnson made a motion, second by Council Member Nakanishi, to authorize the City Manager to execute Amended Option to Lease and Associated Ground Lease with Pacific Gas and Electric Company for the location of a Compressed Air Energy Storage Facility at White Slough Water Pollution Control Facility.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

C-11 Adopt Resolution Authorizing City Manager to Execute and Deliver All Documents Related to Funding Agreement for the White Slough Water Pollution Control Facility Storage Expansion Project (PW)

Adopted Resolution No. 2016-52 authorizing the City Manager to execute and deliver all documents related to the funding agreement for the White Slough Water Pollution Control Facility Storage Expansion Project.

C-12 Set Public Hearing for May 4, 2016, to Consider Adoption of the 2016/17 Annual Action Plan for the Community Development Block Grant Program (CD)

Set public hearing for May 4, 2016, to consider adoption of the 2016/17 Annual Action Plan for the Community Development Block Grant Program.

D. 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.

Public comment may only be made on matters within the Lodi City Council's jurisdiction (Government Code Section 54954.3, Lodi City Council Protocol Manual Section 6.3I). The Council cannot take action or deliberate on items that are not on this agenda unless there is an emergency and the need to take action on that emergency arose after this agenda was posted (Government Code Section 54954.2(b)(2)). All other items may only be referred for review to staff or placement on a future Council agenda.

Mike Lusk requested that Council hold a Shirtsleeve Session to discuss the possibility of a sales tax measure for the purpose of funding Police and Fire and the looming \$91 million California Public Employees Retirement System debt.

Mr. Schwabauer stated that Council will discuss a potential sales tax measure at its May 3, 2016, Shirtsleeve Session.

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

Council Member Mounce stated that the City Clerk tracks Council Member requests that go back to early 2014, adding that many of the requests have gone unanswered. She requested that staff devote time to resolving the pending items once the budget sessions are completed.

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

None.

G. Public Hearings

G-1 Public Hearing to Consider Adopting Resolution Approving the Automated License Plate Reader System Software (Vigilant/LEARN) Lodi Police Department Usage Policy (PD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Chandler called for the public hearing to consider adopting resolution approving the Automated License Plate Reader (ALPR) System Software (Vigilant/LEARN) Lodi Police Department Usage Policy.

Captain David Griffin provided a PowerPoint presentation on the ALPR Policy. Specific topics of discussion included equipment and data usage, policy, Public Records Act requests, civil code, and employee accountability.

In response to Council Member Mounce, Captain Griffin stated that each user will have his or her own password to track who accessed the system and when. He further stated that he would provide Council with information on how often the passwords will change.

City Attorney Magdich stated that, with regard to Public Records Act requests, the Supreme Court ruled that these records are privileged and cannot be produced; only collected for law enforcement purposes. Captain Griffin stated that the only data collected is a photograph of the car and license plate, along with the date, time, and location.

Mayor Chandler opened the public hearing for public comment.

Alex Aliferis expressed his concern about potential violations of the Fourth Amendment, tracking of citizens, what data the system will store and for how long, searches without warrants, if it will hinder officers from taking care of other matters, if the information will be sold, and if this will increase future lawsuits on violations of privacy.

City Manager Schwabauer responded that the City will not sell the information as it is not publicly available and considered by the courts to be privileged and not subject to the Public Records Act; the data is stored for one year on a rolling calendar and deleted unless it is evidence of a crime; and the search and seizure law is not applicable when one enters a public sphere. Ms. Magdich pointed out that this is governed by the Civil Code, which is clear the information cannot be sold or given to anyone not in law enforcement and includes civil penalties that would apply. The legislation established that this practice not be implemented until the governing board and community have an opportunity learn about the system, training, and how the information is stored and collected. The draft policy is based on Lexipol and was reviewed by the City Attorney's Office that it conforms with policy.

Council Member Johnson questioned if the public should hear the full presentation, which was

provided at a previous Shirtsleeve Session, on how the system works. Council Member Nakanishi pointed out that the presentation was already given and he felt it was unnecessary to do so again. Mayor Chandler asked those in attendance if they were interested in receiving the full presentation, and no one indicated interest. Council Member Mounce stated she heard from neighbors about the system and that they were supportive, adding that she believed the public was adequately informed. Council Member Nakanishi added that this system will help deter gang activity, stating that Lodi is the only jurisdiction in this area that has not implemented this technology.

There being no further public comments, Mayor Chandler closed the public hearing.

In response to Council Member Mounce, Captain Griffin stated that six local jurisdictions are using this technology, including Stockton, Tracy, California Highway Patrol, and Manteca.

Council Member Nakanishi made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-53 approving the Automated License Plate Reader System Software (Vigilant/LEARN) Lodi Police Department Usage Policy.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

G-2 Public Hearing to Consider Adopting Resolution Approving the 2015-2023 Draft Housing Element (CD)

Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Chandler called for the public hearing to consider adopting resolution approving the 2015-2023 Draft Housing Element.

City Planner Craig Hoffman provided a presentation regarding the 2015-2023 Draft Housing Element. Specific topics of discussion included housing needs of the City for 2015-2023; requirement that the Housing Element be reviewed and certified by the Department of Housing and Community Development (HCD) every five to eight years; HCD's review and comments on the City's proposed draft; request to include affordable housing and migrant farm worker housing; review process; and Council approval.

In response to Council Member Mounce, Mr. Hoffman confirmed that the requirement for affordable housing and migrant farm worker housing does not include funding from the State. He stated that Lodi does not look at who the housing is for and is more interested in diverse housing. HCD is satisfied with Lodi's response to the requirement. Council Member Mounce stated that Lodi should require affordable housing and projects such as duplexes and multi-family uses when development projects come forward. Mr. Hoffman agreed, stating that some of the new developments include diversity in housing and there are upcoming projects that propose multi-family housing units.

In response to Council Member Nakanishi, Mr. Hoffman stated that the Housing Element is a year-and-a-half process which includes: 1) review by the San Joaquin Council of Governments of housing needs; 2) staff update; 3) stakeholder meetings; 4) Planning Commission public hearing; 5) recommendation to Council for submittal to State for review; 6) comments from the State; 7) second review process; and 8) final Council approval and submittal to State for certification.

Mayor Chandler opened the public hearing for public comment.

Alex Aliferis stated that he resides on the east side, which has a high number of renters and vacant homes.

There being no further public comments, Mayor Chandler closed the public hearing.

Council Member Johnson made a motion, second by Council Member Mounce, to adopt Resolution No. 2016-54 approving the 2015-2023 Draft Housing Element.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

H. Communications

H-1 Monthly Protocol Account Report (CLK)

Council Member Mounce made a motion, second by Council Member Johnson, to approve the monthly Protocol Account Report through March 31, 2016.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None

Absent: Mayor Pro Tempore Kuehne

I. Regular Calendar

I-1 Ratification of Employment Agreement Entered into Between City Manager Stephen Schwabauer and Public Works Director Charles E. Swimley, Jr. (CM)

City Manager Schwabauer provided a presentation regarding ratification of employment agreement with Public Works Director Charles Swimley. Specific topics of discussion included appointment as Interim Director in December; positive performance review from the development community, Public Works Department, and City staff during those five months; Mr. Swimley's friendly, respectful, and responsive service to the community; and recommendation.

Council Member Mounce expressed support for Mr. Swimley's appointment, adding that, despite her aversion to the severance package in the contract, the City Manager's positive leadership has created an amazing team and she was willing to overlook that condition in the contract.

Mayor Chandler and Council Members Nakanishi and Johnson also expressed support for Mr. Swimley and his hard work, dedication, and responsiveness.

Mr. Swimley recognized his predecessors in the department and all they have done to build a strong, sound department and their contributions to the community. He expressed affinity for his staff and City employees and thanked his wife and family for their continued support throughout his career.

Council Member Mounce made a motion, second by Council Member Johnson, to ratify Employment Agreement entered into between City Manager Stephen Schwabauer and Public Works Director Charles E. Swimley, Jr.

VOTE:

The above motion carried by the following vote:

Ayes: Council Member Johnson, Council Member Mounce, Council Member Nakanishi, and Mayor Chandler

Noes: None  
Absent: Mayor Pro Tempore Kuehne

- I-2 Adopt Resolution Approving Side Letter Agreements Amending the Memorandums of Understanding or Statement of Benefits Between the City of Lodi and its Various Bargaining Groups, Confidential Employees, Executive Management, and Council Appointees Regarding a One-Time, Non-PERSable Payment to Partially Off-Set Increased Medical Premiums for Employees Who Are Currently Enrolled in One of the City's Medical Plans and Appropriating Funds (\$50,850) (CM)

This item was pulled from the agenda and will be brought back to Council at its next meeting.

- I-3 Consider Notice of Cost to Grant Two Years Additional Service Credit Under Government Code Section 20903 (CM)

Human Resources Manager Adele Post provided a presentation regarding the notice of cost to grant two years additional service credit under Government Code Section 20903. Specific topics of discussion included notification requirements; California Public Employees Retirement System law that allows two-year service credit; application to specific classifications identified by an agency; eligibility; reduction in workforce; estimated cost savings of \$260,000 for two-year period versus the employer's cost of \$52,000 over a five-year amortization period of \$10,000 a year; and action at next meeting to adopt resolution.

In response to Council Member Mounce, City Manager Schwabauer confirmed that the employee in question is not being forced out as he plans to retire in the distant future and this incentive encourages him to retire early should he opt to take advantage of it. The employee has tenure and, if laid off, would bump another employee.

This item was for notification purposes only; no action required.

- J. Ordinances - None

- K. Adjournment

There being no further business to come before the City Council, Mayor Chandler adjourned the meeting at 8:26 p.m. in memory of Mr. Glenn Robison, retired Assistant City Engineer, who passed away on April 5, 2016.

ATTEST:

Jennifer M. Ferraiolo  
City Clerk