

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, APRIL 17, 2019**

C-1 Call to Order / Roll Call

The City Council Closed Session meeting of April 17, 2019, was called to order by Mayor Chandler at 6:03 p.m.

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

Absent: None

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

C-2 Announcement of Closed Session

- a) Conference with Adele Post, Human Resources Manager, and Andrew Keys, Deputy City Manager (Labor Negotiators), Regarding Fire Mid-Management, International Brotherhood of Electrical Workers, Lodi Police Dispatchers Association, Police Officers Association of Lodi, and Police Mid-Management Pursuant to Government Code §54957.6 (CM)

C-3 Adjourn to Closed Session

At 6:03 p.m., Mayor Chandler adjourned the meeting to a Closed Session to discuss the above matters. The Closed Session adjourned at 7:03 p.m.

C-4 Return to Open Session / Disclosure of Action

At 7:09 p.m., Mayor Chandler reconvened the City Council meeting, and City Attorney Magdich disclosed the following action.

Item C-2a) was discussion only with no reportable action.

A. Call to Order / Roll Call

The Regular City Council meeting of April 17, 2019, was called to order by Mayor Chandler at 7:09 p.m.

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

Absent: None

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

B. Presentations

B-1 Quarterly Update from Greater Lodi Area Youth Commission (PRCS)

Greater Lodi Area Youth Commissioners Jasmine Shukla and Emma Colarossi provided a quarterly report on the activities of the Commission, including the Pig Skin Fall Formal dance, canned food drive for the Lodi Salvation Army, and Casino Night.

B-2 Friends of the Lodi Public Library Month Proclamation (LIB)

Mayor Chandler presented a proclamation to Becky Hamner, President of the Friends of the Lodi Public Library, proclaiming April 2019 as Friends of the Lodi Public Library Month in Lodi.

Ms. Hamner introduced members of the board who were present and stated the group has donated over \$70,000 in the last few years.

B-3 Sexual Assault Awareness Month Proclamation (CLK)

Mayor Chandler presented a proclamation to Melissa Amos, Women's Center Youth Shelter Manager, proclaiming April 2019 as Sexual Assault Awareness Month in the City of Lodi. Ms. Amos invited the public to join in National Denim Day on April 24, 2019, to show support for victims and encouraged anyone interested in learning more to visit the Women's Center website at www.womenscenteryfs.org.

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

Mayor Pro Tempore Kuehne made a motion, second by Council Member Mounce, 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, Mayor Pro Tempore Kuehne, and Mayor Chandler

Noes: None

Absent: None

C-1 Approve Minutes (CLK)

The minutes of March 6, 2019 (Regular Meeting), March 12, 2019 (Shirtsleeve Session), March 12, 2019 (Special Meeting), March 19, 2019 (Shirtsleeve Session), March 20, 2019 (Regular Meeting), March 26, 2019 (Shirtsleeve Session), April 2, 2019 (Shirtsleeve Session), April 3, 2019 (Regular Meeting), and April 9, 2019 (Shirtsleeve Session) were approved as written.

C-2 Approve Plans and Specifications and Authorize Advertisement for Bids for Fire Station No. 1 Kitchen Remodel Project (PW)

Approved plans and specifications and authorized advertisement for bids for Fire Station No. 1 Kitchen Remodel Project.

C-3 Approve Specifications and Authorize Advertisement for Bids for 2019 Pavement Resurfacing Project (PW)

Approved specifications and authorized advertisement for bids for 2019 Pavement Resurfacing Project.

C-4 Approve Specifications and Authorize Advertisement for Bids to Upgrade Existing Facilities at McLane Substation (EU)

Approved specifications and authorized advertisement for bids to upgrade existing facilities at McLane Substation.

C-5 Adopt Resolution Accepting Donation of \$8,596.31 from Lodi Public Library Foundation for Improved Internet Connectivity and Appropriating Funds (LIB)

Adopted Resolution No. 2019-45 accepting donation of \$8,596.31 from Lodi Public Library Foundation for improved internet connectivity and appropriating funds.

C-6 Adopt Resolution Accepting Additional Grant (\$59,888) from California State Library for Adult Literacy Program at Lodi Public Library and Appropriating Funds (LIB)

Adopted Resolution No. 2019-46 accepting additional grant in the amount of \$59,888 from California State Library for Adult Literacy Program at Lodi Public Library and appropriating funds.

C-7 Adopt Resolution Authorizing City Manager to Waive Bid Process and Purchase Eight Rectangular Rapid Flashing Beacons from Traffic and Parking Control Company, Inc. of Brown Deer, Wisconsin, Utilizing California Multiple Award Schedule Contract No. 4-08-78-0042A (\$22,787) and Appropriating Funds (\$22,787) (PW)

Adopted Resolution No. 2019-47 authorizing the City Manager to waive bid process and purchase eight rectangular rapid flashing beacons from Traffic and Parking Control Company, Inc., of Brown Deer, Wisconsin, utilizing California Multiple Award Schedule Contract No. 4-08-78-0042A, in the amount of \$22,787, and appropriating funds in the amount of \$22,787.

C-8 Adopt Resolution Authorizing Purchase of Three Sodium Hypochlorite Generator Cells from PSI Water Technologies, Inc., of Campbell, for On-Site Sodium Hypochlorite Generation at Surface Water Treatment Facility (\$32,703) (PW)

Adopted Resolution No. 2019-48 authorizing the purchase of three sodium hypochlorite generator cells from PSI Water Technologies, Inc., of Campbell, for on-site sodium hypochlorite generation at Surface Water Treatment Facility, in the amount of \$32,703.

C-9 Adopt Resolution Authorizing City Manager to Purchase Service Desk Plus Software License from Zoho Corporation, of Pleasanton, for Operation of Information Technology Help Desk Ticket Tracking System (\$28,480.50) (CM)

Adopted Resolution No. 2019-49 authorizing the City Manager to purchase Service Desk Plus Software License from Zoho Corporation, of Pleasanton, for operation of Information Technology Help Desk Ticket Tracking System, in the amount of \$28,480.50.

C-10 Adopt Resolution Authorizing City Manager to Purchase Microsoft Exchange Server License 2019 from SHI, Inc., of Somerset, New Jersey, to Upgrade City's Email Services (\$49,357.32) (CM)

Adopted Resolution No. 2019-50 authorizing the City Manager to purchase Microsoft Exchange Server License 2019 from SHI, Inc., of Somerset, New Jersey, to upgrade City's email services, in the amount of \$49,357.32.

C-11 Adopt Resolution Authorizing City Manager to Execute Service Contract with ConvergeOne, of Bloomington, Minnesota, for Support of City's Phone System and Voicemail Systems (Not to Exceed \$32,969.30) and Rescinding Resolution No. 2019-29 Authorizing City Manager to Execute Professional Services Agreement with Advantel Networks, of San Jose (CM)

Adopted Resolution No. 2019-51 authorizing the City Manager to execute service contract with ConvergeOne, of Bloomington, Minnesota, for support of City's phone system and voicemail systems, in an amount not to exceed \$32,969.30, and rescinding Resolution No. 2019-29 authorizing the City Manager to execute Professional Services Agreement with Advantel Networks, of San Jose.

C-12 Adopt Resolution Authorizing City Manager to Execute Service Contract with Eaton Corporation, of Cleveland, Ohio, for Support of City's Datacenter Uninterrupted Power Supply (Not to Exceed \$30,276.29) (CM)

Adopted Resolution No. 2019-52 authorizing the City Manager to execute service contract with Eaton Corporation, of Cleveland, Ohio, for support of City's datacenter uninterrupted power supply, in an amount not to exceed \$30,276.29.

C-13 Adopt Resolution Authorizing City Manager to Execute Change Orders to 2018 Pavement Crack Sealing Project (\$30,000) and Appropriating Funds (\$19,000) (PW)

Adopted Resolution No. 2019-53 authorizing the City Manager to execute change orders to 2018 Pavement Crack Sealing Project, in the amount of \$30,000, and appropriating funds, in the amount of \$19,000.

C-14 Adopt Resolution Accepting Luca Place Subdivision, Tract No. 3622, Public Improvements (PW)

This item was pulled from the agenda pursuant to staff's request.

C-15 Adopt Resolution Accepting The Vine at Vintner's Square Subdivision, Unit No. 2, Tract No. 3898, Public Improvements (PW)

Adopted Resolution No. 2019-54 accepting The Vine at Vintner's Square Subdivision, Unit No. 2, Tract No. 3898, Public Improvements.

C-16 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with O'Dell Engineering, Inc., of Modesto, for On-Call Landscape Architectural Services (\$100,000) (PW)

Adopted Resolution No. 2019-55 authorizing the City Manager to execute Professional Services Agreement with O'Dell Engineering, Inc., of Modesto, for on-call landscape architectural services, in the amount of \$100,000.

C-17 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Petralogix Engineering, of Galt, for California Environmental Quality Act and Architectural Compliance Services for Lodi Police Training Facility (\$91,850) (PW)

Adopted Resolution No. 2019-56 authorizing the City Manager to execute Professional Services Agreement with Petralogix Engineering, of Galt, for California Environmental Quality Act and architectural compliance services for Lodi Police Training Facility, in the amount of \$91,850.

C-18 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Civil Hydro Tech, LLC, of Sunnyvale, for Groundwater Program and PCE/TCE Plume Management (\$141,700) and Appropriating Funds (\$141,700) (PW)

Adopted Resolution No. 2019-57 authorizing the City Manager to execute Professional Services Agreement with Civil Hydro Tech, LLC, of Sunnyvale, for Groundwater Program and PCE/TCE Plume Management, in the amount of \$141,700 and appropriating funds in the amount of \$141,700.

C-19 Adopt Resolution Authorizing City Manager to Execute Professional Services Agreement with Raney Planning and Management, Inc., of Sacramento, for Preparation of Environmental Impact Report and Planning Services and Conduct Sphere of Influence and Municipal Services Review Update for Proposed Perrin Ranch Project (CD)

This item was removed from the Consent Calendar at the request of Council Member Mounce in order to vote on the matter separately.

Mayor Pro Tempore Kuehne made a motion, second by Council Member Nakanishi, to adopt Resolution No. 2019-62 authorizing the City Manager to execute Professional Services Agreement with Raney Planning and Management, Inc., of Sacramento, for preparation of Environmental Impact Report and planning services and conduct Sphere of Influence and Municipal Services Review Update for Proposed Perrin Ranch Project.

VOTE:

The above motion carried by the following vote:

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

Noes: Council Member Mounce
Absent: None

C-20 Adopt Resolution Appropriating Funds for Lodi Station Parking Garage North Elevator Repair Project (\$155,486) (PW)

Adopted Resolution No. 2019-58 appropriating funds for Lodi Station Parking Garage North Elevator Repair Project, in the amount of \$155,486.

C-21 Adopt Resolution Approving 2019/2020 Citywide Pavement Repair Project for Road Repair and Accountability Act of 2017 Funding (PW)

Adopted Resolution No. 2019-59 approving 2019/2020 Citywide Pavement Repair Project for Road Repair and Accountability Act of 2017 Funding.

C-22 Adopt Resolution Approving Updated Records Management Program Manual and Authorizing Destruction of Certain Citywide Records in Accordance with the Government Code and the City's Records Management Policy (CLK)

Adopted Resolution No. 2019-60 approving updated Records Management Program Manual and authorizing destruction of certain Citywide records in accordance with the Government Code and the City's Records Management Policy.

C-23 Authorize City Attorney to Issue "Comfort Letter" to Owner Thomas H. Babcock, Trustee of James S. Babcock Living Trust, in Connection with Prospective Sale of Real Property Located at 712 West Lodi Avenue (CA)

Council Member Nakanishi requested clarification on the purpose of a comfort letter, to which City Attorney Magdich responded that properties overlying the water plumes over the PCE/TCE contamination often seek comfort letters as an assurance that the City is not pursuing litigation against them for PCE/TCE clean up; however, it does not preclude property owners from being responsible for contamination caused by other means or by future property owners.

Authorized the City Attorney to issue "Comfort Letter" to owner Thomas H. Babcock, Trustee of James S. Babcock Living Trust, in connection with prospective sale of real property located at 712 West Lodi Avenue.

C-24 Post for Expiring Terms on Library Board of Trustees, Lodi Arts Commission, and Planning Commission (CLK)

Directed City Clerk to post for expiring terms on Library Board of Trustees, Lodi Arts Commission, and Planning Commission.

C-25 Adopt Resolution Authorizing City Manager to Waive Bid Process, Utilize GSA Contract No. GS-07F-0199T, and Approving Purchase of Toyota Internal Combustion Forklift from Atlanta Forklifts, Inc., of Scottdale, Georgia (\$89,271) (EU)

Adopted Resolution No. 2019-61 authorizing the City Manager to waive bid process, utilize GSA Contract No. GS-07F-0199T, and approve purchase of Toyota internal combustion forklift from Atlanta Forklifts, Inc., of Scottdale, Georgia, in the amount of \$89,271.

C-26 Set Public Hearing for May 1, 2019, to Consider Adopting Resolution Approving Final 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan for Community Development Block Grant Program (CD)

Set public hearing for May 1, 2019, to consider adopting resolution approving final 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan for 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 Stokes, representing the Lodi Boys and Girls Club, thanked the City of Lodi and citizens for its continued support of the Club, which continues to struggle but has received support through major fundraising efforts. He stated the Boys and Girls Club has great employees and programs and provides amazing experiences for the youth of this community.

Amanda Lee, member of the public, showed photographs of guns and ammunition found at the homeless encampment by the river near Highway 99. She stated she hosted members of the San Joaquin County Board of Supervisors, District Attorney's Office, Caltrans, Public Works and Police Departments, San Joaquin County Sheriff's Office, and California Highway Patrol (CHP) to view the situation along the river. Ms. Lee questioned what the City's responsibility is in responding to inquiries and complaints about the health and safety of drinking water and illegal activities occurring along the river. She expressed fear of the guns, potential meth labs, and illegally parked trailers in the area, as well as chemicals and human waste being dumped into the river and that nothing is being done to address the problem because of jurisdictional issues. She demanded that immediate action be taken before someone is hurt and urged the various agencies to ensure that the laws are enforced. Ms. Lee referenced Penal Code 373a that sets forth penalties for lack of abating nuisances and stressed that the District Attorney should prosecute everyone who is guilty until the nuisance is abated and removed. She stated no agency is above the law and the neighbors are prepared to take this matter to court if necessary.

City Manager Schwabauer reported that staff held a second meeting with local officials, including Senator Galgiani and Assemblyman Cooper's offices, Caltrans, and CHP to further push them toward addressing the situation and to tour areas along Awani Drive to explore solutions. Caltrans presented a preliminary fencing plan to secure the area, and both Senator Galgiani and Assemblymember Cooper expressed support for an emergency declaration to move this project along quicker. The District Attorney's Office will be added to future meetings going forward.

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

Council Member Nakanishi announced that Council will hold a Shirtsleeve Session next week to discuss the Sustainable Groundwater Management Act, during which the Public Works Director will give a report on the progress to date. He stated the Eastern San Joaquin Groundwater Authority is on track to complete the study by 2020.

Council Member Mounce commented on the situation with the homeless encampments along the river, stating that a number of pieces of legislation, starting with AB109, have driven people to live on the streets and they have no regard for safety and how they treat precious resources. She expressed frustration that leaders are not acting on this and stated that jurisdictional arguments are not an excuse and meetings with other groups is not a solution. She reported that a Lodi native was killed in a carjacking in Washington by drug-addicted criminals and stated that, if this problem continues to be ignored, the same situation will happen in Lodi. She urged Ms. Lee and her neighbors to continue bringing this matter forward and demanding that something be done. Council Member Mounce reported she will be attending the League of California Cities Legislative Action Days in Sacramento and will meet with Senator Galgiani and Assemblymember Cooper to further discuss this situation. Further, she thanked the Parks, Recreation, and Cultural Services Department for a wonderful Arbor Day celebration at Hale Park and thanked the City Manager for his touching comments in recognition of the life that was recently taken at Hale Park. Lastly, Council Member Mounce asked staff to further research whether any penalties can be assessed on Caltrans as Ms. Lee suggested.

Mayor Pro Tempore Kuehne reported on: 1) his attendance at the Bluegrass Festival where he served as a judge; 2) attendance at the meeting referenced earlier by the City Manager regarding the area along the river by Highway 99, during which the City suggested an even more secure fencing option to provide greater security from the bridge and the group discussed a unified plan for the entire County to provide better policing; and 3) attendance at a preparation meeting for the San Joaquin Council of Governments One Voice trip to Washington D.C., at which he will lobby for funding of the Harney Lane overpass.

Mayor Chandler reported on his attendance at the Lodi City Employees Association recognition dinner where employees were recognized for their hard work and service, as well as the 6th annual Love Lodi event, for which he recognized Pastor Glen Barnes and the faith community for sponsoring such an event. Lastly, he stated Lodi's sister city, Kofu, Japan, celebrated its 500th anniversary and reported that he, Mayor Pro Tempore Kuehne, Council Member Nakanishi, and the President of the Lodi Sister City Committee traveled to Kofu to join the celebration. Kofu government officials treated the group very graciously, and it was a memorable experience. Mayor Chandler shared some of the photographs taken during the trip (filed).

Mayor Pro Tempore Kuehne added there was a lot of pomp and circumstance and a packed schedule every day, but it was one of the highlights of his life.

Council Member Nakanishi pointed out the City spent no money on this trip.

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

City Manager Schwabauer reported that the Lodi Police Department has been very active in dealing with the situation along the river, including towing the trailer that was mentioned at the last meeting.

In response to Council Member Nakanishi, Mr. Schwabauer stated there are a number of camper vehicles that park throughout town that are not supported by the structure that funds towing of normal vehicles. Normal vehicle tows have value in either salvage or resale; however, motor homes used by the homeless have no salvage value whatsoever. No one will accept those, so they must be destroyed. The City negotiated an agreement with some of the towing companies to tow vehicles for \$1,000 each and destroy them.

G. Public Hearings

G-1 Public Hearing to Consider Adopting Resolution Approving Draft 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan for Community Development Block Grant Program (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 draft 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan for Community Development Block Grant (CDBG) Program.

CDBG Program Administrator Patrice Clemons provided a PowerPoint presentation regarding CDBG Consolidated Plan for 2019-2023 and 2019-20 Annual Action Plan. Specific topics of discussion included CDBG purpose, Consolidated Plan process, Consolidated Plan sections, priority needs, goals, outreach, inclusion of Annual Action Plan with program year's budget and projects, unknown Housing and Urban Development (HUD) allocations for 2019-20, projects and allocations, submittal of Annual Action Plan, and recommended action.

Council Member Johnson questioned whether CDBG money in the future could be directed toward homeless issues, similar to the tent city built in Sacramento. He recognized it does not fit the normal definition of CDBG funds, but addressing homelessness is a prime need. He suggested staff explore the possibility for future CDBG money. City Manager Schwabauer explained there are two tracks for expenditure of CDBG funds: one is for target populations and

the other is for target locations. The homeless are an eligible source as a target population; however, the funds could not be used for policing those areas, only for enriching the prospects for that population.

Council Member Mounce stated CDBG funds were meant to help Latino women with children; that is the core target population. Further, she stated the President plans to eliminate CDBG funding and that the National League of Cities is working to convince his administration that this is an area he should not cut.

Council Member Johnson stated he understands the objective of CDBG funding, but he wonders if an exemption could be granted because the homelessness issue is overwhelming the country.

Council Member Mounce stated that, until there is more home ownership in the area, the east side will not change. She stated the money should be designated to build homes for Latinos on the east side. Further, Council Member Mounce expressed opposition to setting aside CDBG funds for the Tiny House Project and does not want these homes located within the CDBG target area. Mr. Schwabauer stated the Tiny Homes Project does not have to go in the target areas. He stated that 16 locations will be presented to the Committee on Homelessness, after which it will come to Council for decision. He added that, because CDBG funding can be used to ameliorate the homeless program, it can be used toward the Tiny House Project.

Council Member Nakanishi suggested that, if the City receives CDBG funds next year, it not include the Tiny House Project or anything related to the HEAP grant because of Council concerns.

Mayor Chandler opened the public hearing for public comment.

An unidentified member of the public questioned why the Blakely Park bathroom project is so expensive.

Parks, Recreation, and Cultural Services Director Jeff Hood stated the bathroom is a prefabricated structure manufactured offsite and the project includes preparing the site, connecting to sewer, water, and electrical systems, and includes an area for storage for Park staff. There is a strong need for a restroom in the park, particularly since the City received a grant to redo the ball fields and swimming area and is applying for a grant for additional improvements.

Sharon Gillies, representing California Human Development, thanked the City for designating funds toward expanding the immigration program, on which she provided information (filed). The organization, which has helped many people in Lodi, provides citizenship services and helps people find a legal pathway to citizenship. Further, she requested that immigration be added to the list of community services because there is definitely a need for it in Lodi.

Mayor Pro Tempore Kuehne thanked Ms. Gillies for sharing information regarding this service and stated he supports it because it is a worthwhile cause. Further, he stated he supports all of the recommendations presented, some of which are typically included in the grant and some that are new.

In response to Council Member Mounce, Ms. Clemons explained this action is to approve the draft five-year plan and draft plan for next year. The public hearing will be on Council's May 1, 2019, agenda to approve the final plan and allocation.

Amanda Lee, member of the public, expressed opposition to using CDBG money for the Tiny House Project because it will add more violence and crime on the east side and expressed support for immigration services because it helps improve lives. Further, she stated there needs to be greater public education efforts on how transitional housing works and overcoming the stigma that comes with that type of housing.

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

Council Member Mounce stated she will vote in favor of the recommendation, but added she will continue to fight to keep as much CDBG funding on the east side where it will most help the target population.

Mayor Pro Tempore Kuehne made a motion, second by Council Member Johnson, to adopt Resolution No. 2019-63 approving draft 2019-2023 Consolidated Plan and 2019-2020 Annual Action Plan for Community Development Block Grant Program.

VOTE:

The above motion carried by the following vote:

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

Noes: None

Absent: None

G-2 Public Hearing to Consider Adopting Resolution Approving Community Development Block Grant Annual Action Plan 2018-2019 Amendment No. 2 (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 Community Development Block Grant (CDBG) Annual Action Plan 2018-2019 Amendment No. 2.

CDBG Program Administrator Patrice Clemons provided a PowerPoint presentation regarding CDBG 2018-19 Annual Action Plan Amendment No. 2. Specific topics of discussion included sources for reallocation, uses of reallocation, public review and comment period, and requested action.

Mayor Chandler opened the public hearing for public comment.

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

Mayor Pro Tempore Kuehne made a motion, second by Council Member Johnson, to adopt Resolution No. 2019-64 approving Community Development Block Grant Annual Action Plan 2018-2019 Amendment No. 2.

VOTE:

The above motion carried by the following vote:

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

Noes: None

Absent: None

RECESS

At 8:37 p.m., Mayor Chandler called for a recess, and the City Council meeting reconvened at 8:40 p.m.

G-3 Public Hearing to Consider Adopting Resolution Authorizing City Manager to Execute Reimbursement Agreement RA-18-01 for Public Improvements Constructed with Lodi Shopping Center (PW)

NOTE: This item is a quasi-judicial hearing and requires disclosure of ex parte communications as set forth in Resolution No. 2006-31.

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 authorizing the City Manager to execute Reimbursement Agreement RA-18-01 for public improvements constructed with Lodi Shopping Center.

City Attorney Magdich reminded Council that at the February 6, 2019, public hearing on this item, the Frontier Community Builders (FCB) attorney made two arguments that Council asked her to research and provide a response. First was the argument that the application submitted by Daryl Browman with Browman Development Company (BDC) was not timely filed, and the second was in reference to the term "improvements" for the Reimbursement Agreement (RA) before Council. Specific topics of discussion included scarcity of cases interpreting RAs and related statutes; California Attorney General decisions; City Attorney opinions that timeliness in submitting the application requesting reimbursement within one year was satisfied, the preparation of the RA within 60 days was satisfied, and the public hearing being set within 90 days was satisfied; "directory" versus "mandatory" language; reason for delays, including efforts to negotiate disputes between all of the parties and conduct a peer review of the agreement under threat of litigation against the City; no consequences or penalties in the Lodi Municipal Code section relating to time periods; definition of Government Code 66419, which includes language to ensure consistency with the general plan or any applicable specific plan; opinion that as long as BDC improvements were consistent with the general plan, the costs would be subject to the agreement; and overall opinion that FCB's attorney's arguments are not valid. She recommended Council open the public hearing and offer each side 15 minutes to comment.

Mayor Chandler opened the public hearing for public comment.

Daryl Browman with BDC pointed out this issue has been postponed 11 times over the course of the last year and encouraged the Council to make a decision in this matter to finalize the RA. He expressed appreciation to staff for all of its efforts in getting this agreement prepared and answering every question brought up by the parties and their counsel. He stated that staff, the independent peer review, City's counsel, and outside counsel all agree and support the findings in the RA as adequate, appropriate, and consistent with local ordinances. All of those parties also find FCB's claims to be meritless. He requested Council approve the RA.

Steve Herum, representing FCB, stated this particular RA is unique to past RAs because the City is handling it in a different manner and abandoning past practice, which he believes will create chaos in the future because other developers will want the same agreement. Mr. Herum presented a handout (filed) with excerpts from the Lodi Municipal Code relating to timelines and definitions, Government Code relating to definition of "improvement," and court interpretation relating to definition of "improvement." Mr. Herum stated the Lodi Municipal Code gives Council 90 days to make a decision, but it does not extend the time limit. He further discussed the difference between the use of "must" and "shall," stating the code states the hearing "shall" be conducted within 90 days, which should be defined as mandatory; not permissive. He pointed to other Lodi Municipal Code sections that use the word "shall" as mandatory, adding that staff cannot go back and forth on how to interpret the word; it should be utilized the same throughout the code. With regard to the definition of "improvements," Mr. Herum stated that at no meeting or hearing did the City say the Walmart project had to be consistent with the general plan, which goes against the City Attorney's argument about the Government Code's reference to compliance with a general plan or specific plan. Mr. Herum urged Council not to rely on staff's opinion and review the Government Code section definition of "improvement" for itself.

Tom Doucette with FCB stated that, over the last 30 years, his company has applied for RAs on improvements built in town and has never objected to paying its fair share of the costs, and no other property owner has opposed costs allocated to them. With this RA, the issue is overhead, administration of the project, and incidental expenses, which should be covered by the 10 percent allowance. The purpose is to eliminate the argument and for the developer to itemize costs for the City to determine if they are adequate or overstated. Lodi, in the past, has not allowed itemization of indirect costs. This agreement has overhead charges, as well as applies the 10 percent reimbursement, which he believes is double-dipping. Mr. Doucette added that FCB disputes the land basin charge as well, stating he believes FCB is being allocated three times the actual amount. He stated that he too would like a resolution to this matter and move on.

Steve Herum summarized that the math does not make sense in this RA and referred to the letter from Walmart included in the Council packet that states the performance bond is equal to the cost of improvements. He stated he agrees with Walmart's statement and calculates the total cost to

be paid should be \$3,461,862 based on the performance bond plus 10 percent for overhead and fees. If that number is put into the RA, FCB will be satisfied and will drop any opposition to the RA.

Mayor Pro Tempore Kuehne pointed out that the entire quote from the Walmart letter concludes that the contract price, which is bonded, includes all costs for the improvement, direct and indirect.

Mayor Chandler questioned whether this alternative option was previously presented to Mr. Browman, to which Mr. Herum responded that he believes this formula is correct under the RA ordinance. Mr. Schwabauer pointed out that Mr. Herum's figure of \$3,461,862 is not what he is proposing FCB should pay; rather, he is proposing it is the total number to be allocated among all of the parties.

Matthew Nelson with Gresham, Savage, Nolan, and Tilden, author of the Walmart letter, pointed out that once again Mr. Herum raised issues at the last minute, while Walmart presented its facts and arguments last week for inclusion in the Council packet, thereby giving Council time to review the information prior to making a decision. Mr. Nelson further stated that Mr. Herum's argument on the use of "shall" versus "may" is not valid because all of the examples he provided had consequences or penalties associated with it. With the RA code section, Mr. Herum is applying an argument that if the applicant files timely but Council does not hear the matter within the 90-day timeframe, the applicant should be penalized. Further, in the case of Mr. Herum's argument that the Government Code only reimburses hard costs for improvements, he pointed out that developers would no longer construct anything if all true costs were not reimbursed. The basis of an RA is the first party in is ultimately reimbursed, with the latter parties paying for the improvements. Lastly, with regard to the letter referenced by Mr. Herum, Mr. Nelson stated the performance bond is intended to cover the entire project, not for what FCB contends.

Daryl Browman responded to Mr. Herum's alternative solution, stating that taking half of what is legally owed is not an acceptable compromise. He reiterated that staff and every outside expert have agreed that this RA is consistent with other RAs approved in Lodi and stated that all of Mr. Herum's examples of "shall" versus "may" have penalties tied to the actions in the code. He stated BDC made several compromises in this matter at the behest of the City, which reduced the reimbursable amount by \$1 million that legally could have been included in the agreement. He urged Council to consider the fairness issue in this matter, stating the improvements in the RA are conditions that would have been required to build the FCB homes as part of the Gateway North project. If FCB were to build those improvements today, it would be carrying \$6 million of the improvements and it would likely be twice as expensive. Mr. Browman stated that BDC is paying four times as much as FCB for the reimbursements on a per acre basis. He stated the reimbursement is for the amount spent, which includes land acquisition, development of facility, and construction costs. Mr. Browman pointed out that FCB is the only property owner complaining about this agreement. Based on the overwhelming evidence presented by staff and supported by outside engineering and legal consultants, he urged Council to make a final decision on this matter and either approve the RA or not.

Mike Lusk, member of the public, spoke on behalf of Lodi citizens, stating it appears the City may be liable for any difference in costs and he does not want tax payers to subsidize the building industry. He asked Council to take that into consideration when making its decision.

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

Ms. Magdich responded to some of the points brought up: 1) issue relating to timeliness was covered by Walmart's attorney; 2) the difference between "directory" and "mandatory" verbiage is that there are consequences and penalties to certain actions, such as misdemeanors or infractions, and the courts are clear that timeframes without consequences tend to be "directory"; and 3) she is relying on case law and attorney general opinions with regard to "improvements" and that it is broadly defined. Mr. Schwabauer added that City plans clearly show drainage and streets are necessary developments. Ms. Magdich continued that Mr. Herum's argument about there being no reference to general plan regulations at prior meetings is not valid because

general plan compliance is required for all City projects and does not need to be articulated. Further, the figure Mr. Herum is relying on does not include the storm water basin retention, which would need to be added if his suggestion is to be considered.

In response to Mayor Pro Tempore Kuehne, Ms. Magdich stated that the use of the word "shall" is mandatory when there are consequences tied to it; however, there are no consequences specified in the applicable Lodi Municipal Code sections relating to the RA. She further stated that Mr. Browman complied with the code by submitting his application within the one-year timeframe, Public Works vetted the application and it was sent back for further work, and the 60- and 90-day timeframes are predicated on a complete application. The public hearing was set within the timeframe, but it was continued at the request of staff, BDC, and FCB while all of the parties attempted to work through the issues brought up by one or more party under a threat to sue. The delay was for the purpose of vetting the issues. Mayor Pro Tempore Kuehne stated he believes the timeliness arguments are not valid and read Walmart's conclusion, which stated the agreement went through unprecedented scrutiny and analysis, staff should be commended, and the RA should be approved.

Council Member Mounce agreed that "shall" and "must" are strong words, which brought to her mind the Redevelopment Agency and how the ordinance was written that projects "may" or "might" be built, instead of "shall" or "must," and the then-City Manager's response was to trust staff, which the group could not do because the language in the ordinance was not strong enough. Ms. Magdich responded courts have decided that, if there are no consequences tied to an ordinance, it is directory language. The purpose of the 60- and 90-day language is to protect applicants so their project is not intentionally shelved to miss the deadline. There are no consequences or penalties written into this ordinance; therefore, it is directory. Council Member Mounce disagreed, stating "shall" means the consequence is the developer would be out of luck. Mr. Schwabauer cautioned about interpreting words that have been interpreted by courts, stating it is not prudent to use colloquial meanings when there is legal court guidance on what certain terms mean. Council Member Mounce countered that the City ordinance should be corrected, to which Mayor Chandler agreed.

Public Works Director Charlie Swimley clarified that the dollar amount brought up by Mr. Herum should also include the cost for the pump station and additional storm drain improvements, which requires bonding, that would bring the total amount to \$4.3 million subject to plan check fees.

In response to Council Member Johnson, Ms. Magdich confirmed that a complete engineering study was done, as well as a peer review conducted by an independent party that agreed with the study.

Mr. Schwabauer pointed out that one of the arguments made at this meeting was to imply that the gatekeeper should control the logic of the agreement, but it is really the intensity of acreage of each location. In response to Mr. Schwabauer, Mr. Swimley provided calculations showing that FCB was allocated 31 percent of the basin land cost, which is appropriate for the run-off.

Council Member Mounce stated that both companies have been friends to this community and it is unfortunate that Council has to make a decision in this argument. She stated that for her the bottom line is how this will affect citizens and how much money it would cost taxpayers. Ms. Magdich stated staff provided the opinion that the RA as written and allocated is correct and that, if Council were to discount the amount requested in the RA without a justification, Mr. Browman would look to the City to make up the differential.

Council Member Nakanishi shared the feelings expressed by Council Member Mounce, stating he respects both parties, but his primary responsibility to the City is fiduciary. He stated that this matter has been prolonged because of arguments with both parties, and the legal opinion is to support the RA.

Mayor Pro Tempore Kuehne agreed, stating this is not a good place to be in as a Council Member, this issue has been on-going for over a year, he has met with both parties, and a decision must be made.

Ms. Magdich reminded Council this is a quasi-judicial matter and each member should report on with whom they met.

Council Member Nakanishi stated he met with both parties several times.

Council Member Johnson stated he met with neither party.

Council Member Mounce stated she met with both parties.

Mayor Chandler stated he met with BDC, FCB, and Elliot Homes, but not with Walmart. He questioned if there was an official response to Mr. Herum's alternative proposal, to which Mr. Schwabauer stated that Mr. Browman rejected it.

Council Member Johnson made a motion, second by Council Member Nakanishi, to adopt Resolution No. 2019-65 authorizing the City Manager to execute Reimbursement Agreement RA-18-01 for Public Improvements Constructed with Lodi Shopping Center.

VOTE:

The above motion carried by the following vote:

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

Noes: Mayor Chandler

Absent: None

H. Regular Calendar

H-1 Adopt Resolution Authorizing City Manager to Execute Improvement Agreement for Gateway North Subdivision, Unit No. 1, Tract No. 3940 (PW)

Public Works Director Charlie Swimley provided a brief presentation regarding the Improvement Agreement for Gateway North Subdivision, Unit No. 1, Tract No. 3940, stating the subject location is located south of the Walmart property, the configuration is reflected in Exhibit A of the staff report, and the developer provided all of the requirements now that the Reimbursement Agreement (RA) with Walmart has been approved, with the exception of payment as a condition of the RA.

In response to Council Member Mounce, Mr. Swimley responded that items of this nature are typically on the Consent Calendar; however, in this case it was necessary to handle it following the previous item relating to the Walmart RA so Council could make a decision based on the approved RA. City Manager Schwabauer added that the RA requires a payment under this agreement, and City Attorney Magdich pointed out there is a Blue Sheet regarding this item.

In response to Mayor Chandler, Ms. Magdich stated this agreement may take a similar path as the previous RA item, but the agreement does include protection for the City if payment is not made under the RA. Mr. Schwabauer added that potential reimbursements subject to an RA will depend on whether there is land in this agreement eligible for reimbursement application. Mr. Swimley stated there may be some land that qualifies along Lower Sacramento Road.

Council Member Mounce made a motion, second by Council Member Johnson, to adopt Resolution No. 2019-66 authorizing the City Manager to execute Improvement Agreement for Gateway North Subdivision, Unit No. 1, Tract No. 3940, as detailed in the Blue Sheet.

VOTE:

The above motion carried by the following vote:

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

Noes: None

Absent: None

I. Ordinances

- I-1 Adopt Ordinance No. 1961 Entitled, "An Ordinance of the City Council of the City of Lodi Authorizing an Amendment to the Contract Between the City Council of the City of Lodi and the Board of Administration of the California Public Employees' Retirement System" (CLK)

Council Member Mounce stated she will be abstaining from voting on this item due to the fact that she was absent from the meeting at which this ordinance was introduced.

Mayor Pro Tempore Kuehne made a motion, second by Council Member Johnson, (following reading of the title) to waive reading of the ordinance in full and adopt and order to print Ordinance No. 1961 entitled, "An Ordinance of the City Council of the City of Lodi Authorizing an Amendment to the Contract Between the City Council of the City of Lodi and the Board of Administration of the California Public Employees' Retirement System," which was introduced at a regular meeting of the Lodi City Council held March 6, 2019.

VOTE:

The above motion carried by the following vote:

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

Noes: None

Abstentions: Council Member Mounce

Absent: None

J. Adjournment

There being no further business to come before the City Council, the meeting was adjourned at 10:01 p.m.

ATTEST:

Jennifer M. Ferraiolo
City Clerk