

**January 5, 2005**

**The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.**

**MINUTES OF THE  
WORKSHOP AND SPECIAL MEETING - CITY COUNCIL  
JANUARY 5, 2005**

**The workshop and special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:30 p.m. on Wednesday, January 5, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.**

**ROLL CALL:**

**Present: Council Members Smith, Patterson, Whitney, and Mayor Messina**

**Absent: Council Member Campbell - arrived at 6:40 pm**

**PLEDGE OF ALLEGIANCE:**

**Mayor Messina led the pledge to the flag.**

**ADOPTION OF AGENDA:**

**The Agenda was unanimously adopted as presented.**

**COMMUNICATIONS:**

**PUBLIC COMMENT:**

**Donnell Rubay spoke regarding the Mayor's comments about charging fees for appeals at last night's meeting - explained why she had, in the past, filed appeals.**

**UNFINISHED BUSINESS:**

**Videotape was shown of Terry Franke of the First Amendment Coalition regarding Sunshine Ordinances. This tape provided information regarding:**

- Why such ordinances are adopted**
- Deficiencies in the Brown Act and Public Records Act**
- Need for communities to address particular needs in individual communities that have been obstacles**
- Question and answer session regarding Sunshine Ordinance**

**This was followed by a report by the City Attorney, Heather McLaughlin, who explained the proposed ordinance and reviewed written communication from committees, groups and individuals making comments on the proposed ordinance, as well as the responses from the Sunshine Committee. She**

also discussed how the City would implement it. City Manager, Jim Erickson, then provided comments regarding concerns about the proposed ordinance and provided a suggestion for an amendment.

Ann Hansen, Benicia Historical Museum, commented on the ordinance, noting that she cannot support the ordinance as presently configured. She objects to potential regulation of the organization, which is an independent, non-government organization. She commented that the proposed ordinance is over-broad, and creates an additional layer of administration, as well as being vague in terms of its actual implementation.

Council Member Smith clarified that the application to non-government agencies is subject to provisions of the ordinance calling for consultation with affected groups.

Bonnie Silveria, Benicia Historical Society, asked who the Sunshine Committee members are. Council Members responded that the Committee Members are Council Member Campbell and Vice Mayor Patterson. Anyone who attended the meetings was treated as a full committee member. Vice Mayor Patterson asked those in the audience to stand if they attended at least one meeting (over a dozen people stood). Vice Mayor Patterson named some of the people who attended, including John Moses, who observed but did not participate. Ms. Silveria noted that she wants the section on potential applicability to non-profits to be removed, as that would be another level of bureaucracy, ADA issues, etc. She mentioned the Good Neighbor Policy and code enforcement as higher priorities.

JB Davis, Economic Development Board, expressed concern about applicability to non-profits, repeated the suggestion of excising that provision.

Ari Soglin, BeniciaNews, clarified the thinking about non-profits. He noted the proposal does not mandate application to non-profits, only that the Commission would look at the idea in consultation with groups affected. He commented that a watchdog commission is very important; the commission would be representative of the people.

Mayor Messina indicated that the City Council has the ultimate authority and that the Council Members are representatives of the people. They are elected and can be voted out if they are not responsive.

Mr. Soglin then asked if the Economic Development Board's letter submitted to the Council was approved by quorum of the board? If not, it would be a violation of the Brown Act, he said.

Mike Ioakimedes, Chair of the Economic Development Board, said that the letter was signed by the members, but not authorized by action of the board.

Larry Fullington, Economic Development Board, questioned the need for the ordinance or whether the community really cares about the ordinance. He is concerned about cost in staff time and out-of-pocket costs of ordinance administration. He noted that City staff does not need an ordinance to do their jobs effectively.

Mary Francis Kelly Poh, Community Action Council, noted that she is not sure of where she stands on the proposal. She is opposed to sections involving application to non-profits. She commented that just because an organization applies for funding, does not make it a government agency. She explained how some community non-profits obtain funding openly via Human Services allocations. She said that the six-day meeting noticing could be very problematic for non-profits.

Chris Howe, Valero Refinery, indicated that Valero supports open government, but that the current proposed ordinance is too broad. He expressed concern about application to the Community Advisory Panel (CAP). CAP was never intended to be a government body and that application of the ordinance to CAP would not be appropriate. He noted that the solution might be to be as specific as possible in the ordinance as to which non-profits would be covered.

Mr. Ioakimedes, Economic Development Board Chair, noted that the board is also for open city government, but that he is also concerned with those same provisions. He commented that the ordinance speaks very little about engagement of citizens; the ordinance circumvents obligation of citizenship. He went on to note that the government already has the tools it needs. Watchdog duty should fall on the people, not a watchdog committee.

Council Member Smith read the letter from the Youth Action Task Force relating to the proposed ordinance. The task force indicated in the letter that they felt the value vs. the burden should be carefully weighed in the ordinance. They are concerned that the ordinance would impede the activities of collaboration.

Annie Lloyd, Youth Action Task Force (YATF), echoed these concerns regarding the proposed ordinance. She noted that the YATF is a loosely organized group and questioned whether the ordinance should apply to them?

Belinda Smith, Sunshine Committee, noted that she was part of the drafting of the Sunshine Ordinance. She has had an experience with the City, specifically being denied City documents. Things seem to be good now, but that could change. She asked why would this require more employee training. She asked how staff determined the staffing hour requirement.

Jim Erickson, City Manager, indicated there is a schedule of staff hours and how those estimates were determined included in the packet. He provided an overview of the schedule of hours.

Greg Kaufman, President of the Chamber of Commerce, paraphrased the letter submitted by the Chamber of Commerce. He requested more time and more inclusiveness in review of the proposed objective in the application of the ordinance provisions to non-profits. He noted his concern about the impact on the City budget and stretching staff resources. He is concerned about administration by an un-elected body, as well as concern that the committee will divide the community, adversely impacting the business community.

Kitty Griffin noted that the objections voiced thus far to the ordinance are frivolous. The press needs greater access to information about government. She objected to concerns over staff morale, and

asserted that normal citizens will care about this ordinance. She said that non-profits should be obligated to open their meetings to the public, but not more than that.

Bob Mutch commented that there have been document problems in the past, but that things have been better through the existing system. He noted that there is a cultural change going on in City government, that people are increasingly being treated as customers. Things will get better as individuals within the organization get better, and that this is occurring. He noted that the commission does not really make sense, for example, quarterly commission meetings will not be timely enough to deal with potential complaints. He commented that it is overkill for a small town like Benicia, that the model proposed does not really fit here. He urged reconsideration of the ordinance for Benicia.

Donnell Rubay noted that the ordinance development process was quite open. She added that in terms of application of rules to non-profits, that this had not yet been decided. Certain organizations receiving public funds have not necessarily acted responsibly. The Mayor and City Council should not have appointed/authorized the Sunshine Sub-Committee, as they are not intended to implement the ordinance. She also commented that the City Finance Director has not responded to her request for an accounting of the Camel Barn finances relative to City contributions. She noted that she feels the commission is necessary.

Bob Craft, PURE Committee Chair, commented that he attended two of the meetings and thinks the Sunshine Committee did a good job. The Contra Costa Times workshop speakers said their opinion is that access to government isn't worth anything without an Ethics Commission. He noted that he supports the ordinance and that the costs developed in the staff analysis are actually relatively small in comparison to other expenditures made by the City.

Karen Burns noted that she likes the idea of Sunshine Ordinance having power over existing commissions. The non-profits funded by the City have no openness, open meetings or posted agendas - some even discourage attendance at their meetings. The non-profits receiving a sizable portion of their budgets should not be permitted to operate in a closed manner.

David Ernst noted he participated in the meetings and that they were open, and others should have participated. He also noted, as an example, the waterfront initiative - City and organizers of the initiative could not get together on a common position. It is due to mistrust based on a history of City secrecy. The ordinance, if adopted, will help create more openness and eliminate feelings of secrecy.

John Van Landschoot commented that the concern that the new proposed commission is non-elected and that this may be a problem is actually not a problem. For non-profits, if you receive money from the City, you should open your meetings to the public. He noted that he likes the idea proposed by Mr. Howe from Valero, to establish a threshold for triggering the rules applying to non-profits (i.e., at a certain level of support). He suggested getting more input and asked the question, "How much is open government worth?"

Ann Hansen asked if everyone feels that the Brown Act has been successful? She asked who is the

**watchdog of the Brown Act?**

**Vice Mayor Patterson noted that options include self-monitoring, District Attorney's Office, Fair Political Practices Commission, and private law suit. She also commented that the Brown Act has been successful, but has certain areas that need improvement and correction.**

**Mayor Messina called a recess at 9:40 p.m.**

**The meeting reconvened at 9:55 p.m.**

**Alan Schwartzman, Planning Commission, commented that the committee, as recommended, does not necessarily assure lack of bias. Non-profits are "private" organizations. Open government is important. Perhaps there can be some effort to mandate access to information. Council and the City Manager can mandate this regardless of form. If there is an ordinance, it needs to be revised to remove vagueness to avoid issues; needs to be succinct and specific.**

**Council Member comments began at 10:00 p.m.:**

**Vice Mayor Patterson proposed the removal of application to non-profits, that it is too much of a red herring and may contradict contractual agreements.**

**Council Member Campbell said the issue of non-profits could be handled, if necessary, by negotiating amendments to individual agreements.**

**Council Member Smith indicated that he likes the Planning Commission's recommendation regarding the "right to disruption" concerns; suggested inserting the wording "to the extent not disruptive." He also noted that he likes the idea of a reading of the rights, unless the list of rights is posted - suggested posting in each meeting room. Regarding JPAs, he suggested removing the portion of the ordinance requiring potential application of the ordinance to them. He also commented on the vagueness of appropriate time for public meetings and said that the ordinance should indicate government should insist that meetings not go beyond 11 p.m. He indicated the ordinance should give the Mayor the prerogative to cut speaker's time to three minutes with concurrence of Council on occasion. Also, draft minutes should be available within six days. He suggested a prohibition on lobbying by City Council members or former City Department Heads, as well as the establishment of tiers of application of requirements for different bodies. Council Member Smith indicated he agrees with almost the entire ordinance.**

**Council Member Whitney commented that the non-profits should be taken out of the ordinance. Regarding the right to interrupt, he indicated he is concerned about it and would like that part deleted. He also said he would like to see clear consequences for ethics violations, and would like all employees, appointed and elected, to sign off on it. He went on to say that he would like to allow additional opportunity for questions, that he is open to talking about it further, perhaps an ad hoc committee. He is concerned about the staff hours estimated and would like to see staff work on reducing those hours.**

Mayor Messina indicated he has several changes to share. He said that he is comfortable with the general protections we have under existing laws. He is concerned about restating laws and rules contained in other codes. For example, he does not want to re-state the Brown Act rules, instead the ordinance should identify changes above and beyond Brown Act requirements. Regarding the Ethics and Meetings sections, he indicated he is pretty much satisfied with that content. Regarding the time requirements, he would like to see some more flexibility written into that requirement. He noted that he is most perplexed by the concept of the watchdog committee, suggested letting the Sunshine Council Members be the ad hoc committee/watchdog committee. He also commented that there would likely be more staff time required than what is estimated in the staff report. He suggested allowing the Sunshine Committee to have one more round to review the comments and engage in additional dialogue with the public.

Vice Mayor Patterson talked about how they had spoken with other cities with such commissions and they did not note problems. She noted that access to power is one of the main reasons for the ordinance, to make local government accessible for everyone.

Council Member Whitney asked about scanners in City Hall and suggested that the City scan "popular" documents, as then it would be easier to provide such documents to the public. He also asked about the issue of gifts and how the ordinance would impact long-standing relationships, exchanging of golf rounds with friends, etc.

Council Member Campbell raised the issue of the need to clarify the gift policy and noted that awareness is the key. That is why part of the ordinance is redundant with the Brown Act, as it will help those who don't have access to government on a frequent basis. For example, he noted, the process of the ordinance resulted in a staff being informed enough to comply with records test of the Contra Costa Times.

Mayor Messina clarified that the prior Council had directed the City Manager to improve staff awareness as a result of a Fairfield paper test a couple of years ago.

Vice Mayor Patterson suggested one more meeting of the Sunshine Committee, and to send a notice to that effect to City boards and commissions, and then have the Sunshine Committee bring it back before the City Council. She also suggested that City Council members give their comments in writing to the Sunshine Committee.

Jim Erickson provided information on staff concerns regarding the need for a commission, standing or ad hoc, that it is really just needed for violations, not implementation. Those are more administrative requirements, whereas with a violation, a committee is the safety valve.

Vice Mayor Patterson discussed the importance of the committee and what it is trying to achieve. She stated that she was miffed that there has been so much push back from Staff on this issue.

Karen Burns asked when would the open meeting requirements for non-profits be re-visited?

**Vice Mayor Patterson noted that it might be an issue that can be brought to the Audit and Finance Committee.**

**Council Member Campbell commented that the issue could be a budget issue for groups receiving City money.**

**Kitty Griffin suggested that the League of Women Voters be involved to further inform the community about the ordinance.**

**ADJOURNMENT:**

**Mayor Messina adjourned the meeting at approximately 11:00 p.m.**

**Lisa Wolfe, City Clerk**