

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JANUARY 5, 2010

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, January 5, 2010 in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- ❑ Benicia Housing Authority:
Two full terms to January 31, 2012 (Tenants)
- ❑ Civil Service Commission:
Four full terms to January 2014
- ❑ Human Services and Arts Board:
Two unexpired terms to June 30, 2010 and July 31, 2013
- ❑ Open Government Commission:
Two full terms to January 31, 2014
- ❑ Parks, Recreation and Cemetery Commission:
One full term to January 2014
- ❑ Sky Valley Open Space Committee:
One full term to January 31, 2013

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

APPOINTMENTS:

Council discussed Vice Mayor Schwartzman's concerns regarding the need for continuity with the appointment to the STA.

RESOLUTION 10-01 - A RESOLUTION CONFIRMING MAYOR'S APPOINTMENTS OF MEMBERS OF THE CITY COUNCIL TO STANDING, AD HOC AND OUTSIDE AGENCY COMMITTEES

On motion of Council Member Hughes, seconded by Council Member Campbell, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: Vice Mayor Schwartzman

RESOLUTION 10-02 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF WALTER (BUD) DONALDSON TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2013

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

PRESENTATIONS:

Tula Sister City Update:

Ms. Carla Gallagher provided an update on Benicia's Sister City, Tula, Mexico.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Jim Erickson, City Manager, stated that there was a request from the appellants attorney that item VIII-A be continued, as their lead counsel was not able to attend tonight's meeting.

Janet Coleson, Council's outside counsel, suggested Council approve the agenda, open up the public hearing, take public testimony, and then continue the public hearing to date certain.

Kat Wellman, Planning Commission's outside counsel, stated the item could be moved up in the agenda, as there were expensive outside experts present.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the Agenda was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Vice Mayor Schwartzman – Vice Mayor Schwartzman discussed his positive experience with AT&T's U-verse product.
2. Mayor Patterson – Mayor Patterson discussed her recent vacation, and how pleased she was to be back in Benicia.

CONSENT CALENDAR:

Council pulled items VII-A, VII-D, VII-E, and VII-F.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the Consent Calendar was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Council adopted the 2010 City Council Regular Meeting Calendar.

RESOLUTION 10-03 - A RESOLUTION AUTHORIZING THE SPENDING PLAN OF THE SUPPLEMENTAL LAW ENFORCEMENT GRANT FUND FOR FISCAL YEAR 2009/10

Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of the Minutes of December 15, 2009:

Council Member Ioakimedes requested the 'ex parte' statement and the discussion statement be separated to prevent confusion.

On motion of Council Member Ioakimedes, seconded by Vice Mayor Schwartzman, the Minutes of December 15, 2009 were approved as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Approve an amendment to the lease between the City of Benicia and Benicia Main Street:

Council clarified the issue of rent deferral, clarification that the proposed deferral would not have an impact on the City's General Fund.

Council Members Campbell, Schwartzman, and Mayor Patterson disclosed ex parte communications.

Council and Staff discussed the freight room in the depot building. The issue would be discussed at the 1/26/10 City Council budget meeting.

On motion of Vice Mayor Schwartzman, seconded by Council Member Campbell, Council approved an amendment to the lease between the City of Benicia and Benicia Main Street, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Ratification of the Endowment Fund Policy of the Human Services and Arts Board and reallocation of \$44,656 in prior year expenditures:

Council and Staff discussed City policy on how the endowment funds are used, how grant requests are handled, the flexibility of the Board to go below the threshold, the possibility of the fund being a moving target, Human Services and Arts Board's support for the proposed reallocation, the sources for the endowment funds, and the need to discuss how the endowment fund is handled at the 1/26/10 budget workshop.

Public Comment:

None

Council and Staff discussed the possibility of having the funds that are contributed from other sources remain under the discretion of the HSAB. Council will discuss the issue further at the 1/26/10 budget workshop.

Vice Mayor Schwartzman and Staff discussed how the endowment funds are handled with respect to the human services portion and the arts portion of the board. The human services fund has never collected any donations on behalf of the arts groups.

Council Member Hughes stated he would make a motion to approve, with the provision Council discuss the refinement of the language in the policy at the 1/26/10 budget workshop.

RESOLUTION 10-04 - A RESOLUTION RATIFYING THE ENDOWMENT FUND POLICY OF THE HUMAN SERVICES AND ARTS BOARD AND REALLOCATING \$44,656 IN PRIOR YEAR EXPENDITURES

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Consideration of Mid-Cycle Budget Adjustments for Fiscal Years 2009-2011:

Council suggested moving the discussion on this item to the 1/26/10 budget workshop.

Council and Staff discussed the City's operating negative balance for the upcoming year, the need to discuss possible ways to close the negative gap on 1/26/10.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved continuing the discussion of the Mid-Cycle Budget Adjustments for Fiscal Years 2009-2011 to the 1/26/10 budget workshop, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor

Patterson

Noes: None

PUBLIC HEARINGS:

Appeal of the Rose Center Use Permit for Reduced Parking:

Mayor Patterson stated the attorneys for the appellant requested the item be continued, since Mr. Kopper could not be present.

Mr. Donald Mooney, attorney for the appellant, stated the appellant wished to withdraw their request for a continuance. He submitted a letter and packet of information (copy on file) from Mr. Kopper. They wished to proceed with the public hearing as scheduled.

Council and Ms. Coleson discussed the additional information provided by Mr. Mooney, and whether it should be considered substantial information, per the City's Open Government Ordinance.

Ms. Wellman discussed the need for Staff to have adequate time to evaluate, review, and respond to the information submitted by Mr. Mooney.

Ms. Coleson recommended Council continue the item, so that Council would have time to review the information submitted.

Mayor Patterson and Mr. Mooney discussed the content of the information he submitted (8-page letter from Mr. Kopper and a completed parking study).

Council and Staff discussed the need to continue the item to review the information, the need to allow for Council, Staff, and the public to review the information submitted.

Council Member Campbell discussed the need to take a break to review the information to verify that it was indeed substantial information.

Mr. Mooney and Council discussed the timeline for the information that was submitted at tonight's meeting.

Ms. Wellman discussed the 120-day limit for taking action, confirmation that the City had met the court ordered limit, and her recommendation to continue the item.

Public Hearing Opened

Applicant:

Mr. Thomas Carey, attorney for the applicant, discussed the date the appellant filed their appeal, the additional materials submitted by the appellant, the court's mandate to have the issue resolved within 120 days of October 30, 2009, concern regarding the Planning

Commission's ruling satisfying the mandated 120 days, and his client's willingness to either continue the item or proceed as planned.

Appellant:

Mr. Mooney discussed the need for the public to be able to weigh in on the issue of the continuance. He stressed that his client was ready to proceed with the public hearing. He expressed his desire to hear the staff report and then be able to give his presentation.

Mayor Patterson clarified that the staff report had been given, and the recommendation was to continue the public hearing to allow staff, the public, and Council to review the additional information.

Council Members Ioakimedes, Schwartzman, Hughes, and Mayor Patterson expressed support for continuing the meeting to allow Council, Staff, and the public time to review the information submitted by Mr. Kopper.

Council Member Campbell expressed support for Council taking a break to review whether the information submitted should be considered substantial.

Public Comment:

1. Collette Meunier – Ms. Meunier discussed concerns regarding the issue of a continuance. She discussed the timeline for the information that was submitted by Mr. Kopper.

Mayor Patterson disclosed ex parte communications she had with Ms. Wika regarding the procedures for a continuance.

2. Jon Van Landschoot – Mr. Van Landschoot spoke in support of continuing the public hearing. He requested Council review the information submitted by the appellant, the appellate court decision document, and the need for impartiality and professionalism.

Council and outside counsel discussed the time constraints imposed by the courts.

Council Members Hughes and Campbell discussed the size and detailed content of the information submitted by Mr. Kopper.

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, council approved continuing the public hearing to the 1/19/10 Council meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

ACTION ITEMS:

Approval of Additional Grant Award of \$15,000 in FY 2009-10 and \$15,000 in FY 2010-11 to the Benicia Community Action Council:

Rob Sousa, Finance Director, reviewed the staff report.

Public Comment:

1. Sharon Petrellese – Ms. Petrellese discussed the Human Services and Arts Board’s support of the Community Action Council, and clarified the additional funds would come from the City’s General Fund.

Council discussed support for the work CAC does, and concern regarding the issue of setting a precedent.

RESOLUTION 10-05 - A RESOLUTION AUTHORIZING AND ADDITIONAL GRANT AWARD OF \$15,000 IN FY 2009-10 AND \$15,000 IN FY 2010-11 TO THE BENICIA COMMUNITY ACTION COUNCIL

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Resolution was adopted, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

INFORMATIONAL ITEMS:

Reports from City Manager:

None

Mayor Patterson requested Mr. Erickson report on his trip to Montreal when a light agenda presents itself.

COUNCIL MEMBER REPORTS:

Update from the Regional Transportation Impact Fee meetings and STA staff report:

Mayor Patterson clarified that such items could be listed on an agenda as an action item.

Council Member Ioakimedes briefly reported on the Regional Transportation Impact Fee meetings and STA.

Mayor Patterson suggested STA do a presentation for Council before the February STA meeting.

On motion of Council Member Ioakimedes, seconded by Council Member Hughes, Council directed staff to agendize a presentation on this issue prior to STA’s February meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Request to agendize a discussion regarding reimbursement for staff time in defending lawsuits:

Vice Mayor Schwartzman reviewed the Council report.

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, Council approved agendizing a discussion regarding reimbursement for staff time in defending lawsuits, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Request to agendize a discussion of council rules and procedures regarding council member rights to sufficient and uninterrupted time if on topic and in the development of questions:

Mayor Patterson suggested including this topic on the 1/19/10 Council meeting when Council would discuss the Brown Act and Council Rules and Procedures.

Staff cautioned that the 1/19/10 meeting was becoming quite full.

Mayor Patterson suggested agendizing the discussion for the first meeting in February, and requested it be listed early on the agenda.

Council Member Campbell inquired which rules Council followed.

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 8:40 p.m.

Lisa Wolfe, City Clerk