

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
JANUARY 7, 2003**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:31 p.m. Tuesday, January 7, 2003, in the Council Chambers, City Hall, 250 East Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS:

Mayor Messina announced action taken in Closed Session, as follows: Re: Conference with Legal Counsel - Anticipated Litigation - 2 cases - Potential claim - direction was given to staff to settle; Sewer related cases - direction given to staff to settle cases.

Mayor Messina announced that a CEQA Scoping Meeting on the Intermodel Train Station would be held on Thursday, January 9, 2003 at 7: 00 p.m. in the Commission Room.

APPOINTMENTS:

Mayor Messina announced the appointment of Bobbie Geyer to the Human Services Fund Board to fill an unexpired term to July 1, 2005.

RESOLUTION NO. 03-1 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF BOBBIE GEYER TO THE HUMAN SERVICES FUND BOARD TO FILL AN UNEXPIRED TERM ENDING JULY 1, 2005

The above Resolution confirming the Mayor's appointment was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

Mayor Messina announced the reappointment of Carole Nail to the Library Board of Trustees to fill a full term ending December 31, 2005.

RESOLUTION NO. 03-2 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF CAROLE NAIL TO THE LIBRARY BOARD OF TRUSTEES TO A FULL TERM EXPIRING DECEMBER 31, 2005

The above Resolution confirming the Mayors' appointment was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

Mayor Messina announced the appointment of Ruth Workman to the Library Board of Trustees to fill a full term ending January 5, 2006

RESOLUTION NO. 03-3 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF RUTH WORKMAN TO THE LIBRARY BOARD OF TRUSTEES TO A FULL TERM EXPIRING JANUARY 5, 2006

The above Resolution confirming the Mayor's appointment was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

Mayor Messina announced the reappointment of Mark Hughes to the Parks, Recreation and Cemetery Commission to fill a full term ending January 4, 2007.

RESOLUTION NO. 03-4 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MARK HUGHES TO THE PARKS, RECREATION AND CEMETERY COMMISSION TO A FULL TERM EXPIRING JANUARY 4, 2007

The above Resolution confirming the Mayor's appointment was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina

Noes: None

Mayor Messina announced the reappointment of Larry Melandez to the Parks, Recreation and Cemetery Commission to fill a full term ending December 1, 2006.

RESOLUTION NO. 03-5 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF LARRY MELANDEZ TO THE PARKS, RECREATION AND CEMETERY COMMISSION TO A FULL TERM EXPIRING DECEMBER 1, 2006

The above Resolution confirming the Mayor's appointment was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina

Noes: None

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

On motion of Council Member Whitney, seconded by Council Member Smith, and unanimously carried, Agenda was adopted as presented.

COMMUNICATIONS:

WRITTEN:

PUBLIC COMMENT:

1. Marilyn Bardet, 333 East K Street, stated opposition to the proposed LNG Project in Vallejo; Vallejo's City Council needs to hear that Benicia does not approve of the project; requested redoing the Valero EIR based on new information.
2. Myrna Hayes, 816 Bransaforte Street, Vallejo, Community Co-Chair of the Mare Island Restoration Board, announced 7th Annual San Francisco Bay Flyaway Festival; what happens at Mare Island effects Benicia.
3. Bob Mutch, 695 Knight Drive, gave an up-date on the X-Park; announced up-coming fundraiser; commented on the new helmet law for skateboarders.
4. Peter Bray, 303 Warwick Drive, opposes the LNG Project from an air pollution standpoint; supports Benicia becoming involved.
5. Cathy Ann Hewitt, 266 East B Street, would like to see healthy eco-friendly business for Mare Island; complimented the City Council on cooperation with the Harbor Corporation; most comprehensive dredging episode; supports proposed Marina berthing raises.
6. Catherine Machalinski, 1856 Shirley Drive, expressed concerns over prevailing winds as related to the Valero EIR and LNG Project; pollutants will affect Benicia; urged the Council to agendize this item.
7. Jeri Curry, Sierra Club, Solano Chapter, strongly opposed to the LNG Project; Sierra Club has passed a Resolution opposing the project; supports redoing the Valero EIR.
8. Lisa Orlando, 583 East H Street, opposed to LNG Project; chances of an environmental disaster will increase.
9. Paul Windors, 425 Turner Drive, opposed to LNG Project
10. Jon Van Landschoot, 175 West H, supports the City becoming involved in LNG Project; suggested holding public meetings; unsure of Valero EIR findings; concerned about the location of Community Center and financing; corrected statements made in the newspaper regarding tax benefits of Mills Act; supports the Mills Act.
11. Steve Gizzi, 260 Semple Crossing, LNG Project is ill conceived; focus on intervention; irresponsible for the Council not to be involved.

12. Bill Tanner, Valero Corporation, responded to BAAQMD reports on the use of safety flares at the refinery; questioned the District's numbers.
13. William Winters, 2136 Casa Grande Place, saddened over strong opposition to this project; natural gas is a low impact source of energy.
14. Renee Stewart, 472 Casey Court, opposed to LNG Project; this project has a lot of potential hazards.
15. Leah Perry Shelhorn, 700 1st Street, thanked Vice Mayor Campbell for bringing this project to the attention of the citizens; this is a health and safety issue; opposes the LNG Project.

CONSENT CALENDAR:

Mayor Messina asked if there were any requests for items to be pulled from the Consent Calendar; Items D, E, G, H and I were pulled by members of the Council.

On motion of Council Member Whitney, seconded by Council Member Bidou, and unanimously carried, the following items were approved under the Consent Calendar:

Minutes of December 17, 2002.

Approval of check registers for November 2002.

Approval of the monthly investment reports for July through September 2002.

RESOLUTION NO. 03-6 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR FUNDING FROM THE CALIFORNIA ENERGY COMMISSION FOR BATTERY BACKUP SYSTEMS OPERATING WITH LED TRAFFIC SIGNALS IN THE AMOUNT OF \$19,600 AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL GRANT-RELATED DOCUMENTS

Waive the readings of all ordinances introduced and adopted pursuant to this Agenda

(END OF CONSENT CALENDAR)

SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE BY ADDING A NEW SECTION 9.06.110 (PROHIBITION OF SMOKING IN OUTDOOR PUBLIC PLACES)

Council Member Smith requested that this item be pulled from the Consent Calendar; stated support for this Ordinance; laws like this save County, State and Federal public health costs.

Council took the following action:

ORDINANCE NO. 03-1 - AN ORDINANCE AMENDING CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE BY ADDING A NEW SECTION 9.06.110 (PROHIBITION OF SMOKING IN OUTDOOR PUBLIC PLACES)

On motion of Council Member Smith, seconded by Council Member Whitney, the above Ordinance was adopted on roll call by the following vote:

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina

Noes: None

RESOLUTION APPROVING THE ARBITRATOR'S RECOMMENDATION REGARDING THE 2002 MARINA RATE INCREASES

Mayor Messina, Council Member Bidou and Otto Giuliani, City Manager, did not participate in this discussion due to Conflict of Interest; Vice Mayor Campbell chaired this portion of the meeting.

Karen Majors, Assistant City Manager, summarized the staff report; the arbitrator has recommended an increase; clarified the changes made to the Resolution.

Vice Mayor Campbell commented on the lease with the Benicia Harbor Corporation; questioned what would be a reasonable return of revenue; compare profits with other Marinas; supports the \$1.00

increase.

Four concerned citizens spoke on this matter.

Karen Majors, Assistant City Manager, clarified how the proposed rate increase was determined; request was made in 2002 and the rates proposed are for 2002; future rate increase will have to be requested.

Council Member Smith stated that it was time to move forward; dredging has been satisfactory; reviewed the added conditions for rate increases and clarification of a new berth; would like to add a condition that rates would be changed only after the creation of a dredging fund and dock maintenance program with specific goals and objectives.

Council Member Whitney agreed that future increases need to be tied to certain standards; questioned guidelines for dock maintenance and the possibility of forming a citizen's advisory panel; requested an estimate if arbitration was taken to the next level.

Alan Nadritch, Finance Director, stated that the cost of additional arbitration could be from \$7500 to \$10,000.

Vice Mayor Campbell stated support for the proposed \$1.00 increase but will not support any additional increases during his term on the City Council.

Council Member Smith made a motion to adopt the proposed Resolution with the added condition #4 - Rates shall be changed only after creation of a permanent dredging fund and dock maintenance program with specific goals and objectives.

Vice Mayor Campbell called for a break at 9:20 p.m.
Vice Mayor Campbell reconvened the meeting at 9:25 p.m.

Council Member Smith restated his motion.

Council took the following action:

RESOLUTION NO. 03-7 - A RESOLUTION APPROVING THE ARBITRATOR'S RECOMMENDED MARINA RATE INCREASE FOR 2002, AS AMENDED

On motion of Council Member Smith, seconded by Council Member Whitney, the above Resolution was adopted, as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Smith and Whitney

Noes: None

Abstain: Council Member Bidou and Mayor Messina

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KATHERINE AUSTIN, ARCHITECT, OF SEBASTOPOL, CA FOR DEVELOPMENT OF PLANS AND SPECIFICATIONS FOR THE BENICIA COMMUNITY CENTER, NOT TO EXCEED \$72,250

Heather Mc Laughlin, City Attorney, clarified the Conflict of Interest issues for Council Members Campbell and Smith for Items G and H; a Council Member with a Conflict of Interest may speak as a member of the public during the Public Comment period.

Council Members Campbell and Smith did not participate in discussion of this item due to Conflict of Interest.

One concerned citizen spoke on this item.

Mayor Messina stated that the funds for this item are coming from the sale of surplus city property.

Council Member Whitney asked if the design of the building would provide for future expansion.

Otto Giuliani, City Manager, stated that the architect was given direction to plan for future expansion.

Council took the following action:

RESOLUTION NO. 03-8 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KATHERINE AUSTIN, ARCHITECT, OF SEBASTOPOL, CALIFORNIA FOR DEVELOPMENT OF PLANS AND SPECIFICATIONS FOR THE BENICIA COMMUNITY CENTER IMPROVEMENTS NOT TO EXCEED \$72,250

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

Ayes: Council Members Bidou, Whitney and Mayor Messina

Noes: None

Abstain: Council Members Campbell and Smith

RESOLUTION ACCEPTING THE OFFER TO PURCHASE SURPLUS CITY PROPERTY ADJACENT TO 1440 EAST SECOND STREET (FORMER O STREET RIGHT OF WAY) TO CHANG LIM AND HONG JA LEE

Council Members Campbell and Smith did not participate in discussion of this item due to Conflict of Interest.

Council took the following action:

RESOLUTION NO. 03 - 9 - A RESOLUTION ACCEPTING THE OFFER OF \$65,000 FROM CHONG LIM AND HONG JA LEE TO PURCHASE THE FORMER "O" STREET RIGHT OF WAY AUTHORIZING THE CITY MANAGER TO EXECUTE A PURCHASE AGREEMENT AND ESCROW DOCUMENTS TO COMPLETE THE SALE

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

Ayes: Council Members Bidou, Whitney and Mayor Messina

Noes: None

Abstain: Council Members Campbell and Smith

RESOLUTION APPROVING THE EXPENDITURE OF FUNDS IN EXCESS OF \$25,000 TO REMEDIATE WATER AND RELATED DAMAGE TO CITY HALL

Vice Mayor Campbell requested that this item be pulled from the Consent Calendar; asked for clarification on the damage.

Council took the following action:

RESOLUTION NO. 03-10 - A RESOLUTION APPROVING THE EXPENDITURE OF FUNDS IN EXCESS OF \$25,000 TO REMEDIATE WATER AND RELATED DAMAGE TO CITY HALL AND APPROVING AN APPROPRIATION OF \$50,000 FROM THE GENERAL FUND RESERVES

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

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina

Noes: None

PUBLIC HEARINGS:

PUBLIC HEARING (TEFRA) ON THE RESOLUTION APPROVING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OF THE BENICIA POINT APARTMENTS

Karen Majors, Assistant City Manager, explained that this resolution approves the issuance of multifamily housing revenue bonds; the City is not responsible for repayment of the debt.

Mayor Messina opened the Public Hearing. Legal Notice was given. No written protests received.

Mayor Messina closed the Public Hearing.

Council took the following action:

RESOLUTION NO. 03 - 11 - A RESOLUTION APPROVING THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, AND DEVELOPMENT OF THE BENICIA POINT APARTMENTS

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

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

**PUBLIC HEARING ON THE MILLS ACT PROGRAM
RESOLUTION TO ESTABLISH THE MILLS ACT PROGRAM AND ESTABLISH THE MAXIMUM
ANNUAL COST OF THE PROGRAM
RESOLUTION TO ESTABLISH MILLS ACT PROGRAM FEES**

Otto Giuliani, City Manager, summarized the past action taken on this item.

Vice Mayor Campbell asked if there had been a resolution of the "Good Faith Clause"

Colette Meunier, Community Development Director, stated that the "Good Faith Clause" is a contract issue; the Historic Preservation Commission will hold a workshop to develop provisions of the contract; certain requirements of the contract will be governed by state law; contract will be sent to the Council for review.

Mayor Messina opened the Public Hearing. Legal Notice was given. No written protests received.

1. Toni Haughey, 251 West J, Chairperson, Historic Preservation Commission, urged the Council to pass this Resolution.
2. Patrick Ward, 230 West K Street, thanked the Council, Community Development Director, Associate Planner and Historic Preservation Commission for their efforts; encouraged passage of the Resolution.

Mayor Messina closed the Public Hearing.

Council Member Smith expressed concerns about non-compliance standards and the imposition of a 12½% penalty; would like to review standard contract.

Otto Giuliani, City Manager, suggested that this Resolution be approved; a review of the basic contract can be done when the first contract comes before the Council.

Council took the following actions:

RESOLUTION NO. 03-12 - A RESOLUTION APPROVING THE IMPLEMENTATION OF THE MILLS ACT PROGRAM

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

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

RESOLUTION NO. 03-13 - A RESOLUTION TO ESTABLISH MILLS ACT PROGRAM APPLICATION FEES

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

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina
Noes: None

Mayor Messina clarified that direction to staff to bring the first contract to the Council for review and comments was clear.

UNFINISHED BUSINESS:

ORAL REPORT ON THE STATUS OF THE URBAN GROWTH BOUNDARY COMMITTEE (MAYOR MESSINA AND VICE MAYOR CAMPBELL)

Mayor Messina reported that a meeting had been held to determine the issues that would be used in the telephone questionnaire; two issues had been identified; poll would occur later in the month and results would be available in four to six weeks.

Council Member Smith stated appreciation for the timeline that was presented by Richard Taylor, Consulting Attorney.

Vice Mayor Campbell stated that the timeline for a citizen petition initiative was a little longer than first anticipated.

Heather McLaughlin, City Attorney, stated that the consulting attorney had not been given direction to work on the specific wording.

NEW BUSINESS:

RESOLUTION ALLOWING THE NEW OWNER/CARRIER OF BENICIA CITY CAB TO OPERATE A TAXI SERVICE IN THE CITY

Alan Nadritch, Finance Director, stated that Benicia City Cab had been sold last year; the Municipal Code does not allow the license to be transferred; all background checks have been done; proposed rates have been included in the staff report.

Council Member Smith stated that most of the complaints are about the waiting time; hopeful that the new owner will bring back a level of satisfaction.

Council took the following action:

RESOLUTION NO. 03-14 - A RESOLUTION ISSUING A TAXICAB OPERATOR'S PERMIT TO THE NEW OWNER OF BENICIA CAB COMPANY

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

Ayes: Council Members Bidou, Campbell, Smith, Whitney and Mayor Messina

Noes: None

COUNCIL REQUEST FOR NEW AGENDA ITEMS:

DISCUSSION TO AGENDIZE A RESOLUTION REGARDING THE VALLEJO LIQUEFIED NATURAL GAS TERMINAL AND POWER PLANT PROJECT

Council Member Bidou requested that Valero Refinery be taken out of the proposed Resolution so that he can participate in the discussion without a Conflict of Interest.

Vice Mayor Campbell stated that he had no objection to Council Member Bidou's request.

Council Member Smith requested clarification as to whether or not the Council can take action on this item.

Heather McLaughlin, City Attorney, read the portion of the Rules and Procedures that applied; Council Members can choose to dedicate staff time to an item and provide staff with appropriate direction.

Five concerned citizens spoke on this item.

Council Member Whitney stated that health and safety is a priority of the Council; needs more data to support this resolution.

Council Member Smith stated that he is in favor of passing resolution and directing staff to look at the project in context of the 1999 Re-use Plan.

Vice Mayor Campbell voiced opposition to hiring a consultant; air quality needs to be looked at on a regional level; the LNG Project will impact Benicia on many levels; being an intervener will allow questions to be asked and answered; Benicia would be expressing concerns of a neighbor.

Heather McLaughlin, City Attorney, pointed out sections of the resolution that needed to be reworded.

Council Member Bidou expressed concern about the community; bring this back after rewording has been done; will not support as written.

Mayor Messina stated that intervener status only has value when the project is before the Energy Commission; copies of the safety report from Vallejo will be provided to all Council Members; any negative impacts to health and safety are a priority; proposed that Vice Mayor Campbell follow the process, attend meetings and report back to the Council.

Council Member Smith proposed several wording changes to the resolution; not ready to send a letter opposing the project.

Vice Mayor Campbell stated his agreement that the resolution needs to be reworded by the City Attorney and brought back to the Council.

Otto Giuliani, City Manager, stated that this item would be brought back under New or Unfinished Business on the agenda.

Consensus of the Council was to bring this item back.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:05 p.m.

Linda S. Purdy, City Clerk