

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
JANUARY 19, 2010

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:15 p.m. on Tuesday, January 19, 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 Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: Council Member Campbell (arrived at 6:18 p.m.)

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).

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN COMMENT:

None

PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session.

CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Government Code section 54956.9 (b) (1) and (b)(3)(D)

ADJOURNMENT:

Mayor Patterson adjourned the meeting to Closed Session at 6:17 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JANUARY 19, 2010

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:18 p.m. on Tuesday, January 19, 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:

Council Member Campbell 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:

Announcement of action taken during closed session:

Janet Coleson, Outside Counsel, reported that Council received information from Outside Counsel regarding anticipated litigation.

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
- ❑ Solano Transportation Authority Bicycle Advisory Committee:
One full term opening – three-year term

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:

RESOLUTION 10-06 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF TODD LOPEZ, REPRESENTING VALERO TO THE BENICIA COMMUNITY SUSTAINABILITY COMMISSION FOR A FOUR-YEAR TERM

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:

State Parks and Wildlife Conservation Trust Fund Act of 2010:

Mr. Gene Doherty presented a PowerPoint Presentation (copy on file). Topics discussed included: California State Parks, recent history, 2010/2011 budget, goals, finances, trust fund distribution, timeline of activities, and benefits.

Mr. Doherty requested Council consider adopting a resolution in support of the proposed plan.

Council and Staff discussed the process for Council considering Mr. Doherty's request, and Council's past support of the State Parks.

Council directed Staff to prepare a resolution (pending Staff's review) in support of the proposed plan to be presented at the next Council meeting.

Vice Mayor Schwartzman expressed concern regarding asking citizens to pay additional registration fees (taking into account the current economic conditions).

PROCLAMATIONS:

None

PUBLIC COMMENT:

1. Tim Winfield – Mr. Winfield discussed the BERT Program and the Medical Reserve Corp, and encouraged citizens to volunteer their time.
2. Gene Doherty – Mr. Doherty discussed Arts Benicia's current exhibit.

ADOPTION OF AGENDA:

Mayor Patterson and Staff discussed the possibility of switching the two public hearing items around so that the quicker item (VIII-B) would be heard first. After discussion, Council chose not to change the order of the public hearing items.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the Agenda was adopted as presented, 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 received (copies on file).

CONSENT CALENDAR:

Council pulled items VII-C, VII-D, VII-E, and VII-H.

On motion of Vice Mayor Schwartzman, seconded by Council Member Ioakimedes, 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 approved the Minutes of January 5, 2010:

RESOLUTION 10-07 - A RESOLUTION SUPPORTING THE FINDINGS OF THE CALIFORNIA STATEWIDE LOCAL STREETS AND ROADS NEEDS ASSESSMENT

Council approved the denial of the claim against the City by Shanna Keller and referral to insurance carrier.

Council accepted the investment report for the quarter ended September 2009.

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Declaration of surplus property to be demolished; sites include: the "Scout House" and property at 550 East G Street:

Council and Staff discussed the possibility of selling or moving the property (no interest had been expressed to move the property), and the amount of demolition waste that should be diverted to landfills. Council suggested amending the language to read 'to the greatest extent possible, but not less than 50%.'

Council and Staff discussed whether there had been interest in future uses for the two lots in question.

RESOLUTION 10-08 - A RESOLUTION OF THE BENICIA CITY COUNCIL DECLARING THE STRUCTURES LOCATED AT 550 EAST G STREET AND AT THE NORTHEAST CORNER OF EAST L AND EAST 4TH STREETS, OTHERWISE

KNOWN AS THE SCOUT HOUSE, AS SURPLUS AND AUTHORIZE DEMOLITION THEREOF.

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

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

Noes: None

Denial of the claim against the City by Joseph Landon and referral to insurance carrier:

Council and Staff discussed the construction road that was behind the property in question. The road was not City-owned or maintained.

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, Council approved the denial of the claim against the City by Joseph Landon and referral to insurance carrier, on roll call by the following vote:

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

Noes: None

Public Comment:

None

Denial of the claim against the City by John Potter and referral to insurance carrier:

Council discussed the City's policy on storm drains, the claim involving an act of God, and whether debris or a root ball caused the problem. Staff did not have the file in question, and requested the item be continued to later in the meeting after the file had been retrieved. Council approved continuing discussion on the item until later in the agenda.

Approval of Tree Pruning Contract:

Council and Staff discussed the trees on First Street and in the City parks.

Public Comment:

1. Jeanine Seeds – Ms. Seeds discussed the issue of debris from trees on the storm drains.

Staff discussed the City's recommendation that property owners look around their property. If the drains are clogged with leaves, etc. they should clear them away.

RESOLUTION 10-09 - A RESOLUTION APPROVING THE CONTRACT WITH A-PLUS TREE SERVICE IN THE AMOUNT OF \$26,965 FOR PURPOSE OF TREE PRUNING, ALLOCATED FROM THE TREE PROGRAM MAINTENANCE FUND AND AUTHORIZING THE DIRECTOR OF PARKS AND COMMUNITY SERVICES TO SIGN THE TREE SERVICE CONTRACT ON BEHALF OF THE CITY

On motion of Vice Mayor Schwartzman, 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

PUBLIC HEARINGS:

Appeal of the Rose Center Use Permit for Reduced Parking:

Jim Erickson, City Manager, introduced the item.

Kat Wellman, Outside Counsel, reviewed the staff report.

Council Member Campbell and Staff discussed the 2003 appeal, parking study, traffic study, and the issue of substantial change.

Mr. Mark Rhodes, Planning Consultant, discussed the revised document (table) he submitted this evening.

Council, Outside Counsel, and Staff discussed the revised document (table) in question. Mr. Rhodes clarified that the revised table contained information already in the supplemental agenda packet that went out on Friday, 1/15/10, as well as information on page VIII-A-41 of the original agenda packet.

Council, Staff, and Outside Counsel discussed the issue of substantial change with regards to the project.

Staff discussed the process for reducing the number of parking spaces to less than the number specified in the schedules in the Benicia Municipal Code (BMC).

Applicant:

Tom Carey, attorney for applicant, discussed the mandate by the court of appeals, BMC as it relates to survey data, and data that was collected through various parking studies that were done. He addressed concerns by the appellant regarding taking the current economic conditions into consideration.

Council Member Campbell and Mr. Carey discussed how to deal with parking problems that could come up in the future.

Mayor Patterson called for a 7-minute break at 9:18 p.m.
The meeting resumed at 9:26 p.m.

Appellant:

Mr. Kopper, attorney for the applicant, submitted a letter from Smith Engineering & Management (copy on file).

Council took a 5-minute break to review the information. Council consensus was that it was not considered substantial new information, and proceeded with the public hearing.

Mr. Kopper discussed the data in the various traffic and parking studies that were done for the project, the issue of a conditional use permit, the issue of a change in use, the need for additional CEQA review, the need for additional environmental review, environmental impacts, and the need for a neutral parking study.

Council and Mr. Kopper discussed the issue of additional CEQA review, and possible remedies in the event it is found that there is a lack of parking (possibly acquiring adjacent land), improving the walkability, adding design elements, designating primary uses, etc.

Public Hearing Opened

Public Comment:

1. Margie Ives, Property Manager, Rose Center – Ms. Ives discussed her experience in managing the Rose Center. She has not seen any parking issues in the center.
2. Jeanine Seeds –Ms. Seeds asked for a clarification or explanation of how the City process works for decisions about parking, etc. She discussed concerns regarding approval of the project, and what was considered ‘substantial’.
3. Collette Meunier – Ms. Meunier discussed concerns regarding the lack of parking spaces in the Rose Center, concerns regarding loading zones, recommendations on how to handle provisions regarding the parking concerns and future projects (written document submitted 1/19/10– copy on file).
4. Karen Posey – Ms. Posey discussed concerns regarding the parking at Parkway Plaza and Rose Center, and concerns regarding Staff’s treatment of citizens speaking out against the Rose Center project.
5. Mary Wika – Ms. Wika discussed concerns regarding the Rose Center project (as stated in a written document submitted 1/19/10(copy on file)).
6. William Keegan – Mr. Keegan was a tenant at Rose Center. He did not think there was a parking problem.
7. Rufus Bunch – Mr. Bunch discussed his positive experiences with the parking availability at the Rose Center.
8. Jon Van Landschoot – Mr. Van Landschoot discussed the issue of City’s disregarding laws, the issue of fairness, the need for an independent parking study, the need to align the City’s parking and traffic ordinances to best practice, concern regarding the lack of a loading dock at the Rose Center, and the need to inform the Planning Commission on decisions being made.

Public Hearing Closed

Applicant – Rebuttal:

Mr. Carey clarified that his client was not the developer of Parkway Plaza. He discussed the City’s parking standards, concerns regarding the accuracy of previous parking studies, concern regarding linking increased traffic to increased parking, condition regarding condition #4 and use classification (He saw it as a safeguard, not a problem.).

Mayor Patterson requested Staff prepare a user-friendly readable version of how the process works for decisions about parking, etc (in response to Ms. Seed's concerns).

Ms. Wellman and Mr. Rhodes reviewed the changes Staff made to the proposed conditions of approval.

Council Member Campbell and Staff discussed the possibility of a condition regarding continuing parking surveys into the future and subsequent remediation.

Council Member Hughes and Staff discussed the proposed condition #4, removing the word 'believes' from the condition, and the need to indicate in the condition who would pay for the additional parking study referenced in condition #4 (applicant).

Ms. Coleson reviewed Outside Counsel's recommendation to leave the public hearing open and continue the hearing to the second meeting in March, and that Council direct Staff to look into preparing new documents to review the categorical exemption found in CEQA guidelines section 15305 (the applicability), and additionally, in the alternative, to prepare an addendum to the EIR, pursuant to Staff's recommendation under Public Resources Code section 21166 and guidelines 15162. She asked that Outside Counsel be able to review the documentation (especially the resolution) prior to the agenda packet being prepared.

Vice Mayor Schwartzman and Staff discussed condition #4, having the applicant pay for the additional parking study referenced in the condition, concern regarding the current parking requirements, the issue of continuing surveys, and the original number of designated parking spaces.

Council Member Ioakimedes discussed the issue of continuing surveys, the effects the economy has on the fast food industry, the effects future (Vallejo) developments could have on the center's parking demands, concerns regarding the subjective data, and the revisions to condition #4.

Council Member Hughes discussed why Council would consider deviating from BMC.

Mayor Patterson discussed the need to have an independent parking analysis, concerns regarding 'designing to peak', modifying the condition so it is flexible, the need for tiers of remedy, putting bicycle racks where they are usable, adding racks where possible, design aspects that would be helpful to get at the walkability aspects of the project, the need to anticipate the possible traffic from the Bordoni Ranch project, CEQA review (possibly as an addendum), the enforceable condition idea, and revisiting condition #25.

Council Member Campbell discussed the issue of substantial change, and the need to come up with remedies in the event parking becomes a problem.

Ms. Coleson clarified her recommendation to Council that they direct Staff to look at the applicability under the categorical exemption 15305, and in addition, as an alternative, that they prepare an addendum pursuant to Staff's recommendation under 21166.

Council, Staff, and Ms. Coleson discussed the type of addendum that should be done. Council, Staff, and Outside Counsel discussed the need for additional time to bring this item back.

Council and Outside Counsel discussed how communication between Outside Counsels, Staff, and Council should be handled. Staff will advise Council as to how soon they could have this item ready to bring back to Council. Staff will notify applicant and appellant as to the status of timing. Staff will report back on the issue of timing at the next meeting.

Council Member Hughes made a motion to direct Staff to prepare an addendum to the certified EIR, documenting the reasons why additional environmental review is not necessary. Council would also direct Staff to return to Council resolutions finding that the granting of a use permit is exempt from CEQA under categorical exemptions for minor alterations in land use limitations.

Ms. Coleson clarified that the direction to Staff was that there was a great deal of additional directions to Staff that was in addition to her recommendation. Her recommendation was that Staff look at the applicability of categorical exemption under 15305, minor alterations in land use limitations. Additionally, in the alternative, she recommended an addendum (Council's direction was even more broad) to the EIR, in light of Staff's recommendation under 21166, documenting the recommendation.

Mayor Patterson clarified that she gave direction to Staff regarding condition #4, possible remedies, etc. She suggested the motion be to continue the item with the direction that had been given to Staff that included the CEQA review for the exemption, and the additional (if necessary) CEQA document, as well as the other directions as discussed by Council.

Council Member Hughes discussed concerns regarding being too specific with the 'other' direction at this time.

Mayor Patterson suggested giving direction to Staff to come up with their best professional advice to the remedies that may be considered.

Mr. Carey discussed concern regarding additional conditions in the motion.

Council Member Ioakimedes requested staff bring back a document relating to policy making rather than litigating.

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved continuing the public hearing to a future meeting, and directed Staff to prepare an addendum to the certified EIR, documenting, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162, whether additional environmental review is necessary. Council would also direct Staff to return to Council resolutions finding that the granting of a use permit is exempt from CEQA under categorical exemptions for minor alterations in land use limitations, and to come up with their best

professional advice to the remedies that may be considered, on roll call by the following vote:

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

Noes: None

At 11:29 p.m., Mayor Patterson asked if there was a motion to continue hearing the remaining items. Due to the lack of a motion, all remaining agenda items were continued.

Public hearing to consider the application of California Taxicab Co. to operate a Taxicab service within the City of Benicia:

Continued

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

Reports from City Manager:

None

Council Member Committee Reports:

1. Mayor's Committee Meeting - (Mayor Patterson) - Next Meeting Date: January 20, 2010
2. Association of Bay Area Governments (ABAG) - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: Spring General Assembly – April 22, 2010
3. Finance, Audit & Budget Committee - (Vice Mayor Schwartzman & Council Member Campbell) - Next Meeting Date: January 22, 2010
4. League of California Cities – (Mayor Patterson & Vice Mayor Schwartzman) - Next Meeting Date: New Mayors and Council Members Academy – January 20-22, 2010
5. School Liaison Committee - (Council Members Ioakimedes & Hughes) - Next Meeting Date: March 11, 2010
6. Sky Valley Open Space Committee - (Council Members Campbell & Hughes) - Next Meeting Date: February 3, 2010
7. Solano EDC Board of Directors - (Mayor Patterson & Council Member Campbell) - Next Meeting Date: January 21, 2010
8. Solano Transportation Authority (STA) - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: February 10, 2010
9. Solano Water Authority/Solano County Water Agency and Delta Committee - (Mayor Patterson & Vice Mayor Schwartzman) - Next Meeting Date: February 11, 2010
10. Traffic, Pedestrian and Bicycle Safety Committee - (Council Members Hughes & Ioakimedes) - Next Meeting Date: January 21, 2010
11. Tri-City and County Regional Parks and Open Space - (Council Members Campbell & Hughes) - Next Meeting Dates: February 17, 2010
12. Valero Community Advisory Panel (CAP) - (Council Member Hughes) - Next Meeting Date: January 28, 2010

13. Youth Action Coalition – (Vice Mayor Schwartzman & Council Member Campbell) -
Next Meeting Date: January 27, 2010
14. ABAG/CAL FED Task Force/Bay Area Water Forum – (Mayor Patterson) - Next
Meeting Date: January meeting cancelled

COUNCIL MEMBER REPORTS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:29 p.m.

Lisa Wolfe, City Clerk