

February 03, 2009 Regular Meeting

BENICIA CITY COUNCIL

REGULAR MEETING AGENDA

City Council Chambers

February 3, 2009

7:00 P.M.

Times set forth for the agenda items are estimates. Items may be heard before or after the times designated.

I. CALL TO ORDER (7:00 P.M.):

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/ PROCLAMATIONS:

A. ANNOUNCEMENTS:

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee:

One unexpired term to September 30, 2010

One full term to January 31, 2013

Parks, Recreation and Cemetery Commission:

One unexpired term to March 31, 2010

3. 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.

B. APPOINTMENTS:

[Appointment of Fred Deltorchio to the Civil Service Commission for one full term to January 31, 2013](#)

C. PRESENTATIONS:

Benicia/Martinez Bridge Landscaping Caltrans Presentation

D. PROCLAMATIONS:

1. Commendations for [Police Corporal Mark Menesini](#) and [Paramedic/Firefighter James Ensley](#)

2. [Recognition of National Black History Month](#)

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not

make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT

B. PUBLIC COMMENT

VII. CONSENT CALENDAR (7:30 P.M.):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. [Approval of Minutes of January 7, 2009 and January 20, 2009.](#)(City Clerk)

B. Second reading and adoption of an ordinance with the addition of subsection F to Section 5.52.050 (Permit not required) of Chapter 5.52 (Massage) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code to exempt state certified practitioners or therapists. (Police Chief)

Recently enacted Senate Bill ("SB") 731 will provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization ("MTO") as of September 1, 2009. Subsection F will exempt members of the MTO from regulation by the Benicia Municipal Code.

Recommendation: Adopt the ordinance amending Section 5.52.050 (Permit not required) of Chapter 5.52 (Massage) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code by adding a subsection F.

C. [Amend the Professional Services Agreement for the Housing Element.](#) (Community Development Director)

The General Fund allocation of \$60,000 for the Housing Element Update has been appropriated. In November 2008, the City Council directed staff to hold an additional workshop, primarily to obtain public input on appropriate sites for affordable housing. The workshop requires \$2,600 in consultant work, \$4,400 for citywide postcard noticing, and \$600 for newspaper notice and refreshments. The professional services agreement needs to be amended to include the workshop, scheduled for Tuesday, February 10, 2009, at the Benicia Senior Center.

Recommendation: Authorize the City Manager to execute an amendment to the Housing Element Update professional services agreement with Lisa Wise Consulting, and to transfer \$7,600 from Planning Division Professional Services (Account 010-4105-8106) to the Housing Element (Account 011-4105-9200) to accommodate an additional workshop to identify housing opportunity sites.

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

VIII. PUBLIC HEARINGS:

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

IX. ACTION ITEMS (7:40 P.M.):

A. [Denial of an application for a new card room permit for the PASTIME.](#) (City Manager) –

Continued from the January 6, 2009 City Council Meeting

The owner of the PASTIME has applied for a new card room permit. The previous permit was not renewed and has expired. Under the Municipal Code, new card rooms are not allowed. The City Council should review the material and deny the application for a new card room permit.

Recommendation: Adopt the resolution directing the Police Department to deny the application for a new card room permit for the PASTIME.

B. [Benicia Business Park Project.](#) (City Manager and Community Development Director)

At its December 2, 2008 meeting, the Council decided to agenda reconsideration of its November 18, 2008 denial of the Benicia Business Park application following a facilitated public workshop. The purpose of the workshop, held January 7, 2009, was to help determine whether a collaborative approach to planning the project with the applicant and the community is feasible. Following the workshop, the applicant submitted a January 23, 2009 letter to the City Council proposing project review steps, timeline and tools. (This letter replaces a similar letter of December 2, 2008.) It is anticipated that this proposal will be the primary focus of Council's determination of whether to rescind denial of the project application.

Recommendation: Reconsider denial of the Benicia Business Park application, and, if the denial is rescinded, provide direction to staff to begin a review process for the application, including by issuing a request for proposals for a specific plan and environmental impact report.

C. [Consideration of request from Benicia Community Arts for extension of the deadline for Request for Funding Applications.](#)(Administrative Services Director)

The Human Services and Arts Board is currently in the process of reviewing Request for Funding (RFF) Applications for FY 2009-2011. This process began on November 3, 2008 with a special meeting of the Board where the timeline for the process was communicated and organizations were given the opportunity to provide input on expected community needs for the upcoming fiscal period. Following this meeting, the RFF packets were distributed to current and potential grantees along with information regarding the RFF process, including the deadline. The January 12, 2009 deadline was also communicated via the City's website and the local newspaper. Benicia Community Arts was unable to submit a completed application by the deadline and, on January 12, 2009, verbally requested an extension from the Human Services and Arts Board. The Board denied this request, noting that such an extension would not be fair to all the other organizations that did comply with the process. **Recommendation:** Review the request from Benicia Community Arts to extend the deadline for the Request for Funding Applications and uphold the Human Services and Arts Board denial of this request.

X. INFORMATIONAL ITEMS:

A. City Manager Reports

XI. COUNCIL MEMBER REPORTS:

XII. ADJOURNMENT (8:45 P.M.):

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not

on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council.

 [IV-B Civil Service Commission.pdf](#)

 [IV-D-1 Commendation Menisini.pdf](#)

 [IV-D-1 Commendation Ensley.pdf](#)

 [IV-D-2 Proclamation Black History Month.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Massage Ordinance.pdf](#)

 [VII-C Agreement Housing Element.pdf](#)

 [IX-A Denial Card Room Permit.pdf](#)

 [IX-B Benicia Business Park.pdf](#)

 [IX-C Extension Request BCA.pdf](#)

RESOLUTION NO. 09-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
CONFIRMING THE MAYOR'S REAPPOINTMENT OF FRED DELTORCHIO TO
THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING JANUARY 31, 2013**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the reappointment of Fred Deltorchio to the Civil Service Commission by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 3rd day of February, 2009 and adopted by the following vote:

Ayes:

Noes:

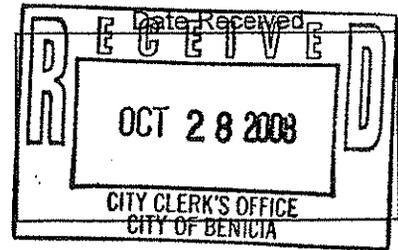
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

APPLICATION



City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Audit & Finance Committee
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Building Board of Appeals
- Civil Service Commission
- Economic Development Board
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sky Valley Open Space Committee

Name: FRED DELTORCHIO

Address: [REDACTED]

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) [REDACTED] Fax: 510-799-8281

Email: fdeltorchio@ci.hercules.ca.us years as Benicia resident: 16

Occupation/Employer: POLICE CHIEF - CITY OF HERCULES

Please note your most recent community or civic volunteer experience: _____

CIVIL SERVICE COMMISSIONER (6 yrs), SOCCER COACH (10 yrs)

Please describe any applicable experience/training: SEE ATTACHED

LETTER

All applications are considered public records and will be retained in an active file for at least one year from date of receipt.

Signature: [Handwritten Signature] Date: 10/25/08

Lisa Wolf
City Clerk, City of Benicia
250 East L Street
Benicia, CA 94510

October 25, 2008

SUBJECT: **Application for Reappointment to the Civil Service Commission**

Dear Lisa,

I received your recent letter on this subject and you will find my completed application for reappointment to the Benicia Civil Service Commission enclosed. I wish, by way of this letter, to answer the questions listed on the attachment to the application form.

1. *What interest you about this commission?*

As a former Benicia city employee and current Benicia resident I have great interest in the city hiring, promoting and retaining the best quality employees to serve our community. As a current city government employee I also believe it is important to reduce unnecessary turnover in city staff, as recruitment and termination are both costly endeavors and money for local governments is at a low point. By assisting the city in the selection and promotion of the best qualified employees cost savings can be realized in both areas. The above factors all can contribute to better government services, at the lowest cost for Benicia residents like me.

2. *Do you have any experience in the area of human resources, employee relations, and/or supervising/managing employees or programs?*

In my current position as Hercules' Police Chief I work closely with my city's human resources director and her staff. I also oversee a police department with 37 full time employees and a budget of almost \$7,000,000. Prior to being appointed police chief I was a police commander for Hercules and a police sergeant for the City of Benicia. I also served as president of the Benicia Police Officers Association. During my career of almost 27 years I have acquired extensive experience in all aspects of recruitment, promotion, evaluation and discipline of public employees.

3. *What knowledge and skills could you bring to the City of Benicia if appointed to this commission?*

Along with the knowledge and experience described in my previous answer I also bring over six years of experience as a member of this commission and over one year as its current chairperson. I have established positive and productive working relationships with all other commissioners and city human resources staff.

In closing I would like to add that I am very excited and optimistic about the recent appointments made at various department head positions within the city. I would like to continue to be a part of the positive change already underway.

Sincerely



Fred Deltorchio

██████████ Benicia, CA 94510

IV-B-4



COMMENDATION

IN RECOGNITION OF THE HEROIC SERVICE OF

POLICE CORPORAL

MARK MENESINI

WHEREAS, Mark Menesini holds the rank of Police Corporal with the Benicia Police Department; and

WHEREAS, on January 11, 2009, the Benicia Police and Fire Departments responded to a traffic collision involving a vehicle that veered off Eastbound I-780 and came to rest in the swimming pool in the backyard of 473 Edna Court; and

WHEREAS, the resident and neighbors entered the pool in an attempt to keep the vehicle afloat; and

WHEREAS, Police Corporal Menesini was the first emergency responder to arrive and found the vehicle nearly submerged in the pool with a female trapped inside, under the water, appearing to be deceased; and

WHEREAS, without hesitation, Corporal Menesini entered the frigid water and aggressively worked to free the lifeless female; and

WHEREAS, together with Paramedic/Firefighter Ensley, was able to free the victim and pull her to the side of the pool where she was handed over to Paramedics who initiated advanced life support procedures, which ultimately resulted in the victim regaining consciousness; and

WHEREAS, while this incident exemplifies the extraordinary training and teamwork of our public safety personnel, Police Corporal Menesini played a significant role in ensuring the success of this rescue and was crucial in saving the life of the female driver.

NOW, THEREFORE, BE IT KNOWN THAT I, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, do hereby commend Police Corporal Menesini on his exemplary and heroic service to the community and the citizens of Benicia.

Elizabeth Patterson, Mayor
February 03, 2009





COMMENDATION

IN RECOGNITION OF THE HEROIC SERVICE OF

PARAMEDIC/FIREFIGHTER

JAMES ENSLEY

WHEREAS, James Ensley holds the rank of Paramedic/Firefighter with the Benicia Fire Department; and

WHEREAS, on January 11, 2009, the Benicia Police and Fire Departments responded to a traffic collision involving a vehicle that veered off Eastbound I-780 and came to rest in the swimming pool in the backyard of 473 Edna Court; and

WHEREAS, the resident and neighbors entered the pool in an attempt to keep the vehicle afloat; and

WHEREAS, Paramedic/Firefighter arrived to find the vehicle nearly submerged in the pool with a female trapped inside, under the water, appearing to be deceased; and

WHEREAS, without hesitation, Paramedic/Firefighter Ensley entered the frigid water and aggressively worked to free the lifeless female; and

WHEREAS, together with Police Corporal Menesini, was able to free the victim and pull her to the side of the pool where she was handed over to Paramedics who initiated advanced life support procedures, which ultimately resulted in the victim regaining consciousness; and

WHEREAS, while this incident exemplifies the extraordinary training and teamwork of our public safety personnel, Paramedic/Firefighter Ensley played a significant role in ensuring the success of this rescue and was crucial in saving the life of the female driver.

NOW, THEREFORE, BE IT KNOWN THAT I, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, do hereby commend Paramedic/Firefighter Ensley on his exemplary and heroic service to the community and the citizens of Benicia.

Elizabeth Patterson, Mayor
February 03, 2009





PROCLAMATION

RECOGNIZING BLACK HISTORY MONTH

WHEREAS, the month of February has, since 1926, been designated for the celebration of Black history, in recognition of Frederick Douglas and Abraham Lincoln; and

WHEREAS, during Black History Month, schools, government agencies, civic groups and other organizations recognize and celebrate the contributions that African-Americans have made to the history of the United States; and

WHEREAS, the economic, political, intellectual and cultural life of our region has greatly benefited from the contributions of African-Americans; and

WHEREAS, an understanding and appreciation of the history and contributions of those of African descent is vital to a community of diverse ethnic and cultural heritage; and

WHEREAS, the City of Benicia prides itself on being a multiracial/multicultural community, celebrates its diversity and appreciates the contribution of its African-American citizens.

NOW, THEREFORE, BE IT RESOLVED THAT I, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, do hereby recognize February 2009 as Black History Month in the City of Benicia.

Elizabeth Patterson, Mayor
February 3, 2009



IV-D-2-1

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
JANUARY 7, 2009

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:06 p.m. on Tuesday, January 7, 2009 in the Mary Farmar Elementary School Auditorium, 901 Military West, Benicia, 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:

Heather McLaughlin led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A sign 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:

Various items submitted (copies on file).

PUBLIC WORKSHOP:

Benicia Business Park Project:

Daniel Iacofano, Moore Iacofano Goltsman (MIG), will prepare a summary of the workshop. (Minutes will be presented to Council once the summary becomes available from MIG.

ADJOURNMENT:

Mayor Patterson adjourned the meeting to Closed Session at 10:00 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JANUARY 20, 2009

The regular meeting of the City Council of the City of Benicia was called to order by Vice Mayor Campbell at 7:00 p.m. on Tuesday, January 20, 2009 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, and Schwartzman

Absent: Mayor Patterson

PLEDGE OF ALLEGIANCE:

Vice Mayor 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:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
 - One unexpired term to September 30, 2010
 - One full term to January 31, 2013
- Civil Service Commission:
 - One full term to January 31, 2012
- Planning Commission:
 - Two full terms to January 31, 2013
- Open Government Commission:
 - One full term to January 31, 2013
- Library Board of Trustees:
 - Two full terms to January 31, 2012
- Finance, Audit and Budget Committee:
 - One full term to January 31, 2011
 - Two full terms to January 31, 2013
- Parks, Recreation and Cemetery Commission:
 - One unexpired term to March 31, 2010

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:

None

PRESENTATIONS:

Presentation by Jen McGraw of the Center for Neighborhood Technology:

Ms. McGraw reviewed a PowerPoint Presentation on the Center for Neighborhood Technology (hard copy on file).

Presentation of \$62,510 rebate check from Pacific Gas & Electric Company to the City for the recent installation of energy efficient replacement blowers at the Wastewater Treatment Plant:

Mr. Allan Lacson, Pacific Gas & Electric Company, Ms. Patti Boyd, Ecos, and Mr. Rupert Dallas, Ecos, presented the City with a rebate check of \$62,510.

PROCLAMATIONS:

None

Jim Erickson, City Manager, introduced Fire Chief Steve Vucurevich.

ADOPTION OF AGENDA: moved action items to front of agenda

Mr. Erickson discussed moving item VII-C to Action Items and continuing item IX-A to a future meeting. Vice Mayor Campbell suggested moving IX-A to the front of the agenda to take public comment prior to continuing it.

On motion of Council Member 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, and Schwartzman

Noes: None

Absent: Mayor Patterson

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

None

CONSENT CALENDAR:

Item VII-C was moved to Action Items per the adoption of the Agenda.

On motion of Council Member 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, and Schwartzman

Noes: None

Absent: Mayor Patterson

Council approved the Minutes of January 6, 2009.

DRAFT

ORDINANCE 09- - AN ORDINANCE AMENDING SECTION 5.52.050 (PERMIT NOT REQUIRED) OF CHAPTER 5.52 (MASSAGE) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY ADDING A NEW SUBSECTION F TO EXEMPT STATE CERTIFIED PRACTITIONERS OR THERAPISTS

RESOLUTION 09-02 - A RESOLUTION APPROVING A CONTRACT FOR REPLACEMENT OF WATER FILTER MEDIA AT THE WATER TREATMENT PLANT WITH CARBON ACTIVATED CORPORATION IN THE INITIAL AMOUNT OF \$146,086, WITH SUBSEQUENT COSTS BEING NEGOTIATED IN 2010 AND 2012, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

ORDINANCE 09-04 - AN ORDINANCE AMENDING SECTION 5.46.020 AND SUBSECTION 5.46.030 (A) OF CHAPTER 5.46 (ADULT BUSINESS PERFORMER LICENSE AND BACKGROUND CHECK FOR NON-PERFORMERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE REGARDING APPLICATION AND LICENSE FEES

ORDINANCE 09-05 - AN ORDINANCE REPEALING ORDINANCE NO. 07-17, AN URGENCY INTERIM ORDINANCE, EXTENDING ORDINANCE NO. 07-14, AN URGENCY INTERIM ORDINANCE APPROVING AN INTERIM ZONING MORATORIUM ON THE ESTABLISHMENT OF NEW ADULT ENTERTAINMENT BUSINESSES IN THE CITY OF BENICIA AND ADOPTING FINDINGS INCLUDING ENVIRONMENTAL FINDINGS AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN

Council approved the amendment to the agreement between the City of Benicia and Benicia Main Street.

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

Adoption of annual increases for the capital improvement license tax, the parkland dedication fee, and the library book fee:

Rob Sousa, Finance Director, reviewed the staff report.

Council Member Ioakimedes and Staff discussed what communities do when they reach build out and you have to stop issuing building permits.

Council Member Hughes and Staff discussed how the proposed fees compared to other fees in neighboring communities (In the past it has been roughly ¾ of what Vallejo, Fairfield, and Vacaville have been.)

Public Comment:

1. Rick Ernst – Mr. Ernst discussed whether the fees were related to remodels and other types of permits. Staff confirmed the fees were related to new dwelling units. For commercial and industrial, if they were going to add on to their facility, the commercial and industrial portion of the capital improvement tax would be applied to the commercial industrial. This should apply to the Benicia Business Park as it gets developed. However, depending on the outcome, the Benicia Business Park would be linked to the development impact rates that were in existence when they applied. So, these rates would not apply.

RESOLUTION 09-03 - A RESOLUTION ADOPTING INCREASES FOR THE CAPITAL IMPROVEMENT LICENSE TAX FOR CONSTRUCTION OR ALTERATION OF SINGLE-FAMILY RESIDENCES, MULTIPLE-DWELLING STRUCTURES, AND COMMERCIAL OR INDUSTRIAL FACILITIES

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

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

Noes: None

Absent: Mayor Patterson

RESOLUTION 09-04 - A RESOLUTION ADOPTING AN INCREASE IN THE PARK LAND DEDICATION FEE

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

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

Noes: None

Absent: Mayor Patterson

RESOLUTION 09-05 - A RESOLUTION ADOPTING AN EXTENSION AND INCREASE IN THE LIBRARY BOOK FEE

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

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

Noes: None

Absent: Mayor Patterson

ACTION ITEMS:

First reading and introduction of an ordinance amending Chapter 8.38 (Graffiti Control) of Title 8 (Health and Safety) of the Municipal Code:

Jim Erickson, City Manager, introduced the item.

Chief Sandra Spagnoli reviewed the staff report.

Council Member Hughes and Staff discussed taking aggressive steps to fight graffiti, concerns about the message this might send to the citizens regarding penalties for property owners, softening the language and maintaining the same results, current noticing requirements, and Staff's attempts at strengthening the existing ordinance.

Council Member Schwartzman and Staff discussed past instances with graffiti and what percentage has been on public property vs. private property. Most of the calls the Police Department receives are regarding private property. The graffiti abatement that is done at City parks or on City property is generally handled immediately. They discussed the current notification process, the proposed graffiti removal time limit, how the issue of multiple property owners would be addressed, the nexus of the foreclosure action against an offender if they don't own property, language regarding property liens, and the responsibility of businesses regarding the handling of graffiti implements.

Council Member Ioakimedes and Staff discussed the differences between vandalism, graffiti, and mischievous acts.

Council Member Hughes and Staff discussed how the reward expenses/funds would be handled.

Vice Mayor Campbell and Staff discussed the issue of criminalizing the victim, addressing the issue of property liens, and softening the language regarding the City working with the property owner to remove graffiti.

Public Comment:

1. Rick Ernst – Mr. Ernst discussed concerns he had stated in writing (copies on file). He spoke in favor of the enforcement issues. He discussed concerns regards the lien provisions on property owners who are tagged.
2. Jerry Hayes – Mr. Hayes discussed his experiences with graffiti problems. He spoke in opposition to Council taking action on this item tonight, as it needs more work. There is overkill and it is going too far. The issue has not been publicized enough.
3. Judith Judson-Baker – Ms. Judson-Baker discussed the trouble she has had with graffiti on her property. It is a very expensive undertaking. She urged Council to rewrite the ordinance so it works better for the property owners. She discussed concerns regarding curfew enforcement. She discussed the connection between graffiti and the inundation of public housing.

Council Member Hughes and Staff discussed what the City knows about those who are committing the crimes, kids doing the graffiti when they are going to and from a location, tracking graffiti, graffiti being a recreational activity that is not just done by kids, the fact that there is a low apprehension rate, and Staff going back to look at some of the language that appears to be heavy handed and bring it back to Council.

Council Member Ioakimedes and Staff discussed the issue of Staff's increased attention on the East Third Street Tunnel, the reduction in graffiti incidents, and concerns regarding some of the provisions in the language that could be interpreted.

Council Member Schwartzman and Staff discussed the issue of softening the 72-hour removal requirement, publicizing the reward program, installing cameras in the East Third Street Tunnel, looking into how to best deal with uncooperative property owners, and concerns regarding the lien provision.

Council Member Hughes clarified that he did not want to go overboard in softening the ordinance. He would like to see the language reflect a partnership between the City and the property owners.

Council Member Ioakimedes discussed the 72-hour removal requirement and having it be discretionary.

Mr. Erickson stated that Staff could work with the business community and the community on this issue. However, some of the concerns stated tonight are things that are already in place in the current ordinance. Also, they are things that are in place and working in other communities.

Council Member Schwartzman requested a redlined version or something similar to track changes in the new and old version of the ordinance.

Vice Mayor Campbell discussed putting a safety belt in the ordinance regarding 'administrative hearings' pertaining to appeals to the City Council. He inquired what the penalties were for graffiti. He stated that the ordinance needed fine-tuning.

INFORMATIONAL ITEMS:

Reports from City Manager:

None

Council Member Committee Reports:

1. Mayor's Committee Meeting - (Mayor Patterson) - Next Meeting Date: January 21, 2009
2. Association of Bay Area Governments (ABAG) - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: April 23, 2009 – Spring General Assembly
3. Audit & Finance Committee - (Vice Mayor Campbell & Council Member Schwartzman) - Next Meeting Date: February 6, 2009
4. League of California Cities - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: February 19, 2009
5. School Liaison Committee - (Council Members Ioakimedes & Hughes) - Next Meeting Date: March 12, 2009
6. Sky Valley Open Space Committee - (Vice Mayor Campbell & Council Member Ioakimedes) - Next Meeting Date: February 4, 2009
7. Solano EDC Board of Directors - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: January 22, 2009
8. Solano Transportation Authority (STA) - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: February 11, 2009
9. Solano Water Authority/Solano County Water Agency and Delta Committee - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: February 12, 2009

DRAFT

10. Traffic, Pedestrian and Bicycle Safety Committee - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: April 16, 2009
11. Tri-City and County Regional Parks and Open Space - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Dates: Citizen's Advisory Committee - February 18, 2009 and Governing Board – March 9, 2009. Vice Mayor Campbell discussed current issues going on with Lynch Canyon.
12. Valero Community Advisory Panel (CAP) – (Council Member Hughes) - Next Meeting Date: January 29, 2009
13. Youth Action Task Force - (Council Members Ioakimedes & Schwartzman) - Next Meeting Date: January 28, 2009
14. ABAG/CAL FED Task Force/Bay Area Water Forum - (Mayor Patterson) - Next Meeting Date: February 23, 2009

COUNCIL MEMBER REPORTS:

None

ADJOURNMENT:

Vice Mayor Campbell adjourned the meeting at 8:36 p.m.

AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 3, 2009
CONSENT CALENDAR

DATE : January 26, 2009

TO : City Manager

FROM : Chief of Police

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE
ADDING SUBSECTION F TO SECTION 5.52.050 (PERMIT
NOT REQUIRED) OF CHAPTER 5.52 (MASSAGE) OF
TITLE 5 (BUSINESS TAXES, LICENSES AND
REGULATIONS) OF THE BENICIA MUNICIPAL CODE
TO EXEMPT STATE CERTIFIED PRACTITIONERS OR
THERAPISTS**

RECOMMENDATION:

Adopt the ordinance amending Section 5.52.050 (Permit not required) of Chapter 5.52 (Massage) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code by adding a subsection F.

EXECUTIVE SUMMARY:

Recently enacted Senate Bill ("SB") 731 will provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization ("MTO") as of September 1, 2009. Subsection F will exempt members of the MTO from regulation by the Benicia Municipal Code.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community Health and Safety

BACKGROUND:

The massage ordinance was adopted at the August 19, 2008 City Council meeting. Staff developed the ordinance to specifically address permitting and regulating conditions that would differentiate a legitimate massage business from an illegal business that uses a massage business as a front for unlawful activity. SB 731 prohibits local ordinances from regulating the practice of massage by a MTO certificate holder. Adding subsection F will bring the BMC into compliance with SB 731. This amendment was introduced at the January 20, 2009 Council meeting.

Attachment:

- Draft Ordinance

DRAFT ORDINANCE

CITY OF BENICIA

ORDINANCE NO. 09-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.52.050 (PERMIT NOT REQUIRED) OF CHAPTER 5.52 (MASSAGE) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY ADDING A NEW SUBSECTION F TO EXEMPT STATE CERTIFIED PRACTITIONERS OR THERAPISTS

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Section 5.52.050 (Permit not required) of Chapter 5.52 (Massage) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended by adding a new subsection F to read as follows:

F. Massage practitioners or massage therapists who are duly certified by the Massage Therapy Organization as set forth in Business and Profession Code Section 4600 et seq.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 20th day of January, 2009, and adopted at a regular meeting of the Council held on the 3rd day of February, 2009, by the following votes:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 3, 2009
CONSENT CALENDAR**

DATE: January 20, 2009

TO: City Manager

FROM: Community Development Director

SUBJECT: **AMEND THE PROFESSIONAL SERVICES AGREEMENT
FOR THE HOUSING ELEMENT UPDATE**

RECOMMENDATION:

Authorize the City Manager to execute an amendment to the Housing Element Update professional services agreement with Lisa Wise Consulting, and to transfer \$7,600 from Planning Division Professional Services (Account 010-4105-8106) to the Housing Element (Account 011-4105-9200) to accommodate an additional workshop to identify housing opportunity sites.

EXECUTIVE SUMMARY:

The General Fund allocation of \$60,000 for the Housing Element Update has been appropriated. In November 2008, the City Council directed staff to hold an additional workshop, primarily to obtain public input on appropriate sites for affordable housing. The workshop requires \$2,600 in consultant work, \$4,400 for citywide postcard noticing, and \$600 for newspaper notice and refreshments. The professional services agreement needs to be amended to include the workshop, scheduled for Tuesday, February 10, 2009, at the Benicia Senior Center.

STRATEGIC PLAN:

Relevant Strategic Plan Goal:

- Goal 7.00: Build Community Collaboration

BUDGET INFORMATION:

The contract amendment would have no impact on the City budget since there are sufficient funds to cover this work.

ATTACHMENTS:

- Consultant Agreement of July 1, 2008
- Amendment to Agreement, including Exhibit C

**CONSULTANT AGREEMENT OF JULY 1, 2008
CITY OF BENICIA AND LISA WISE CONSULTING**

CONSULTANT AGREEMENT

This agreement ("Agreement") entered into July 1, 2008, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Lisa Wise Consulting, a California corporation, with its primary office located at 1302 Bayview Heights Drive, Los Osos, California 93402 hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain professional services to prepare an update to the 1999-2006 Housing Element. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A according to the completion schedule included in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work.

(i) CONSULTANT and CITY agree that the completion schedule in Exhibit A represents the best estimate of the schedule. CONSULTANT shall comply with

completion dates noted in Exhibit A unless a written waiver is granted by the CITY's project manager.

(ii) CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed in accordance with this Agreement.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. COMPENSATION.

(a) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall not exceed \$52,920 based upon the rate schedule in Exhibit B attached hereto and hereby incorporated by reference. The rate schedule in Exhibit B itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY'S prior written approval from the Community Development Director, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project. In no event shall compensation or reimbursement exceed \$52,920.

(b) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the

Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(c) Invoicing and Payment. CONSULTANT shall submit monthly invoices for the services performed under this Agreement during the preceding period. Invoices or billings must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item in accordance with Exhibit B. CITY shall approve or disapprove said invoice or billing within thirty (30) days following receipt thereof and shall pay all approved invoices and billings within thirty (30) days. Interest at the rate of one and one-half (1.5) percent per month will be charged on all past due amounts starting thirty (30) days after the invoice date, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will be credited first to interest, and then to principal.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with the number of copies described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT at the address indicated in Section 11.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to CITY for damages suffered as a result of CONSULTANT'S failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit B. However, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services which are of benefit to CITY.

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service

hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

If to CITY: Charlie Knox, Community Development Director
City of Benicia
250 East "L" Street
Benicia, CA 94510

If to CONSULTANT: Lisa Wise, Principal
Lisa Wise Consulting
1302 Bayview Heights Drive
Los Osos, CA 93402

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY

copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

<u>Policy</u>	<u>Minimum Limits of Coverage</u>
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001, or equivalent (Ed 1/87 covering auto liability code 1) (any auto)	Bodily Injury/Property Damage \$1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001, or equivalent)	\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professionals' Liability, errors and omissions liability insurance appropriate to the CONSULTANT'S profession.	Generally \$1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials,

employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this

Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

Executed by CITY and CONSULTANT on the date shown next to their respective signatures.
The effective date of this Agreement shall be the date of execution by the CITY as shown below.

Lisa Wise Consulting

CITY OF BENICIA

BY: Lisa Wise
DATED: 8-12-08

BY: [Signature]
DATED: 08/26/08

RECOMMENDED FOR APPROVAL

[Signature]
Department Head

APPROVED AS TO FORM

[Signature]
City Attorney

07/01/08

**CITY OF BENICIA
HOUSING ELEMENT UPDATE**

Scope of Work

Task 1 - Project Scope Refinement and Document Review

1.1 Meetings with Staff. LWC will meet with planning staff to:

- Refine the project scope and schedule;
- Determine the condition and availability of city resources (i.e. GIS) necessary for successful project completion;
- Review housing resources and funding mechanisms; and
- Identify key issues.

In addition to frequent communication with staff, this task anticipates one (1) meeting with planning staff, including staff from other departments and organizations as appropriate.

Timeframe: August 4 – 8, 2008

Deliverables: Attend one meeting for project kick-off; develop list of needs/resources to carry out project.

1.2 Document Review. LWC will review City documents to aid in understanding local conditions and the community's housing needs. These documents include, but are not limited to, the City's General Plan, City's Zoning Ordinance, ABAG Regional Housing Needs Plan, and all prior written communication with HCD.

Timeframe: August 4 – 8, 2008

Deliverables: N/A

Task 2 - Housing Element Research and Preparation

2.1 Review and Evaluate Existing Housing Element. In order to ensure a comprehensive and effective update, LWC will review and evaluate Benicia's 1999-2006 Housing Element in compliance with Government Code Section 65588. This process includes:

- Determining the effectiveness the element's goals, objectives, policies, and programs;
- Consulting with Benicia Housing Authority and other relevant organizations as needed;
- Recommendations for the modification or replacement of goals, policies, and programs pursuant to current State law and guidelines; and
- A comparison and analysis of prior projections to what was achieved.

Timeframe: August 4 – 8, 2008

Deliverables: Outcomes to be included in Administrative Draft Housing Element, Task 4.2

- 2.2 **Housing Needs Assessment.** LWC will complete the housing assessment and needs analysis in compliance with Government Code Section 65583. LWC will coordinate with staff to develop a current housing inventory and to evaluate housing conditions using State criteria. LWC will obtain and analyze the most current data available on demographics and housing in Benicia to complete this task.

The gathered data will be used to draft a housing needs assessment that will identify:

- Population and demographic trends;
- Number of households and housing units;
- Overcrowding and tenure characteristics;
- Condition of housing stock, including the number of substandard units;
- Analysis of government assisted at-risk units;
- Special housing needs in accordance with 65583(a)(7) (e.g. large families, seniors, farmworkers, homeless, etc.);
- Housing cost and affordability; and
- Projected housing needs (RHNA Allocation).

Timeframe: August 4 – 15, 2008

Deliverables: Draft Housing Needs Assessment (to be incorporated into Administrative Draft Housing Element, Task 4.2)

- 2.3 **Housing Resources and Site Inventory.** LWC will identify housing resources, including programmatic, physical, and financial. As part of this task, LWC will conduct a land inventory in compliance with State law 65583 and AB2348. The purpose of the land inventory is to identify specific sites suitable for new residential development and to prepare an analysis of the relationship between the projected housing needs by affordability category and the dwelling unit capacity of vacant or underutilized sites.

The gathered data will be used to draft a sites inventory and analysis that will identify:

- Inventory of land suitable for residential development;
- Environmental constraints and adequate infrastructure;
- Realistic development capacity;
- Analysis of non-vacant and underutilized sites;
- Zoning to accommodate the development of housing affordable to lower income households;
- Zoning for emergency shelters and transitional housing to comply with 65583(a)(4) and SB2;
- Zoning for a variety of housing types;
- Second units; and
- Potential for alternatives to adequate sites pursuant to 65583.1(a)(c).

Timeframe: August 18-29, 2008

Deliverables: Draft Sites Inventory in table and map form (to be incorporated into Administrative Draft Housing Element, Task 4.2)

- 2.4 **Housing Constraints.** LWC will identify potential and actual governmental and non-governmental constraints to housing production in compliance with 65583. Where constraints exist, LWC will develop recommendations to mitigate their effects.

The following City ordinances, policies, and procedures will be analyzed for potential constraints to housing production:

- Land use controls;
- Codes and enforcement;
- On- and off-site improvement requirements;
- Constraints-housing for persons with disabilities (65583(a)(4); 65583(c)(3); SB 520);
- Non-governmental constraints;
- Fees and exactions; and
- Processing and permit procedures.

Timeframe: September 1 – 5, 2008

Deliverables: Draft Housing Constraints (to be incorporated into Administrative Draft Housing Element, Task 4.2)

Task 3 – Public Participation

LWC will coordinate community involvement prior to the preparation of the Administrative Draft Housing Element. LWC recommends the following approach for public participation:

- 2-day charrette (a multi-day collaborative design and planning workshop inclusive of all community members)
- Joint Planning Commission and City Council Meeting (1)

The 2-day charrette will be held to allow the public to focus on the issues, build community consensus, and give direction to the Housing Element goals, policies, and programs. The charrette will include a series of interactive public meetings, ideally including the City Council, Planning Commission, HCD and involvement of city departments as appropriate. LWC will rely on City staff to plan the logistics in terms of finding and securing a space, providing food, snacks, and equipment, and sending out announcements for the meetings.

- 3.1 **Charrette Preparation.** LWC will work city staff to prepare for the charrette by developing a list of all possible participants (including HCD), determining methods for public noticing and awareness, identifying charrette materials, designing the charrette schedule and program. This task also includes a compilation of data gathered from Task 2 for public presentation.

Timeframe: September 1-9, 2008

Deliverables: Submit a list of suggested participants, charrette schedule and program (consisting of 1 electronic copy using InDesign or other graphic-oriented software), identification and preparation of relevant data from Task 2 for presentation at charrette.

- 3.2 Charrette.** LWC will serve as the primary charrette facilitator with support from city staff. LWC anticipates a series of public participation events followed by feedback loops to reach community consensus. It is expected that the charrette will begin with achieving a common understanding of the project purpose and objectives, followed by an overview of present conditions, housing element needs and requirements, and responses from the community. However, the final charrette program will be developed in consultation with city staff.

Timeframe: The charrette will occur over a period of two days; between September 1-19, 2008.

Deliverables: Charrette attendance and materials including any digital presentations, handouts, visual aids, and questionnaires as needed.

- 3.3 Charrette Report.** To confirm progress, identify outcomes, and memorialize the results, LWC will prepare a charrette report following Task 3.2. All or portions of this report can be used to describe the required public participation section of the Housing Element.

Timeframe: September 1-19, 2008

Deliverables: Charrette Report – one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy.

- 3.4 Joint Planning Commission and City Council Hearing.** LWC will attend one (1) joint meeting with the City Council and Planning Commission to present charrette outcomes, solicit input, and receive any additional input from the public before preparing the Administrative Draft Housing Element.

Timeframe: TBD following consultation with city staff; between September 1-19, 2008.

Deliverables: Work with city staff to determine appropriate presentation material, prepare presentation accordingly, and attend meeting.

Task 4 – Prepare Draft Housing Element

- 4.1 Modification of Goals, Policies, Programs, and Quantified Objectives.** LWC will build on the existing Housing Element, public input, and the needs, resources, and constraints analyses to formulate a five-year implementation plan with appropriate and implementable housing policies, programs, and quantified objectives. This work will satisfy the requirements of Government Code Sections 65583(b) and (c).

The Housing Element will contain programs to:

- Ensure that housing opportunities are available for all persons;
- Preserve and improve the existing stock of affordable housing, including at-risk units;
- Facilitate development of adequate housing to meet the needs of low and moderate income households;
- Mitigate any governmental constraints to housing production, improvement and/or maintenance;
- Ensure consistency with other General Plan elements and community goals; and

- Incorporate LEED and Green Building energy efficiency goals/policies/programs and progressive energy conservation policies to complement Benicia's existing green building incentive program.

Timeframe: September 8-19, 2008

Deliverables: Draft goals, policies, objectives, programs, and quantified objectives (to be incorporated into Administrative Draft Housing Element, Task 4.2).

4.2 Administrative Draft Housing Element. LWC will prepare and submit the Administrative Draft Housing Element and Technical Appendix for staff review and comment. This draft will contain full draft text, tables, data, formatting, graphs, and illustrations. Contents will include, at minimum:

- Description of how public input was considered and incorporated into Element;
- A review of actual results of the previous Element's goals, objectives, policies, programs (quantified where possible);
- Analysis of what was planned in the previous Element and what was achieved;
- A description of how the goals, objectives, policies and programs of the updated element incorporate what was learned from the results of the previous element;
- Adequate sites implementation, or rezoning program, if needed;
- Housing Needs Assessment including population and employment trends, household characteristics, housing stock characteristics, special housing needs analyses, analysis of opportunities for energy conservation (e.g. Title 24 energy conservation standards, incentives for green building, higher density, compact infill development and passive solar design), analysis of projected housing projects at-risk of converting to non low-income uses; projected housing need, including Benicia's share of the regional housing needs;
- Sites Inventory (by parcel number, size, general plan designation, zoning, description of existing uses, map of sites);
- Sites Inventory and Analysis of Suitability and Availability (identifying environmental constraints, infrastructure such as planned water, sewer, and other dry utilities supply), realistic development capacity calculation accounting for site improvements and land use controls, analysis of non-vacant and underutilized lands, identification of zoning appropriate for housing for lower-income households;
- Zoning for a variety of housing types (multifamily rental, permanent and seasonal agricultural employees, emergency shelters, transitional housing, supportive housing, single-room occupancy, factory-built housing, mobile homes, second units, etc.);
- Adequate sites alternatives (by way of substantial rehabilitation, acquisition of affordability or preservation, second units);
- Governmental Constraints including land use controls (zoning development standards such as parking, height limits, setbacks, lot coverage, minimum unit sizes, growth controls, etc.), codes and enforcement, on/off-site improvements (e.g. curbing requirements, street widths, circulation improvements), fees and exactions (permit and impact fees and land dedication or other requirements imposed on developers), processing and permit procedures, and housing for persons with disabilities;
- Nongovernmental constraints (e.g. availability of financing, price of land, cost of construction)

- Quantified Objectives for the number of housing units by income level over the timeframe of the Element;
- Description of General Plan consistency; and
- Updated goals, objectives, policies, and programs.

Timeframe: September 22-October 17, 2008

Deliverables: Administrative Draft Housing Element – one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy.

- 4.3 **Public Draft Housing Element.** LWC will modify the Administrative Draft as directed by staff. LWC will then prepare a Public Draft Housing Element and Technical Appendix for the City of Benicia to submit to HCD, the Planning Commission, the City Council, and the general public for review and comment.

Timeframe: October 20-31, 2008

Deliverables: Public Draft Housing Element – one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy.

- 4.4 **HCD's 60-Day Review of Public Draft Housing Element.** LWC will consult with HCD to determine the number of copies required for HCD submittal. LWC will attend one (1) meeting with a representative of the State Department of Housing and Community Development (HCD) during its review of the Draft Housing Element.

Timeframe: November – December 2008

Deliverable: Copies of the Public Draft Housing Element for HCD.

Task 5 – Environmental Analysis

- 5.1 **Prepare Initial Study and Negative Declaration.** LWC will carry out the environmental analysis pursuant to CEQA. The Scope of Work and proposed fee assumes that a Negative Declaration will be prepared for the project and that no special studies will be required. LWC will prepare all necessary environmental review documents pursuant to State law and guidelines. The Negative Declaration will be available for public review for a period of 20-30 days. Following the close of the public review period, the City and LWC will consider written comments received. Once the Negative Declaration is adopted, the City will file the Notice of Determination and pay filing fees to the Department of Fish and Game.

Timeframe: January – February, 2009

Deliverables: Negative Declaration – one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy; and all related environmental review documents.

Task 6 – Adoption Hearings

- 6.1 **Hearings for Housing Element Adoption.** LWC will attend two (2) Planning Commission hearings and two (2) City Council hearings. The presentation will reveal HCD's comments. LWC will assist staff in responding to any public or agency

comments, including from HCD, and can be available to attend additional hearings on a time-and-materials basis.

Timeframe: March 2009

Deliverables: Attendance at two (2) Planning Commission hearings; two (2) City Council hearings.

Task 7 – State Certification & Final Housing Element

- 7.1 HCD's 90-Day Review of Adopted Housing Element.** LWC will prepare a final version of the Housing Element, including any changes to the draft required by HCD, staff and officials, for adoption and transmittal to the State. LWC will work closely with staff to ensure that the City meets all HCD deadlines and requirements.

Timeframe: April – June 2009

Deliverables: Final Housing Element – one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy to the City, and the required number of copies as set by HCD.

- 7.2 State Certification.** LWC will follow through to ensure State certification of the Housing Element after adoption by the City. LWC will work closely with HCD to ensure that the City meets State requirements. LWC will modify the adopted Housing Element, if required to obtain certification, and attend one (1) hearing with the City Council to present any changes.

Timeframe: July 26-31, 2009

Deliverables: Modify Housing Element if necessary; if modification is required, produce one (1) unbound copy, five (5) bound paper copies, and one (1) electronic copy of the revised Housing Element, and attend one (1) City Council hearing.

City of Benicia - Housing Element - Schedule - 6-20-08

		2008					2009						
		Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June	July
TASK 1: Project Scope Refinement & Document Review													
1.1	Meeting with Staff												
1.2	Document Review												
TASK 2: Housing Element Research and Preparation													
2.1	Review and Evaluate Existing Housing Element												
2.2	Housing Needs Assessment												
2.3	Housing Resources and Site Inventory												
2.4	Housing Constraints												
TASK 3: Public Participation (Dates to be Determined)													
3.1	Charrette Preparation												
3.2	Charrette (2-days)												
3.3	Charrette Report												
3.4	Joint PC/CC Meeting												
TASK 4: Prepare Draft Housing Element													
4.1	Goals, Policies, Programs, and Quantified Objectives												
4.2	Administrative Draft Housing Element												
4.3	Public Draft Housing Element												
4.4	HCD's 60-Day Review of Draft Housing Element												
TASK 5: Environmental Analysis													
5.1	Prepare Initial Study and Negative Declaration												
TASK 6: Adoption Hearings (Dates to be Determined)													
6.1	Hearings for Housing Element Adoption (4)												
TASK 7: State Certification & Final Housing Element													
7.1	HCD's 60-Day Review of Adopted Housing Element												
7.2	State Certification												

Exhibit B- Budget

**City of Benicia
Housing Element Update
Schedule of Hours and Fees**

TASKS	Wise		Associate		Total	
	Hours	Cost	Hours	Cost	Hours	Cost
1. Project Scope Refinement & Document Review						
1.1 Meeting with Staff (1)	4	\$ 600	-	\$ -	4	\$ 600
1.2 Document review	4	\$ 600	4	\$ 360	8	\$ 960
2. Housing Element Research & Preparation						
2.1 Review and Evaluate Existing Housing Element	8	\$ 1,200	12	\$ 1,080	20	\$ 2,280
2.2 Housing Needs Assessment	12	\$ 1,800	24	\$ 2,160	36	\$ 3,960
2.3 Housing Resources and Site Inventory	12	\$ 1,800	32	\$ 2,880	44	\$ 4,680
2.4 Housing Constraints	8	\$ 1,200	12	\$ 1,080	20	\$ 2,280
3. Public Participation						
3.1 Charrette Preparation	4	\$ 600	4	\$ 360	8	\$ 960
3.2 Charrette (2-days)	16	\$ 2,400	16	\$ 1,440	32	\$ 3,840
3.3 Charrette Report	4	\$ 600	8	\$ 720	12	\$ 1,320
3.4 Joint PC/CC Meeting	8	\$ 1,200	4	\$ 360	12	\$ 1,560
4. Prepare Draft Housing Element						
4.1 Modification of Goals, Policies, Programs and Quantified Objectives	20	\$ 3,000	20	\$ 1,800	40	\$ 4,800
4.2 Administrative Draft Housing Element	8	\$ 1,200	16	\$ 1,440	24	\$ 2,640
4.3 Public Draft Housing Element	4	\$ 600	8	\$ 720	12	\$ 1,320
4.4 HCD's 60-Day Review of Public Draft Housing Element	4	\$ 600	-	\$ -	4	\$ 600
5. Environmental Analysis						
5.1 Prepare Initial Study and Negative Declaration	8	\$ 1,200	32	\$ 2,880	40	\$ 4,080
6. Adoption Hearings						
6.1 Hearings for Housing Element Adoption (4)	20	\$ 3,000	12	\$ 1,080	32	\$ 4,080
7. State Certification & Final Housing Element						
7.1 HCD's 90-Day Review of Adopted Housing Element	16	\$ 2,400	12	\$ 1,080	28	\$ 3,480
7.2 State Certification	32	\$ 4,800	12	\$ 1,080	44	\$ 5,880
Total	192	\$ 28,800	228	\$ 20,520	420	\$ 49,320
Out-of-Pocket Expenses						\$ 3,600
Total Costs						\$ 52,920

**AMENDMENT TO AGREEMENT,
INCLUDING EXHIBIT C**

AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this _____ day of February, 2009, by and between the City of Benicia, a municipal corporation ("CITY") and Lisa Wise Consulting, a California corporation with its primary office located at 1302 Bayview Heights Drive, Los Osos, California, 93402, ("CONSULTANT"), is made with reference to the following:

RECITALS:

A. On July 1, 2008, an agreement was entered into by and between CITY and Lisa Wise Consulting ("Agreement").

B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. Paragraph 3 of the Agreement is modified to read as follows: (a) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall not exceed \$55,520.00 based upon the rate schedule in Exhibit B and Exhibit C attached hereto and hereby incorporated by reference. The rate schedule in Exhibit B and Exhibit C itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY'S prior written approval from the Community Development Director, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project. In no event shall compensation or reimbursement exceed \$55,520.00.
2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

Lisa Wise
Lisa Wise Consulting

City of Benicia,
A Municipal Corporation

By _____
Date: _____

By _____
Jim Erickson, City Manager

RECOMMENDED FOR APPROVAL:

Charlie Knox, Community Development Director

APPROVED AS TO FORM:

Heather McLaughlin, City Attorney

EXHIBIT C

Housing Element / Additional Workshop Costs

	<u>Contingencies</u>	<u>Lisa Wise Consulting, Purchase Order</u>
Current Balance	\$ 328.93	\$ 25,135.00
Estimated Costs for Additional Workshop		
workshop	\$ -	\$ 2,600.00
postcards	\$ 4,354.32	\$ -
Herald Ad	\$ 330.00	\$ -
refreshments	\$ 300.00	\$ -
Total Estimate	\$ 4,984.32	\$ 2,600.00
Funds Requested	\$ 5,000.00	\$ 2,600.00

A total of \$7,600 is needed to carry out additional workshop; rounded up in case costs are higher than estimated.

January 14, 2009

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 3, 2009
ACTION ITEM**

DATE : January 21, 2009
TO : City Council
FROM : City Manager
SUBJECT : **DENIAL OF AN APPLICATION FOR A NEW CARD ROOM
PERMIT FOR THE PASTIME**

RECOMMENDATION:

Adopt the resolution directing the Police Department to deny the application for a new card room permit for the PASTIME.

EXECUTIVE SUMMARY:

The owner of the PASTIME has applied for a new card room permit. The previous permit was not renewed and has expired. Under the Municipal Code, new card rooms are not allowed. The City Council should review the material and deny the application for a new card room permit.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community Health and Safety
- Goal 5.00: Enhance Community Appearance

BUDGET INFORMATION:

None.

BACKGROUND:

The City's Municipal Code effectively prohibits the permitting of new card rooms. See Benicia Municipal Code Section 5.08.030. The PASTIME had a card room permit for a number of years but they failed to renew it in a timely fashion. Section 5.08.040 requires that applications to renew a card room license must be filed by January 1 of each year. No card room application was filed with the city for 2007 (or 2008). The 2006 permit expired on December 31, 2006 so there is no valid card room license that can be renewed. Instead, the owners have filed an application for a new card room license. Since there is no valid card room license, the new card room license must be denied.

Section 5.08.070 requires the City Manager to “submit a completed, final report on the initial application for a license to the city council.” This staff report plus the attached report from the Police Department comprises that report. The City Council should review the report and determine whether the applicant has complied with the card room ordinance. If the Council determines that the applicant has not complied, the Council must direct the Police Department to deny the license. A resolution to so direct the Police Department is included with this report.

The card room application does not comply with the Municipal Code provisions as noted below. This list does not include any possible violations that relate to actual operations.

1. The previously valid permit for the PASTIME has been allowed to expire and has not been valid since 12/31/06.
2. Section 5.08.030(A) prohibits the establishment of new card rooms.
3. The address of the building owner has not been provided per Section 5.08.040(D).
4. Fingerprints and photographs of the proposed licensee were not required per Section 5.08.040(F) because the Police Department has Department of Justice notification.
5. The financial information provided by the applicant does not include all information required by Section 5.08.040(K) such as the address of property or the last income tax statement filed with the IRS.¹
6. The description of security measures required by Section 5.08.040(N) is inadequate. The application form requires a description of security measures including security personnel staffing and training and provision of security in and around off-street parking areas. The completed application appears only to include light in the parking lot, walking patrons to their car, a security system, and an email of “Safety Advice” that seems to relate more to emergency preparation than to security. The application also relies on the Police to drive by or enter the property instead of having internal security personnel or measures.

It should be noted that the owners of the PASTIME have obtained a city business license and card room dealer work permits so there is no valid excuse for not renewing the card room license in a timely manner.

Vice Mayor Campbell and Council Member Schwartzman have conflicts on this item due to property that they own near the PASTIME’s location. They should abstain from participating in this item.

Attachments:

- Resolution Directing the Police Department to Deny the Application
- Report from the Police Department

¹ The financial information will be provided to the Council separately to protect the information and the privacy interests.

RESOLUTION

RESOLUTION NO. 09-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
DIRECTING THE POLICE DEPARTMENT TO DENY THE APPLICATION
FOR A CARD ROOM FOR THE PASTIME**

WHEREAS, the Benicia Municipal Code regulates card rooms; and

WHEREAS, the Benicia Municipal Code prohibits the issuance of new card room licenses; and

WHEREAS, the card room license for the PASTIME expired on December 31, 2006 and was not renewed; and

WHEREAS, on November 11, 2008 Vernon and Mona Lemings submitted an application for a card room license; and

WHEREAS, the application for the card room license does not comply with the Benicia Municipal Code.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia does hereby find that the application fails to comply with the Benicia Municipal Code:

1. The previously valid permit for the PASTIME has been allowed to expire and has not been valid since December 31, 2006.
2. Section 5.08.030(A) prohibits the establishment of new card rooms.
3. The address of the building owner has not been provided per Section 5.08.040(D).
4. The financial information provided by the applicant does not include all information required by section 5.08.040(K) such as the address of property or the last income tax statement filed with the IRS.
5. The description of security measures required by Section 5.08.040(N) is inadequate. The application form requires a description of security measures including security personnel staffing and training and provision of security in and around off-street parking areas. The completed application appears only to include light in the parking lot, walking patrons to their car, a security system, and an email of "Safety Advice" that seems to relate more to emergency preparation than to security. The application also relies on the Police to drive by or enter the property instead of having internal security personnel or measures.

BE IT FURTHER RESOLVED that the Police Department is directed to deny the application of Vernon and Mona Lemings for a card room license for the PASTIME.

On motion of Council Member _____ seconded by Council Member, the _____, above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 3rd day of February, 2009, and adopted by the following vote:

Ayes:

Noes:

Absent:

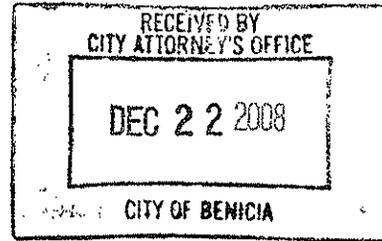
Abstain: Vice Mayor Campbell, Council Member Schwartzman

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

POLICE REPORT



Police Department
MEMORANDUM

Date: December 16, 2008
To: Jim Erickson, City Manager
From: Sandra Spagnoli, Police Chief *SS*
Subject: PASTIME CARD ROOM- NEW LICENSE DENIAL

Recommendation:

Deny the application for a new card room permit at the PASTIME and forward recommendation to the City Council in accordance with Benicia municipal code 5.08.070.

Summary:

I have reviewed the attached application from the PASTIME to obtain a new card room license as outlined in Benicia municipal code 5.08.030. The PASTIME card room license was denied for a renewal because owners have failed to comply with the renewal provisions set forth in the Benicia municipal code. The city card room license has been expired since December 31, 2006. The owner is requesting a new license because they no longer posses a valid City of Benicia card room license.

I concur with the investigators findings to deny the request for a new card room license in accordance with section 5.08.030 of the Benicia Municipal Code, which prohibits issuing new card room licenses.

In addition, a review of police calls for service to this location over a 3 year period indicates that officers responded to over 60 calls for service over the last 3 years varying from disturbances and assaults, to alcohol violations which creates an undo burden on law enforcement services.

cc: City Attorney, Heather McLaughlin

IX-A-7



Police Department
MEMORANDUM

Date: December 11, 2008
To: Chief Spagnoli
From: Sgt. Alkire
cc: Lt. Daley
Subject: Card Room Application – Pastime Club

Lt. Daley:

Pursuant to our city ordinance, I have received the Card Room License Application for the Pastime Club. The Pastime Club has a current city business license for both the bar area as well as the card room area of the business. The Police Department Operating Permit last expired on December 31, 2006 and has not been renewed since. This failure to renew the operating permit (BMC 5.08.030) was discovered this year when a potential buyer came forth and requested information and purchase and transfer of the permits/licensing.

The current owners, Vernon and Mona Lemings, were informed that the Benicia Police Department would not approve a renewal of the permit and the potential sale was altered to reflect the business without a card room. To the best of my knowledge the sale is currently in escrow and is expected to close in the near future.

When I spoke to Mona Lemings I asked the reason she hadn't applied for the operating permits over the previous two years. Mona Lemings told me that her bookkeeper handles all of her card room business and he apparently failed to make the application.

I reminded her that she had applied for her business license and dealers permit in person and she said that since no one gave her the form so she didn't realize it was necessary.

5.08.030 Card room license required – Prohibition of all future card rooms.

A. No person shall establish, maintain, manage or operate any card room or permit or allow any card room to be established, maintained, managed, or operated within any

IX-A-8

building or structure, owned, occupied, or controlled by him/her unless such card room is maintained and operated pursuant to a valid, unexpired, unsuspended and unrevoked card room license issued pursuant to the provisions of this chapter. The holder of any such license or his/her designated representative shall be required to exercise personal control and direction over the operation of the card room and shall be available at reasonable times, during regular business hours, to the chief of police or his/her designated representative.

B. The city shall not approve or issue any building permit, license or other entitlement for the construction, ownership, operation or use of a card room except to those persons who otherwise comply with the requirements of this chapter in all respects, and (1) who were legally, lawfully and actively operating a card room as of the effective date of the ordinance codified in this chapter, or (2) who obtained a license which was sold, transferred or assigned by a licensee who was legally, lawfully and actively operating a card room as of the effective date of the ordinance codified in this chapter.

Mona Lemings has requested the opportunity to re-apply for her license so that she would then be able to sell/transfer the license to someone else within the city of Benicia. Pursuant to our city ordinance, only a valid/current card room permit/license is eligible for transfer which under the current circumstances renders the Pastime permit/license worthless.

The California Division of Gambling Control is holding up their permit renewal pending our decision and advised me that without local approval they were not likely to renew the State license.

Both Vernon and Mona Lemings have been checked through the Department of Justice and are on an automatic notification list. There have been no violations reported to this agency that would prevent either of them from holding a card room permit.

BMC 5.08.040 Application for card room license.

An application for a card room license or a card room license renewal, as required herein, shall be completed by the applicant and filed with the police department within 60 days after the effective date of the ordinance codified in this chapter and by January 1st of each succeeding year upon such form as may be furnished by the police department. The application shall set forth and include the following:

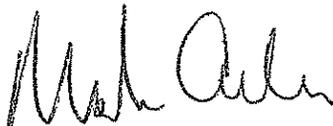
The most current operating permit issued by the Benicia Police Department was for the year 2006. The owners did not complete an application for the years 2007 or 2008 and have operated in violation of this section for two years.

The California Division of Gaming Control has informed me that the only transfer they would allow would be to another entity within the City of Benicia. Based on the following BMC section (and 5.08.030 above) it appears that such a transfer is not possible and therefore the renewal process would be without purpose.

BMC 5.08.100 License nonassignable.

A. Except as otherwise provided for in this chapter, no card room license may be sold, transferred or assigned by the licensee, or by operation of law, to any person, persons, or legal entity. Any sale, transfer or assignment shall be void, and shall be deemed a voluntary surrender of such license, which license shall immediately be deemed terminated, revoked and void unless the person, persons or legal entity have applied for and obtained a transfer of the card room license.

Based on the fact that this former permit holder has been operating outside the requirements of the ordinance, coupled with the pending sale and their apparent legal inability to transfer said permit, I recommend that this permit to operate not be renewed.



Sgt. Mark Alkire
Benicia Police Department



Chapter 5.08 CARD ROOMS¹

Sections:

- 5.08.010 Purpose and intent.
- 5.08.020 Definitions.
- 5.08.030 Card room license required – Prohibition of all future card rooms.
- 5.08.040 Application for card room license.
- 5.08.050 Card room license application fee.
- 5.08.060 Application acceptance, referral, investigation and report.
- 5.08.070 License issuance or denial.
- 5.08.080 Suspension and revocation of license.
- 5.08.090 Procedures for suspending or revoking card room licenses and work permits by city council.
- 5.08.100 License nonassignable.
- 5.08.110 Operating regulations.
- 5.08.120 Cessation of operations.
- 5.08.130 Violation of chapter as public nuisance.
- 5.08.140 Issuance of work permits for employees.
- 5.08.150 Obligation to inform of certain changes concerning licenses and employees.
- 5.08.160 Card games conducted pursuant to law.
- 5.08.170 Permitted games designated.
- 5.08.180 Identification cards.
- 5.08.190 Licensee, owner, agent or employees not to play cards – Exceptions.
- 5.08.200 Use of skills by card rooms.
- 5.08.210 Operation of house bank or similar system.
- 5.08.220 Communication within card rooms – When prohibited.
- 5.08.230 Exclusion or ejection of individuals from card rooms.
- 5.08.240 Licensee responsible for violations.
- 5.08.250 Violation of state and city laws.
- 5.08.260 Gamblers Anonymous information.
- 5.08.270 Posting operating regulations.
- 5.08.280 Inspection of card rooms for enforcement.
- 5.08.290 Formal bookkeeping system.
- 5.08.300 Notice.

5.08.010 Purpose and intent.

The city council determines that the public health, safety and welfare require the adoption of regulations pursuant to, and in conformity with, the State Gaming Registration Act, under which the city shall prohibit the future construction and establishment of card rooms within the city. The city council also finds it necessary to regulate the existing card rooms located in the city with regards to the following:

- A. The persons who will own, operate, and be employed in card rooms;
- B. The operation of card rooms in the city;
- C. The issuance of permits and licenses, including limitations on transfer and assignment, regarding card rooms; and
- D. The permissible games which may be played in the card rooms.

5.08.020 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

A. "Applicant" shall mean a living person, corporation or partnership who applies for either:

1. A license to operate, manage or maintain a card room (an applicant for a license to operate or manage a card room also includes, for purposes of BMC 5.08.040, all persons holding or having a financial interest in the card room); or

2. A work permit to be employed in a card room.

B. "Application" shall mean the form submitted by the owner, operator, or employee and which, when completed by the applicant, contains information requested by the city of Benicia (the "city") upon which the city council may base their approval of such application.

C. "Card game" shall mean any game played with cards or other devices for money, checks, credits or any other thing of value.

D. "Card room" shall mean any building or structure, or any portion of a building or structure, or any premises or place wherein any person or persons are permitted to play a card game authorized by BMC 5.08.170 in return for a fee, charge or other compensation.

E. "Card table" shall mean any table or any other surface upon which any card game authorized by BMC 5.08.170 is played.

F. "Day" shall mean a working day during which the city's administrative departments are open and available to the general public.

G. "Employee" shall mean any person employed by a licensee, with or without compensation, in a card room, and who either (1) participates as a dealer in a card game or is in charge of the operation and is required to supervise card tables, or (2) is a proposition player or an agent of the licensee. Anyone who is required to routinely enter into the card playing area during the course of their duties is considered an employee. The term employee does not include a bartender, culinary worker, or any other person not directly connected with the card room operation.

H. "License" shall mean a license granted by the Benicia city council to an applicant to operate a card room in the city. This license is distinct from, and in addition to, any business license required by the city.

I. "Licensee" shall mean any person who holds a current, valid license, issued by the city to operate a card room.

J. "Owner" shall mean any person, persons, corporation or partnership, or any combination thereof, that has any interest, legal or equitable, in any card room or card room license, excepting a bona fide lending institution licensed by the state of California or the federal government.

K. "Person" shall mean and include individual, firm, association, partnership, joint venture and corporation.

L. "Premises" shall mean any structure or portion of a structure to be licensed, or for which a license has been granted in accordance with the provisions of this section, which contains a card room.

M. "Proposition player" shall mean an employee or other person who participates in a card game at the request, direction or demand of the licensee, his/her agents, or employees and who plays with his/her own money, and who is solely responsible for his/her own wins and losses.

N. "Shill" shall mean any person who participates in a card game at the request, direction or demand of the licensee, his/her agents, or employees where the licensee and/or the card room has a financial interest in such person's wins or losses.

O. "Wagering limit" shall mean to risk or stake an amount of money on an uncertain outcome; a bet.

P. "Work permit" or "permit" shall mean a permit granted to an employee or agent of the licensee of a card room by the chief of police. (Ord. 99-13).

5.08.030 Card room license required – Prohibition of all future card rooms.

A. No person shall establish, maintain, manage or operate any card room or permit or allow any card room to be established, maintained, managed, or operated within any building or structure, owned, occupied, or controlled by him/her unless such card room is maintained and operated pursuant to a valid, unexpired, unsuspended and unrevoked card room license.

issued pursuant to the provisions of this chapter. The holder of any such license or his/her designated representative shall be required to exercise personal control and direction over the operation of the card room and shall be available at reasonable times, during regular business hours, to the chief of police or his/her designated representative.

B. The city shall not approve or issue any building permit, license or other entitlement for the construction, ownership, operation or use of a card room except to those persons who otherwise comply with the requirements of this chapter in all respects, and (1) who were legally, lawfully and actively operating a card room as of the effective date of the ordinance codified in this chapter, or (2) who obtained a license which was sold, transferred or assigned by a licensee who was legally, lawfully and actively operating a card room as of the effective date of the ordinance codified in this chapter.

C. Those persons who obtain a card room license pursuant to this chapter shall continue to operate their card room as a legal nonconforming use, and shall be subject to all laws applicable to legal nonconforming uses in addition to the requirements of this chapter. To the extent any conflict exists between any law governing legal nonconforming uses and the provisions of this chapter, the provisions of this chapter shall prevail and control.

5.08.040 Application for card room license.

An application for a card room license or a card room license renewal, as required herein, shall be completed by the applicant and filed with the police department within 60 days after the effective date of the ordinance codified in this chapter and by January 1st of each succeeding year upon such form as may be furnished by the police department. The application shall set forth and include the following:

A. The location of the card room for which the license is required, including a specific description of the building or structure, or portion of the building or structure, within which the card room is to be situated, and the specific portion of such building or structure for which a card room license is required. If the entire building or structure is used as a card room, the application shall so state and shall request a license for the entire building or structure. If only a portion of the building or structure is used as a card room, the applicant shall so state, shall describe such portion and shall request a license for only such portion. No permit shall be deemed issued for any portion of any building which the application fails to state is to be used for card room purposes or for which the application fails to specifically request a license;

No card room may be located in any zone which has not been specifically approved for such a business and none may be located near any of the unsuitable areas, as specified in Business and Professions Code Section 19852(a)(3);

B. The maximum number of card tables proposed to be maintained within the card room;

C. The specific types of card games proposed to be played within the card room;

D. The true and complete name and address of each owner or owners of the building or structure within which the card room is proposed to be maintained;

E. The true and correct name and address of the person or persons to whom it is requested that a card room license be issued, as follows:

1. If the proposed licensee is an individual, the application shall set forth the name, residence and business address of the applicant;

2. If the proposed licensee is a corporation, the application shall set forth the complete name of the corporation and the state within which it is incorporated, together with its home address and its local address, and also the names and addresses of each officer of the corporation, all persons responsible for operation and management of the card room, and any person owning 10 percent or more of the total shares of stock issued by such corporation;

3. If the proposed licensee is a partnership, the application shall set forth the full names of all partners and the firm name under which the partnership operates, together with the addresses of all partners;

F. A set of clearly identifiable fingerprints and photographs of each person to whom a license is to be granted or, in the case of a partnership, all of the partners; or in the case of a corporation, the president and members of the board of directors, in the form and manner and by an agency approved by the chief of police. Each person shall have paid to the police

department the current fee set by the city master fee schedule for receiving and processing fingerprints so taken;

G. A statement as to whether or not any of the persons hereinabove required to be named in the application have at any time in the last 10 years been convicted of or entered a plea of nolo contendere to any crime or crimes of lesser and included offense and (other than minor traffic offenses) listed in BMC 5.08.060(C) and, if so, the nature of the crime for which they were convicted, and the date and jurisdiction of the conviction;

H. A statement as to whether any gaming permit or card room license previously granted to the applicant has been denied or revoked; the time of denial, revocation or suspension; the jurisdiction denying, suspending or revoking; and the reasons therefor;

I. A statement that the applicant understands and agrees that the application shall be considered by the city council after a full investigation and reports have been made by the chief of police, other city officials or their authorized representatives;

J. A statement that the applicant understands and agrees that the card room established or maintained under any license issued pursuant to the application filed shall be established, operated, managed, and maintained in full conformity with all of the laws of the state of California and the laws and regulations of the city applicable thereto; and that any violation of any such laws in the card room or in connection therewith, shall render any license therefor subject to immediate suspension or revocation and the licensee may thereafter be forever barred from obtaining a card room license from the city of Benicia;

K. A full and complete financial statement of the applicant on forms provided by the police department; a full and complete financial statement of each general or limited partner of the applicant, and a full and complete financial statement of each officer and/or director of the corporation or other entity; a full and complete financial statement of all lenders, except bona fide lending institutions licensed by the state of California or the federal government, whose interest is secured by the assets of the card room;

L. A statement that the applicant understands and agrees that the chief of police or a representative of the chief of police shall have access to the card room premises and to the business records of the applicant for the purpose of investigating compliance with the provisions of this chapter and all other applicable state and federal laws and regulations, and the applicant consents to any such search and consequential seizure;

M. A statement that the applicant understands and consents to the inclusion in any report to the city manager and city council of any criminal conviction that is related to the application;

N. A description of security measures the applicant has or will take or cause to be taken, including security personnel staffing and training, and provision of security in and around off-street parking areas. The security plan must be approved by the police department and adopted by the card room operator prior to issuance of the license;

O. A statement indicating whether the applicant will operate a "house bank," and, if so, a complete description of the operating policies and procedures of such bank, and evidence of the surety bonds required by BMC 5.08.210;

P. A release by the applicant and any of the persons hereinabove required to be named in the application allowing the city to investigate their background, including any history of criminal convictions, as specified in BMC 5.08.060(C);

Q. If the applicant is seeking the transfer, sale or assignment of a current legal card room license, a signed and notarized statement of the current card room licensee consenting to the sale, transfer or assignment of the card room license;

R. Such other information that either the applicant or the city may consider pertinent;

S. The contents of the application shall be certified under penalty of perjury as follows:

1. By the proposed licensee if an individual;
2. By a general partner if the proposed licensee is a partnership; and
3. By the president thereof if the proposed licensee is a corporation. (Ord. 99-13).

5.08.050 Card room license application fee.

A nonrefundable card room license application fee shall accompany the application, shall be paid to the police department, and shall be retained by the city for the cost of investigating and

processing of the application whether or not the application is approved. The application fee shall be paid before the application is accepted by the police department. The fee amount shall be established by resolution of the city council.

5.08.060 Application acceptance, referral, investigation and report.

A. Upon receipt of an application for a card room permit, within 30 days, the police department shall examine the same, and if it is determined that it fails to comply with the requirements of this chapter or does not contain all the information required by this chapter, the application shall be returned to the applicant for proper completion of the application, together with a statement indicating the deficiencies. If the application does comply, the police department shall inform the applicant in writing that the application has been accepted as complete, but that the city reserves the right to request additional information regarding matters contained in the application.

B. The city manager shall be responsible for the gathering of all reports and pertinent information from other city departments and completing a final report to the city council for their acceptance of said application.

C. Providing that the release(s) referenced in BMC 5.08.040(P) has been obtained, the chief of police, or a representative of the chief of police, is hereby authorized to obtain criminal history information in the last 10 years for each person required to be named in the application for determining whether any such person has been convicted of any crime involving robbery, burglary, lotteries, gambling, larceny, usury, perjury, bribery, extortion, bookmaking, fraud, narcotics or controlled substances (except for the history of convictions for marijuana offenses, which shall only be applied to those occurring in the last two years), prostitution, pimping, pandering, money laundering, the California Control of Profits of Organized Crime Act (Penal Code Section 186 et seq.), the Street Terrorism Enforcement and Prevention Act (Penal Code Section 186.20 et seq.), the Federal RICO provisions, or similar crimes involving moral turpitude or who, following an arrest and prosecution for any of the above offenses, is found guilty of or enters a plea of nolo contendere to any lesser and included offense. The chief of police, within 45 days of receipt of a complete application, shall submit a written report to the city manager summarizing the results of his or her investigation. (Ord. 99-13).

5.08.070 License issuance or denial.

The city manager shall submit a completed, final report on the initial application for a license to the city council. Within 30 days of receipt of the completed final report from the city manager, the city council shall review the report at a public meeting. If the city council determines the applicant complies with the requirements of this chapter in all respects, the city council shall direct the police department to issue a license to the applicant. Each license approved by the city council shall be subject to licensee's compliance with all applicable provisions of this chapter as well as such other conditions, limitations and restrictions as the city council may require and shall be valid for up to one calendar year. In the case of a partnership, a license shall be issued in the name of all the partners.

If the city council determines that the application does not comply with the requirements of this chapter in all respects, the city council shall direct the police department to deny the license. The decision of the city council shall be final.

For all subsequent years, the chief of police shall issue the annual license, provided he or she finds that it complies with this chapter. Each license approved by the chief of police shall be subject to licensee's compliance with all applicable provisions of this chapter as well as such other conditions, limitations and restrictions as the city council may require and shall be valid for up to one calendar year.

5.08.080 Suspension and revocation of license.

A. All licenses and work permits authorized and issued under the provisions of this chapter shall be subject to suspension or revocation by either the chief of police pursuant to the procedures contained in this section or by majority vote of the city council pursuant to the procedures contained in BMC 5.08.090, if it is determined, based upon a preponderance of the

evidence, that the licensee or any employee or agent of such licensee or permittee has:

1. Failed to comply with any of the provisions of this chapter; or
2. Been convicted, in the last 10 years, of any crime involving robbery, burglary, lotteries, gambling, larceny, usury, perjury, bribery, extortion, bookmaking, fraud, narcotics or controlled substances (except for the history of convictions for marijuana offenses, which shall only be applied to those convictions occurring in the last two years), prostitution, pimping, pandering, money laundering, the California Control of Profits of Organized Crime Act (Penal Code Section 186 et seq.), the Street Terrorism Enforcement and Prevention Act (Penal Code Section 186.20 et seq.), the Federal RICO provisions, or similar crimes involving moral turpitude or who, following an arrest and prosecution for any of the above offenses, is found guilty, enters a plea of guilty or enters a plea of nolo contendere to any of the above or lesser and included offenses; or
3. Breached any term or condition upon which his/her card room license or work permit was issued.

B. The chief of police may immediately suspend or revoke a card room license or a work permit upon determining that any of the grounds listed in subsection (A) of this section exist. The chief of police shall give written notice to the licensee/permittee that the license/permit has been revoked and that the licensee/permittee may appeal that decision to the city council in accordance with Chapter 1.44 BMC. (Ord. 07-30 § 1; Ord. 99-13).

5.08.090 Procedures for suspending or revoking card room licenses and work permits by city council.

Existing card room licenses and work permits may be suspended or revoked pursuant to the following procedures:

A. The city council may, by majority vote, suspend or revoke any card room license or work permit after a hearing pursuant to an appeal filed under BMC 5.08.080; or

B. The city council may, by majority vote, suspend or revoke any card room license or work permit pursuant to a hearing of which at least 20 days' notice shall be given by the city to the licensee/permittee of the time, place and purpose thereof. Such notice may take the format of an order to show cause, issued by the chief of police or his or her designee, addressed to the licensee/permittee, requiring such licensee/permittee to show cause before the city council at a time, date and place stated, why the license should not be suspended or revoked. The order to show cause shall set forth the reasons or grounds upon which such suspension or revocation is proposed;

C. At any hearing under this section, the licensee/permittee may appear, either in person or by counsel, or both in person and by counsel, and may produce and submit any relevant evidence such licensee/permittee may desire, oral or documentary;

D. Should the city council exercise the authority granted to it under the authority of subsection (A) or (B) of this section, and suspend or revoke the license/permit of any card room or card room employee, the city manager shall notify in writing the licensee/permittee as to the action taken. Suspension or revocation of a license/permit by the city council shall be effective immediately after notice given by the city manager of the council's decision. The decision of the city council shall be final;

E. No licensee or other person in charge or control of any card room operating under any license or permit held or issued pursuant to the provisions of this chapter shall operate or use any table, or manage, conduct or carry on any business or activity permitted by this chapter during any time that such license issued by the city has been or is suspended or revoked. A revoked license may not be transferred.

If the license/permit is revoked by action of the city council, the licensee/permittee shall be forever barred from obtaining a card room license/permit from the city of Benicia.

5.08.100 License nonassignable.

A. Except as otherwise provided for in this chapter, no card room license may be sold, transferred or assigned by the licensee, or by operation of law, to any person, persons, or legal entity. Any sale, transfer or assignment shall be void, and shall be deemed a voluntary

surrender of such license, which license shall immediately be deemed terminated, revoked and void unless the person, persons or legal entity have applied for and obtained a transfer of the card room license.

B. A license issued to an individual shall terminate on December 31st of the calendar year in which said individual dies, except that the personal representative of the estate of said individual may apply for renewal of the license for one year, providing said representative has complied with the Gaming Registration Act of the state of California and all other provisions of this chapter.

C. If the licensee is a partnership and one or more of the partners dies, the surviving partners, or partner, may, with prior approval of the city council, acquire, by purchase or otherwise, the interest of the deceased partner, or partners, without affecting a surrender or termination of the license. In such case, the licensee shall thereafter be deemed to be the surviving partner, or partners, upon notice to the city of said purchase or transfer.

D. Any change of legal status of licensee (such as a change from individual to corporate status) not otherwise herein provided, shall require the prior approval of the city council, which may condition such approval on any appropriate basis.

5.08.110 Operating regulations.

The licensee may operate a card room only at the location specified in the license and in accordance with the following regulations:

A. Only one room may be used for the card room activity.

B. No more than 12 card tables shall be permitted in a card room. In the event a licensee reduces the number of card tables permitted by his/her license, he/she shall not be entitled to reimbursement of any fees or charges previously paid. No more than 36 card tables shall be allowed to operate in the city.

C. No more than eight players shall be permitted at one card table unless the state amends its laws to permit more players. No more than 10 players shall be permitted in any case.

D. The card room shall be located on the ground floor and be so arranged that card tables are plainly visible from the outside door opening.

E. The card room shall be open to police inspection, without a search warrant, during all hours of operation.

F. The card room may operate 24 hours a day, seven days a week unless otherwise stated. The hours of operation shall be clearly posted at the card room so as to give law enforcement and patrons adequate notice of such hours.

G. Each card table during the time of play shall have assigned to it a person holding a valid card room work permit. This person is in charge of and shall supervise and conduct the game strictly in accordance with the laws of the state and this chapter.

H. Only table stakes are permitted.

I. Neither the licensee nor an employee of the licensee shall extend credit to or accept a promissory note from any player for any reason.

J. No minor shall be permitted at a card table.

K. No alcoholic beverages shall be stored, poured or mixed in a card room.

L. No intoxicated person shall be permitted in a card room.

M. Before it shall be allowed to operate, each card room establishment shall adopt rules for wagering limits in each game, after the rules have been approved by the local licensing authority. During hours of operation, such rules shall be clearly posted at the card tables where the games are offered, to provide the patrons adequate notice of those rules. (Ord. 99-13).

5.08.120 Cessation of operations.

A license becomes void upon a six-month involuntary absence or suspension of operations allowed by it, regardless of the reasons therefor; except that the city council may, during the six months, extend the time for good cause shown.

5.08.130 Violation of chapter as public nuisance.

In addition to the legal remedies provided for in this code, the operation of any card room in

violation of the provisions of this chapter or other applicable laws and regulations shall be deemed a public nuisance and the city may bring an action in any court of competent jurisdiction to enjoin such nuisance or may abate such nuisance in any other manner provided to the city by law.

5.08.140 Issuance of work permits for employees.

A. No licensee or other person in charge or control of any licensed card room shall employ or allow any person to work in such card room without such person having first obtained a card room work permit. Nothing herein shall be construed to prohibit the employees or agents of licensees who are actually working in a card room, or for a card room licensee, on the effective date of the ordinance codified in this chapter, from continuing such work; provided, that within 60 days of such date such employees and agents must submit the required application for a work permit.

B. The prospective employee or agent shall complete an application for such permit on forms provided by the police department setting forth:

1. The true name of such person, including all other names by which such person is or has been known;
2. The permanent home address of such person;
3. The name of the card room and card room licensee in and for which such person intends to work;
4. The position/positions and duties such person shall hold and perform while in the employ of licensee;
5. A statement as to whether or not any of the persons hereinabove required to be named in the application have at any time in the last 10 years been convicted of or entered a plea of nolo contendere to any crime or crimes of lesser and included offense listed in BMC 5.08.060(C) and, if so, the nature of the crime for which they were convicted, and the date and jurisdiction of the conviction. The period of time for marijuana offenses shall be two years;
6. Two recent photographs of such person, and a set of clearly identifiable fingerprints and photographs of the person to whom a permit is to be granted in the form and manner and by an agency approved by the chief of police. Each person shall have paid to the police department the current fee set by the city master fee schedule for receiving and processing fingerprints so taken;
7. A statement that such person understands and agrees to the inclusion, in any report to the city manager or city council, of any criminal conviction related to the application;
8. A release by such person allowing the city to investigate his or her background, including any history of criminal convictions, as specified in BMC 5.08.060(C);
9. Certification by the prospective employee that contents of the application are true under penalty of perjury.

C. Providing that the release(s) referenced in subsection (B)(8) of this section has been obtained, the chief of police, or any other person designated by the chief of police, is hereby authorized to obtain any criminal history information related to the application requirements regarding such person and conduct such other investigations deemed necessary for the purpose of determining whether the application accurately sets forth the information requested.

D. Application for a work permit shall be submitted on the first day the police department is open to accept such applications after beginning employment at the card room. A nonrefundable fee, the amount of which will be established and may be amended by city council resolution, will be charged to each prospective employee or agent to cover the costs of such application, and shall be paid to the police department and made payable to the city at the time application for a work permit is submitted. After an application is submitted along with the required fee, the police department shall provide the applicant with a receipt indicating acceptance of the application and fee. The receipt shall serve as a probationary work permit to be maintained by the employee at all times while performing their duties in the card room. Upon completion of the police department's investigation, a determination will be made by the police chief whether a work permit will be issued. The chief of police shall base such determination on the factors enumerated in this section.

E. The chief of police shall, within 30 days, determine whether the application contains false statements knowingly made, or whether the applicant is unfit to be employed by a card room because of prior criminal convictions in the last 10 years of or involving lotteries, gambling, larceny, usury, perjury, bribery, extortion, bookmaking, fraud, narcotics or controlled substances (except for the history of convictions for marijuana offenses, which shall only be applied to those occurring in the last two years), prostitution, pimping, pandering, robbery, burglary, money laundering, the California Control of Profits of Organized Crime Act (Penal Code Section 186 et seq.), the Federal RICO provisions, or similar crimes involving moral turpitude or who, upon arrest and prosecution for any of the above crimes, is found guilty of or enters a plea of nolo contendere to a lesser and included offense. If such determination is made, the chief of police shall notify the prospective employee and licensee that the application has not been approved and the reasons therefore in writing. Such determinations shall be subject to appeal to the city council of the city in accordance with the appeal procedures set forth in Chapter 1.44 BMC.

F. An employee registration and work permit shall be valid for one year. It shall be renewable at the end of each year upon filing a new application and paying a renewal registration fee, the amount of which will be established by city council resolution. If an expired registration and work permit is not renewed within 30 days of the expiration date, it shall be considered void.

G. In addition to any other restrictions provided by law, no work permit shall be issued to anyone who is disqualified from holding a state gambling license for any of the reasons specified in Business and Professions Code Section 19850.

H. Any application for a work permit shall be subject to objection by the State Division. If the Division objects to the issuance of a work permit, it shall be denied. Such a denial may be reviewed in accordance with the Gambling Control Act (Business and Professions Code Section 19801 et seq). (Ord. 07-30 § 2; Ord. 99-13).

5.08.150 Obligation to inform of certain changes concerning licenses and employees.

A. The licensee shall notify the police department in writing within 14 days of any change in the information required in an application for license issuance or renewal as provided in BMC 5.08.040, except that no such change need be reported if such change occurs within 30 days immediately preceding the expiration of such license.

B. Each person registered as a card room employee or agent shall notify the police department in writing within 10 days of any change in the information such employee or agent provided in the registration application/work permit required by BMC 5.08.140.

C. On or before the first day of January of each year, each card room license owner shall submit to the chief of police a current and complete listing of all their employees or agents who work or are affiliated with the card room.

5.08.160 Card games conducted pursuant to law.

All games conducted or operated in the city pursuant to the provisions of this chapter shall be conducted and operated in full conformity with, and subject to, all the provisions of the laws of the state of California and the city. The agreed-upon rules of play for the games which are permitted to be played by this chapter shall be retained by the chief of police and shall be available for public inspection. All games shall be conducted and played in accordance with such rules of play.

5.08.170 Permitted games designated.

Only the games of five card draw poker, five card lowball draw poker, seven card stud poker, Texas hold'em poker, double hand poker, crazy pineapple, or Omaha, and no other game or games shall be played or permitted to be played in a licensed card room. Additional games may be played if the applicant: (1) submits the game for approval to the Department of Justice and receives approval; and (2) receives approval from the chief of police. The chief of police may condition approval of the game in order to protect public welfare and promote integrity of the game. The chief of police's approval or denial of the game may be appealed to

the city council in accordance with Chapter 1.44 BMC. All games of chance are hereby prohibited. (Ord. 07-30 § 3).

5.08.180 Identification cards.

All employees, including managers and owner/managers, of a licensed card room shall display a personal identification card at all times while on duty and physically present in the card playing area. Such identification card shall be prominently displayed on the outermost garment at approximately chest height, and shall at all times be readable and in good condition. No such employee shall be allowed to commence work or remain in the card playing area who does not display such identification card. Wilful failure to comply with this section shall constitute grounds for suspension or revocation of such employee's work permit and/or the card room's license.

5.08.190 Licensee, owner, agent or employees not to play cards – Exceptions.

It shall be unlawful for any licensee, owner, agent or employee of any card room holding a license or permit under the provisions of this chapter to play any card game or gamble in the premises in which they are employed or have a financial interest, except for off-duty personnel and proposition players, unless they wear their identification card, as required by BMC 5.08.180, while playing. Proposition players shall also wear an identification card, as required by BMC 5.08.180, while playing.

5.08.200 Use of skills by card rooms.

It shall be unlawful for any licensee, owner, agent or employee of any card room holding a license under the provisions of this chapter to hire, employ or engage a "shill" as that term is defined in this chapter. It shall be unlawful for any person to act as a shill within a licensed card room in the city where such person is to receive any reward, whether financial or otherwise, present or promised; or whether such reward or revenue is to be diverted to said card room, its owner, licensee, manager or any other person whomsoever with any financial interest in said card room. It shall be unlawful for any person to perform any such function as described herein within a licensed card room in the city.

5.08.210 Operation of house bank or similar system.

It shall be unlawful for any licensee, or agent or employee of a licensee, to remove, use, spend or transfer any money which has been deposited by a customer, player, employee or other person into a licensee's house bank. Any licensee who establishes such a house bank shall maintain adequate records which detail all bank transactions, including deposit cards, which shall be signed by the depositor and which shall designate a beneficiary or beneficiaries in the event of the death or incapacity of the depositor. Such records shall be made available for inspection by the chief of police or any other person designated by the chief of police. Each house bank established and operated pursuant to this chapter shall obtain and maintain a surety bond or bonds in a principal amount equal to the total of all deposits in such bank.

5.08.220 Communication within card rooms – When prohibited.

It shall be unlawful for any person to communicate in any way, whether verbally or nonverbally, to any other person, whether playing a card game or not, any information concerning the cards held by any other person in the card room.

5.08.230 Exclusion or ejection of individuals from card rooms.

It shall be unlawful for any person who has engaged in, been convicted of, or entered a plea of nolo contendere to any charge in last 10 years involving bookmaking, narcotics or controlled substances (except for the history of convictions for marijuana offenses, which shall only be applied to those occurring in the last two years), illegal gambling activities, pimping, prostitution, a crime of moral turpitude, extortion, robbery, burglary, money laundering, violations of the California Control of Profits of Organized Crime Act (Penal Code Section 186 et seq.), the Street Terrorism Enforcement and Prevention Act (Penal Code Section 186.2 et seq.), or Federal RICO provisions; or who is under the age of 21 years; or who, in the opinion

of a licensee or its agents or employees, is obviously under the influence of any intoxicating beverage, narcotic or drug to enter into or remain upon the premises of any card room, or to participate in the playing of any card game at any card table.

A. A licensee, owner, agent or employee of such card room or any law enforcement officer of the city may exclude or eject from any card room any person prohibited by the terms of this section from being on the premises of a card room. The chief of police may, but is not required to, notify a licensee, owner, agent or employee of a card room of the identity of a person subject to exclusion. Any such notification shall be in writing to the licensee, owner or employee of such card room of the identity of any person subject to exclusion or ejection pursuant to this section.

B. Any person who, pursuant to this section, is excluded or ejected from a card room may apply to the chief of police for a hearing on the question of whether this section is applicable to such person. The hearing shall be held within 30 days after receipt of the hearing request, or at such other times as the applicant and chief of police may agree.

C. If, upon the hearing, the chief of police determines that the exclusion or ejection should not apply to the applicant, all card rooms licensed by the city shall be notified in writing of such determination. If the determination is that the exclusion or ejection was proper, the chief of police shall inform the applicant and card room of that determination in writing. Such determination shall be subject to appeal to the city council of the city in accordance with the appeal procedures set forth in Chapter 1.44 BMC.

D. No card room which excludes any individual based upon this chapter shall be subject to civil liability if such ejection or exclusion was based upon a reasonable and good faith belief that this chapter applied to the individual in question. (Ord. 07-30 § 4; Ord. 99-13).

5.08.240 Licensee responsible for violations.

The licensee of any card room shall be responsible for all violations of the laws of the state of California or of the ordinances and regulations of the city which he or she knowingly or recklessly or without all due care permits to occur within said card room, whether or not said violations occur within his or her presence.

5.08.250 Violation of state and city laws.

No licensee, agent or employee of any card room licensed pursuant to this chapter shall knowingly engage in or knowingly permit any other person on such premises to engage in any act in violation of the laws of the state of California or of the ordinances and regulations of the city.

5.08.260 Gamblers Anonymous information.

All card rooms shall make available and post in a visible location on the premises the telephone number of Gamblers Anonymous.

5.08.270 Posting operating regulations.

A set of operating regulations in a form approved by the chief of police and containing the provisions of BMC 5.08.110 shall be prominently posted in at least one conspicuous location within every card room, as determined by the chief of police.

5.08.280 Inspection of card rooms for enforcement.

All premises operating pursuant to the terms of this chapter may be inspected for violations of this chapter at any time during normal business hours by the chief of police of the city or his duly authorized representative. Any evidence of any violation of the terms of this chapter may be seized without warrant; provided, that such evidence shall be specifically identified and a receipt therefor shall be given to the owner of such evidence and to the licensee of such premises or his or her agent.

5.08.290 Formal bookkeeping system.

All card room owners shall maintain a formal bookkeeping system that conforms to generally accepted accounting practices. Receipts from each operating card table shall be collected not

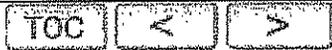
less often than once every 24 hours. Such receipts shall be recorded on a voucher by a manager, verified by the table operator and signed by both such employees. These vouchers shall be time and date stamped and retained with the card room's other financial records.

5.08.300 Notice.

Any written notice required to be given by this chapter shall be served on the applicant, licensee or permittee at the address stated on the application, license or permit, as the case may be, either personally or by first class mail and certified mail. Notice shall be deemed given upon receipt of notice when personally served or two days after deposit in the U.S. mail. (Ord. 99-13; Ord. 97-8; Ord. 72-6 § 1, 1972; prior code § 5-232)²

¹ Prior legislation: Prior code §§ 5-201 – 5-233.

² For statutory provisions on gaming generally, see Penal Code § 330 et seq.





STATE OF CALIFORNIA

GAMBLING CONTROL COMMISSION

2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

Arnold Schwarzenegger, Governor

DEAN SHELTON, CHAIRMAN
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH

December 1, 2008



Via Certified Mail

Pastime Club
c/o Mona Lemings
1749 Lopes Road
Benicia, CA 94500

Re: Extension of Renewal State Gambling License

Dear Ms. Lemings:

The California Gambling Control Commission (Commission) has extended Pastime Club's Renewal State Gambling License at its November 25, 2008, Commission Meeting.

Enclosed is the extended state gambling license and endorsement that will be valid through February 28, 2009. Business and Professions Code Section 19875 requires the gambling license to be posted at all times in a conspicuous place in the area where gambling is conducted.

If you have any additional questions, you may contact me at (916) 263-1038. You may also find information on the Commission's website at www.cgcc.ca.gov of assistance in identifying your responsibilities as a state gambling licensee.

Sincerely,

Robin Saenz, Analyst
Licensing Division

Enclosure

cc: Benicia Police Department

IX-A-23



STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

GAMBLING CONTROL COMMISSION

DEAN SHELTON, CHAIRMAN
STEPHANIE SHIMAZU
ALEXANDRA VUKSICH

2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231
(916) 263-0700 Phone
(916) 263-0499 Fax
www.cgcc.ca.gov

November 20, 2008

Via email

Det. Sgt. Mark Alkire
c/o Benicia Police Department
200 East L St
Benicia, California 94510

Re: Pastime Club – Required Benicia Police Department Permit

Dear Sgt. Alkire:

Pastime Club's (Pastime) state gambling license currently expires on November 30, 2008; and, the renewal state gambling license application is scheduled to be heard at the California Gambling Control Commission (Commission) hearing on November 25, 2008. It is our understanding that the Benicia Police Department's permit for Pastime expired in January 2006.

Based on your recent email communication with Robin Saenz, one of my staff, and staff from the Bureau of Gambling Control (Bureau), you indicated that, "Pastime Cardroom had submitted their Benicia Police Department Business Operating Permit for renewal." Therefore, please provide to the Commission a detailed timeline of your review process and procedures related to the renewal of Pastime's operating permit by your department.

It is also important that the Commission receive all relevant information, including any derogatory information relating to the cardroom when considering the renewal application of Pastime's state gambling license. Therefore, if your department would not be renewing Pastime operating permit, please advise the Commission immediately of any derogatory information, which your department may have on Pastime. And, which information may be used in denying Pastime's operating permit renewal application. Such information would be useful also to the Commission in its consideration of Pastime's renewal application. Your assistance is much appreciated in this regard.

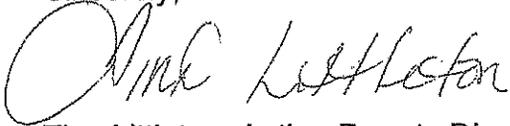
Due to the urgency of the requested information, please fax a response to Robin's attention no later than **Monday, November 24, 2008.**

IX-A-24

Det. Sgt. Mark Alkire
Page Two

Should you have any questions, please contact Robin Saenz, of my staff, at
(916) 263-1038. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Littleton". The signature is written in a cursive, flowing style.

Tina Littleton, Acting Deputy Director
Licensing Division

cc: Bureau of Gambling Control, Licensing Section
Mr. and Mrs. Lemings, Owners, Pastime Club

IX-A-25

December 2, 2008

Mr. Vernon Lemings
1749 Lopes Road
Benicia, CA 94510

Mr. Lemings:

Your application for a Card Room License has been received by the Benicia Police Department. After a review of the information submitted, your Card Room License Application has been accepted as complete for 2009. However, the City reserves the right to request additional information regarding matters contained in your application.

The status of your license may be affected by any changes mandated by the California Department of Justice.

If you have any questions regarding the application or review process that is currently underway, you may contact Sgt. Mark Alkire at 707 746-4244. The review should be completed in the first half of December 2008 and you will be notified of the results.

Sincerely,

Mark Alkire
Detective Sergeant

Cc: Chief Sandra Spagnoli
Heather McLaughlin, City Attorney

IX-A-26

BENICIA POLICE DEPARTMENT CARDROOM LICENSE APPLICATION

DATE: 11-6-08							
APPLICANT NAME LAST LEMINGS			FIRST VERNON			MIDDLE WANDA	
ADDRESS [REDACTED]			CITY BENICIA		STATE CA.	PHONE [REDACTED]	
PLACE OF BIRTH [REDACTED]			DATE OF BIRTH [REDACTED]		AGE [REDACTED]	MARITAL STATUS [REDACTED]	
DRIVERS LICENSE # [REDACTED]			STATE [REDACTED]	SEX [REDACTED]	RACE [REDACTED]	HEIGHT [REDACTED]	WEIGHT [REDACTED]
MARKS, SCARS, TATTOOS [REDACTED]			SOCIAL SECURITY NUMBER [REDACTED]				
CARDROOM NAME PASTIME CARDROOM			ADDRESS 726- 15 th St.			PHONE [REDACTED]	
NAME OF BUSINESS WHERE LOCATED (if different) NONE			ADDRESS OF BUSINESS (if different) NONE			OTHER PHONE	
IS THE ENTIRE BUILDING OR STRUCTURE USED AS A CARDROOM? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>				IF A PORTION OF A BUILDING OR STRUCTURE IS USED, DESCRIBE LOCATION: BACK OF BUILDING			
LOCATION INSIDE OTHER BUSINESS BAR IN FRONT			MAXIMUM NUMBER OF TABLES? 2		TYPES OF CARD GAMES PROPOSED ALL LISTED WITH BENICIA		
BUILDING OWNER(S): NAME DAN LEARY			ADDRESS			PHONE NUMBER(S) [REDACTED]	
CORPORATE LICENSEE NAME, if applicable. (List ALL Officers) N/A			HOME & LOCAL ADDRESSES N/A			PHONE NUMBER(S) N/A	
STATE OF INCORPORATION							
NAME OF PROPOSED LICENSEE N/A			ADDRESS N/A			PHONE NUMBER(S) N/A	
NAME OF PROPOSED LICENSEE (Use additional pages if necessary)			ADDRESS			PHONE NUMBER(S)	
NAME(S) OF PERSON(S) RESPONSIBLE FOR OPERATION & MANAGEMENT OF CARDROOM AND ANY PERSON OWNING 10% OR MORE OF THE TOTAL STOCK ISSUED BY SUCH CORPORATION			ADDRESS			PHONE NUMBER(S)	
NAME VERNON LEMINGS			ADDRESS [REDACTED]			PHONE NUMBER(S) [REDACTED]	
NAME MOWA LEMINGS			ADDRESS [REDACTED]			PHONE NUMBER(S) [REDACTED]	
NAME			ADDRESS			PHONE NUMBER(S)	

PARTNERSHIP (List all partners) FIRM NAME Pastime Club Verona Lemings	ADDRESS 726 1st St Benicia [REDACTED]	PHONE NUMBER(S) [REDACTED]
NAME Mona Lemings	ADDRESS [REDACTED]	PHONE NUMBER(S) [REDACTED]
NAME	ADDRESS	PHONE NUMBER(S)
NAME	ADDRESS	PHONE NUMBER(S)

APPLICANT: Please read and COMPLETE or INITIAL each of the following statements:

BENICIA MUNICIPAL CODE SECTION 5.08.040

Subsection (g): Have you, or any person named in the application, ever been convicted of a crime listed in Section 5.08.060(c) of the Benicia Municipal Code during the time period listed therein?: YES []/NO [X]

If YES, list the nature of the crime for which you were convicted, the date of conviction and the jurisdiction involved in the space below.

Subsection (h): Have you, or any partner and or corporation involved in this application, ever had a permit or license denied, revoked or suspended? YES []/NO [X]. If YES, include the date of the denial, revocation or suspension, the jurisdiction involved and the reason(s) for the denial, revocation or suspension in the space below:

Subsection (i): I/WE understand and agree that this application shall be considered by the City Council after a full investigation and reports have been made by the Chief of Police, other City officials or their authorized representatives. [INITIALS: *WJL mg*]

Subsection (j): I/WE understand and agree that the card room established or maintained under any license issued pursuant to this application shall be established, operated, managed and maintained in full conformity with all of the laws of the State of California and the laws and regulations of the City of Benicia applicable thereto and that any violation of any such laws in the card room on in connection therewith, shall render any license therefor subject to immediate suspension or revocation and the licensee may thereafter be forever barred from obtaining a card room license from the City of Benicia. [INITIALS: *WJL mg*]

Subsection (k): I/WE understand that I must provide a full and complete financial statement, (on forms provided by the Benicia Police Department), as well as a full and complete financial statement of each general or limited partner of the applicant, and a full and complete financial statement of each officer and/or director of the corporation or other entity, if applicable, and a full and complete financial statement of all lenders, except bona fide lending institutions licensed by the State of California or the federal government, whose interest is secured by the assets of the card room. [INITIALS: *WJL mg*]

Subsection (l): I/WE understand and agree that the Chief of Police or a representative of the Chief of Police shall have access to the card room premises and to the business records of the applicant for the purposes of investigating compliance with the provisions of this chapter and all other applicable state and federal laws and regulations, and I/WE consent to any search and consequential seizure.

[INITIALS: *JW* *SK*]

Subsection (m): I/WE understand and consent to the inclusion in any report to the City Manager and City Council, of any criminal conviction related to this application as specified in Benicia Municipal Code Section 5.08.040. [SIGNATURE: *James Leming*]

Subsection (n): Provide a description of security measures you have taken or will cause to be taken, including security personnel staffing and training, and provisions of security in and around off-street parking areas in the space below: *More Skins*

see attached

Subsection (o): Will you be operating a "house bank"? If **YES**, provide a complete description, (in the space below), of the operating policies and procedures of such bank, and evidence of the surety bonds required by Section 5.08.210 of the Benicia Municipal Code.

no

Subsection (r): In the space provided below, include any additional information that you feel may be pertinent:

Subsections (p) and (s): I/WE HEREBY CONSENT TO THE INVESTIGATION OF MY/OUR APPLICATION AND BACKGROUND INCLUDING CRIMINAL HISTORY. I HEREBY RELEASE THE CITY AND WAIVE ANY CLAIMS AGAINST THE CITY AND ITS EMPLOYEES FOR THE INVESTIGATION OF THIS APPLICATION. I/WE DECLARE, UNDER PENALTY OF PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

I am applying for this cardroom license as the following:

- AN INDIVIDUAL CARD ROOM OPERATOR.
- A GENERAL PARTNER OF THE PARTNERSHIP INVOLVED IN THE FINANCING AND/OR OPERATION OF THE CARD ROOM.
- THE PRESIDENT OF THE CORPORATION INVOLVED IN THE FINANCING AND/OR OPERATION OF THE CARD ROOM.

James W. Leming
APPLICANT'S SIGNATURE
More Skins

DATE

11-6-08

IX-A-29

We have light in parking lot.

The women are always walked to their cars.

We have ADT for a security system – Phone # 1-800-369-0996

I have Police to drive by periodically, also if there are undesirable people around, I have them come in and walk around.

mlemings@msn.com

From: <GayleP.Balentine@mail.state.ky.us>
 To: <angelarenick@hotmail.com>; <maverickandcompany@msn.com>; <mlemings@msn.com>;
 <sbgramsie@cox-internet.com>
 Sent: Friday, April 11, 2003 7:25 AM
 Subject: FW: US Government Safety Advice

I think this is what you wanted

--

>

>-----Original Message-----

>From: Jerry Gideon [mailto:jgideon@wcc.net]

>Sent: Wednesday, February 12, 2003 1:49 PM

>To: undisclosed-recipients

>Subject: US Government Safety Advice

>

>

>

>As an Emergency Manager with the U.S. Government, I have privileged

>information to the current events and those events that may happen

>in the near future. At this time, I want to take this opportunity to

>give

>you some general advice for survival if a terrorist act hits very close

>to home that could potentially incapacitate you. Here are some

>suggestions to be prepared:

>

>Treat this situation as if it were a major earthquake or other natural

>disaster.

>

>1. If terrorism strikes in your state or even region, cellular phone

>systems will go out due to the overloading of the system and the

>resultant crash of the network. Also your regular phones may be

>disrupted and the state of emergency may result in 1/3 of your

>region's lines being turned off for periods of time so that the system

>doesn't overload. This is similar to rotating blackouts, only on the

>phone lines. Thus, develop a plan for you and your family members

>so that you can either meet or be assured they will know how to regain

>contact with you.

>

>2. Also consider that if family members work or frequently travel

>to another city, roads may be blocked or unsafe to travel. Thus,

>arrange for those members away from the general home area to

>divert to a close friend's house in the city they frequent. Have them

>stay there until the "all clear" is given. You (and they) will be more

>assured of their safety. Have backup friends, too. Consider you will

>not be able to communicate with them for at least four to 24 hours

> -- again, AT LEAST.

IX-A-31

- >
- >3. Ensure that you frequently refuel your vehicles and that they are
 - >always full with gasoline. Those of you who frequently let your car
 - >go below * tank may not get you home if stuck in local traffic. The
 - >last thing you want is to run out of gas. Remember, gas stations need
 - >electricity to run; and in a terrorist situation, they may be
 - >ordered to shut down -- even if there is electricity available.
- >
- >4. ALWAYS carry cash and lower dollar bills. In a situation with
 - >communications failure, no store can process credit card/ATM
 - >transactions because these require phone lines. If you frequently
 - >forget to keep cash on you, have \$40 in loose bills stored in a secret
 - >spot in your car that you use the most. This way, if you get caught
 - >on the road without cash, you have that secret stash.
- >
- >5. Keep enough water on hand for ONE WEEK. Freshly bottled water.
 - >This is because our municipal water systems ARE at risk. One week
 - >will be sufficient for trucked water to make it in. The traditional
 - >three days is too short.
- >
- >6. Have your pantry STOCKED with food for one week, too. This
 - >should be food that is very simple to make. You should also have
 - >enough packaged food for a few days that require no
 - >cooking, should the electric systems be taken out.
- >
- >7. It is a good idea to have a portable emergency kit in a large
 - >duffle bag containing the above items, should you (God forbid) ever
 - >need to be evacuated. This way, you can grab the bag and go.
 - >Essential items should include medicines (for one week's supply),
 - >toilet paper, toothbrushes and paste, hand sanitizer, water/food,
 - >flashlights, portable radios with plenty of batteries, pen and paper,
 - >whistle, rope, duct tape, blankets, general toiletries, and anything
 - >else you feel to sustain you for ONE WEEK. Believe it or not, this
 - >can all fit into one large duffle bag for a regular sized family.
- >
- >7. Pets. Make sure you have the appropriate carriers for your pets
 - >and plan for extra water and food for them. It is a good idea to buy
 - >a small bag of food for them and store it with that emergency
 - >duffle bag. Also store leashes/collars, and extra water. Do NOT
 - >leave pets unattended. In emergency situations, they know something
 - >is wrong, become frightened, and may try to even run away. Be
 - >mindful of this.
- >
- >8. In extreme cases, the Red Cross and local governments utilize
 - >Amateur Radio as a way to pass welfare traffic. The terrorist acts
 - >in NYC left Amateur Radio as the ONLY means of communications in
 - >or out of the city. The city's 9-1-1 dispatch center was on the 12th
 - >floor of one of the towers. That went down and so did their 9-1-1
 - >system for the whole city. If you evacuate, it is best to go to the Red
 - >Cross and have HAM radio pass welfare traffic to your loved ones
 - >across the country.

>
>9. If you are home when a situation occurs, STAY THERE. DO NOT go
>out and drive around or wander. Subsequent events can immobilize
>you away from home and create undue worrying from your family.
>Doing this also hampers emergency efforts and obstructs life saving
>efforts. STAY OFF THE PHONE. Calling everyone in the world ties up
>the phone system and obstructs emergency services. It is best to
>CALL ONE party out of state and have them contact everyone else to
>let them know you are okay.

>
>10. The notion of this can't happen here was proved wrong. It can and
>will happen anywhere. Report suspicious circumstances to law
>enforcement immediately. Let them determine the severity of the
>situation. If government says get out or to watch out for certain
>places, don't take it lightly.

>
>11. Don't panic. Just be prepared. Pull together.

>
>The above can be applied to any disaster (floods, quakes, etc)...It is
>also suggested that you research more for other items recommended
>to stock up on not mentioned here (like clothing, good walking shoes,
>dust masks).

>
>Take care,

>
>Scott Borgioli , Chief Emergency Communication Center
>Officer/Incident Commander Chief Radio Officer US Department of
>Commerce - National Weather Service

>
>

BENICIA POLICE DEPARTMENT

CARD ROOM EMPLOYEE ROSTER

BENICIA MUNICIPAL CODE 5.08.150 Requires that, "On or before the first day of January of each year, each card room license owner shall submit to the Chief of Police a current and complete listing of all their employees or agents who work or are affiliated with the card room."

Please Complete

Name of Card Room: PASTIME

Date Of Completion: 11/26/08

Employee's full name and position <i>ISABELITA KIRSCHNER</i>	Cardroom Permit# <i>189</i>	Permit exp. date <i>12/22/08</i>
Employee's full name and position <i>MARVIN COSTALES</i>	Cardroom Permit# <i>345</i>	Permit exp. date <i>1/10/09</i>
Employee's full name and position <i>VERNON LEMING</i>	Cardroom Permit# <i>284</i>	Permit exp. date <i>11/13/08</i>
Employee's full name and position <i>MONA LEMING</i>	Cardroom Permit# <i>291</i>	Permit exp. date <i>11/13/08</i>
Employee's full name and position	Cardroom Permit#	Permit exp. date
Employee's full name and position	Cardroom Permit#	Permit exp. date
Employee's full name and position	Cardroom Permit#	Permit exp. date

Signature and title of person completing roster: *Monica R. Smith*

IX-A-35

Initials: WAX

WAX

SYSTEM: RTE Date Range: 1/01/05 - 12/31/08
 Program: CAD306A Time Window: 0:00:01 - 23:59:59
 Selections by Address Range: System: Street #: 600726 Div: 001
 Call Street #: 000726 Div: 001
 Computer Aided Dispatch
 Call Summary
 Name: ISF
 Name: ISF
 Div: 001 Page: 13/17/08
 DPL: 001 Date: 12/17/08
 SEX ST MOD/F: ST ST MOD/F:
 SEX ST MOD/F: ST ST MOD/F:

Clerk: 001 BENICIA

CALL#/DPF Type/Disposition Time Incident Location Ref Reference P/P/E

Verbal Address:

Police #	CALL TYPE/DESCRIPTION	Time	Incident Location	Ref	Reference	P/P/E
2	307 FOOT PATROL					
14	310 OUT OF SERVICE					
12	303 SECURITY CHECK					
11	217 VEHICLE STOP					
13	318 PEDESTRIAN STOP					
7	319 OUT OF VEHICLE					
212	TOTAL POLICE ALL CALL TYPES					

TOTAL CITY: 001 BENICIA

Police #	CALL TYPE/DESCRIPTION	Time	Incident Location	Ref	Reference	P/P/E
1	001 ABANDONED VEHICLE					
3	002 ALARM					
6	003 ALCOHOL VIOLATION					
6	011 ARREST					
2	015 ASSAULT					
6	018 ASSIST CITIZEN					
1	026 EXTREME					
1	036 ENTERING INFO					
2	040 BORG-COMMERCIAL					
3	041 BORG-VEHICLE					
4	048 CITY ORDINANCE VIO					
5	065 DISTURBANCE CUSTOMER					
2	073 DISTURBANCE NOISE					
17	075 DISTURBANCE PHYSICAL					
9	077 DISTURBANCE VERBAL					
5	079 CAT					
6	085 EXTRA PATROL					
6	099 FOUND PROPERTY					
1	123 INFORMATION					
2	138 LOST PROPERTY					
1	162 OTHER CRIMINAL OFFENSE					
5	170 PARKING VIO					
2	174 PHONE CALLS					
2	211 SMOKING ORDINANCE VIO					
1	216 ALCOHOL STRNG					
1	217 TOBACCO STRNG					
2	230 SUSPICIOUS CIRCUMSTANCE					
3	230 SUSPICIOUS PERSON					
2	234 SUSPICIOUS VEHICLE					
1	238 THEFT					
1	232 THEFTS					
2	244 TRM					
1	246 TRAFFIC HAZARD					
3	260 VANDALISM					
1	261 VANDALISM					
1	264 VEHICLE COMPLAINT					
1	282 WELFARE CHECK					
15	306 FOLLOW UP					
2	307 FOOT PATROL					
14	310 OUT OF SERVICE					
32	313 SECURITY CHECK					
11	317 VEHICLE STOP					
15	318 PEDESTRIAN STOP					
7	319 OUT OF VEHICLE					
212	TOTAL POLICE ALL CALL TYPES					

212 TOTAL P/P/E ALL CALL TYPES

AGENDA ITEM
CITY COUNCIL REGULAR MEETING: FEBRUARY 3, 2009
ACTION ITEMS

DATE : January 27, 2008

TO : City Council

FROM : City Manager
Community Development Director

SUBJECT : **BENICIA BUSINESS PARK PROJECT**

RECOMMENDATION:

Reconsider denial of the Benicia Business Park application, and, if the denial is rescinded, provide direction to staff to begin a review process for the application, including by issuing a request for proposals for a specific plan and environmental impact report.

EXECUTIVE SUMMARY:

At its December 2, 2008 meeting, the Council decided to agendize reconsideration of its November 18, 2008 denial of the Benicia Business Park application following a facilitated public workshop. The purpose of the workshop, held January 7, 2009, was to help determine whether a collaborative approach to planning the project with the applicant and the community is feasible. Following the workshop, the applicant submitted a January 23, 2009 letter to the City Council proposing project review steps, timeline and tools. (This letter replaces a similar letter of December 2, 2008.) It is anticipated that this proposal will be the primary focus of Council's determination of whether to rescind denial of the project application.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00 Protect Community and Environmental Health and Safety
- Goal 2.00 Strengthen the Economy
 - Strategy 2.30 Facilitate and encourage sustainable development
- Goal 4.00 Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.10 Provide a balanced street system to serve automobiles, pedestrians, bicycles and transit
 - Strategy 4.40 Improve and maintain facilities and infrastructure
- Goal 5.00 Enhance Community Appearance
 - Strategy 5.10 Promote quality design in new construction and remodeling

A project acceptable to the community could increase the City's tax base, provide jobs, and develop the site consistent with the General Plan vision of sustainability, including by providing campus design, Low-impact Development and LEED-ND features, LEED-certified buildings, a transit facility, and clean-fuel transit.

BUDGET INFORMATION:

All costs related to the development other than staff time are borne by the applicant. The project would be required to contribute its fair share for City services, including funding and installation of all on-site infrastructure and necessary off-site utility connections; paying development and traffic impact fees; and providing sites and funding for fire, police, and public works facilities and operations.

ENVIRONMENTAL REVIEW:

The development would be subject to a Subsequent EIR that may utilize baseline information from the prior EIR but must include new, thorough analysis of all potential significant impacts of the proposed development.

SUMMARY:

The applicant's January 23, 2009 letter (which replaces the November 24, 2008 letter; both attached) proposes project review components to address community concerns, including extension of the review timeline, compliance with AB 32 and SB 375, a development agreement, separate agreements with the school district and unions, a subsequent EIR, a specific plan, a community advisory panel, and a business recruitment program.

The January 23 letter raises the following issues:

- A limitation that the specific plan be "consistent with the existing General Plan." State law requires consistency between the two plans (see attachment with excerpt of Government Code Section 65451) but allows for amending a general plan if necessary to adopt a specific plan. This limitation apparently would not accommodate such a scenario, which might be necessary if, for example, required to certify the subsequent EIR.
- A requirement that the school district approve a separate agreement before the development agreement can be approved. This provision effectively would give the school district board review authority over the application, which is beyond the City's ability to delegate. The intent to execute this separate agreement could be included in the development agreement instead of a binding provision.

NEXT STEPS:

If Council rescinds its denial of the project, Council may establish the review process for the application, including actions necessary to develop a project description for a Subsequent EIR. If the denial is not rescinded, City review of the application will be concluded.

If the denial is rescinded and Council directs staff to begin the specific planning process, staff would issue a Request for Proposals for a consultant team that includes EIR expertise (as the project description for the subsequent EIR would be the draft specific plan). The Request for Proposals would require respondents to specify all process milestones, timelines, and deliverables.

Attachments:

- January 23, 2009 letter from applicant
- January 7, 2009 workshop summary and wall graphic
- Description of Development Agreement, Specific Plan and Subsequent EIR
- Mayor's proposed changes to December 2, 2008 letter from applicant
- December 2, 2008 letter from applicant
- December 2, 2008 letter on behalf of Benicia Unified School District
- Correspondence from Benicia Green Gateway Group

JANUARY 23, 2009
LETTER FROM APPLICANT



4061 Port Chicago Highway, Suite H
Concord, California 94520
(925) 682-6419
Fax (925) 689-7741

January 23, 2009

Dear Mayor Patterson and Members of the Benicia City Council:

After my conversations with members of the City Council and after the January 7, 2009 Community Meeting and further discussions within our organization, we offer the following in the hope that you will rescind your November 18, 2008 decision to deny our application to develop the Benicia Business Park Project. Please be advised that the commitments set forth herein are made by both the project owner, West Coast Home Builders, Inc. and the project developer, Discovery Builders, Inc. (hereafter collectively "Discovery Builders"). To that end please accept the following offer:

If, at the Feb 3, 2009 City Council meeting, the City Council votes to rescind its decision to deny our project we will commit to the following in exchange for said rescission:

I. WAIVER AND EXTENSION OF TIME LIMITS

Discovery Builders shall waive any present or past statutory or regulatory timelines for the Project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's decision to overturn the Project denial. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and we will grant a 6 month extension in good faith.

II. DEVELOPMENT AGREEMENT

Discovery Builders shall enter into a Development Agreement with the City of Benicia. We shall negotiate the terms of the Agreement in good faith, but we acknowledge at the outset that the Agreement shall include the following components as well as others:

- A. The Specific Plan and all conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary;
- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on Semple School, and that said agreement is in place prior to approval of the Development Agreement.

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- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with certain unions, including those commonly known as Building Trades, for work to be done on the Project and that said agreement be in place prior to approval of the Development Agreement.
- D. The terms of the BUSD agreement and the PLA are separate from the Development Agreement but must be in place prior to approval of the Development Agreement.

III. SUBSEQUENT EIR

In conjunction with the Development Agreement, Discovery Builders shall fund a Subsequent EIR (SubEIR) for the Project:

- A. The processing of the SubEIR shall include two scoping sessions.
- B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
- C. The SubEIR shall be prepared by an independent consultant of the City's choosing, *but in no case shall LSA be contracted for further work on the Project environmental review or Project approvals;*
- D. All studies required by the mitigation measures and/or conditions of approval shall be completed prior to issuance of the first grading permit.
- E. Updated Economic Analysis and Market Study of the Project shall be included in the SubEIR.
- F. Updated Health Risk Assessment shall be included in the SubEIR.
- G. SubEIR will identify that Development Agreement will be part of the Project.

IV. AB32 and SB 375

The Project shall comply with the requirements of AB32 and SB 375. This will include implementation of a Transportation Demand Management (TDM) plan to reduce emissions and vehicle use. A TDM plan will need to be approved for every phase of Project development by the City of Benicia prior to issuance of the first building permit for that Phase. This TDM will include a free express shuttle service funded by a Benicia Business Park CFD. This express shuttle service will serve the Project site and Downtown Benicia. The TDM plan will also include designs for a transit center constructed on the Project site with properly planned and located shuttle stops. The TDM plan will also provide guidelines and requirements for shared-use parking, traffic calming mechanisms, bike rack locations, carpool and van-pool ride match programs and requirements for implementation of bike paths and walking paths. This Project will be required to provide funds to extend the Benicia Breeze to the Project site. Bio-swales and bio-retention basins must be integrated into the Project design and all buildings within the Project must be LEED certified

V. SPECIFIC PLAN

In conjunction with the Development Agreement and SubEIR Discovery Builders shall work with the City to process a Specific Plan for the Project consistent with the existing General Plan as part of the Project approval process. The Specific Plan shall follow the requirements of Government Code Section 65451. The Specific Plan will establish detailed development standards for the entire Project. Input from the community and all stakeholders will be included and used to develop the Specific Plan.

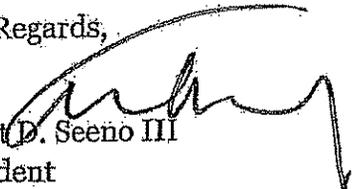
VI. ADDITIONAL TERMS AT COUNCIL'S DISCRETION

In addition to the above commitments, we agree to the following::

- A. We will fund reasonable City expenses associated with the establishment and operation of a Community Advisory Panel or Commission for the Project as determined by the City Council.
- B. We will fund reasonable City expenses associated with the establishment and operation of a Business Recruitment Program for the Project.
- C. We will cooperate with the City in establishing a timetable for actively processing and pursuing project entitlements:
We will work with the City to determine realistic dates for completing the Specific Plan, certifying the SEIR, Approval of the Vesting Tentative Map, Master Plan Overlay and Development Agreement.
- D. We will promote use of local hires.
- E. Implement the current General Plan which is a consensus based plan for the City of Benicia.
- F. Encourage and promote green/clean technology users and develop proactive recruitment plan.
- G. We will communicate with public, city and staff and take the time necessary for comprehensive development, processing and community engagement.
- H. We will work with the City in developing ways in which to make the Project economically sustainable and feasible for potential users.

Thank you for your time and consideration.

Best Regards,


Albert D. Seeno III
President

JANUARY 7, 2009 WORKSHOP SUMMARY AND WALL GRAPHIC



CITY OF BENICIA

SEENO BENICIA BUSINESS PARK PROJECT

Community Meeting | January 7, 2009 • 6 to 10 pm | Mary Farmar Elementary School

I. WELCOME & INTRODUCTIONS

Mayor Elizabeth Patterson welcomed community members to the meeting to discuss a letter received from Discovery Builders that asked the City Council to reconsider its rejection of the Seeno Benicia Business Park proposal in December if the developer agreed to a number of new conditions. The mayor underscored that the evening's meeting was intended as a community forum, not as a venue for further Council discussion of the project. She then introduced Daniel Iacofano of MIG, the consultant facilitating the meeting, who outlined ground rules for a productive community conversation about the project's status.

II. PROJECT BACKGROUND & STATUS

Daniel presented a brief summary of the current state of the business park project, noting that the City Council had rejected the developer's proposal for the project in December, but Discovery Builders had requested that the Council reconsider if Council and the community accepted a set of new conditions. The community meeting was scheduled in response to this letter to provide a forum for discussing the site, the proposed project, and the opportunities and challenges therein.

III. TOWARD A COLLABORATIVE PLANNING PROCESS

Daniel began the meeting by inviting community members to submit speaker cards on topics of special concern to them. Speakers were called up in a random order and asked to limit remarks to three minutes. Community members who wanted to speak on multiple topics were free to submit multiple speaker cards. Diana Sherman, also of MIG, recorded comments graphically by topic.

Vision and Guiding Principles

- Use local hires.
- Make process transparent.
- Maximize community engagement.
- Envision green gateway.
- Take time to do it right.
- Ensure environmental protection.
- Include green technology.
- Consider environmental impact on people.
- Consider multi-objective uses.
- Apply sustainable planning philosophy.
- Employ adaptive reuse of schools.
- Develop proactive recruitment plan for green/clean technology industries.
- Be proud of project.
- Encourage consensus based process.
- Use General Plan health element as a tool.
- Build on the General Plan.
- Put forward a community-based vision.
- Establish iron-clad performance agreements.
- Create an inclusive process.
- Promote transit-oriented development.



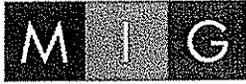
- Make a long-term commitment to the community.
- Apply holistic planning principles.
- Make the project economically sustainable and feasible.
- Develop a specific plan for the site.
- Start fresh.
- Identify what the community does want, not just what it doesn't.

Issues

- Local jobs means reduced greenhouse gas emissions, less traffic, less climate impact, reduced commuting, and jobs closer to home.
- The project should create jobs for Benicia residents.
- The existing business park is 50 years old—plan this one for the next 50 years!
- Will specific plan, new agreement, and subsequent EIR change basic concerns?
- Can land trust just buy the land?
- What about a new developer?
- Leave land idle if there's no good plan.
- Provide training for green jobs.
- Create jobs for the future.
- Ensure a zero-carbon footprint.
- Consider pollution impact, especially on children.
- Put project in now—the economy will come back!
- How much habitat enhancement will be involved?
- As tax base rises, city costs rise.
- What's most suitable for the land?
- Consider nearby residents and extend Semple School benefits to these residents.
- Is land suitable for workers if it's not okay for residents?
- Is there demand?
- What about windmills with solar panels and range cattle?
- Traffic on East Second is an issue.
- What about other uses for Mills?
- Include native plant protection.
- Strive to have city staff who can be involved in the long run.
- Encourage transit-oriented development.
- Provide a mass transit system (at developer expense).
- Think about small retail on First.
- Capture local dollars with retail and other uses.
- Don't grade the hills—build in clusters between the hills.
- Remember that you can't buy mitigation for poor air quality.

Process

- A specific plan (paid for by the developer) should be a requirement.
- Require substantial community involvement early in the process—this is the key to success.
- Need a new, not just a revised, project.
- Promote the vision of a green gateway.
- A development agreement would be good.
- Need an oversight committee that reports regularly to the community.
- Need someone from the City on site during construction.
- Provide residents with information and confidence.



- Require an outside manager for the project who would be paid by the developer and would report weekly to the City.
- Include significant penalties or performance bonds for infractions.
- Require a comprehensive economic analysis.
- Develop a community-based process.
- Make sure PLA applies to everything, including future tenant improvements.
- Include form-based code.
- Ensure that the City enforces rules.

Schools Agreement

- Include the school district agreement in this process and consider action with respect to Mills School if problems emerge.
- How do we know the schools agreement will be included?
- Why is the school representative a non-voting member? (This is because the school representative has issue-specific interests.)
- Separate application and project terminology—new project with an existing application.

Additional Information Needed

- Explore what “green” means (e.g., food processing, solar on warehouses, etc.).
- This is a complex process—make it easy for people to understand.
- Need more information on health impacts.
- Need further economic studies to identify the right land use.
- Create a public economic analysis.
- Who will pay for the specific plan? The development should pay.
- Residents have doubts.
- Conduct a First Street economic study to ensure that there are no negative impacts on existing retail.
- Will freeway commercial fill?
- Which suggested changes will make it into the letter?
- Complete the baseline greenhouse gas inventory and include commute emissions.
- Make mitigations clear for all.
- Does motion to reconsider have to be decided on February 3? (No, it can be extended.)
- What do you want? Where? How can it happen?
- When does a proposed new agreement get hammered out for review?
- What methodology will guide a specific plan?
- Do we want a project or not? If so, define what this is.
- The City should take the lead!
- Conduct a land use market study.
- Did initial auguring go 15 feet down to test for sacred sites and Native American objects?
- How will the community know if the City is over-constraining the project? There’s a lot of competition!
- What is the benefit of a developing a specific plan with a selected developer? Can you get the same outcome from a developer agreement?
- You need vision and assurances. There are significant off-site implications. This would need in-state planning guidelines and a phasing component. You could also do this as a planned unit development (PUD).
- How set in stone is a specific plan? There’s a big investment in process and infrastructure. This requires a formal process to modify this, though it’s rare for a specific plan to be significantly changed, as it’s very cumbersome.
- Where is the balance between benefit for the City and economic benefit for the developer?
- Can you write an adaptable specific plan? (Yes!)



Process Timeline

- Extend timelines (e.g., six months).
- Twelve months is ambitious—rushing the process leads to loss of trust and credibility.
- Project should take time, not be on the City revenue schedule.
- What is the next step if Council reconsiders its decision? The Council needs a clear work plan with time points, guiding principles, and outcomes. The letter could be a basis for a collaborative process. The letter could also be jointly-authored by Council and the developer.
- Clarify the vision for the site.
- Timing depends on existing documents, but 12 to 18 months could be realistic.
- How long would a development agreement take? This is tied to zoning and the plan, but probably 12 to 18 months—the process is the same as for a specific plan.
- Need an articulated timeline: a date of decision, go/no-go points, response to all concerns, identification of the consultants. What by when?

IV. SUMMARY & NEXT STEPS

At the close of the meeting, Daniel identified eight key areas to explore further as the Council weighs its options:

- Creating a specific plan requirement;
- Developing a community-based vision;
- Conducting a land use market study;
- Identifying the meaning of “green” industries and technology;
- Determining how to create iron-clad performance agreements;
- Maximizing community engagement;
- Determining who should pay for the planning process; and
- Establishing a realistic timeline.

Al Seeno of Discovery Builders also had an opportunity to address the community and provide a preliminary response to the feedback, and expressed his interest in working with residents and Council to craft a project that would be both environmentally and economically feasible. The community and Council agreed that the results of the community meeting would be summarized and distributed to Council and the developer in time for Discovery Builders to prepare a response before the February 3, 2009 City Council meeting, where the letter and the project status would be on the agenda.

SENO BUSINESS PLAN Vision and Principles

ISSUES

- LOCAL JOBS - REDUCED GIG TRAFFIC, LESS CALIFORNIA IMPACT, REDUCED TRAFFIC, LESS TIME
- JOBS FOR SENIOR RESIDENTS
- EVADING PARK IS SO UNDESIRABLE - PLAN THIS ONE FOR NEXT SOI
- WILL SPECIFIC PLAN CHANGE BASIC CONCERNS?
- CAN LAND TRUST - NOT BUY LAND?
- WHAT ARE NEW DEVELOPERS?
- LEAVE LAND USE IF NO GOOD PLAN
- TRAINING FOR GREEN JOBS
- CREATE DES FOR FUTURE
- ZERO-CARBON FOOTPRINT
- POWELL HUNTERS - USE THEM!
- TOP PROJECT IN NEW-BORN WILL BE OVER
- WANT TO BE AN INVESTOR WITH A SMALL

PROCESS

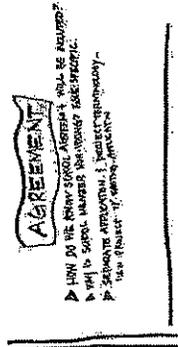
- AS IN BASEN, CITY COSTS UP FOR LAND
- WHAT'S MOST SUITABLE USE
- CONSIDER NEARBY RESIDENTS - EXTEND SIMPLE BENEFITS TO RES
- IS LAND SUITABLE FOR VISITORS IF ITS NOT OKAY FOR RESIDENTS
- IS THERE DEMAND?
- WHAT ABOUT HOV/AV/10/12/14/16/18/20/24/30/36/42/48/54/60/66/72/78/84/90/96/102/108/114/120/126/132/138/144/150/156/162/168/174/180/186/192/198/204/210/216/222/228/234/240/246/252/258/264/270/276/282/288/294/300
- TRAFFIC ON BABY 2nd = ISSUE
- WHAT ABOUT OTHER USES FOR HILLS?
- NATIVE PLANT PROTECTION
- STRIVE TO HAVE CITY STAFF WHO CAN BE INVOLVED IN LONG RUN
- TRANS-ORIENTED DEVELOPMENT
- NEED HAS TRANSPORT SYSTEM
- THINK ABOUT SMALL SCALE ON (HILL)
- CAPTURE LOCAL \$ w/ RETAIL, etc
- DONT GRADE HILLS - BUILD IN GUSSET
- WANT TO PAY FOR INVESTMENT - NOT QUALITY

INFORMATION NEEDED

- EXPLORE WHAT GREEN MEANS (e.g. food projects, see an infographic)
- CONSIDER PROCESS - MAKE IT EASY FOR PEOPLE TO UNDERSTAND
- NEED MORE INFO ON HEALTH IMPACTS
- NEED FURTHER ECONOMIC STUDIES TO IS RIGHT LAND USE
- PUBLIC ECONOMIC ANALYSIS
- WHO WILL PAY FOR SPECIFIC PLAN? DEVELOPER? SHOULD RNT?
- RESIDENTS HAVE DOUBTS
- WEST GATEWAY ECON. STUDY - MAKE SURE ITS NOT NEE IMPACT
- WILL FRESHWAY COMMERCIAL FILL?
- NEED SUGGESTED ZONE MAKE IT NOT LETTERS
- COMPLETE BASELINE DATA INVENTORY - INCLUDE COMMUNITY IMPROVEMENT
- MAKE SURE PLAN TALKS TO ALL
- DOES NATION TO RECONSIDER HAVE TO BE DECISION FOR 2017?

PROCESS TIMELINE

- EXTEND TIMELINES - 45 6 MONTHS
- IF NOTHING CHANGES - RUSHING PROCESS LEADS TO LOSS OF TRUST/CREDIBILITY
- PROJECT SHOULD TAKE TIME - NOT BE ON CITY REVENUE SCHEDULE
- WHAT IS THE NEXT STEP IF COUNCIL RECONSIDERS DECISION?
 - CLARIFY WORK PLAN - TIME POINTS, SCHEDULE, RESPONSIBILITIES
 - LETTERS COULD BE SIGNED FOR COLLABORATION PHASES
 - CLARIFY VISION FOR THE
- TIMING? DEPENDS ON EXISTING SCHEDULES
 - IT-TO NOT CAN BE RECALCULATED
 - HOW LONG WOULD A DEVELOPER AGREE TO TAKE? ALWAYS CHANGED TO SUIT TIMING, IT
 - IT-TO NOT IN THE AIR - WITH
- ACTUALIZED TIMELINE
 - DATE OF POINTS
 - DATE OF POINTS
 - DATE OF POINTS



**DESCRIPTION OF DEVELOPMENT
AGREEMENT, SPECIFIC PLAN
AND SUBSEQUENT EIR**

Benicia Business Park Community Workshop

Potential Planning Tools

Development Agreement (Government Code 65865)

A development agreement is a binding contract between the City and developer, the breach of which creates potential for damages and other relief awarded by a court. The principal purpose of a development agreement is to establish the regulations that will apply to a project and the conditions to which it will be subject, including fees and design standards. Development agreements allow the City to negotiate public benefits, while the developer obtains protection from future changes in land use regulations. A development agreement must specify its duration, permitted uses of the property, density or intensity of use, maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. Development agreements are flexible and can accomplish through contract what can't be accomplished through regulation alone. A development agreement may include, among other provisions, requirements for the developer to provide infrastructure, public capital facilities, employment opportunity, community facilities and environmental protection.

Subsequent EIR (CEQA Guidelines 15162)

A subsequent EIR is prepared for projects that change substantially due to new information, revised project description, or different circumstances affecting the site. A subsequent EIR is different from a new EIR in that it may utilize baseline information from the prior EIR. Nevertheless, a subsequent EIR must include new, thorough analysis of all potential significant impacts of the proposed revised project. A subsequent EIR is subject to the same circulation and review as the previous EIR.

Specific Plan (Government Code 65451)

Specific plans are intended to facilitate implementation of the General Plan for a particular area of the city. A specific plan must include text and maps showing:

- (1) The distribution, location, and extent of the uses of land, including open space;
- (2) The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities needed to support the land uses described in the plan; (3) Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources; and (4) Implementation measures including regulations, programs, public works projects, and financing measures necessary to achieve (1), (2), and (3).

A specific plan must demonstrate consistency with the general plan and address any subjects the City Council determines are necessary or desirable for implementation of the general plan. A specific plan may be adopted by resolution or by ordinance and may be amended as often as deemed necessary by the City Council.

**MAYOR'S PROPOSED CHANGES TO
DECEMBER 2, 2008
LETTER FROM APPLICANT**

**CHANGES TO APPLICANT'S AGREEMENT LETTER
REQUESTED BY MAYOR PATTERSON**
(strikeout indicates deletion; underline/italic indicates addition)

I. WAIVER AND EXTENSION OF TIME LIMITS

Discovery Builders shall waive any present or past statutory or regulatory timelines for the project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's consideration of your Request for Reconsideration. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and will negotiate any necessary extensions in good faith.

II. SPECIFIC PLAN (moved from below)

~~If the City Council so directs,~~ In conjunction with the Development Agreement and SubEIR Discovery Builders shall work with and fund the City led preparation of a Specific Plan for the Project area consistent with the existing General Plan a vision for a green tech R&D campus style business park, and compliant with paragraphs, III, and IV, V. as part of the Project approval process. The Specific Plan shall follow the requirements of Government Code Section 65451; Recovery of costs pertaining to infrastructure, including transit, shall be through an assessment district (including, but not exclusive to Mello-Roos) and traffic impact fees.

III. SUBSEQUENT EIR

In conjunction with the Specific Plan and the Development Agreement, Discovery Builders shall fund a Subsequent EIR (SubEIR):

- A. The processing of the SubEIR shall include two scoping sessions.
- B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
- C. The SubEIR shall be prepared by an independent consultant of the City's choosing, but in no case shall LSA be contracted for further work on the project environmental review or project approvals;
- D. All studies necessary for determination of mitigations or conditions of approval shall be done prior to issuance of entitlements issuance of the first grading permit or pursuant to adopted SEIR Mitigation Monitoring Plan.

IV. DEVELOPMENT AGREEMENT

Discovery Builders shall enter into a Development Agreement with the City of Benicia, which shall be recorded prior to recording the tentative map. We shall

negotiate the terms of the Agreement in good faith, but we acknowledge at the outset that the Agreement shall include the following components as well as others:

- A. The Specific Plan and all conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary to support the redesigned project as envisioned in the future Specific Plan; said conditions of approval shall have sustainability metrics and performance measures identified in the certified Mitigation and Monitoring Plan of the future SEIR.
- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District; said agreement shall be adopted by BUSD prior to the recording of the Tentative Map.
- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with certain unions, including those commonly known as Building Trades, for work to be done on the project; said agreement shall be filed with the City of Benicia prior to issuance of the first Building Permit.
- D. The terms of the BUSD agreement and the PLA are separate from the Development Agreement and will not necessarily be incorporated in the Development Agreement unless determined by the City Council to be necessary to the Development Agreement.

V. AB32 and SB375

The Project shall comply with the requirements of AB32 (2006) and its 2008 adopted strategies and amendments, as well as SB375(2008).

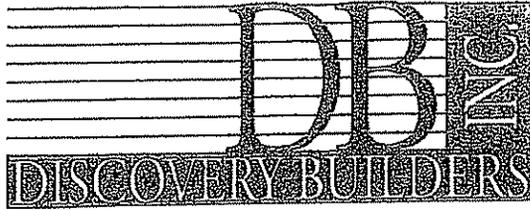
VI. ADDITIONAL TERMS AT COUNCIL'S DISCRETION

In addition to the above commitments, ~~if the Council so desires,~~ we agree to fund the following to be coordinated by City staff:

- A. A Community Advisory Panel ~~or Commission~~ for the Project, consisting of the Mayor, another Councilmember, 2 Planning Commissioners, 4 at-large members of the public representing environmental, social and economic interests, and 1 non-voting ex-officio member from the BUSD.
- B. A Business Recruitment Program for the Project.

C. Exhibits: Schedule of date certain for each process; elements of the Development Agreement; requirements for Specific Plan; guiding principles; federal and state stimulus packet for green projects (training facilities, etc.) [stakeholder requests]

DECEMBER 2, 2008
LETTER FROM APPLICANT



4061 Port Chicago Highway, Suite H
Concord, California 94520
(925) 682-6419
Fax (925) 689-7741

December 2nd, 2008

Dear Mike:

I appreciate you taking the time to meet with me the other day when I dropped in unannounced at your restaurant. As we discussed, the Benicia Business Park Project is very important to my family and our organization. As I stated we are obviously disappointed with the outcome of the recent hearing on the project, and we want to find a way to resolve the Council, School District, and community concerns so that we can move forward with our work.

After my conversation with you and further discussions within our organization, we offer the following in the hope that you will request reconsideration of the Council's recent decision to deny the project approval. To that end please accept the following offer:

If, at the next City Council meeting, you will request reconsideration of the November 18, 2008 vote to deny the Project approval and if said vote to deny the Project approval is subsequently rescinded, we will commit to the following in exchange for said rescission:

I. WAIVER AND EXTENSION OF TIME LIMITS

Discovery Builders shall waive any present or past statutory or regulatory timelines for the project and its application. We further agree to extend any time limits that may have accrued or will accrue as a result of the continued procession of our project for 12 months from the date of the Council's consideration of your Request for Reconsideration. Timeliness of the process is essential to our agreement, however if the process takes longer, we are committed to continuing to work with the City and will negotiate any necessary extensions in good faith.

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Discovery Builders shall enter into a Development Agreement with the City of Benicia. We shall negotiate the terms of the Agreement in good faith, but we acknowledge at the outset that the Agreement shall include the following components as well as others:

- A. All conditions of approval already introduced for the Project shall be terms of the Development Agreement unless the City Council determines one or more terms unnecessary;
- B. The agreement shall include a requirement that Discovery Builders negotiate a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District.

~~IX-B-21~~

- C. The Agreement shall include a requirement that Discovery Builders enter into a separate written agreement (the PLA) with certain unions, including those commonly known as Building Trades, for work to be done on the project.
- D. The terms of the BUSD agreement and the PLA are separate from the Development Agreement and will not necessarily be incorporated in the Development Agreement unless determined by the City Council to be necessary to the Development Agreement.

III. SUBSEQUENT EIR

In conjunction with the Development Agreement, Discovery Builders shall fund a Subsequent EIR (SubEIR):

- A. The processing of the SubEIR shall include two scoping sessions.
- B. The Health Risk Assessment prepared by LSA, dated November 2008, shall not be used or relied upon in any way during the environmental review and/or further processing of Project approvals;
- C. The SubEIR shall be prepared by an independent consultant of the City's choosing, *but in no case shall LSA be contracted for further work on the project environmental review or project approvals;*
- D. All studies necessary for determination of mitigations or conditions of approval shall be done prior to issuance of entitlements.

IV. AB32

The Project shall comply with the requirements of AB32.

V. SPECIFIC PLAN

If the City Council so directs, in conjunction with the Development Agreement and SubEIR Discovery Builders shall work with the City to process a Specific Plan for the Project area consistent with the existing General Plan as part of the Project approval process.

VI. ADDITIONAL TERMS AT COUNCIL'S DISCRETION

In addition to the above commitments, if the Council so desires, we agree to fund the following to be coordinated by City staff:

- A. A Community Advisory Panel or Commission for the Project
- B. A Business Recruitment Program for the Project.

Finally, I note your sensitivity to the desires of other Council members, so these commitments are not exclusive; other Councilmember's may wish to consider other matters and we are happy to work out details on other items. The above commitments

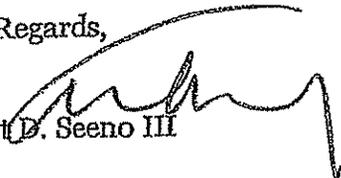
IX-B-22


simply represent our position on all matters we currently are aware of. In any case, we are committed to working with the City, the school district, and the community in exchange for the opportunity to move our current project forward as outlined above.

Thank you for your time and consideration.

Best Regards,

Albert D. Seeno III

A handwritten signature in black ink, appearing to read 'Albert D. Seeno III', written over a horizontal line. The signature is stylized and cursive.

DECEMBER 2, 2008
LETTER ON BEHALF OF THE
BENICIA UNIFIED SCHOOL DISTRICT

LAWRENCE M. SCHOENKE
ATTORNEY AT LAW
lschoenke@mbdlaw.com
SAN FRANCISCO



December 2, 2008

E-MAIL AND MAIL

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
250 L Street
Benicia, CA 94510

Re: Benicia Business Park
Council meeting of December 2, 2008
Our file: 1375.10308

Dear Mayor and City Council Members:

We send this letter on behalf of the Board of Trustees ("Board") of the Benicia Unified School District ("District") to state its view on the request for reconsideration of the denial of the Benicia Business Park ("BBP") Project by the City Council on November 18, 2008 to be heard this evening December 2, 2008.

The District has previously provided communication on the impact of the BBP on the District on three separate occasions and in particular on the students and staff at Robert Semple Elementary School, located at 2015 East Third Street ("Semple School").

We have in our possession a letter from Albert Seeno III to Mike Ioakimedes concerning a number of apparent commitments from Mr. Seeno concerning the BBP. The one matter that, of course, interests the District is section II. B. In that "commitment" Mr. Seeno states that the proposed Development Agreement with the City of Benicia would include a requirement to negotiate an agreement with the District to address the impacts on Semple School and its students.

The limited language of the provision noted above troubles the Board and us as legal counsel to the District. The agreement language is insufficient in the eyes of the District as written.

We request the following language in place of section II. B.:

SAN FRANCISCO
71 Stevenson Street
Nineteenth Floor
San Francisco, CA 94105
Tel 415.548.4111
Fax 415.548.4384

LONG BEACH
301 East Ocean Boulevard
Suite 1750
Long Beach, CA 90802
Tel 562.366.8500
Fax 562.366.8505

SAN DIEGO
750 B Street
Suite 2310
San Diego, CA 92101
Tel 619.595.0202
Fax 619.702.6202
www.mbdllaw.com

Elizabeth Patterson, Mayor
Members of the City Council
City of Benicia
December 2, 2008
Page 2

II. B. The Development Agreement shall include a requirement that Discovery Builders enter into a separate written agreement with the Benicia Unified School District (the BUSD Agreement) to address the Project's impacts on the District that includes at a minimum the necessary mitigation measures as determined by the BUSD Governing Board, which will include, but are not limited to:

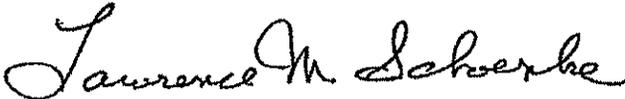
1. Creation of an escrow fund of \$2 million, at a minimum, to fund the implementation of mitigation measures ultimately stated in the mitigation agreement.
2. Creation of an escrow fund to maintain the mitigation measures under the mitigation agreement.
3. Maintain an insurance policy with the District as additional insured insuring against liability due to the Project mitigation measures and impacts from the Project.
4. Reimbursement of attorney's fees paid by BUSD and the cost of BUSD staff resources to date.
5. Creation of an escrow fund to pay for attorney's fees and BUSD staff resources for future negotiations and supervision of the mitigation agreement.

The District Board members and staff are informed that there may be a committee or an ad hoc task force formed to give input on the future planning process for this Project. The District Board asks to have school district representation on any committee or task force the Council may create.

We believe that if the commitments above are made, the District would not object to the request for reconsideration and rescission of the denial of the Project.

Very truly yours,

MILLER BROWN & DANNIS



Lawrence M. Schoenke for
Mark W. Kelley

cc: Board of Trustees, Benicia Unified School District
James Erickson, City Manager, City of Benicia

**CORRESPONDENCE FROM
BENICIA GREEN GATEWAY GROUP**

Anne Cardwell - RE: Sharing information about the Seeno agreement

From: <rogrmail@gmail.com>
To: <Anne.Cardwell@ci.benicia.ca.us>
Date: 1/16/2009 11:59 AM
Subject: RE: Sharing information about the Seeno agreement
CC: <epatterson@ci.benicia.ca.us>

Hi Anne -- just a quick follow-up to my earlier email.... I understand that there will likely be a PACKET that accompanies a Seeno response following the facilitated workshop. Please make sure to include my email and Mark Wolfe's memo in that packet. Also, please include my email and Mark Wolfe's memo with the report from Mr. Iacofano (since I "entered" it into the record that night at the workshop).

Thanks,
 Roger Straw

From: rogrmail@gmail.com [mailto:rogrmail@gmail.com]
Sent: Friday, January 16, 2009 10:14 AM
To: Anne.Cardwell@ci.benicia.ca.us
Cc: epatterson@ci.benicia.ca.us
Subject: FW: Sharing information about the Seeno agreement

Hi Anne -- Thank you for making copies of my communication to the Council and Staff (below) available for the public at the facilitated workshop on 1/7/09. However, I have not been able to locate a copy on the City's website. I want to be sure my email and the attachment (which is our memo from counsel, Mark R. Wolfe), are available online and included as part of the permanent record.

Thanks,
 Roger Straw

From: rogrmail@gmail.com [mailto:rogrmail@gmail.com]
Sent: Wednesday, December 31, 2008 1:04 PM
To: Tom Campbell; Mayor Elizabeth Patterson; Mark Hughes; Mike Ioakimedes; Alan Schwartzman
Cc: Jim Erickson; Anne Cardwell
Subject: Sharing information about the Seeno agreement

Dear Mayor Patterson, Councilmembers and City Manager Erickson:

Please review the attached memo from Green Gateway Group's consultant, Mark Wolfe. Mark is a land use and environmental attorney and urban planner, who offers significant support for and insights concerning the evolving memo of agreement between Councilmember Ioakimedes and Albert Seeno III.

Mr. Seeno stated clearly in his letter to Councilmember Ioakimedes that he would be open to further commitments, so we and others have viewed the document as a work in progress and a basis for a similarly-worded agreement to be drawn up between the City and Mr. Seeno, conditioning the February 2009 "vote to reconsider" and all further planning and development. We have therefore also asked Mr. Wolfe to comment on additional suggestions that have been made public by Mayor Patterson and a few additional suggestions made by members of our group.

Suggestions that Green Gateway Group submitted to Mr. Wolfe for comment:

IX-B-28

1. A strong recommendation that the consultant group **Dyett and Bhatia** be contracted to design and manage the Specific Plan process. (This is the group that Brisbane is using for their Specific Plan and their EIR process. They are urban planning consultants that specialize in collaborative efforts involving a diversity of stakeholders.) *Mark Wolfe comments favorably on this in his memo under "Additional Terms." Wolfe is familiar with Dyett and Bhatia, but declines to recommend a particular firm.*
2. That the "front money" for the Specific Plan process be paid into a fund by Seeno. The City would pay out from the fund, then reimburse Seeno when the money is recovered through an assessment district and traffic impact fees. *Mark Wolfe comments favorably on this in his memo, under "Additional Terms."*
3. That Seeno agree never to present a plan that will require another "Letter of Overriding Conditions" to offset health and safety issues by promises of financial gain. *Mark Wolfe does not comment on this suggestion. His off the record comment was something to the effect that a condition like this might be seen as prejudicial to the outcome of CEQA, and would therefore be viewed as unacceptable under the law.*

I hope everyone finds this input substantive and helpful as we move forward together in search of a trendsetting new green gateway business community in our City.

Please have copies of this email and the attachment available for participants at the January 7 Workshop.

Best wishes for the coming year,
Roger Straw
Benicia Green Gateway Group
home office: (707) 748-7350 cell: (707) 373-6826

MEMORANDUM

December 31, 2008

To: Roger Straw, Green Gateway Group

From: Mark Wolfe, M. R. Wolfe & Associates, P.C.

Re: Terms of Proposed Rescission of City Council Denial of Seeno Benicia Business Park Project

You asked us to review the proposed agreement proffered to Councilmember Mike Ioakemedes by Albert Seeno II ("Seeno"), dated November 24, 2008, seeking rescission of the Benicia City Council's earlier vote to deny certain land use entitlements for the Benicia Business Park Project ("Project") in exchange for certain concessions. You also asked us to comment on Mayor Patterson's proposed changes to that agreement. Our thoughts follow, organized according to the agreement's structure.

I. Waiver and Extension of Time Limits

We do not see a problem with this provision. If the Council acts to rescind its previous 'no' vote on the Project, a waiver and extension of statutory time limits governing local agency approval of development project applications would become necessary in order to shield the City from potential legal claims by Seeno.

Having said that, and although Seeno appears to be committing to a 12 month extension and to negotiate in "good faith" in the event the City wishes to extend the deadlines further, the City may want to modify the agreement to state that Seeno shall grant an additional 6 month extension upon written request from the City in the event the Specific Plan/Development Agreement process is not completed within the prescribed 12 months. Further extensions beyond 18 months total could be subject to negotiations in good faith along the lines of what Seeno has proposed.

II. Development Agreement

Very briefly stated, a development agreement ("DA") is a statutorily recognized, binding contract between a developer and a local government agency setting forth terms and conditions under which a proposed project is to be developed. It generally contains clear, fixed commitments from the developer regarding what will actually be built, and sets forth specific community benefits or contributions that the developer will provide – benefits often far beyond what the law would allow the agency to mandate. A DA also generally "locks in" whatever regime of land use regulation (i.e., general plan policies, zoning codes, etc) exists at the time the agreement is signed, thus shielding the project in

question from future regulatory actions that might otherwise affect build-out. DAs accordingly create a "vested right" in a developer to complete the project as described in the agreement without regulatory interference in the future. Note that DAs are subject to referendum.

Pursuing a DA for the Seeno Project could benefit Benicia, since it would provide a mechanism for securing firm commitments from Seeno to improve the Project in various ways and/or to extract additional community benefits, design changes, or environmental mitigation measures beyond what CEQA requires. Once agreed to and signed by Seeno and the City, the DA would become a legally enforceable contractual obligation that the City could enforce in court.

The downside to a DA is that, once it is finalized, the City will be "stuck" with whatever version of the Project is set forth in the agreement. Many DA's carry 15-year terms (though they typically are reviewed annually for implementation status), and we would expect Seeno to seek a comparable lifespan. The risk is that conditions and circumstances within the City can obviously change. Unforeseen events could arise, loop holes could be found and exploited, and the City could in theory be powerless to act in response. Such risk, however, is inherent in any contract that calls for performance over a long time-period, and is generally minimized through smart planning and negotiations. As such, many local agencies are comfortable with assuming this kind risk assuming they have negotiated otherwise favorable substantive terms. DAs accordingly have become quite common throughout the state.

On balance, we believe the potential benefits to the City of Benicia from pursuing a DA with Seeno likely outweigh the risks, assuming the City takes a sufficiently hard line at the bargaining table and extracts firm, substantive, carefully defined commitments. We would concur with Mayor Patterson that the DA should be finalized and recorded prior to recording the tentative map, since the latter is also a mechanism for establishing vested rights. We have no opinion regarding the wisdom of recording a labor agreement before building permits are issued, though if your group includes building trade union members, that would probably be smart.

With regard to the substantive "terms" of the DA set forth in the current Seeno proposal, they are necessarily vague at this early stage. Although the City could exploit its "cat bird" position to get clearer concessions put down on paper *before* voting to rescind the previous denial, that may not be politically feasible. Nevertheless, the City should recognize that it occupies a position of substantial strength in any negotiation with Seeno leading up to the vote on whether to rescind its earlier denial of the Project, since if the vote is not to rescind, the Project is effectively killed for the time being. We are not in a position to recommend specific provisions that the City should insist upon prior to the rescission vote, but wish to call attention to the City's apparently significant leverage.

We would recommend, however, that in order to minimize the risks associated with Seeno "sitting on" its entitlements for a protracted period, the City may want to

consider a provision under which the DA would automatically terminate within a set period of time, say 5 years, in the event Seeno has not pulled building permits and begun construction during that time. The City may also want to consider a provision requiring that the separate Seeno-BUSD agreement be negotiated in advance, and attached to the DA as an exhibit.

III. Subsequent EIR

This is a major concession from Seeno. It effectively creates a whole new CEQA process, with a new 45-day public comment period, and a fresh round of hearings before the Planning Commission and City Council. The omission of the LSA Health Risk Assessment appears sound. We would concur with the Mayor's proposal clarifying that all mitigation-related studies be performed prior to pulling the first grading permit or per the MMRP.

IV. Compliance with AB32 and SB375

This provision appears sound as well. The Project would be subject to them regardless. Since the AB32 regulations probably won't be ready until mid to late 2009, we concur with the Mayor's proposed clarification.

V. Specific Plan

This is another major concession. Although many of the benefits of a Specific Plan process could in theory be realized via the DA process, it certainly does no harm to the community to have both processes proceeding side-by-side in tandem with the Subsequent EIR process. The Mayor's proposed clarifications seem fine, though obviously the devil-inhabited details regarding what constitutes a "green tech R&D style business park" will need to be hashed out during all three processes.

VI. Additional Terms

These concessions too seem sound, and the Mayor's clarification regarding the composition of the Community Advisory Panel appears wise. Requiring the developer to provide funding in advance (or a binding commitment to do so) for the Specific Plan and SEIR processes is common, though the contract for providing such planning services must be between the City and the planning consultant. In terms of requiring use of a particular planning consulting firm, there may or may not be contract letting provisions in the Benicia Municipal Code that require an open RFP/RFQ process. If there are no such requirements, than we believe it is within the City's discretion to select the consultant it deems most qualified.

We hope you find these comments helpful. Please call with any questions.

MRW:ms

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 3, 2009
ACTION ITEMS**

DATE : January 28, 2009

TO : City Manager

FROM : Administrative Services Director

SUBJECT : **CONSIDERATION OF REQUEST FROM BENICIA COMMUNITY ARTS FOR EXTENSION OF THE DEADLINE FOR REQUEST FOR FUNDING APPLICATIONS**

RECOMMENDATION:

Review the request from Benicia Community Arts to extend the deadline for the Request for Funding Applications and uphold the Human Services and Arts Board denial of this request.

EXECUTIVE SUMMARY:

The Human Services and Arts Board is currently in the process of reviewing Request for Funding (RFF) Applications for FY 2009-2011. This process began on November 3, 2008 with a special meeting of the Board where the timeline for the process was communicated and organizations were given the opportunity to provide input on expected community needs for the upcoming fiscal period. Following this meeting, the RFF packets were distributed to current and potential grantees along with information regarding the RFF process, including the deadline. The January 12, 2009 deadline was also communicated via the City's website and the local newspaper. Benicia Community Arts was unable to submit a completed application by the deadline and, on January 12, 2009, verbally requested an extension from the Human Services and Arts Board. The Board denied this request, noting that such an extension would not be fair to all the other organizations that did comply with the process.

STRATEGIC PLAN:

N/A

BUDGET INFORMATION:

There is no immediate budget impact associated with this action.

BACKGROUND:

The Human Services and Arts Board conducts a Request for Funding (RFF) process every two years, just prior to the preparation of the City's budget. The Board is currently in the middle of the process for the 2009-2011 fiscal period, as RFF applications were due on January 12, 2009 and the Board recently met on January 26, 2009 to finalize their questions for applicants.

On November 3, 2008 the process began with an informational meeting for organizations, where the timeline and process was communicated. The organizations that were likely to apply were also invited to provide the Board with input about the expected community needs for the next two-year fiscal period. The meeting was well attended, including Stan Houston from Benicia Community Arts. Following that meeting, an email was sent to current and potential grantees with the RFF packet. The email also indicated that a hard copy could be sent via mail upon request, but since most applicants had expressed interest in receiving the application soft copy for ease of completion, the packet was forwarded in this manner. Additionally, the RFF packet and the deadline were posted on the City's website in November. Ads regarding the RFF process and deadline were placed in the Benicia Herald and ran on November 16, 19, 23 and 26, 2008. Finally, a reminder with responses to questions that had been received by applicants regarding the RFF packet was sent out in early January to all organizations that had requested the RFF packet.

It should be noted that initially the due date for the RFF packet was set for January 6, 2009 and this was the date communicated at the special meeting on November 3, 2008. But in response to feedback from an applicant that it would be difficult to submit the packet so soon after the holidays, the Board agreed to extend the deadline to January 12, 2009. Organizations received notification of the later deadline date via the communications described above. The Board received 12 completed RFF applications by the due date. These responses included all current grantees, with the exception of BCA, as well as three other submittals from applicants that are not current grantees, but had expressed an interest in applying this time.

On January 12, 2009, Stan Houston of Benicia Community Arts (BCA) was contacted regarding the RFF packet, as BCA was the only group that was expected to submit who had not yet done so. Mr. Houston indicated that it was an oversight and the application was not yet complete. Further, he was out of state that week and would not be able to submit it by or near the due date. He asked that BCA be given additional time to complete and submit the packet.

At the Board's meeting that evening, the Human Services and Arts Board considered Mr. Houston's request, but in deference to the other applicants who all complied with the process and submitted on time, as well as concern over the ability of the Board to remain on schedule in terms of the timeline for the remainder of the process, decided to deny the request. They were informed that extensions had apparently been granted to applicants in previous RFF cycles by the Finance Department, but that those extensions were, at most, one-day extensions (for example, if an applicant missed the 5 pm cut-off on the due date, they were allowed to turn in the packet the following morning). Again, based on the conversation with Mr. Houston, BCA would not be able to submit their packet that quickly. While the Board was certainly sympathetic to BCA's situation, they felt strongly that it was important to maintain and respect the process set in place for review of grant request for City funds.

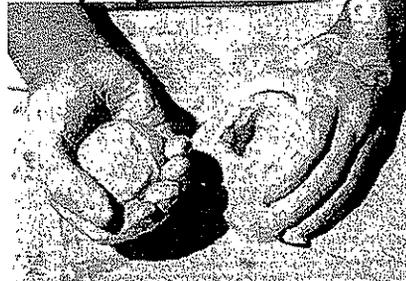
Since being notified of the Board's decision, Mr. Houston has submitted a request on behalf of BCA asking the Council to consider extending the deadline for the RFF for BCA. Should their request be granted by the Council, it is recommended that BCA submit their application on February 4, 2009, so that their submittal can be immediately distributed to the Board and reviewed prior to their February 9, 2009 meeting when applicants will be interviewed regarding their RFF packets.

Attachments:

- Request from Benicia Community Arts
- Timeline for Request for Funding Process
- Communications regarding RFF Process

REQUEST FROM BENICIA COMMUNITY ARTS

Shaping a Community!



Shaping a Life!

Benicia Community Arts

A non-profit 501c3 Benicia Community
Organization - Since 1980

January 25, 2009

Honorable Mayor Elizabeth Patterson
C/o City Hall
250 L Street
Benicia, California 94510

Re: Request to agendize BCA's disqualification for bi-annual grant HSAB request

Dear Mayor Patterson:

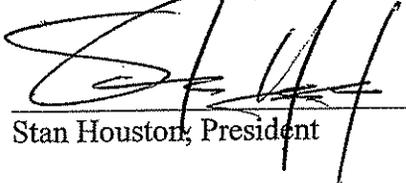
I am asking that Benicia Community Art's (BCA) recent disqualification by the Human Services and Arts Board to submit a grant request for the next budget cycle be immediately agendized on the next council calendar. This request is time sensitive because HSAB will meet February 9 2009 to hear arguments for grant requests by only those pre-qualified; at present we are not qualified.

BACKGROUND:

In June of 2008 BCA began a fundamental transition that included the replacement of its founder and CEO, Bonnie Weidel. Including the succession of a new president of the board, several new board members were elected. A few weeks into the job, the CEO resigned leaving me, the vice-president of the board, to fulfill presidential duties. Since that time we have managed to build a new foundation of board members, fully document and organize our accounting for the past two years, and make progress on a number of new community programs. Unfortunately, our unfamiliarity of timelines and some miscommunications caused us to miss the deadline scripted by HSAB to file a grant request for the next budget cycle.

Therefore, I am asking you and council to review this issue and intercede on BCA's behalf to reverse HSAB's decision so that we are allowed to submit our grant request and simultaneously qualify as a grant requestor.

Respectfully submitted,
Benicia Community Arts



Stan Houston, President

Cc: BCA Board

TIMELINE

**2009-2011 RFF & Budget Recommendations
Proposed Timeline**

<u>Date</u>	<u>Task</u>
October 20, 2008	Review proposed schedule Review previous RFF Form Review recipient list
October 23, 2008	Notice of special meeting sent to potential applicants
November 3, 2008 Human Services: 6:00 pm Arts: 7:30 pm	Special meeting to assess community needs and review RFF process with potential grantees. Update recipient list as needed
November 10, 2008	Make any needed updates to RFF Form as a result of special meeting and direct staff to send RFF Form to potential grantees
November 12, 2008	Send out RFF Form to potential grantees
January 12, 2009	Due date for completed RFFs Notice of Public Hearing sent to applicants
January 12, 2009	Board receives RFF packets received from applicants
January 26, 2009 (tentative)	Special meeting for Board to review RFF packets received from applicants
February 9, 2009	Public Hearing – Council Chambers
March 9, 2009	Board finalizes recommendations to Finance Director for inclusion in the City's 2009-2011 budget

COMMUNICATIONS REGARDING RFF PROCESS

From: Carrie Wenslawski
To: dalene@benicia-ballet.org, info@artsbenicia.org, beniciacommunityarts@ez2.net, mjbardet@sbcglobal.net, moesdaddy@earthlink.net, beniciaperformingarts@yahoo.com, counseling@csssolano.org, dleesdavis@aol.com, vrobertson@bencac.com, mtmatth@aol.com, kjordan@beniciaunified.org, bweidel@earthlink.net, kathryn@artsbenicia.org
Date: 11/12/2008 6:18:47 PM
Subject: Human Services & Arts Board Request for Funding Packet

Hello,

Attached please find the Human Services & Arts Board "Request for Funding" packet. There is one for Human Service organizations and one for Arts organizations. The due date is Monday, January 12, 2009 by 5:00 PM. Please note that the original plus ten copies (a total of 11) of the completed application must be submitted in a sealed envelope/container.

If you need a hard copy, please let me know and I'd be happy to mail you one.

Also attached is a revised time line for your information.

If you have any questions, please contact Anne Cardwell at acardwell@ci.benicia.ca.us or 707-746-4210 (email is preferred.) Any questions that are emailed/faxed to Anne will be shared with all applicants so everyone will have the benefit of receiving the same information.

Thank you,
Carrie

Carrie Wenslawski
Management Analyst
City of Benicia
250 East L St. Benicia, CA 94510
Tel (707) 746-4236 or 746-4309
Fax (707) 747-1637

CC: acardwell@ci.benicia.ca.us

Anne Cardwell - Display Ad

From: Jayne York
To: adsbenicia@yahoo.com
Date: 11/13/2008 9:03 AM
Subject: Display Ad
CC: Anne Cardwell; Carrie Wenslawski

Hi Barbara,
Please publish the attached legal notice, making it a Display Ad, and furnish Affidavit of Publication, for the following dates:

Sunday - November 16, 2008
Wednesday - November 19, 2008
Sunday - November 23, 2008
Wednesday - November 26, 2008

I have also faxed this notice to your office.

Thank You!!
Jayne

IX-C-10

**THE BENICIA HUMAN
SERVICES & ARTS BOARD**
is accepting requests for funding
for Human Services and Arts for
FISCAL YEARS

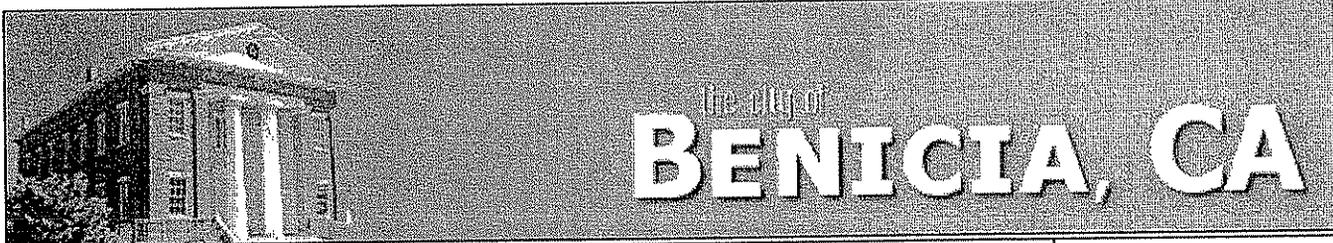
2009-2010 and 2010-2011.

**All applications must be
received NO LATER THAN
5:00 p.m. on MONDAY,
JANUARY 12, 2009.**

**Applications may be obtained
at the City of Benicia
City Manager's Office
250 East L Street in Benicia,
on the City's website**

**www.ci.benicia.ca.us (under Public
Announcements)**

**or by calling Anne Cardwell,
Administrative Services Director at
707-746-4210.**



City Service Request System	Business Services	City Departments	Community & Events	Government & Officials
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Home
Agendas & Minutes
Announcements
Benicia Breeze Changes
Code Enforcement
Getting to Benicia
Help Keep Benicia Spectacular
Job Openings
Meeting Schedules
Municipal Code
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Sustainability
Website Directory
Disclaimer
Search <input type="text"/> <input type="button" value="GO"/> <input checked="" type="radio"/> Full Site <input type="radio"/> This Section Search Tips

Human Services & Arts Board Request For Funding for FY 2009-11

Below please find the Human Services & Arts Board "Request for Funding" packets. There is one for Human Service organizations and one for Arts organizations. The due date is Monday, January 12, 2009 by 5:00 PM. Please note that the original plus ten copies (a total of 11) of the completed application must be submitted in a sealed envelope/container.

If you would like a WORD version so you can type in the information, please contact Carrie Wenslawski at cwenslawski@ci.benicia.ca.us or 707-746-4309.

Also below is a time line of the process for your information.

If you have any questions, please contact Anne Cardwell at acardwell@ci.benicia.ca.us or 707-746-4210 (email is preferred.) Any questions that are emailed/faxed to Anne will be shared with all applicants so everyone will have the benefit of receiving the same information.

- [2009-11 FINAL RFF Human Services.pdf](#)
- [2009-11 FINAL RFF Arts.pdf](#)
- [RFF Timeline 111208.pdf](#)

City of Benicia California ~ 250 East L Street ~ Benicia, CA 94510 ~ (707) 746-4200

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IX-C-12