

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 3, 2009

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, February 3, 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, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Chief Vucurevich 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
- 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:

RESOLUTION 09-06 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF FRED DELTORCHIO TO THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING JANUARY 31, 2013

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

PRESENTATIONS:

Benicia/Martinez Bridge Landscaping Caltrans Presentation:

Ms. Jeanne Gorham discussed the project Caltrans is working on to provide landscaping at the I-680/I-780 interchange. It is replacement planting associated with the new Benicia/Martinez Bridge. The project is \$3.5 million, including areas on the Martinez side of the bridge as well. The bulk of the landscaping is on the Benicia side of the bridge. She reviewed the plan that showed the planting areas and the plant pallet (copies of handouts on file).

Mayor Patterson and Ms. Gorham discussed the process that would be followed to include the public. It is handled different in each city. She spoke with City Staff and left that up to them. Caltrans would like to have final plans by the end of April. Ms. Gorham stated that they could work directly with a committee and Staff. If there is interest in forming a group of interested community members, they could work with the group.

Mayor Patterson requested Staff come up with a few suggestions and options for a tree committee or small committee. If there is interest by Council Members, they could indicate that to Mr. Erickson.

PROCLAMATIONS:

- Commendations for Police Corporal Mark Menesini and Paramedic/Firefighter James Ensley
- Recognition of National Black History Month

ADOPTION OF AGENDA:

Jim Erickson discussed the issue of enforcement of the A-frame sign rules in the City. The City has taken the position that the A-frame signs would be abated on a 'by complaint' basis. Benicia Main Street has requested that the City revisit the sign rules. Mr. Erickson suggested that the Council revisit the issue. The Chamber of Commerce would be asked for its input as well. In the meantime, the sign enforcement would be done when it posed a safety hazard, until Council revisits the issue.

Mayor Patterson asked if the issue was subject to HPRC review and if it was guided by the master plan that was adopted. Staff's indication was that it would be subject to HPRC review, and it was not guided by the master plan that was adopted.

Vice Mayor Campbell asked if the EDB would be involved. Mr. Erickson stated that the EDB could weigh in as well. Vice Mayor Campbell suggested that the discussion should be narrowed to only include the A-frame signs.

Council Member Schwartzman suggested breaking up the sign ordinance to be discussed one issue at a time. He felt that the EDB should be involved.

Council Member Ioakimedes discussed the need to discuss the entire ordinance, not just the A-frame signs.

Mr. Erickson suggested agenda item IX-C be moved ahead of the Benicia Business Park item.

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, Schwartzman, and Mayor
Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. John Furtado – Mr. Furtado discussed the issue of the sign ordinance. He discussed the issue of directional signs to direct people to the artisans and Downtown area, and the issue of spirit cards.
2. Robert Luna – Mr. Luna discussed the issue of A-frame signs, code enforcement, and support for amending the current sign ordinance.

Vice Mayor Campbell suggested putting this issue on the next EDB agenda. Mayor Patterson suggested having the Planning Commission get some background information prior to sending it to the EDB.

CONSENT CALENDAR:

Mayor Patterson noted that she was not present at the January 20, 2009 Council meeting.

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

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

Noes: None

Council approved the Minutes of January 7, 2009 and January 20, 2009.

ORDINANCE 09-06 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

Council approved amending the Professional Services Agreement for the Housing Element.

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

None

ACTION ITEMS:

Consideration of request from Benicia Community Arts for extension of the deadline for Request for Funding Applications:

Ann Cardwell, Administrative Services Director, reviewed the staff report.

Council Member Hughes inquired about the programs the applicant currently does in the City.

Public Comment:

1. Stan Houston discussed the transition in the Benicia Community Arts Board. The application slipped through the cracks. They missed the deadline. He requested the deadline be extended. He is prepared to submit the application by end of business day on 2/4/09.
2. Sharon Petrellese – Ms. Petrellese requested the deadline not be extended. She discussed the Human Services and Arts Fund Board's current meeting schedule and problems extending the deadline would cause the board. She requested Council abide by the Human Services and Arts Fund Board's decision.

Council discussed the work that the Benicia Community Arts had done in the community, the importance of meeting deadlines, what would be best for the community, and the work Ms. Weidel has done in the community.

3. Marilyn Bardet – Ms. Bardet spoke in support of extending the deadline.
4. John Furtado – Mr. Furtado spoke in support of extending the deadline.

Council expressed concern about setting a precedence and that there were mitigating and unique factors including that that the Benicia Community Arts had been in existence for 28 years and they just had a change in leadership.

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, Council agreed to allow Benicia Community Arts to submit a grant application for consideration by the Human Services and Arts Fund Board by end of business day 2/4/09, on roll call by the following vote:

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

Noes: Council Member Schwartzman

Denial of an application for a new card room permit for the PASTIME – Continued from the January 6, 2009 City Council Meeting:

Council Member Schwartzman and Vice Mayor Campbell recused themselves due to conflicts of interest.

Deputy Chief Bidou reviewed the staff report.

Council Member Hughes and Staff discussed the issue of the business operating without a license and current licensing rules.

Council Member Ioakimedes and Staff discussed current codes regarding transferring permits and licenses.

Public Comment:

1. Michael Cardoza, Attorney for the Applicant – Mr. Cardoza discussed the issue of permit transference, the steps the applicant has taken so far, the police calls to the Pastime bar, the applicant's request that the Council direct the City to issue the license to his client. The bar has been sold but the card room has not been sold.

Mayor Patterson and Staff discussed the issue of the license, the issue of the expired license, license transfer, the sale of the PASTIME bar, relocation of the card room, and current zoning.

Public Comment:

1. Jon Van Landschoot – Mr. Van Landschoot spoke in support of the denial of application.

Council and Staff discussed the clarity of the Benicia Municipal Code.

RESOLUTION 09-07 - A RESOLUTION DIRECTING THE POLICE DEPARTMENT TO DENY THE APPLICATION FOR A CARD ROOM FOR THE PASTIME

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

Ayes: Council Members Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Abstain: Council Members Campbell and Schwartzman

Mayor Patterson called for a 5-minute break at 8:39 p.m.

The meeting resumed at 8:47 p.m.

Benicia Business Park Project:

Mayor Patterson asked if the agreement were to be rescinded, whether this would have to be a public hearing.

Jim Erickson, City Manager reviewed the staff report.

Charlie Knox, Community Development Director, reviewed the memo written on 2/3/09 by City Staff (copy on file).

Vice Mayor Campbell and Staff discussed the difference between voting no and rescinding the vote.

Mayor Patterson and Staff discussed the importance of the language in the letter, clean tech and green tech, the level of detail for TDM, the need for a performance factor, and recent fee increases approved on 1/20/09.

Applicant:

Louis Parsons, Discovery Builders, Inc. – Mr. Parsons thanked the City for putting the 1/7/09 meeting together. They want to be simple and straightforward in looking at the key issues and areas that were brought forward at that meeting. They want to be at the table during the specific plan process. He discussed the communications with BUSD. They are hopeful that the decision of 11/18 is rescinded.

Public Comment:

1. Sabina Yates – Ms. Yates - provided a handout and sat down (copy on file).
2. Marilyn Bardet – Ms. Bardet discussed concerns she has regarding health risk assessment and the need for monitoring at Robert Semple, compliance with AB 32, and the specific plan.
3. Mark Kelley, Miller Brown Dannis – Mr. Kelley discussed concerns regarding the need for mitigation measures regarding the BUSD. He discussed the concerns the District has with the proposed project.
4. Janice Adams, Superintendent, BUSD - Superintendent Adams discussed concerns regarding the impact the project would have on Robert Semple Elementary. The District is in support of the project, as long as they have an enforceable agreement. BUSD sent the City a letter on 11/2 and have not heard back on any of the District's requests. BUSD has spent considerable money and resources with regards to the proposed project.

Mayor Patterson discussed BUSD being a stakeholder in the specific plan process.

5. Dana Dean, Trustee, BUSD Board of Trustees – Trustee Dean discussed the five items of concern included in the letter BUSD sent to the City.

Council Member Schwartzman discussed the option of swapping the Robert Semple site with the Mills site. He discussed the issue of tying the agreement between the developer and BUSD into the development agreement.

Council, Ms. McLaughlin, and Mr. Jarvis discussed the legality of conditioning the City's future ability to proceed with consideration of any legislative act, including a development agreement upon a third party reaching an agreement with another third party.

Council Member Ioakimedes disclosed ex parte communications. He suggested an MOU between the applicant and BUSD.

6. Rosie Switzer, President, BUSD Board of Trustees – President Switzer indicated that an MOU would be acceptable if the 5 issues BUSD raised in the letter were included.

Mayor Patterson discussed issues that could be addressed in an agreement or MOU. She suggested the attorneys for BUSD and Seeno communicate with each other in a memo that City Staff could respond to, and then give a couple suggestions on how the City could link the requirements of the performance of an agreement between the developer and BUSD prior to the City's moving forward on something, so that it is a legitimate performance.

7. Brian Harkins – Mr. Harkins spoke in favor of Council rescinding the 11/18 vote.
8. Sabina Yates – Ms. Yates discussed concerns regarding the letter sent by Seeno on 1/23/09.
9. Sue Johnson – Ms. Johnson discussed concerns regarding the proposed project. She spoke in opposition to rescinding the denial of the project.
10. Nicole Goehing – Mr. Goehing discussed concerns regarding the construction labor that would be used for the proposed project.
11. Donald Dean – Mr. Dean discussed concerns and suggestions regarding conditions in the letter submitted by Discovery Builders, Inc.

Mayor Patterson asked Mr. Dean regarding a future study for future use. The City wants to be careful that the City is not implying that it will do a water study after the project consideration. She asked him to put something in writing or in a conversation with Staff regarding clarification about when you do a study and when you don't.

12. Dan Smith – Mr. Smith spoke in opposition to rescinding the denial of the project.
13. Michael Paric – Mr. Paric spoke in favor of Council rescinding the denial of the project.
14. Roger Straw – Mr. Straw discussed the memo written by City Staff on 2/3/09.
15. Jerome Page – Mr. Page discussed concerns regarding the proposed project.
16. Mary Magill – Ms. Magill discussed concerns about the need for mitigations for Robert Semple and the surrounding neighborhoods.
17. Rick Ernst – Mr. Ernst discussed the impacts of rescinding the denial.
18. Jon Van Landschoot – Mr. Van Landschoot suggested giving Seeno and BUSD one month to come up with a binding agreement. He discussed the need for a grading ordinance.
19. Bob Craft – Mr. Craft discussed the need to address the District's concerns.
20. Norma Fox – Ms. Fox spoke in opposition to Council rescinding the denial tonight. She spoke in support of Mayor Patterson's proposed revisions. She discussed concerns with the letter sent by Discovery Builders on 2/3/09.
21. James Stevenson – Mr. Stevenson discussed concerns regarding the project and air quality.
22. Albert Seeno, Discovery Builders – Mr. Seeno spoke in support of Council rescinding the denial of the project.

Vice Mayor Campbell discussed concerns regarding the interesting bifurcated EIR process, concerns regarding the applicant gaming the City, the different between voting no and rescinding the no vote, and the incentive for coming up with a specific plan and development agreement, and his reasons for supporting rescinding the denial. Down the line, if he does not like what is happening, he could always vote no. Council has not voted yes on the project.

Council Member Hughes discussed his support for rescinding the denial. Voting to rescind the denial does not mean Council is approving the project. It means that Council has gathered a lot more information and it is more comfortable moving forward in a way, which it can determine a more collaborative way in moving forward. As Ms. Bardet put it, we should act on hope not fear. We have to move forward cautiously, but we have to

move forward. A good or great project today is better than a perfect project tomorrow. You can always come up with a better project in the future. We need to move forward.

Council Member Schwartzman disclosed exparté communications. He would like to get to a 5/0 vote to rescind the denial. Council needs to decide if the letter would be included, Staff's recommendations, etc. We need to make sure the developer is going to waive any present or past statutory regulatory timelines. There are still things that we need to know are going to take place part in parcel of what we are going to do. Staff's memo today covered a lot of things. He was concerned about BUSD, legalities aside. It is something that Council needs to be cognizant of. Council Member Ioakimedes' had a good suggestion with the MOU. The issue of the project labor agreements, he is glad that if Council goes along this way, the intent is to have that. However, regarding the project labor agreements, he was wondering if this were the City's property, he could understand the City making it a demand for a condition to have PLA's. He is most concerned about the prevailing wage. He would like to see that in there.

Vice Mayor Campbell disclosed exparté communications.

Council Member Ioakimedes discussed exparté communications. He discussed what happened when Council denied the project. Rescinding the denial could give the City an opportunity to use the project to position the community to take advantage of emerging technology and changing markets. He discussed the issue of clean tech and green tech. He suggested proceeding quick and dirty tonight, with the understanding that Council would need to come back and get into the details.

Mayor Patterson discussed concerns regarding rescinding the vote tonight. Council could direct Staff to draft a resolution to rescind the vote. Voting on this tonight would not be correct.

Ms. McLaughlin stated that it was Staff's intent that Council would state its intent to rescind the vote. Staff would then draft a resolution rescinding the vote. Staff would use the memo from the City Manager and Community Development Director as the basis, along with any additions that Council wished to add in.

Mayor Patterson clarified that if there were a motion made, it would be to direct Staff to prepare a resolution to rescind the vote. The second part of the lack of clarity is the letters of agreement. It seems that the City has to acknowledge that the letters are there and there is some sort of relationship that the City has (with the developer), and what is the action that the City does for those letters. How does Seeno have an opportunity to respond, so that at the end of the day we have agreement on the letter? A lot of her comments and edits were for fixing the language in the letter of agreement because she believed it would be binding.

Ms. McLaughlin discussed the ways Mayor Patterson's concerns could be addressed. The City could draft a resolution to modify Seeno's letter, or it could do a whole new letter that incorporates the terms and refer the resolution to it. The City would need to make sure it had Discovery Builders, Inc.'s sign off on it as well.

Mayor Patterson and Ms. McLaughlin stated they were more comfortable doing a resolution.

Mayor Patterson stated that if there was a motion to give direction to Staff that it should include that the terms of the letters of agreement be included in the resolution rather than relying on the letters. Regarding the letter from City Staff, there is a need for further clarification. There would be guidance in the discussion to fix the language where Council is uncomfortable. Council has heard from Mr. Seeno that 18 months is the target, but it could take a month or two longer. It would be nice if it would take less. She disclosed exparté communications. She explained why she was unable to vote in favor of rescinding the denial of the project.

Council Member Schwartzman and Staff clarified the reason Council needed a resolution to rescind the vote. Staff's expectation is that it would use the memo from the City Manager and Community Development Director, with any modifications that Council wanted, to modify the letter from the applicant, and use that as the basis for drafting the resolution.

Council Member Hughes stated that his concern with that was that he thought a lot of the specific details would be worked out in the specific plan and the development agreement and not part of the resolution. If Council gets too detailed in the resolution, it will never get to a point of consensus and will never move forward. His recommendation is that Council directs Staff to move forward with directing Staff to draft a resolution that rescinds the denial on 11/18/08, and the resolution reflects the discussion that took place tonight and any of the changes in that discussion we would make in the letter of agreement that the City received from the applicant. All we are trying to do is rescind based on the fact that we think we have enough information to move forward in a collaborative way.

Mayor Patterson stated that there would be no more added. In fact, there would probably be some things taken out of the edited document that Council has tonight. The language about having metrics and performance measures is the level of detail she is seeking. The language of funding certainty is the level of detail. She does not want to negotiate reasonable funding of what it costs for us to do things. All the language that Council has in the copy she provided is what she would consider putting in a resolution. No more and no less. The transit issue was suggested by Steve Goetz. The reason it was in there is because it is in the letter of agreement. In order to reduce the vehicle miles it is going to take a lot more than just the TDM. She would take the TDM out so it would say 'a performance measure that reduces vehicle miles to enable us to achieve the goals of AB 32 by 2020. That is what the law is. You have to have performance measures and metrics in order to move forward. You don't need to create the details of those performance measures and metrics, but you have to have them. That is exactly what her edits do.

Council Member Hughes stated that he did not think Council was too far off. His understanding was that things like performance metrics would be included in a development agreement or specific plan. He was not sure if including it in a resolution

buys us anything. His concern is that he did not want this to get hung up on wording, and all of the sudden there is disagreement on where this is heading.

Mayor Patterson stated that it wasn't Council that she was concerned about. It is the general public and they wanting to trust this. They are looking for language like that. The more assurances they can see, without getting into details, the more Council has demonstrated that it hears and cares, and is respondent, the better.

Mr. Erickson stated that Staff should try and capture what Council has said tonight, and put it in the resolution. If Staff is doing a good job, it should capture the sense of the Council. To the extent it does or does not bring about all five members, Council will have that opportunity when it looks at the resolution. Staff's job is to take what Council has done tonight to put it in the form of an actionable document.

Mayor Patterson stated that Council wanted to ensure that the direction includes the essence of the comments and her edits.

Council Member Ioakimedes discussed not wanting the language in the resolution to preclude an open process. He wants the process to be as open and unencumbered as possible.

On motion of Council Member Hughes, seconded by Council Member Schwartzman, Council agreed to direct Staff to draft a resolution that rescinds the November 18, 2008 denial of the Benicia Business Park application that includes language in terms that reflects the discussion Council had tonight at the Council meeting, including the terms of the letters of agreement and staff memo (Elements needed for Benicia Business Park), and all comments, on roll call by the following vote:

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

Noes: Mayor Patterson

INFORMATIONAL ITEMS:

None

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:18 p.m.

Lisa Wolfe, City Clerk