

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
FEBRUARY 6, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, February 6, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

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

CLOSED SESSION:

**A. CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6 (a))**

Agency negotiators: City Manager and Human Resources Director

Employee organization(s): Benicia Police Officer's Association, Benicia Senior Management Group and Benicia Public Service Employees' Association

**B. PUBLIC EMPLOYEE APPOINTMENT/ PERFORMANCE EVALUATION
(Subdivision (b) (1) of Government Code Section 54957)**

Titles: City Manager and City Attorney

ADJOURN TO CLOSED SESSION:

Mayor Messina adjourned the meeting to Closed Session at 6:02 p.m.

RECONVENE OPEN SESSION:

The Open Session portion of the meeting was called to order at 7:01 p.m.

INFORMATIONAL ITEMS:

Update on Priority Projects:

Mayor Messina stated that due to the late hour Council needed to decide whether it wanted to continue this item to a future agenda or hear it after tonight's regular meeting.

Council Member Patterson stated that for obvious selfish reasons (she was ill), she would prefer to continue this item to a future agenda. There is nothing earth shaking going on with the priorities. Some of the items will be covered in the regular meeting agenda this evening.

Council majority agreed to continue this item to a future agenda.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:02 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 6, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:02 p.m. on Tuesday, February 6, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina 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:

Action taken at Closed Session:

Ms. McLaughlin announced the following actions taken in Closed Session:

- A. Conference with Labor Negotiator - Senior Management Group - item will be pulled to allow questions on the process to be addressed. Public Service Employees Group – Council received information from Staff. BPOA – Council received information from Staff.
- B. Public Employee Appointment/Performance Evaluation – Council received information from Staff.

Openings on Boards and Commissions:

- People Using Resources Efficiently (PURE) Committee:
One immediate opening
- Human Services Arts Board:
One unexpired term to June 30, 2009

APPOINTMENTS:

Mr. Rodney Sherry:

Council Member Patterson stated that she could not support the appointment for five reasons. Mr. Sherry is extremely qualified in his profession and field, and is a huge asset to the City, but not for the HPRC. The five reasons are as follows: 1) There are specific requirements for the qualifications including expertise, knowledge on and about historic

culture and architecture, 2) the State Office of Historic Preservation wrote a letter to the City stating that in furtherance of its Certified Local Government (CLG) status, it needed to upgrade the expertise of the commissioners on the HPRC, 3) the City had a report (that was commissioned by the City, the Kinder Report) to look at efficiency in City government. One of the strong recommendations was to upgrade the commissioners to a more qualified level, 4) there is an incumbent who is extraordinarily well qualified. His presence on the commission was professional, and the dialogue on the commission was quite good. She does not understand why he is not being reappointed and 5) Council needs to do better for our commissions.

Vice Mayor Schwartzman stated that he could not support the appointment. It is different than the other commissions. This commission has specific criteria. Mr. Sherry has some great qualifications and he would like to see him on a particular commission, but not the HPRC. His experience does not lend itself to the specific criteria that are being requested and demanded for qualifications in the HPRC. In Vice Mayor Schwartzman's conversation with Mr. Sherry, he (Mr. Sherry) did not express a lot of experience or knowledge in historic preservation, which is required. He would like to see Mr. Sherry apply for the Planning Commission when there is an opening.

Council Member Whitney stated that he understands Mr. Dean's disappointment. The truth is that this is a great community and there are many people who qualify for many of the commissions. For whatever reasons, those people may choose not to apply. Council Member Whitney looks at this process is open and inclusive. The City should foster a process that welcomes people to apply. He would have voted for Mr. Dean's appointment if the Mayor had reappointed him. He thinks the City has to be careful about the process of appointing people. Council ends up creating a disincentive for people to come forward apply for the commissions because many people get tired of getting beat on. Let's give people a chance and move forward. He believes that Mr. Sherry meets the requirements of the HPRC. When Mr. Daley came forward, some of the Council wanted to give him a chance. Why not give other people a chance?

Public Comment:

1. John Van Landschoot – Mr. Van Landschoot stated that he agreed with Mayor Messina and Council Member Whitney. They Mayor has said that he wanted the people on the Planning Commission and HPRC to be more professional. With professional people, the law can be followed. There will be certainty in the process – we fought too long. There would be fewer disputes. The HPRC has two openings. Only two out of the five applicants were interviewed. He applied, however he is taking himself out of the mix. The two applicants that were interviewed don't fit the CLG requirements. He read the letter from the State Office of Historic Preservation regarding appointing applicants (copy on file). He thinks Council needs to listen to the State Office of Historic Preservation. He would like to see the vote postponed. He listed the applicants who were not interviewed and their qualifications. He suggested sending the applications to Lucinda Woodward at the State Office of Historic Preservation and having her provide input. The HPRC is different than all the other

commissions. It is the law that someone qualified has to be appointed. It is not just personality; it is professionalism.

2. Jeanine Seeds – Ms. Seeds stated that it is nice that everyone wants the commissioners to learn at the expense of the HPRC. Not everyone who submits an application is interviewed. There are people in town who are magnificently qualified for the commissions. Why are we afraid of appointing qualified people? This is ridiculous? Why is Council appointing under-qualified people to the commissions. Council does not have the right to go against the law and put the citizens' interests so far down. It is too risky. These openings are not learning internships. These people have power to impact the decisions that are made. It is not fair to the citizens that Council is letting people be interns at the expense of the City.
3. Toni Haughey – Ms. Haughey stated that she has concerns about Mr. Sherry's appointment. His credentials don't qualify him for the HPRC. Mr. Sherry would be replacing Mr. Dean. Mr. Dean is one of the most qualified HPRC Commissioners. He is very qualified. He does not see the wisdom or logic for replacing Mr. Dean. This is not about disappointment, it is about being qualified. She went to City Hall and got the list of people who had applied for the HPRC. It is true that all of the applicants were not interviewed. She is concerned that a business that Mr. Sherry owns 50% of has done business with the City on over 21 projects. She believes that might be a conflict of interest.
4. Blythe Wilson – Mr. Wilson stated that he is a HPRC Commissioner. He served with Mr. Dean. Mr. Dean does a very thorough job and cares about the various projects in town. Mr. Sherry's background does not lend itself to the HPRC. This is important enough an issue to warrant further consideration.

Mayor Messina stated that he interviews every candidate. Some people apply multiple times, and he may not re-interview candidates if they reapply for the same commission. He believes he interviewed Mr. Van Landschoot twice out of the three times he applied. Regarding the law, if you look at the State Constitution, it is clear how the process works. His job as Mayor is to bring forward qualified candidates. That is the role he plays in this process. Council's job is to confirm or not confirm the candidates. He encouraged people to approach him before appointments are made with comments or suggestions or thoughts on the individuals being appointed.

Council Member Hughes stated that he voted no on an appointment a month or so ago stating lack of experience. He did not want to be inconsistent with that reasoning. The other concern he has is that there is a very qualified incumbent who is still interested in being on the commission. He does not know if the incumbent has received an explanation as to why he is not being reappointed. Regrettably, he will be voting no.

RESOLUTION 07- - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF RODNEY SHERRY TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM ENDING FEBRUARY 28, 2011

The above Resolution was not adopted, on roll call by the following vote:
Ayes: Council Member Whitney and Mayor Messina

Noes: Council Members Hughes, Patterson, and Schwartzman

RESOLUTION 07-05 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MICHAEL WHITE TO THE HISTORIC PRESERVATION REVIEW COMMISSION TO A FULL TERM ENDING FEBRUARY 28, 2011

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

Council Member Patterson stated that she had been watching Mr. White and believes he is an asset to the HPRC. His interest in Benicia history and historic culture has been very well represented.

Vice Mayor Schwartzman stated that he voted in favor of Mr. White because he believes he has the appropriate experience.

Council Member Patterson asked Ms. McLaughlin a procedural question dealing with the ex parte aspect of interviewing applicants. She asked Ms. McLaughlin to follow up via email or memo with a response regarding the exact procedure.

PRESENTATIONS:

Presentation by Caltrans:

Mr. Bijan Sartipi, District 4 Director, Caltrans, reviewed a PowerPoint presentation on current projects affecting Benicia. He then played a video on the Adopt-A Highway program.

Council Member Hughes asked if, regarding the Adopt-A-Highway, someone would be partnered up or would they take care of their own portion. How much time commitment would this be? Mr. Sartipi stated that they would try and work things out. If they are individuals, they could make arrangements to pair people up. The time commitment varies. In certain areas, it is done monthly, other areas are done quarterly, etc. For each area, there is a minimum amount of time that must be spent.

Council Member Patterson thanked Mr. Sartipi for the presentation. She is looking forward to the freeway weed abatement in the near future. She asked how the amount of litter could be reduced. She feels it is the citizens' responsibility and would like to know what programs are available to educate the public. Mr. Sartipi suggested providing the video to the citizens. Caltrans tries to go to schools to educate students on the litter problem. The object is to break the cycle of littering. Council Member Patterson asked about the cost of picking up trash. It would cost the same amount (\$16,000,000) to pave 16 lane miles, which is the same amount this district is paying annually to pick up trash.

Council Member Whitney asked about the trees that were removed along Benicia's section of I-780. Mr. Sartipi stated that Caltrans will work with the City on what types of trees will be planted. Caltrans is in the process of removing approximately 350 trees in

Benicia. They will do everything they can to remedy the situation. They will begin working on the scope of the project in 2008. The amount of trees that will be replaced has not yet been determined. Council Member Whitney asked that Caltrans keep the City Manager informed as to the progress of the project. He asked how citizens should contact Caltrans if the Adopt-A-Highway program is not being done. Caltrans is cranking up the enforcement on the program. He suggested taking a picture of the sign with trash around it and sending it to the company.

Vice Mayor Schwartzman thanked Caltrans for the presentation and for removing the diseased trees. He asked about the State Park Road Bridge. It is a dangerous area and there is not enough room for bicycles or pedestrians. The City is working as diligently as possible to secure money to address the issue. Is there money available statewide for this? What can citizens do to encourage the project to move forward? Mr. Sartipi was not familiar with that project. He offered to look into the issue and get back to Council.

Mayor Messina stated that he is the current vice chair of the STA. They are working with the State Transportation Improvement Fund to do some allocations. They recently got \$1 million, but that's not enough. He wanted to echo the concern that this is a high priority project and needs the support of Caltrans. He is looking for favorable treatment if they could receive some as these projects move forward. Mr. Sartipi stated that Caltrans was looking for partnerships and they want to be good neighbors. If there is any way Caltrans could support the project, either by bringing funds or through the approval process, they will be sure to give it the right priority. He will work with Daryl Halls, STA, to get a better understanding of the project.

Mayor Messina stated that there was a tree committee. Is there a way to partner with Caltrans and involve the volunteers to advance the tree replanting? Mr. Sartipi stated that Caltrans could consider that. Safety is their number one concern.

Public Comment:

1. Mary Wika – Ms. Wika stated that the City Attorney said she could ask questions regarding the State Park Road Bridge. She has submitted questions to Caltrans and has never received a reply. Mr. Sartipi stated that he would provide his contact information to Ms. Wika tonight. Ms. Wika asked Mayor Messina about the \$1 million he mentioned earlier. What is that for? Mayor Messina stated it was for a parallel bridge to handle pedestrian and equestrian activity beside the bridge. Mr. Schiada stated that the City has been trying to get the bridge widened for ten years. The bridge is owned by Caltrans. The City has \$1.9 million in funding lined up, but needs \$3 million for the project. There are two options – to have a parallel pedestrian bridge or to widen the entire bridge with a section to accommodate pedestrians. Mr. Schiada stated that this project is one of Council's top ten priorities.
2. Karen Posey – Ms. Posey stated that she had the same question about the EIR that was done in 1998. She has asked the City questions and the City keeps saying it is not their responsibility, as it is owned by Caltrans. Mr. Sartipi stated that he was not sure about the details of this specific project. He was sure other Caltrans staff

is knowledgeable about the project, but he personally was not. Projects have to be prioritized. There is never enough money to fund all of the projects that come up. The good news is that some money has been allocated to the project. Caltrans will work with the City and STA to find a way to get it going. Mr. Sartipi gave Ms. Posey a business card so she could contact him to get the name of the person she should speak to.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson stated that several members of the public who requested item X-A-3 be moved up in the agenda.

Mayor Messina expressed his reluctance to rearrange the agenda, as there are other agenda items that are of equal interest and important to other people.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items received (copies on file).

PUBLIC COMMENT:

1. Karen Posey – Ms. Posey read the following prepared statement: “Do the Citizens of Benicia know that you have issued another permit to Starbucks on 1/31/07 in the Benicia Gateway?”

At this point, I am no longer appalled by the City Council and staff in the inappropriate decision they have made on behalf of the local citizens of Benicia. I personally am almost speechless at the bold face-to-face deception and lies the counsel has presented to the Citizen’s of Benicia. I am not at all proud to be associated with this behavior of the elected Counsel and its staff on the many issue’s you have disregarded.

Let me start with the minor fact that in December when several citizens voiced there concerns about big box and the fourth Starbucks in Benicia that the city issued a permit for and could do nothing about, because it was to late. Believe us it puts the small business out of Benicia. You as the Council sat before us and agreed or pretended to agree that it was not what you wanted and you would moved forward on the moratorium to prevent any further permits to be issued to the big box businesses in Benicia. Once again, you failed your community and citizens and allowed one more Starbucks to enter the Benicia Gateway. I’m

positive Benicia won't be in Sunset Magazine with a Gateway full of big box businesses. Let's see about putting a Red Lobster at the bottom of 1st street and see the response you get if you inform the community. Each and every one of you should be held accountable for the conduct as well as the City.

In the Rose Center project you have went against conditions and many laws due to the fact that Benicia has no set Policies and Procedures and that is how you as the council has justified your BAD decisions. This has been each and every one of your excuses for not making things stop or passing issues through. Each and every one of you has a duty to our community to go by the law. Do you think this is okay not to get your polices in place and use that as an excuses to pass issues through the City. You continue to prolong these important issues such as policy and procedures.

I also have to bring up another fact in this matter that every single time we get up to speak about the Rose Center Project, you always remind us that you can not make any comment to public comments, but yet other issue are brought forth and you as the council have no problem commenting. Why can't you make any comment on the project? Is it because you are afraid of the developer?

As I know and everyone else that has participated in these meetings you will end my comment with a 'thank you, oh, we can't comment, but we do care about the community and for the people that just tuned in we don't want you to think we don't care.' We all have heard that over and over again and you have made no change to move forward on policies and procedure within the City You have postponed the moratorium for no reason other than staff vacation, holiday, busy, low priority on your lists and the excuses go on. It's looks as if the postponement was planned in order to issue another permit for Starbucks. The City Counsel has taken no consideration of the impact this will have on the surrounding businesses that have supported your community, schools, and special programs for years. Now they will go away to the big boxes. In case you didn't see the local news last week, your neighboring city had a long spot on the 6:00 p.m. news about the affects of the big boxes in the community. Hope you can come up with a better excuse than we don't have policies and procedures that why we did it?

Why does the city need or want 5 Starbucks, Jack in the box 1, Burger King 2, Jamba Juice 1, Taco Bell 1, McDonalds 1, Cold Stone 1, Safeway 1, Kentucky Fried Chicken 1, Double Rainbow 1, Baskin Robins 1."

Mayor Messina asked Ms. McLaughlin to help Ms. Posey understand the limitations of how Council could/could not respond to her questions and statements. Ms. McLaughlin stated that Council was limited to its responses to the public if the item is not on the agenda, in order to provide enough notice and information to folks who may want to participate in the discussion. That is under the City's Sunshine Ordinance as well as the Brown Act. Mayor Messina stated

that if Ms. Posey had additional questions on how Council could respond, she was welcome to discuss the issue further with Ms. McLaughlin.

Ms. Posey stated that when the item she and Ms. Wika wanted to discuss was on the agenda, Council's response is the same as it is tonight.

2. Jeanine Seeds – Ms. Seeds stated that what the law is and how Council behaves are two different things. Regarding the appointments and visiting the Mayor to discuss concerns, several citizens brought up their concerns at past meetings. Regarding the liquor store that is going up in the Rose Center - she is not sure why the president of the School Board is putting another liquor store so closed to schools. Wasn't the Shell gas station's liquor license suspended for selling to minors? We do not need another liquor store. We do not need another place for the police to patrol. The developer knows the citizens don't want another Starbucks. Why does the City allow the developer to continue to build projects that are against the wishes of the people?
3. Mary Wika – Ms. Wika began reading a prepared statement.

Mayor Messina stopped her and asked her to read the item under the agenda item, as she was discussing the issue of a moratorium. Ms. Wika asked Mayor Messina to not interrupt her. She asked Mayor Messina if she would like her to re-read her statement under the agenda item. Mayor Messina asked her to read the portion of the statement that do not relate to the issue of a moratorium.

Council Member Patterson stated that it was confusing because the email/statement was comprehensive and covered many issues. The email is sequential, but does make reference to the moratorium. As long as Ms. Wika knows that, she would be able to re-read her statement in its entirety under the agenda item. Council Member Patterson stated that she thought the email/statement was okay to read during public comment.

Ms. Wika asked if she would get her entire five minutes of public comment time back since she was so rudely interrupted. Mayor Messina stated that she could have her full five minutes to speak. Ms. Wika re-read the following prepared statement: "I was told today that Dirk Fulton got a bldg permit issued on 1/31/07 for a Starbucks at Rose Center. As you can well imagine I am very upset and utterly disappointed in the City of Benicia for allowing this to happen.

I emailed you 1/25 raising my concern with the postponement of the moratorium. You emailed the City Attorney and Charlie Knox on 1/29 alerting them that time is of the essence for the moratorium and on 1/31, Dirk Fulton gets his permit for a Starbucks across the street from my business. Who was to know? I believe all of you! In December 06 when the community reached out to the council, you understood at that time what the community wanted and you acted as though you were pushing the issue to early January for a workshop and we brought up the fact that we needed the moratorium. You all agreed. You also all agreed that Benicia did not need its fourth Starbucks. You even personally called Starbucks asking

them not to go in to the Blockbuster building. But what did they tell you. Just like they told me to bad, we are coming regardless. So now, since the council drug its feet again in making a decision Benicia is getting its fifth Starbucks!
If the council is not equipped to make emergent decisions such as the moratorium, we need a new council.

If you look back to Dirk Fulton's original application for Rose Center, he states that he wants to bring in new businesses to Benicia. Longs Drugs and now Starbucks #5 are far from that. Dirk Fulton has proved time and again he is not a man of his word. I believe there needs to be an internal investigation of the City of Benicia. I have done everything through my rights as a citizen and the council has turned there back on yet another item to benefit development (Dirk Fulton) regardless of whom it affects. You are taking the livelihoods away from people who have served this community for years. Do you think it would hurt Dirk Fulton financially to prevent him from leasing to a Starbucks? Or put him out of business? But you prefer to put independent businesses that have served this community for years out of business. Just as you mentioned at my appeal Dirk Fulton is well aware of what is coming. Finally tonight only as an informational item, you the council will discuss the moratorium - after Dirk got his Starbucks permit. Elizabeth I have worked very hard for thirteen years serving this community and for the last five thanks to Starbucks there hasn't been much profit. I truly love Benicia. You the Council is not looking out for this little town, which the Benicia Plan states throughout to do everything to maintain the small town atmosphere.

My business will not survive another Starbucks. You all know that. You also know I am very persistent. You may force me to close my doors, but I will be sure that every citizen in Benicia is aware of what has occurred and everything leading up to it.

In the past year, you have allowed four additional Starbucks (a worldwide monster) to consume Benicia. I give it about another year before you have no independent coffee shops left in Benicia. Benicia will look like every other Pleasant Hill, nothing special."

CONSENT CALENDAR:

Council pulled items VII-A, VII-C, VII-D, and VII-G.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

RESOLUTION 07-06 - A RESOLUTION ACCEPTING THE BIDS FOR THE CITY HALL BATHROOM RENOVATION PROJECT, AFFIRMING THE CITY MANAGER'S DECISION ON THE BID PROTEST, AWARDING THE

CONSTRUCTION CONTRACT TO GILBERT-MORAD ENGINEERING AND CONSTRUCTION OF FAIRFIELD IN THE AMOUNT OF \$233,445, AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY AND APPROPRIATING \$156,000 FROM THE CAPITAL LICENSE FUND AND \$100,000 FROM THE FACILITIES MAINTENANCE RESERVES

RESOLUTION 07-07 - A RESOLUTION APPROVING THE JULY 1, 2006 TO JUNE 30, 2011 AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING WITH THE BENICIA PUBLIC SERVICE EMPLOYEES' ASSOCIATION:

RESOLUTION 07-08 - A RESOLUTION APPROVING THE JULY 1, 2006 TO JUNE 30, 2010 AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING WITH THE BENICIA POLICE OFFICER'S ASSOCIATION

RESOLUTION 07-09 - A RESOLUTION ACCEPTING THE BIDS FOR THE X-PARK PROJECT, AWARDED THE CONSTRUCTION CONTRACT TO AJ VASCONI GENERAL ENGINEERING OF CONCORD CALIFORNIA IN THE AMOUNT OF \$858,500, APPROPRIATING \$407,986 FROM THE GENERAL FUND SURPLUS AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of the Minutes of January 16, 2007:

Council Member Patterson stated that she was not able to review the minutes. She would like to have the minutes continued to the next meeting. The minutes were continued to the next meeting.

Award of construction contract for the Lincoln Street Water Line Replacement Project:

Vice Mayor Schwartzman stated that he wanted to publicly pose a question. He wondered if it was possible; since the street would be opened up, do the improvements for sewer, cable, etc. He wondered if, in the future, Staff could time the work that needed to be done so that the street would only have to be opened up one time, and possibly save some money. Mr. Schiada stated that was something he could take a look at in the future.

RESOLUTION 07-10 - A RESOLUTION ACCEPTING THE BIDS FOR THE LINCOLN STREET WATERLINE REPLACEMENT PROJECT, AWARDED THE CONSTRUCTION CONTRACT TO SOARES PIPELINE IN THE AMOUNT OF \$84,871.00, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Adoption of the 2007 City Council Regular Meeting Schedule:

Vice Mayor Schwartzman suggested canceling the July 3rd meeting as it is on the same night as the 3rd of July Parade. He suggested canceling that meeting, but keeping the August 7 meeting.

Council Member Patterson wanted to cancel the 12/18 Council meeting, as it is close to the holidays. She found it very annoying that Council conducted serious business so close to the holidays.

Mayor Messina stated that he agreed with Vice Mayor Schwartzman's suggestion about canceling the July 3 meeting, but keeping the August 7 meeting. He would rather take the December 18 meeting up closer to the date. There may be some very important issues that need to be addressed.

Mr. Erickson stated that the City begins its budget season in June. In the past, there has had to be an early meeting in July to accommodate that process. There may need to be a special meeting scheduled in early July.

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the City Council meeting schedule was adopted to reflect canceling the July 3, 2007, meeting, and keeping the August 8, 2007 meeting, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Approve the July 1, 2006 to June 30, 2010 amendments to the labor agreement with the Benicia Senior Management Group:

Mr. Erickson stated that Council asked to bring this item back at the next Council meeting.

PUBLIC HEARINGS:

ACTION ITEMS:

Redesign and re-bid for restoration of the Commandant's Residence Improvement Project:

Mike Alvarez, Parks and Community Services Director, reviewed the staff report.

Council Member Hughes asked Mr. Sousa what the impact would be to the General Fund; taking into account, Council just approved funds for the X-Park. Knowing that the General Fund Reserve is at 26%, where would it leave the City knowing that the funds were approved for the X-Park, and then going forward with Phase 1 and Phase 2? Mr. Sousa stated that with the funding of the X-Park, Commandant's, and the Arsenal environmental report, the City would be left with a 20% reserve. He and the City Manager had been reviewing this year's budget. They have been weighing their concerns

over not having any surplus remaining against the fact that two of Council's top projects are being tackled. They are optimistic that the expenses will come in less than anticipated, they are confident in taking the reserve down to the 20%. When all is said and done, there is cautious optimism that the 20% could be exceeded after the projects. Council Member Hughes asked Mr. Alvarez how close to occupancy the City was. Mr. Alvarez stated that it would be in the summer of 2008. The cost would be approximately \$1 million more after phase one and Phase 2 are completed. There may not be such high costs if tenants were to do the bidding. In a public bid, it would be \$1 million.

Council Member Whitney stated that he took a tour of the building. It is a fantastic structure. The building is structurally sound. The City is close to occupancy, assuming the combination of Phase 1 and Phase 2 are approved. Tennant improvements would be less because they would not be a public bid.

Council Member Patterson stated that she supported the proposed approach. She would like to pursue paying the historic architect for the reuses of the facility study and report. They could advise the City so that the future reuse is consistent with the Secretary of Interior Standards for uses. The money would be well spent on getting that advice. She thought Council had agreed on that at a prior meeting on Phase 2. That should be done after Phase 2, but before the City enters into any contracts or agreement. She asked if Council could have a report from Carey on what the costs would be to do the reuse study. It would be appropriate to have discussion on the financing schemes that the City could enter into with private partnerships. The one that tops her list would be a certificate of participation. It is not too soon to begin looking at those possibilities and being ready to move forward. Would it be possible to have that report to Council in the next few months or sooner? She wanted to make sure that this does not fall through the cracks, since she has raised the question before.

Mayor Messina stated that the money Council Member Patterson was suggesting (\$7,000) was not very much. It could just be included as part of the project. As far as the timing, he would not want it to get in the way of the project. He suggested bring the report back in August. It would take a year for the project to come to fruition. This would be useful information for the City to have before it enters into any sort of contract.

RESOLUTION 07-11 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CAREY & CO. INC. OF SAN FRANCISCO, CALIFORNIA FOR DEVELOPMENT OF PLANS AND SPECIFICATIONS FOR THE BENICIA COMMANDANT'S RESIDENCE PROJECT NOT TO EXCEED \$123,230

On motion of Council Member Patterson, seconded by Council Member Whitney, the above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

Mayor Messina called for a 5-minute break at 9:05 p.m.
The meeting resumed at 9:10 p.m.

Review of Library Basement Completion Project:

Diane Smikahl, Library Director, reviewed the staff report.

Mary Eichbauer, Library Board of Trustees – Ms. Eichbauer stated that the Board supports the project. This space was earmarked for Library services when the building was built. Now is the time to move forward on the project. The money is available. Staff desperately needs the office space. The Library gets very crowded in the afternoons. The literacy program needs more room. The Board has unanimously decided this project is its top priority.

Carol Nail - Library Board of Trustees – Ms. Nail stated that the Library is beginning to outgrow the space it has. They would like to expand the space and increase the services it offers. Over the years, the Library has had visiting tours. The space and time needs to be made available so that those types of programs continue.

Ruth Workman, Library Board of Trustees – Ms. Workman invited Council to step behind the circulation desk to see the amount of space the Library staff has to work with. The staff is remarkable.

Mike Radesky, Library Board of Trustees – Mr. Radesky stated that he couldn't believe the small spaces the staff has to work in. He asked Council to seriously consider approving this.

Brad MacLane, Library Board of Trustees – Mr. MacLane commended Ms. Smikahl for pursuing this project. The staffing space is unbelievably small. There is a need for more computer space. This seems like a project that could be done. The funds are there.

Ron Arrants, Friends of the Benicia Public Library – Mr. Arrants encouraged citizens to join the organization. The Friends of the Library are using three quarters of the basement for its monthly book sales. The group has been running the book sales for eleven years. It has been able to provide the Library with about \$50,000 per year. The most impacted organization as a result of this proposal is the Friends of the Library. However, this is vital for the community. The proposed plan will allow the group to continue to serve the Library. He strongly urged Council to authorize the proposal.

Council Member Hughes stated that he fully supports the proposal. He asked about the impact to the General Fund. Mr. Sousa stated that there would be no impact to the General Fund. Mr. Alvarez stated that staff was confident with the estimate.

Council Member Whitney stated that this is a project that could get done. He asked Mr. Alvarez when this could be completed. Mr. Alvarez stated that assuming it was approved this evening, it could be done within one year. He believes in expanding the influence of the Library on the community.

Council Member Patterson asked if there would be any assistance from the original architect Franz Albert. Mr. Alvarez stated that could be looked into. She asked Mr.

Arrants if Friends of the Library had looked at off-site space for its storage needs. Mr. Arrants stated it had not.

Vice Mayor Schwartzman suggested wiring the Dona Benicia Room for sound and video into the design. Council Member Patterson stated the room was partially wired now, but additional upgrades would be good.

Public Comment:

1. Jeanine Seeds – Ms. Seeds stated that because of the BUSD money debacle this year, she wants to know who will watch these costs. Who monitors the budget to keep the costs on track? Mr. Erickson stated that there would be a staff project manager assigned to the project to assist with that. Construction project costs are always a little uncertain. Staff is optimistic and hopeful that it has the money it needs.
2. Helane Bowles – Ms. Bowles stated that she hopes the project moves forward. She works at the Library. She would appreciate it if Council would consider this. It is hard to work in the basement.

Mayor Messina stated that the project is lower level tenant improvement. The project could be expedited and could happen much quicker than one year. He does not see this as being an overly complicated project. It is just putting up some walls, hallways, ceilings, etc. He would like the Library Board of Trustees and Staff to quickly look at this to provide input and get the project moving quickly.

Mr. Erickson stated that Staff was also anxious to get the project moving, however there are other things going on (X-Park, Commandant's, etc.) that will be competing for time.

On motion of Council Member Whitney, seconded by Council Member Hughes, Council approved the use of Library Fund balances in Measure B and Interlibrary Loan accounts to create a design plan and obtain a cost estimate for construction, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

INFORMATIONAL ITEMS:

Reports from City Manager:

Update on the 2007-2009 Strategic Plan

Jim Erickson, City Manager, reviewed the staff report.

Consideration of possible City Council subcommittee relative to Valero Water Contract Renegotiation:

Council Member Whitney stated that he discussed this with the City Attorney. The agreement with Valero regarding the water contract that expires in 2009. He suggested it would be proactive to form a committee that was perhaps handled in-house. He would like to be involved, since he had been involved in the CAP for so long.

Mayor Messina stated that he would subscribe to the concept of trying to handle this in-house. He suggested supporting Council Member Whitney and forming a Mayor's subcommittee.

Ms. McLaughlin stated that given Staff's workload, there is not a lot of time for her to devote to this. It is necessary to have some assistance on this project.

Mr. Erickson stated that he was not anxious to spend a lot of money on this, but could see lending Staff's expertise.

Council Member Patterson stated that her day job deals with water contracts at the state level. It is a very complex and complicated area. There are tricky issues involved. There are legal and environmental requirements put on water supply on a regular basis that has to be met. It takes the expertise that is available to the City through this firm to understand how to protect the City's interest. Her concern is that the City has entered into contracts that are not favorable to the City. She could start with the Port. The City is not getting one penny for the use of the Port. That is not a good agreement. The UUT cheated the City out of approximately \$9 million in a ten-year period until it was recently amended. It is not a good idea to enter into such contracts without the expertise. She supports the idea, and is sensitive to the workload. At the same time, it is essential to get the expertise.

Council Member Hughes stated that he supported the committee concept. He is a member of CAP. He is willing to serve on the subcommittee.

Vice Mayor Schwartzman stated that he supported the committee concept. He asked Mr. Sousa if he knew what the contract was worth. Mr. Sousa stated he was not familiar with the contract. Mr. Schiada stated that a new agreement that would bring the City into the 21st century is worth millions of dollars. It is a significant revenue issue with the City. Vice Mayor Schwartzman stated that he felt the City needs the proper expertise that will keep the City on the straight and narrow with this. It is a complicated issue. He is willing to serve on the committee.

Mayor Messina suggested forming a committee. He stated that he and Council Member Whitney would be on the committee and work with the City Attorney to make sure there is appropriate outside representation. Mr. Schiada will most likely be the Staff person on the subcommittee.

Consideration of requests for a formula-based business moratorium:

Jim Erickson, City Manager, reviewed the staff report. There is a study session scheduled for February 20, 2007 on this issue.

Mayor Messina stated that there are a few paths Council could take. One would be to proceed with the concept of a moratorium, which would take resources and time. The other alternative would be to proceed as it is now and discuss it at the next meeting.

Ms. McLaughlin stated that a moratorium would only take one Council meeting, but would need a 4/5 vote. It would be an ordinance. There is a special law that allows a moratorium to be adopted at one meeting. There is no 30-day waiting period with a moratorium. In order to do a moratorium, you need to make a finding that you have plans in the works to consider studying the area. In the City's case, the Downtown Mixed Use Area and the Lower Arsenal Mixed Use Area are the two candidates for a moratorium of this sort. Otherwise, Council would have to make a finding that it was going to study other parts of town.

Council Member Patterson stated that Council has heard from the public regarding this issue. Council owes it to the City to find out if there is widespread support for a moratorium. She asked for details on the moratorium, what it does, how long it lasts, expectations of the moratorium, costs, etc. She does not know what the City could have done to prevent the fourth and fifth Starbucks. She wanted Ms. McLaughlin to tie that into the discussion as well.

Ms. McLaughlin stated that a moratorium would prevent the City from issuing any permits or entitlements for formula based businesses. The City would have to come up with a definition for formula based businesses – does it apply to restaurants, hair salons, etc. It would be effective for the period the City was studying, up to two years. Regarding the fourth and fifth Starbucks – at the time the moratorium was brought up, there was very little the City could do to prevent them from arriving. It was her understanding that the Starbucks in Solano Square is permitted use under the current zoning. The Starbucks in the Rose Center Project was permitted through a use permit. The use permit had already been approved. The Starbucks at Safeway was part of a lease agreement. There was a building permit for interior modification, but she does not think there were any permits beyond that. The Starbucks going in the old Blockbuster building required a tenant improvement permit. If this moratorium were in place, it could only have prevented that if the City could prove that Solano Square was impacted and that the City was studying the area. The only area she knows the City is studying the plan in the Downtown Mixed Use Area. She does not believe the Starbucks in the Rose Center Project would have been affected by the moratorium because the project was so far along in the process, that it would have been entitled to proceed ahead anyhow. A moratorium won't impact proposed use if the applicant has made a substantial investment.

Council Member Patterson stated that she appreciated the discussion, as she had received a lot of confused emails and phone calls.

Public Comment:

1. Jeanine Seeds – Ms. Seeds stated that if it only took one meeting, why wasn't the public told that. She spoke with Mr. Knox today and she understood that the permit was just recently issued. It was only because Ms. Wika researched the moratorium that this came up. She does not understand why people don't understand that what is being done is not right. This says a lot about the issue of wanting qualified people and not interns on the commission. Why Council is saying that this has only come up in the past few months, she just does not

understand. What about bringing in new businesses and rebuilding First Street? The businesses that went in the Olson project, with the exception of Starbucks were already in town. She learned from a friend in Berkeley that moratorium's are fairly easy to pass. Council's excuse is always 'well, there's nothing on the books.' Well, let's hurry up and get something on the books so that does not continue to be an excuse. Regarding the Long's Drugs and liquor sales, there was another Long's where people protested the sale of alcohol, and Long's decided not to open up, because they make most of their money on alcohol sales. Why do we need to have another meeting to talk about this? Just do it. Council should be ashamed.

2. Mary Wika – Ms. Wika asked Ms. McLaughlin about her comments regarding moratoriums only taking one meeting to pass and could be specified not to issue any more permits for formula based businesses for 45 days.

Ms. McLaughlin stated that the initial period of a moratorium would be 45 days. After that, it would have to be extended. You would have to come up with reasons for it to be citywide. In order to have a moratorium, you would have to make certain findings that the moratorium is protecting public health, safety, and welfare.

Ms. Wika stated that Ms. McLaughlin stated that a moratorium could be done in one meeting. Now she is saying that the City would need to make findings and resolutions, etc. The City takes so long to make decisions, how could they possibly do that in one meeting?

Mayor Messina stated that Ms. McLaughlin stated that the moratorium could be done in one meeting, but she did not say there were not procedures that have to be followed.

Ms. Wika asked why it would not affect the Fulton project. Mayor Messina stated that the questions had to be posed to him. Ms. Wika stated that she was asking the question to the City Attorney. Mayor Messina stated that the questions had to be posed to him, per the rules. Ms. McLaughlin stated that based on what she knows; a moratorium would not affect the Starbucks on the Rose Center Project. The project was designed for this sort of use. The applicant had signed a lease and invested substantial investments towards perfecting that. If it was at the beginning of the process, when there had been no investments that the applicant made towards the goal..

Mayor Messina asked Ms. McLaughlin to help Council understand the 'beginning of the project.'

Ms. Wika asked Mayor Messina if she could just take her five minutes. She wanted to ask her questions. The Mayor was asking questions, and she wanted to ask her own questions. The moratorium was supposed to prevent such businesses from going in for 45 days. The public has been asking for the moratorium since

December. The permit was not issued until January 31. If the moratorium would have been done back then, there would not be a permit for a fifth Starbucks in Benicia. Mayor Messina stated that Council is here today. It can only do what it can do. Ms. Wika stated that she was not asking him, she was asking the City Attorney the question. Mayor Messina stated that she was not allowed to do that. She must pose her questions to him. Ms. Wika wanted to know about the process of issuing the permit to Starbucks on January 31.

Ms. McLaughlin clarified that Ms. Wika was asking if the City had taken action at the end of January, could it have adopted a moratorium and prevented the fifth Starbucks from going in. Ms. McLaughlin believed the answer would be no.

Mr. Knox stated that in order to prevent the Starbucks from going into the Rose Center Project, the City would have had to adopt a moratorium at least prior to October, which was the date of the building permit approval. It is likely that the City would have had to adopt a moratorium prior to the application for a building permit. His guess would be that given the type of moratorium that is being requested, to prevent a Starbucks from going in the Rose Center Project, it would have had to be in place in September or August of last year. It is not the January 31 tenant improvement permit that is the issue. It is the building permit to allow the center in the first place in which a coffee shop, restaurant, retail, etc. was a permitted use. The coffee shop is not one of the use permit required uses. It is a permitted use. As the City goes forward, if it is looking at the areas like Downtown where it has a study, it needs to be aware that the affect of an ordinance, which would take longer to put into place, could actually preclude some of the uses by making them not permitted uses any longer. The moratorium would not have the same effect, unless it was done in a timely fashion, which would not have been December or January. It would have been August or September.

Ms. Wika asked Mr. Knox if this whole amount of wasted time could have been prevented by stating what he just said – that there was no way. He misled everyone here. She was here meeting after meeting and nobody commented to her that the moratorium would have had to be done two or three months ago. Mayor Messina stated that Mr. Knox had already answered that question. Ms. Wika stated that everyone could see that Mr. Knox wasted a lot of people's time.

Council Member Patterson stated that she did not think she had ever advocated for a moratorium. What she wanted to do was see if there was enough public interest for a moratorium, what it would do, and how it would work. She was not sure what happened with the timing. She is disappointed it took this long to have this particular discussion. She forwarded comments to Mr. Knox. She wished she had a clear picture when Council could have taken action. She would hate to feel that maybe the public's interest had not been dealt with properly. She does not want this to happen again.

Vice Mayor Schwartzman stated that there was an assertion in the staff report that ‘multiple City Council Members had made requests regarding scheduling and consideration of a possible moratorium.’ He is not sure if the word ‘multiple’ was correct. If you were talking about a possible ordinance, he would absolutely agree. Here we are tonight going around and around. The issue is whether there is a consensus for a moratorium in the future. This has gone on for a long time. Let’s make a decision. Either there will be consensus or not. It is simple.

3. Harry Newhall – Mr. Newhall stated that this is not the first time that Council has wasted time discussing issues. He knew that Council Members Patterson and Schwartzman had expressed interest in putting together some sort of direction for big box business. He was disappointed that Council Member Patterson had not discussed this issue with the City Attorney yet. He was disappointed in Vice Mayor Schwartzman as well. They had said they would take the lead on this. There is no leadership on this Council. Staff is overwhelmed with work. Who works for whom? Does Council whip Staff or does Staff whip Council? Council needs to set priorities and get things moving for a change. This has been going on since December 6. He is against formula based businesses. Mr. Knox knew what the public was looking for. He was disappointed in the Council and Staff.

Council Member Patterson stated that she fulfilled the promise she had made to the community. The work has been done. Staff has a draft ordinance. A study session was scheduled for February 20. She was disappointed that there is not a workshop on this on February 13. The work has been done. The issue on the moratorium was asked in a timely manner. She was frustrated that Council didn’t get a timely answer. It did not do the City any good, because there are some legal permitting issues. The clarification on the application for a moratorium has been slow coming. When she started in December, she thought there was a chance to have it looked at. Tonight Council still has a chance to give direction on how to move forward on a formula business ordinance. The fundamental question is what is in the public’s interest is now.

4. Karen Posey – Ms. Posey asked why on December 6, Mr. Knox said the fifth Starbucks was already a done deal. It was made clear that a moratorium needed to be in place. Why didn’t the City Attorney intervene and say what needed to be done? She has been coming to the Council meetings for over a year. Council can never give a straight answer. Staff and Council knew there were negotiations going on with Starbucks. Why did they not tell the citizens about the Starbucks back then?

Mayor Messina stated that Staff and Council did not know about it back then. Ms. Posey stated that Mr. Knox just stated that he knew. Mayor Messina clarified that Mr. Knox did not say that. Ms. Posey stated that Mr. Knox said there was nothing Staff could do on October 27. Mayor Messina stated that Mr. Knox did not say that. Ms. Posey asked for clarification on what Mr. Knox said. Mayor Messina stated that he understood that Ms. Posey was upset at the action or inaction that Council is taking. Sometimes information comes to Council, as it did tonight, that they did not know before. Ms. Posey asked how Council could not know about

this. It is a hot topic. Mayor Messina stated that Council does not know everything. Ms. Posey asked Mayor Messina to answer the question. Why did Council not know what was happening with this project? She stated that the Mayor just said this was the first it heard of this tonight. Mayor Messina asked what the question was. Ms. Posey stated that she did not understand why she had to keep repeating the same question. It was very redundant. Why can't Council take action on this? Why wasn't the public informed? Can Mr. Knox clarify what he said?

Mr. Knox stated that what he said was that if they wanted a moratorium to be effective for a Starbucks in Rose Center, which is not the same as him saying that he knew a Starbucks was going in Rose Center. The Starbucks came in mid-January. In mid-January, Staff knew they were interested in Starbucks. What he was saying was that if the City wanted to prevent that possibility, Council would have had to adopt the moratorium long ago, possibly in September or August to prevent that eventuality. The reason that question has not been answered before is that it had not been asked before. This is the first opportunity Council has taken to ask if it wanted a moratorium, is there public interest, etc.

Ms. Posey stated that on December 6, there were over 70 people in the audience, and many more watching on television. Council knew that this was coming. The citizens brought it up. They spent at least 40 minutes discussing that.

Mayor Messina stated that Council is trying to move forward, conduct business, and make a decision. The decision before Council is to decide if it will proceed forward with a moratorium. Is it in the best interest of the community to proceed with a moratorium, knowing what Council knows tonight?

5. Jeanine Seeds – Ms. Seeds stated that nobody ever mentioned that a moratorium would not affect Rose Drive. With Mary Wika here, there was no way Council did not know it was about Rose Drive Center. She has been checking with Mr. Knox as to when permits were being issued. Nobody said 'don't even think about Rose Drive because you didn't start in September.' Citizens have been coming to Council meetings, emailing Staff, Council, etc. Ms. Wika now stands to lose her business, as does Sam, because it was too late and no one ever said it was too late. If Staff is saying that they did not understand that was what it was about.

Vice Mayor Schwartzman asked Ms. McLaughlin if there was a 4/5 vote for a moratorium, could that be done tonight? He is not in favor of a moratorium for multiple reasons. Some of the findings that would need to be done are health, safety, and welfare. Ms. McLaughlin confirmed that was correct. A moratorium is basically freezing the status quo while Council decides what it wants to do. Vice Mayor Schwartzman stated that he did not see a moratorium on Starbucks or a moratorium at this point on formula based or anything right now because it is not a health and safety issue. For Ms. Wika, it is a big issue. He understands that. As a small business owner, he empathizes with Ms. Wika. It would not matter if it were a Starbucks, Peet's, etc. that went into that center. She may not want that, but there are a lot of people in town that likes those businesses.

The point is where is the health, safety, and welfare issues in the moratorium? An ordinance is a different story. He and Council Member Patterson have been working on an ordinance. They have a draft that will come forward at the February 20 meeting. There will be an opportunity for the public to provide more input on it at that time. He was not in favor of a moratorium in this particular circumstance. It would have to be a health and safety issue in order for him to be in favor of a moratorium. That is where he stands at this point.

Council Member Patterson stated that basic planning is health, safety, and welfare. The moratorium provides for a time out. (The applicable use is for the purpose of planning and would apply in this case.) If it was done on the fly tonight, it could be challenged and the City would be spinning its wheels. Do we need the 45-day time out or can Council proceed with the ordinance, which is more or less ready for the study session on February 20. She would prefer the study session be on February 13. That is what Council promised the community. She does not appreciate switching the workshop dates. That is harmful and part of the frustration Council is hearing tonight is a result of that switch, which is exactly what she told the Mayor and City Manager last week when she found out about the switch. The moratorium could be used in this case. But, can the City make findings tonight? Could Council be so specific to withstand a test? She did not know. She is not an expert in the law. She would like to move as quickly as possible on the ordinance. She asked what other areas the City has that are sensitive to Starbucks. God forbid the City looks at a sixth Starbucks. She wanted to hear a discussion about that among her colleagues. Are they concerned about a sixth, seventh, eighth, maybe ninth Starbucks?

Mayor Messina asked if Council Member Patterson was suggesting that discussion take place tonight. Council Member Patterson stated that it seemed to her that the public's interest for the moratorium has to be established tonight in order to make an up or down vote.

Council Member Hughes stated that Council has spent the past few months mainly talking about Starbucks. It concerned him that Council is painting all formula businesses as being evil. There are many formula based businesses that are providing a tremendous value to Benicia, such as Raleys, Safeway, etc. He would not support a moratorium at this point. He would be concerned with the unintended consequences of that. The City might be turning away some businesses that could provide tremendous value to the City. He would be very interested in engaging in discussion about the ordinance because he thought that would provide the long-term solution everyone is looking for. That may not be a popular position to take with the audience tonight, but that is his position.

Mr. Erickson stated that he did not know if the moratorium would be any quicker than the ordinance. Council would want to construct a defensible moratorium that targets what it wants to target. A moratorium is really a moot process at this point.

Mayor Messina stated it was clear there was not a consensus on the moratorium. It would be discussed at the February 20 study session.

Council Member Patterson asked if the ordinance could be agendized at the workshop so it could be acted on. Mayor Messina stated that he did not see a problem with that. Ms. McLaughlin stated that the staff report could be ready to be posted on Friday. As long as there were no significant changes when it was presented, it should not be a problem. Ms. McLaughlin stated that she needed to reformat it into proper ordinance form. Council Member Patterson stated she was confident with the ordinance, with the clarification that was made last week. Ms. McLaughlin stated that she reviewed it today and made some suggestions.

Mr. Erickson brought up the issue of getting the information out to the public. There is not a lot of time to get the notice out, given the fact that the ordinance is not available at this time. There have been some complaints in that area.

Vice Mayor Schwartzman stated he was concerned about doing a first reading at the workshop. There will be other people coming out to talk about how they are in favor of formula based businesses. He has a feeling Council will not be in the position to vote on an ordinance at the workshop.

Mayor Messina clarified that Council Member Patterson was just trying to make sure that Council did not preclude the option.

Update on the 2007 Policy Calendar:

Jim Erickson, City Manager, reviewed the staff report.

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 10:39 p.m.

Lisa Wolfe, City Clerk