February 11, 2009

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Wednesday, February 11, 2009

(*Note alternate meeting day*)

7:00 P.M.

I. OPENING OF MEETING

- **A. Pledge of Allegiance**
- **B. Roll Call of Commissioners**
- **C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.**

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

- **A. WRITTEN**
- **B. PUBLIC COMMENT**

IV. PRESENTATION

A. OPEN GOVERNMENT PRINCIPLES

The City Attorney will be giving an overview of the Open Government Ordinance, including Brown Act, Conflict of Interest, Ethics, Public Records and Ex-Parte Communication.

V. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

***Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.**

- **A. Approval of Agenda**
- **B. Approval of Minutes of December 11, 2008**

C. 726 FIRST STREET – USE PERMIT CONDITION OF APPROVAL: FINAL CONSIDERATION OF DESIGN OF SCREENED PORCH STRUCTURE -*Public Hearing

08PLN-57 Use Permit

726 First Street, APN: 89-341-010

PROPOSAL:

Per the project Use Permit findings and conditions of approval (PC Resolution No. 08-13), the design of the rear screened porch structure requires final consideration by the Planning Commission after receiving Design Review approval from the Historic Preservation Review Commission (HPRC).

Recommendation: Approve the design of the screened porch structure located in the rear of the building at 726 First Street, based on the findings and subject to the conditions listed in the proposed Resolution

VI. REGULAR AGENDA ITEMS

A. STRATEGIC PLAN UPDATE – Staff will provide an update on the Commission's Strategic Plan priorities.

Recommendation: Commission discuss 2007-09 Strategic Plan priorities and provide an updated list to Staff.

VII. COMMUNICATIONS FROM STAFF

A. COMMISSION RULES & PROCEDURES – The adopted Rules and Procedures are being distributed by Staff to the Commission for review.

VIII. COMMUNICATIONS FROM COMMISSIONERS

IX. ADJOURNMENT

Public Participation

The Benicia Planning Commission 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 Planning Commission allows speakers to speak on non-agendized matters under public comments, 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 Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

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 Commission 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 Planning Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission 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 Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.usunder 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 Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

Open Government (pdf)
December 11, 2008 minutes (pdf)
Rellik Tavern (pdf)
Strategic Plan (pdf)
Rules and Procedures (pdf)

AGENDA ITEM
PLANNING COMMISSION MEETING: FEBRUARY 11, 2009
INFORMATIONAL ITEM

DATE : February 2, 2009

TO : Planning Commission

FROM : City Attorney

SUBJECT : **COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING**

RECOMMENDATION:

Complete open government awareness training.

EXECUTIVE SUMMARY:

The Open Government ordinance requires that all public officials, and some employees, read the Open Government ordinance and attend an annual training on the ordinance.

BUDGET INFORMATION:

There is no fiscal impact from these changes.

BACKGROUND:

The training includes a review of the Brown Act, conflict of interest issues, ethics, due process and "Open Government Tips". Please sign and return the certificate of completion to the City Clerk's office or the City Attorney's office once you have read the ordinance. A second copy of the certificate is included for your records. This course also covers review of the City of Benicia Code of Conduct. It is not necessary to sign and return page 4 of the Code of Conduct when the material is included in this Open Government Training. Your signature on this document verifies that you have also completed this training. The Brown Act has not been included as the 2009 update because it was sent under separate cover in January.

Attachments:

- Title 4 of the Benicia Municipal Code
- Open Government Tips
- Code of Conduct
- Certificate of Completion

TITLE 4

Title 4
OPEN GOVERNMENT

Chapters:

4.04 In General
4.08 Public Access to Meetings
4.12 Public Information
4.16 Ethics
4.20 Open Government Commission

Chapter 4.04
IN GENERAL

Sections:

4.04.010 Goal.
4.04.020 Findings and purpose.
4.04.030 Fundamental rights.
4.04.040 Copies to be provided.
4.04.050 Definitions.

4.04.010 Goal. It is the goal of this title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings, easier access to public records, ethical guidelines and a watchdog commission will help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well-educated public and ethical officials are essential to good government. (Ord. 05-06 § 1).

4.04.020 Findings and purpose. The city council finds as follows:

A. The Ralph M. Brown Act states: "The people of this State do not yield their sovereignty to the agencies which serve them."

B. It is the city's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.

C. Elected city officials, commissions, boards, advisory bodies and other agencies of the city exist to conduct the people's business. This title is intended to assure that the deliberations of these bodies and the city's operations are open to the public.

D. This title is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Benicia can be fully informed and thereby retain control over the instruments of local government in their city.

E. This title is intended to list and implement fundamental rights of each member of the public. (Ord. 05-06 § 1).

4.04.030 Fundamental rights. Fundamental rights of each member of the public include, but are not limited to:

A. The right to receive meaningful, advance notice of agendas and packets of all meeting materials.

B. The right to attend, listen to and participate in all meetings without cost, signup, giving name or address or any personal information.

C. The right to speak with a meaningful amount of time on every agenda item separately, including each consent item, closed session or any report items without being required to sign up, give his/her name, or address, or any other information.

D. The right to interrupt the body for a point of order or clarification except to the extent that it becomes unduly disruptive.

E. The right to speak on any subject not on the agenda so long as the subject relates to the business of the body.

F. The right to criticize the body or members for their official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

G. The right to pull consent agenda items for public review and discussion.

H. The right to comment on every agenda item either during the public comment period on that item, under the general public comment period or in writing.

I. The right to use presentation tools when commenting.

A plaque listing these rights will be placed at the entrance of the council chambers. These rights shall be read aloud by the presiding official to the public at the start of each meeting unless the rights are posted in the meeting room. If the rights are posted, the presiding officer may state the rights are posted instead of reading them. (Ord. 05-06 § 1).

4.04.040 Copies to be provided. The office of the city attorney shall provide any person with a copy of the Brown Act or Public Records Act or this title without charge. (Ord. 05-06 § 1).

4.04.050 Definitions. The following words and phrases, whenever used in this title, shall be construed as hereafter set out unless it shall be apparent from the context that they have a different meaning. Unless defined herein, the definitions in the Ralph M. Brown Act and the California Public Records Act and related laws shall govern.

A. " Agenda packet" means the nonconfidential portion of a body's agenda-related materials. "Agenda packet" includes materials that:

1. Were distributed by the city to a majority of the members of a body prior to or at the meeting; and

2. Relate to an item on the agenda.

B. "Body" means:

1. The Benicia city council;

2. Any board, commission, task force or committee, which is established by city ordinance or by motion or resolution of the city council or created as a result of federal, state or local grants;

3. Any advisory board, commission or task force created and appointed by the mayor and approved by the city council; or

4. Any standing committee of any body specified in subsections (B)(1), (B)(2) or (B)(3) of this section.

"Body" shall not mean any congregation or gathering which consists solely of employees of the city of Benicia or consists of employees and representatives of companies providing employees' benefits including, but not limited to, retirement and health care plans.

C. "Criticize" means to provide verbal or written critical comments, regarding the official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

D. "Days" means calendar days.

E. "Department" means a department of the city of Benicia.

F. "Information request facilitator" means the person who shall assist members of the public with their public information requests. For general requests, it means the city clerk in accordance with BMC 4.20.030(D). For department-specific requests, it means the department director or designee.

G. "Interrupt" means to stand and raise one's hand and, in accordance with Robert's Rules of Order, wait for recognition by the presiding officer before speaking.

H. "Meeting".

1. "Meeting" shall mean any of the following:

a. A congregation of a majority of the members of any body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

b. Any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and

c. Any meal or social gathering of a majority of the members of a body immediately before, during, or after a meeting of a body. For the purposes of this definition, "immediately before" means the four hours prior to a meeting.

2. "Meeting" shall not include any of the following:

a. Individual contacts or conversations between a member of a body and any other person;

b. The attendance of any number of the members of a body at a conference, or at any meeting or gathering organized to address a topic of local community concern and which is open to the public; provided, that a majority of the members of a body refrains from collectively discussing, other than as part of the scheduled program, the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that body;

c. The attendance of any number of the members of any body at a purely social, recreational, educational or ceremonial occasion; provided, that a majority of the members of any body refrains from discussing any business within the subject matter jurisdiction of the body; and provided, that the gathering does not qualify as a meeting under subsection (F)(1)(c) of this section; and

d. The attendance of a majority of the members of a body at a standing committee; provided, that the members of the body who are not members of the standing committee do not participate personally or through representatives.

I. "Notice" means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in BMC 4.08.030, 4.08.050 and 4.08.060.

J. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

K. "Public official" means all elective officials and members of all official boards, commissions and committees of the city.

L. "Online" shall mean accessible by computer without charge to the user.

M. "The Public Records Act" shall mean Government Code Section 6250 et seq.

N. "Ralph M. Brown Act" shall mean Government Code Section 54950 et seq.

O. "Software or hardware failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the city has taken customary precautions.

P. "Standing committee" shall mean any number of members of a body which totals less than a quorum and which has (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of the body.

Q. "Weeknight" shall mean after 5:00 p.m. on any day of the week except for Saturday or Sunday. (Ord. 07-22 § 1; Ord. 06-11 § 1; Ord. 05-06 § 1).

Chapter 4.08
PUBLIC ACCESS TO MEETINGS

Sections:

4.08.010 Meetings to be open and public – Application of Brown Act.
4.08.020 Conduct of meetings for public agencies covered by this title.
4.08.030 Notice requirement – Emergency meeting.
4.08.040 Conduct of business – Time and place for meeting.
4.08.050 Notice and agenda requirements – Regular meetings.
4.08.060 Notice and agenda requirement – Special meetings.
4.08.070 Agenda packets as public records – Agenda subscribers.
4.08.080 Barriers to attendance prohibited.
4.08.090 Public testimony at regular and special meetings.
4.08.100 Minutes and recordings.
4.08.110 Public comment by members of bodies.
4.08.120 Agenda descriptions and oral disclosures.
4.08.130 Statement of reasons for closed sessions.
4.08.140 Conduct of closed session.
4.08.150 Disclosure of closed session discussions and actions.
4.08.160 Ex-parte communications.

4.08.010 Meetings to be open and public – Application of Brown Act. All meetings of bodies defined in BMC 4.04.050 shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.) unless greater public access is required by this chapter, in which case this chapter shall be applicable. (Ord. 05-06 § 1).

4.08.020 Conduct of meetings for public agencies covered by this title. To the extent not inconsistent with state or federal law, a body may require, as a condition of any express delegation of power to any public agency, including joint powers authorities, whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency at which an item concerning or subject to the delegated power is discussed or considered shall be conducted pursuant to the Ralph M. Brown Act. (Ord. 05-06 § 1).

4.08.030 Notice requirement – Emergency meeting. Emergency meetings shall be held in accordance with Government Code Section 54956.5 which states:

(a) For purposes of this Section, "emergency situation" means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this Section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b) (1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this Section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this Section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this Section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this Section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Ord. 05-06 § 1).

4.08.040 Conduct of business – Time and place for meeting.

A. Unless proscribed by council ordinance, every body established by city council ordinance shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible bodies shall

conduct their regular meetings on weeknights except when the body determines that the subject matter would be more appropriately discussed at another time.

B. Regular and special meetings of every body shall be held within the city of Benicia except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the body is a party;

2. Inspect real or personal property which cannot be conveniently brought to Benicia; provided, that the topic of the meeting is limited to items directly related to the real or personal property;

3. Participate in meetings or discussions of multi-agency significance that are outside Benicia. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by all participating agencies. Agencies include local agencies such as school districts, counties, cities or other public agencies as specified in the Brown Act; or

4. Meet outside the city of Benicia with elected or appointed officials of the United States or the state of California or counties.

C. If a meeting is held outside of the city, the location of the meeting shall be posted in the city.

D. If a regular meeting for any body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least six days in advance.

E. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding official of the body or his or her designee. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

F. If a quorum of a body becomes present at a meeting of a standing or ad hoc committee of said body, the body may not take action at the meeting of the committee unless the meeting has been properly noticed as a meeting of the body itself. The standing or ad hoc committee of a body may take action at the meeting consistent with the committee's jurisdiction and authority.

G. Every body shall ensure that video screens or presentation boards are reasonably viewable by both the body and the public.

H. To ensure business is conducted in the open, bodies should avoid taking breaks during discussion of a particular agenda item. If a break is needed or if the item is continued to a future meeting, each member of the body shall disclose orally on the public record the general nature of any conversations during the break or continuance pertaining to the item.

I. Unless proscribed by council ordinance, each body established by ordinance shall establish and publish an annual schedule of regular meetings. (Ord. 07-02 § 1; Ord. 06-11 § 2; Ord. 05-06 § 1).

4.08.050 Notice and agenda requirements – Regular meetings.

A. Six-Day Advance Notice Requirement for Regular Meetings of Bodies. The city council, and any body defined in BMC 4.04.050, shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public 24 hours a day no later than six days before the date of the meeting;

2. Filing a copy of the agenda and a complete agenda packet with the office of the city clerk and the Benicia Public Library no later than five days before the date of the meeting; and

3. Posting a copy of the agenda online at the city's web site no later than six days before the date of the meeting. Notwithstanding this subsection, the failure to timely post a copy of the agenda because of software or hardware failure, as defined, shall not constitute a defect in the notice for a regular meeting, if the body complies with all other posting and noticing requirements.

B. Supplemental Agenda and Related Materials Requirements for Regular Meetings of Bodies. Notwithstanding the notice provisions of subsection (A) of this section, a body may amend or supplement a posted agenda or agenda-related materials no later than 72 hours before a regular meeting and only for the following reasons or under the following conditions. Prior to amending or supplementing the posted agenda or agenda-related materials, the presiding officer shall state for the record what supplemental material is under consideration and/or how the agenda is proposed to be amended. Agendas or agenda-related materials may only be amended or supplemented:

1. To add an item due to an emergency or urgency, provided the body makes the same findings as required by subsection (D) of this section before taking action;

2. To delete or withdraw any item from a posted agenda;

3. To provide additional information to supplement the agenda-related material previously filed with the office of the city clerk; provided, that the additional information was not known to staff;

4. To correct technical, nonsubstantive errors or omissions, or to change a stated financial amount that decreases the body's obligation under a proposed agreement, or to clarify the agenda title in a manner that does not substantively change the nature of the action to be taken on the agenda item;

5. To consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the city council; provided, that the item has not been materially changed by the committee or materially changed after the committee considered the item; or

6. To continue an agendized item to the next regular meeting of the body so long as members of the public are given an opportunity to address the body on the item at the meeting from which the item is continued.

If substantial supplemental information is received from the applicant or a member of the public, the body shall either (1) automatically continue the item to the next regular meeting or a special meeting, or (2) decide that there was adequate notice to allow consideration of the additional information.

C. Excuse of Open Government Notice Requirements. If an item appears on an agenda but the body fails to meet any of the additional notice requirements under this section, the body may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and

2. The body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

b. There is a need to take immediate action which relates to federal or state legislation or the body's eligibility for any grant or gift; or

c. The item relates to a purely ceremonial or commendatory action.

D. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (C) of this section, a body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the body that work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or

2. The matter is urgent. Upon a determination by a two-thirds vote of those present, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action which came to the attention of the body after the agenda was posted; that there was adequate public notification considering the subject matter to be considered; and that the need to take immediate action:

a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

b. Relates to federal or state legislation; or

c. Relates to a purely ceremonial or commendatory action.

E. Nothing in this section shall prohibit a body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to subsection (D) of this section before or during a meeting.

F. Nothing in this section shall prohibit the office of the city attorney from conforming a document to comply with technical requirements as to form and legality. (Ord. 07-03 § 1; Ord. 05-06 § 1).

4.08.060 Notice and agenda requirement – Special meetings.

A. If the presiding official or senior staff member to the body finds that waiting for the next available regular meeting of the body would make it impossible to take meaningful action or the regular meeting will be cancelled due

to a lack of quorum or a city holiday, a special meeting of any body may be called at any time by the presiding official thereof or by the senior staff member to the body. All bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least 72 hours (excluding Saturday, Sunday and holidays) before the time of the meeting set forth in the agenda. The posting time for a special meeting due to the body's regular meeting falling on a holiday shall be six days;

2. Filing a copy of the agenda and copies of all agenda-related material in the office of the city clerk at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda; and

3. Delivering a copy of the agenda to each member of the body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 24 hours before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Bodies specified in BMC 4.04.050 shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting online at the city's web site at least 72 hours before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware failure, as defined, shall not constitute a defect in the notice for a special meeting if the body complies with all other posting and noticing requirements.

C. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the body except that the body may designate an alternative meeting location; provided, that such alternative location is specified in the agenda.

D. To the extent practicable, the presiding official or the majority of members of any body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

E. Special meetings may not be scheduled on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting. (Ord. 05-06 § 1).

4.08.070 Agenda packets as public records – Agenda subscribers.

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code Section 6250 et seq.) and this title, every body specified in BMC 4.04.050 shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. All agendas shall be posted on the city's web site and the city's cable channel and available at the Benicia Public Library. Complete agenda

packets for each body shall be posted on the city's web site to the extent fiscally and technologically feasible and shall be available for review at the Benicia Public Library and at the city manager's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.

B. All agendas of every body shall be available to the public by an email subscription. Such service shall be provided free of charge and shall be provided to the subscriber until the request for the service is cancelled by the subscriber or the email address is no longer valid. The email shall be sent at the time of the posting of the agenda for the meeting. The city clerk shall establish the email subscribers list for the city council agendas. The secretary to other bodies shall establish and maintain the email subscribers list for the respective bodies.

C. Paper copies of the agenda and agenda packet shall be available to members of the public for every body upon payment of the fee established by city council resolution. Every body shall establish a subscription list for the agenda and/or agenda packet so that members of the public may subscribe to the agenda and/or agenda packet upon payment of the fee established by the city council. The fee shall not exceed the direct costs of copying the agenda and agenda packet and the reasonable mailing costs of the agenda and agenda packet. In order to enhance public participation and involvement, the fees for the agenda subscription shall be waived for anyone who reports on city government and makes the reports available to members of the public. Subscriptions for the agenda and/or agenda packet shall be valid for one year. The city clerk or the secretary to other bodies shall send the subscriber a note to resubscribe and pay the subscription fee with the last agenda and/or agenda packet that is mailed to a subscriber.

D. Every body shall make available for immediate public inspection and copying the agenda packet that has been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this title or under state or federal law. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that Act or this title.

E. All requests by agenda subscribers to receive agendas or agenda-related materials may be made by mail, telephone or email to the office of the city clerk or city manager's office. The city clerk shall maintain a list of all bodies and shall immediately forward a copy of the written request to the appropriate body to ensure compliance with the request.

F. Notwithstanding any other provision of this title, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the body taken at the meeting for which the agenda or the agenda-related material was not timely received. (Ord. 05-06 § 1).

4.08.080 Barriers to attendance prohibited.

A. No body specified in this title shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system or television shall be used to the extent technologically and fiscally reasonable to permit the overflow audience to listen to the proceedings.

B. Any person attending an open meeting of a body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings. (Ord. 06-11 § 3; Ord. 05-06 § 1).

4.08.090 Public testimony at regular and special meetings.

A. Every agenda for every regular or special meeting shall provide a public comment section on the agenda as an opportunity for members of the public or for members of the body to directly address a body on items of interest to the public that are within the body's subject matter jurisdiction; provided, that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2 and BMC 4.08.050(D). Except as provided in subsection (C) of this section, speakers shall limit their comments during the public comment section of the agenda to nonagendized items.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have 15 minutes to present their case. The spokesperson for the proponent(s) shall have five minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.

C. At the presiding official's discretion, the official may grant up to 10 minutes to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the body's consideration of those items. Such comments shall be made under the public comment part of the agenda.

D. Every body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. Except as otherwise provided by this section, it shall be the policy of the city that all speakers are entitled to up to five minutes of speaking time per agenda item.

E. Members of the public who speak on an agenda item or under public comment do not have to give their name or address should they choose not to.

F. Written material submitted by members of the public shall be retained as part of the official agenda file and available for review by other members of the public in accordance with Chapter 4.12 BMC.

G. No body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law. (Ord. 07-04 § 1; Ord. 06-04 § 1; Ord. 05-06 § 1).

4.08.100 Minutes and recordings.

A. All bodies shall record the minutes for each regular and special meeting convened under the provisions of this chapter. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the body began and ended any closed session, any letters submitted on agenda items, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

B. Every body specified in BMC 4.04.050 and established by city ordinance shall make an audio and where possible economically and technically a visual recording of every open regular meeting. Other bodies shall audiotape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying. For the city council and bodies established by ordinance, the recording shall not be erased, deleted or destroyed for at least four years. For all other bodies, the recording shall not be erased, deleted or destroyed for at least two years. If, during the four- or two-year period, a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the body. (Ord. 05-06 § 1).

4.08.110 Public comment by members of bodies. Every member of a body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the body of which he or she is a member. Bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those

judgments or opinions pertaining to the disclosure or nondisclosure of discussions or actions taken in closed session. However, the release of specific factual information made confidential by state or federal law including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this title, may constitute grounds for censure or for an action for injunctive or declaratory relief by the body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law. (Ord. 05-06 § 1).

4.08.120 Agenda descriptions and oral disclosures.

A. Agendas for meetings shall provide a brief description of the item under consideration. To the extent appropriate, information that should be described includes the following: the commonly used name and location of the property under consideration; names of proposed appointees, contractors or parties to an agreement; and the general nature of the action(s) under consideration. The use of acronyms, jargon and "double speak" should be avoided.

B. Closed session descriptions shall comply with the permissive provisions of Government Code Section 54954.5 in describing items for closed session.

C. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

D. Any action taken on items that are not described in accordance with this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1. (Ord. 05-06 § 1).

4.08.130 Statement of reasons for closed sessions.

A. Prior to adjourning to any closed session, a body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of a closed session item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B) or a court orders disclosure.

D. Nothing in this section shall require or authorize a disclosure of information that is confidential under law. (Ord. 06-11 § 4; Ord. 05-06 § 1).

4.08.140 Conduct of closed session.

A. A body shall consider in closed session only those matters specified in the statement required in BMC 4.08.130.

B. The following provisions of the Brown Act apply to the conduct of closed session by bodies and are hereby incorporated by reference as though fully set forth herein: Government Code Sections 54956.8; 54956.9; 54956.95; 54957; and 54957.6.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B). (Ord. 05-06 § 1).

4.08.150 Disclosure of closed session discussions and actions.

A. In accordance with Government Code Section 54963 and as provided below, a person present at a closed session may not disclose confidential information received.

B. In addition to the required disclosures pursuant to Government Code Section 54957.1 and subsection (C) of this section, the body may, by motion and vote in open session, elect to disclose any other information obtained in closed session which a majority of the members of the body deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding official or such other person present in the closed session, designated to convey the information.

C. Immediately following the closed session a body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real Property Negotiations. Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon after the other party or its agent has informed the body of its action upon (a) inquiry by any person, and (b) in any event, at the next meeting of said body. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the conditions have been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation. Direction or approval given to the body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after

an adverse party has been served in the matter if immediate disclosure of the body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement. If a body accepts a settlement offer signed by an opposing party, the body shall report its vote of approval and identify the substance of the agreement. If final approval rests with another part or with the court, the body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.

D. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

E. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting.

F. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in subsection (C) of this section at such time as disclosure is required. (Ord. 05-06 § 1).

4.08.160 Ex-parte communications. While it is the city's policy to encourage communications between the public and officials, the city recognizes that Constitutional due process protections may limit communications with council members or board or commission members outside of a public meeting. Therefore, the city's policy on ex-parte communications discourages officials from discussing appeals or enforcement matters with members of the public except during the body's formal consideration of the matters. These matters should not be discussed during site inspections or field trips that are not part of an agendized meeting. If such discussions take place, officials must publicly disclose at the start of the agendized presentation of the item, the substance of any such discussions they have had with anyone other than another member of

the body or staff member. This policy applies to any appeal or enforcement matter which is pending, or is reasonably expected to come before the body on which the official sits. (Ord. 05-06 § 1).

Chapter 4.12
PUBLIC INFORMATION

Sections:

4.12.010 Release of documentary public information.
4.12.020 Release of oral public information.
4.12.030 Public review file – Policy body communications.
4.12.040 Non-exempt public information.
4.12.050 Disclosure requests.
4.12.060 Immediate disclosure request.
4.12.070 Withholding restrictions.
4.12.080 Justification for withholding.
4.12.090 Fees for copying.
4.12.100 Web site information.
4.12.110 Requests made by email.
4.12.120 Policy regarding purchase and use of computer systems.

4.12.010 Release of documentary public information. Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 05-06 § 1).

4.12.020 Release of oral public information. Release of oral public information shall be accomplished as follows:

A. Every department director shall be responsible for being knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The department will make every effort to facilitate the information requested and will make it a top priority.

B. It shall be the duty of the department director (or designee) or, in the case of requests not directed to a specific department, the city clerk to provide information on a timely and responsive basis to the public. It shall also be their duty to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees and city board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the city, department, board, commission or committee and does not materially misrepresent the city, department, board, commission or committee's position. Nothing in this section shall be construed to

provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. (Ord. 05-06 § 1).

4.12.030 Public review file – Policy body communications. Every body specified in BMC 4.04.050 shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous 30 days or is scheduled or requested to be placed on the agenda within the next 30 days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file; provided, that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review. (Ord. 05-06 § 1).

4.12.040 Non-exempt public information. Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

a. Sex, age and ethnic group;

b. Years of graduate and undergraduate study, degree(s) and major or discipline;

c. Years of employment in the private and/or public sector;

d. Whether currently employed in the same position for another public agency;

e. Other non-identifying particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.

2. The job description of every employment classification.

3. The resumes of employees, although personal information such as home address shall be deleted.

4. Any adopted memorandum of understanding between the city and a recognized employee organization.

D. Law Enforcement Information.

1. The Benicia police department shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law such as the TNG Order, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. The final decision for disclosure shall be made by the city council and the vote and reasoning of each city council member shall be made public on all nondisclosures. Such redacted information may include:

a. The names of juvenile witnesses or suspects;

b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;

c. The identity of a confidential source;

d. Secret investigative techniques or procedures;

e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or

f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.

2. The Benicia police department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, including any of their respective agencies, departments, programs, projects or other categories, which have been submitted to a majority of the members of the city council, or their standing committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

G. Email correspondence retained in the ordinary course of business and not exempt from disclosure shall be made available within three working days upon written or oral request. All such email shall be maintained for two years before being destroyed. (Ord. 05-06 § 1).

4.12.050 Disclosure requests.

A. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than five business days unless the requestor is advised in writing within one business day that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;

2. The requested records are in the possession of the department processing the request;

3. The requested records are stored in a location outside of the department;

4. The requested records likely comprise a voluminous amount of separate and distinct writings;

5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

B. All determinations made pursuant to subsections (A)(1) through (A)(5) of this section shall be communicated in writing to the requestor within five business days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than 10 business days after the written determination pursuant to subsections (A)(1) through (A)(5) of this section is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. The written request

shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state a number by which the requestor may be contacted.

C. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but shall be advised that providing such information may help the city assist the person finding all documents responsive to their request.

D. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection (A) of this section shall be sent to the requestor if an address has been provided. (Ord. 05-06 § 1).

4.12.060 Immediate disclosure request.

A. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, within the past calendar year, or (2) public records such as statements of economic interests that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

B. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records pursuant to an immediate disclosure request that is submitted to any department or to any body shall be satisfied at the earlier of the time required by other law or no later than two business days unless the requestor is advised in writing within two business days that additional time is needed because of the volume of records sought or because the records do not qualify as subject to the immediate disclosure request procedure.

C. All determinations made pursuant to subsection (B) of this section shall be communicated in writing to the requestor within two business days of the date of the request. If additional time is needed or if the records do not qualify for an immediate disclosure request, the request shall be processed in accordance with BMC 4.12.050. (Ord. 05-06 § 1).

4.12.070 Withholding restrictions.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law.

B. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review. (Ord. 05-06 § 1).

4.12.080 Justification for withholding. Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

D. The final decision for withholding information shall be made by the city council. The matter shall be scheduled for action at the next regularly scheduled city council meeting unless such meeting is more than 30 days from the date of the request for action by the council. In the event that the next regular meeting is more than 30 days away, a special meeting shall be called. If the council decides records should be disclosed, the records shall be disclosed not later than 5:00 p.m. of the next business day following the council meeting unless the council specifies some other time. Each council member's vote and general reason shall be given and recorded in public. Detailed reasons need not be provided when such disclosure would compromise privacy or confidential matters or would subject the city to litigation. (Ord. 07-05 § 1; Ord. 05-06 § 1).

4.12.090 Fees for copying.

A. No fee shall be charged for making public records available for inspection.

B. No fee shall be charged for a single copy of a current meeting agenda.

C. A fee may be charged for:

1. Single or multiple copies of past meeting agendas or any agenda-related materials;
2. Multiple copies of a current meeting agenda; and
3. Any other public record copied in response to a specific request.

D. The city may, rather than making copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.

E. All drafts or final environmental impact reports and environmental impact statements shall be posted either on the city's web site or on the consultant's web site.

F. In addition to the copies routinely required for city official or staff use, the city shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to 20 copies of documents such as environmental impact reports. These copies will be provided on a first-come, first-serve basis at no cost to members of the public. The city manager or designee shall determine if and how many extra copies will be required on a case by case basis.

G. All fees permitted under this section shall be determined and specified in the city of Benicia master fee schedule, as amended. When the cost of writing a receipt and collecting the fees required under this section would exceed the cost of the copies, the copying fee shall be waived. The master fee schedule shall note the maximum amount that may be waived.

H. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with state law. (Ord. 06-11 § 5; Ord. 05-06 § 1).

4.12.100 Web site information. Each department shall make an effort to ensure its portion of the city's web site is kept current. Each department shall also post public documents that are of interest to a wide number of the public. (Ord. 05-06 § 1).

4.12.110 Requests made by email. To ensure that email requests are received, records requests made by email shall not be effective until acknowledged by a return email of the city. Immediately upon receipt of an email request for records, the employee shall promptly acknowledge the request by a return email. Departments may establish a designated staff member or designated email address to receive email records requests. (Ord. 05-06 § 1).

4.12.120 Policy regarding purchase and use of computer systems.

A. It is the policy of the city to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.

B. Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

1. Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.

2. Implementing a system that permits paper reproduction of electronic copies of records.

C. Nothing in this section shall be interpreted to require the city to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records. (Ord. 05-06 § 1).

Chapter 4.16
ETHICS

Sections:

4.16.010 Policy.
4.16.020 Responsibilities of public office and employment.
4.16.030 Declaration of open government awareness.
4.16.040 Dedicated service.
4.16.050 Fair and equal treatment.
4.16.060 Use of public property.
4.16.070 Obligations to citizens.
4.16.080 Conflict of interest.
4.16.090 Disclosure of conflict of interest.
4.16.100 Representation before bodies.
4.16.110 Gifts.

4.16.010 Policy. The proper operation of city government requires that: (1) public officials and employees be independent, impartial and responsible to the people; (2) government decisions and policy be made using the proper channels of government; and (3) that public office or employment not be used for personal gain. (Ord. 05-06 § 1).

4.16.020 Responsibilities of public office and employment. Public officials and employees are bound to uphold and carry out the Constitution of the United States, the Constitution of the state of California, and the law and regulations of the city. Public officials and employees shall observe in their official acts the highest ethical standards and discharge faithfully the duties of their offices or employment regardless of personal considerations. Public officials and employees shall recognize that the public interests must be their primary concern; that they fulfill the public trust invested in them by their conduct; and that conduct in their official affairs should be above reproach. (Ord. 05-06 § 1).

4.16.030 Declaration of open government awareness. All employees who are required to fill out conflict of interest forms pursuant to the Political Reform Act and the city's conflict of interest code and all public officials shall sign an annual statement stating that they have read the rest of this title, Open Government, and have attended or will attend when next offered, a training session on open government, to be held at least once annually. The statements shall be maintained by the city clerk's office and shall be available as public record. Annual training shall also be provided to city employees who regularly respond to requests for information by the public. All such trainings will be conducted by the city attorney's office with the assistance of the open government commission. (Ord. 07-23 § 1; Ord. 05-06 § 1).

4.16.040 Dedicated service. Public officials and employees shall not exceed their authority or breach the law or ask others to do so. Public officials and employees shall work in full cooperation with other public officials and employees unless prohibited from doing so by laws or regulations including, but not limited to, attorney-client privilege, privacy or confidentiality laws. (Ord. 05-06 § 1).

4.16.050 Fair and equal treatment. Except in the case of moving an agenda item up on a particular agenda, preferential consideration of the request or petition of an individual person, group, business or entity shall not be given. No person, group, business or entity shall receive special advantages beyond that which are available to any other person, group, business or entity. (Ord. 05-06 § 1).

4.16.060 Use of public property. No public official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such property is available to the public generally or when such use is incidental as provided by city policy including city manager administrative instructions. No public official or employee shall use the time of any city employee, while said employee is on duty, for personal convenience or profit. (Ord. 05-06 § 1).

4.16.070 Obligations to citizens. No public official or employee shall use their official position to grant, or assist in granting, any special (whether negative or positive) consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen in the same circumstances. (Ord. 05-06 § 1).

4.16.080 Conflict of interest.

A. Incorporation of the California Political Reform Act. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the public official or employee knows or has reason to know he or she has a disqualifying conflict of interest within the meaning of California Government Code Section 87100 et seq., and any subsequent amendments to those sections. Members of advisory bodies not subject to the Political Reform Act may make, participate in making, or in any way use or attempt to use their official positions to influence decisions on matters within the purview of their body. In the interest of open government, members of all bodies are encouraged to disclose economic interests that are not conflicts under the Political Reform Act.

B. Incorporation of Government Code Section 1090 Et Seq. No public official or employee shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to those sections.

C. Future Employment. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a decision of the city, affecting a person or entity with whom the public official or employee is discussing or negotiating an agreement

concerning said public official or employee's future employment. This prohibition shall be for a period of one year from the beginning of the discussion or negotiation or completion of the negotiation on future employment.

D. Incompatible Activity or Employment. Public officials and employees shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with their assigned duties as a public official or employee. (Ord. 07-06 § 1; Ord. 05-06 § 1).

4.16.090 Disclosure of conflict of interest.

A. Public officials and employees shall disclose on the public record any personal, professional or business relationships with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the official or employee where, as a result of the relationship, the ability of the official or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the city official or the employee's department, shall constitute the public record.

B. Penalties. A court may void any governmental decision made by a public official or employee who fails to disclose a relationship as required by subsection (A) of this section if the court determines that the failure to disclose was willful.

C. Regulations. The open government commission may recommend regulations for adoption by the city council setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this section. (Ord. 05-06 § 1).

4.16.100 Representation before bodies. No public official on a decision making body shall represent a client, a person or group before the board, commission, committee or the city council on which the public official presently sits. (Ord. 05-06 § 1).

4.16.110 Gifts. In conformance with the gift limits imposed by California Government Code Section 89503 and any subsequent amendments to that section, no official or employee of the city shall accept any gift, reward, service or gratuity of any kind in excess of the amount set forth pursuant to the Political Reform Act per single source as defined by the Political Reform Act regulations in a calendar year by reason of their employment or office. The provisions of Government Code Section 89503 and the related regulations shall be used to interpret the provisions of this section. (Ord. 07-24 § 1; Ord. 06-11 § 6; Ord. 05-06 § 1).

Chapter 4.20
OPEN GOVERNMENT COMMISSION

Sections:

4.20.010 Open government commission.
4.20.020 Administrative review and appeal process.
4.20.030 Responsibility for administration.
4.20.040 Enforcement of ethics chapter.

4.20.010 Open government commission.

A. Duties. In the implementation of this title, the commission shall:

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this title with a priority on simple, standard procedures.

2. Assist in citywide training for implementing the title.

3. Develop and maintain an administrative process for review and enforcement of this title.

4. Propose amendments to the city council of this title as needed.

5. Report to the city council on any practical or policy problems encountered in the administration of this title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, and familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible. The first appointment shall be for one year. The second appointment shall be for two years. The third appointment shall be for three years. All subsequent appointments shall be for four years. A commissioner may serve two full four-year terms on the commission.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this title. (Ord. 05-06 § 1).

4.20.020 Administrative review and appeal process.

A. An administrative review and appeal process is hereby established to review whether a meeting was held in violation of this title or records were withheld in violation of this title. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act. Further, such administrative review process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor.

B. Such review process shall include an:

1. Appeal to the city manager who shall make a decision within seven days of the appeal. (This step shall not apply in cases involving the city manager or members of the city council.)

2. Appeal of the city manager's decision to either the commission or a three-member panel of city attorneys, at the option of the person appealing the decision. The commission or three-member panel of city attorneys, as the case may be, shall first review the matter to determine if they have jurisdiction over the matter. If the complaint involves allegations that meetings were held in violation of this title or records were withheld in violation of this title, then they have jurisdiction to hear the matter and may hear the matter in accordance with the procedures established by resolution of the open government commission. The decision on jurisdiction is final unless judicial review is initiated.

3. If the commission or a three-member panel of city attorneys reviews whether a meeting was in violation of this title or records were withheld in violation of this title, their decision may be appealed to the city council. The decision of the city council is final.

C. Enforcement.

1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (B) of this section, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this title.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a body has violated this title. The costs and fees shall be paid by the body and shall not become a personal liability of any public official or employee of the body.

3. If the litigation is judged to be frivolous by the court, the defendant body may assert its right to be paid reasonable court costs and attorneys' fees.

D. Mediation. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any body, agency or department may demand immediate mediation of his or her request with the Solano County courts mediation service or some mutually agreed-upon person who agrees to volunteer his or her time serving as mediator.

E. Cure and Correction.

1. Nothing in this title shall prevent a body from curing or correcting an action challenged on grounds that a body violated any material provision of Chapter 4.08 BMC. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the commission, upon the conclusion of a formal hearing conducted pursuant to its administrative review process, determines that

a body violated any material provision of this title, the body shall agendize for the challenged action to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) – (4), inclusive.

F. Reports or Recommendations from Meetings Alleged to Have Been Held in Violation of This Title. If the sole purpose or nature of an action that is challenged for violation of this title is to make or convey an advisory report or recommendation to another body, such body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said body to hear or take action on the item in the absence of such report or recommendation.

G. Penalties. The penalty for violation of this title by an elected or appointed official shall be commensurate with the violation and may include penalties, such as censure, including findings of fact and a determination, which shall be given to media selected by the commission.

H. Limitation of Actions. No person may file a complaint with the commission alleging violation of the notice provisions of BMC 4.08.050 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken. (Ord. 07-08 § 1; Ord. 05-06 § 1).

4.20.030 Responsibility for administration.

A. The city manager shall administer and coordinate the implementation of the provisions of this title for all bodies, agencies and departments under his or her authority, responsibility or control.

B. The city attorney shall staff, or provide staff for, the commission to permit the commission to fulfill the functions and duties set forth herein. The city attorney shall provide the commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

D. The city clerk or designee shall act as information request facilitator to assist members of the public with acquiring the information they seek. If it will take longer than 48 hours (excluding Saturdays, Sundays, and holidays) to obtain the information requested by a member of the public then the city clerk will provide a written concise explanation of how and when the information will be made available. (Ord. 05-06 § 1).

4.20.040 Enforcement of ethics chapter. The city council, and not the open government commission, shall be the enforcement body for alleged violations of Chapter 4.16 BMC. This process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor. In the event of an allegation of a violation of the ethics provisions of this title, the matter shall first be referred to the city attorney

for a determination as to whether there is a substantial likelihood that an ethics violation occurred. If substantial cause exists, the city council shall use the administrative process set forth above to resolve the matter except the option of referral to the commission in BMC 4.20.020(A)(2) shall be omitted. In the case of an allegation of an ethics violation committed by an elected official, the process shall proceed directly to the city council for a determination. (Ord. 05-06 § 1).

OPEN GOVERNMENT TIPS

OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

DISCLOSE EX PARTE COMMUNICATIONS

BACKGROUND: In *quasi-judicial* matters, when the Council, Planning Commission, Historic Preservation Review Commission, Civil Service Commission or other Board or Commission is deciding the facts of a particular case applicable to a specific piece of property, an abatement matter, a use permit or variance, personnel appeals, license revocations, or an appeal of a lower level decision, it is extremely important for members of the decision-making body to refrain from contacting either party to the dispute or their attorneys. These types of ex parte (outside of the record) contacts can give rise to legal attack against the City for violation of due process rights. You are supposed to make your decision based solely on evidence produced at the hearing. If you have received evidence outside of the hearing, and the substance of that contact was not disclosed at the commencement of the hearing so as to give all parties an opportunity to respond and contest it, a court may find that the City's hearing violated the Constitutional due process rights of either party, thus subjecting the City to liability.[1] This policy applies to any *quasi-judicial* matter which is pending, or is reasonably expected to come, before the body on which the official sits.[2]

BEST PRACTICE – NO EX PARTE COMMUNICATIONS: In matters involving *quasi-judicial* decisions, particularly where the matter is controversial and being contested, and in any enforcement action or appeal of a prior decision, the best practice is for you to avoid all ex parte communications about the item. In these types of contested cases, you should refrain from contacting the parties or their attorneys, or getting involved in the dispute prior to the hearing, so as to preserve your ability to make your decision based solely on the evidence produced at the hearing.

DISCLOSURE OF EX PARTE COMMUNICATIONS: If you do get involved in an ex parte discussion, you must publicly disclose the substance of any such discussion at the start of the agendized presentation of the item. However, it is not enough just to indicate that you spoke to a party, such as the applicant, or to the neighbors who are contesting the application or project. To ensure due process, you need to disclose what was learned during the conversation so that all parties have an opportunity to respond.[3]

SITE VISITS: These types of matters should not be discussed during site inspections or field trips that are not part of an agendized meeting. Although individual site visits are allowed and encouraged, they should be disclosed so that your specific observations can be made part of the record.

LEGISLATIVE ACTS: In *legislative* actions, generally applicable to the city as a whole (such as most ordinances), not only is it appropriate to speak and receive information from your constituents, but that is part of your duties as elected and appointed officials. For Open Government purposes, it is suggested that you disclose the information you received outside of the hearing. This is because if the information is important for your decisionmaking process, it may also be important for the other decision makers to hear and consider.

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[1] The concern regarding ex parte contacts only applies to *quasi-judicial* actions, where the decision making body is acting like a court.

[2] See also Benicia Municipal Code Section 4.08.160.

[3] Any questions or concerns regarding ex parte communications and what should be disclosed on the record should be discussed prior to the meeting with the City Attorney.

OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

HOW TO MAKE A MOTION

Background: In a public meeting, it is important for the public to understand what action is taken by the decision making body. It is not always easy to follow what action a public body is proposing if a motion is made that does not specify with sufficient detail the item and the actual action that is being proposed. This handout is designed to assist the public official in calling for action on both simple and complex items.

Simple Items With Little Or No Discussion: For certain items on the agenda, very little if any discussion is needed. Approval of the consent calendar is an example. If the mayor or chair asks for a motion to approve the consent calendar, an individual need merely to respond "so moved"[1] or "I move to approve the consent calendar." This approach may be used for other actions by inserting the identity of the item to be approved.

More Complex Items With Discussion: For items involving a detailed staff report, complex issues, controversy or a great deal of public discussion, it is important for any motion to clearly identify what action is being proposed by the decision making body and the identity of the project or item. This eliminates confusion and allows anyone entering the meeting (or turning on the television) to understand what item is being discussed and the action that is being proposed. It also creates a clean record for the decision making body.

Staff reports generally include a "*recommendation*" section that can be read as an actual motion if this is the action that the decision making body wishes to follow. However, any deviation from the recommendation or changes in the conditions of approval must be cited. For example, a motion to approve a conditional use permit might be made as follows:

> "I move to approve a conditional use permit for Good Grub Restaurant located at 360 Main Street to permit outdoor eating subject to the findings and conditions in the attached resolution, with the one change in condition #6 that the bar area must be closed at midnight."

The illustrated motion contains the action, the description and location of the project, cites the resolution and the findings and conditions of approval, as well as a proposed change in one of the conditions of approval.

A decision not to follow a staff recommendation should include findings of fact to support the decision. For example, such a motion contrary to the one made above would be:

> "I move to reject the application for a conditional use permit for outdoor eating to Good Grub Restaurant located at 360 Main Street based on the fact there are residential neighbors on two sides of the restaurant that are currently experiencing noise and other problems from the restaurant that would only increase if outdoor dining were permitted."

If this motion were passed, staff would have sufficient information to prepare a resolution rejecting the application for a conditional use permit based on actual findings.

During a meeting, the City Attorney (or staff advisor if there is no City Attorney staffing the meeting) can assist in properly framing a motion if there is any question as to how an action should be proposed.

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[1] This is because the motion requested has already been articulated.

CODE OF CONDUCT

City of Benicia
Code of Conduct for Members of
City Council, Boards, Commissions and Committees

Preamble

The residents and businesses of Benicia are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of democratic government therefore requires that:

- Public officials, both elected and appointed, comply with both the letter and spirit of the laws and politics affecting the operations of government;
- Public officials be independent, impartial and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Benicia City Council has adopted a Code of Conduct for members[1] of the City Council and the City's commissions to assure public confidence in the integrity of local government and its effective and fair operation.

This Code of Conduct describes the manner in which Council Members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Benicia.

The constant and consistent theme through the conduct guidelines is "respect." Council Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. These guidelines help guide Council Members to do the right thing in even the most difficult situations.

It is also recognized that Council Members have the duty to conduct City affairs in a business-like manner, assuring timely consideration of matters before them and thoughtful expeditious decision-making. These guidelines incorporating best practices among city governments can help guide Council Members to contribute to this end.

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[1] For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "Council Member" or "member" refers to any member of the Benicia City Council or any of the City's boards, commissions or committees established by the City Council.

City of Benicia Code of Conduct

1. **Acts in the Public Interest**
   Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Benicia and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council and the City's commissions[2].

2. **Comply with the Law**
   Members shall comply with the laws of the federal government, the State of California and the City of Benicia in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the City Municipal Code, laws pertaining to conflict of interest, elections campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances, resolutions and policies. Members shall not solicit political support from City Staff (financial contributions, display of signs, name on support list, etc.).

3. **Conduct of Members**
   The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council and commissions, the staff or the public.

4. **Respect for Process**
   Members shall perform their duties in accordance with the processes and rules of order established by the City Council and commissions governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the City Council by City staff.

5. **Conduct at Public Meetings**
   Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the Chair in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Members shall avoid debate and argument with the public. Members shall not engage in personal attacks of any kind under any circumstance.

6. **Decisions Based on Merit**
   Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

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[2] For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "commissions" refers to any of the City's commissions, boards or committees established by the City Council.

7. **Communication**
Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commission, which they may have received from sources outside of the public decision-making process.

8. **Conflict of Interest**
In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest.

9. **Gifts and Favors**
Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.

10. **Confidential Information**
Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

11. **Use of Public Resources**
Members shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

12. **Representation of Private Interests**
In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Council or any commissions or proceedings of the City, nor shall members of commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. **Advocacy**
Members shall represent the official policies of positions of the City Council or commissions to the best of their ability when designated as delegates. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Benicia, nor will they allow the inference that they do.

14. **Policy Role of Members**
Members shall respect and adhere to the council-manager structure of city government as provided by state law and City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, commissions, and City Staff.

Members therefore shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of staff to implement Council policy decisions. Members should refrain from:

- Disrupting staff from the conduct of their jobs
- Involvement in administrative functions
- Attending staff meetings unless requested by staff

15. Independence of Boards and Commissions

Because of the value of the independent advice of commissions to the public decision-making process, members of Council shall refrain from using their position to influence the deliberations or outcomes of commission proceedings.

16. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for City employees and for residents and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

17. Implementation & Enforcement

As an expression of the standards of conduct for members expected by the City, this Code of Conduct is intended to be self-enforcing. It, therefore, becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientation for candidates for City Council, applicants to commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming that they read and understand the City of Benicia Code of Conduct.

This Code shall be reviewed annually by the City Council and City commissions at the annual organization and procedures meeting of each body. At such meeting, Council Members and Commissioners shall sign a statement affirming they have read and understand the Code of Conduct.

The Benicia Code of Conduct expresses standards of ethical conduct expected for members of the City Council and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

The chairs of commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Conduct are brought to their attention.

I affirm that I have read and understand the City of Benicia Code of Conduct.

_____ _____

Signature Date

_____

Print Name

CERTIFICATE OF COMPLETION

OPEN GOVERNMENT TRAINING
Proof of Participation Certificate

Participant Name: _____

Board or Commission: Planning Commission

Course Date & Time: February 11, 7:00 p.m.

Location: Council Chambers, City Hall

Eligible Credit: Requires Attendance for Entire Session

This course is an overview course on open government principles necessary to satisfy the requirements of Title 4 of the Benicia Municipal Code, including the following:

- The Brown Act
- Conflict of Interest Issues
- Ethics; and
- Due process.

This course also covers review of the City of Benicia Code of Conduct. It is not necessary to sign and return page 4 of the Code of Conduct when the material is included in this Open Government Training. Your signature on this document verifies that you have also completed this training.

To be completed by participant:

By signing below, I certify that I attended this session, participated in the activity described above and have read Title 4 of the Benicia Municipal Code and the Code of Conduct.

_____

Participant Signature

NOTE TO PARTICIPANT: Please provide a copy of this proof of participation to the City Clerk. In addition, we recommend you make a copy of this proof of participation for your own records to retain for at least five years. **These certificates are only available at this program; duplicates will not be issued.**

OPEN GOVERNMENT TRAINING
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DRAFT

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING MINUTES
Thursday, December 11, 2008
7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance
B. Roll Call of Commissioners

Present: Commissioners Richard Bortolazzo, Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, and Brad Thomas
Absent: Chair Railsback (excused)

Staff Present: Damon Golubics, Principal Planner
Mike Marcus, Assistant Planner
Gina Eleccion, Management Analyst
Kat Wellman, Contract Attorney

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the agenda was approved, as amended by pulling Item IV-D per the public's request, by the following vote:

Ayes: Commissioners Ernst, Healy, Sherry, Syracuse and Thomas
Noes: Commissioner Bortolazzo
Absent: Chair Railsback
Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

On motion of Commissioner Bortolazzo, seconded by Commissioner Sherry, the Consent Calendar was approved, as amended by pulling Item IV-D, by the following vote:

Ayes:	Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse and Thomas
Noes:	None
Absent:	Chair Railsback
Abstain:	None

A. Approval of Agenda
B. Approval of Minutes of November 5, 2008
C. Approval of Minutes of November 13, 2008

D. ZONING MAP AMENDMENT - DOWNTOWN HISTORIC OVERLAY DISTRICT - *Public Hearing

City of Benicia
Zoning Map Amendment - Downtown Historic Overlay District

PROPOSAL:

The City of Benicia is in the process of updating its downtown historic resource inventory. A current survey of historic properties has been completed and reviewed by the Historic Preservation Review Commission. Pursuant to Chapter 17.120 (Amendments) of the Benicia Municipal Code, the Planning Commission must make a recommendation to the City Council regarding only the Downtown Historic District map boundary changes recommended by the Historic Preservation Review Commission. The Planning Commission does not make a recommendation to Council on any other aspect of the historic survey update.

Recommendation: Recommend City Council amendment to the Downtown Historic Overlay District based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

Gina Eleccion, Management Analyst, gave an overview of the requested map amendments.

The public hearing was opened.

Phyllis Hartzell, 420 West K Street – She requested that the boundary be moved to no longer include the 400 block of West K Street. She noted that she has previously requested this and nobody from staff contacted her about this item. She submitted a letter.

Jon Van Landschoot, 175 West H Street – He commented on the history of the district and the requirements of historic properties. There have been many changes in staff during the 4-year process of this project. He commented on the City's requirements for being a Certified Local Government. He stated his appreciation of the Commission's efforts on the adult business ordinance.

The public hearing was closed.

Commissioners questioned the changes being made. Gina Eleccion clarified that all individual property forms have been evaluated by HPRC. HPRC is charged with protecting historic resources. It is the purview of the Planning Commission to recommend changes to the map per HPRC's recommendations. Gina Eleccion noted that she personally has spoken to Ms. Hartzell on numerous occasions and advised her of the Ad Hoc Committee's intent to retain her property as a contributor.

Kat Wellman, Contract Attorney, noted that this is a recommendation to the City Council only. Final action will be taken by the City Council.

RESOLUTION NO. 08-12 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA TO THE CITY COUNCIL RECOMMENDING AN AMENDMENT TO THE DOWNTOWN HISTORIC OVERLAY DISTRICT MAP

On motion of Commissioner Thomas, seconded by Commissioner Sherry, the above Resolution was adopted by the following vote:

Ayes:	Commissioners Bortolazzo, Healy, Sherry, Syracuse and Thomas
Noes:	Commissioner Ernst
Absent:	Chair Railsback
Abstain:	None

V. REGULAR AGENDA ITEMS

A. 726 FIRST STREET – RELLIK TAVERN USE PERMIT FOR LIVE ENTERTAINMENT AND ALCOHOL BEVERAGE SALES

08PLN-57 Use Permit
726 First Street, APN: 89-341-010

PROPOSAL:
In accordance with the Downtown Mixed Use Master Plan, the applicant requests approval of a Use Permit for alcohol beverage sales between the hours of 9pm and 2am and for indoor live entertainment.

Recommendation: Approve a Use Permit for alcoholic beverage sales and live entertainment, for the proposed bar located at 726 First Street, based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

Commissioners Bortolazzo and Sherry stated a conflict of interest for property ownership within 500' of the project.

Mike Marcus, Assistant Planner, gave an overview of the project. Staff has recommended specific conditions of approval to address any issues.

Commissioners discussed the overall project. In response to a question asked, Mike Marcus noted that there is approximately 100' from the back deck to the nearest residence. However, he noted that there are apartments on the other side of the alley from the project.

Commissioners stated their concerns over noise issues and would like to ensure that this is addressed. There is a concern with proper lighting of the project. The design will be reviewed by the Historic Preservation Review Commission. In addition, Mike Marcus noted that the existing card room will cease operations.

The hours of operation were discussed. Mike Marcus noted that the hours presented are consistent with other bars in town. The difference between live and amplified music was discussed.

Delando Pegan, Applicant – He thanked staff for their work on this project. He noted that since living in town, there haven't been many places like his proposed bar for entertainment purposes. He would like to see the hours extended. He commented on the back deck and smoking issues. He would prefer to not have patrons congregating in front of the business on First Street to smoke. He questioned the use of minor amplified music.

Commissioners commented on the alley and existing entrances. The applicant noted that the alley entrances will be sealed. In addition, the applicant noted that there have been no police/noise calls for issues related to the back deck.

Commissioners commented on the potential to ban smoking near public buildings and questioned how this would affect the business. The applicant noted that this would hurt the business, and would hurt all restaurants and bars.

Delando Pegan noted that ideally he would like the latest hours as possible for smoking on the patio. Regarding music, he would like 12:30 a.m. or 1:00 a.m. on weekends; but was okay with 10:00 p.m. on weekdays. He would like flexibility on special occasions (3rd of July or other events).

The public hearing was opened.

Christine Passalacqua – She has worked with the applicants on numerous projects. They are quality and detail oriented people. In addition, they are working with a variety of community members and businesses. She supports the project.

Wade Gomes – He has been working with the applicants on the project. He commented on smoking restrictions in other cities. He noted that smoking is permitted in designated areas, which is why the smoking patio is proposed.

Tom Hamilton – He commented on the 12 occurrences for amplified music. He would like flexibility in the amplified music.

Nobel Griswold – He does not currently go to the Pastime, but is excited to see this project move forward. He would like to see flexibility in the hours and smoking.

Greg Davis, 123 West D Street – He lives around the corner from Choices. He noted that the doors are supposed to be closed, but they are frequently left open. He has concerns for neighbors of this new establishment. He thinks this is a positive project, but would like follow-up with the police on the door issues.

The public hearing was closed.

Mike Marcus suggested the following:

1. Expanding hours of live entertainment to 1:00AM on weekends
2. Retaining recommended hours of operation on the rear smoking patio, since First Street will not be impacted after 10:00PM on weekdays.
3. Solo acoustical musicians/instrumentalists requiring amplification shall be exempt from Condition #8 (hour limitations for amplified music).
4. Conditions #24 & 25 offer protection in the case that neighbors are impacted: 24) Use Permit conditions of approval shall be reviewed on an as needed basis by the Community Development Department and Police Department; 25) In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.
5. On a case-by-case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (Condition #8) for any city-wide event. The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event. Such events shall not count towards the permittee's allotted twelve (12) live entertainment events per calendar year.

Commissioners discussed the number of restrictions being placed on this business. There are concerns with smoking.

Amend resolution to:
1. Delete Item 6
2. Included recommended hour changes
3. Delete Item 10
4. Reword Item 9 regarding amplified music

Kat Wellman noted that in order to meet the intent of State law, there can't be a fully enclosed space for smoking. This would allow employees to access the patio.

Damon Golubics noted that the hours have been negotiated between the applicants, staff and the police department. He noted that there needs to be a balance with neighboring property owners. He recommended a condition requiring a self-closing mechanism on the door leading to the rear patio as a means of sound attenuation.

Kat Wellman noted that if condition 6 is a major issue, that should be addressed. In addition, staff and the applicant agreed to increase live entertainment to 1:00 a.m. on the weekends. She noted that Mike Marcus suggested language to clarify Item 10. In addition, applicant can apply for extended hours for weekday special events and holidays for amplified music, with approval from the Community Development and Police Departments. Add to #8, include self-closing back door.

RESOLUTION NO. 08-13 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR A BAR ESTABLISHMENT WITH LIVE ENTERTAINMENT AT 726 FIRST STREET

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the above Resolution was adopted by the following vote:

Ayes:	Commissioners Ernst, Syracuse and Thomas
Noes:	Commissioner Healy
Absent:	Chair Railsback
Abstain:	Commissioners Bortolazzo and Sherry

A recess was called at 8:38 p.m. The meeting was reconvened at 8:44 p.m.

B. ADOPTION OF COMMISSION RULES & PROCEDURES

The Commission will discuss and adopt Rules and Procedures.

Recommendation: Discuss, review, take public testimony, and approve rules and procedures by which the Planning Commission can conduct business. Adopt a resolution authorizing use of the Planning Commission rules and procedures.

Damon Golubics gave an overview.

Commissioners discussed the rules and procedures. Paragraph F was mentioned for clarification. Kat Wellman recommended removing the last sentence. She clarified leaving the recommendation to reconsider at the same meeting, as Planning Commission may not be the final action. In addition, she clarified the motion to reconsider.

RESOLUTION NO. 08-14 (PC)- RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA ADOPTING FORMAL RULES AND PROCEDURES BY WHICH THE COMMISSION WILL OPERATE

On motion of Commissioner Syracuse, seconded by Commissioner Ernst, the above Resolution was adopted by the following vote:

Ayes:	Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse and Thomas
Noes:	None
Absent:	Chair Railsback
Abstain:	None

VII. COMMUNICATIONS FROM STAFF

Damon Golubics noted that there will be a public facilitated meeting on the Benicia Business Park project. In addition, he thanked the Commission for their hard work in 2008 and wish everyone a happy holiday season.

Mike Marcus encouraged people to attend the Arts Benicia exhibit. In addition, he clarified the motion on the Rellik conditions regarding #17.

VIII. COMMUNICATIONS FROM COMMISSIONERS

Vice Chair Healy thanked staff for their work and wished everyone a happy holiday.

IX. ADJOURNMENT

Vice Chair Healy adjourned the meeting at 8:55 p.m.

AGENDA ITEM
PLANNING COMMISSION MEETING: FEBRUARY 11, 2009
CONSENT CALENDAR

DATE	:	February 4, 2009
TO	:	Planning Commission
FROM	:	Mike Marcus, Assistant Planner
SUBJECT	:	**USE PERMIT CONDITION OF APPROVAL: FINAL CONSIDERATION OF DESIGN OF OPEN-AIR PORCH STRUCTURE LOCATED IN REAR OF BUILDING AT 726 FIRST STREET**
PROJECT	:	726 First Street – Rellik Tavern (currently Pastime) 08PLN-57 APN: 89-341-010

RECOMMENDATION:

Approve the design of the open-air porch structure located in the rear of the building at 726 First Street, based on the findings and subject to the conditions listed in the attached resolution.

EXECUTIVE SUMMARY:

On December 11, 2008, the Planning Commission approved a Use Permit for alcohol beverage service and live entertainment (Resolution 08-13) for the Rellik Tavern (formerly Pastime). The applicant indicated that they would like to modify the project plans to include an open-air porch structure on the rear of the building. The Planning Commission added a condition of approval requiring the final design of the rear structure to come back to the Planning Commission for final consideration after receiving Design Review approval from the Historic Preservation Review Commission (HPRC). The applicant received HPRC design review approval on January 22, 2009 and respectfully requests final consideration by the Planning Commission.

BACKGROUND:

Applicant/Owner: DiZy Enterprizes – Delando and Zoe Pegan
General Plan designation: Downtown Commercial/Mixed Use
Zoning designation: Town Core
Existing use: Bar and Card Room (Pastime)
Proposed use: Bar

Adjacent zoning and uses:

North: Town Core; Commercial (Benicia Home Improvement Center)
East: Town Core; Public & Semi-Public, Commercial (State Capitol Building, Randy's)
South: Town Core; Commercial (Randy's Catering)
West: Town Core – Open; Vacant lot

SUMMARY:

A. Project Description

On December 11, 2008, the Planning Commission approved a Use Permit for alcohol beverage service and live entertainment (Resolution 08-13). At the hearing, the applicant indicated that they would like to modify the project plans to include an open-air porch structure on the rear of the building. The Planning Commission concluded that adding such structure could affect the use of building and added a condition of approval requiring the final design of the porch structure to come back to the Planning Commission for final consideration after receiving Design Review approval from the Historic Preservation Review Commission (HPRC).

On January 22, 2009, the applicant received HPRC design review approval for exterior improvements, including the rear open-air patio structure. The HPRC approved the open-air structure as an addition to the existing wooden deck located at the back of the building. The proposal includes the following work:

- Open-air structure: 3' ½" high wood siding base, with a 5' ½" high open-air structure. Open-air portion to be constructed with 3" by 3" lumber, spaced 10" apart (OC)
- Flat pitch roof, to match existing building height (~15' from ground), with gutters
- Wood planter box with 4" by 4" shaped corbels below
- Extension of existing rail to 42" height for ADA compliance

FURTHER ACTION:

The Planning Commission action will be final unless appealed to the City Council within ten business days.

Attachments:

- ❑ Draft Resolution
- ❑ Historic Preservation Review Commission Design Review Resolution No. 09-3
- ❑ Project Plans

DRAFT RESOLUTION

DRAFT

RESOLUTION NO. 09- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING THE DESIGN OF THE OPEN-AIR PORCH STRUCTURE LOCATED IN THE REAR OF THE BUILDING LOCATED AT 726 FIRST STREET

WHEREAS, on December 11, 2008, Mr. Delando Pegan of DiZy Enterprises, received Use Permit approval for a bar establishment with live entertainment at 726 First Street from the Planning Commission; and

WHEREAS, Use Permit Resolution No. 08-13, Condition No. 5 states that following Historic Preservation Review Commission's Design Review approval, the applicant shall submit the final design of the open-air patio structure to the Planning Commission for final review and consideration; and

WHEREAS, on January 22, 2009, Mr. Delando Pegan of DiZy Enterprises, received Design Review approval for exterior façade improvements and a rear porch open-air structure at 726 First Street from the Historic Preservation Review Commission; and

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the open-air patio structure at 726 First Street.

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby approves the proposed project subject to the following conditions:

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "January 8, 2009" prepared by Steve McKee, attached as an exhibit and on file with the Community Development Department.

2. The project shall adhere to all conditions required by Planning Commission Use Permit Resolution No. 08-13 and Historic Preservation Review Commission Design Review Resolution No. 09-3.

3. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.

4. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided

for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * *

On motion of Commissioner , seconded by Commissioner , the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on February 11, 2009 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

_____

Fred Railsback
Planning Commission Chair

HPRC RESOLUTION 09-3

RESOLUTION NO. 09-3 (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING EXTERIOR FAÇADE IMPROVEMENTS AND A REAR PORCH ENCLOSURE AT THE RELLIK TAVERN (formerly PASTIME) ON A BUILDING LOCATED AT 726 FIRST STREET

WHEREAS, Delando and Zoe Pegan of DiZy Enterprises, have requested Design Review approval for exterior façade improvements and a rear porch screen structure at 726 First Street; and

WHEREAS, the Historic Preservation Review Commission at a regular meeting on January 22, 2009 conducted a public hearing and reviewed the proposed project;

NOW, THEREFORE, BE IT RESOLVED THAT the Historic Preservation Review Commission of the City of Benicia hereby approves exterior façade improvements and a rear porch screen structure at 726 First Street; and

BE IT FURTHER RESOLVED THAT the Historic Preservation Review Commission finds that:

a) The proposed development is consistent with the objectives and the applicable provisions of Title 17 of the Benicia Municipal Code, the Downtown Historic Conservation Plan and the Secretary of the Interior's *Standards*;

b) By removing non-historic, nonconforming signage, painting the façade and retaining door and window proportions, the proposed improvements retain traditional façade elements, proportions and architectural details which give historic buildings their special character;

c) The architectural design of the rear patio screening structure employs the same materials, and similar opening proportions and clearly distinguishes old from new;

d) The proposed façade modifications and the proposed conditions of approval are consistent with the Downtown Historic Conservation Plan and Title 17 of the Benicia Municipal Code and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed project, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city;

BE IT FURTHER RESOLVED THAT the Benicia Historic Preservation Review Commission hereby approves the proposed project subject to the following conditions:

1. The plans submitted for the building permit, development and construction shall substantially comply with the submitted elevations date stamped January 8, 2009 prepared by Steve McKee, Architect, consisting of 3 sheets marked, attached to this resolution, on file with the Community Development Department, except as modified by the following conditions.

2. The plans submitted for the building permit, development and construction shall substantially comply with the color and material board, prepared by Steve McKee, Architect, date stamped January 7, 2009.

    a. Door shall be of Moderne style, characterized by wood and glass construction, consistent with the door shown in Exhibit A (Piccolo). Sidelight, directly adjacent to door, shall be glass or glass block with wood trim. Prior to installation, the final design of the door and sidelight shall require Community Development Department staff-level approval.

3. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.

4. Any alteration of the approved plans, including substitution of materials or colors, shall be requested in writing and approved by the Community Development Director or designee prior to changes being made in the field.

5. Construction activities shall meet all municipal code requirements for hours of operation. Construction equipment shall be adequately muffled and controlled. These requirements shall be made a condition of all related contracts for the project.

6. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Historic Preservation Review Commission, Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * *

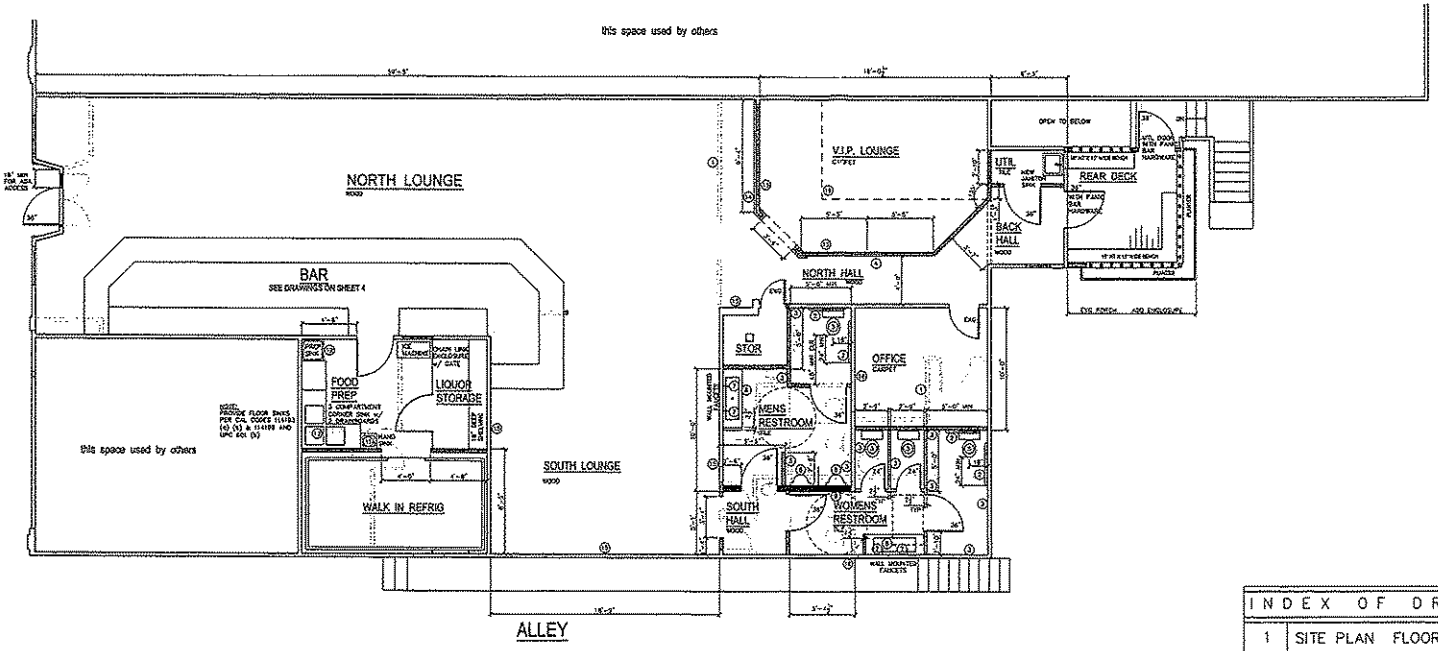
On motion of Taagepera, seconded by Commissioner White, the above Resolution was adopted by the Historic Preservation Review Commission of the City of Benicia at a regular meeting of said Commission held on January 22, 2009 by the following vote:

Ayes:	Commissioners Crompton, Donaghue, Haughey, Taagepera, White and Chair Mang
Noes:	None
Absent:	None
Abstain:	Commissioner McKee

Chuck Mang
Historic Preservation Review Commission Chair

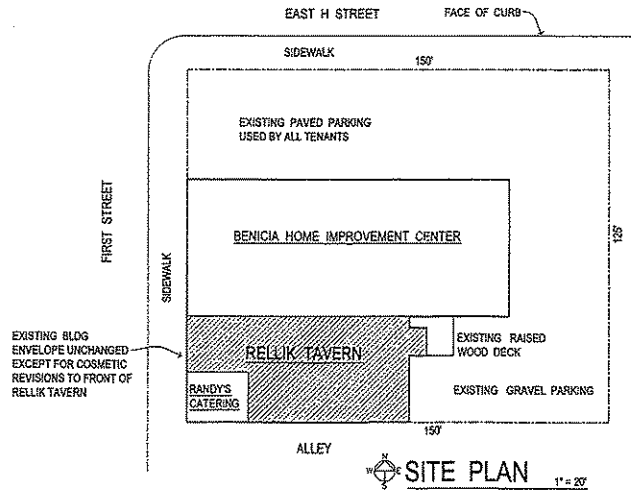
PROJECT PLANS

RELLIK TAVERN



FLOOR PLAN

2574 sq ft 1/4"



SITE PLAN

1" = 20'

INDEX OF DRAWINGS	
1	SITE PLAN FLOOR PLAN NOTES
2	FRONT ELEVATION
3	SIDE ELEVATION

PROJECT INFO

PROJECT DESCRIPTION:
REMODEL EXISTING BAR SPACE. ADD FOOD PREP AREA AND HANDICAPPED ACCESSIBLE RESTROOMS.

OCCUPANCY GROUP A-2
CONST TYPE V- NO HR (1-HR AT WALLS THAT ABUT OTHER TENANTS) (NON-SPRINKLERED)

NORTH LOUNGE	1,133 S.F.
SOUTH LOUNGE	331 S.F.
SMOKING LOUNGE	211 S.F.
OFFICE	106 S.F.
FOOD PREP AND REFRIGERATION	264 S.F.
RESTROOMS	267 S.F.
HALLS/ STORAGE	208 S.F.
TOTAL	2,520 S.F.

RECEIVED
JAN 08 2009
CITY OF BENICIA
COMMUNITY DEVELOPMENT

Steven McKee - Architect
975 West K Street
Benicia CA 94510
(707) 746-6788
(707) 746-6767 fax

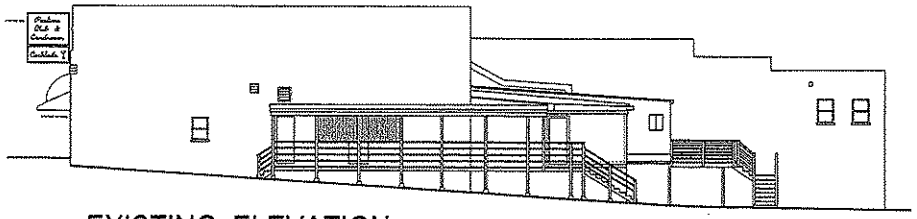
Revisions:

Date: 1/6/09
Drawn By: SM

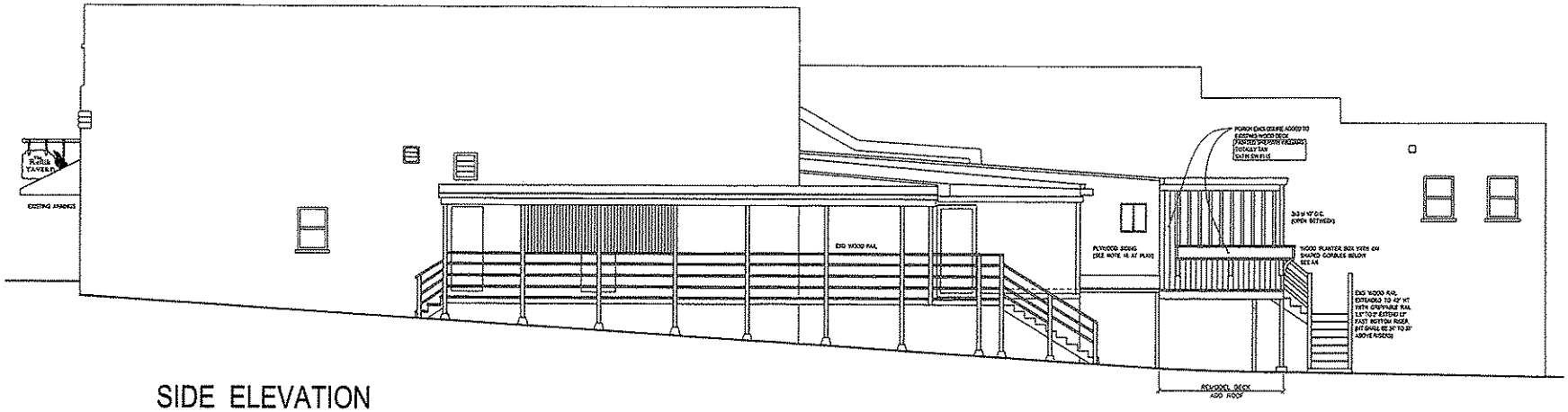
REMODEL
THE RELLIK TAVERN
726 FIRST STREET
BENICIA CA

Sheet: 1 OF 3

PLANS NOTES



EXISTING ELEVATION
south 1/8"



SIDE ELEVATION
south 1/4"

Steven McKee - Architect
975 West K Street
Benicia CA 94510
(707) 746-6788
(707) 746-6787 fax
www.smckee.com

Revisions:

Date: 1/6/09
Drawn By: SM

REMODEL
THE RELLIK TAVERN
726 FIRST STREET
BENICIA CA

Sheet: 3 OF 3

SIDE ELEVATION

G:\Documents and Settings\Steve\My Documents\~CAD DRAWINGS\PROJ# BAR\Pegan HPRC submittal 1-06-dwg 1-06-09 12:51:30 PM Steve

Community Development Department
MEMORANDUM

Date: February 4, 2009
To: Planning Commission
From: Gina D. Eleccion, Management Analyst
Re: 2009-2011 Budget Planning Strategic Project Rankings

The City has begun the process of preparing the Budget for fiscal years 2009-11. Part of this effort includes establishing City priorities for this two-year period by the City Council.

Following an overview by the Administrative Services Director of the Strategic Plan Update at the December 2008 Planning Commission meeting, Commission members were asked to consider current and future projects and programs, and to provide input regarding priorities for the next two years.

The priorities submitted by Planning Commission members for the 2007-09 budget cycle, including status, are as follows:

1. Implement Downtown/Arsenal Plans and provide necessary funding **(Downtown completed/Arsenal in progress)**
2. Ensure Benicia Business Park is appropriately planned and environmentally mitigated **(in progress)**
3. Adopt standards for green building and energy efficiency **(in progress)**
4. Improve the State Park Bridge for pedestrian and bicycle safety
5. Require story poles for all development projects **(completed)**
6. Produce a master plan for the Yuba property
7. Enhance the appearance of the City gateways
8. Expand code enforcement **(completed - now full-time staff)**
9. Determine the feasibility of expanding Lake Herman and restoring Pine Lake

The Commission is being asked to revise the above list. Staff will forward the Commission's recommendation to the City Council as part of the 2009-11 budget planning process.

Attachment:
- Commissioner responses

Commissioner Healy

1. Benicia Business Park (see #2 of old list)
2. Completion / Implementation of the Climate Action Plan
3. Development of funding mechanism / organizational plan for solar installation / energy efficiency projects.
4. Development of funding mechanism & execution of Downtown Specific plan.
5. Implementation of city-wide tree planting program.
6. Train / transit station.
7. Review Southampton open space policies.
8. Improvement of internet capacity for Arsenal / Industrial party / BBP
9. Water reuse / efficiency planning
10. Update / develop consistent operating policies for restaurants / bars (i.e. entertainment. sidewalk access, alcohol restrictions, etc)

Commissioner Syracuse

1. Study of westside waterfront pathway system
2. E Street parking lot
3. Additional pedestrian amenities for First Street

RULES AND PROCEDURES
ADOPTED: DECEMBER 11, 2008

A. GENERAL PROVISIONS

1. These rules and procedures shall be known as "Rules and Procedures of the Planning Commission, City of Benicia." A copy of these rules and amendments thereto shall be filed in the Community Development Department for examination by the public.

2. These rules, and any amendments thereto, shall be effective on the date of the adoption hereof and shall govern the conduct of the Planning Commission.

3. These rules and procedures may be amended hereafter by action of the Planning Commission.

B. OFFICERS

1. The officers of the Commission/Board shall be:

   Chair: who shall preside at all meetings of the Planning Commission, call special meetings, appoint committees, and perform other proper duties of a presiding officer. Except as otherwise authorized by the Planning Commission, the Chair shall sign all correspondence, reports and other instruments approved by the Planning Commission.

   Vice Chair: who shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or other permanent absence of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Planning Commission shall select a new chair.

   Secretary: who shall keep a written record of all business transacted by the Planning Commission, notify members of meetings, maintain the official records of the Planning Commission, and perform such other duties as the Planning Commission may direct.

2. The Chair and Vice Chair shall be elected by the Planning Commission from its membership at their October meeting each year when the Planning Commission is fully constituted. The Community Development Director of his or her designee shall serve as Secretary to the Commission/Board.

3. Staff Person. The Staff Person of the Planning Commission shall: (a) supply the Planning Commission members with such information and make such

recommendation as deemed necessary to carry out the purposes of the Planning Commission and to properly administer its affairs; and (b) be the single point of contact for the Planning Commission.

4. Additional Duties. The officers of the Planning Commission shall perform such other duties and functions as may from time to time be required by the Planning Commission.

C. MEETINGS

1. The regular meeting of the Planning Commission shall be on the second Thursday of each month at 7:00 pm. In compliance with the Brown Act and the Open Government Ordinance, all regular meetings shall be open and public. An agenda for regular meetings will be prepared and posted six (6) days prior to a meeting.

2. Special meetings may be called by the Chair or by a majority of the Planning Commission members if determined to be necessary for discharge of the Planning Commission's responsibilities. The Secretary shall poll Planning Commission members and attempt to arrange a date and time convenient to all Planning Commission members. Notice of special meetings shall be given consistent with Brown Act and Open Government Ordinance requirements.

3. Meeting Location. Regular meetings shall be held in the Council Chambers. When the Council Chamber is unavailable and in exceptional circumstances, the Planning Commission may change this meeting location by notice on its agenda

4. Adjournment. The Planning Commission shall not begin new public hearing items after 11:00 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting. At the conclusion of the last public hearing item that ends after 11:00 p.m., the Commission may determine by a simple majority vote that all remaining administrative items on the agenda be heard by the Commission or continued to a future meeting and the Planning Commission may extend the meeting to an additional specified amount of time.

D. AGENDA

1. Opening of Meeting/Pledge of Allegiance/Roll Call

2. Reference to Fundamental Rights of Public

3. Agenda Changes and Discussion

4. Public Comment

5. Consent Calendar/Approval of the Agenda/Approval of Minutes

6. Agenda Items

7. Communications from Staff/Communications from Commissioners

8. Adjournment

E. MINUTES

1. General Policy Statement on Minutes of Meeting. It is the general policy of the Planning Commission to prepare draft minutes of the deliberations of the Planning Commission. These minutes will include:

   a. the time the meeting was called to order,

   b. the names of the members attending the meeting,

   c. a one-sentence summary of, and the roll call vote on, each matter considered at the meeting,

   d. the time the body began and ended any closed session,

   e. any letters submitted on agenda items,

   f. those members of the public who spoke on each matter if the speakers identified themselves,

   g. and the time the meeting was adjourned.

   The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. Minutes must be finalized and adopted by the majority of Planning Commission members in order to be regarded as an official record of the Planning Commission. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

2. Public Comment. Any member of the public during Oral Communications may request that corrections or deletions be made to the minutes. These requests may be acted upon by the Planning Commission with appropriate review and deliberation.

3. Method of Documentation. It is the policy of the Planning Commission to retain tape recordings documenting Planning Commission deliberations for two years following the finalization and adoption of written minutes. Written minutes that have been adopted by the Planning Commission shall constitute the official record of the Commission and shall be maintained indefinitely.

F. RULES OF ORDER

The following definitions and rules shall govern the proceedings and order of business of the Planning Commission:

1. Prior to public discussion or Planning Commission deliberation, the presiding officer or other person designated thereby shall describe the item or business before the Planning Commission.

2. Public Discussion.

The presiding officer shall recognize speakers on an agendized matter when that item is before the Planning Commission for consideration. (This includes any comments pertaining to the Announcements/Appointments/Presentations/ Proclamations section of the agenda.) The presiding officer shall recognize speakers on Public Hearing items at the Public Hearing. The presiding officer shall recognize speakers on matters not on the agenda under the Opportunity for Public Comment portion of the agenda.

Persons addressing the Planning Commission shall do so only at the speakers' rostrum and should begin, but are not required to do so, by stating their name and address for the record. All remarks shall be addressed to the Planning Commission as a body and not to any member thereof, or to staff, or to the public. No person other than a member of the Planning Commission and the person having the floor shall be permitted to enter into any discussion without the permission of the presiding officer. Speakers may not make personal attacks on Planning Commissioners, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

a. Recognition. Any person addressing the Planning Commission shall first secure the permission of the presiding officer.

b. Not a Debate. Public discussion should not be used to elicit a debate between Planning Commission members and the public. Speakers should not be interrupted unless they are out of order.

c. Time Limits. Each speaker shall speak only once on an agenda item and limit his/her remarks to five (5) minutes when speaking at the time of the agendized item or when speaking on non-agendized items under Opportunity for Public Comment, except as otherwise specifically provided for in these Rules or in the Open Government Ordinance, or except as time is extended by the presiding officer with the consent of the majority of the Planning Commission. Each speaker shall avoid repetition of the remarks of prior speakers and speak only to the specific agenda item under consideration.

In accordance with the Open Government Ordinance, the presiding officer may request spokespersons be designated to represent similar views. Spokespersons shall each have fifteen (15) minutes to present their case. Any spokesperson wishing to make a rebuttal shall have 5 (five) minutes to present.

d. Pending Motion. When a motion is pending before the Planning Commission, no person other than a Planning Commission member shall address the Planning Commission without first securing the permission of the Chair to do so.

e. Public Discussion. Public Discussion shall precede Planning Commission deliberation.

f. No discussion shall be permitted, without approval of the Planning Commission, after a motion has been adopted which would terminate further deliberation.

3. Appeals

a. The procedure for the conduct of all appeals to the Planning Commission shall be as set forth in the governing ordinance or resolution.

b. If no procedure is set forth, the staff person shall first present his or her case. The appellant shall then present his or her case. The staff person may then offer a rebuttal. The staff person and appellant may then present closing arguments.

4. Planning Commission Deliberation.

a. Presiding Officer May Deliberate. The presiding officer may deliberate from the chair, subject only to such limitations of deliberation as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Planning Commission by reason of his or her acting as the presiding officer.

b. Conflict of Interest. In situations where there is a conflict of interest under the Political Reform Act, the Open Government Ordinance or other conflict laws, members of the Planning Commission are required to abstain from voting on the item and participating in the decision-making process. The following procedures should be followed:

i. Declare the conflict of interest.
ii. State the basis of the conflict of interest.
iii. Do not discuss or vote on the matter.
iv. Step down from the podium and leave the room until the item is completed or unless the Political Reform Act allows the member to remain in the room.

c. Getting the Floor - Improper References to be Avoided. Every member desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine himself or herself to the questions under deliberation, avoiding all personalities and indecorous language.

d. Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call said member to order, or as herein otherwise provided. If a member, while speaking, be called to order, said member shall cease speaking until the question of order be determined, and if in order, said member shall be permitted to proceed.

e. Remarks of Commission/Board Member - When Entered in Minutes. Any Planning Commission member may request, through the presiding officer, the privilege of having a written abstract of said member's statement on any subject under consideration by the Planning Commission entered in the minutes. If the Planning Commission consents thereto, such statement shall be entered in the minutes.

f. Motion to Reconsider. A motion to reconsider any action taken by the Planning Commission may be made only on the date such action was taken. It may be made either immediately during the same session; or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable.

g. Motion to Table. A motion to lay on the table shall preclude all amendments or deliberation of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority.

h. Motion to Call for Question or Continue to a Date Specific. A motion to call for the question or continue the matter to a specific date shall preclude

all amendments to or deliberation of the subject under consideration and is not debatable.

i. Statement of Position. When a motion to call for question or table is adopted, each member of the Planning Commission may briefly state his/her position on the matter before roll call or call for the next item of business.

j. Privilege of Closing Deliberation. The member moving the adoption of a motion or resolution shall have the privilege of closing the deliberations or making the final statement.

k. Division of Question. If the question contains two (2) or more divisible propositions, the presiding officer may, and upon request of a member shall, divide the same.

l. Second Required. All motions, except for nominations and a point of order, shall require a second.

m. Voting. A vote of three (3) members at a properly called meeting shall be necessary for any action of the Planning Commission. Four (4) members of the Planning Commission shall constitute a quorum. If a motion fails to receive the required number of votes to pass or fail, the request of any Planning Commission member would cause the item to be carried over to the next meeting.

n. Forms of Action. The Planning Commission may act by motion or resolution. All motions shall be recorded in the minutes verbatim. All resolutions shall be in writing and the title shall be recorded verbatim in the minutes as well as the vote thereon.

o. Miscellaneous. All other matters not covered by these rules shall be decided by a majority of the Planning Commission. Roberts Rules of Order may be used as a guide.

G. ATTENDANCE

It shall be the responsibility of each Planning Commission member to notify the Secretary, who shall thereupon notify the Chair, of an inability to attend a scheduled Planning Commission meeting. Other applicable attendance rules for Commissioners are governed by the Benicia Municipal Code.

H. PREEMPTION

The applicable City of Benicia's policies, resolutions and ordinances and state and federal laws shall prevail where a conflict exists between any of them and these Rules and Procedures.