

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
FEBRUARY 13, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:35 p.m. on Tuesday, February 13, 2007, in the Dona Benicia Room, Benicia Public Library, 150 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Jeanine Seeds – Ms. Seeds stated that she was disappointed that there was no video capability. Some of the things that were said at the last meeting were disappointing. Not only did Starbucks bypass the citizens, but the developer and the City bypassed them as well. Two Council Members stated they were against a moratorium. It had not been discussed yet, and they were already against it. They had not heard from their constituents yet. These are the people that are here.
2. Norma Fox – Ms. Fox stated that she thought this was going to be a workshop on all things that affected the campaign. She submitted amendments to those issues on December 2, 2007. She submitted information to be discussed in the workshop. It is not on the agenda, so she is told she would not be able to discuss it. She described the ordinance that she proposed be adopted. When the ordinance was voted on, Council Members Whitney, and Patterson stated they would be interested in making some changes during the workshop.

Mayor Messina stated that although this was public comment, it was not the time to stand up and question Council on everything. She stated that she wanted to know if the ethics ordinance would protect the citizens from such behavior in the future. She wanted to know if Council was interested in making the amendments before the election season begins.

Council Member Patterson asked Ms. McLaughlin if the questions Ms. Fox was asking had to go through the two-step process. If that were the case, she would like to make the formal steps to address the questions Ms. Fox is asking.

Mayor Messina introduced Ms. Carol Langford and Mr. Steve Churchwell, the experts the City hired to assist in this process.

ACTION ITEMS:

Consideration of campaign related ordinances to regulate campaign financing and to establish a voluntary expenditure ceiling for candidate elections:

Vice Mayor Schwartzman asked what would happen if a candidate decides he did not want to abide by the voluntary spending limit, what would happen. Mr. Churchwell stated in that case, the limit would be lifted for all candidates. He stated that in the next presidential election, no one was planning on abiding by the limit. Mr. Churchwell stated that if a candidate declines to abide by the limit, and they make qualified expenditures, then the candidates would have the option of not abiding by the limit. Vice Mayor Schwartzman stated that if the limit was too low, the chances of people not abiding by the limit increase. Vice Mayor Schwartzman clarified that the City can't control how much the outside parties can spend, but it could control how much they contribute to a candidate.

Norma Fox - Ms. Fox stated that Benicia is a small town. Voluntary limits will have more of an influence on candidates in a small town. Why doesn't the City look in the horse's mouth, other communities, to see how this process is working for them? She has done a lot of research and this has been done. They have spending limits such as \$.25 to \$.50 per registered voter.

Bob Mutch – Mr. Mutch stated that he would be interested to hear what the community defines as fair elections. Is fair based on who wins or loses? Who determines fair? The results of an election define who the winner is. He does not understand how anyone could define a basis for a proposal that would fairly dictate what we will require our candidates to do during an election. He is not sure there is a mathematical equation that would seem fair to all citizens. Personally, what other communities do does not have an effect on him. As far as he knows, there are a lot of Benicians who associate themselves with the views and literature that have been distributed by the so called 'outside entities.'

Mayor Messina stated that the thing that Council is trying to agree on is an actual limit. That is what is blank in the ordinance. Council is trying to come to a consensus.

David Lockwood – Mr. Lockwood stated that he would be totally opposed to a low spending limit. It could perhaps encourage under the table activities. He thinks that if a spending limit is going to be established, you can't set the limit below what it would cost to run radio, cable, etc. ads.

Jeanine Seeds – Ms. Seeds stated that in her experience, the people who spent the most money won. Just because you don't make a lot of money, it should not prohibit a

candidate. She had not thought about the under the table stuff. She does not think that is a point. You can't control people's morals. They are trying to make things clean and fair. This is a great way to see how the candidates will be spending the citizen's money over the four-year period.

Council Member Hughes stated that he has already said that he does not support campaign spending limits. He thinks if you put limits on Benicia elections, you will have some unintended consequences that deal with the independent expenditures. There is not a correlation between the amount of money a candidate spends and their success in the election. He went back six elections to compare data.

Council Member Whitney stated that he previously suggested having the limit at a low level. After listening to many people, he came to the belief that trying to set the ceiling thing is a red herring – a false security. The real issue is who is giving the candidate the money. The people have the right to know that. It is not so much about having a ceiling, but increasing the reporting of the campaign funds. Why is \$.51 bad, but \$.50 good? Council tried to come up with a ceiling at the last meeting, but could not. He thought Council should focus on extensive reporting of campaign funds. Regarding the issue of retribution, how viable is this? Mr. Churchwell stated that it is viable because the courts stated that if you are an anarchist, you could be held liable, but if you are democrat or republican, you are okay. Anonymity has been upheld by the Courts, as has the source of mail. When it came to candidates, they have to put names and addresses on the literature.

Council Member Patterson stated that other communities have seen the wisdom of having the limits. The advantage of having the limit is that it limits the candidate from having to dial for dollars. It then forces the candidate to be sharp in distinguishing themselves from other candidates. She is particularly offended by getting a lot of literature that is a massive amount of advertising with little information. With campaign expenditure limits, studies have demonstrated that the candidates are more focused on the issues.

Vice Mayor Schwartzman stated that campaigning is communicating. Advertising is just one form of communicating. He does not know if you can take advertising out of campaigning. He knows what it costs to put out a reasonable mailer. He spent \$7,000 on his mailers. These days, 40% of the voters are absentee voters. That means you have to have an early, middle, and near the end mailer go out to them. Some cities don't have yard signs. That is a staple in this town – do we want to take that away? It does not take a math wizard to figure out that the costs add up quickly. He would rather have no limit than a low limit. For him, it should be either no limit or a reasonable limit. Just because other communities do things, it does not automatically make it right for this City. If the anonymity was over \$25 or \$50, he could guarantee all the candidates would have taken in less money. It would have been worse for candidates with less money. At the last workshop, it seemed clear that the real issue was the outside entities.

Ms. Langford stated that usually, when there is an ethics code, there is a stick in it. With spending limits, she does not see the incentive to voluntarily limit her spending. If you don't have an incentive, what is the incentive for someone with deep pockets?

Citizen – The citizen stated that regarding the disclosure of amounts above a certain limit, she suggested having the candidate publicly advertise, maybe on a sign, where the big donations came from.

Susan Street – Ms. Street asked Council Member Hughes if it would seem fair to add a percentage to a newbie so they would not be at a disadvantage. She asked Vice Mayor Schwartzman what his idea of a reasonable limit was. Vice Mayor Schwartzman stated that he listed his limit amount in the original proposal. Ms. Street asked Ms. Langford about the incentive issue. Ms. Langford stated that there has to be a reason for someone with deep pockets to agree to a spending limit. With every code of ethics she has done, there has always been a carrot or a stick. She does not know if what is being proposed gets at that issue. Ms. Street stated that Benicians are saying that the last election was a joke. It was alarming to many people on how much was actually spent on the election, including outside people.

Jerry Hayes – Mr. Hayes stated that he had been involved in a few elections in Benicia. He has been involved in elections where he raised more and lost more than the other candidates. He thinks that Council is ignoring that in the last election, something was wrong. The election was not the same as past elections. Corporate interests came into play. His issue is fairness in the election. The real issue is what happens to the City government when the corporations show up and take over. A lot of money funneled through to support and oppose candidates. The will and the interest of the citizens have not been served as a result of what took place. The real issue is what to do when somebody throws in a bunch of money. It is not fair that a corporate interest is able to influence an election, come back, and have a very significant issue decided on by the Council that was elected. He hopes Council seriously considers that issue. Something seriously needs to be addressed when corporate interests suddenly is really more important than the interest of the citizens.

Vice Mayor Schwartzman stated that it seemed to him that Mr. Hayes was concentrating on the corporate influence. Mr. Hayes stated that was correct. Vice Mayor Schwartzman stated that seemed to be the real issue Council needed to address.

Mayor Messina stated that the meeting had gotten off track. The item being discussed was a spending limit.

Richard Bortolazzo – Mr. Bortolazzo stated that he was in favor of rigorous reporting requirements. Spending caps don't do anyone any good.

Mayor Messina stated that he did not think that anyone would be agreeing on a new number for a limit at this point.

Chuck White – Mr. White stated he was writing the 'Clean Money Book'. Mr. White stated that ceilings deliver a message.

Jeanine Seeds – Ms. Seeds stated that she looked at a chart that showed that Council Members Hughes and Schwartzman spent the most money and won. How can he say that it has not affected the last six elections? Council Member Hughes stated that you could not take a snapshot and make a statement. He looked at the trends and came up with his information.

Norma Fox - Ms. Fox stated that Council Member Hughes was not taking into account the independent expenditures when he is looking at his graphs. He has to look at the whole picture. Regarding spending limits, she does not understand why the City does not go to see what other cities are doing. There are a lot of ways to address the independent expenditures.

Council Member Patterson stated that she agreed with Mr. White that having a ceiling is a message. She shares Ms. Fox's perspective regarding seeing what other communities are doing. She would like to see a ceiling move forward. She could agree with Vice Mayor Schwartzman's figure of \$1.

Vice Mayor Schwartzman stated that the limit would have to be reasonable and suggested \$27,000.

Council Member Whitney stated that he took issue in this debate; many people have discounted the candidates who won the last election. He could look at a ceiling of \$27,000. However, in his mind, it goes back to rigorous reporting. It is knowing where the money is coming from. People want to see the candidates walking out there.

Council Member Hughes stated that the insinuation bothered him that the only reason he won the election is because he spent a lot of money. He spent a lot of time in the community walking the neighborhoods. He ran a fair, honest election, which is why he thinks he won the election. He does not support a spending limit. If there will be one, it needs to be reasonable. He voted for the \$1 per voter limit at the last meeting on this. He was concerned with some of the consequences that would be a result of a limit.

Mayor Messina stated that this would be brought back at a future meeting with the \$1 limit. The most current revision would be brought back such as on page IV-A-4. There was a qualification for compliance that was noted as well.

Council Member Patterson stated that when it is brought back, it should be a redlined version. Ms. McLaughlin stated that it was too hard to do a redline version on this.

Mayor Messina stated that they would go with the ordinance that was in the packet tonight.

Consideration of a City Council Code of Conduct and Best Practices:

Mr. Churchwell stated that this ordinance was a compilation of the ideas that were brought forward by the community and Council. The only things that are not in there are things that blatantly violate the First Amendment. This ordinance is cost effective and

constitutional. Mr. Churchwell went through the proposed ordinance and explained each section (refer to agenda pages IV-A-9 to IV-A-18).

Council Member Patterson inquired about page IV-A-42 – what is unconstitutional about electronic reporting? Electronic reporting is essential for busy individuals. It would make a huge difference for people to understand what is going on. She would like that put into the ordinance. Mr. Churchwell stated that his issue was the cost. If the City would purchase the equipment, it might be different. Council Member Patterson stated that the City Clerk could scan the document and post it. Mr. Churchwell stated that could be easily added. He thought she was referring to proprietary software and equipment that needed to be purchased.

Vice Mayor Schwartzman stated that he was concerned about page IV-A-10. He was concerned about responsibility being put on treasurers. He does not know of any candidate in the City who pays a treasurer. You are putting more duties and responsibilities on volunteer treasurers. It could be a misdemeanor if some things were violated. The intent is not to put a fear factor in someone who wants to run for office. Ms. Langford stated that if you get a CPA or lawyer helping as the treasurer, the misdemeanor would be reported to the State Bar. That will make people reluctant. Vice Mayor Schwartzman stated that section might not need to be there. Regarding .040 – what is the purpose? Mr. Churchwell stated that it is an additional chute for people to go through. Vice Mayor Schwartzman stated that he did not know what that additional document was that was needed. On page IV-A-11 – (f) the limit is \$10,000 - other than individuals. He asked why the bank accounts needed to be established in Benicia. Mr. Churchwell stated that it was a common provision in a local ordinance.

Council Member Patterson stated that the aggregate limit of \$2,500 was too high.

Vice Mayor Schwartzman inquired about page IV-A-15 (c) 2 – he would want to put on spots less than 30 seconds, no more than 4 seconds for disclaimer.

Council Member Patterson inquired about page IV-A-16 – charitable contributions – is there something unconstitutional about that? It was in Novato's ordinance. Ms. Langford stated that 'in connection with a campaign' is not defined. Regarding reporting – there is an element on record retention that she would like to see. Mr. Churchwell stated that the State has to retain election materials for five years.

Council Member Whitney inquired about page IV-A-11 (f) – if a corporation wanted to make a donation, it could only be \$10,000. On anonymous contributions – the overwhelming majority was under \$99. Is this saying that once you get to \$200, those donations have to be disclosed? Mr. Churchwell stated that was correct. Council Member Whitney stated that the most anyone could give as a cash donation was \$25. It could be tough for people to enforce that at gatherings. Ms. Langford stated that the term 'negligently' worried her in the enforcement section. She thought the 'negligent' part should be reworded.

Council Member Hughes inquired about page IV-A-10 – where did the \$500 number come from? Mr. Churchwell sated that it was just a number that was chosen. Council Member Whitney inquired about page IV-A-14 – this is related to direct contributions from corporations – it nothing to do with independent expenditures. Mr. Churchwell stated that section (a) was the meat of this.

Norma Fox - Ms. Fox stated that there was no way for the ‘community’ to have any sort of comments in this meeting. The big contributors formed PACs. Seeno and Valero formed a PAC. How is this any different? Mr. Churchwell stated that corporations don’t have restrictions on California law. She asked if this provision would have changed the amount they contributed.

Council Member Patterson stated that the reporting could have made a difference.

Sabina Yates – Ms. Yates stated that the City of Santa Cruz has electronic filing. The regular reporting goes to the City and the newspapers.

David Lockwood – Mr. Lockwood sated that PACs are the most undemocratic organizations he has ever seen. The decisions were made be two or three people. They never ask any members what their feeling was on any of the issues they supported. It becomes a case that once the majority votes; it all goes in that direction. The City has to do something to harness the PACs.

Susan Street – Ms. Street asked if Valero could put \$10,000 into signs to elect someone. Valero PAC writes the check to the sign company. Is that okay? Mr. Churchwell stated that was okay. Ms. Street stated that the only thing is that it would be reported in a timely manner. A corporation can spend as much as they want on a campaign (as long as it is not a contribution) and no one can do anything about that. Mr. Churchwell stated that you couldn’t regulate spending.

Mayor Messina stated that tonight, Council has to decide whether or not it wants to go forward with the ordinance.

Bonnie Silveria – Ms. Silveria stated that she has been involved in campaigns for many years. She asked Council not to make it more difficult, so that it would be like a job. They are volunteering their time.

Sabina Yates – Ms. Yates asked if the City could require an earlier filing date. There is no way the public could have known the money was being spent until after the election was over. Mr. Churchwell stated that there could be an additional report that was required before the election.

Norma Fox – Ms. Fox stated that with the Friday filing, by the time the City Clerk files the paperwork and the newspaper reports it, the election is over. The public needs to see that information before the election. Some cities have cut off dates for contributions. Mr. Churchwell stated that was unconstitutional and would not hold up in the courts.

David Lockwood – Mr. Lockwood stated that he thought any spending limit is clearly right at the essence of the free speech amendment. You are trying to control the communication by limiting the amount of money people are spending. He thinks they should chuck that whole section. The City should tighten up the reporting. In the last election, the two big contributions were made for a purpose. If we can accomplish knowing where the money is coming from and receiving it in a timely manner, which would be good.

Jeanine Seeds – Ms. Seeds stated that she wants to know about the \$45,000 or \$10,000 donations. Usually people do that for a stick or carrot. She agreed that moving the date back where people can contribute. Is there a law requiring a clear picture of where the money comes from? Mr. Churchwell stated that State law requires a sponsor of a PAC to be included in the name of the sponsor. If it were not on the sign or in the literature, it would have to be enforced.

Council Member Hughes stated that last year; the flyers had the information who sponsored them.

Bob Craft – Mr. Craft stated that it sounds like we are on the right track with stringent reporting requirements. The other thing is that he agrees with Mr. Lockwood, except for putting in voluntary spending limits. It matters. If there were a reasonable amount, it would be useful. It makes sense that whatever we come up with, there needs to be a revision that the amount is revisited in five years.

David Ernst – Mr. Ernst stated the emphasis should be on whether it was a fair election. He felt sorry for Council Member Hughes the day after the election when his picture was in the paper because he thought he would never be able to know if he won the election fairly.

Council Members Hughes, Whitney, Schwartzman, Patterson stated there were some things that needed to be worked on, but they want to bring this back for discussion/action.

Council Member Patterson stated that she would like to revisit the issue of ‘recusing’. She wants to debate the \$10,000 limit. There needs to be more discussion on the issue of ‘anonymous donor’ and the amount to be reported. There needs to be more reporting on the Wednesday before the election reporting. She loved the idea of having a report on this and checking up on it in four years. Council needs to revisit the ethics issue to include voluntary outside corporations and independent campaign expenditure. That is more important than anything Council does. It might influence Valero. A lot hangs on the voluntary requirement in the ethics portion.

Mayor Messina stated this should be brought back and gone through section by section, to get comments.

Council Member Patterson thanked the experts and the citizens for their participation and effort.

Norma Fox – Ms. Fox discussed the issue of loans. Mr. Churchwell stated that any loan that is made in lieu of a contribution is limited to \$500. She asked about Vice Mayor Schwartzman’s loan. Vice Mayor stated that it was all personal money of his own that was loaned. Ms. Fox questioned the issue of credit cards. Council Member Hughes stated that he did not use credit cards to extend credit for his campaign.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:25 p.m.

Lisa Wolfe, City Clerk