

February 15, 2005

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.

**MINUTES OF THE
SPECIAL MEETING - CITY COUNCIL
FEBRUARY 15, 2005**

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:15.m. on Tuesday, February 15, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Patterson, Smith, and Mayor Messina

Absent: Council Member Whitney

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENT OF CLOSED SESSION:

Mayor Messina read the announcement of closed session.

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

COMMUNICATIONS ON CLOSED SESSION ITEMS:

WRITTEN:

None

PUBLIC COMMENT:

None

CLOSED SESSION:

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

(Initiation of litigation pursuant to subdivision (b) of Section 54956.9)

One Case

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:17 p.m.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
FEBRUARY 15, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30.m. on Tuesday, February 15, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Patterson, Smith, and Mayor Messina

Absent: Council Members Whitney and Campbell (Campbell arrived at 7:32 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Announcement of action taken in Closed Session:

Mayor Messina stated that Council directed Staff not to proceed with litigation.

APPOINTMENTS:

None

PRESENTATIONS:

Update on PURE Committee Activities:

Mr. Bob Craft presented the following report:

Additional toxicity tests were conducted in January. Ninety six-hour acute toxicity static renewal tests were conducted using City and Valero effluent blended with pilot plant concentrate. The results were mixed.

The tests at the City facility were not positive, a turnaround from previous testing. Extreme toxicity was found when the two species of fish were subjected to a 100% RO concentration level. That may have been the result of ammonia concentrations, perhaps caused at least in part by the wet weather in early January.

At Valero, the results using two species were more positive and were marginally acceptable. Additional testing is required and will be undertaken in the near future.

They must get acceptable survival rates for the targeted species. They recognize the most sensitive

species required for NPDES permit compliance might change as a result of this project. The funding will be determined during the permit renewal process in 2006-2007.

PURE's consultant (CDM) has examined 3 siting alternatives for the components required for treatment of the wastewater. The alternatives examined were:

1. All major components - micro-filtration, ultra-violet and reverse osmosis - located at the City facility
2. MF and UV located at the WWTP with the RO at Valero
3. Or, the MF at the WWTP and the RO/UV at Valero

All other things being equal, it appears that the most cost effective solution is to place all the major components at the City facility. That is driven primarily by a need for an intermediate pumping station at Valero if options 2 or 3, were implemented. The difference in capital costs associated with the three ranges from approximately \$1 million to \$1.8 million. There is adequate space at the City facility to accommodate the components, but flexibility for future growth at the facility will be impacted.

Three factors could ultimately affect what at first blush looks to be a slam-dunk decision. The factors are:

1. The location of treatment components at Valero. If these could be placed near the cooling towers, the need for the intermediate pump station would be obviated. This station accounts for nearly all of the cost differences among the three alternatives.
2. More detailed analysis of electrical supply conditions at Valero and the City including any need for standby power.
3. Toxicity testing of RO concentrations of both City and Valero effluent - dilution ratios and toxicity results could dictate the location.

Flow equalization techniques will be required for the recycling system to operate efficiently. Three alternatives for flow equalization have also been examined. A system using the City's existing multi-purpose basins to store as much as 400,000 gallons looks to be the most cost effective solution for the task by as much as 30%.

Evaluation of electrical power supply alternatives is incomplete at this point. The required information has not yet been received from PG&E. There are a number of variables that must be considered in this arena.

MDE has surveyed the possible supplemental use of alternative power sources. Only one seems to hold any promise for this project. It is the potential use of digester gas (methane) in some way. This needs more detailed work to ascertain the practical feasibility of such a technique in their application.

PURE's concept has called for as much as 2 MGD of recycled water being provided to the refinery. Valero has pledged \$15 million in capital costs for a system that delivers at least 1 MGD. Unfortunately, it now appears that projected costs for a system that has the capacity to deliver 2 MGD

will be between \$19-21 million dollars. PURE has a significant shortfall at this capacity level unless they can find additional sources of funding. They will pursue these of course; but in case they cannot identify additional funds, MDE is in the process of reviewing potential cost reduction methods, which include:

1. Reevaluation of original design and operation concepts.
2. Downsizing the recycled water delivery capacity of the system. The original agreement with Valero called for at least 1 MGD of recycled water to be provided by the City. PURE will explore how sensitive the total project cost is to the treatment capacity. MF/RO units are modular and therefore sensible 'breakpoints' may emerge in terms of right-sizing the project.
3. Reevaluation of project reliability factor - for example, would operations at less than 24/7 be acceptable and operationally feasible.

PURE expects to have the results of the cost reduction studies at its next meeting in March. They hope that they will be able to maintain its goal of 2 MGD. The refinery used an average of just over 4 MGD of the raw water in 2004.

PURE is still on track to agree on a conceptual design in the spring, and to produce a preliminary design in early summer. Its final design should be completed by the end of 2005 to enable the City to apply for applicable discharge permits.

PURE's aggregate consultant costs to date are within budget and, with some line item adjustments, it is expected that this will continue. The current contract will take them through the preliminary design phase.

The next PURE Committee meeting will be on 3/8/05.

Benicia Historical Museum at the Camel Barns:

Ms. Sandy Moriarty, Education Coordinator, presented a project that she has been working on. She has put together a walking tour of the historical tiles, as well as a few historical structures on First Street. The museum does approximately 50 tours per year for the elementary schools. Ms. Moriarty stated that the museum is going strong. She stated that educating the community and the schools is their main goal.

Mayor Messina encouraged Ms. Moriarty to make the brochures on the Children's Walking Tour available at the museum for the public to obtain.

Vice Mayor Patterson asked Ms. Moriarty if she (and any other Council Members) could be included in one of the children's walking tours. Ms. Moriarty stated that she would work on that and get back to Council on a possible date.

PROCLAMATIONS:

Mayor Messina presented a proclamation honoring Valero for its recent ranking as one of America's best big companies and best employers. Doug Comeau accepted the proclamation.

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

Council Member Campbell requested items X-A and X-B (Reports from the City Manager) be moved up in the agenda, as there are many people in the audience (and at home) that want to be involved in the discussion. Council agreed to move items X-A and X-B up to immediately follow Unfinished Business.

On motion of Council Member Campbell, seconded by Council Member Smith, the Agenda was adopted as amended, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

COMMUNICATIONS:

WRITTEN:

None

PUBLIC COMMENT:

1. Marilyn Bardet - Ms. Bardet discussed the recent BUSD and 7-11 Committee meetings that she attended. She discussed the City's General Plan and how it relates to the proposed school closure. She stated that it is time to form a committee at the City level. It should be open to the public. We need to discuss the purposes of the community center, a potential site, funding issues, and how it relates to the closure of a school. She wants to see how Council gives leadership to the discovery process about where a community center belongs, and to weigh in about the importance of the schools in our town.
2. Council Member Smith stated that he was disappointed that there were no nominations for the Planning Commission tonight. He stated that perhaps now that the project for the Mayor's family has made its final pass by the Planning Commission, we could get some fresh blood on the commission.
 - 2/17/05 - The Chamber of Commerce will have its Business After Hours at the Old Thyme Deli. The Old Thyme Deli and Costco Wholesale will host it.
 - 2/18/05 - The Chamber will host a Business Expo Workshop.
 - 2/19/05 - Congressman George Miller will be at City Hall to discuss Social Security and the future of that system.
 - 2/19/05 - Benicia Historical Museum will host its annual Celebration of Concepcion Arguello and Nikolai Rezanov's ill-fated love affair.
 - 2/19/05 - St. Dominic's will have its annual crab feed.
 - 2/19/05 - Raley's will host a fund-raising BBQ for the family of Marine Lieutenant Dustin Shumney.

- **2/20/05 - Various musicians will perform at Choices Bar to raise money for the Shumney family.**
 - **2/26/05 - There will be a memorial service for Lieutenant Shumney at the Veterans Memorial Hall.**
 - **2/26/05 - Napa-Solano Audubon Society will have a field trip.**
 - **2/28/05 - There will be a joint meeting of the School Board and City Council at 7:00 p.m. at the Benicia Library, Dona Benicia Room.**
- 3. Council Member Campbell stated that the Marina should be looked at by the EDB and Planning Commission, not just the Audit and Finance Committee. There are many topics that need to be discussed. He asked Staff to give the same presentation to the EDB and Planning Commission that will be given to the Audit and Finance Committee.**

Vice Mayor Patterson suggested making some recommendations through the Audit and Finance Committee as to how to approach this with the other two commissions. Mayor Messina asked that Council receive copies of communications from the Audit and Finance Committee on this item.

CONSENT CALENDAR:

Mayor Messina asked if there were any items to be pulled. Vice Mayor Patterson requested item VI-C be pulled. Council Member Smith requested item VI-B be pulled. Ms. McLaughlin, requested item VI-A (11/4/04 minutes only) be pulled.

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

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

The minutes of 2/1/05 regular City Council Meeting were approved.

RESOLUTION 05-11 - A RESOLUTION ADOPTING THE 2005 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM, FOR THE PERIOD OF FEBRUARY 2005 THROUGH SEPTEMBER 2005, AND AUTHORIZING THE CITY MANAGER TO SIGN THE PROGRAM ON BEHALF OF THE CITY

RESOLUTION 05-12 - A RESOLUTION AUTHORIZING THE PURCHASE OF A REPLACEMENT SIGN TRUCK FROM NATIONAL UTILITY EQUIPMENT COMPANY OF SAGINAW, ALABAMA, IN THE AMOUNT OF \$53,566.25

RESOLUTION 05-13 - A RESOLUTION AUTHORIZING THE PURCHASE OF A POLICE INTERCEPTOR VEHICLE FOR THE POLICE DEPARTMENT UTILIZING EQUIPMENT REPLACEMENT FUNDS

RESOLUTION 05-14 - A RESOLUTION APPROVING THE NEW JOB DESCRIPTION FOR THE CLASSIFICATION OF RECREATION COORDINATOR AND ESTABLISHING THE SALARY RANGE

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of minutes of the 11/4/04 Joint Planning Commission and City Council Meeting (contingent on Planning Commission approval):

Ms. McLaughlin stated that the Planning Commission has not taken action on the requested changes to the minutes. She suggested continuing the minutes until the next Council meeting.

Denial of Claim and referral to insurance carrier (Aldrich):

Council Member Smith stated that this claim is from a Benicia resident that is claiming damages from the pipeline project. He would like to have more time to work on the claim to see if the contractor will be stepping up to the plate. Ms. McLaughlin stated that Council could continue this claim until she had time to contact the adjuster for the contractor.

Waive the Attorney-Client Privilege for the Memo Regarding Jefferson Street and the City of Benicia's Interest:

Vice Mayor Patterson stated that this issue was a property dispute. It took the City a long time to take action on it to commission the legal research. The lessons learned are that the property disputes are very complicated affairs. What appears to be clear (clear title or public right of way) is often not the case. The lesson learned is that it is best to get the facts to avoid personal harm.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, Council agreed to waive the attorney-client privilege for the memo regarding Jefferson Street and the City of Benicia's interest, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

Approval of a Certified local Government (CLG) Application:

Eric Angstadt, Associate Planner, reviewed the Staff report.

RESOLUTION 05-15 - A RESOLUTION TO AUTHORIZE THE APPLICATION FOR CERTIFIED LOCAL GOVERNMENT STATUS AND TO AUTHORIZE THE MAYOR, STEVE MESSINA, TO SIGN THE APPLICATION AND TO AUTHORIZE THE CITY MANAGER, JIM ERICKSON, TO SIGN THE PROGRAM DOCUMENTS AND AGREEMENTS

Council Member Smith stated that he has been trying to get the City to be a CLG for over three years. This is a very long-overdue action.

Vice Mayor Patterson asked staff for a status update on the historic overlay district. She stated that a few months ago, Council gave direction to staff to look at single-family residence structures that are non-historic within the historic district. Mr. Angstadt stated that in reference to the Downtown Historic Conservation Plan, Staff expects to conclude survey activities by the end of March. Following the survey conclusion, they will begin text updates. The item for providing design review for non-historic single-family homes is on the work plan. They will prepare draft guidelines and text to incorporate them into the Conservation Plan. Those will be part of the community meetings that go on.

Council Member Campbell stated that this was all interconnected with the mixed-use zoning. He asked Staff what was going on with the mixed-use. Ms. Meunier stated that once we go through the Conservation Plan and work program, they will hopefully be able to satisfy the concerns in the community that our preservation controls and regulations are sufficient to protect our resources, we can then return to the Downtown mixed-use and move forward with that.

Vice Mayor Patterson suggested having the concerns raised by Council Member Campbell on the next agenda. She suggested having a discussion on them, with the understanding that we have the priorities discussion coming up. With a greater understanding of mixed-use zoning requirements, we can then make the judgment calls.

Mayor Messina asked Staff if they could be prepared to discuss this at the next Council meeting. Mr. Erickson stated that Staff is very busy and shorthanded right now. He stated that perhaps Staff could provide a written Staff report prior to the 3/5/05 priorities meeting. Mayor Messina stated that the direction to Staff is that Council would like to see the same information that was presented to the Planning Commission. They would like to have some dialogue, so it needs to go on the agenda. In terms of a report, they expect nothing in writing, but something 'off the cuff'.

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

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

REPORTS FROM CITY MANAGER: (moved up in the Agenda)

Proposed Joint Use Agreement between the City and BUSD:

Jim Erickson, City Manager, introduced the item. Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

Mayor Messina stated that Council would be meeting jointly with BUSD in a week or so to discuss this item. He views the fields at the schools as a strong community asset. The school district is on hard times. The children should not suffer because of this. If the City can step in and help out, it should

(with regards to the maintenance of the fields). He does not want to wait to proceed any longer. He wants to proceed right away.

Council Member Campbell asked Staff to clarify the dollar amounts for the citywide assessment district. After discussion, Mayor Messina tried to simplify the process by asking for a breakdown of the \$800,000, how much would be used for the school property and how much is for our existing City property. Mr. Alvarez stated that the existing L&L, the 2190 units, would be approximately \$400,000. The school fields would be approximately \$350,000. The remaining balance would be for engineering and design.

Vice Mayor Patterson stated that we would still have additional problems in terms of maintenance of the older parts (of town) that are not in the assessment districts. It would be good to have that as an element in this discussion. Mr. Alvarez reviewed how the various medians in the City are handled.

Vice Mayor Patterson asked why the commercial parcels are not considered in the current scenario. Mr. Alvarez stated that was a good question, and that is why we are here tonight. He did not have an answer. Commercial does not pay park dedication fees. Commercial does not contribute to our residential L&L that has parks in it. Vice Mayor Patterson stated that a lot of our commercial enterprises pride themselves on supporting teams in our towns. They use that as an explanation of what they are contributing in lieu of higher taxes. Mr. Alvarez stated that if they are able to find that nexus under AB1600, then the spread from 7,000 units to 9,000 units, which would lower the spread. Vice Mayor Patterson stated that it would be useful to have all of this information in a spreadsheet form, to make it easier to understand.

Council Member Campbell asked if we do this agreement, would we be able to use the gyms? Mr. Alvarez stated that the district has offered the gyms and multi-purpose rooms under the agreement.

Public Comment

- 1. Ruth Burdick - Ms. Burdick had questions on the assessment district being proposed. Mayor Messina explained the current and proposed assessment districts and how they work. Mr. Alvarez explained how the proposed capital expenditures would work with regards to the community center. Mr. Alvarez stated that Council directed Staff not to be involved in discussion as to which school site they would prefer to use for a community center. If a site were made available, they would be interested in discussing its use with BUSD.**
- 2. Michael Lionel - Mr. Lionel discussed some of the past efforts by the Council to aid BUSD. He stated that he sees them stepping up again to help BUSD. He hopes it is a win/win for all involved. He hopes they do not settle on a second rate facility for the community center.**
- 3. Alan Schwartzman - Mr. Schwartzman suggested Council look into using artificial fields. He discussed the benefits of artificial fields, and other sites that are using them. It would cost money upfront, but would save money in the long run on maintenance, water, etc. He suggested that if the City leases a school building, BUSD could forgo the lease charge in lieu of the City maintaining its fields. Mr. Alvarez stated that he is aware that the BHS Boosters Club is looking into the artificial turf. It is low maintenance and can be much safer than regular turf.**

4. Steve Thomas - Mr. Thomas is the President of the BHS Panther Foundation. He explained how the Foundation raises funds and what the funds are used for. He stated that there are grants available that they can apply for to be used for the artificial turf. The foundation is working on that. They look forward to working with the City to find creative ways to maintain and improve/lower the long-range maintenance needs.
5. Mark Hall - Mr. Hall discussed a memo that he read from BUSD in January 2005 regarding its master plan. He stated that the letter discusses the square footage of the Mills campus and its closure. The site was not supposed to be decided on until February. Mayor Messina stated that the City has provided BUSD with information they have requested. However, the City has not participated in discussion as to which site they would prefer to use.

Council Member Smith stated that we have had discussion with BUSD about joint use. The City did tour the district office. Beyond that, they have not had specific discussion regarding the school sites. The City had nothing to do with the document that Mr. Hall referred to.

Council Member Campbell stated that the City has had public discussion where they stated that they would not discuss site closures with the district.

6. Melissa Harley - Ms. Harley asked Council to take a positive lead in this issue. The closure of Mills would affect property values. She stated that it was time for Council to step in and let BUSD know what its intentions are for the proposed closed school site. The City has been touted as the assumed tenant for the closed site. Council needs to announce that any site would work for the community center if that were the case. This needs to happen before BUSD makes its final decision. She believes a community center would be better served at the Community Park.

Mayor Messina stated that we are currently addressing the maintenance of the fields, regardless of what site is closed. In terms of the reuse of the facility that is closed, the City could probably use any of the sites for some sort of use. We are not in a position to answer the questions asked by Ms. Harley until BUSD makes its decision.

Vice Mayor Patterson stated that BUSD needs to take a programmatic approach. It is improper for Council to discuss reuse, as it is a school district issue. She stated that the public needs to encourage BUSD to enlarge the pallet of criteria that they are using. Those are the environmental and General Plan issues that the City has to look at. It would be helpful in the future, if there is a reuse concept now that BUSD has to comport with the environmental and General Plan things the City has to consider.

Council Member Smith stated that Council has said that we are interested in any site that BUSD has to offer. They did not specify that it was for a community center. They have not specified criteria for any specific use. He does not think it is fair to BUSD and the community for the City to remain mute on this subject. This is the moment when we need to weigh in. It was not appropriate before, but is now.

Council Member Campbell discussed the benefits for BUSD if the City had a long-term lease on one of the properties. It is better to own something than to lease something long-term. BUSD will not be

keen on selling the City one of the properties.

Vice Mayor Patterson stated that the issue of reuse is important. The public should go back to BUSD and encourage them to look at this in a more comprehensive way. They should go back with a broader pallet of considerations. The City will make the best decision for our community planning consistent with the General Plan. There are a whole host of questions that need to be asked by BUSD to make that determination.

7. Bob Craft - Mr. Craft encouraged Council to approve the Joint Use Agreement. He stated that there seems to be 'turf issues.' The turf (fields) belongs to the taxpayers. Maintaining the fields will not solve BUSD's problems, but it will surely help.
8. Joe Garcia - Mr. Garcia stated that BUSD needs to look at the big picture. Mills is an important amenity to the east side of town. He asked for Council's leadership in the discussions as to what site will be closed. A school closure will change the flavor of the town. Council needs to give BUSD some guidance.
9. Mark Hall - Mr. Hall stated that it was not his intention to insinuate that there was any sort of backdoor discussion between BUSD and Council.

Vice Mayor Patterson stated that there are more areas to consider in the assessment district. We have dedicated trails that are unimproved, but used. They are connector routes to the schools. We have a potential waterfront park that would benefit from some source of funds. We have sidewalks that are difficult to walk on. We need to have trees planted and maintained. The list is longer than in the Staff report for the list of things we might want to consider, with Staff's assessment and advice that would be suitable for an assessment district. Not everybody cares about the schools. They don't have children in the schools and don't relate to them. If we can show that there is a benefit that includes items that are not directly related to the schools, we could gain more votes. Secondly, it is easier to make the nexus to the commercial properties. Working closely with the business community, we could gain its support. She would like that added to the list of things considered in the assessment area. She supports the concept of joint use. If we are having a citywide assessment district, it needs to have City benefits. She would like to see the following 5 items considered of the draft Joint Use Agreement:

1. Page X-A-12 - She would like to see an arbitration clause added.
2. Regarding the issue of setting standards, we need to write standards. She would like to see the need for the standards and guidelines part of the agreement. She would like to see it documented in the agreement that the standards must be done within a certain timeframe.
3. Page X-A-15 - Advertising Criteria - This needs careful consideration. She would like it to be guided by Senate Joint Resolution 29, which was recently passed. It deals with food and advertising with relation to children. It relates to the issue of diabetes, healthy eating, etc. There are other kinds of advertisements that could be considered. She would like to have best practice principles about advertising. She is concerned about having advertising at schools. She wants to make sure we have the necessary protocols in place. She has some suggestions for Staff if they need further assistance.

4. Page X-A-17 - There is a need and necessity for a first right of refusal clause. That is something we might need to consider.
5. Page X-A-25 - She would like to see that we use an integrated pest management program. We should discourage the use of pesticides and herbicides.

Council Member Campbell stated that if we have to do a ballot measure on this, he would like to split the cost with BUSD. He is concerned what will happen if we spend a lot of money on the fields, what happens if BUSD turns around and sells the property. He does not like the idea of advertising at the schools. He does not like the term 'sole discretion' which is used a few times in the proposed agreement. On page X-A-12, it references the supervision of the playing fields being the liability of the City. He wants that whole paragraph reworked so the City is protected.

Ms. McLaughlin stated that the agreement (as written) is one-sided and not beneficial for the City. There is no way City Staff could accept the agreement as it is written. If Council gives Staff direction, they can work with BUSD to make it more equal. Mr. Alvarez stated that BUSD did not follow all of the elements the City had in its original outline for the agreement.

Council Member Smith stated that the fields are not school facilities. They belong to the taxpayers. He stated that Staff seems caught in the rut that they (BUSD) need to compensate the City for restoring the field, when in fact we are just following the General Plan. Council Member Smith stated that the \$350,000 cost seems high. He stated that the costs seem overstated. He questioned the cost of the four employees to maintain BUSD's fields. Mr. Alvarez stated that Staff is very comfortable with the numbers. Council Member Smith stated that this agreement came out his desire that the City discount utilities (specifically water) for the district. He stated that staff continues to have 'turf issues' with this.

Council Member Campbell asked if volunteers could assist in the maintenance. Mr. Alvarez stated that aside from the Panther Foundation, they have not looked into that. Mr. Alvarez stated that having volunteers would most likely take more time to get the job done. Council Member Campbell suggested starting a 'Maintenance Foundation.' Mr. Alvarez stated that there are some aspects of the field upgrades that could be done by volunteers.

Mayor Messina discussed the 'use of playing fields.' He stated that the school should maintain a master schedule for the fields during school hours. The City should maintain the master schedule for all non-school hours. It is incumbent on the City to maximize the use of the fields during non-school hours. Regarding page X-A-12, he asked where the 'admission fee' reference came from. Mr. Alvarez stated that was most likely a boilerplate item. Mayor Messina stated that we might need to charge paying functions for the cleaning of the fields when they use them. Mayor Messina stated that to the extent the City puts in capital dollars, there has to be some sort of amortization period. That concept needs to be part and parcel of the agreement. Mayor Messina asked if the agreement should address 'their fields' and 'our fields.' He asked if the City's fields should be included in the agreement. Mr. Alvarez stated that it was Staff's intention to include BUSD's and the City's fields into the agreement. Mayor Messina stated that he is hesitant to form new assessment districts for this. We may need to look at other ways.

Vice Mayor Patterson stated that the assessment district needs to be thought of as a broad solution to the community, not just for the maintenance of BUSD's fields.

Council Member Campbell referenced page X-A-13. The way it is written, BUSD could dump its maintenance personnel and it would all fall on the City to maintain. Mr. Alvarez stated that the City is only going to maintain the playing fields (sport turf areas) at the four sites; bleachers, backstops, etc. are excluded.

Direction to Staff is to incorporate Council's comments into a version of the Joint Use Agreement and communicate it to BUSD in advance of the 2/28/05 meeting with Council and the School Board.

Mayor Messina called for a 5-minute break at 10:10 p.m.
The meeting resumed at 10:18 p.m.

Criteria Regarding Best City Uses of School District Sites:

Mayor Messina introduced the item and stated that he would start with Public Comment.

Public Comment:

1. Jerry Tenret - Mr. Tenret discussed the recommended closure of Mills. He stated that he is concerned with the possibility of the Mills site being used as a community center. He is concerned about noise, parking, hours of operation, etc. He asked that the City include the neighbors in public meetings regarding this issue. Mr. Alvarez stated that the normal operations of a community center would be from 8:00 a.m. to 10:00 p.m., depending on the use. However CEQA may determine that traffic, noise, etc. would need to be limited.
2. Ruth Burdick - Ms. Burdick stated that she wants the City to step up to the plate and help BUSD with the reuse issue. The District lacks expertise in this area. This is the only school completely surrounded by neighbors. Mr. Alvarez stated that a community center would typically be used for Tiny Tots programs, Boy Scouts, Girl Scouts, Adult Classes (exercise, art, computer, dance, etc.), weekend rentals for birthday parties, weddings, dances, banquets, etc.
3. Lori Johnson - Ms. Johnson stated that this issue seems like a game of hot potato. She stated that the City needs to make it clear to BUSD exactly what its intentions are. Mayor Messina reiterated that regardless of what site is closed, the City could use at least some part of the site for some use. They may not use all of it, but most likely would use at least some of it. Vice Mayor Patterson stated that the school needs to ask what are the potential reuses for the site. It is a longer list than what the City would be using. Also, what are the impacts of those reuses. That should help drive the decision. The General Plan is a very good resource document that she encouraged the schools to use. During the General Plan process the east side was concerned about the kinds of uses that were occurring, because they were affecting the quality of life, such as car washes. In the General Plan, there is reference to the east side about not changing the character and nature of the east side neighborhoods. There are City policies but the school reuse people making the decisions could use that as some criteria for decision-making.

Council Member Campbell stated that it is the Mayor's opinion, not the entire City Council's view, on whether we could use all or part of any particular school.

4. Jill Lowell - Ms. Lowell thanked the Council for its efforts on this issue. She thanked them for thinking outside of the box. She stated the City is very divided on this issue. The 7-11 committee was comprised of lay people. She asked the Council to assist the District in any way possible.
5. Brent Wolke - Mr. Wolke stated that BUSD is assuming that the City will be leasing whichever site they close. He asked Council to make its intentions clear to BUSD.

Mr. Alvarez stated that there are basic elements needed for a community center. It needs a large space for meetings, classrooms, office space, large multi-purpose room, space for Tiny Tot program, etc. If a school were to close, any of the sites would be adequate for the City to reuse. We would also need outdoor space for sports activities.

Council Member Campbell stated that Mills, Turner, and the Administration building all have drawbacks. For him, he does not believe, depending on the terms of the agreement, that we could use any of the sites.

Vice Mayor Patterson stated that we need to take a look at all the other things that the City planning process includes, which includes environmental impacts. Using CEQA would be very helpful. It deals with traffic, noise, things that would affect the quality of life, etc. There is something in the General Plan that talks about the sense of the neighborhood and not adversely changing the character and the quality of life. We have to look at those types of things as planners of the city.

6. Joe Garcia - Mr. Garcia stated that as community leaders, Council's involvement is important. He discussed the safety aspect of Mills closing. The children will have to walk a long distance to get to schools. The sidewalks are uneven and not safe. He stated that Council needs to give BUSD leadership. We need to look at this issue to see what is beneficial for the City in the long run. He asked if the City would participate in the cost of the environmental review that will need to be done. The City needs to be an active player and have an active voice in this process.

Council Member Smith asked Staff to respond to Mr. Garcia's statement about the City's role in the environmental study. Mr. Erickson stated that the City would not be a responsible party in the environmental review.

Vice Mayor Patterson stated that was technically correct. But, it is almost too late. The school committee is not looking at the whole of the community and all of the school areas, and then weighing the reuses and how they would affect one part or the other. By the time the school district considers the reuse of a school CEQA would have to go back and reinvent the alternatives. The

alternatives would be the alternative uses of that site or alternative sites. The schools are considered a separate part of the State government. Schools have a lofty position in the State and are only answerable to the state legislature and not state responsible agencies. They should take a more programmatic approach with CEQA now and begin to do the assessment. If they don't do that, when they do the mandatory scoping session, the public will say that they need to reexamine the other sites.

Mr. Erickson reiterated that Staff has not been talking to BUSD about the use of school facilities for a community center, with the exception of the administration building. Staff has only discussed the maintenance of the fields with BUSD. Its focus has been putting together a Joint Use Agreement for the fields. For many reasons, Staff has not discussed the City's needs with BUSD. Mr. Erickson stated that if there is a school closure, the City might need to adjust our bus routes. There may also need to be additional crossing guards.

7. Liz Gibboney - Ms. Gibboney stated that a school closure is a significant decision for the entire City at large. She asked Council to articulate to the BUSD the position that it has stated tonight to BUSD. She is concerned that there is an assumption out there that the City has expressed to BUSD how much they would pay for leasing one of the school sites. Mr. Erickson stated that the City has never given a number of what they would pay to lease a site from BUSD.

Vice Mayor Patterson stated that she could understand Ms. Gibboney's frustration that Council does not say to BUSD what they have been saying tonight. But, Ms. Gibboney can convey the information to BUSD. It is inappropriate for Council to tell BUSD what its planning concerns are. Council uses the General Plan with hopes that others use it as well.

Mr. Alvarez stated that the planned community center at the Community Park was approximately 4,500 square feet.

8. Michael Lionel - Mr. Lionel stated that the 7-11 Committee has consulted with a CEQA attorney. The CEQA attorney will do a CEQA study for the closure. However, the premises will be simple. Because it is a closure, it will not show impacts like a reuse CEQA would. BUSD is expecting whoever leases the site to do the CEQA that addresses reuse. He stated that Council needs to consider location when deciding on a community center. BUSD is planning on the City using the entire closed site. He believes the General Plan is being violated.
9. Jennifer Whitter - Ms. Whitter stated that a school closure is a citywide planning issue. Losing Mills conflicts with the General Plan. School sites would be used as emergency response centers in the event of a disaster. She proposed some of the City's 25% reserves be used for a programmatic EIR. The City could get real data that would be valuable. Public input and consideration is lacking in the 7-11 Committee. The health and safety of the children needs to be considered. Livability of communities is at the heart and safety of our kids. In a programmatic EIR they would consider no closure as an alternative. If Mills is closed, it is a triple whammy for the surrounding neighborhoods. There will be severe parking issues.

Vice Mayor Patterson stated that when the EIR is done on the school closure, you have to look at the whole of the project, which includes reuse.

10. Steve Thomas - Mr. Thomas stated that he has served on the Budget Advisory Committee (BAC) for two years. This continues to be a multi-phased project. The BAC continues to work with the 7-11 Committee on the school closure issue. He stated that BUSD would not announce a school closure on 2/17. They will simply be accepting the committee's recommendation and report. There will be no action taken on 2/17. He stated that CEQA exempts the closure of a school from CEQA. He will find out if it is required to link school closure with reuse. He cautioned Council about diving into closure issues before we get to the issue of reuse. He will ask BUSD's legal counsel whether it is required to make reuse analysis a precondition to closure. He urged the Council to allow BUSD to finish its task. If they don't lease to the City, they could get more money from someone else. The decision to close a school was not based on any specific revenue. It was based on the savings from a closure. When BUSD negotiates the terms of the lease of the site, part of the negotiations for the lease will be the completion with some assistance from the City. BUSD would be looking to the City for some assistance in the payment for the EIR or Negative Declaration (he is not sure which would be required). Regarding closure, BUSD's legal counsel will advise them as to the scope of the environmental review. Before a final decision is made a CEQA study on the site that will be closed will be completed.

Vice Mayor Patterson stated that if there is a fair argument made on the CEQA document for closure to consider other school sites for closure because of the reuse potential, then the CEQA document must consider these. She stated that they should be careful as they proceed that they have the whole of the project in the CEQA document. Mr. Thomas stated that the project is the school closure. He stated that it is an early caution that Council does not step in to areas that have not been decided and will not be completed for 60-90 days.

11. Marilyn Bardet - Ms. Bardet stated she wanted to pick up on one thing with regard to compensation to the east side, for the loss of either of its schools. Not monetary compensation, but extra consideration for all the ways we can improve the east side. If we talk about an assessment district we also have to measure whether people will pay for an assessment district and a parcel tax. She is concerned about having weddings, banquets, etc. all weekend long in her neighborhood. She stated that there was a letter from BUSD's attorney stating that generally speaking, closures are exempt from CEQA, except in the case of cumulative impact. She discussed the issue of the refinery being built right next to the buffer zone by Robert Semple Elementary. She discussed a study done by the University of Michigan on effects of air contaminants as it aggravates asthma, and other health impacts.

Council Member Smith asked if any of the five elementary schools would be cheaper, easier, etc. for the City to modify for reuse. Mr. Erickson stated that Staff has not looked at the schools for any of those factors. They could not speculate on that. Mr. Erickson stated that the administration building would be expensive for the City to occupy because of its age. Council Member Smith stated that if one of the considerations for reuse was for a police substation, clearly Mills, being as close to the Police Station as it is, would make it the least appropriate site for that use. Mr. Erickson stated that the thing that Chief Trimble has suggested is an additional beat, not an infrastructure. Council Member Smith stated that there will obviously be traffic and noise impacts from a community center reuse of a school site. He asked if Council could acknowledge there would be more problems for schools that are located in neighborhoods. Council Member Smith stated that the reason he is bringing these issues up

is that the 7-11 committees process was flawed. He hoped Council could send some kind of signal in terms of reuse, that they feel the criteria used by the 7-11 committee were not the most appropriate ones in deciding which site would be optimal for the City to lease. The criteria seemed to boil down to economics for BUSD.

Vice Mayor Patterson stated that the message to send to BUSD is that they should have a dialogue with City planners so that they have that significant piece of information. They would benefit enormously from talking with City planners. She stated that BUSD needs to understand that other uses could have an affect on the City. That is the reason they need to look at the General Plan. They need to have that plugged into the environmental process.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, Council agreed to send a letter to BUSD requesting that they consult with our General Plan and City Staff before making a final decision, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

At 11:40 p.m., Mayor Messina asked Mr. Erickson if any of the remaining items on the Agenda could be continued to the next meeting.

Vice Mayor Patterson stated that she would like to hear the New Business items, and continue Reports from City Council Committees.

On motion of Council Member Smith, seconded by Council Member Campbell, Council agreed at 11:40 p.m. to proceed with the New Business items tonight and continue the Reports from City Council Committees until the next meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

NEW BUSINESS:

Discuss Urban Water Management Plan:

Rob Sousa, Finance Director, reviewed the Staff report.

Jim Erickson, City Manager, reviewed the Staff report on this item.

Vice Mayor Patterson stated that the City and public needs to have a vision of a water policy that is consistent with the General Plan. There are lots of benefits to having that public process. She wants to have this on the next agenda with a Staff report.

Council Member Smith requested that the report addresses Staff's opinion on the appropriateness of a task force. Mr. Erickson stated that would not be a problem.

Join a Statewide Pool of Cities and Counties to Utilize a Taxable Bond Issued to Fund the Sale of the City's Vehicle License Fee (VLF) Receivable from the State of California: Rob Sousa, Finance Director, reviewed the Staff report.

RESOLUTION 05-16 - A RESOLUTION APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PURCHASE AND SALE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE SALE OF THE SELLER'S VEHICLE LICENSE FEE RECEIVABLE FROM THE STATE; AND DIRECTING AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION THEREWITH

Vice Mayor Patterson stated, for the record, that she understands that in the past, the citizens paid 2% rate for their VLF. The City got those fees through the constitutional requirement. Now we are dealing with the present, which is an overall reduction of that fee from 2% to 0.65%. What we have done in collaboration with the State is taken the property tax source and we are dividing it differently between the schools, cities and counties. There is no net gain and revenue from this. There is a cost to enter into this arrangement. The only group that she can figure out that is benefiting from this is the bond attorneys and the financial institutions. It is a shame and a rip-off. The financial institutions are putting a lot of pressure on the Governor not to raise taxes. She would like the public to think about this. We are paying bond attorneys for our own money.

Council Member Campbell stated that he does not trust the State. We should do this.

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

Ayes: Council Members Campbell, Smith, and Messina

Noes: Vice Mayor Patterson

Absent: Council Member Whitney

Execute Lease Financing Documents Related to the Casa Vilarrasa Project:
Rob Sousa, Finance Director, reviewed the Staff report.

RESOLUTION 05-17 - A RESOLUTION AUTHORIZING AND DIRECTING THE EXECUTION OF CERTAIN LEASE FINANCING DOCUMENTS RELATED TO CASA DE VILARRASA AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO

Mayor Messina questioned the wording in the resolution authorizing various individuals to execute the necessary documents. Ms. McLaughlin reassured Mayor Messina that this was standard language for bond issues.

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

Ayes: Council Members Campbell, Patterson, Smith, and Mayor Messina

Noes: None

Absent: Council Member Whitney

REPORTS FROM CITY COUNCIL COMMITTEES:

Continued to the next Council meeting.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:07 a.m. on 2/16/05

Lisa Wolfe, City Clerk