

February 19, 2008 Regular City Council Meeting

BENICIA CITY COUNCIL MEETING

REGULAR AGENDA

City Council Chambers

February 19, 2008

7:00 P.M.

I. CALL TO ORDER:

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO FUNDAMENTAL RIGHTS OF THE PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/ PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS:

1. Announcement of Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee:

-Two unexpired terms to September 30, 2010

Historic Preservation Review Commission:

-Two full terms to February 28, 2011

3. Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us.

B. APPOINTMENTS:

[Sky Valley Open Space Committee – one unexpired term to September 30, 2010](#)

-John Furtado

C. PRESENTATIONS:

D. PROCLAMATIONS:

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN

B. PUBLIC COMMENT

VII. CONSENT CALENDAR:

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

[A. Approval of the minutes of February 5, 2008. \(City Clerk\)](#)

[B. Denial of the claim against the City by Karen Edwards and referral to insurance carrier. \(City Attorney\)](#)

The claimant alleges the City's water main ruptured and caused the ground to settle resulting in water damage and settlement cracks. An independent contractor working on the project

for the City has advised that no water damage to this property was caused by the water main break. The amount of the claim is \$411.04.

Recommendation: Deny the claim against the City by Karen Edwards and referral to insurance carrier.

C. Denial of the claim against the City by Benicia Marina Homeowners Association and referral to insurance carrier. (City Attorney)

The claimant alleges that a leak in the City's water main caused the spa to be lifted from the ground. City staff has advised that the leak was in the lawn area not close to the spa area and did not cause damage to the spa. The amount of the claim is unknown at this time.

Recommendation: Deny the claim against the City by the Benicia Marina Homeowners Association and referral to insurance carrier.

D. Denial of the claim against the City by Christine Shannon and referral to insurance carrier. (City Attorney)

The claimant alleges that a tree on the corner of First Street and West G Street was not sufficiently pruned causing a branch to fall on her car. Parks department records show that the First Street City trees were trimmed in January 2007 and the Parks Supervisor visually inspected all City trees on a weekly basis. Parks department staff feels that the limb failure was caused by spontaneous summer limb drop. The amount of the claim is \$961.38.

Recommendation: Deny the claim against the City by Christine Shannon and referral to insurance carrier.

E. Acceptance of the Water Distribution System Improvement Project. (Public Works Director)

This project acceptance and notice of completion is for the Water Distribution System Improvement Project. The last step of the project requires formal acceptance by the City Council and filing of the notice of completion by the City Clerk, which allows the City to process the final payment to the contractor. The final construction cost is \$6,038,250 and is covered from the Water Enterprise Reserve Fund.

Recommendation: Adopt a resolution accepting the Water Distribution System Improvement Project as complete, including Contract Change Orders 1 through 5, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

F. Approve amendment to the lease between the City of Benicia and Benicia Main Street. (Economic Development Manager)

The City of Benicia owns the Southern Pacific depot building at 90 First Street, which was leased to nonprofit organization Benicia Main Street (BMS) in 2002 for a 10-year term. BMS has requested rent forgiveness for March 2008 through December 2009, in order to allow it to grow a new signature event to replace the Waterfront Festival, which was the organization's largest fundraiser. Staff recommends partially approving this request by forgiving the base rent payments due through December 2008, for a total of \$16,200 in foregone revenue to the Southern Pacific Depot account, which is reserved for maintenance and improvements of the depot.

Recommendation: Approve a lease amendment that provides for rent forgiveness for Benicia Main Street at the Southern Pacific depot from March through December 2008.

G. Second reading and adoption of an ordinance revising Section 5.32.120 (Taxicabs) of the Benicia Municipal Code. (Finance Director)

After Regency Cab discontinued taxicab service in Benicia in 2006, the quality of taxicab service has declined, reportedly due to the lack of permitted taxicab drivers in Benicia. The majority of taxicab drivers from the two licensed carriers, Vallejo/Benicia City Taxicab and Yellow Cab of Vallejo & Benicia, are only permitted in Vallejo because of the time and cost to obtain a taxicab driver permit in Benicia. Because of the Benicia taxicab driver shortage, there have been many nights that either no taxicab service was available or the response times were not within an acceptable time range. Staff from the Benicia Police Department and the Vallejo Police Department have been meeting to develop a plan for improving the permitting process shared by the two cities. Based on the meetings, the Benicia Police Chief recommends that Vallejo taxicab driver permits be accepted as valid taxicab driver permits in Benicia, as long as the company is also authorized to operate in Benicia. During the previous Council meeting, the Finance Director was directed to develop a taxi monitoring program that will ensure adequate performance in the future. The Council will review the Monitoring Program recommendations on March 4, 2008. There is no new fiscal impact from these changes.

Recommendation: Adopt the ordinance to authorize taxicab drivers with valid City of Vallejo Taxicab Driver Permits to operate taxicab service within the City of Benicia, as long as the taxicab driver is employed by a carrier that has a taxicab carrier permit authorized by the Benicia City Council.

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

VIII. PUBLIC HEARINGS:

[A. Review of the Benicia Business Park Environmental Impact Report \(EIR\). \(Community Development Director\)](#)

On August 7, 2007, the City Council determined that the Draft Environmental Impact Report (DEIR) conforms with the City's CEQA Environmental Review Guidelines, and extended the written comment period two weeks to August 20, 2007. Comments received at the public hearing and through August 20, 2007 are responded to in the Supplemental Response to Comments. Section III. D. 12 of the City CEQA Environmental Review Guidelines requires a public hearing for EIR certification. The applicant requests the City Council certify the Benicia Business Park EIR. The applicant disputes EIR findings that the Proposed Project does not conform to the General Plan.

Recommendation: It is recommended that the Council either:

1. Adopt a resolution certifying the Benicia Business Park Environmental Impact Report (consisting of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments), and further resolving that the Benicia Business Park Project ("the Proposed Project") considered by the EIR cannot be approved without significant modification due to numerous conflicts with General Plan policies; or
2. Adopt a resolution deferring action on the EIR until the project is brought forward, and requesting staff to present the project as soon as practical to the Planning Commission for recommendation; or
3. Adopt a resolution concluding the EIR does not conform to the requirements of the California Environmental Quality Act and either (a) not certifying the Final Environmental Impact Report or (b) directing modifications to the EIR in specified areas.

IX. ACTION ITEMS:

A. Presentation of the Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 2007 and recognition of Certificate of Achievement for Excellence in Financial Reporting for the June 30, 2006 Report. (Finance Director)

The City of Benicia receives an annual independent audit of its financial records and, upon completion, produces a Comprehensive Annual Financial Report (CAFR). This year's audit was conducted under the direction of Catherine Yuen, Shareholder at Maze and Associates, and presented to the Audit and Finance Committee (AFC) for consideration on February 8, 2008. The Audit and Finance Committee has reviewed the CAFR and recommends approval. The previous year's CAFR received an Award of Excellence from the Government Finance Officer's Association of the United States and Canada. A comparison of the audited results with the amended budget is also presented in the staff report.

Recommendation: Accept the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending June 30, 2007 and authorize staff to distribute the document to recipient agencies.

B. Introduction and first reading of an ordinance for establishing permitting and regulatory requirements for massage therapists. (Police Chief)

Currently, the Benicia Municipal Code only requires massage therapy businesses to obtain a business license. There are no professional guidelines for regulating and licensing massage therapy technicians working in these businesses. Absent a process to approve massage therapists, it is difficult to prevent business owners from operating with uncertified therapists or to discourage unlawful prostitution operations associated with an unlawful massage businesses. Unlawful massage operations can conduct business in commercial properties throughout the community and create quality of life issues related to a non-regulated massage business and prostitution. In response to these issues, the Police Department has reviewed alternatives that would improve the regulation of massage therapy businesses with the support of Benicia licensed massage therapists. Staff has developed an ordinance to specifically address permitting and regulating conditions that will differentiate a legitimate massage therapy business from a house of prostitution that uses a massage business as a front for unlawful activity.

Recommendation: Introduce the ordinance establishing massage regulations.

X. INFORMATIONAL ITEMS:

A. Reports from City Manager:

B. Council Member Committee Reports:

(Council Members serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by Council Members are made only by exception.)

1. Mayor's Committee Meeting. (Mayor Patterson)

Next Meeting Date: February 20, 2008

2. Association of Bay Area Governments (ABAG). (Mayor Patterson & Vice Mayor Campbell)

Next Meeting Date: April 24, 2008 – Spring General Assembly

3. Audit & Finance Committee. (Vice Mayor Campbell & Council Member Schwartzman)

Next Meeting Date: March 7, 2008

4. League of California Cities. (Mayor Patterson & Council Member Schwartzman)
Next Meeting Date: April 16-17, 2008 – Legislative Action Days
5. School Liaison Committee. (Council Members Ioakimedes & Hughes)
Next Meeting Date: March 13, 2008
6. Sky Valley Open Space Committee. (Vice Mayor Campbell & Council Member Ioakimedes)
Next Meeting Date: March 5, 2008
7. Solano EDC Board of Directors (Mayor Patterson & Council Member Ioakimedes)
Next Meeting Date: March 27, 2008
8. Solano Transportation Authority (STA) (Mayor Patterson & Council Member Schwartzman)
Next Meeting Date: March 12, 2008
9. Solano Water Authority/Solano County Water Agency (Mayor Patterson & Vice Mayor Campbell)
Next Meeting Date: March 13, 2008
10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell & Council Member Hughes)
Next Meeting Date: April 17, 2008
11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell & Council Member Hughes)
Next Meeting Date: February 20, 2008 – Citizen’s Advisory Committee
12. Valero Community Advisory Panel (CAP) (Council Member Hughes)
Next Meeting Date: April 24, 2008
13. Youth Action Task Force (Council Members Ioakimedes & Schwartzman)
Next Meeting Date: February 27, 2008
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson)
Next Meeting Date: March 10, 2008

XI. COMMENTS FROM COUNCIL MEMBERS:

XII. ADJOURNMENT:

Public Participation

The Benicia City Council 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 City Council allows speakers to speak on non-agendized matters under public comment, 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 City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Dan Pincetich, 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 Council 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 City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council 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 City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

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

 [IV-B APPOINTMENT.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Denial of Claim Edwards.pdf](#)

 [VII-C Denial of Claim Benicia Marina HA.pdf](#)

 [VII-D Denial of Claim Shannon.pdf](#)

 [VII-E Water Distribution System.pdf](#)

 [VII-F Main Street Lease.pdf](#)

 [VII G TAXI REPORT.pdf](#)

 [VIII-A PUBLIC HEARING BBP.pdf](#)

 [IX-A CAFR REPORT.pdf](#)

 [IX-B MESSAGE ORDINANCE.pdf](#)

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
CONFIRMING THE MAYOR'S APPOINTMENT OF JOHN FURTADO TO THE SKY
VALLEY OPEN SPACE COMMITTEE TO AN UNEXPIRED TERM ENDING
SEPTEMBER 30, 2010**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of John Furtado to the Sky Valley Open Space Committee by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008 and adopted by the following vote:

Ayes:

Noes:

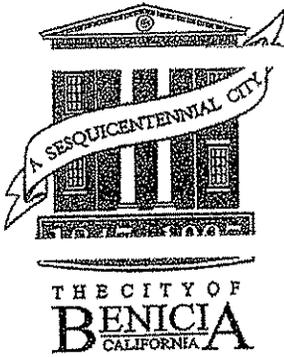
Absent:

Elizabeth Patterson, Mayor

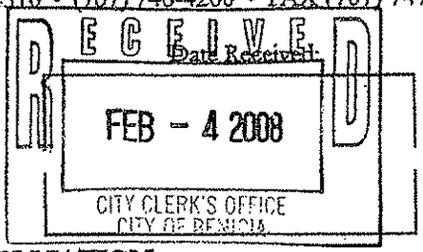
Attest:

Lisa Wolfe, City Clerk

APPLICATION



CITY HALL • 250 EAST L STREET • BENICIA, CA 94510 • (707) 746-4200 • FAX (707) 747-8120



BOARD, COMMITTEE AND COMMISSION APPLICATION

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all interest. (Resolution No 04-9, Exhibit A, Section IV.A)

Board, Committee or Commission: OPEN SPACE COMMITTEE
Name: JOHN R. FURTADO, JR.
Address: 320 ST AUGUSTINE CT., BENICIA, CA 94510
Home Ph: [REDACTED] Work Ph: 925-675-3695
E-mail: FURTADOJR@AOL.COM FAX: 925-675-3610
Job Title: SVP/SR PROJECT MGR Employer: BANK OF AMERICA
Employer Address: 2000 CLAYTON ROAD, CONCORD, CA 94520

Do you reside in Benicia? Yes No If so, how long? 10 YRS, 3 MOS

Please indicate any particular times/days that you are unavailable for meetings:

Please submit a statement on a separate sheet that includes the following:

- Your education (please include name of institution(s) and discipline(s) studied) and prior governmental and nongovernmental experience.
- Include any city/county/state committees or commissions you have served on. Please describe its function, where, when and for how long did you serve.
- Include any community groups or organizations you are or were affiliated with, as well as any office you hold or previously held.
- Why you desire to serve— your own goals and objectives for your term of office.

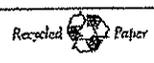
Applicant Signature: [Signature] Date: 1/21/08

- Applications may also be faxed to 707-747-8120 -
Please note that your completed application is a public document that may be included in a City Council Meeting Agenda Packet.
It will also be available to members of the public upon request.

ELIZABETH PATTERSON, Mayor
TOM CAMPBELL, Vice Mayor • MIKE IOAKIMEDES • MARK C. HUGHES • ALAN M. SCHWARTZMAN

JIM ERICKSON, City Manager
LISA WOLFE, City Clerk

IV-B-3



Background Information

I - Education and prior governmental and nongovernmental experience.

1. 1982 - Bachelor of Science from California Polytechnic State University San Luis Obispo, Ca

Major:

Natural Resource Management – Parks and recreational Management Concentration

Minor in Business – Human relations

2- 1986- St Mary's College, Moraga, CA.

Completed one year course study toward MBA

II - Include any city/county/state committees or commissions you served on.

1. 1991-1994 Community Services Commissioner – City of Clayton

- **The Community Services Commission is an advisory body to the City Council and is responsible for recommending user fees and policies for use of city facilities and sponsors community activities**
- **I served two terms on the newly established commission in Clayton that set up new community and ball field's complex. We set up Rules and governance process and procedures for residence and out site user groups.**

2- 1995-1996 Planning Commissioner – City of Clayton

- **The Planning Commission is an advisory body to the Clayton City Council and reviews various development proposals**
- **I served one term on the cities planning commission, reviewing all new projects and land use policies.**

III - Include any community groups or organization you are or were affiliated with as well as any office you hold or have previously held.

1986 – Present - Toast Masters Member – Certified Toastmaster

1987 – Present Cal Poly Alumni Association Member (CPAA)

- **2000-2002 – President of Cal Poly Alumni board of directors**
- **2003-2007 – NORCAL Vice President (CPAA)**

1997 – Present - Neighborhood Watch Block Captain

2003 – BERT Zone Caption – Purple Zone North

IV – Why you desire to serve, your own voice and objectives for your term of office.

I would like to lend my experience to the community from my family background of owning and operating a crop and dairy farm. Making use of that hands on experience, along with my education in Natural Resource Management and my previous commissioner experience. MY wish is to help maintain the open space and green belts surrounding Benicia. For our current residences and for residences of the future.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 5, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, February 5, 2008, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Council Member Hughes led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
Two unexpired terms to September 30, 2010
- Historic Preservation Review Commission
Two full terms to February 28, 2011

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us

APPOINTMENTS:

RESOLUTION 08-04 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MAYOR PATTERSON AND VICE MAYOR CAMPBELL TO THE RAW WATER CONTRACT NEGOTIATIONS WITH VALERO SUBCOMMITTEE

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

DRAFT

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson
Noes: None

PRESENTATIONS:

Save Benicia State Recreation Area from Closure:

Mr. Eugene Doherty, Forrest Deaner Native Plant Botanic Garden, California Native Plants Society – Willis Linn Jepson Chapter, reviewed a PowerPoint presentation (hard copy on file).

Council and Staff discussed funding, proposed park closures, upcoming meeting with Ruth Coleman, police response to calls at the Benicia State Recreation Area, water supply, requesting that the Solano County Board of Supervisors place this issue on its next agenda, and asking each and every city to respond to this issue.

PROCLAMATIONS:

Recognition of the Third Annual Winter Quarters conference at the Benicia Historical Museum – February 9-10, 2008.

ADOPTION OF AGENDA:

Mr. Erickson stated that there was a request from a citizen that Council pull item VII-B from the Consent Calendar.

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson
Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Mary Frances Kelly Poh – Ms. Kelly Poh announced an upcoming propagation workshop that would be put on by the Forrest Deaner Native Plant Botanic Garden, California Native Plants Society at the Benicia State Park this weekend.
2. Ann Hansen – Ms. Hansen expressed the Benicia Historical Museum's concern regarding the degradation of the sandstone buildings at the museum. Ms. Hansen announced various upcoming events at the Benicia Historical Museum.
3. Karen Burns – Ms. Burns discussed the letter of the law vs. the intent of the law, the \$17,000 that Council set aside in November 2007 for installing a gravel road to the dog park, and the lack of handicap accessibility to the dog park.

Council and Staff stated that the issue would be discussed at the February 19, 2008 Council meeting.

DRAFT

4. Bob Craft – Mr. Craft discussed concerns regarding the proposed hydrogen pipeline network and the proposed changes to the Youth Action Task Force.
5. Bill Royal – Mr. Royal discussed his health concerns, his dreams on how to get even with the City for taking his money, pledge of allegiance, extortion, corruption, how he will legally disrupt and embarrass the City at future events, and making the City feel the pain he has felt.

Mayor Patterson asked Mr. Erickson to provide Mr. Royal with the code of conduct. He will be expected to follow the code of conduct at future meetings or he would be escorted out.

6. Jon Van Landschoot – Mr. Van Landschoot requested that the single-family exemption for design review for homes in the Historic District be discussed at the next meeting or the first meeting in March. He suggested that the City request to purchase the Benicia State Park from the State of California.

Council Member Ioakimedes inquired as to the status of the Historic Survey, and suggested that would be an appropriate time to discuss the issue raised by Mr. Van Landschoot.

7. John Furtado – Mr. Furtado suggested the agenda's be printed on both sides, suggested changes to the City's website, the suggestion for Benicia to consider having a video such as the City of Pittsburg California's 'Welcome to Pittsburg' video on its website.

CONSENT CALENDAR:

Council pulled items VII-B, VII-G, and VII-H.

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

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

Noes: None

The minutes of January 15, 2008 were approved.

RESOLUTION 08-05 - A RESOLUTION APPROVING THE IMPLEMENTATION OF A SEWER SYSTEM MANAGEMENT PLAN IN ACCORDANCE WITH THE REQUIREMENTS OF THE STATE AND REGIONAL WATER QUALITY CONTROL BOARDS

RESOLUTION 08-06 - A RESOLUTION APPROVING THE ANNUAL REVIEW OF THE CITY'S INVESTMENT POLICY WITH MINOR CHANGES

Council approved the Investment Report for the quarter ending September 2007.

RESOLUTION 08-07 - A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR FTA SECTION 5307 FUNDING FOR VARIOUS CAPITAL

AND OPERATION PROJECTS SUPPORTING BENICIA BREEZE AND COMMITTING THE NECESSARY LOCAL MATCH FOR THE PROJECTS AND STATING THE ASSURANCE OF THE CITY OF BENICIA TO COMPLETE THE PROJECTS

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Denial of the Claim Against the City by Ellyn and M. Danny Levin and Referral to Insurance Carrier:

Heather McLaughlin, City Attorney, reviewed the staff report.

Public Comment:

1. Ms. Ellyn Levin discussed the fire that damaged her home, the calls she placed to 911, delay in response to her calls, and weed abatement.

Mr. Erickson suggested that Staff meet with Mr. and Mrs. Levin to explain the chain of events and how City services work.

Chief Hanley briefly reviewed the chain of events surrounding the fire in June 2007.

Council Member Campbell stated that it sounded as if the City were going to spend more money on Staff time than the amount of the claim.

Council discussed support for the meeting between Staff and Mr. and Mrs. Levin.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the denial of claim by Ellyn and M. Danny Levin and Referral to Insurance Carrier, on roll call by the following vote:

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

Noes: Vice Mayor Campbell

Celebrating 25 years of Benicia Breeze providing transit service within the City of Benicia and to regional destinations:

John Andoh, Transit Services Manager, reviewed the staff report.

Council and staff discussed the need to reach out to the various organizations and possibly throw a bigger party to draw some deserved attention our way.

RESOLUTION 08-08 - A RESOLUTION CELEBRATING 25 YEARS OF BENICIA BREEZE PROVIDING TRANSIT SERVICE TO THE CITY OF BENICIA AND TO REGIONAL DESTINATIONS

DRAFT

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

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

Noes: None

Endorsement of the proposed strategic planning process for the Youth Action Task Force:
Jim Erickson, City Manager, reviewed the staff report.

Council discussed the current program, fixing something that is not broken, cost of hiring a facilitator, review of the strategic plan, how the group has evolved, funding, the need for this to be handled in a timely manner, unspent money in the group's budget.

Council Member Hughes indicated that he supported the item, however he had reservations.

Vice Mayor Campbell stated that he would like to keep the cost down.

On motion of Council Member Schwartzman, seconded by Council Member Ioakimedes, Council approved the endorsement of the proposed strategic planning process for the Youth Action Task Force, on roll call by the following vote:

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

Noes: None

PUBLIC HEARINGS:

Consideration of a resolution to authorize the filing of a revised tariff for taxicab rates and authorize increases in Safe Ride program fares:

Rob Sousa, Finance Director, reviewed the staff report.

Council and Staff discussed the Taxi Scrip Program, number of drivers participating in the program, enforcement measures in current contract, the fact that 40% of the time the taxicabs are not responding in a timely manner for the Safe Ride Program, unacceptable response time, lack of volume to support having two taxicab companies in the City, the safety of citizens with regards to the issue, the need for assurances by the taxicab companies, the history of taxicab companies in Benicia, Council receiving performance reports on the taxicab service, possible fines for lack of performance, time involved (minimum of 4 hours - \$500.00) for police responding to a DUI, volume of taxicab calls, the need for a monitoring program, and getting more businesses involved in the program.

Public Hearing Opened

Public Comment:

1. Jan Lucca – Mr. Lucca spoke in opposition to the proposed fee increase and the lack of service and performance by the two local taxicab companies. He requested the City make the providers perform per their agreement.

2. Bob Craft – Mr. Craft expressed concern regarding using General Fund monies to pay for drunken people to get home.
3. Karen Perry – Ms. Perry discussed the issue of the City of Benicia accepting the City of Vallejo background checks, raising the rates, hiring more night drivers, and average fare costs.
4. Citizen – The citizen discussed the issue of money, the need to work together, the need for similar rates in Benicia and Vallejo, how expensive it is to operate a taxicab, and the low volume of calls.

Public Hearing Closed

Staff and Council discussed frustration with the performance of the taxicab companies, the estimated of 60 hours/year it would take to have a monitoring program, coming up with a monitoring program, and pros and cons of going back to having only one taxicab company operating in Benicia.

Council Member Ioakimedes made a motion to approve the resolution, adding the monitoring language as discussed, and if future alternatives become available they should be reported to Council.

RESOLUTION 08-09 - A RESOLUTION AUTHORIZING THE FILING OF A REVISED TARIFF FOR TAXICAB RATES AND AUTHORIZING INCREASES IN THE SAFE RIDE PROGRAM FARES

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

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

Noes: None

ACTION ITEMS:

Introduction and First Reading of an ordinance revising Section 5.32.120 (Taxicabs) of the Benicia Municipal Code:

Rob Sousa, Finance Director, reviewed the staff report. He indicated that Staff would bring a proposed monitoring program to Council for review at the next Council meeting.

Council and Staff discussed how Benicia would be kept abreast on Vallejo's background check process, Staff auditing Vallejo's background check process, improving Staff's monitoring program, bringing back potential enforcement measures for violations of the monitoring program, possible outreach program for the bars and restaurants that are not currently using the Safe Ride Program, current licensing requirements for taxicab drivers.

Public Comment:

1. Jan Lucca – Mr. Lucca spoke in support of the proposed ordinance.

ORDINANCE 08- - AN ORDINANCE AMENDING SECTION 5.32.120 (DRIVER'S PERMIT – REQUIRED) OF TITLE 5 (TAXICABS) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Schwartzman, seconded by Council Member Hughes, the above Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

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

Noes: None

Authorization of additional communications expressing opposition to the proposal to close the Benicia State Recreation Area and the historic State Capitol Building:

Jim Erickson, City Manager, reviewed the staff report.

Council and Staff discussed having the communications in the form of a resolution (for effectiveness), having the issue on the Solano County Board of Supervisor's agenda and the Mayor's Conference agenda, the State not wanting to sell the parks, the State's disinclination to have volunteers take over the jobs of the state workers, sending a letter asking the State not to close the State Park, long-term planning, the need for this to be a community based opinion, encouraging citizens to contact their legislators, trying to get the City of Vallejo involved, estimate on when the final decision should be made (unknown), past cuts to the California State Parks,

Public Comment:

1. Dr. Lessenger, Benicia Historical Museum – Dr. Lessenger discussed the proposed park closures, Benicia Historical Museum, the State's reluctance to sell the State Capitol building, the Benicia Historical Museum's offer to run the State Capitol building if it were taken over by the City (via proposal – hard copy on file), and maintaining status quo.

Council and Dr. Lessenger discussed Benicia giving the State the State Capitol building in 1854.

2. Bonnie Silveria, Benicia Historical Society – Ms. Silveria offered the Benicia Historical Society's support on this issue.

Council discussed putting something regarding this issue on the City's website, possibly putting the contact information for the Benicia Historical Museum, Benicia Historical Society, and the Benicia State Recreation Park, and putting together a letter highlighting the issues and the reasons why the two parks should not be closed and linking the letter to the City's website for the public to use for contacting their legislators.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the authorization of additional communications in the form of a

DRAFT

resolution expressing opposition to the proposal to close the Benicia State Recreation Area and the historic State Capitol Building, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

INFORMATIONAL ITEMS:

Reports from the City Manager:

Jim Erickson, City Manager, announced the recent Business of the Year Award (large business category) that the City received from the Benicia Chamber of Commerce.

Council Member Hughes recognized that Council Member Schwartzman's business received the Business of the Year Award (small business category) as well.

COMMENTS FROM COUNCIL MEMBERS:

Request to agendize removal of the newspaper racks on First Street near G Street:

Vice Mayor Campbell reviewed his request.

Ms. McLaughlin discussed the newspaper rack regulation ordinance that was drafted 7-10 years ago. She would need to refresh the draft, since it was done so long ago. She would need to look into this and figure out if limiting two racks per corner would work per the Free Speech Amendment.

Council discussed current ordinances on this issue, enforcement, and identifying legal locations for newspaper racks, addressing all newspaper racks on First Street, incorporating the streetscape plan for Downtown, and where this item falls in Council's priorities.

On motion of Vice Mayor Campbell, seconded by Council Member Schwartzman, Council approved agendizing this item for a future City Council meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 10:07 p.m.

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR**

DATE : February 4, 2008
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY KAREN EDWARDS AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against the City by Karen Edwards and referral to insurance carrier.

EXECUTIVE SUMMARY:

The claimant alleges the city's water main ruptured and caused the ground to settle resulting in water damage and settlement cracks. An independent contractor working on the project for the city has advised that no water damage to this property was caused by the water main break.

BUDGET INFORMATION:

The amount of the claim is \$411.04.

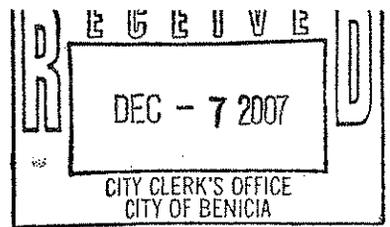
BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against the City

ATTACHMENT



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

- 1. CLAIMANT'S NAME (Print): Karen Edwards - re: 535 Viewmont St. Benicia Ca
- 2. CLAIMANT'S ADDRESS: 20 Corte Annette Moraga, Ca. 94556
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: (925) 284-2545 WORK PHONE: (925) 284-2545

- 3. AMOUNT OF CLAIM: \$ 411⁰⁴ (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case _____
Unlimited Civil Case _____

- 4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

Karen Edwards
(Name)
20 Corte Annette Moraga Ca. 94556
(Street or P.O. Box Number, City, State, Zip Code)

- 5. DATE OF INCIDENT: ^{last} 9-28²-07 TIME OF INCIDENT: night

LOCATION OF INCIDENT: in the street in front of 535 Viewmont St. Benicia 94510

- 6. Describe the incident or accident including your reason for believing that the City is liable for your damages: Ruptured water main on a few occasions causing water runoff into my property. Water main was finally replaced after the entire area buckled and caved in on the street. Water service was turned off for several days except for garden hoses from house to house causing sediment buildup.

- 7. Describe all damages which you believe you have incurred as a result of the incident: Extensive cracks in my driveway and garage floor - some opening over an inch wide. My entire front porch separated from the house and sunk about 4". Cleanup up mud, debris, water. Several trips to Benicia to make sure new tenants could live there safely.

- 8. Names of public employee(s) causing the damages you are claiming: Please note 11/6/07 letter to Mr. Sousa of Benicia Utilities for more than one occasion when the water main in the street ruptured and flooded the area causing damage to my property.

Karen Edwards _____ 11-30-07
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

Benice Utilities

11-6-07

250 L Street

Benice, Ca 94510

Rob Sousa - Finance Director

Dear Mr. Sousa,

For approximately 20 years I have owned and rented out my home at 535 Viewmont St. As you will know there has been a few ruptured water main bursts that have affected my home.

Besides the mess and inconvenience of not being able at times to access to the driveway there has been damage done to my home.

There has been extensive cracks on my garage floor and driveway and my front porch and stairs separated from the house and fell approximately

4 inches. Yesterday I had to make an emergency visit because the hot water faucet to the hall shower would not turn off and the toilet in the master bath kept running. Cost and materials was

approximately \$350⁰⁰ to repair damage caused by water leaks and sediment. I also received a bill for water & sewer charges for 6/1⁰⁴

for 10/1 - 10/31/07.

This ordeal with the water service and street repair could not have come at a worse time. My new tenants could not move in while the streets were torn up and had only a bed in the house for a while.

The hoses hooked up to my house and the neighbors heiked at times spurted on to their cars when they were able to get into the driveway.

I can go into more detail about the problems caused by the breakdown of this water system, but you probably don't want to hear it.

What I do want is a reimbursement for \$411⁰⁴. If you do want to talk to me you can reach me at (925) 284-2545.

A prompt response would be greatly appreciated.

Karen VII-B-4

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR**

DATE : February 4, 2008
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY THE
BENICIA MARINA HOMEOWNERS ASSOCIATION AND
REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against the City by the Benicia Marina Homeowners Association and referral to insurance carrier.

EXECUTIVE SUMMARY:

The claimant alleges that a leak in the city's water main caused the spa to be lifted from the ground. City staff has advised that the leak was in the lawn area not close to the spa area and did not cause damage to the spa.

BUDGET INFORMATION:

The amount of the claim is unknown at this time.

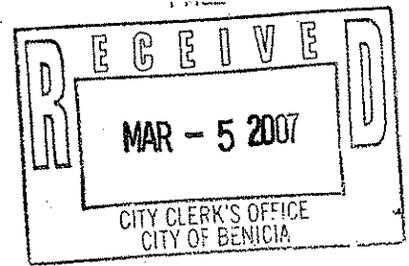
BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against the City

ATTACHMENT



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): Benicia Marina HOA
2. CLAIMANT'S ADDRESS: P.O. Box 190, Pleasanton, CA 94566
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: _____ WORK PHONE: 925-426-1508

3. AMOUNT OF CLAIM: \$ undetermined (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case _____
Unlimited Civil Case _____

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

(Name)

(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: Noted on Feb 12 / 2007 TIME OF INCIDENT: _____

LOCATION OF INCIDENT: Spa at Benicia Marina HOA - East Second St.

6. Describe the incident or accident including your reason for believing that the City is liable for your damages: There was a large water main leak (the source was near 244 East 2nd St) that was found to be the City's responsibility. This leak went untreated for at least 2 weeks before they dug up the line to make repairs, flooding

7. Describe all damages which you believe you have incurred as a result of the incident: the area. The spa has lifted from the ground. Full extent of the damage is unknown because of the spa's skirt. Would like to have a contractor inspect & propose an estimate.

8. Names of public employee(s) causing the damages you are claiming:

Christina Danish _____ 3/2/07
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

RECEIVED FEB 27 2007

VII-C-3

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR**

DATE : February 6, 2008
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY CHRISTINE SHANNON AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against the City by Christine Shannon and referral to insurance carrier.

EXECUTIVE SUMMARY:

The claimant alleges that a tree on the corner of First Street and West G Street was not sufficiently pruned causing a branch to fall on her car. Parks department records show that the First Street City trees were trimmed in January 2007 and the Parks Supervisor visually inspected all City trees on a weekly basis. Parks department staff feels that the limb failure was caused by spontaneous summer limb drop.

BUDGET INFORMATION:

The amount of the claim is \$961.38.

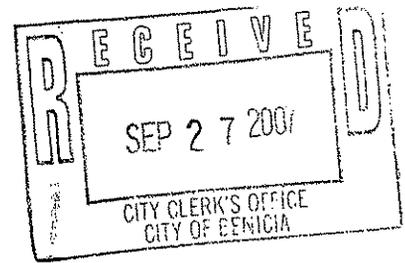
BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against the City

ATTACHMENT



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

- 1. CLAIMANT'S NAME (Print): Christine Shannon
- 2. CLAIMANT'S ADDRESS: 710 Shady Glen, Martinez, CA, 94553
(Street or P.O. Box Number, City, State, Zip Code)
- HOME PHONE: 925-228-8424 WORK PHONE: 925-286-3842
- 3. AMOUNT OF CLAIM: \$ 750.56 (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case _____
 Unlimited Civil Case _____

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

Christine Shannon
 (Name)
710 Shady Glen, Martinez, CA, 94553
 (Street or P.O. Box Number, City, State, Zip Code)

- 5. DATE OF INCIDENT: 8/23/07 TIME OF INCIDENT: Approx. 5PM - 6PM
- LOCATION OF INCIDENT: Corner of 1st and G St.

6. Describe the incident or accident including your reason for believing that the City is liable for your damages: A tree on the corner was not sufficiently pruned. A branch therefore broke and fell on the rear end of my car. A police report was filed by Officer Laughner case # 07-2005

- 7. Describe all damages which you believe you have incurred as a result of the incident:
Several small dents and several scratches -

8. Names of public employee(s) causing the damages you are claiming:

N/A

Christine Shannon _____ 9/18/07
 Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR

DATE : February 7, 2008
TO : City Manager
FROM : Director of Public Works 
SUBJECT : **ACCEPTANCE OF WATER DISTRIBUTION SYSTEM
IMPROVEMENT PROJECT**

RECOMMENDATION:

Adopt a resolution accepting the Water Distribution System Improvement Project as complete, including Contract Change Orders 1 through 5, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

EXECUTIVE SUMMARY:

This project acceptance and notice of completion is for the Water Distribution System Improvement Project. The last step of the project requires formal acceptance by the City Council and filing of the notice of completion by the City Clerk, which allows the City to process the final payment to the contractor. The final construction cost is \$6,038,250 and is covered from the Water Enterprise Reserve Fund.

BUDGET INFORMATION:

The final construction cost for the project is \$6,038,250, which includes \$53,450 for five Contract Change Orders. The change orders represent a less than 1% cost increase, which is well within the normal range for a utility project of this magnitude and complexity. The Water Enterprise fund provides project funding and a construction contingency of \$300,000 was budgeted in account number 076-8076-9194. Therefore, ample funds are available to cover the cost increase.

BACKGROUND:

On April 18, 2006, City Council awarded North Bay Construction, Inc. a construction contract for the Water Distribution System Improvement Project in the amount of \$5,984,800. During the course of construction various changes for unforeseen additional work became necessary resulting in five Contract Change Orders in the combined amount of \$53,450. The final construction cost of the project is \$6,038,250. A contract change order notification memorandum was provided to the City Manager on January 11, 2008.

These water distribution system improvements were undertaken to satisfy new and anticipated drinking water regulations; upgrade or replace outdated and aging equipment and facilities; and restore reliability and redundancy to the City's water system. The improvements included:

- a 3 million gallon treated water storage tank;
- appurtenant pump station;
- pipelines to connect the new reservoir and pump station to the distribution system;
- upgrades to an existing pump station; and
- demolition of an outdated pump station.

The contractor, North Bay Construction, Inc., has completed this project to the satisfaction of the City. It is recommended, therefore, that Council accept this project as complete, including the Change Orders 1 through 5.

cc: City Attorney
Assistant Director of Public Works
Water Treatment Plant Superintendent

Attachments:

- Proposed Resolution with Exhibit A – Summary of Contract Change Orders
- Notice of Completion
- Project Photographs

Proposed Resolution with Exhibit A –
Summary of Contract Change Orders

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE WATER DISTRIBUTION SYSTEM IMPROVEMENT PROJECT AS COMPLETE, INCLUDING CONTRACT CHANGE ORDERS 1 THROUGH 5, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

WHEREAS, by Resolution No. 06-49, City Council awarded the contract for the Water Distribution System Improvement Project in accordance with the plans and specifications; and

WHEREAS, during the course of construction Contract Change Orders 1 through 5 in the combined amount of \$53,450 were necessary to address unforeseen additional work; and

WHEREAS, North Bay Construction, Inc. has completed the work to the satisfaction of the City for a final construction cost of \$6,038,250, including Contract Change Orders 1 through 5, listed on Exhibit A.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby accepts the Water Distribution System Improvement Project as complete for a final construction cost of \$6,038,250.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice with the Solano County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

EXHIBIT A

SUMMARY OF CONTRACT CHANGE ORDERS (CCO'S)

REFERENCE	DESCRIPTION	AMOUNT
CONTRACT CHANGES APPROVED BY THIS RESOLUTION		
CCO #1	Soil issues, including PI and gradation issues with the onsite soil to be used for backfill; partnering workshop; \$40,000 credit to the City for paying PG&E directly for utility work.	\$19,098.00
CCO #2	New pump station control panel; additional 4" perforated underdrain; concrete encasement of 18" relocated water pipe at pump station P-8; utility conduits and appurtenances, motor control center layout; various deletions and credits.	\$18,229.00
CCO #3	Credit for manual transfer switch at motor control center P-1 pump station; add breaker for motor control center and conduit for generator control transformer; details for installation and wiring of valve battery backup unit; additional pavement east of Corp Yard fuel island; relocate 4" flanged nozzle for air valve on 18" water pipe; credit for costs incurred by the City for NBC's work on 3/3/07.	\$5,361.00
CCO #4	Gate at PG&E transformer; pipe support; irrigation booster pump (equipment only); various deletions and credits	\$5,485.00
CCO #5	Installation of irrigation booster pump.	\$5,277.00
TOTAL CONTRACT CHANGE ORDERS		\$53,450.00

Notice of Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA
ATTN: ASSISTANT DIRECTOR OF PUBLIC WORKS
250 EAST L STREET
BENICIA, CA 94510

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

- 1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:

Water Distribution System, located at 2600 East Second Street and within various public rights-of-way, situated in the City of Benicia, County of Solano, State of California, (APN 0080-110-50-0)

Nature of title as stated owner: Fee Title

- 2. A work of improvement known as the **Water Distribution System Improvement Project** at the property described was completed and accepted by the City Council of the City of Benicia on February 19, 2008.
- 3. The name of the contractor for the improvement is **North Bay Construction, Inc.** of Petaluma, California.

CITY OF BENICIA

Dated: _____

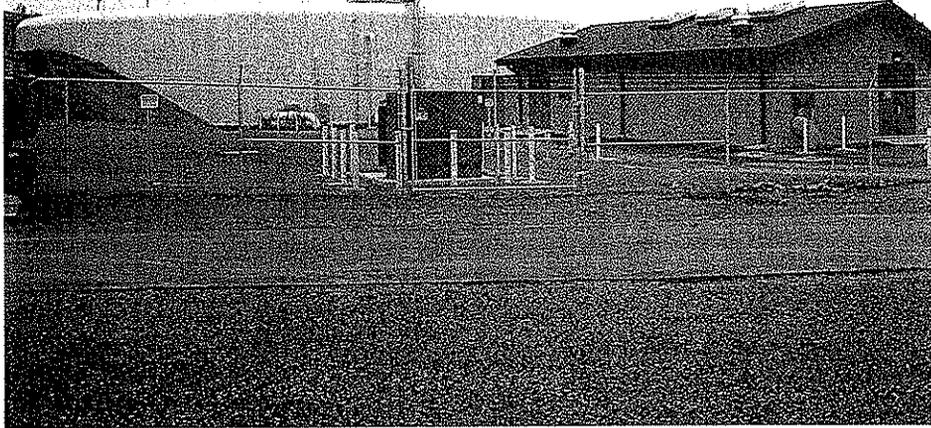
By: _____
James R. Erickson, City Manager

Attest: _____
Lisa Wolfe, City Clerk

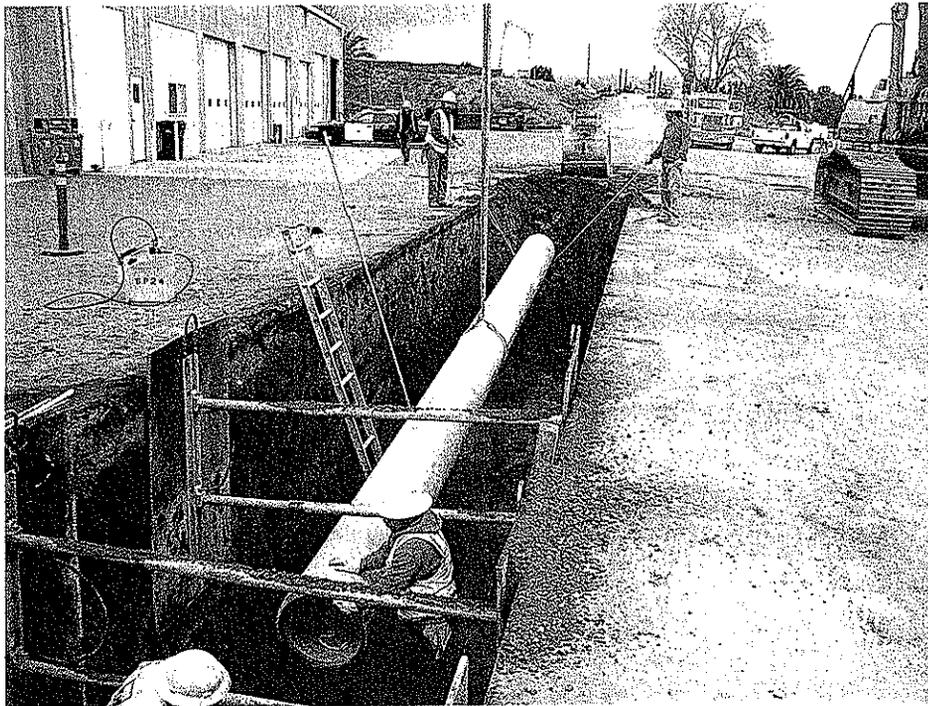
The undersigned, being duly sworn, says: that she is the person signing the above document; that the facts stated therein are true, under penalty of perjury.

Lisa Wolfe, City Clerk

Project Photographs



3 Million Gallon Treated Water Storage Tank and Appurtenant Pump Station



Pipelines to Connect the New Reservoir and Pump Station to the Distribution System

File: Council Pictures WDCSPF accptance 2008.vnd LastRev: Jan 31, 2008



CITY OF BENICIA

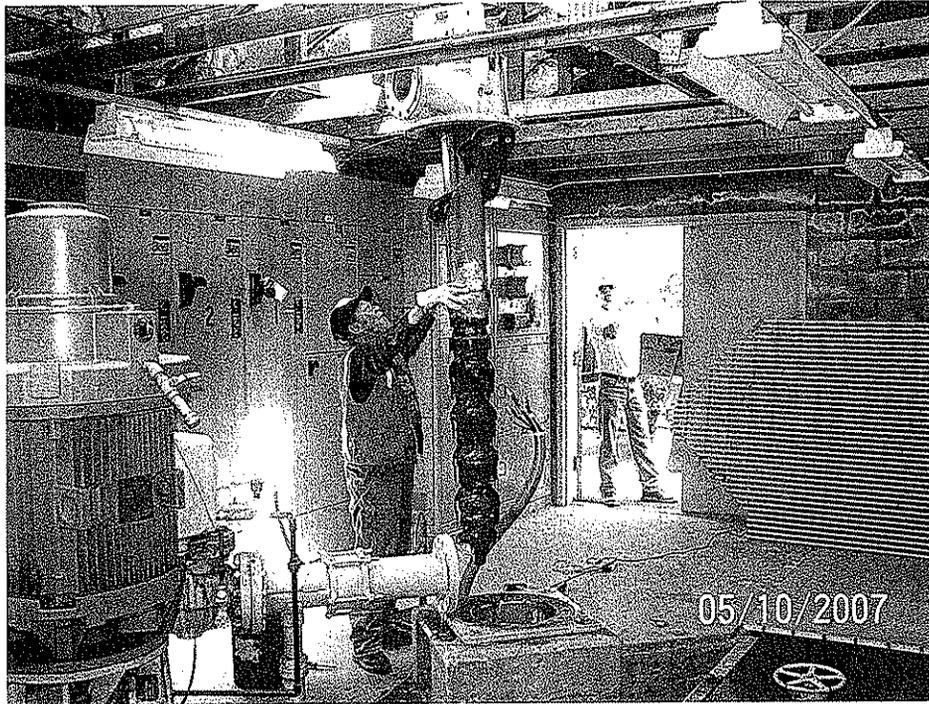
**PUBLIC WORKS
DEPARTMENT**

Water Distribution System Improvement Project
Council Report Photographs

PROJECT
Water Distribution
System Improvements

DATE
January 2008

SHEET
VII-E-9
1 of 2



Upgrades to an Existing Pump Station



Demolition of an Outdated Pump Station

File: Council Pictures WDSIP ascendance 2008.rvt Leaflet: Jan 31, 2008



CITY OF BENICIA

**PUBLIC WORKS
DEPARTMENT**

Water Distribution System Improvement Project
Council Report Photographs

PROJECT
Water Distribution
System Improvements

DATE
January 2008

SHEET
VII-E-10
2 of 2

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR**

DATE : January 23, 2008
TO : City Manager
FROM : Economic Development Manager
SUBJECT : **APPROVE AMENDMENT TO LEASE BETWEEN THE CITY OF BENICIA AND BENICIA MAIN STREET**

RECOMMENDATION:

Approve a lease amendment that provides for rent forgiveness for Benicia Main Street at the Southern Pacific depot from March through December 2008.

EXECUTIVE SUMMARY:

The City of Benicia owns the Southern Pacific depot building at 90 First Street, which was leased to nonprofit organization Benicia Main Street (BMS) in 2002 for a 10-year term. BMS has requested rent forgiveness for March 2008 through December 2009, in order to allow it to grow a new signature event to replace the Waterfront Festival, which was the organization's largest fundraiser. Staff recommends partially approving this request by forgiving the base rent payments due through December 2008, for a total of \$16,200 in foregone revenue.

BUDGET INFORMATION:

There would be \$16,200 in foregone revenue to the Southern Pacific Depot account, which is reserved for maintenance and improvements of the depot.

DISCUSSION:

BMS' current base rent is \$1800 per month. BMS has requested rent forgiveness for March 2008 through December 2009. BMS canceled the annual Waterfront Festival, its largest fundraiser, in 2007, and is planning a new festival centered on art and jazz for July 2008. To give the organization a year to grow this event, staff recommends forgiving base rent for the period of March-December 2008. However, the expectation is that the event will replace the income BMS lost by cancelling the Waterfront Festival, so staff does not support Main Street's request to forgive rent through 2009. If the new event is not successful as a fundraiser, BMS can return with another request in later 2008 or early 2009.

The cost to the City is lost revenue to the Southern Pacific Depot account, which is reserved for the depot's benefit. Forgiving the rent for nine months in 2008 totals \$16,200, at \$1,800 monthly rent. The monthly rent is scheduled to increase to \$2,100 in February 2009, so forgiving the 2009 rent would total \$24,900; this is another reason why staff doesn't currently support that request.

This proposed amendment does not apply to the percentage rents. The lease requires BMS to pay percentage rent – 50% of sales of depot-related merchandise (which totaled \$636 in 2007) and 60% of rental fees for the Freight Room (which has yet to be renovated as a meeting room) – which will remain in effect.

Attachments:

- Letter from Benicia Main Street dated January 8, 2008
- Proposed Lease Amendment

ATTACHMENTS



A California
Main Street City...

...fostering a unified
community effort to
downtown revitalization,
emphasis on historic
preservation, enhancing
the waterfront orienta-
tion, and creating a
quality mix of retail,
commercial, residential,
and recreational uses.

90 First Street
Benicia, CA 94510
(707) 745-9791
Fax (707) 745-1630

January 8, 2008

Mr. Jim Erickson
City Manager
City of Benicia
250 East L Street
Benicia, CA 94510

Dear Jim:

The Benicia Main Street Board of Directors hired a new Executive Director, Nancy Martinez, in November 2007. The new Executive Director's position has been reorganized to focus more on downtown economic development and less on fundraising events.

As I am sure you are aware, the Benicia Main Street Board of Directors made a decision this past year to discontinue the Benicia Waterfront Festival fundraising event. This decision was made in order to give our organization time to reconfigure the event into a more family-oriented event and one that will have a more positive impact on our downtown businesses.

These decisions, while beneficial to Downtown Benicia, have had a profound impact on our income level. In order to alleviate some of this impact, we respectfully request that the City of Benicia forgive the Depot lease fees for the next two years.

We thank you for your continued support and hope that you will decide favorably upon this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Krull", is written over a horizontal line.

Mark Krull
President
Board of Directors

**AMENDMENT TO BENICIA SOUTHERN PACIFIC DEPOT BUILDING
LEASE**

Lessee: Benicia First Corporation dba Benicia Main Street

Address: 90 First Street, Benicia, California

APN(s): 0080-200-07-0

The Parties hereby agree that the Lease dated February 7, 2002 ("Lease") by and between the CITY OF BENICIA, a municipal corporation, hereinafter referred to as "City", and Lessee, is hereby amended as follows to clarify the terms and conditions of the Lease.

I. Paragraph 3 of the Lease is amended to read as follows:

B. Second Minimum Rent Payment and Period:

The minimum rent for the third through the seventh year of this lease is \$21,600.00 per year payable in 12 equal monthly payments of \$1,800.00 per month due on the first day of each month through February 2008. There shall be no minimum rent for the period of March through December 2008.

II. Except as expressly modified herein, all other terms and covenants set forth in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment to Lease on _____, 2008.

ATTEST:

CITY OF BENICIA:

Lisa Wolfe, City Clerk

James R. Erickson, City Manager

APPROVED AS TO FORM:

LESSEE:

Heather McLaughlin, City Attorney

Mark Krull, Board President

Nancy Martinez, Executive Director

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
CONSENT CALENDAR**

DATE : February 11, 2008
TO : City Manager
FROM : Finance Director
SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE
REVISING SECTION 5.32.120 (TAXICABS) OF THE
BENICIA MUNICIPAL CODE**

RECOMMENDATION:

Adopt the ordinance to authorize taxicab drivers with valid City of Vallejo Taxicab Driver Permits to operate taxicab service within the City of Benicia, as long as the taxicab driver is employed by a carrier that has a taxicab carrier permit authorized by the Benicia City Council.

EXECUTIVE SUMMARY:

After Regency Cab discontinued taxicab service in Benicia in 2006, the quality of taxicab service has declined, reportedly due to the lack of permitted taxicab drivers in Benicia. The majority of taxicab drivers from the two licensed carriers, Vallejo/Benicia City Taxicab and Yellow Cab of Vallejo & Benicia, are only permitted in Vallejo because of the time and cost to obtain a taxicab driver permit in Benicia. Because of the Benicia taxicab driver shortage, there have been many nights that either no taxicab service was available or the response times were not within an acceptable time range.

Staff from the Benicia Police Department and the Vallejo Police Department have been meeting to develop a plan for improving the permitting process shared by the two cities. Based on the meetings, the Benicia Police Chief recommends that Vallejo taxicab driver permits be accepted as valid taxicab driver permits in Benicia, as long as the company is also authorized to operate in Benicia. During the previous Council meeting, the Finance Director was directed to develop a taxi monitoring program that will ensure adequate performance in the future. The Council will review the Monitoring Program recommendations on March 4, 2008.

BUDGET INFORMATION:

There is no new fiscal impact from these changes.

BACKGROUND:

The City of Benicia has two authorized taxicab companies, Vallejo/Benicia City Taxicab with 25 taxicab drivers and Yellow Cab of Vallejo & Benicia with 20 taxicab drivers. Each of the two taxicab companies has reported high turnover rates and problems in obtaining permits in both the City of Benicia and the City of Vallejo.

Most recently, the City of Vallejo Police Department assigned a dedicated officer to conduct background checks and monitor the taxicab permit processing. As a result of the enhanced process, several taxi cab drivers failed background checks and were terminated by Vallejo/Benicia City Taxicab and Yellow Cab of Vallejo & Benicia.

The revised Vallejo process has also allowed Benicia's Police Chief and Police Captain to be more comfortable with Vallejo's taxicab driver permitting process, which has led to their recommendation to accept valid Vallejo permits within the City of Benicia. Vallejo has also committed to remain vigilant in administering the taxicab permitting process.

The recommended ordinance change will authorize a taxicab driver with a valid City of Vallejo permit to operate in the City of Benicia, as long as the carrier/owner has been authorized by the City of Benicia. As an additional safeguard, the ordinance allows the Benicia City Manager to require a Benicia taxicab driver's permit if the City Manager is unable to rely upon the Vallejo permitting process or if the City of Vallejo changes its requirements for driver's permits.

The owners of the two taxicab companies support the ordinance changes and Benicia staff have the owners' commitment to provide more timely service in Benicia when the ordinance takes effect.

Attachment:

- Proposed Ordinance

PROPOSED ORDINANCE

CITY OF BENICIA

ORDINANCE NO. 08-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA
AMENDING SECTION 5.32.120 (DRIVER'S PERMIT – REQUIRED) OF TITLE 5
(TAXICABS) OF THE BENICIA MUNICIPAL CODE**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA
DOES ORDAIN** as follows:

Section 1.

Section 5.32.120 (Driver's Permit – Required) of Title 5 (Taxicabs) of the Benicia Municipal Code is amended in its entirety to read as follows:

5.32.120. Driver's permit – Required. No person may drive a taxicab without a valid driver's permit. A valid driver's permit is a permit either (1) issued by the City of Benicia in accordance with BMC Chapter 5.32 (Taxicabs) or (2) issued by the City of Vallejo and the driver is employed by a carrier/owner that has a carrier/owner permit authorized by the city of Benicia. The city manager may require a driver with a Vallejo driver's permit to obtain a City of Benicia driver's permit if the city manager is unable to rely upon the Vallejo permitting process or if the City of Vallejo changes its requirements for driver's permits.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The city council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 5th day of February, 2008 and adopted at a regular meeting of the Council held on the 19th day of February, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
PUBLIC HEARING**

DATE : January 11, 2008
TO : City Council
FROM : Community Development Director
SUBJECT : **REVIEW OF THE BENICIA BUSINESS PARK
ENVIRONMENTAL IMPACT REPORT (EIR)**

RECOMMENDATION:

It is recommended that the Council either:

1. Adopt a resolution certifying the Benicia Business Park Environmental Impact Report (consisting of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments), and further resolving that the Benicia Business Park Project ("the Proposed Project") considered by the EIR cannot be approved without significant modification due to numerous conflicts with General Plan policies; or
2. Adopt a resolution deferring action on the EIR until the project is brought forward, and requesting staff to present the project as soon as practical to the Planning Commission for recommendation; or
3. Adopt a resolution concluding the EIR does not conform to the requirements of the California Environmental Quality Act and either (a) not certifying the Final Environmental Impact Report or (b) directing modifications to the EIR in specified areas.

EXECUTIVE SUMMARY:

On August 7, 2007, the City Council determined that the Draft Environmental Impact Report (DEIR) conforms with the City's CEQA Environmental Review Guidelines, and extended the written comment period two weeks to August 20, 2007. Comments received at the public hearing and through August 20, 2007 are responded to in the Supplemental Response to Comments.

Section III. D. 12 of the City CEQA Environmental Review Guidelines requires a public hearing for EIR certification. The applicant requests the City Council certify the Benicia Business Park EIR. The applicant disputes EIR findings that the Proposed Project does not conform to the General Plan.

BUDGET INFORMATION:

The applicant has funded preparation of the EIR.

ENVIRONMENTAL REVIEW:

A Notice of Preparation for the project was distributed from July 5 to August 5, 2005. Facilitated "community conversations" were held in June 2005 to provide information and allow public input. A scoping meeting was held before the Planning Commission on July 14, 2005. The DEIR was circulated for public review and comment for a period of 45 days from January 11, 2007 to February 26, 2007, and the comment period was extended by the City Council to March 12, 2007. The Planning Commission held a hearing on February 8, 2007 to accept public comment on the DEIR. The City received 115 verbal and written comments from residents, groups, and state agencies prior to the May 1, 2007 DEIR adequacy hearing.

Per City CEQA Environmental Review Guidelines, on August 7, 2007, the City Council determined that the DEIR conformed to the City Guidelines, and extended the public comment period to August 20, 2007. The conformance determination means that the DEIR is legally sufficient to comply with CEQA, including in analyzing impacts that would occur as a result of the Proposed Project and in providing reasonable alternatives to the Proposed Project. A finding of conformance does not mean that a FEIR based on the project would be certified, nor that if it were certified that the project as proposed would be approved.

The DEIR prepared for this project analyzes potentially significant impacts in the full range of categories outlined by CEQA and identifies significant and unavoidable impacts in three categories: land use and planning policy, air quality, and visual resources. The significant and unavoidable impacts related to land use and planning policy and visual resources pertain specifically to the grading plan for the project, which would entail approximately 9,000,000 cubic yards of earth movement.

Four alternatives to the project are discussed in the EIR: the No Project alternative, a Waterways Preservation alternative, a Hillside/Upland Preservation alternative, and a Mixed-Use alternative.

BACKGROUND:

The Proposed Project is located in northeastern Benicia. The project site consists of 527.8 acres of undeveloped land bounded on the south and east by East 2nd Street. The western boundary is an irregular property line that generally parallels the alignments of West Channel Road and Industrial Way. The northern property line is also irregular and is bounded in part by the City of Benicia Water Treatment Plant and Lake Herman Road.

The Proposed Project includes commercial development at the eastern corner of the project site and industrial development in the central and western portions of the project

site. An open space buffer area consisting of primarily undeveloped land is proposed along the south side of Lake Herman Road. In addition, an approximately 54-acre linear open space would extend from Lake Herman Road to the southern boundary of the project site. The purpose of this open space is to preserve a key drainage “reach” and associated wetlands at the project site.

The project includes:

- Rezoning of the site to apply the Master Plan Overlay designation and adjusting the commercial and industrial zoning boundaries;
- Subdivision of the site into 80 lots ranging in size from 2.5 to 9 acres;
- Development of approximately 280 acres of limited industrial and 35 acres of commercial land uses, with approximately 4.4 million square feet of industrial building space and 857,000 square feet of commercial uses – projected to result in the direct creation of 7,680 jobs;
- Provision of approximately 180 acres of open space, including buffers to preserve the rural character of Lake Herman Road and a reach extending from Lake Herman Road to East 2nd Street;
- Installation of necessary infrastructure, including 10 acres of roadways, water, sewer and utilities; and
- Installation of two 1,000,000-gallon water tanks that would provide water supply for the proposed development.

The Proposed Project has been conceived in various forms since the early 1980s. In 1981 an EIR was prepared for a mixed-use development proposal that included the project site. At that time, the project site was part of unincorporated Solano County, and annexation to the City of Benicia was evaluated in the EIR. In 1983, the City Council approved a General Plan amendment, pre-zoning, and annexation of the site and certified the EIR. The Local Agency Formation Commission approved the annexation in 1985. In 1988, a site plan was developed for an industrial park with 115 lots on 319 acres of the property. The sponsor withdrew the application prior to environmental review.

An EIR was prepared for a subsequent industrial park proposal in 2001. After the DEIR was circulated for public review, the applicant made changes to the project. In 2004, Discovery Builders assumed the role of applicant and submitted the current project application.

The project applicant has threatened to sue the City if action on the FEIR is not taken to certify the FEIR. Although the project approvals involve legislative actions that are not subject to time limits specified in the Permit Streamlining Act or Subdivision Map Act, staff agrees that action needs to be taken on the FEIR. The recommendations to take action consider the consequences of delaying action on the FEIR. Staff recommends that Council take action to either move the project along or to terminate it.

CONCLUSION:

There are several options for the Council's action tonight. First, the City Council may determine that the FEIR, Response to Comments, and Supplemental Response to Comments adequately address all agency, organization and public comment received regarding the Benicia Business Park DEIR. This action allows the Council to certify the FEIR. Certification of the EIR does not require nor guarantee approval of the Proposed Project, including the Vesting Tentative Map. If Council chooses this option, staff recommends the resolution certifying the EIR note the areas where the Proposed Project is inconsistent with the City's General Plan and state that the Council would be unable to make the findings required to allow the Proposed Project to be approved. Please note that the City is unable to approve a project that is inconsistent with its General Plan. If this option is selected, it is recommended that the project then be processed before the Planning Commission as soon as is practical.

Second, the City Council may defer action on the FEIR until the Proposed Project is brought forward for approval. The typical project process has the environmental documents processed along with the project approvals. Splitting the project approvals from the environmental approvals is not typical and has not been done in this city before. Keeping the project approvals together with the environmental document approvals allows the City and the public to more fully understand the project and to evaluate the adequacy of the environmental document. Because this action has the result of delaying consideration of certification of the FEIR, it is recommended that the Council direct staff to process the project as soon as is practical.

Third, the City Council may find that the FEIR does not meet the requirements of CEQA for EIR certification. Council could then either not certify the FEIR since the Proposed Project could not be approved because of the General Plan conflicts or direct that more information is needed. Staff does not recommend this action to obtain more information since the DEIR was reviewed for adequacy by the previous Council, changes were made to the document based upon that input, and the General Plan conflicts remain. However, if the Council desires to take this action, detailed areas of inadequacy should be noted for the record.

Attachments:

- Draft Resolution for Recommendation Option 1
- Draft Resolution for Recommendation Option 2
- Draft Resolution for Recommendation Option 3A
- Draft Resolution for Recommendation Option 3B

**DRAFT RESOLUTION
FOR RECOMMENDATION OPTION 1**

RESOLUTION NO. 08-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CERTIFYING THE BENICIA BUSINESS PARK ENVIRONMENTAL IMPACT REPORT (CONSISTING OF THE DECEMBER 2007 FINAL ENVIRONMENTAL IMPACT REPORT, JULY 2007 RESPONSE TO COMMENTS, AND NOVEMBER 2007 SUPPLEMENTAL RESPONSE TO COMMENTS), AND FURTHER RESOLVING THAT THE PROPOSED PROJECT CONSIDERED BY THE ENVIRONMENTAL IMPACT REPORT CANNOT BE APPROVED WITHOUT SIGNIFICANT MODIFICATION DUE TO NUMEROUS CONFLICTS WITH GENERAL PLAN POLICIES

WHEREAS, applications have been filed with the City of Benicia for a large-scale development project referred to as the Benicia Business Park Project (“the Proposed Project”). These applications include applications for a General Plan amendment, rezoning, master plan, and tentative subdivision maps; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared a Draft Environmental Impact Report (DEIR) to determine if the Benicia Business Park Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq*), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 *et seq*) and the City of Benicia Guidelines pursuant thereto; and

WHEREAS, a Notice of Completion of the DEIR was filed with the Office of Planning and Research (OPR) on January 11, 2007, and a notice of the availability of the DEIR was posted at City Hall and was mailed to property owners within three hundred feet of the location of the Proposed Project; and

WHEREAS, copies of the DEIR were provided to the State Clearinghouse (State Clearinghouse No. 2001022079) and to those public agencies that have jurisdiction by law with respect to the Proposed Project, and to other interested persons and agencies; and

WHEREAS, the DEIR was circulated for public review and comment from January 11, 2007 to March 12, 2007; and

WHEREAS, the Planning Commission held a hearing on February 8, 2007 to receive comments on the DEIR; and

WHEREAS, the City has received verbal and written comments from residents, groups, and State agencies; and

WHEREAS, the City Council opened a public hearing on May 1, 2007, and continued it to and closed it on August 7, 2007, to review the DEIR, including responses to comments, with additional comments to be accepted until August 20, 2007 and responded to in a supplemental response to comments; and

WHEREAS, the City Council held a public hearing on August 7, 2007 and determined that the DEIR for the Benicia Business Park Project conforms to the City's CEQA Guidelines by providing an adequate response to potential environmental issues; and

WHEREAS, the Final Environmental Impact Report (FEIR) consists of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments, which incorporate all written comments received, all oral comments made at the May 1 and August 7, 2007 public hearings, the responses to those written and oral comments, and the necessary corrections to the DEIR as incorporated into the December 2007 FEIR; and

WHEREAS, the FEIR has been presented to the City Council for certification.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby finds that:

1. The Benicia Business Park Environmental Impact Report (consisting of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments) identified and adequately evaluated all potentially significant environmental impacts and identified and recommended all appropriate mitigation measures to address identified environmental impacts.

2. The FEIR adequately addressed all agency, organization and public comment received regarding the Benicia Business Park DEIR.

3. The FEIR for the Benicia Business Park has been completed in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 *et seq.*), and the City of Benicia Guidelines.

4. The FEIR reflects the independent judgment and analysis of the City of Benicia.

BE IT FURTHER RESOLVED that the City Council approves and determines that the FEIR for the Benicia Business Park is adequate for purposes of making a decision on the merits of the Proposed Project and has been completed in compliance with CEQA.

BE IT FURTHER RESOLVED that the City Council certifies the FEIR for the Benicia Business Park Project.

BE IT FURTHER RESOLVED that the Proposed Project evaluated by the FEIR for the Benicia Business Park **cannot be approved** by the City unless significant modifications are made to the Proposed Project to resolve the numerous conflicts with the City of Benicia General Plan.

BE IT FURTHER RESOLVED that City Council finds the Proposed Project substantially conflicts with the City's General Plan as set forth on Page 106 of the FEIR and described in more detail on Table IV.A-1. While some of the conflicts may be reduced or

eliminated with the implementation of appropriate mitigations measures, the total combined effect of the conflicts is significant unless changes are made to the Proposed Project.

BE IT FURTHER RESOLVED that the City Council finds that the fact that the Proposed Project would substantially conflict with the policies in the General Plan adopted for the purposes of environmental protection (LU-2) is a significant and unavoidable impact which, despite implementation of all available and reasonable mitigations, cannot be mitigated to a level of less than significant. CEQA (Guidelines Section 15093(a) and 15021(d)) requires the lead agency to balance, as applicable, the economic, legal, social, technological, or other benefits of the Proposed Project against its unavoidable environmental risks when determining whether to approve the Proposed Project. In most circumstances, the lead agency may deem significant and unavoidable adverse environmental effects “acceptable” if the specific economic, legal, social, technological, or other benefits of the Proposed Project outweigh the unavoidable adverse effects. However, state law prohibits a city from approving a project which is not consistent with its General Plan. Therefore, the City cannot lawfully find “overriding considerations” for LU-2, even if the Proposed Project was before the City Council for consideration.

BE IT FURTHER RESOLVED that the City Council finds that the fact that long term Proposed Project-related regional emissions would exceed the BAAQMD thresholds of significance for ozone precursors (AIR-2) is a significant and unavoidable impact which, despite implementation of all available and reasonable mitigations, cannot be mitigated to a level of less than significant. CEQA (Guidelines Section 15093(a) and 15021(d)) requires the lead agency to balance, as applicable, the economic, legal, social, technological, or other benefits of the Proposed Project against its unavoidable environmental risks when determining whether to approve the Proposed Project. The lead agency may deem significant and unavoidable adverse environmental effects “acceptable” if the specific economic, legal, social, technological, or other benefits of the Proposed Project outweigh the unavoidable adverse effects. Because the Proposed Project is not before the City Council for consideration, the City Council cannot make the findings required for a Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the City Council finds that the fact that the Proposed Project could adversely affect the visual character of the Proposed Project site, as observed from public vantage points surrounding the site (VIS-2) is a significant and unavoidable impact which, despite implementation of all available and reasonable mitigations, cannot be mitigated to a level of less than significant. CEQA (Guidelines Section 15093(a) and 15021(d)) requires the lead agency to balance, as applicable, the economic, legal, social, technological, or other benefits of the Proposed Project against its unavoidable environmental risks when determining whether to approve the Proposed Project. The lead agency may deem significant and unavoidable adverse environmental effects “acceptable” if the specific economic, legal, social, technological, or other benefits of the Proposed Project outweigh the unavoidable adverse effects. Because the Proposed Project is not before the City Council for consideration, the City Council cannot make the findings required for a Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the City Council finds that potentially significant Proposed Project impacts listed in Table II-2 may be able to be mitigated to a less than

significant level but that the City Council cannot make the required finding that changes or alterations have been required in or incorporated into the Proposed Project, that reduce the potentially significant environmental effect to a less than significant level as identified in the FEIR because the Proposed Project is not before the City Council for approval.

BE IT FURTHER RESOLVED that the City Council cannot approve and adopt a Mitigation Monitoring and Reporting Program until the Proposed Project itself is brought before the City Council for approval.

BE IT FURTHER RESOLVED that the City Council finds that the Hillside/Upland Preservation alternative is the environmentally superior alternative and is environmentally superior to the Proposed Project because (1) it is substantially more consistent with the City's General Plan policies especially those related to preservation of wetlands, creeks, associated plant and animal communities, and hillsides; and (2) views from public vantage points would be least affected by this alternative.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**DRAFT RESOLUTION
FOR RECOMMENDATION OPTION 2**

RESOLUTION NO. 08-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DEFERRING ACTION ON THE BENICIA BUSINESS PARK ENVIRONMENTAL IMPACT REPORT (CONSISTING OF THE DECEMBER 2007 FINAL ENVIRONMENTAL IMPACT REPORT, JULY 2007 RESPONSE TO COMMENTS, AND NOVEMBER 2007 SUPPLEMENTAL RESPONSE TO COMMENTS), AND FURTHER REQUESTING STAFF TO PRESENT THE PROPOSED PROJECT AS SOON AS PRACTICAL TO THE PLANNING COMMISSION FOR RECOMMENDATION

WHEREAS, applications have been filed with the City of Benicia for a large-scale development project referred to as the Benicia Business Park Project (“the Proposed Project”). These applications include applications for a General Plan amendment, rezoning, master plan, and tentative subdivision maps; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared a Draft Environmental Impact Report (DEIR) to determine if the Benicia Business Park Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 *et seq.*), and the City of Benicia Guidelines pursuant thereto; and

WHEREAS, a Notice of Completion of the DEIR was filed with the Office of Planning and Research (OPR) on January 11, 2007, and a notice of the availability of the DEIR was posted at City Hall and was mailed to property owners within three hundred feet of the location of the Proposed Project; and

WHEREAS, copies of the DEIR were provided to the State Clearinghouse (State Clearinghouse No. 2001022079) and to those public agencies that have jurisdiction by law with respect to the Proposed Project, and to other interested persons and agencies; and

WHEREAS, the DEIR was circulated for public review and comment from January 11, 2007 to March 12, 2007; and

WHEREAS, the Planning Commission held a hearing on February 8, 2007 to receive comments on the DEIR; and

WHEREAS, the City has received verbal and written comments from residents, groups, and State agencies; and

WHEREAS, the City Council opened a public hearing on May 1, 2007, and continued it to and closed it on August 7, 2007, to review the DEIR, including responses to comments, with additional comments to be accepted until August 20, 2007 and responded to in a supplemental response to comments; and

WHEREAS, the City Council held a public hearing on August 7, 2007 and determined that the DEIR for the Benicia Business Park Project conforms to the City’s CEQA Guidelines by providing an adequate response to potential environmental issues; and

WHEREAS, the Final Environmental Impact Report (FEIR) consists of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments, which incorporate all written comments received, all oral comments made at the May 1 and August 7, 2007 public hearings, the responses to those written and oral comments, and the necessary corrections to the DEIR as incorporated into the December 2007 EIR; and

WHEREAS, the FEIR concludes that the Benicia Business Park Project is inconsistent with the City's General Plan, and, if the City Council accepted this conclusion, it would be legally precluded from ultimately approving the Proposed Project; and

WHEREAS, the applicant has strongly requested that the FEIR be presented to the City Council for certification without the Proposed Project applications themselves; and

WHEREAS, it is the normal practice of the City to only consider certification of an FEIR at the same time it actually considers the Proposed Project application itself, and, in fact, the City has never before considered an EIR or other CEQA document without having the proposed project application itself before the City for consideration; and

WHEREAS, the Planning Commission has not yet considered the Proposed Project applications on the merits, and, by law, the City Council cannot consider those applications until after the Planning Commission has reviewed and made a recommendation on them.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby finds that it would facilitate its review of the Benicia Business Park Environmental Impact Report if the City Council had before it for consideration the actual project applications for the Proposed Project, so that the Council could consider the FEIR in the context of a specific project application. More specifically, having an actual project application before it for consideration would assist the Council in determining to accept the FEIR conclusion that the Proposed Project is inconsistent with the City's General Plan (which conclusion, if accepted, would prohibit the Council from approving the Proposed Project).

BE IT FURTHER RESOLVED THAT the City Council thus hereby elects to defer consideration of the applicants' request that it certify the FEIR until it has before it the actual applications for the Proposed Project.

BE IT FURTHER RESOLVED that the City Council directs staff to present the Proposed Project to the Planning Commission for review and recommendation as soon as practical, so that the Proposed Project can then be promptly brought before the City Council for consideration at the same time the Council considers whether to certify the FEIR.

BE IT FURTHER RESOLVED that the City Council requests the Planning Commission to review the significant and unavoidable impacts to Land Use, Air Quality and Visual Character identified in the FEIR and make a recommendation regarding a potential Statement of Overriding Considerations.

BE IT FURTHER RESOLVED that the City Council requests the Planning Commission review the potentially significant Proposed Project impacts listed in Table II-2 to

consider whether changes or alterations have been required in or incorporated into the Proposed Project so that the impacts are mitigated to a less than significant level to the extent possible.

BE IT FURTHER RESOLVED that the City Council requests the Planning Commission review a proposed Mitigation Monitoring and Reporting Program.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**DRAFT RESOLUTION
FOR RECOMMENDATION OPTION 3A**

RESOLUTION NO. 08-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONCLUDING THE BENICIA BUSINESS PARK ENVIRONMENTAL IMPACT REPORT (CONSISTING OF THE DECEMBER 2007 FINAL ENVIRONMENTAL IMPACT REPORT, JULY 2007 RESPONSE TO COMMENTS, AND NOVEMBER 2007 SUPPLEMENTAL RESPONSE TO COMMENTS) DOES NOT CONFORM TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND DECLINING TO CERTIFY THE FINAL ENVIRONMENTAL IMPACT REPORT

WHEREAS, applications have been filed with the City of Benicia for a large-scale development project referred to as the Benicia Business Park Project (“the Proposed Project”). These applications include applications for a General Plan amendment, rezoning, master plan, and tentative subdivision maps; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared a Draft Environmental Impact Report (DEIR) to determine if the Benicia Business Park Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 *et seq.*), and the City of Benicia Guidelines pursuant thereto; and

WHEREAS, a Notice of Completion of the DEIR was filed with the Office of Planning and Research (OPR) on January 11, 2007, and a notice of the availability of the DEIR was posted at City Hall and was mailed to property owners within three hundred feet of the location of the Proposed Project; and

WHEREAS, copies of the DEIR were provided to the State Clearinghouse (State Clearinghouse No. 2001022079) and to those public agencies that have jurisdiction by law with respect to the Proposed Project, and to other interested persons and agencies; and

WHEREAS, the DEIR was circulated for public review and comment from January 11, 2007 to March 12, 2007; and

WHEREAS, the Planning Commission held a hearing on February 8, 2007 to receive comments on the DEIR; and

WHEREAS, the City has received verbal and written comments from residents, groups, and State agencies; and

WHEREAS, the City Council opened a public hearing on May 1, 2007, and continued it to and closed it on August 7, 2007, to review the DEIR, including responses to comments, with additional comments to be accepted until August 20, 2007 and responded to in a supplemental response to comments; and

WHEREAS, the City Council held a public hearing on August 7, 2007 and determined that the DEIR for the Benicia Business Park Project conforms to the City’s CEQA Guidelines by providing an adequate response to potential environmental issues; and

WHEREAS, the Final Environmental Impact Report (FEIR) consists of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments, which incorporate all written comments received, all oral comments made at the May 1 and August 7, 2007 public hearings, the responses to those written and oral comments, and the necessary corrections to the DEIR as incorporated into the December 2007 FEIR; and

WHEREAS, the FEIR has been presented to the City Council for certification.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby finds that the Benicia Business Park Environmental Impact Report (consisting of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments) does not identify and adequately evaluate all potentially significant environmental impacts nor identify and recommend all appropriate mitigation measures to address identified environmental impacts.

BE IT FURTHER RESOLVED that City Council declines to certify the FEIR because the City Council finds the Proposed Project substantially conflicts with the City's General Plan as set forth on Page 106 of the FEIR and described in more detail on Table IV.A-1. While some of the conflicts may be reduced or eliminated with the implementation of appropriate mitigations measures, the total combined effect of the conflicts is significant unless changes are made to the Proposed Project.

BE IT FURTHER RESOLVED that the City Council declines to certify the FEIR because the City Council finds that the fact that the Proposed Project would substantially conflict with the policies in the General Plan adopted for the purposes of environmental protection (LU-2) is a significant and unavoidable impact which, despite implementation of all available and reasonable mitigations, cannot be mitigated to a level of less than significant. CEQA (Guidelines Section 15093(a) and 15021(d)) requires the lead agency to balance, as applicable, the economic, legal, social, technological, or other benefits of the Proposed Project against its unavoidable environmental risks when determining whether to approve the Proposed Project. In most circumstances, the lead agency may deem significant and unavoidable adverse environmental effects "acceptable" if the specific economic, legal, social, technological, or other benefits of the Proposed Project outweigh the unavoidable adverse effects. However, state law prohibits a city from approving a project which is not consistent with its General Plan. Therefore, the City cannot lawfully find "overriding considerations" for LU-2, even if the Proposed Project was before the City Council for consideration.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**DRAFT RESOLUTION
FOR RECOMMENDATION OPTION 3B**

RESOLUTION NO. 08-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONCLUDING THE BENICIA BUSINESS PARK ENVIRONMENTAL IMPACT REPORT (CONSISTING OF THE DECEMBER 2007 FINAL ENVIRONMENTAL IMPACT REPORT, JULY 2007 RESPONSE TO COMMENTS, AND NOVEMBER 2007 SUPPLEMENTAL RESPONSE TO COMMENTS) DOES NOT CONFORM TO THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND DIRECTING MODIFICATIONS TO THE PROPOSED EIR IN SPECIFIED AREAS

WHEREAS, applications have been filed with the City of Benicia for a large-scale development project referred to as the Benicia Business Park Project (“the Proposed Project”). These applications include applications for a General Plan amendment, rezoning, master plan, and tentative subdivision maps; and

WHEREAS, the City of Benicia, as the Lead Agency, prepared a Draft Environmental Impact Report (DEIR) to determine if the Benicia Business Park Project could have a significant impact on the environment, in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*), the Guidelines for the Implementation of the California Environmental Quality Act (14 CCR Section 15000 *et seq.*), and the City of Benicia Guidelines pursuant thereto; and

WHEREAS, a Notice of Completion of the DEIR was filed with the Office of Planning and Research (OPR) on January 11, 2007, and a notice of the availability of the DEIR was posted at City Hall and was mailed to property owners within three hundred feet of the location of the Proposed Project; and

WHEREAS, copies of the DEIR were provided to the State Clearinghouse (State Clearinghouse No. 2001022079) and to those public agencies that have jurisdiction by law with respect to the Proposed Project, and to other interested persons and agencies; and

WHEREAS, the DEIR was circulated for public review and comment from January 11, 2007 to March 12, 2007; and

WHEREAS, the Planning Commission held a hearing on February 8, 2007 to receive comments on the DEIR; and

WHEREAS, the City has received verbal and written comments from residents, groups, and State agencies; and

WHEREAS, the City Council opened a public hearing on May 1, 2007, and continued it to and closed it on August 7, 2007, to review the DEIR, including responses to comments, with additional comments to be accepted until August 20, 2007 and responded to in a supplemental response to comments; and

WHEREAS, the City Council held a public hearing on August 7, 2007 and determined that the DEIR for the Benicia Business Park Project conforms to the City’s CEQA Guidelines by providing an adequate response to potential environmental issues; and

WHEREAS, the Final Environmental Impact Report (FEIR) consists of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments, which incorporate all written comments received, all oral comments made at the May 1 and August 7, 2007 public hearings, the responses to those written and oral comments, and the necessary corrections to the DEIR as incorporated into the December 2007 FEIR; and

WHEREAS, the FEIR has been presented to the City Council for certification.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby finds that the Benicia Business Park Environmental Impact Report (consisting of the December 2007 FEIR, July 2007 Response to Comments, and November 2007 Supplemental Response to Comments) does not identify and adequately evaluate all potentially significant environmental impacts nor identify and recommend all appropriate mitigation measures to address identified environmental impacts.

BE IT FURTHER RESOLVED that additional analysis is required to adequately evaluate the Proposed Project's impacts on sustainable development, traffic, urban decay, energy, air quality, and growth inducing impacts. Analysis should include items such as:

1. Avoiding growth inducing impacts from the Proposed Project and evaluating the acquisition of property, development rights, or easements to preserve open space. (General Plan Program 2.2.B).
2. Reduction of noise and safety impacts by the implementation of traffic calming along East Second Street.
3. Evaluating the Proposed Project for sustainable development impacts and reviewing (a) energy conservation and waste reduction measures, including appropriate orientation of streets and planting of shade trees (CEQA 15126.4) and (b) the degree to which greenhouse gases will be reduced (General Plan overarching goal of sustainable development).
4. A computer simulation of the Proposed Project as seen from East 2nd Street, I-680, and adjacent residential neighborhoods.

BE IT FURTHER RESOLVED that the City Council is unable to evaluate the adequacy of the FEIR without a detailed master plan to review.

BE IT FURTHER RESOLVED that additional possible mitigation measures may result from this additional analysis and may include items such as (1) a design and circulation network that encourages pedestrian and bicycle use by being accessible and human-scale and defined by buildings, trees and lighting, and by discouraging high speed traffic; (2) preservation of natural terrain, drainage and vegetation within park or open space areas; and (3) efficient use of water through the use of natural drainage, drought tolerant landscaping, and recycling.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 19th day of February, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
ACTION ITEMS**

DATE : February 8, 2007

TO : City Manager

FROM : Finance Director

SUBJECT : **PRESENTATION OF THE COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDING JUNE 30, 2007 AND RECOGNITION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING FOR THE JUNE 30, 2006 REPORT**

RECOMMENDATION:

Accept the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year Ending June 30, 2007 and authorize staff to distribute the document to recipient agencies.

EXECUTIVE SUMMARY:

The City of Benicia receives an annual independent audit of its financial records and, upon completion, produces a CAFR. This year's audit was conducted under the direction of Catherine Yuen, Shareholder at Maze and Associates, and presented to the Audit and Finance Committee (AFC) for consideration on February 8, 2008. The Audit and Finance Committee has reviewed the CAFR and recommends approval. The previous year's CAFR received an Award of Excellence from the Government Finance Officer's Association of the United States and Canada. A comparison of the audited results with the amended budget is also presented in the staff report.

BUDGET INFORMATION:

There is no fiscal impact at this time. However, the CAFR is utilized by rating agencies and lending institutions in determining the credit worthiness of the City and can influence lending rates and debt service capacity when the City borrows money.

BACKGROUND:

Once again, the City has received the highest marks available from an independent auditor, often referred to as a "clean audit." In the auditor's opinion ...

...The basic financial statements referred to above present fairly in all material respects the financial position of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Benicia as of June 30, 2007 and the changes in financial position and cash flows where applicable, thereof and the respective

budgetary comparisons listed as part of the basic financial statements for the years then ended, in conformity with generally accepted accounting principles in the United States of America.

Excerpts from the CAFR are attached to this report for your reference. The Management Discussion and Analysis Report provides a thorough discussion of the changes experienced and reported during the fiscal period. Special thanks go out to Abby Urrutia, Assistant Finance Director, and Alyson Kauzer, Accounting Manager, for their special efforts in organizing this year's award-winning report.

Upon approval, the CAFR will be submitted to the Government Finance Officers Association of the United States and Canada for evaluation of reporting criteria and award potential. The previous year's submission received the *Certificate of Achievement for Excellence in Financial Reporting* and continues the City's success in receiving the award for the past 19 years.

General Fund Budget-to-Actual Comparison

The attached *Exhibit I* summarizes the audited results in the General Fund for FY 2006-07. The year ended with budgeted operational revenues exceeding expectations by \$480,065 and operational expenditures under budget by \$868,390. The major revenue improvements were from Fire reimbursements from responding to Southern California Fires, Public Works Engineering receipts and Community Services recreational programs. These are explained more fully in the notes attached to *Exhibit I*.

There were several reasons for the positive expenditure results that yielded a 1.3% savings. The majority of the savings were from salary and benefit savings totaling \$721,590, most of which were in the Community Development and Fire Departments. Another \$164,720 can be attributed to Materials and Supplies savings. There was a large expenditure reported in Misc. Non-Departmental related to the Valero Property Tax Reimbursement that led to the category being over budget by \$589,655. Most of this will be returned in FY 2007-08, as the agreement was recently approved by Council.

The audited results yielded an ending Undesignated Fund Balance of \$6.966 million, representing 23.9% of operational expenditures for the year. This was approximately 1.4% higher than expected and allowed the General Fund to post a surplus above the 20% reserve requirement of \$1.1 million for FY 2006-07.

Exhibit II was requested by the Audit and Finance Committee to show the link between the CAFR and the City's Budget Document. The revenues and expenditures are reconciled, as well as the Ending Fund Balances.

Exhibit III displays the Amended Budgets for FY 2007-08 and FY 2008-09. The adjustments listed in the report were previously collected and recognized in December 2007 in conjunction with the Classification and Compensation study. The report indicates that current budgets are balanced at the 20% Fund Balance Reserve minimum. Staff will return on March 4, 2008 with recommendations for adjusting revenues and expenditures, based upon mid-year financial information.

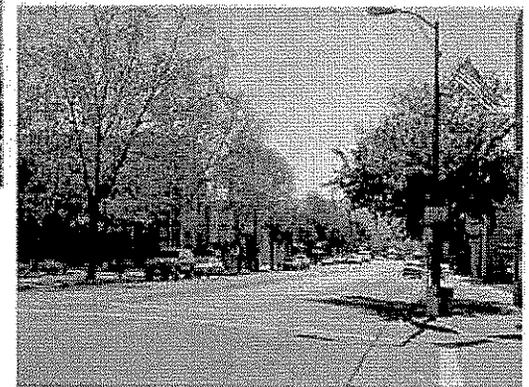
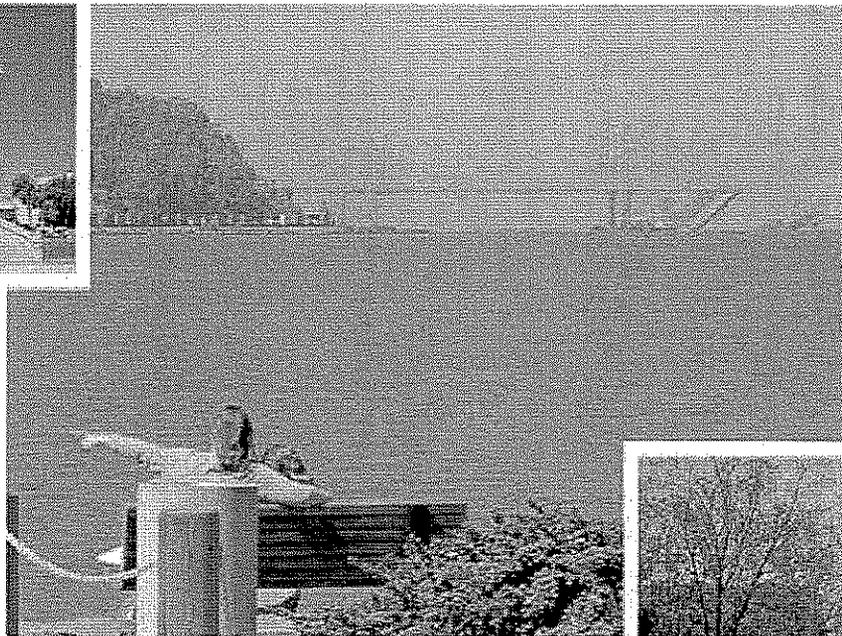
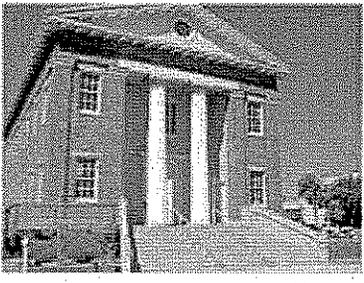
A complete copy of the CAFR is available at the City Clerks Office, the Finance Department, and online at the City of Benicia website: www.ci.benicia.ca.us and click on City Departments-Finance.

Attachments:

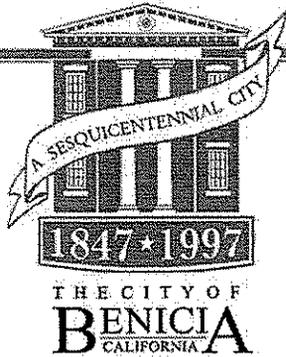
- Excerpts from FY 2006-07 Comprehensive Annual Financial Report
- General Fund Budget to Actual Comparison

**Excerpts from FY 2006-07
Comprehensive Annual Financial Report**

THE CITY OF **BENICIA** CALIFORNIA



**Comprehensive Annual
Financial Report
for the
Fiscal Year Ended
June 30, 2007**



December 5, 2007

**To the Honorable Mayor, Members of the City Council,
and Citizens of the City of Benicia, California:**

I am pleased to present to you the Comprehensive Annual Financial Report (CAFR) of the City of Benicia (the City) for the fiscal year ended June 30, 2007. This CAFR has been prepared by the Finance Department in conformance with the principles and standards for financial reporting set forth by the Governmental Accounting Standards Board (GASB).

Responsibility for both the accuracy of the data and fairness of the presentation, including all disclosures, rests with the City. To the best of my knowledge, the enclosed information is accurate in all material respects and is reported in a manner designed to present fairly the financial position and changes in financial position of the City, as measured by the financial activity of its governmental activities, business-type activities, each major fund, and the aggregate remaining fund information. All disclosures necessary to enable the reader to gain an understanding of the City's financial activities have been included.

The City's basic financial statements have been audited by Maze & Associates CPA, a public accounting firm fully licensed and qualified to perform audits of State and local governments within the State of California. The goal of the independent audit is to provide reasonable assurance that the basic financial statements of the City for the fiscal year ended June 30, 2007, are free of material misstatement. The independent auditor's report is presented at the front of the financial section of this report.

Management's Discussion & Analysis (MD&A) immediately follows the independent auditor's report and provides a narrative introduction, overview, and analysis of the basic financial statements. The MD&A is designed to complement this letter of transmittal and should be read in conjunction with it.

PROFILE OF THE GOVERNMENT

Benicia, California is located in southern Solano County adjacent to the Carquinez Strait, which is part of the San Francisco Bay. It is a waterfront city, known for its small town charm, history and high quality of life. Benicia has moderate Mediterranean weather with dry warm summers and moderate winters. It currently occupies 14 square miles and serves a population of 27,916.

The City was incorporated in April 24, 1851, under the laws of the State of California. The City is a general law city administered by a council-manager form of government and provides a wide range of

municipal services to its citizens including public safety (fire and police), library, parks and recreation, public works, planning and zoning, water and wastewater utilities, economic development, transit, and general administrative services.

The financial reporting entity includes all funds and activities of the City of Benicia. Other governmental agencies that provide services within the City include Solano County, the Benicia Unified School District and the Benicia Housing Authority. Financial information for these agencies is not included in the accompanying financial statements because each is a legally separate entity with operations separate from the City, and the City has no financial interest in their activities.

Management Summary

Benicia benefits from the stability of its leadership and experience. Elizabeth Patterson, newly elected mayor in November 2007, has been a Council Member since 2003, replacing Steve Messina, who served two 4-year terms as Mayor. Jim Erickson, former City Manager for the City of Millbrae for more than 20 years, was chosen to become the new City Manager after an extensive recruitment process in February 2003. Mr. Erickson leads the executive management team, which includes nine Directors that bring substantial technical expertise and managerial experience to the City of Benicia. With this level of expertise, the City continues its reputation of progressive and business-like management. The City Council and the Executive Management Team stress long-term planning and the ability to turn fiscal challenges into opportunities.

In 2004, the city developed a ten-year General Fund model. This model has become a guide and educational tool for the City's management staff, Council Members and citizens. The City's Audit and Finance Committee also takes a very active role in monitoring the ten-year model and has recommended several enhancements to ensure the viability of the model in forecasting future operational outcomes.

In addition to the model, the City has also developed a strategic plan that will direct the City's vision for success, which is updated every budget cycle. This plan identifies strategies and priorities that will best address issues raised by the City's stakeholders, and will serve as a framework for the City to provide the community with integrity, excellence, service and inclusiveness of all.

By combining the business-like attitude with the ten-year model, taking into account the strategic issues that have been identified, the City now enjoys a \$3,606,392 undesignated General Fund reserve, together with \$1,477,569 for Economic Uncertainty, \$1,477,569 for Exposures Reserve and \$2,955,138 for Emergency Reserve.

ECONOMIC OUTLOOK AND CONDITION

Benicia's strategic setting on the Carquinez Strait has made it an attractive location as both a place to live and a place for industrial growth. While largely built out, families continue to be attracted to the City of Benicia's quiet tree-lined neighborhoods, good schools, low crime rate and small-town, historic charm.

The table below illustrates the City's General Fund property, sales and utility tax collections for fiscal years 2002 through 2007:

General Fund Tax Collections 2001-02 Through 2006-07			
Year	Property	Sales	Utility
2001-02	\$ 8,962,542	\$ 3,698,722	\$ 2,644,033
2002-03	10,133,259	3,802,518	2,739,530
2003-04	10,502,276	4,237,439	2,747,951
2004-05	10,774,630	4,567,137	2,826,370
2005-06	11,919,854	5,373,118	3,001,316
2006-07	12,881,657	6,285,439	5,056,904

As the table indicates, property taxes increased \$961,803 (8.07%) in fiscal year 2006-07. This increase reflects \$485,596,050 in added assessed value due to new residential and commercial construction and the existing housing market in Benicia. There is a housing market slowdown anticipated for the coming year, as is experienced throughout the County. Sales tax increased \$912,321 (16.98%) in fiscal year 2006-07. This increase reflects strong performance by many of Benicia's industrial and retail businesses. The long-term economic outlook for the City continues to be strong given the diversity of the City's economic base and the low vacancy rate in the City's Industrial Park. Utility user tax collections increased \$2,055,588 (68.49%). The new Utility User Tax agreement with Valero has generated a one-time revenue stream in the amount of \$1,234,706 to City coffers.

The City's Industrial Park is a model for other California cities on how to transform an abandoned military base into a viable industrial park and local economic catalyst. The Benicia Industrial Park provides a strong sales tax base for the City, generating over 60% of the City's sales tax revenue. Because of Benicia's excellent deep-water harbor facilities along the Carquinez Strait, Valero's Northern California Petroleum Refinery is a major activity in the Park. Amports owns the port facility and maintains a large distribution facility in Benicia, which processes over 150,000 passenger cars and light trucks annually. Other industrial sectors represented in the park include steel and metal fabrication, construction, wine warehousing and distribution and nutraceutical product research, development and manufacturing.

Over the last decade, the total square footage of the Benicia Industrial Park has expanded to over 6,000,000 square feet, over 400 companies, and approximately 7,500 jobs. The types of companies locating in the Industrial Park continue to diversify Benicia's economic base and reflect Benicia's prominence as an industrial center located midway between the Bay Area and Sacramento markets. Access to major Northern California freeways and railways contribute to the success and viability of the Benicia Industrial Park.

Discovery Builders, a major Northern California developer, owns approximately 500 acres adjacent to the Benicia Industrial Park. When approved and developed, the new Benicia Business Park will significantly increase property, sales and utility tax revenue for the City. Consistent with the City's General Plan, the new business park will contain over 4 million square feet of light industrial uses and over 800,000 square feet of commercial space. The environmental review is underway and is expected to be completed in 2008.

The following is a list of the top 15 employers in the Industrial Park:

Employer	Employees	Type of Business
Valero Refining Co	531	Petroleum Refining
Dunlop Manufacturing Inc.	200	Manufacture/Distribute Musical Accessories
Radiator Express Warehouse Inc.	199	Distribute Radiators
Bio-Rad Laboratories Inc.	193	Manufacture Hematology Products
APS West Coast, Inc.	150	Operate Port of Benicia
Coca-Cola Bottling Co.	145	Soft Drink Delivery
Cytosport	145	Dietary Sport & Nutrition Products
The Pepsi Bottling Group	121	Soft Drink Manufacturing
Henry Wine Group	117	Import/Distribute Wine Spirits
Benicia Fabrication & Machine	112	Metal Products Manufacturing
Veolia Industrial Services	102	Industrial Services
PSC Industrial Outsourcing Inc.	95	Industrial Waste Cleaning/Disposal
Philip Services Corp	86	Local Trucking Service
Universal Environmental	84	Industrial Services & Transportation
Rix Industries	80	Manufacture Air Gas Compressors

FINANCIAL GOALS AND STRATEGIES

The City's financial goals and strategies center on development of large and stable revenue sources to provide high level services to a growing community in an efficient cost-effective manner. These goals and strategies are:

1. Maintain balanced budgets that incorporate basic services and infrastructure expansion to meet community growth envisioned by the City Council and the City's General Plan.
2. Promote development of job and sales tax creating businesses to reduce the standing of the City as a bedroom community by balancing housing with jobs.
3. Promote a balance of affordable housing opportunities.
4. Promote the preservation of open space, the development of cultural amenities, the encouragement of Historical Preservation and Historical Tourism, and adequate transportation.
5. Ensure growth pays its own way.
6. Promote intergovernmental cooperation to reduce costs and better serve City residents.
7. Increase citizen involvement and City service responsiveness to residents.

There is also a strong focus on sound management of the City's financial resources to allow for the stable delivery of public services and to preserve the City's reputation in financial markets.

Balanced Budget

While the City has recovered from the \$1 million annual property tax revenue reduction imposed by the State in fiscal 1994, costly litigations concerning storm drain improvements, and the recent reduction in property valuation for Valero, one of the City's major property taxpayers, it continues to face the challenge of a slowing economy and increased employee benefit costs. Additionally, due to the past and current State of California's budget crises, the City cautiously anticipates the potential loss of additional revenue—whether it is in the form of reduced motor vehicle fees, sales tax, property tax, or on-going grant and allocation programs. In so doing, the City's General Fund reserve has remained in a secure position to weather the fiscal challenges that are anticipated in the next five years.

Benicia Market Analysis

The Benicia industrial market is diverse, strong and reflects the petro-chemical, steel fabrication and machining, construction, environmental engineering and warehouse/distribution sectors. For the last decade, the Benicia Industrial Park has been an attractive alternative to the Contra Costa market due to more affordable rents, access to affordable housing and a skilled and semi-skilled labor pool. The Benicia Industrial Park currently includes approximately 6 million square feet of space and only a few vacant parcels remain. To the west of the Industrial Park, approximately 500 acres owned by Discovery Builders will be available for future industrial development. While other communities are experiencing significant reductions in sales tax revenue, the Benicia Industrial Park remains a stable economic engine for the City. The diversity of Benicia's economic base will continue to enable the City to tolerate fluctuations in the state and national economy. In summary, 2007 was a strong year, as unemployment remained low in Benicia relative to County and State averages.

Housing Opportunities

The City of Benicia completed its Housing Element Report in May 2003. As part of the process, the Association of Bay Area Governments (ABAG) provided each community with a Fair Share Allocation that must be met within an established planning time period, in compliance with state law. The City's Housing Element Fair Share Allocation was established at 413 units and compliance is required by 2007. The City embarked upon an Affordable Housing Strategy wherein the City has facilitated and provided financial incentives to complete the construction of 124 housing units affordable to low and very low-income households since June 30, 2002. These completed units include two Habitat for Humanity sponsored units, two units at Clos du Val, fifty units at Bayridge, twelve units at Hearthstone Village and fifty six units at Burgess Point.

In addition to the affordable housing units, a large, market-rate single-family housing project (Tourtelot) is currently under construction in the Southampton area. Based on projects completed to date and currently under construction, the City of Benicia expects to meet its 1999-2007 ABAG Fair Share Allocation for all income segments within the community.

Parks, Open Space, Library, Historical Preservation and Tourism, and Transportation

The City is extremely proud of its award winning, 50-acre community park and 570-acre open space area in the northern part of the City. The City is continuing with the renovation and tenant improvements to Mills Elementary School, which will be utilized as a community center. It is currently in the design phase. The 20,000 square foot Skate Park was completed and opened in October 2007. The City is also nearing completion of the renovation of the Benicia High School lower athletic fields.

The City's \$6 million public library facility, opened in 1993, provides patrons with the utmost in modern technology available, including electronic access to the collection of other county and community college libraries. Users are able to borrow audiotapes of books, videotapes of movie classics and music compact discs in addition to having access to 113,000-volume collection of books. The library offers a number of special programs for children, teens and seniors. To further expand library services, the remodeling of the library basement is currently in progress with the design phase being completed.

The City of Benicia has a rich historical background as one of the nation's foremost military compounds, multi-faceted seaports and site of the California State Capital in 1854. There are many wonderful buildings from these bygone eras that are full of cherished artifacts and architectural splendor. The City of Benicia has recognized the importance of maintaining these significant historical assets and has empowered both citizen committees and staff to protect these valuable treasures for residents, visitors and future generations.

The City's transit system "Benicia Breeze" has evolved into a more efficient transit operation providing improved local flex route service within the City on three routes, regional service between Vallejo and Central Contra Costa County on two routes, supplemental service to Benicia schools on two routes, a local taxi scrip program for seniors and persons with disabilities and a paratransit service for persons who are unable to use fixed route transit due to their disability. Benicia Breeze uses a fleet of seven transit buses and seven cutaway buses, all of which are accessible to bicycles and mobility devices. Benicia Breeze averages about 610 passengers per weekday and carries approximately 13,500 passengers per month.

Growth Pays Its Own Way

Benicia's fees and taxes on new development are designed to ensure that growth pays its own way, while simultaneously ensuring that the City is not priced out of the development market. The total amount of fees paid for a "typical" new 2,758 square-foot single-family residence is approximately \$35,000. The fees vary based on square footage and pay for needed public facilities, such as streets, water and wastewater facilities, parks, library books and public safety needs.

Intergovernmental Cooperation

The City of Benicia works closely with the Benicia Unified School District (BUSD) in numerous ways, including:

- Providing two school resource officers at no cost to the school district
- Funding the school district's crossing guard program
- Funding for various counseling services for at-risk students and student reading programs
- High school baseball use of Fitzgerald Field
- Library assistance to schools ordinarily provided by credentialed school librarians
- Safety improvements consisting of the installation of a flashing crosswalk for Benicia High School
- Maintenance of playing fields and turf areas at three school sites

Benicia and its neighboring city, Vallejo, continue to work together to protect open space adjacent to the Benicia Community Park, which borders both cities. Benicia and Vallejo also cooperate in other matters of mutual interest. For example, the two cities, along with Fairfield, cooperated in the acquisition and maintenance in perpetuity of large tracts of open space located between each of the cities. The cities also cooperate in the management, storage and purchase of water.

Citizen Involvement

The City completed the revision of its General Plan in 1999. Part of this process involved the efforts of the General Plan Oversight Committee. This committee, composed of 17 citizens, played a key role in the formation of the new Plan. During the preparation and approval process, the City conducted an extensive public outreach program in which all segments of the community were invited to participate.

In summary, the City manages its ongoing operations and capital improvement programs in an efficient, business-like manner, with a focus on an entrepreneurial approach to problem solving and citizen involvement. Involving our citizens in shaping Benicia's future, preserving Benicia's charm and planning for its orderly progress into the twenty-first century, is of paramount importance.

FINANCIAL INFORMATION

City management is responsible for establishing and maintaining an internal control structure designed to ensure government assets are protected from loss, theft or misuse and ensure adequate accounting data are compiled for the preparation of financial statements in conformity with generally accepted accounting principles. The internal control structure is designed to provide reasonable, but not absolute, assurance that these objectives are met. The concept of reasonable assurance recognizes (1) the cost of a control should not exceed the benefits likely to be derived, and (2) the valuation of costs and benefits requires estimates and judgments by management.

Budgeting Controls

The City maintains budgetary controls. The objective of these budget controls is to ensure compliance with the City Council approved, annual appropriated budget. Activities of the General Fund and Special Revenue Funds, if required, are included in the annual appropriated budget. Project-length financial plans are adopted for the Capital Improvement Projects Funds. Budgetary control is maintained at the department level for administrative and operating expenditures and at the project budget total for capital improvements. For administrative and operating budgets, the line-item budget authority is delegated to department managers. The City also maintains an encumbrance accounting system as one technique of accomplishing budgetary control.

As demonstrated by the statements and schedules included in the financial section of this report, the City continues to meet its responsibility for sound financial management.

Governmental and Business-Type Activities and Net Assets

For detailed information and analysis of the governmental and business-type activities and net assets, please see Management's Discussion and Analysis.

General Fund Reserves

The City has adopted a fund balance reserve policy establishing a minimum fund balance equal to 20% of the fund's annual operating expenditures budget for the purpose of stabilizing the delivery of City services during periods of operational budget deficits. At a minimum, the reserves include the following: Economic Uncertainty of 5%, Liability Exposures Reserve of 5%, Emergency Reserves of 10%. At the end of this fiscal year, the General Fund has maintained the 20% minimum and in addition has an undesignated fund balance of 11%, with 7.4% earmarked for approved projects.

Gann Limit vs. Appropriations Subject to Limit

Proposition 4, the "Gann Initiative," was passed by California voters in 1978 and is intended to limit government appropriations. The appropriations limit is calculated each year based upon fiscal year 1978-79 appropriations, which are modified by the composite consumer price index and population changes that have occurred in subsequent years. The City's appropriations limit and the estimated appropriations subject to the limit for the fiscal year 2006-07 amounted to \$61,992,633 and \$25,664,260, respectively. City appropriations subject to the limit have consistently remained far below the appropriation limits and are not expected to deviate from this trend in the foreseeable future.

Cash Management

The City's cash and investments are managed on a pooled basis. The average investment portfolio was \$57,727,463. The average yield on investment in 2006-07 was 4.45%, average maturity at year-end was approximately a year and three quarters, and total interest earned was \$3,002,244. Investments consisted primarily of money market funds, U.S. government securities and Local Agency Investment Fund (LAIF) deposits managed by the Treasurer of the State of California. These investments are allowed under an investment policy adopted by the City Council that defines eligible investments and maturities of the City's investment portfolio and requires securities be held by the City or by a qualified safekeeping institution and be registered in the City's name.

Debt Administration

The City has utilized bond financing for many public improvement projects in the past. The City's reputation and creditworthiness has been enhanced by its reliance on the same bond counsel and underwriter for nearly all bond issues brought to market over the past seventeen years. These consultants are intimately familiar with City activities and policies and are an invaluable asset in marketing the City to investors.

Additional information on the City's long-term debt can be found in Note 7 to the Basic Financial Statements.

AWARDS

The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City of Benicia for its Comprehensive Annual Financial Report for the fiscal year ended June 30, 2007. In order to be awarded a Certificate of Achievement, a government must publish an easily readable and efficiently organized comprehensive annual financial report. This report must satisfy both generally accepted accounting principles and applicable legal requirements.

A Certificate of Achievement is valid for a period of one year. The Finance Department Staff believes this report conforms to the Certificate of Achievement Program requirements and will submit the report to the GFOA to determine its eligibility. The City of Benicia has received this award for the past 15 years and it is our goal to be awarded this Certificate once again. The award demonstrates the City's conformance to the highest level of financial reporting standards, which will likely have a positive influence on the City's financial rating. This will ensure cost savings in the future when the City of Benicia seeks financing for public improvements.

Acknowledgements

The preparation of this report could not be accomplished without the efficient and dedicated services of the entire staff of the Finance Department. I would like to express my special appreciation to Assistant Finance Director Abigail M. Urrutia and Accounting Systems Supervisor Alyson Kauzer. I would also like to thank the Mayor, City Council Members and the City Manager for their support in planning and conducting City financial affairs in a responsible and efficient manner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "RSousa". The signature is written in a cursive, somewhat stylized font.

Robert Sousa
Finance Director

MUNICIPAL OFFICERS

As of June 30, 2007

CITY COUNCIL (Elected)

Steve Messina, Mayor	November 2007
Alan Schwartzman, Vice Mayor	November 2009
Mark Hughes, Councilmember	November 2009
Elizabeth Patterson, Councilmember	November 2007
Bill Whitney, Councilmember	November 2007

OTHER (Elected)

Lisa Wolfe, City Clerk	November 2007
Virginia Souza, City Treasurer	November 2007

PLANNING COMMISSION (Appointed)

Scott Strawbridge	October 2008
Mike Ioakimedes	October 2007
Kyle Daley	October 2007
Daniel Healy	September 2010
Richard Bortolazzo	September 2010
Fred Railsback	October 2008
Bonnie Silveria	October 2007

PARKS, RECREATION AND CEMETARY COMMISSION (Appointed)

Sandy Moriaty	March 2009
John McGuire	June 2010
Rufus Bunch	January 2011
Annie Lloyd	September 2009
Nancy Cockerham	September 2010
Dan Moitoza	March 2010
Ernie Gutierrez	November 2010
Ellen Quigley	September 2007

APPOINTED OFFICIALS

Jim Erickson	City Manager
Heather McLaughlin	City Attorney

DEPARTMENT HEADS

Robert Sousa	Finance
Dan Schiada	Public Works
Sandra Spagnoli	Police
Ken Hanley	Fire
Michael Alvarez	Parks and Community Services
Anne Cardwell	Interim Human Resources
Diane Smikahl	Library
Charles Knox	Community Development

CITY OF BENICIA

MISSION STATEMENT

To serve and enhance our community with care, commitment and pride.

VISION STATEMENT

Building a great community together by preserving and strengthening:

- Our small town character
- A vibrant economy
- Our history
- A safe and healthy environment

GUIDING PRINCIPLES

- Integrity: doing the right thing, not the easy thing
- Excellence: giving our best always; continuously improving
- Service to the community: being accessible, caring and responsive
- Inclusiveness: seeking involvement of all stakeholders

STRATEGIC ISSUES

- Maintain a Strong Economy
- Strengthen Downtown
- Take Care of Infrastructure
- Protect Community Health and Safety
- Enhance Community Appearance
- Provide More Activities for Our Youth
- Build Community Collaboration
- Promote Continuous Improvement
- Promote Arts, Culture and Continuous Learning

CITY OF BENICIA
ORGANIZATIONAL CHART

JUNE 30, 2007

CITIZENS OF BENICIA

CITY COUNCIL

Steve Messina, Mayor

CITY CLERK

Lisa Wolfe

Alan Schwartzman, Vice Mayor

Mark Hughes

Elizabeth Patterson

Bill Whitney

CITY TREASURER

Virginia Souza

CITY MANAGER

Jim Erickson

CITY ATTORNEY

Heather McLaughlin

POLICE
CHIEF

Sandra
Spagnoli

FIRE
CHIEF

Ken
Hanley

FINANCE
DIRECTOR

Robert
Sousa

PARKS &
COMMUNITY
SERVICES
DIRECTOR

Mike
Alvarez

PUBLIC
WORKS
DIRECTOR

Dan
Schiada

INTERIM
HUMAN
RESOURCES
MANAGER

Anne
Cardwell

LIBRARY
DIRECTOR

Diane
Smikahl

COMMUNITY
DEVELOPMENT
DIRECTOR

Charles
Knox

Certificate of Achievement for Excellence in Financial Reporting

Presented to

City of Benicia
California

For its Comprehensive Annual
Financial Report
for the Fiscal Year Ended
June 30, 2006

A Certificate of Achievement for Excellence in Financial Reporting is presented by the Government Finance Officers Association of the United States and Canada to government units and public employee retirement systems whose comprehensive annual financial reports (CAFRs) achieve the highest standards in government accounting and financial reporting.



A handwritten signature in cursive script, appearing to read "Thomas J. Blinn".

President

A handwritten signature in cursive script, appearing to read "Jeffrey R. Emmer".

Executive Director

ACCOUNTANCY CORPORATION
3478 Buskirk Ave. - Suite 215
Pleasant Hill, California 94523
(925) 930-0902 • FAX (925) 930-0135
maze@mazeassociates.com
www.mazeassociates.com

INDEPENDENT AUDITOR'S REPORT ON BASIC FINANCIAL STATEMENTS

To the City Council
City of Benicia, California

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of the City of Benicia, California as of and for the year ended June 30, 2007, which collectively comprise the City's basic financial statements as listed in the Table of Contents. These financial statements are the responsibility of the City's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free of material misstatement. An audit includes examining on a test basis evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of Benicia, California as of June 30, 2007 and the respective changes in the financial position and cash flows, where applicable, thereof and the respective budgetary comparisons listed as part of the basic financial statements for the year then ended in conformity with generally accepted accounting principles in the United States of America.

Management's Discussion and Analysis is not a required part of the basic financial statements but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted primarily of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit this information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the basic financial statements. The supplemental information listed in the Table of Contents is presented for purposes of additional analysis and is not a required as part of the basic financial statements of the City of Benicia, California. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and in our opinion is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

The introductory section and statistical section listed in the Table of Contents have not been subjected to the auditing procedures applied in the audit of the basic financial statements and accordingly we express no opinion on them.

November 9, 2007

Maze & Associates

CITY OF BENICIA
Management's Discussion and Analysis

This management's discussion and analysis provides readers an overview and analysis of financial activities of the City of Benicia (City) for the fiscal year ended June 30, 2007. Please read this discussion and analysis in conjunction with the accompanying Transmittal Letter, the Basic Financial Statements and the accompanying notes to the financial statements.

FINANCIAL HIGHLIGHTS

- The assets of the City exceeded its liabilities at the close of the most recent fiscal year by \$222.7 million. Of this amount, \$48.9 million may be used to meet the City's ongoing obligations to citizens and creditors.
- The City's total net assets increased by \$4.4 million due to increases in property and sales taxes, investment earnings and a one-time infusion of additional utility users tax.
- As of the close of the current fiscal year, the City's governmental funds reported combined ending fund balances of \$19.3 million, a decrease of \$5.0 million in comparison with the prior year. Approximately 51% of this total, \$9.8 million, is available for spending at the City's discretion.
- At the end of the current fiscal year, unreserved, undesignated fund balance for the General Fund was \$3.6 million, with \$2.5 million earmarked for approved projects. Additional designations of \$1.5 million for Economic Uncertainty, \$1.5 million for Exposures Reserve and \$3.0 million for Emergency Reserve have been set-aside to comply with the City's 20% reserve policy.
- The City's total debt decreased by \$2.3 million as a net result of debt maturities during the year.

OVERVIEW OF THE FINANCIAL STATEMENTS

This discussion and analysis is intended to serve as an introduction to the City's basic financial statements, which consists of three parts: (1) Government-wide Financial Statements, (2) Fund Financial Statements, and (3) Notes to the Basic Financial Statements. This report also contains other supplementary information in addition to the basic financial statements.

Government-wide Financial Statements

The Government-wide Financial Statements provide readers with a broad view of the City's finances, in a manner similar to a private-sector business, using the economic resources measurement focus and accrual basis of accounting. Under the accrual basis of accounting, revenues are recognized in the period in which they are earned, while expenses are recognized in the period in which liability is incurred.

The Statement of Net Assets reports information about the City as a whole. This statement includes all assets (including infrastructure) as well as all liabilities (including long-term debt) of the City. Net assets are the difference between assets and liabilities, which is one way to measure the City's financial health. Over time, increases or decreases in the City's net assets are one indicator of whether its financial health is improving or deteriorating.

In these statements City activities are reported into two categories:

- **Governmental Activities** - Most of the City's basic services are reported in this category, including administration, community development, police, fire, parks and community services,

CITY OF BENICIA
Management's Discussion and Analysis

public works, library services, and economic development. Property, sales and utility taxes, user fees, interest income, franchise fees, and state and federal grants are among the revenues that finance these activities.

- **Business-Type Activities** - The City charges a fee to customers to pay for the cost of certain services provided. The City's wastewater, water, marina, and transit operations are reported in this category.

Fund Financial Statements

A fund is a group of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. Some funds are required to be established by State law or by bond covenants. However, the City establishes many other funds to help control and manage money for a particular purpose or to show that the City is meeting legal responsibilities for using certain taxes, grants, or other funds restricted in its use. Fund Financial Statements provide detailed information about the most significant funds, not the City as a whole.

All of the funds of the City can be divided into three categories:

- **Governmental Funds** - Most of the City's basic services are reported in governmental funds, using the current financial resources measurement focus and modified accrual accounting method, where revenues are recognized when measurable and available. Governmental funds are used to account for essentially the same functions reported as "governmental activities" in the Government-wide Financial Statements. However, unlike the Government-wide Financial Statements, Governmental Funds Financial Statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in determining the City's ability to finance its programs in the near future.

To better understand the City's long-term and short-term requirements, it is useful to compare the City's Governmental Fund Statements with the governmental activities in the Government-wide Financial Statements. A reconciliation is provided for both the governmental fund balance sheet and the statement of revenues, expenditures and changes in fund balances to facilitate this comparison.

- **Proprietary Funds** - When the City charges customers for services, either to outside customers or to other City departments, these services are generally reported in proprietary funds. Proprietary funds are reported in the same way in which all activities are reported in the Government-wide Financial Statements, using the accrual basis of accounting. The City's enterprise funds are the same as the "business-type activities" reported in the government-wide financial statements, but provide more detail and additional information, such as cash flows for each enterprise fund. The City uses internal service funds to report activities that provide supplies and services to the City's other programs and activities, such as insurance, general services, building and equipment management and the retirement stability funds. Internal service funds are reported with "governmental activities" in the Government-wide Financial Statements since services provided predominantly benefit governmental rather than business-type functions.
- **Fiduciary Funds** - The City is the trustee, or fiduciary, for certain funds held on behalf of third parties. The City's fiduciary activities are reported in a separate Statements of Fiduciary Net

CITY OF BENICIA Management's Discussion and Analysis

Assets. These activities are excluded from the City's Government-wide Financial Statements because the City cannot use these assets to finance its operations. However, the City is responsible for ensuring that assets reported in these funds are used for their specified purposes.

Notes to the Financial Statements

The notes provide additional information essential to a full understanding of the data provided in both the Government-wide Financial Statements and Fund Financial Statements. The notes to the financial statements can be found on pages 33-61 of this report.

Other Information

In addition to the basic financial statements and accompanying notes, this report also presents certain Required Supplementary Information concerning the City's progress in funding its obligation to provide pension benefits to its employees.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

The City's combined Net Assets for the year ended June 30, 2007 are summarized below.

Summary of Net Assets
(in millions)

	Governmental Activities		Business-type Activities		Total	
	2007	2006	2007	2006	2007	2006
Current and other assets	\$ 43.4	\$ 45.1	\$ 36.9	\$ 40.4	\$ 80.3	\$ 85.5
Capital assets	119.7	115.2	110.2	105.5	229.9	220.7
Total Assets	163.1	160.3	147.1	145.9	310.2	306.2
Long-term liabilities outstanding	23.9	24.3	50.7	52.7	74.6	77.0
Other liabilities	6.9	5.4	6.0	5.5	12.9	10.9
Total Liabilities	30.8	29.7	56.7	58.2	87.5	87.9
Net Assets:						
Invested in capital assets, net of related debt	109.1	106.2	56.8	50.4	165.9	156.6
Restricted	7.8	14.2	-	0.7	7.8	14.9
Unrestricted	15.4	10.1	33.6	36.7	49.0	46.8
Total Net Assets	\$ 132.3	\$ 130.5	\$ 90.4	\$ 87.8	\$ 222.7	\$ 218.3

The largest portion of the City's net assets (74.5%) reflects its investments in capital assets, less any related debt used to acquire those assets still outstanding. The City uses these capital assets to provide services to citizens and are not available for future spending.

CITY OF BENICIA
Management's Discussion and Analysis

Restricted net assets represent 3.5% of the total net assets and are subject to external restrictions. The decrease of \$7.1 million in restricted net assets is due to completion of capital projects. These monies will be available for future spending but only for specific projects around the City and for debt payments. The balance of unrestricted net assets, which represents 22.0% of the total assets, may be used to meet the City's ongoing obligations to citizens and creditors.

A Statement of Activities and Changes in Net Assets, as of June 30, 2007, is presented below.

Statement of Activities and Changes in Net Assets
(in millions)

	Governmental Activities		Business-type Activities		Total	
	2007	2006	2007	2006	2007	2006
Revenues:						
Program Revenues:						
Charges for services	\$ 4.7	\$ 5.6	\$ 15.3	\$ 17.0	\$ 20.0	\$ 22.6
Operating grants and contributions	1.8	1.4	1.4	1.1	3.2	2.5
Capital grants and contributions	-	0.2	0.4	0.3	0.4	0.5
General Revenues:						
Property taxes	13.9	13.1	-	-	13.9	13.1
Sales taxes	7.0	6.0	-	-	7.0	6.0
Utility users' tax	5.1	3.0	-	-	5.1	3.0
Other taxes	2.1	2.1	-	-	2.1	2.1
Motor vehicle license fees	2.0	2.0	-	-	2.0	2.0
Investment earnings	3.4	0.7	1.6	0.8	5.0	1.5
Total Revenues	40.0	34.1	18.7	19.2	58.7	53.3
Expenses:						
Administration	3.3	3.6	-	-	3.3	3.6
Community Development	2.1	1.4	-	-	2.1	1.4
Public Safety - Police	10.4	7.1	-	-	10.4	7.1
Public Safety - Fire	6.3	6.1	-	-	6.3	6.1
Parks and Community Services	6.0	5.4	-	-	6.0	5.4
Public Works	5.6	4.5	-	-	5.6	4.5
Library	2.1	1.9	-	-	2.1	1.9
Economic Development	0.4	0.7	-	-	0.4	0.7
General Government	2.9	2.6	-	-	2.9	2.6
Interest on long-term debt	0.5	0.4	-	-	0.5	0.4
Wastewater	-	-	6.9	6.2	6.9	6.2
Water	-	-	6.6	5.9	6.6	5.9
Benicia Marina	-	-	0.6	0.6	0.6	0.6
Transit	-	-	1.8	1.5	1.8	1.5
Total Expenses	39.6	33.7	15.9	14.2	55.5	47.9
Increase in net assets before transfers	0.4	0.4	2.8	5.0	3.2	5.4
Transfers	0.1	0.1	(0.1)	(0.1)	-	-
Increase in net assets	0.5	0.5	2.7	4.9	3.2	5.4
Net assets - 7/1/06	130.5	130.0	87.7	82.8	218.2	212.8
GASB 34 Implementation Adjustment	1.3	-	-	-	1.3	-
Net assets - 6/30/07	\$ 132.3	\$ 130.5	\$ 90.4	\$ 87.7	\$ 222.7	\$ 218.2

CITY OF BENICIA Management's Discussion and Analysis

Governmental Activities

Total resources available during the year to finance governmental operations were \$170.5 million consisting of Net Assets at July 1, 2006, of \$130.5 million, program revenues of \$6.5 million and general revenues of \$33.5 million.

The cost of all governmental activities this year was \$39.6 million. The largest governmental programs include Public Safety - both Police and Fire, and Parks and Community Services. The amount that was paid by those who directly benefited from governmental programs was \$4.7 million, while operating and capital grants and contributions paid for \$1.8 million of total costs. The City paid for the remaining "public benefit" portion of governmental activities with taxes and investment earnings.

The following table shows the Net Cost of Governmental Activities, which totaled \$33.1 million.

Net Cost of Governmental Activities

	Expenses	Program Revenues	Net Revenue (Expense) of Activities
Administration	\$ 3,300,970	\$ 32,950	\$ (3,268,020)
Community Development	2,095,746	1,314,800	(780,946)
Public Safety - Police	10,439,354	745,445	(9,693,909)
Public Safety - Fire	6,335,969	294,441	(6,041,528)
Parks and Community Services	5,966,185	1,769,044	(4,197,141)
Public Works	5,605,290	1,093,435	(4,511,855)
Library	2,153,638	379,848	(1,773,790)
Economic Development	385,726	-	(385,726)
General Government	2,864,213	927,067	(1,937,146)
Interest on long-term debt	503,819	-	(503,819)
	\$ 39,650,910	\$ 6,557,030	\$ (33,093,880)
Total	\$ 39,650,910	\$ 6,557,030	\$ (33,093,880)

Business-type Activities

Total resources available during the year to finance Business-Type Activities were \$106.4 million consisting of Net Assets at July 1, 2006, of \$87.7 million, program revenues of \$17.1 million and general revenues of \$1.6 million.

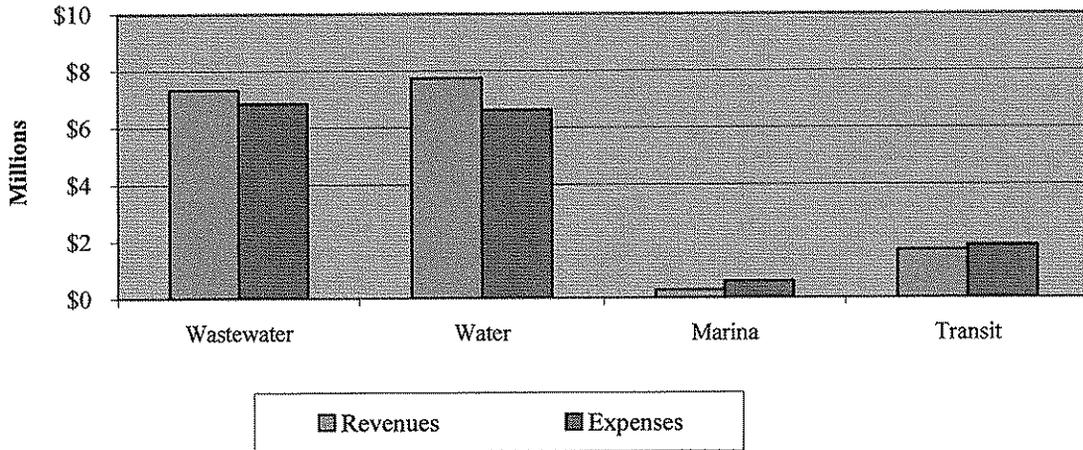
The cost of all Business-Type activities this year was \$15.9 million. As shown in the Statement of Activities and Changes in Net Assets, the amounts paid by users of the systems were \$15.3 million, while operating and capital grants and contributions were \$1.8 million.

CITY OF BENICIA
Management's Discussion and Analysis

Net Cost of Business-Type Activities

	Expenses	Program Revenues	Net Revenue (Expense) of Activities
Wastewater	\$ 6,853,399	\$ 7,335,148	\$ 481,749
Water	6,614,679	7,749,171	1,134,492
Benicia Marina	579,184	284,187	(294,997)
Transit	1,847,674	1,674,070	(173,604)
Total	\$ 15,894,936	\$ 17,042,576	\$ 1,147,640

The following chart illustrates the comparison of operating revenues and expenses by business-type activity:



FINANCIAL ANALYSIS OF THE CITY'S FUNDS

In addition to the accrual-basis government-wide statements described above, the City maintains financial records at the fund level for compliance with finance-related legal requirements and for budgetary control. The Fund Financial Statements focus on individual funds of the City, reporting operations in more detail than the Government-wide Financial Statements.

Governmental Funds

The City's governmental funds provide information on near-term inflows, outflows and balances of spendable resources. The City's governmental funds reported a combined fund balance at June 30, 2007, of \$19.3 million, a decrease of \$5.0 million in comparison with the prior year.

CITY OF BENICIA
Management's Discussion and Analysis

General Fund - The General Fund is the chief operating fund of the City. As a measure of the General Fund's liquidity, it may be useful to compare both unreserved and total fund balance to total funding requirements. At the end of the fiscal year, total fund balance of the General Fund was \$10.3 million, of which the unreserved, undesignated portion was \$3.6 million. In compliance with the City's reserve policy, a total of 20% of the annual operating budget has been set-aside for the following: \$1.5 million for Economic Uncertainty, \$1.5 million for Exposures Reserve and \$3.0 million for Emergency Reserve. Total fund balance represents 33% of total general fund expenditures, while unreserved, undesignated together with the 20% reserve set-aside represents 31% of that same amount.

The General Fund realized general tax and other revenues of \$32.3 million during the year to pay for \$29.5 million operating expenditures, realizing a \$2.8 million excess of revenues over expenditures. Stronger than anticipated sales tax and increases in utility users tax, which included a one-time catch-up, provided a boost in revenues. This resulted in a favorable variance from budgeted amounts. Total operating expenditures realized a favorable variance from budgeted amounts due to salary savings and delays in capital expenditures.

Transfers in to the General Fund were significantly higher than budget due to reimbursements from capital lease proceeds for the Police Building renovation and Storm Drain project. Transfers out to other funds were considerably lower than budget due to delays in construction projects. The General Fund continues to have healthy reserves for future emergencies.

McAllister Area Capital Project Fund - Revenue for the year came from investment earnings of \$.07 million and developer contributions of \$.3 million. Capital expenditures for the year, totaling \$3.3 million were significantly higher than previous year's expenditures. This is attributable to developer improvements above and beyond the maximum amount agreed upon during the formation of the district, which is nearing project completion. There is a balance of \$.8 million in the Construction Fund that will be paid to the developers upon completion and acceptance of the infrastructure.

Proprietary Funds

The City's proprietary funds provide the same type of information found in the Government-wide Financial Statements, but in more detail.

Wastewater Fund - The City's wastewater utility fund collected \$7.2 million in user fees to maintain the system. The fund has \$69.3 million in capital assets, net of accumulated depreciation, financed with \$27.6 million of long-term debt. The fund made debt service payments of \$2.3 million during the year.

Water Fund - The City's water utility fund collected \$7.5 million in user fees to sustain the system. The system has \$36.5 million in capital assets, net of accumulated depreciation, financed with \$19.1 million of long-term debt. The Water Treatment Plant Improvement Project was completed this fiscal year with funding from a State loan in the amount of \$11.7 million. The Water Distribution Improvement Project is currently in progress with funding from reserves. The fund made \$1.4 million in debt service payments for the year.

Benicia Marina - The City's Marina collected \$.3 million in user fees to support its operating and debt service costs. The Marina has \$3.8 million in capital assets, net of accumulated depreciation, financed with \$4.0 million of long-term debt. Debt service payments for the year were \$.3 million. The fund continues to operate at a loss of \$.3 million. The City continues to evaluate options for a long-term operating solution.

CITY OF BENICIA
Management's Discussion and Analysis

Transit – The City's Transit system operates bus, para-transit, taxi service for the citizens of Benicia. The City collected user fees of \$.3 million, which was supplemented by an additional \$1.4 million in federal, state and local grants to support operations. The fund has \$0.6 million in capital assets, net of accumulated depreciation, financed by intergovernmental revenues.

GENERAL FUND BUDGETARY HIGHLIGHTS

Over the course of the year, the City Council may revise the City budget on more than one occasion. The Approved Budget is adopted by the City Council prior to the July 1 start of the fiscal year ("Original Budget"). The City Council may add appropriations or change revenue estimates during the course of the fiscal year, primarily at midyear budget review. Finally, the revenue and expenditure estimates for the current fiscal year are revised as part of the Approved Budget ("Final Budget").

Fiscal year 2006-07 was the second year of a two-year budget. The original budget for 2006-07 was developed in early 2005. The original budget for the General Fund revenues was \$28.1 million, while expenditures were at \$27.5 million. The final budget estimates for revenues was \$32.2 million, an increase of \$4.1 million, and \$30.2 million for expenditures, an increase of \$2.7 million. The main components of the increases are as follows:

- \$1.3 million additional revenues for sales tax in anticipation of a stronger local economy
- \$2.2 million additional revenues for utility users tax in anticipation of a tax agreement that will infuse a one-time catch-up and increases in utility usage
- \$.2 million additional revenues for use of money and property in anticipation of higher market return in investments
- \$.3 million additional revenues for state reimbursements of prior years state cutbacks and takeaways
- \$.9 million additional appropriations for capital outlays such as the patrol laptops for Police, streets and other capital projects
- \$.6 million additional appropriations for salary adjustments for all departments for compliance with negotiated labor agreements
- \$.4 million additional appropriations to the Community Development department for contracted services for the downtown and arsenal area environmental impact review

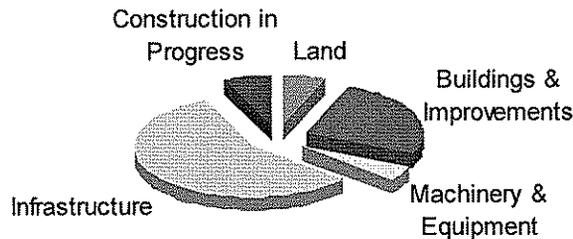
CAPITAL ASSETS

The capital assets of the City are those assets, which are used in the performance of the City's functions including infrastructure assets. This investment in capital assets includes land and easements, infrastructure, buildings and improvements, equipment and construction in progress. The City has fully accounted for its infrastructure, in compliance with GASB 34, increasing its capital assets by \$1.3 million. At June 30, 2007, net capital assets of the governmental activities totaled \$119.7 million and the net capital assets of the business-type activities totaled \$110.2 million. Depreciation on capital assets is recognized in the Government-wide Financial Statements.

CITY OF BENICIA
Management's Discussion and Analysis

The following table provides a breakdown of the City's capital assets at June 30, 2007:

	Capital Assets (in millions)					
	Governmental Activities		Business-type Activities		Total	
	2007	2006	2007	2006	2007	2006
Land	\$ 18.0	\$ 18.0	\$ 2.6	\$ 1.5	\$ 20.6	\$ 19.5
Buildings & Improvements	16.5	15.0	85.3	72.3	101.8	87.3
Machinery & Equipment	7.2	7.1	8.6	8.4	15.8	15.5
Infrastructure	124.4	121.8	69.4	69.1	193.8	190.9
Construction in Progress	9.8	7.9	7.7	14.0	17.5	21.9
Total Capital Assets	175.9	169.8	173.6	165.3	349.5	335.1
Accumulated Depreciation	(56.2)	(54.6)	(63.4)	(59.8)	(119.6)	(114.4)
Net Assets	\$ 119.7	\$ 115.2	\$ 110.2	\$ 105.5	\$ 229.9	\$ 220.7



Land	Buildings & Improvements	Machinery & Equipment
Infrastructure	Construction in Progress	

This year's major capital asset additions were:

- Vehicles – Fire rescue vehicle and a Transit bus.
- Construction in progress: McAllister Project Area, Water Distribution Improvement Project, Skate Park, along with other projects currently under construction.

Additional information on the City's capital assets can be found in Note 6 on pages 46-49 of this report.

DEBT ADMINISTRATION

The City uses a variety of indebtedness to finance various capital acquisitions. At June 30, 2007, the City's long-term debt outstanding was \$78.0 million. Of this total, \$24.3 million was in governmental activities and \$53.7 was in business-type activities.

CITY OF BENICIA Management's Discussion and Analysis

The City's governmental activities decreased by \$.8 million, and business-type activities decreased by \$1.6 million as a net result of debt maturities.

The percentage of net bonded debt to taxable property valuation, and the amount of bonded debt per capita are useful indicators of the City's debt position. Per capita debt outstanding decreased by \$147 per capita from \$2,946 to \$2,799 from the previous fiscal year.

The following is a summary of the City's long-term debt obligations at June 30, 2007:

Long-term Debt
(in millions)

	Governmental Activities		Business-type Activities		Total	
	2007	2006	2007	2006	2007	2006
General Obligation Bonds	\$ 7.0	\$ 7.5			\$ 7.0	\$ 7.5
Pension Obligation Bonds	13.9	14.0			13.9	14.0
Capital Lease	3.4	3.6			3.4	3.6
Utility Revenue Bonds			12.6	13.7	12.6	13.7
Loans Payable			41.1	41.6	41.1	41.6
Total Indebtedness	\$ 24.3	\$ 25.1	\$ 53.7	\$ 55.3	\$ 78.0	\$ 80.4

Additional information on the City's long-term debt can be found in Note 7 on pages 50-54 of this report.

ECONOMIC FACTORS AND NEXT YEAR'S BUDGET

The City prepares biennial budget, which focuses on long-term financial viability and allows decision-makers to better understand the on-going impact of current policy decisions. Through the budget, the Council sets the direction of the City, allocates its resources and establishes its priorities. Positive economic indicators such as low unemployment, increase in sales tax and increase in property valuations continue to indicate a healthy economy for Benicia. However, with economic uncertainties caused by the State budget deficit and projected increases in personnel and benefits caution was exercised in developing the budget for fiscal year 2006-07.

CONTACTING THE CITY'S FINANCIAL MANAGEMENT

This financial report is designed to provide our citizens, taxpayers, customers, investors and creditors with a general overview of the City's finances and to show the City's accountability for the money it receives. If you have questions about this report or need any additional financial information, contact the Finance Department at 250 East "L" Street, Benicia, CA 94510, phone (707) 746-4225.

GOVERNMENT-WIDE FINANCIAL STATEMENTS

**STATEMENT OF NET ASSETS
AND STATEMENT OF ACTIVITIES**

CITY OF BENICIA
STATEMENT OF NET ASSETS
JUNE 30, 2007

	Governmental Activities	Business-Type Activities	Total
ASSETS			
Cash and investments available for City operations (Note 3)	\$25,039,940	\$31,538,066	\$56,578,006
Accounts receivable	1,385,605	2,119,519	3,505,124
Interest receivable	159,898	173,889	333,787
Materials, parts and supplies (Note 1H)	9,565	161,171	170,736
Prepaid items	102,656	100,000	202,656
Internal balances	245,997	(245,997)	
Restricted cash and investments held by fiscal agents (Note 3)	311,603	360	311,963
Deferred charges		609,143	609,143
Lease receivable		489,533	489,533
Loans receivable (Note 5)	2,835,868	1,906,406	4,742,274
Prepaid PERS contribution (Note 10)	13,283,659		13,283,659
Capital assets (Note 6):			
Non-depreciable	27,775,824	10,284,366	38,060,190
Depreciable, net of accumulated depreciation	91,935,074	99,948,924	191,883,998
Total Assets	<u>163,085,689</u>	<u>147,085,380</u>	<u>310,171,069</u>
LIABILITIES			
Accounts payable	3,026,192	1,419,693	4,445,885
Accrued payroll	139,366		139,366
Customer and performance deposits	1,005,581	127,004	1,132,585
Interest payable	195,605	462,949	658,554
Unearned revenue		750,620	750,620
General liability claims (Note 11):			
Due within one year	96,034		96,034
Workers compensation claims (Note 11):			
Due within one year	262,959		262,959
Due in more than one year	427,154		427,154
Accrued compensated absences (Note 1G):			
Due within one year	988,305	240,251	1,228,556
Due in more than one year	293,698		293,698
Long-term debt (Note 7):			
Due within one year	1,168,064	2,982,543	4,150,607
Due in more than one year	23,190,330	50,719,443	73,909,773
Total Liabilities	<u>30,793,288</u>	<u>56,702,503</u>	<u>87,495,791</u>
NET ASSETS (Note 8)			
Invested in capital assets, net of related debt	109,082,400	56,818,976	165,901,376
Restricted for:			
Capital projects	4,915,911		4,915,911
Debt service	1,409,547	360	1,409,907
Special revenue projects	1,522,715		1,522,715
Total Restricted Net Assets	<u>7,848,173</u>	<u>360</u>	<u>7,848,533</u>
Unrestricted	<u>15,361,828</u>	<u>33,563,541</u>	<u>48,925,369</u>
Total Net Assets	<u>\$132,292,401</u>	<u>\$90,382,877</u>	<u>\$222,675,278</u>

See accompanying notes to financial statements

CITY OF BENICIA
STATEMENT OF ACTIVITIES
FOR THE YEAR ENDED JUNE 30, 2007

Functions/Programs	Program Revenues				Net (Expense) Revenue and Changes in Net Assets		Total
	Expenses	Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-type Activities	
Governmental Activities:							
Administration	\$3,300,970	\$32,950			(\$3,268,020)		(\$3,268,020)
Community development	2,095,746	1,284,313	\$30,487		(780,946)		(780,946)
Public safety - police	10,439,354	199,039	546,406		(9,693,909)		(9,693,909)
Public safety - fire	6,335,969	196,361	98,080		(6,041,528)		(6,041,528)
Parks and community services	5,966,185	1,768,794	250		(4,197,141)		(4,197,141)
Public works	5,605,290	444,159	649,276		(4,511,855)		(4,511,855)
Library	2,153,638	246,302	133,546		(1,773,790)		(1,773,790)
Economic development	385,726				(385,726)		(385,726)
General government	2,864,213	557,754	369,313		(1,937,146)		(1,937,146)
Interest on long-term debt	503,819				(503,819)		(503,819)
Total Governmental Activities	39,650,910	4,729,672	1,827,358		(33,093,880)		(33,093,880)
Business-type Activities:							
Wastewater	6,853,399	7,223,062		\$112,086		\$481,749	481,749
Water	6,614,679	7,465,686		283,485		1,134,492	1,134,492
Benicia Marina	579,184	284,187				(294,997)	(294,997)
Transit	1,847,674	290,474	1,383,596			(173,604)	(173,604)
Total Business-type Activities	15,894,936	15,263,409	1,383,596	395,571		1,147,640	1,147,640
Total	\$55,545,846	\$19,993,081	\$3,210,954	\$395,571	(33,093,880)	1,147,640	(31,946,240)
General revenues:							
Taxes:							
Property taxes					13,942,074		13,942,074
Sales taxes					6,986,922		6,986,922
Utility users' tax					5,056,904		5,056,904
Other taxes					2,131,710		2,131,710
Motor vehicle in-lieu, unrestricted					2,015,234		2,015,234
Investment earnings					3,390,122	1,559,891	4,950,013
Gain from disposal of capital assets					2,000	4,761	6,761
Transfers, net					77,993	(77,993)	
Total general revenues and transfers					33,602,959	1,486,659	35,089,618
Change in Net Assets					509,079	2,634,299	3,143,378
Net Assets-Beginning					130,526,567	87,748,578	218,275,145
GASB Statement No. 34 Implementation Adjustment (Note 6)					1,256,755		1,256,755
Net Assets-Ending					\$132,292,401	\$90,382,877	\$222,675,278

See accompanying notes to financial statements

FUND FINANCIAL STATEMENTS

The funds described below were determined to be Major Funds by the City in fiscal 2007. Individual non-major funds may be found in the Supplemental section.

GENERAL FUND

The General Fund is used for all of the general revenues of the City not specifically levied or collected for other City funds and the related expenditures.

McALLISTER ASSESSMENT DISTRICT

The McAllister Assessment District Capital Projects Fund accounts for the construction of public improvements benefiting the property within the bounds of the Assessment District, which is located north of Rose Drive and to the west of East Second Street. Source revenues include investment earnings and proceeds from bonds.

CITY OF BENICIA
GOVERNMENTAL FUNDS
BALANCE SHEET
JUNE 30, 2007

	General	McAllister Assessment District	Other Governmental Funds	Total Governmental Funds
ASSETS				
Cash and investments available for City operations (Note 3)	\$9,987,429	\$849,675	\$10,967,041	\$21,804,145
Accounts receivable	687,354		698,251	1,385,605
Interest receivable	85,908	424	55,200	141,532
Due from other funds (Note 4B)	675,597			675,597
Prepaid items	74,122			74,122
Restricted cash and investments (Note 3)			280,970	280,970
Loans receivable (Note 5)	966,646		2,061,736	3,028,382
Total Assets	\$12,477,056	\$850,099	\$14,063,198	\$27,390,353
LIABILITIES				
Accounts payable	\$987,201	\$829,500	\$1,102,028	\$2,918,729
Accrued payroll	139,366			139,366
Customer deposits	711		1,004,870	1,005,581
Due to other funds (Note 4B)			428,107	428,107
Deferred revenue	966,646		2,573,456	3,540,102
General liability claims (Note 11)	96,034			96,034
Total Liabilities	2,189,958	829,500	5,108,461	8,127,919
FUND BALANCES				
Fund balance (Note 8)				
Reserved for:				
Debt service			1,409,547	1,409,547
Prepaid items	74,122			74,122
Encumbrances	285,239		1,237,089	1,522,328
Open space			110,000	110,000
Unreserved:				
Designated for:				
Future projects	306,448			306,448
Cable grant	104,622			104,622
Economic uncertainty	1,477,569			1,477,569
Exposures reserve	1,477,569			1,477,569
Emergency reserve	2,955,138			2,955,138
Undesignated, reported in:				
General Fund	3,606,391			3,606,391
Special Revenue Funds			2,532,927	2,532,927
Capital Projects Funds		20,599	3,665,174	3,685,773
Total Fund Balances	10,287,098	20,599	8,954,737	19,262,434
Total Liabilities and Fund Balances	\$12,477,056	\$850,099	\$14,063,198	\$27,390,353

See accompanying notes to financial statements

CITY OF BENICIA
 Reconciliation of the
 GOVERNMENTAL FUNDS -- BALANCE SHEET
 with the
 STATEMENT OF NET ASSETS
 JUNE 30, 2007

Total fund balances reported on the Governmental Funds Balance Sheet \$19,262,434

Amounts reported for Governmental Activities in the Statement of Net Assets are different from those reported in the Governmental Funds above because of the following:

CAPITAL ASSETS

Capital assets used in Governmental Activities are not current assets or financial resources and therefore are not reported in the Governmental Funds. 110,961,066

ALLOCATION OF INTERNAL SERVICE FUND NET ASSETS

Internal Service Funds are not Governmental Funds. However, they are used by management to charge the costs of certain activities, such as insurance, central services and maintenance to individual Governmental Funds. The net current assets of the Internal Service Funds are therefore included in Governmental Activities in the following line item in the Statement of Net Assets.

Cash and investments	3,235,795
Restricted cash and investments	30,633
Interest receivable	18,366
Prepaid items	28,534
Materials, parts and supplies	9,565
Prepaid PERS contributions	13,283,659
Capital assets, net of accumulated depreciation	8,749,832
Accounts payable	(107,463)
Internal balances	(1,493)
Workers' compensation claims	(690,113)
Interest payable	(34,174)
Long-term debt	(13,891,327)

ACCRUAL OF NON-CURRENT REVENUES AND EXPENSES

Revenues which are deferred on the Fund Balance Sheets, because they are not available currently, are taken into revenue in the Statement of Activities. 3,540,102

LONG-TERM ASSETS AND LIABILITIES

The assets and liabilities below are not due and payable in the current period and therefore are not reported in the Funds:

Long-term debt	(10,467,067)
Interest payable	(161,431)
Loans receivable	(192,514)
Non-current portion of compensated absences	(1,282,003)

NET ASSETS OF GOVERNMENTAL ACTIVITIES \$132,292,401

See accompanying notes to financial statements

CITY OF BENICIA
 GOVERNMENTAL FUNDS
 STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES
 FOR THE YEAR ENDED JUNE 30, 2007

	General	McAllister Assessment District	Other Governmental Funds	Total Governmental Funds
REVENUES				
Property taxes	\$12,881,657		\$751,966	\$13,633,623
Sales taxes	6,285,439		701,483	6,986,922
Utility users' taxes	5,056,904			5,056,904
Other taxes	1,032,343			1,032,343
Assessments			442,634	442,634
Licenses and permits	1,829,485			1,829,485
Fines and forfeitures	109,744			109,744
Use of money and property	1,135,249	\$74,406	558,434	1,768,089
Revenue from other agencies	2,105,163		1,172,891	3,278,054
Current service charges	1,576,731		1,279,638	2,856,369
Community donations		342,620	102,605	445,225
Other	304,018		257	304,275
Total Revenues	32,316,733	417,026	5,009,908	37,743,667
EXPENDITURES				
Current:				
Administration	3,256,967			3,256,967
Community development	1,227,026		538,219	1,765,245
Public safety - police	7,206,040		325,719	7,531,759
Public safety - fire	6,110,150			6,110,150
Parks and community services	4,589,329		697,072	5,286,401
Public works	1,694,070		56,045	1,750,115
Library	1,144,591		928,637	2,073,228
Economic development	333,337			333,337
General	2,554,884			2,554,884
Capital outlay	1,354,565	3,311,378	6,457,271	11,123,214
Debt service:				
Principal			617,933	617,933
Interest and fiscal charges			511,846	511,846
Total Expenditures	29,470,959	3,311,378	10,132,742	42,915,079
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	2,845,774	(2,894,352)	(5,122,834)	(5,171,412)
OTHER FINANCING SOURCES (USES)				
Proceeds from sale of capital assets	2,000			2,000
Transfers in (Note 4A)	942,388		3,440,063	4,382,451
Transfers (out) (Note 4A)	(1,479,991)		(2,788,322)	(4,268,313)
Total Other Financing Sources (Uses)	(535,603)		651,741	116,138
NET CHANGE IN FUND BALANCES	2,310,171	(2,894,352)	(4,471,093)	(5,055,274)
BEGINNING FUND BALANCES	7,976,927	2,914,951	13,425,830	24,317,708
ENDING FUND BALANCES	\$10,287,098	\$20,599	\$8,954,737	\$19,262,434

See accompanying notes to financial statements

CITY OF BENICIA
 Reconciliation of the
 NET CHANGE IN FUND BALANCES - TOTAL GOVERNMENTAL FUNDS
 with the
 STATEMENT OF ACTIVITIES
 FOR THE YEAR ENDED JUNE 30, 2007

The schedule below reconciles the Net Changes in Fund Balances reported on the Governmental Funds Statement of Revenues, Expenditures and Changes in Fund Balance, which measures only changes in current assets and current liabilities on the modified accrual basis, with the Change in Net Assets of Governmental Activities reported in the Statement of Activities, which is prepared on the full accrual basis.

NET CHANGE IN FUND BALANCES - TOTAL GOVERNMENTAL FUNDS (\$5,055,274)

Amounts reported for governmental activities in the Statement of Activities are different because of the following:

CAPITAL ASSETS TRANSACTIONS

Governmental Funds report capital outlays as expenditures. However, in the Statement of Activities, the cost of those assets is capitalized and allocated over their estimated useful lives and reported as depreciation expense.

The capital outlay expenditures are therefore added back to fund balance	7,984,985
Retirements are deducted from fund balance	(2,501,603)
Depreciation expense is deducted from the fund balance	
(Depreciation expense is net of internal service fund depreciation of \$465,796 which has already been allocated to serviced funds)	(1,960,015)
Proceeds from sale of capital assets	(2,000)

LONG-TERM DEBT PROCEEDS AND PAYMENTS

Bond proceeds provide current financial resources to governmental funds, but issuing debt increases long-term liabilities in the Statement of Net Assets. Repayment of bond principal is an expenditure in the governmental funds, but in the Statement of Net Assets the repayment reduces long-term liabilities.

Repayment of debt principal is added back to fund balance	617,933
-----------------------------------------------------------	---------

ACCRUAL OF NON-CURRENT ITEMS

The amounts below included in the Statement of Activities do not provide or (require) the use of current financial resources and therefore are not reported as revenue or expenditures in governmental funds (net change):

Deferred revenue	2,186,936
Loans receivable	(192,514)
Interest payable	8,027
Compensated absences	(219,635)

ALLOCATION OF INTERNAL SERVICE FUND ACTIVITY

Internal Service Funds are used by management to charge the costs of certain activities, such as equipment acquisition, maintenance, and insurance to individual funds. The portion of the net revenue (expense) of these Internal Service Funds arising out of their transactions with governmental funds is reported with governmental activities because they service those activities.

Change in Net Assets - Internal Service Fund	(357,761)
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CHANGE IN NET ASSETS OF GOVERNMENTAL ACTIVITIES	\$509,079
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See accompanying notes to financial statements

CITY OF BENICIA
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES
AND CHANGES IN FUND BALANCE
BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 2007

	<u>Budgeted Amounts</u>		<u>Actual Amounts</u>	<u>Variance with Final Budget Positive (Negative)</u>
	<u>Original</u>	<u>Final</u>		
REVENUES:				
Taxes:				
Property	\$12,993,210	\$12,911,560	\$12,881,657	(\$29,903)
Sales	4,977,780	6,251,145	6,285,439	34,294
Utility users'	3,020,550	5,210,315	5,056,904	(153,411)
Other	861,045	952,240	1,032,343	80,103
Licenses and permits	1,896,140	1,912,020	1,829,485	(82,535)
Fines and forfeitures	138,000	141,000	109,744	(31,256)
Use of money and property	612,650	857,670	1,135,249	277,579
Revenue from other agencies	1,959,190	2,302,550	2,105,163	(197,387)
Current service charges	1,498,080	1,489,830	1,576,731	86,901
Other	184,090	186,090	304,018	117,928
Total Revenues	<u>28,140,735</u>	<u>32,214,420</u>	<u>32,316,733</u>	<u>102,313</u>
EXPENDITURES:				
Current:				
Administration	2,467,560	2,653,370	3,256,967	(603,597)
Community development	1,384,140	1,753,970	1,227,026	526,944
Public safety - police	6,978,325	7,222,935	7,206,040	16,895
Public safety - fire	5,948,985	6,483,995	6,110,150	373,845
Parks and community services	4,050,065	4,225,370	4,589,329	(363,959)
Public works	1,751,370	1,797,855	1,694,070	103,785
Library	1,085,435	1,128,795	1,144,591	(15,796)
Economic development	276,110	377,360	333,337	44,023
General	2,722,690	2,757,250	2,554,884	202,366
Capital outlay	826,785	1,763,595	1,354,565	409,030
Total Expenditures	<u>27,491,465</u>	<u>30,164,495</u>	<u>29,470,959</u>	<u>693,536</u>
EXCESS OF REVENUES OVER EXPENDITURES	<u>649,270</u>	<u>2,049,925</u>	<u>2,845,774</u>	<u>795,849</u>
OTHER FINANCING SOURCES (USES)				
Proceeds from sale of capital assets	11,030	11,030	2,000	(9,030)
Transfers in (Note 4A)	168,230	654,530	942,388	287,858
Transfers (out) (Note 4A)	(766,850)	(4,322,725)	(1,479,991)	2,842,734
Total other financing sources (uses)	<u>(587,590)</u>	<u>(3,657,165)</u>	<u>(535,603)</u>	<u>3,121,562</u>
NET CHANGE IN FUND BALANCE	<u>\$61,680</u>	<u>(\$1,607,240)</u>	2,310,171	<u>\$3,917,411</u>
Beginning fund balance			<u>7,976,927</u>	
Ending fund balance			<u>\$10,287,098</u>	

See accompanying notes to financial statements

CITY OF BENICIA
 MCALLISTER ASSESSMENT DISTRICT
 STATEMENT OF REVENUES, EXPENDITURES
 AND CHANGES IN FUND BALANCES
 BUDGET AND ACTUAL
 FOR THE YEAR ENDED JUNE 30, 2007

	<u>Budget</u>	<u>Actual</u>	Variance Positive (Negative)
REVENUES:			
Use of money and property		\$74,406	\$74,406
Community donations		342,620	342,620
Total Revenues		<u>417,026</u>	<u>417,026</u>
EXPENDITURES:			
Capital outlay	<u>\$2,788,885</u>	<u>3,311,378</u>	<u>(522,493)</u>
Total Expenditures	<u>2,788,885</u>	<u>3,311,378</u>	<u>(522,493)</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	<u>(2,788,885)</u>	<u>(2,894,352)</u>	<u>(105,467)</u>
NET CHANGE IN FUND BALANCES	<u><u>(\$2,788,885)</u></u>	<u>(2,894,352)</u>	<u><u>(\$105,467)</u></u>
Beginning fund balance		<u>2,914,951</u>	
Ending fund balance		<u><u>\$20,599</u></u>	

See accompanying notes to financial statements

MAJOR PROPRIETARY FUNDS

Proprietary funds account for City operations financed and operated in a manner similar to a private business enterprise. The intent of the City is that the cost of providing goods and services be financed primarily through user charges.

The City reported all of its the Enterprise Funds as major funds in fiscal 2007.

WASTEWATER

Accounts for the transport, treatment and disposal of wastewater for residents and businesses located within the City.

WATER

Accounts for the purchase, treatment and distribution of water to residents and businesses located within the City.

BENICIA MARINA

Accounts for the operation and management of the City Marina.

TRANSIT

Accounts for the operation and management of the City transit operations.

CITY OF BENICIA
 PROPRIETARY FUNDS
 STATEMENT OF NET ASSETS
 JUNE 30, 2007

	Business-type Activities-Enterprise Funds					Governmental Activities- Internal Service Fund
	Wastewater	Water	Benicia Marina	Transit	Totals	
ASSETS						
Current Assets:						
Cash and investments (Note 3):						
Available for City operations	\$12,249,010	\$19,195,720	\$93,336		\$31,538,066	\$3,235,795
Held by fiscal agents	92	268			360	30,633
Accounts receivable	742,462	823,326	18,136	\$535,595	2,119,519	
Interest receivable	68,069	105,354	466		173,889	18,366
Materials, parts and supplies	32,234	128,937			161,171	9,565
Prepaid items			100,000		100,000	28,534
Total Current Assets	13,091,867	20,253,605	211,938	535,595	34,093,005	3,322,893
Non-Current Assets:						
Long-Term Assets:						
Prepaid PERS contribution						13,283,659
Deferred charges	232,812	376,331			609,143	
Loans receivable (Note 5)	1,003,019	903,387			1,906,406	
Lease receivable			489,533		489,533	
Total Long-Term Assets	1,235,831	1,279,718	489,533		3,005,082	13,283,659
Property, Plant and Equipment (Note 6):						
Land	669,710	1,850,388	63,983		2,584,081	
Buildings and improvements	51,036,559	26,314,210	7,933,206	5,000	85,288,975	11,906,899
Machinery and equipment	5,381,557	1,968,558		1,329,282	8,679,397	3,108,727
Treatment plant, sewer and water pipe	41,038,750	28,382,522			69,421,272	
Construction in progress	1,086,388	6,613,897			7,700,285	
Less: accumulated depreciation	(29,932,036)	(28,580,246)	(4,147,918)	(780,520)	(63,440,720)	(6,265,794)
Net Property, Plant and Equipment	69,280,928	36,549,329	3,849,271	553,762	110,233,290	8,749,832
Total Non-Current Assets	70,516,759	37,829,047	4,338,804	553,762	113,238,372	22,033,491
Total Assets	83,608,626	58,082,652	4,550,742	1,089,357	147,331,377	25,356,384
LIABILITIES						
Current Liabilities:						
Accounts payable	200,433	949,217		270,043	1,419,693	107,463
Customer and performance deposits		26,276	100,000	728	127,004	
Interest payable	236,002	56,298	170,649		462,949	34,174
Due to other funds (Note 4B)				245,997	245,997	1,493
Deferred revenue	391,834	36,665	220,000	102,121	750,620	
Workers' compensation claims (Note 11)						262,959
Compensated absences (Note 1G)	129,208	111,043			240,251	
Current portion long-term liabilities (Note 7)	1,647,582	1,197,179	137,782		2,982,543	470,000
Total Current Liabilities	2,605,059	2,376,678	628,431	618,889	6,229,057	876,089
Long-Term Liabilities (Note 7)						
Workers' compensation claims (Note 11)						427,154
Utility revenue bonds (Note 7)	3,712,473	7,696,119			11,408,592	
Loans payable (Note 7)	23,862,122	11,449,568	3,999,161		39,310,851	
Pension obligation bonds (Note 7)						13,421,327
Total Long-Term Liabilities	27,574,595	19,145,687	3,999,161		50,719,443	13,848,481
Total Liabilities	30,179,654	21,522,365	4,627,592	618,889	56,948,500	14,724,570
NET ASSETS (Note 8)						
Invested in capital assets, net of related debt	40,058,751	16,206,463		553,762	56,818,976	8,749,832
Restricted for:						
Debt service	92	268			360	30,633
Unrestricted	13,370,129	20,353,556	(76,850)	(83,294)	33,563,541	1,851,349
Total Net Assets	\$53,428,972	\$36,560,287	(\$76,850)	\$470,468	\$90,382,877	\$10,631,814

See accompanying notes to financial statements

CITY OF BENICIA
 PROPRIETARY FUNDS
 STATEMENT OF REVENUES, EXPENSES
 AND CHANGES IN FUND NET ASSETS
 FOR THE YEAR ENDED JUNE 30, 2007

	Business-type Activities-Enterprise Funds					Governmental Activities- Internal Service Fund
	Wastewater	Water	Benicia Marina	Transit	Totals	
OPERATING REVENUES						
Charges for services	\$6,733,625	\$6,956,334		\$278,377	\$13,968,336	\$3,312,789
Connection fees	486,674	502,478			989,152	
Rentals			\$283,861		283,861	
Refunds and rebates	2,763	6,874	326	12,097	22,060	457
Total Operating Revenues	<u>7,223,062</u>	<u>7,465,686</u>	<u>284,187</u>	<u>290,474</u>	<u>15,263,409</u>	<u>3,313,246</u>
OPERATING EXPENSES						
Wages and benefits	2,088,709	2,331,281		14,658	4,434,648	668,597
Materials and supplies	612,020	906,795			1,518,815	771,632
Operations and maintenance	1,284,767	1,127,213	202,915	1,703,940	4,318,835	238,669
Purchased water		423,308			423,308	
Insurance premium						218,624
Claims						294,218
Depreciation	2,140,592	1,158,545	189,612	129,076	3,617,825	465,796
Total Cost of Sales and Operating Expense:	<u>6,126,088</u>	<u>5,947,142</u>	<u>392,527</u>	<u>1,847,674</u>	<u>14,313,431</u>	<u>2,657,536</u>
Operating Income (Loss)	<u>1,096,974</u>	<u>1,518,544</u>	<u>(108,340)</u>	<u>(1,557,200)</u>	<u>949,978</u>	<u>655,710</u>
NONOPERATING REVENUES (EXPENSES)						
Interest income	550,647	982,105	26,824	315	1,559,891	151,393
Interest (expense)	(703,770)	(593,170)	(186,657)		(1,483,597)	(794,182)
Amortization of issuance cost of debt	(23,541)	(74,367)			(97,908)	
Intergovernmental revenue				1,383,596	1,383,596	
Pension obligation amortization						(340,607)
Gain from sale of capital assets	785			3,976	4,761	6,070
Total Nonoperating Revenues (Expenses)	<u>(175,879)</u>	<u>314,568</u>	<u>(159,833)</u>	<u>1,387,887</u>	<u>1,366,743</u>	<u>(977,326)</u>
Income (Loss) Before Transfers	921,095	1,833,112	(268,173)	(169,313)	2,316,721	(321,616)
Contributions	112,086	283,485			395,571	
Transfers in (Note 4A)				40,237	40,237	147,855
Transfers (out) (Note 4A)	(53,555)	(64,675)			(118,230)	(184,000)
Net Transfers	<u>58,531</u>	<u>218,810</u>		<u>40,237</u>	<u>317,578</u>	<u>(36,145)</u>
Change in Net Assets	979,626	2,051,922	(268,173)	(129,076)	2,634,299	(357,761)
BEGINNING NET ASSETS	<u>52,449,346</u>	<u>34,508,365</u>	<u>191,323</u>	<u>599,544</u>	<u>87,748,578</u>	<u>10,989,575</u>
ENDING NET ASSETS	<u>\$53,428,972</u>	<u>\$36,560,287</u>	<u>(\$76,850)</u>	<u>\$470,468</u>	<u>\$90,382,877</u>	<u>\$10,631,814</u>

See accompanying notes to financial statements

CITY OF BENICIA
 PROPRIETARY FUNDS
 STATEMENT OF CASH FLOWS
 FOR THE YEAR ENDED JUNE 30, 2007

	Business-type Activities-Enterprise Funds					Governmental Activities- Internal Service Fund
	Wastewater	Water	Benicia Marina	Transit	Totals	
CASH FLOWS FROM OPERATING ACTIVITIES						
Receipts from customers	\$7,077,257	\$10,087,262	\$310,097	\$319,240	\$17,793,856	\$3,313,246
Payments to suppliers	(2,090,457)	(2,355,186)	(205,848)	(1,530,289)	(6,181,780)	(975,721)
Payments to employees	(2,059,001)	(2,307,821)		(14,658)	(4,381,480)	(887,221)
Claims paid						(214,347)
Cash Flows from Operating Activities	<u>2,927,799</u>	<u>5,424,255</u>	<u>104,249</u>	<u>(1,225,707)</u>	<u>7,230,596</u>	<u>1,235,957</u>
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES						
PERS Obligation contribution						
Interfund receipts				190,499	190,499	1,493
Operating grant and contribution				1,052,877	1,052,877	
Transfers in				40,237	40,237	147,855
Transfers (out)	(53,555)	(64,675)			(118,230)	(184,000)
Cash Flows from Noncapital Financing Activities	<u>(53,555)</u>	<u>(64,675)</u>		<u>1,283,613</u>	<u>1,165,383</u>	<u>(34,652)</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES						
Acquisition of capital assets	(305,858)	(7,609,913)		(62,519)	(7,978,290)	(189,447)
Proceeds from sale of capital assets	785			3,976	4,761	6,070
Proceeds of long-term debt, net of discount	44,244	960,621			1,004,865	
Principal payments on long-term debt	(1,638,715)	(968,721)	(131,849)		(2,739,285)	
Interest paid	(716,174)	(600,357)	(192,096)		(1,508,627)	
Cash Flows from Capital and Related Financing Activities	<u>(2,615,718)</u>	<u>(8,218,370)</u>	<u>(323,945)</u>	<u>(58,543)</u>	<u>(11,216,576)</u>	<u>(183,377)</u>
CASH FLOWS FROM INVESTING ACTIVITIES						
Principal paid in non-capital debt						(440,000)
Interest paid on non-capital debt						(401,277)
Interest received	574,024	965,959	27,521	637	1,568,141	144,169
Cash Flows from Investing Activities	<u>574,024</u>	<u>965,959</u>	<u>27,521</u>	<u>637</u>	<u>1,568,141</u>	<u>(697,108)</u>
Net Cash Flows	<u>832,550</u>	<u>(1,892,831)</u>	<u>(192,175)</u>		<u>(1,252,456)</u>	<u>320,820</u>
Cash and investments at beginning of period	11,416,552	21,088,819	285,511		32,790,882	2,945,608
Cash and investments at end of period	<u>\$12,249,102</u>	<u>\$19,195,988</u>	<u>\$93,336</u>		<u>\$31,538,426</u>	<u>\$3,266,428</u>
Reconciliation of Operating Income (Loss) to Cash Flows from Operating Activities:						
Operating income (loss)	\$1,096,974	\$1,518,544	(\$108,340)	(\$1,557,200)	\$949,978	\$655,710
Adjustments to reconcile operating income to cash flows from operating activities:						
Depreciation	2,140,592	1,158,545	189,612	129,076	3,617,825	465,796
Change in assets and liabilities:						
Receivables, net	(217,077)	2,583,791	25,910		2,392,624	
Materials, parts and supplies	(3,647)	(14,588)			(18,235)	1,158
Other assets	18,877	68,721			87,598	4,119
Accounts payable and other accrued expenses	(208,900)	47,997	(2,933)	173,915	10,079	29,303
Accrued compensated absences	29,708	23,460			53,168	
Refundable deposits		1,120		(264)	856	
Deferred revenue	71,272	36,665		28,766	136,703	
Workers' compensation claims						79,871
Cash Flows from Operating Activities	<u>\$2,927,799</u>	<u>\$5,424,255</u>	<u>\$104,249</u>	<u>(\$1,225,707)</u>	<u>\$7,230,596</u>	<u>\$1,235,957</u>
NONCASH TRANSACTIONS:						
Interest accretion on non-capital debt						(358,731)
Contributions and transfers of capital assets	<u>\$112,086</u>	<u>\$283,485</u>			<u>\$395,571</u>	

See accompanying notes to financial statements

General Fund Budget to Actual Comparison

Exhibit I (a)

General Fund Budget-to-Actual

	Amended Budget 2006-07	Actual 2006-07	Surplus/ (Deficit)	Salary & Benefit Savings	Materials Supplies Services	Accounting Liability Misc. Rev.	Note
Revenues							
City Council	0	0	0			0	
City Clerk	0	50	50			50	
City Treasurer	36,500	52,570	16,070			16,070	
City Manager	0	190	190			190	
City Attorney	0	130	130			130	
Economic Development	0	0	0			0	
Human Resources	0	505	505			505	
Finance	0	30	30			30	
Library	78,270	74,195	(4,075)			(4,075)	
Community Development	528,000	510,100	(17,900)			(17,900)	
Police	495,140	483,210	(11,930)			(11,930)	
Fire	159,250	286,275	127,025			127,025	(1)
Public Works	28,500	198,000	169,500			169,500	(2)
Parks & Community Services	818,000	961,310	143,310			143,310	(3)
Insurances	0	0	0			0	
Non-Departmental	28,315,855	28,373,015	57,160			57,160	
Interfund Transfer-In	168,230	168,230	0			0	
Revenue Total	\$ 30,627,745	31,107,810	480,065	0	0	480,065	
Expenditures							
City Council	90,455	82,420	8,035	2,800	5,235		
City Clerk	71,995	69,175	2,820		2,820		
City Treasurer	49,955	52,570	(2,615)	(120)	(2,495)		
City Manager	423,435	418,230	5,205	6,500	(1,295)		
City Attorney	572,740	571,485	1,255	106,375	(105,120)		
Human Resources	423,715	450,820	(27,105)	(4,375)	(22,730)		
Finance	983,155	999,675	(16,520)	9,585	(26,105)		
Community Grants & Programs	439,430	388,225	51,205		51,205		
Economic Development	427,560	383,335	44,225	2,255	41,970		
Library	1,128,795	1,144,595	(15,800)	(15,075)	(725)		
Community Development	1,408,415	1,227,030	181,385	152,650	28,735		(4)
Police	7,301,345	7,293,635	7,710	58,550	(50,840)		
Fire	6,571,350	6,203,785	367,565	342,555	25,010		(5)
Public Works	1,873,260	1,774,765	98,495	39,430	59,065		
Parks & Community Services	4,227,955	4,366,800	(138,845)	(31,140)	(107,705)		(6)
Insurances	876,280	725,110	151,170		59,500	91,670	
Non-Departmental & Debt Service	1,868,460	2,408,615	(540,155)	51,600	(2,100)	(589,655)	(7)
Interfund Transfer-Out	843,080	632,785	210,295		210,295		(8)
Expenditure Total	\$ 29,581,380	29,193,055	388,325	721,590	164,720	(497,985)	
Expenditure Savings			1.3%	2.4%	0.6%	-1.7%	
Operational Surplus/(Deficit)	1,046,365	1,914,755	868,390	721,590	164,720	(17,920)	
Capital Projects & Non-Recurring							
Non-Recurring Revenues	3,176,175	2,140,390	(1,035,785)				(9)
Non-Recurring Expenditures	4,905,840	1,754,520	3,151,320				(10)
Non-Recurring Surplus/(Deficit)	(1,729,665)	385,870	2,115,535				
Combined Surplus/(Deficit)	(683,300)	2,300,625	2,983,925				
Transfers to B.S. & Misc Adj	(399,880)	(287,160)					
Transfers to Project Reserves	0	2,550,535					(11)
Fund Balance	\$ 6,645,465	6,966,135					
	22.5%	23.9%					
Over/(Short) of Reserve	729,190	1,127,525					

Exhibit I (b)

General Fund Notes

Item Description

1	California experienced an increase in fire disasters during FY06-07. Through mutual aid, the Fire Department has sent strike teams all over the state to help combat fires, which accounted for several reimbursements from the Office of Emergency Services.
2	The Public Works Department received a large number of inspection and plan processing fees for the year.
3	The Parks & Community Services Department increased the number of specialty classes and recreation programs. The popularity of the programs led to revenues well above budgeted amounts.
4	The Community Development Department experienced a high number of staff turnover during the year, which left authorized positions vacant for months.
5	The Fire Department also experienced a high number of vacancies for the fiscal year which resulted in salary savings for the year.
6	The Parks & Community Services Department's increased specialty classes and recreation programs resulted in additional costs for the City; however, the revenues derived from additional classes gave the department an overall budget savings of \$4,465.
7	The City had been working on an agreement with Valero for a 10-year repayment schedule for the property tax settlement. On the contrary, the County had implemented a shorter repayment schedule that increased the City's tax repayment by as much as \$590,000. Vacation accruals came in under for the year by as much as \$52,000, which resulted in an overall budget shortage of \$540,000 for Non-Departmental.
8	Interfund Transfers-Out were under budget due to lower expenditures for the BUSD field maintenance.
9	The Non-Recurring Revenues section of the General Fund Budget did not receive building permits at the Tourtelot Project area as anticipated, due to a slower pace in development.
10	The Non-Recurring Expenditures section had several capital projects roll into FY07-08 which caused a number of Interfund Transfers and Outstanding Encumbrances to be lower. Of the \$3.1 million in budget savings, \$1.7 million is for the Commandant's, \$.4 million is for the Skate Park, \$.5 million is for Transit and the Storm Drain projects.
11	The City Council had approved projects this fiscal year that requires reservation of funds. These projects include: \$290,000 for Storm Drain, \$210,000 for Transit, \$407,990 for the Skate Park, and \$1,642,545 for the Commandant's residence.

Exhibit II

General Fund Reconciliation - Budget to CAFR

	General Fund Budget Report Actual	Cable Fund Budget Report Actual	Combined Budget Report Total	Audited CAFR Report Actual
Revenues:				
Operating	\$ 31,107,810	\$ 12,921	\$ 31,120,731	\$ 32,316,733
Non-Recurring	2,140,390		2,140,390	
Other Financing Sources			-	944,388
Revenue Total	<u>\$ 33,248,200</u>	<u>\$ 12,921</u>	<u>\$ 33,261,121</u>	<u>\$ 33,261,121</u>
Expenditures:				
Operating	\$ 29,193,055	\$ 3,375	\$ 29,196,430	\$ 29,470,959
Non-Recurring	1,754,520		1,754,520	
Other Financing Uses			-	1,479,991
Expenditure Total	<u>\$ 30,947,575</u>	<u>\$ 3,375</u>	<u>\$ 30,950,950</u>	<u>\$ 30,950,950</u>
Surplus/Deficit	<u>\$ 2,300,625</u>	<u>\$ 9,546</u>	<u>\$ 2,310,171</u>	<u>\$ 2,310,171</u>

Reconciliation of Fund Balances

Available Fund Balance Reported in Budget	\$ 6,966,135
Adjustments to reconcile to CAFR Fund Balance:	
Reserved for Prepaid items	74,122
Reserved for Encumbrances	285,239
Unreserved - future projects	306,448
Unreserved - cable grant	104,622
Transfers to project reserves	<u>2,550,535</u>
Total Fund Balance Reported in CAFR	<u>\$ 10,287,101</u>

Exhibit III

General Fund Summary - By Department

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08	Mid Year Adjustment	Amended 2007-08	Adopted Budget 2008-09	Mid Year Adjustment	Amended 2008-09
Revenues								
City Council	0	0	0	0	0	0	0	0
City Clerk	0	50	0	0	0	0	0	0
City Treasurer	21,390	52,570	54,670	0	54,670	55,285	0	55,285
City Manager	2,560	190	0	0	0	0	0	0
City Attorney	1,605	130	0	0	0	0	0	0
Economic Development	40	0	0	0	0	0	0	0
Human Resources	260	505	0	0	0	0	0	0
Finance	210	30	0	0	0	0	0	0
Library	73,085	74,195	72,770	0	72,770	72,770	0	72,770
Community Development	710,070	510,100	583,450	0	583,450	583,450	0	583,450
Police	493,095	483,210	505,400	0	505,400	523,000	0	523,000
Fire	147,545	286,275	124,750	0	124,750	124,750	0	124,750
Public Works	78,455	198,000	52,000	0	52,000	52,000	0	52,000
Parks & Community Services	978,605	961,310	961,000	0	961,000	996,000	0	996,000
Insurances	10	0	0	0	0	0	0	0
Non-Departmental	25,971,055	28,373,010	29,568,330	83,365	29,651,695	30,359,835	221,560	30,581,395
Interfund Transfer-In	115,910	168,230	78,165	0	78,165	80,415	0	80,415
Revenue Total	\$ 28,593,895	31,107,805	32,000,535	83,365	32,083,900	32,847,505	221,560	33,069,065
Expenditures								
City Council	94,930	82,420	96,005	0	96,005	101,575	0	101,575
City Clerk	81,300	69,175	74,695	960	75,655	76,410	3,795	80,205
City Treasurer	34,145	52,570	54,670	5,410	60,080	55,285	6,095	61,380
City Manager	399,275	418,230	425,675	18,215	443,890	441,940	19,125	461,065
City Attorney	481,645	571,485	574,380	(5,695)	568,685	584,070	(4,440)	579,630
Human Resources	368,250	450,820	419,255	(15,610)	403,645	414,525	(3,285)	411,240
Finance	936,990	999,675	1,067,715	41,765	1,109,480	1,127,060	67,680	1,194,740
Community Grants & Programs	346,100	388,225	483,255	2,500	485,755	526,525	7,500	534,025
Economic Development	265,150	383,335	462,835	10,455	473,290	483,220	3,215	486,435
Library	1,013,665	1,144,595	1,192,505	15,095	1,207,600	1,241,465	47,635	1,289,100
Community Development	1,166,155	1,227,030	1,427,830	33,670	1,461,500	1,476,170	25,440	1,501,610
Police	6,611,815	7,293,635	8,011,210	6,130	8,017,340	8,214,255	52,350	8,266,605
Fire	5,772,525	6,203,785	6,830,340	185,835	7,016,175	7,048,230	195,005	7,243,235
Public Works	1,661,840	1,774,765	1,979,990	24,580	2,004,570	2,059,420	26,405	2,085,825
Parks & Community Services	3,977,935	4,366,800	5,188,185	145,630	5,333,815	5,495,790	210,105	5,705,895
Insurances	799,805	725,110	647,930	0	647,930	673,305	0	673,305
Non-Departmental & Debt Service	1,649,490	2,408,615	2,170,430	(666,120)	1,504,310	2,078,625	(591,025)	1,487,600
Interfund Transfer-Out	241,335	632,785	641,300	0	641,300	674,990	0	674,990
Expenditure Total	\$ 25,902,350	29,193,055	31,748,205	(197,180)	31,551,025	32,772,860	65,600	32,838,460
Operational Surplus/(Deficit)	2,691,545	1,914,750	252,330		532,875	74,645		230,605
			0.8%		1.7%	0.2%		
Capital Projects & Non-Recurring								
Non-Recurring Revenues	825,250	2,140,390	110,000	80,000	190,000	110,000	0	110,000
Non-Recurring Expenditures	2,502,165	1,754,520	1,311,280	91,720	1,403,000	145,630	0	145,630
Combined Surplus/(Deficit)	1,014,630	2,300,620	(948,950)		(680,125)	39,015	0	194,975
Transfers to B.S. Loans Receivable	(201,960)	(190,115)	(25,400)	0	(25,400)	(66,440)	0	(66,440)
Transfers to Internal Service Funds	0		0			0		
Transfers to Designated Reserves	921,865		0			0		
Transfers to Project Reserves	0	2,550,535						
Misc Adj to Fund Balance		(97,050)		(490,480)			(490,480)	
Fund Balance	\$ 6,928,885	6,966,135	6,533,065		6,311,410	6,638,520		6,572,825
	26.8%	23.9%	20.6%		20.0%	20.3%		20.0%
Over/(Short) of Reserve			183,424		1,205	83,948		5,133

**AGENDA ITEM
CITY COUNCIL MEETING: FEBRUARY 19, 2008
ACTION ITEM**

DATE : January 18, 2008

TO : City Manager

FROM : Chief of Police

SUBJECT : **INTRODUCTION AND FIRST READING OF AN ORDINANCE
ESTABLISHING PERMITTING AND REGULATORY
REQUIREMENTS FOR MASSAGE THERAPISTS**

RECOMMENDATION:

Introduce the ordinance establishing massage regulations.

EXECUTIVE SUMMARY:

Currently, the Benicia Municipal Code only requires massage therapy businesses to obtain a business license. There are no professional guidelines for regulating and licensing massage therapy technicians working in these businesses. Absent a process to approve massage therapists, it is difficult to prevent business owners from operating with uncertified therapists or to discourage unlawful prostitution operations associated with an unlawful massage businesses. Unlawful massage operations can conduct business in commercial properties throughout the community and create quality of life issues related to a non-regulated massage business and prostitution.

In response to these issues, the Police Department has reviewed alternatives that would improve the regulation of massage therapy businesses with the support of Benicia licensed massage therapists. Staff has developed an ordinance to specifically address permitting and regulating conditions that will differentiate a legitimate massage therapy business from a house of prostitution that uses a massage business as a front for unlawful activity.

BUDGET IMPACT:

There will be no fiscal impact.

BACKGROUND:

On June 15, 2007, a Benicia massage establishment was closed as a result of an undercover prostitution investigation conducted by the Benicia Police Department. This establishment was

opened under the existing business license ordinance, which has no requirement to conduct a background investigation and confirm certificates presented by the owners.

Once unlawful massage establishments are open for business, they can be difficult to close down, even with an arrest for prostitution, because there are no guidelines for massage therapists. For example, if during an investigation one of the massage therapists is arrested for prostitution, the owner of the business can claim ignorance of the criminal activities and continue to conduct business. There is currently no provision in the Benicia Municipal Code that holds owners responsible for the illegal actions of their employees should such illegal activity occur at the business site.

In an effort to address the problems associated with unlawful massage establishments, staff researched surrounding cities massage ordinances and found that the industry standard in many cities is to establish guidelines and regulations for massage therapists. Cities that have established a massage ordinance have found that once massage therapists were regulated by ordinance, there is a direct connection to reducing illegal massage businesses that offer prostitution. The recommended regulations for Benicia were modeled from several contemporary ordinances which cities have found effective to reduce and discourage massage businesses which offer prostitution.

By enacting this ordinance setting forth conditions and criteria for massage therapists, illegal massage operations can be discovered at the permitting stage. This is the most cost efficient method in dealing with potential illegal operations and thus commits our investigative resources to other areas. The proposed ordinance is not overly prohibitive so as to dissuade legitimate massage practitioners from applying and obtaining a permit under this section.

The new ordinance will provide staff with the necessary tools to differentiate legitimate from unlawful businesses. Illegitimate business owners will be easily discouraged when faced with the requirement of a written examination and a more thorough background examination.

PROPOSED ORDINANCE:

State law allows the city to adopt reasonable operating standards for massage businesses. Standards include educational requirements, passing tests to show competency in massage therapy and sanitary conditions of the place of business. The new ordinance incorporates standard industry terms and definitions, and is designed to prevent and dissuade unlawful operations from competing with legitimate business operations. Examples of the more significant new provisions are set forth below:

1. Educational/Certification Requirements: All massage establishment permittees and massage therapy technicians need to possess:
 - a. A diploma that shows satisfactory completion of at least two hundred (200) hours from a professional school or institution, AND,

- b. Be certified by a State or National Certified Board for Therapeutic Massage and Body Work Professional Association devoted to the massage therapy specialty and therapeutic enhancement approach, OR
 - c. Successfully complete and pass a written and practical examination through the City.
- 2. Permit Issuance or Denial: Sets grounds for denying a permit such as insufficient proof of required education or certification.
- 3. Grounds for Suspension or Revocation of Permit: This provision now sets forth specific grounds upon which a permittee may have their permit suspended or revoked.
- 4. Out-call massage therapy permit: This provision will allow a massage establishment or massage therapy technician to obtain a special endorsement to their respective permit which would allow them to provide out-call massage therapy services.
- 5. Permit Duration and Renewal: A permit is valid for two (2) years and must be renewed. In order to renew the permit, the section also sets forth the conditions.
- 6. Inspections: The Police Department shall make inspections at each massage establishment to determine whether there is compliance.

PUBLIC DISCUSSION:

On October 10, 2007, Police Department staff met with approximately 20 local licensed massage technicians and massage business owners to review the draft ordinance. Staff made further revisions to the draft ordinance based on input from the massage therapists who work in Benicia. Many of them affirmed the need for regulations to discourage unprofessional massage businesses, and certifying legitimate therapist as professionals. The practitioners concurred with the City in its proactive and collaborative approach at enhancing their industry standards by enacting an ordinance regulating massage.

Attachment:

- Draft Ordinance

DRAFT ORDINANCE

CITY OF BENICIA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 5.52 (MASSAGE) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAN as follows:

Section 1.

Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended by adding a new Chapter 5.52 (Massage) to read as follows:

Chapter 5.52:

MASSAGE

Sections:

- 5.52.010 Purpose.
- 5.52.020 Definitions.
- 5.52.030 Permit required—Massage establishment—Outcall massage service—Massage technician.
- 5.52.040 Business registration tax requirement.
- 5.52.050 Permit not required.
- 5.52.060 Massage establishment, outcall massage service permit application.
- 5.52.070 Massage establishment facilities regulations.
- 5.52.080 Permits nonassignable.
- 5.52.090 Change of location or name.
- 5.52.100 Massage technician—Permit required.
- 5.52.110 Massage technician permit application.
- 5.52.120 Renewal of permits—Massage establishment, outcall massage service, massage technician.
- 5.52.130 Suspension or revocation hearing.
- 5.52.140 Appeal procedures.
- 5.52.150 Burden of proof.
- 5.52.160 Public nuisance.

5.52.010 Purpose. It is the purpose and intent of the City Council that the operation of massage establishments, outcall massage services, and persons offering massage and bodywork be regulated in the interests of public health, safety and welfare by providing minimum building sanitation and health standards and to insure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform

such services offered. Further, it is the intent of this chapter to insure that such businesses and persons operate in a manner that prevents criminal behavior such as the solicitation of prostitution.

5.52.020 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

“Applicant” means the permit applicant and each of the following persons: the managing responsible officer/employee, a general partner, a limited partner who owns or controls twenty percent or more of the business, a shareholder of a corporation who owns or controls twenty percent or more of the shares of the corporation which owns the business.

“Bodywork” means the skillful application of touch to enhance health and well-being. “Bodywork” includes a variety of philosophical approaches, theoretical frameworks, and techniques such as massage, movement and education. The term “bodywork” shall be deemed a form of massage and be subject to requirements of this chapter.

“Employee” means any and all persons, other than a massage technician, employed by the massage establishment who may render any service to the permittee, and who receives compensation from the establishment and who has no physical contact with the customers or clients. The term “employee” shall include independent contractors who are regularly employed by the establishment and who work at the massage establishment.

“Massage” means any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of consideration (whether for the massage, as part of a membership, as part of other services or a product, or otherwise) by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

“Massage establishment” means any establishment having a fixed place of business where any person, firm, associations, partnership, or corporation engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage.

“Massage technician,” “massage trainee,” “masseur,” “masseuse,” “massage/bodywork professional” and “massage therapist” mean a nonmedical health care professional who offers services to the public using a massage or bodywork specialty and health enhancement approach in caring for clients for any form of consideration (whether for the massage, as part of other services or a product, or otherwise) and has obtained a permit as required by this chapter.

“Outcall massage service” means any business where a function of such business is to engage in or carry on massage, not at a fixed location but at a location designated by the customer, massage technician, or other person.

“Recognized school of massage” means any school or institution of learning which teaches the theory, ethics, practice, profession, or work of massage and/or bodywork, which has been approved pursuant to the California Education Code. Schools offering a correspondence course not requiring attendance shall not be deemed a recognized school. The City shall have the right to confirm that the applicant has actually attended class in a recognized school.

5.52.030 Permit required—Massage establishment—Outcall service—Massage technician. It is unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the City, the operation of a massage establishment or outcall massage service or the function of a massage technician without first having obtained a permit issued by the City pursuant to the provisions set forth in this chapter. A permit shall be valid for twenty-four months from the date of issuance unless revoked or suspended.

5.52.040 Business registration tax requirement. A massage establishment and outcall massage service shall pay any required business registration tax for such business and occupation including the business license tax.

5.52.050 Permit not required. The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties provided sufficient documentation verifying exempt status is furnished to the chief of police.

A. Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California.

B. Barbers, beauticians and aestheticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp of the customers.

C. Hospitals, nursing homes, sanatoriums or any other health facilities duly licensed by the State of California.

D. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

E. Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes.

5.52.060 Massage establishment, outcall massage service permit application.

A. Any person, corporation, or partnership desiring to obtain a permit to operate a massage establishment or outcall massage service shall make application to the chief of police or authorized representative. Prior to submitting such application, a nonrefundable fee set forth in the City fee schedule, shall be paid. A copy of the receipt shall accompany the application.

B. The application and fee required under this section shall be in addition to any license, permit, fee or tax required under any other chapter of this Code.

C. The application for permit does not authorize a massage establishment or outcall service to operate until such permit has been granted.

D. Each applicant for a permit shall submit the following information under penalty of perjury:

1. The full true name under which the business will be conducted.
2. The present or proposed address where the business is to be conducted.
3. The applicant's full, true name, and other names used, date of birth, California driver's license number or California identification number, social security number, present residence address and telephone number. The sex, height, weight, color of hair, and color of eyes. Such other identification and information shall be provided as required by the chief of police or his/her representative, necessary to discover the truth of the matters specified and required in the application.
4. The applicant's residences inclusive of dates at each address, for the last five years.
5. The applicant's business, occupation, and employment history for five years preceding the date of application, and the inclusive dates of same.
6. The permit history of the applicant, whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license, whether the permit or license was revoked or suspended; or if a vocational or professional license or permit was issued, revoked, or suspended and the reason therefor.
7. All convictions for any crime involving conduct which requires registration under California Penal Code Section 290, or convictions of California Penal Code Sections 314, 315, 316, 318, 647(b), (as now written or as amended), or convictions of crimes designated in Government Code Section 51032(b), or any crime involving dishonesty, fraud, deceit, violence or moral turpitude. Convictions under the laws of other states or countries which proscribe the same conduct or similar conduct as the afore-designated California crimes shall be provided. Convictions that have been expunged must be reported.
8. A complete definition of all services to be provided.

9. The name, address, and date of birth of each massage technician or employee who is or will be employed in the massage establishment or outcall service.

10. The name and address of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.

11. Acceptable written proof that the applicant is at least eighteen years of age.

12. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation.

13. If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner.

14. The applicant, corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this chapter. The corporation's or partnership's responsible managing officer must, at all times, meet all of the requirements set for permittees by this chapter or the corporation or partnership permit shall be suspended until a responsible managing officer who meets such requirements is designated. If no such person is found within ninety days, the corporation or partnership permit is deemed cancelled and a new application for permit must be filed.

15. The chief of police or his/her authorized representative may require the applicant to furnish fingerprints when needed for the purpose of establishing identification. Fingerprinting will be taken at a place designated by the chief of police. Any required fingerprinting fee will be the responsibility of the applicant.

16. Two photographs of the applicant and managing responsible officer are to be taken by the police department.

17. A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.

18. The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and a notarized acknowledgement from the owner of the property that a massage establishment will be located on his/her property.

19. Authorization for the City, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth

in the application and into the background of the applicant and the responsible managing officer.

20. Proof of massage malpractice or professional liability insurance in the sum of not less than five hundred thousand dollars per massage technician licensed, or to be licensed, at the massage establishment, up to a maximum of one million dollars.

21. The applicant shall submit any change of address or fact which may occur during the procedure of applying for a massage establishment permit.

22. A certificate of compliance from both the City code enforcement official and the police department which certifies that the premises of the massage establishment meets all applicable codes and regulations must be submitted prior to application approval. Any required inspection fees shall be the responsibility of the applicant.

E. The chief of police or authorized representative shall have up to sixty days, after submission of all required information, including the required certificates of compliance, to investigate the application and the background of the applicant. Upon the completion of the investigation, the chief of police, or authorized representative, shall grant the permit, with or without conditions, if the chief finds in the exercise of discretion all of the following:

1. The required fee has been paid.
2. The application conforms in all respects to the provisions of this chapter.
3. The applicant has not made a material misrepresentation in the application.
4. The applicant, if an individual, or any of the stockholders of the corporation, or any officers or director, if the applicant is a corporation; or a partner if the applicant is a partnership, or the managing responsible officer has not been convicted within five years preceding application in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct which is a violation of the provisions of California Penal Code Sections 314, 315, 316, 318, 647(b) (as now written or as amended), or of crimes that are designated in Government Code Section 51032(b), or any other crime involving dishonesty, fraud, deceit, violence or moral turpitude. Convictions under the laws of other states or countries which proscribe the same or similar conduct as the afore-designated California crimes shall be considered.
5. Within five years preceding application, the applicant or managing responsible officer/employee has not had a massage establishment, outcall service massage technician, or other similar permit or license revoked, or suspended by the City, or any other State or local agency prior to the date of approval or engaged in conduct that would be a grounds for revocation of a permit under this chapter.
6. The applicant is at least eighteen years of age.

7. The massage establishment as proposed by the applicant would comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.

F. If the chief of police or authorized representative, following investigation of the applicant, in the exercise of discretion, fails to make the findings stated in subsection E of this section, the chief shall deny said application by written notice to the applicant.

G. A massage establishment comprised entirely of persons exempt under 5.52.050 (Permit not required) shall not be required to obtain a massage permit. However, proper documentation shall be furnished to the chief of police to verify the exempt status.

H. All persons currently holding a valid massage establishment permit or massage therapy technician permit, shall have six months following the enactment of this ordinance in which to comply with the requirements of this ordinance. If a permittee does not attain compliance with this ordinance within the proscribed time limits, the chief of police shall immediately suspend or revoke the permittee's permit.

I. In the event an applicant has a valid permit for massage with another city, then when able to do so, the chief of police may use the background investigation from that city to determine the extent necessary for the background investigation for the City.

5.52.070 Massage establishment and outcall operating requirements. No person shall engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on, any massage establishment or outcall service, unless each and all of the following requirements are met:

A. Each person employed or acting as a massage technician shall have a valid permit issued by the chief of police which shall be clearly visible on the massage technician's person during working hours. It is unlawful for any owner, manager, operator, responsible managing officer/ employee, or permittee to employ or permit a person to act as a massage technician who is not in possession of a valid, unrevoked massage technician permit issued pursuant to this chapter.

B. The possession of a valid massage establishment permit does not authorize the possessor or any other person to perform work for which a massage technician permit is required.

C. Massage shall be provided or given only between the hours of seven a.m. and ten p.m. No massage establishment shall be open and no customer shall be in the establishment between ten p.m. and seven a.m. No outcall massage shall be provided or given before seven a.m. or after ten p.m.

D. A list of services available and the cost of such services shall be posted in an open public place within the premises, and shall be described in readily understandable language. No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage technician shall offer or perform any service other than those posted.

E. The massage establishment permit shall be displayed in an open and conspicuous place on the premises. The massage technician working will also have their permit displayed in an open place on the premises.

F. Every massage establishment and outcall massage service shall keep a written record of the date and hour of each service provided; the name and address of each patron and the service received; and the name of the massage technician administering the service. Such records shall be open to inspection only by officials, including the police department and the city attorney, charged with enforcement of this chapter and for no other purpose, including a prohibition of use of the file by owners and employees of the establishment. Such records shall be retained on the premises of the massage establishment and at the outcall business office for a period of two years.

G. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

H. If male and female patrons are to be treated simultaneously at the same massage establishment, a separate massage room or rooms and separate dressing facilities shall be provided for male and female patrons. A single toilet facility will be provided with a locking door. Nothing herein shall be construed to authorize the treatment of only one sex if that is in violation of any civil rights or other laws requiring service to both genders.

I. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open, with a disinfectant approved by the county health department. Bathtubs shall be thoroughly cleaned with a disinfectant approved by the health department after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair, and maintained in a clean and sanitary condition.

J. Instruments utilized in performing massage shall not be used on more than one patron unless they have been sterilized using approved sterilization methods.

K. All employees, including massage technicians, shall wear clean, professional attire. Said garments shall not expose their genitals, pubic areas, buttocks, or chest.

L. No person shall enter, be or remain in any part of a massage establishment while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except pursuant to a prescription for such drugs. The owner, operator, responsible managing employee, manager, or permittee shall not permit any such person to enter or remain upon such premises.

M. No massage establishment or outcall massage service shall operate as a school of massage, or use the same facilities as that of a school of massage.

N. No massage establishment or outcall massage service granted a permit under the provisions of this chapter shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available other than those services described in 5.52.050 (Definitions "Massage") of this chapter, nor shall any massage establishment or outcall massage service employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in this chapter.

O. No massage may be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked. All doors to dressing rooms and treatment rooms shall open inward. Draw drapes, curtain enclosures, or accordion-pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors.

P. A massage shall not be given unless the patron's genitals are fully covered and, in addition, a female patron's breasts are fully covered.

Q. No massage establishment shall be open for business without at least one massage technician on the premises unless there is a retail clerk selling merchandise or a receptionist taking appointments.

S. An industry standard massage table will be used meeting required health standards.

5.52.070 Massage establishment facilities regulations. Every massage establishment shall maintain facilities meeting the following requirements:

A. Any signs shall be in conformance with the current ordinances of the City.

B. At least one artificial light of not less than sixty watts shall be provided in each room or enclosure where massage services are performed on patrons.

C. Minimum ventilation shall be provided in accordance with the Uniform Building Code.

D. Adequate equipment for disinfecting and sterilizing instruments used in performing the acts of massage shall be provided.

E. Hot and cold running water shall be provided at all times.

F. Closed cabinets shall be provided for storage of clean linens.

G. Adequate dressing area and toilet facility shall be provided for patrons.

H. A minimum of one separate wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

I. Pads used on massage tables shall be covered with a durable washable material acceptable to the county health department.

J. Proof of compliance with all applicable provisions of the City Municipal Code shall be provided prior to the issuance of any permit.

K. **Outcall Massage Service.** Any massage technician who provides massage at any hotel or motel, shall first notify the owner, manager, or person in charge thereof that such permittee intends to provide massage to a person or persons registered at the hotel or motel and give such owner, manager, or person in charge the name of his/her massage technician permit.

Inspection by officials. The investigating and enforcing officials of the City, including the county health officials, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and provisions of this chapter.

5.52.080 Permits nonassignable. No massage establishment or outcall massage service permit may be sold, transferred or assigned by the permittee, or by operation of law, to any other person or persons; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be deemed terminated and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without affecting a surrender or termination of such permit and in each case the permittee shall thereafter be deemed to be the surviving partner(s). If the permit is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder, the permit shall be deemed terminated and void unless the new stockholders are identified within ten days of transfer and they meet all requirements under this chapter for stockholders.

5.52.090 Change of location or name.

A. A change of location of a massage establishment may be approved by the chief of police, the community development director, building official, finance director and the fire chief or their designated representatives, provided all ordinances and regulations of the City are complied with.

B. No permittee shall operate under any name or conduct any massage establishment or outcall service under any designation not specified in the approved permit.

C. Any application for an expansion of a building or other place of business or a massage establishment shall require compliance with this chapter; no expansion of a nonconforming location shall be permitted.

5.52.100 Massage technician—Permit required. No person shall engage in the business of massage or act as a massage technician unless such

person holds a valid massage technician's permit issued by the City. Each massage technician permit holder shall be issued a photo identification badge which will also serve as a massage technician permit. The permit holder shall display the massage technician permit during business hours.

5.52.110 Massage technician permit application.

A. Each applicant for a massage technician permit shall make application to the chief of police or his/her designee. Prior to submitting an application, a nonrefundable fee in the sum set forth in the City fee schedule shall be paid to help defray the costs of the investigation required by this chapter. A copy of the cashier's receipt shall accompany the application.

B. Permit fees required under this section shall be in addition to any license, permit, fee or tax requirements under any other section or ordinance of this code.

C. The application for permit does not authorize the applicant to provide massage until such permit has been granted.

D. Each applicant for a massage technician permit shall submit the following information under penalty of perjury:

1. All information required by 5.52.060 (Massage establishment and outcall operating requirements) (D)(3) through (8), (11), (16), (21) and (22) of this chapter.

2. The applicant must furnish a diploma or certificate of graduation from a two-hundred-hour resident course of instruction from either:

- a. A recognized school as defined in 5.52.050 (Definitions "Recognized school of massage") of this chapter; or
- b. An existing school or institution of learning outside the State of California together with a certified transcript of the applicant's school records showing date of enrollment, hours of instruction and graduation from a course having at least a minimum requirement prescribed by Title 5, Division 21, of the California Administrative Code; wherein the theory, method, profession and work of massage is taught, and a copy of the school's approval by its State Board of Education.

3. The massage establishment's full name, address and telephone number if the massage technician will be employed at a fixed place of business. In the event the applicant seeks to conduct outcall massage services, an additional application and fee must be submitted.

4. Such other identification and information as the police department may require in order to fully investigate the matters as required to be set forth in the application.

5. Two photographs of the applicant to be taken by the City police department designee. Nothing contained herein shall be construed to deny the right of the chief of police or his designee to confirm the height and weight of the applicant, or to take additional photographs.

6. The chief of police or authorized representative may require the applicant to furnish fingerprints when needed for the purpose of establishing

identification. Any required fingerprinting fees will be the responsibility of the applicant. Fingerprinting shall be taken at a place designated by the chief.

7. A certificate from a medical doctor licensed to practice in the State of California stating that the applicant has, within thirty days immediately preceding the date of application, been examined and found to be free of any contagious or communicable disease. Pursuant to Health and Safety Code Section 199.20, and unless otherwise required by State or federal law, nothing in this chapter shall require testing or disclosure as to whether an applicant is infected with the human immunodeficiency virus (HIV).

8. Authorization for the City, its agents and employees, to seek information and to investigate the truth of the statements set forth in the application and to investigate the background of the applicant.

9. Each applicant shall successfully complete both a written test and practical performance examination administered through the City wherein the applicant has been required to demonstrate a basic knowledge of anatomy, physiology, hygiene, and massage, unless applicant can provide proof of certification by the National Certification Board for Therapeutic Massage and Bodywork.

E. The chief of police or authorized representative shall have up to sixty days after the submission of all required information to complete his/her investigation. Upon completion of the investigation, the chief, or authorized representative, shall grant the permit, with or without conditions, if in the exercise of discretion he finds those matters designated in 5.52.060 (Massage establishment and outcall operating requirements) (D)(3) through (8), (11), (16), (21) and (22) of this chapter have been provided and are true and correct and in the exercise of discretion further finds:

1. The applicant has furnished an acceptable diploma or certificate of graduation from a recognized school;
2. The applicant has furnished written proof from a recognized school that the minimum number of hours of instruction have been completed;
3. The applicant has passed the test required herein.

F. If the chief of police or authorized representative, following investigation of the applicant, in the exercise of discretion, fails to make the findings in subsection E of this section, the chief, or authorized representative, shall deny said application by dated, written notice.

New massage technicians—Notification. The holder of the massage establishment or outcall service permit shall notify the chief of police, in writing, of the name and address of each person employed as a massage technician at such establishment within five days of this person's being employed. The requirements of this section are in addition to the other provisions of this chapter; and nothing contained herein shall relieve the permittee of the responsibility of ascertaining, prior to employment, that said person has a current unrevoked massage technician's permit.

5.52.120 Renewal of permits—Massage establishment, outcall massage service, massage technician. Permittees shall have thirty days from

date of expiration to renew their permit. If, upon the thirty-first day an application of renewal has not been received, the permit shall be deemed suspended until such time as the renewal application has been received. If a renewal application and all required information for the renewal is not received within sixty days after expiration, the license shall be deemed expired and no privilege to provide massage shall exist.

Renewals shall be processed and investigated as though they were initial applications, except that the applicant is required to submit only that information which has changed from the last application or renewal. A fingerprint check will be completed upon each renewal.

Application of regulations to existing massage establishments, outcall services, and massage technicians. The provisions of this chapter shall be applicable to all persons and businesses whether the business was established before or after the effective date of the ordinance codified in this chapter, except that massage establishments or outcall services legally in business prior to the effective date shall have ninety days to file for a massage establishment or outcall service permit and to comply with the provisions of this chapter. Massage technicians who have valid massage technician permits shall have until the expiration of their current business permit to apply for a massage technician permit under the terms of this chapter but shall otherwise comply with the regulations set forth herein within ninety days.

Prohibited conduct. It is unlawful and a misdemeanor for any person to violate any of the mandatory requirements of this chapter.

5.52.130 Suspension or revocation hearing. The chief of police or authorized representative may revoke or suspend a massage establishment permit or massage technician permit if it is found that the permittee does not possess the qualifications for the permit as required by this chapter, has been convicted of any violation of the provisions of this chapter or any lesser included offense, has made a material misrepresentation on the permit application or renewal or has violated any mandatory provisions of this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit. For purposes of this section, permittee shall include the managing responsible officer or employee. Further, the permittee shall be responsible for those acts of its employees which are done in the course and scope of their employment by the permittee.

A hearing shall be scheduled upon not less than ten calendar days' notice to the permittee stating the grounds for proposed revocation or suspension. Notice shall be given by personal service or certified mail to the address shown on the last application or renewal. If reasonable attempts to otherwise serve are not successful, service may be provided by first class mail.

Notice of the decision shall be given in the same manner as for the hearing. The decision of the chief of police or his authorized representative may be appealed by the permittee to the city manager within fifteen calendar days of service by filing written notice of appeal with the city manager's office stating the

basis for the appeal and the errors claimed to have occurred. If the permit is suspended or revoked, the permit shall be surrendered.

Service shall be deemed complete when personal service is made, when the certified letter is delivered, or when the decision is mailed by first class mail.

5.52.140. Appeal procedures. Any interested person may appeal the decision to revoke, suspend, deny or approve a massage establishment or massage technician permit by filing a written notice of appeal, stating the grounds thereof, in accordance with Chapter 1.44 of the Benicia Municipal Code.

5.52.150. Burden of proof. Unless otherwise specifically prohibited by law, the burden of proof is on the permittee/applicant in any hearing or other matter under this chapter.

5.52.160. Public nuisance. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the city attorney may in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by law.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The city council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member _____, seconded by Council Member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the _____, 2008, and adopted at a regular meeting of the Council held on _____, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk