

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
FEBRUARY 20, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:02 p.m. on Tuesday, February 20, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

Mr. Erickson stated that the Closed Session item was listed as the first item on the agenda. There was some confusion as to what time the second part of the special meeting would begin. Some people might be thinking the study session item would begin at 6:15 p.m. or 6:20 p.m. If Council wishes, it could go into Closed Session for ten or fifteen minutes and proceed with the study session item at 6:15 p.m. That would be in consideration of the citizens who thought the study session item would be following a closed session item.

Mayor Messina asked the audience to raise its hands to show how many were there to hear the study session item. He stated that he thought there were enough citizens present who wanted to speak on the study session item that warranted Council moving directly into the study session item.

Council Member Patterson stated that the Benicia Herald reported that the start time for the study session item was 6:30 p.m. What Council has are a few people here and there will be more people coming who won't be able to hear the staff report. Council would probably save time by following what the City published as an agenda start time as well as what the newspaper published. It was unfortunate that the newspaper made a mistake because it makes Council's job more complicated.

Mayor Messina stated that there were enough individuals present who want to speak and be recognized. He felt Council would move forward with the study session item. The important thing at this point is that Council be made aware of the issue. Council has to make a decision. Hopefully the citizens present will be able to share some information.

Vice Mayor Schwartzman stated that when asked who was here for the study session item, virtually everyone in the room put their hands up. He was concerned that if Council wanted to stay on time for the regular meeting, it needs to get as much information it can on the study session item. Hopefully, as citizens arrive, they will get a chance to speak if they wish.

Mayor Messina stated that Council would continue the Closed Session item until the next Council meeting.

STUDY SESSION ITEM:

Potential Formula Business Ordinance

Mayor Messina stated that unfortunately, there was a situation where Council has a broad issue that affects the majority of the community, in terms of Council's discussion on formula based businesses. It refers to a number of types of businesses. Unfortunately, the way Council has framed the discussion and the way it is coming forward, it has created a situation where he has a potential for a conflict of interest. He finds this very disconcerting. For most of the discussion, in terms of formula based businesses and other areas that could be discussed, he felt it was important that Council try and be inclusive and include the entire Council in those discussion. He chastised Staff and Council for the way the discussion was framed. They did everyone a disservice. It would be his hope that in the future, Staff and Council attempt to be inclusive. Where there are opportunities to have the entire Council participate in a discussion, it should be framed that way and not try to be exclusionary. As soon as Council limits participation, it is putting itself in a position where decisions might not be made so wisely. With that, he excused himself from the discussion. Vice Mayor Schwartzman chaired this portion of the meeting.

Ms. McLaughlin stated that the Mayor excused himself because he owns an eating and drinking establishment such as the ones that will be discussed tonight. If Council chooses to adopt an ordinance such as the one that has been proposed, it could have a potential financial impact on his business. That is why she advised Mayor Messina to excuse himself from the discussion. The Ordinance drafted does not include grocery stores, hardware stores, or drug stores. She suggested keeping the discussion broad so that the maximum number of Council Members could participate. She also suggested sending the Ordinance to the Planning Commission for further review and refinement. Her concern was that the remaining Council Members would be able to participate in the discussion.

Mr. Knox reviewed the staff report.

Council Member Patterson stated that she was thrown by the Mayor's comments. Perhaps the Mayor did not understand that formula business ordinance could cover a broad sense such as gas stations, grocery stores, cleaners, UPS, etc. However, in discussions with

Staff, Council realized that the real issue in Benicia was focused on the restaurant business and retail. She had prepared a long laundry list with conditions on what should be done for all formula business to affect restaurants and retail and not the other uses. It was her understanding that why and how this was draft ordinance narrowed to restaurants and retail and that doing so was because Council was dealing with the problem in Benicia and not with not being exclusionary?

Mr. Knox stated that he agreed with the way Council Member Patterson characterized the situation. In trying to determine what problem it is that the City is trying to solve with the ordinance and the concerns raised by the community, it centered on two issues: 1) the issue of eating and drinking establishments, and 2) the potential for single category stores to threaten some of the independent retailers. If you start from the discussion of 'what is a formula business' there would be too many to look at. Staff focused on eating and drinking establishments and retail stores. Staff believed those were the areas it heard the most concern over. That would not preclude Council from having a broader look at the issue.

Vice Mayor Schwartzman stated that was his recollection as well. You could over regulate it to the point a whole lot of commerce was closed off.

Council Member Hughes asked Mr. Knox how many formula businesses there were Downtown and in Davies Square? There were three Downtown and six in Solano and Davies Square. The suggested limit of ten would limit it to one more in that area.

Council Member Whitney wanted to clarify that the remainder of the study session should be for public comment so Council could hear what the public had to say. Vice Mayor Schwartzman stated that this was a study session so Council would be studying the issues and hearing public comment.

Vice Mayor Schwartzman referenced VI-A-2 – where do 'warehouse clubs' fit in? Mr. Knox stated that it was referring to businesses such as Sam's Club and Costco where people purchase items in bulk. The proposed ordinance states that a big box business would be any business 20,000 sq. ft. or over. He stated that Double Rainbow was not included as a formula based business. Based on Staff's formula business definition, it did not share the signage, logo, ingredients, menu, etc. as other Double Rainbow businesses such as the one in San Francisco. Vice Mayor asked Ms. McLaughlin if, with that in mind, the Mayor could be included in the discussion. Ms. McLaughlin stated that Mayor Messina has an economic interest in the business. If the City prohibits all coffee shops such as Starbucks in the Downtown area, it stands to reason that the other independent coffee shops would get more business. Vice Mayor Schwartzman would like to have the correct definition for formula based businesses as it relates to Double Rainbow. Regarding Solar Clothing – is it a chain or franchise? Staff was not aware of that.

Vice Mayor Schwartzman referenced page VI-A-7. He wanted to gain some perspective. It appears that a big box business would be allowed in the community commercial and the general commercial with a use permit. If Council were to define big box as anything

over 20,000 sq. ft. and it is just a matter of getting a use permit, how comfortable would Council be with the findings on the use permit and what would be appropriate in coming to a decision of wanting a 150,000 sq. ft. store?

Mr. Knox stated that was a decision for Council in terms of directing the Planning Commission. There are a number of other findings that Council might make that are more specific to certain locations or types of big box retail. There is a long list of more general findings Council could make. The reality of the community commercial is that there is really only one site that could support anything over 20,000 sq. ft, which is where the Star Sports and health club on West 7th Street. Realistically, the General Commercial Zoning District is the one that could support something over 20,000 sq. ft, which would include Rose Center, Southampton, and the interchange at I-680 and Lake Herman Road.

Council Member Patterson stated that Council might want to consider items that are findings that would be made for such use permits. Council might want to consider revising item #2. The way it is stated is kind of a big sieve that things could slip through. What should be said, in addition to that is to avoid formula appearance conformed to architectural design standards, which would have to be adopted prior to any permitting processes that would include signage, design and color. The City then would control anything that might look 'formula' – it would protect the look, character, and feel of Benicia.

Vice Mayor Schwartzman stated that there were a lot of people who wanted to speak during public comment. He asked that everyone speaking limit his or her comments to three minutes so there would be enough time to hear everyone who wanted to speak.

Public Comment:

1. Kim Winston, Manager, Civic and Community Affairs, Starbucks – Ms. Winston referenced a packet she submitted to Staff and Council last week (hard copy on file) that outlined a number of concerns Starbucks had with the proposed restrictions. She highlighted some of the contributions and benefits formula based businesses like Starbucks bring to communities. There are 45 employees called 'partners' who work for Starbucks in Benicia. Starbucks invests hundreds of thousands of dollars in salary and benefits for its partners. Starbucks has made many investments in the community, donated to many of the charitable causes in town, they are a member of the Chamber of Commerce, and they are part of Benicia's National Historic Preservation Main Street Project. Starbucks urged Council to oppose the ordinance as it stands. Starbucks urged Council to let the citizens determine the appropriate business mix through their purchase of goods and services.
2. Chuck Shaw, California Business Properties Association – Mr. Shaw stated that he has no personal interest in the business activities being discussed tonight. He was speaking on an educational basis. He discussed the 'It's Better in Benicia' campaign from the 1990's. Benicia recruited corporate businesses at that time. To date, the City has a thriving industry because of that. He asked Council to make its decision based on a visionary leadership prospective. Successful retailing is

- market driven. He asked that Council remember that office, industrial, and retail are codependent. If you say no to one, you are sending a message to the other businesses. Give the citizens the opportunity to say what it wants on this issue. He invited Mr. Knox to contact the City Manager of Hercules to discuss how they have addressed this issue. He urged the Council to involve the individuals who are actually involved. There are many invested parties. There is the question of whether all interested parties received due process.
3. Paul Winders – Mr. Winders asked for the definition on formula based businesses as it related to Double Rainbow. Why is it not known as a formula based business? He is in favor of the ordinance. Starbucks does contribute a lot to the community. He looks at Starbucks as a threat. Small coffee shops tend to close as Starbucks opens its various stores. The City should limit the big box businesses.
 4. Phyllis Wika – Ms. Wika stated it was imperative that Council stop, look and listen to the citizens who have been speaking on this issue for months. Council usually either ignores citizen’s comments or completely disregards what they have to say. It is time to deal with the big box issue. Council has already let three or so slip by. We need to do something now. There are a lot of small businesses that would come into town. Why kill the ones that are already here? They have regular customers who have come in for thirteen years.
 5. Lee Klare – Mr. Klare stated there were 50 starbucks within ten cities in the Bay Area, five of which are in Benicia. The folks that own Starbucks represent Starbucks. They are not represented by the city of the people that live in that city. Patrons of Rrags and other small coffee shops are here tonight. Why aren’t the patrons of Starbucks here saying they want more Starbucks in town? There are more than enough formula based businesses in Benicia. He left Walnut Creek because they lost sight of their small town. Now Walnut Creek is trying to backtrack because hindsight is twenty-fifteen. Council needs to figure out why people live here. He chose to live in Benicia because it has the small town feel. He can walk into Rrags any time of the day and see people he knows in there. How many more Starbucks will be built before communities wake up and say enough is enough? Within a one-mile circumference, there are five Starbucks in Benicia. How much common sense are we throwing out the window on a daily basis?
 6. Mary Wika – Ms. Wika stated that she was offended that the comment from the Starbucks representative stating that the local independent coffee shops could not make a consistent latte. As of November 2006, Starbucks had 8,900 retail outlets in the United States. Approximately 65% of those are company-owned and operated. There are an additional 3,500 outlets in other countries. This brings the total locations of Starbucks in 2006 to 12,400 worldwide. The CEO of Starbucks recently stated that they aim to eventually operate 40,000 retail Starbucks worldwide. Starbucks revenue in 2005 was \$6.4 billion and they employed 125,000 people. There are currently over 100 Starbucks within 20 miles of Benicia, and 360 within 50 miles of Benicia. Independent businesses have faced a tough road over the past 15 years. Tens of thousands have closed as formula based businesses such as Starbucks, Home Depot, etc. have multiplied. Many studies have found that formula based businesses eliminate just as many jobs as

they create. Consumer spending is a fixed pie. There was an expenditure profile done to figure out what happens to a dollar spent when fixed at a local shop vs. at a formula business. At a formula based business, 86% of the dollar goes out of state to the corporate headquarters and out of state suppliers. The survey of local retailers found that 54% of the dollar was re-spent within the state. When local retailers are replaced by formula based businesses, all of the local retailers suffer. Consumer choices are only partially responsible for the rise of the formula based businesses and decline of the local businesses. Public policies have played a huge role in that. Land use policies have fueled sprawl and undermined the viability of older commercial centers. Many cities are now trying to fix this and curtail the urban decay by adopting these ordinances to keep formula based businesses out. This is what brings us here tonight. The independent local coffee shops are saying that they need to have emergency protection from the corporate monsters known as formula based businesses. The City of Benicia also needs the protection from the formula based businesses. Since this was brought up in December 2006, the fourth and fifth Starbucks have received permits to operate in Benicia. As of tonight, there has been nothing done to prevent other formula based coffee retailers from coming into Benicia. They need tonight, an immediate emergency moratorium stopping any formula based retail coffee shop from opening citywide. The City Attorney stated at the last meeting that it could be done in one meeting. This is an emergency and needs to be implemented tonight. There are nine coffee shops in Benicia. They are only asking for a temporary moratorium on coffee shops.

7. Jeanine Seeds – Ms. Seeds stated that no one really knows how much money Starbucks makes. Because of their behavior and the fact that they don't care about putting people out of business, she did not have a comfort level with any report Starbucks gives. She agreed with Ms. Wika that there needs to be an emergency moratorium for coffee shops. If the City of Berkeley could have a moratorium on shoe stores, Benicia could have one for coffee shops. Council should know how its constituents feel since they have been saying the same thing since October. Council has dragged its feet. The citizens need to have a chance. Council owes the citizens not Starbucks. There needs to be an emergency moratorium tonight.
8. Marty Duvall – Mr. Duvall asked if he was the only one who noticed that the first two speakers went beyond their allotted time. Vice Mayor Schwartzman clarified that others were allowed to go beyond their allotted times as well. Mr. Duvall stated that the words 'big box' or 'formula based' are buzzwords. The City needs to step up and define what those definitions will be for Benicia. He encouraged this process and discussion. He wants to keep the small town character. He has nothing against Chevy's or Long John Silvers coming to town, however, he does not want to see one on every corner.
9. Stephanie Swide – Ms. Swide stated that she was junior at Benicia High School. There was no Starbucks in town ten years ago. In response to the proposed ordinance, she knows she speaks for a large percentage of her peers when stating that it is a good idea. The Starbucks monopoly in town is a popular topic of discussion among her peers. When she found out there were two new Starbucks in town, she was shocked. There has been a surge of discussion at the high school

about the large corporations coming into town. She goes to Starbucks; however, this is a growing problem in Benicia. She wanted Council to know that the youth in town is concerned about this issue.

10. Penny Stell – Ms. Stell stated that she works for Starbucks. She is proud to be a partner at Starbucks. Starbucks is ethical, community oriented, etc. Starbucks did not ask her to come tonight. She came tonight as a resident of the City. She loves Benicia and she loves Starbucks. She wanted Council to recognize all of the good Starbucks does for the community. Starbucks supports all businesses and citizens in town.
11. Jessica Apel – Ms. Apel stated she was a partner for Starbucks. She was not asked to come here tonight. She is a District Manager for Starbucks. She is very impressed with the passion and the care that the City takes in the community. She urged Council to look at what Starbucks does for the community. Starbucks is very active in the community. Starbucks has done a lot for this community. She is proud of all the Starbucks partners who live and work in this community. Starbucks is a company that she will retire from.

Council Member Whitney asked Ms. Apel why Starbucks did not come to the City Staff or Council to get a feel for what the community was about. At some point, it starts to become arrogance. Ms. Stell stated that Starbucks looks at various ways to interact with and contribute to the community. She encouraged people to talk with the partners in the stores to find out how proud they are and how they interact with the community.

Vice Mayor Schwartzman stated it was 7:00 p.m. He needed to hear from Council on its thoughts about continuing on. There were nine more public comment cards.

Council Member Patterson stated that in light of the fact that Council cancelled the Closed Session item as well as the fact that it pulled an item off of the agenda, it would make sense that it continue to 7:30 p.m. She wanted to make sure everyone understood that this item was on the regular agenda for Council to decide whether or not the ordinance goes to the Planning Commission.

Council Member Whitney suggested going on until 7:30 p.m., however, it should be made clear that Council would be stopping firmly at 7:30 p.m.

12. Laura Ramirez – Ms. Ramirez stated that she owns the local business Buttons and Bows on First Street and that she was also a Benicia resident. She stated that she supports the local small businesses. She has lived in Benicia for a long time. Many of the local businesses are in support of an ordinance. Many people are appalled by the idea of big box businesses coming into town. One big box store can be so huge that they can offer what the local shops are offering. They have the buying power that small businesses cannot compete with. Costco has taken several of the brands she carries and sold them for less than she pays for the wholesale price. Companies like that also supply knockoffs. She does not want to

see any more big box businesses in Benicia. She wants to maintain the small quaint feel that Benicia has. She was in favor of the proposed ordinance.

13. Bob Berman – Mr. Berman stated that he was in support of the proposed ordinance, although it seems timid. He was concerned about page two of the staff report. It is incorrect to draw any conclusion that no big box has been proposed for the Seeno project. The project description does not say that Seeno will not consider big box retail. He suggested Council go back and request that the proponent revise the application to state that big box retail is not a part of their project.

Council Member Patterson asked Mr. Berman for examples of how the ordinance could go further. Mr. Berman stated that he could not give specifics. The City should eliminate the possibility of big box retail in Benicia. Council Member Patterson summarized that what Mr. Berman was suggesting was that when Council takes this issue up in the regular meeting, that be proposed as an alternative. She stated that rather than ask Seeno to make such a statement, the City has the ability to adopt a master plan that makes all of those restriction imbedded in the master plan. Mr. Berman stated that he agreed, but all he wanted to point out was that the staff reports states that ‘no big box retail is anticipated.’ He thought that was an incorrect characterization of the Seeno Project. There needs to be a correction there. Council Member Patterson stated that an alternative would be to simply prohibit big box.

14. Maria Teresa Matthews – Ms. Matthews stated that she wanted Council to take the time to make sure this is done right. How did the business licenses get approved without thinking about the effects on the small businesses in town? Her small business cannot compare with Starbucks. Starbucks is a company owned by a company. They cannot compete with Starbucks aggressive marketing. She would like Council to consider putting regulations in place to prevent this from happening in the future.
15. Patty Childs – Ms. Childs stated that she works for Starbucks. It is the best company she has ever worked for. It has allowed her to give back to the community. She had to go out of this town to make a living. She is the manager of the new Starbucks on First Street. They are called partners because they are given stock in the company on an annual basis. She donates to the soccer teams, schools, Main Street, as well as makes donations to non-profit organizations in the community. She was happy to be able to live and work in the same community. For 20 hours per week, partners get full benefits as well as a retirement plan. Everyone has a choice on where they want to eat and drink.
16. Chris Gonzalez – Ms. Gonzalez stated that she works for Starbucks. She hopes everyone could come to some kind of forgiveness to get through this. Her parents worked for big box companies. Starbucks gives to the community. Her store was the second top seller – selling 300 pounds of coffee to send to the troops in Iraq. The money goes back to the county the coffee comes from. Her mother was from El Salvador. They are building in communities. Starbucks is trying to make a difference in its individual stores. They are a big business, but a family business.

17. Gabriel Hagemann – Mr. Hagemann stated that he works for Weingarten Realty Investors. His company owns, manages, and leases the Southampton Shopping Center. They are opposed to the ordinance regarding formula based businesses. He respects the desire of the Council and citizens to respect and preserve small town atmosphere. The Southampton Center was developed to serve the community as a one-stop shop for shopping needs. Any citywide regulations would limit the pool of tenants for that space. Blanket citywide restrictions will change the shopping patterns. It would have a detrimental effect on Southampton Shopping Center and would further devastate the occupancy. It will lower the property value for retail businesses. He asked if there was a strong enough need for a citywide regulation.
18. Johnnie Downs – Ms. Downs stated that she works for the California Restaurant Association. She referred to a handout she gave to Council (hard copy on file). Many speakers focused on Starbucks. The proposal is more far reaching than Starbucks. The California Restaurant Association is opposed to the ordinance. It is far reaching and unfairly targets a certain group of businesses.
19. Laura Dorus– Ms. Dorus stated that she was a singer in town. Café Voltaire is a very unique café. There is nothing like it in town. She goes to the Double Rainbow as well. This kind of individuality needs to be preserved.
20. Jan Cox-Golovich – Ms. Cox-Golovich commented on the definition of ‘partner’. The study of big box businesses show that over 75% of money spent in this community goes out of the community with big box companies. Money spent in the community goes back into the community. Her business uses local roasters, bakers, etc. She has artists, employees, etc. who are all in Benicia. Because she serves fair trade, she insures that a certain percentage of the profits go back to the farmers. She is aware that the out of state company that runs the Southampton Center is boosting rents so high that local business won’t be able to afford to stay there. All that will be left are the formula based businesses. That is why they are fighting so hard to stop this.
21. Sam Tran – Mr. Tran stated that he owns Rrags Café. He gives back to the community without claiming it on tax returns. He believes in giving back to the community. He has been coming to the Council meetings since December trying to get an ordinance set. It has been pushed back, and now there will be five Starbucks. Could Council say that there will be no more Starbucks? He does not think so. That is why there needs to be an ordinance. Council needs to support the local businesses. We need to support each other. Corporations come and go. They can last for a long time without profit and not feel the pain. Local mom and pop stores can only go one or two months before they feel the pain. He thinks everyone should unite and come up with an ordinance that supports the local businesses.
22. Garret Hopper – Mr. Hopper stated that he was a junior in high school. He applied to three different local businesses with no luck. When he applied to Starbucks, he got a response the very next day. Starbucks gives him a chance to work with the community. They provide excellent training. Starbucks looks out for its employees. They offer stock options. It is the government’s job to not only look

out for the employee, but the employer as well. By denying a company to open, they are denying the citizens the right to work.

Council Member Patterson suggested that since this item is on the regular agenda, Council take notes and discuss it before giving direction at the regular meeting.

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 7:33 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
FEBRUARY 20, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:41 p.m. on Tuesday, February 20, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Openings on Boards and Commissions:

- People Using Resources Efficiently (PURE) Committee:
One immediate opening
- Historic Preservation Review Commission:
One full term to February 28, 2011

APPOINTMENTS:

RESOLUTION 07-12 - A RESOLUTION CONFIRMING THE MAYOR'S
APPOINTMENT OF SANDRA KOZAK TO THE HUMAN SERVICES ARTS
BOARD TO AN UNEXPIRED TERM ENDING JUNE 30, 2009

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson stated that regarding the Local Hazard Mitigation Plan item; Staff received some information from Council Member Patterson earlier today. Staff believes those comments should be incorporated into the final plan that will be submitted to FEMA. The comments deal with rising sea level, flood insurance rate map, etc. If the Council adopts the resolution, it would be done so with the knowledge that those comments would be included. Secondly, item IX-B – the Valero Water Reuse item was pulled, as there had been a lot of press reports that the agenda was very full this evening.

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

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

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Jan Cox-Golovich – Ms. Cox-Golovich stated that she had a copy of the Seeno EIR. Comments on the EIR are due Monday. She talked with Mr. Knox to ask for an extension. She was told that Council had the power to extend the due date. She just started working on it. She would like two more weeks to review and comment.
2. Susan Street – Ms. Street asked for more time for the community to provide input on the Seeno EIR. Seeno would be moving 9 million cubic yards of dirt. She begged Council to extend the time for the public to provide input.
3. Jeanine Seeds – Ms. Seeds stated she was trying to get through the Seeno EIR. The time is much too short. It is an unreasonable request that the comments be completed by Monday. She still wants a moratorium on big box businesses. We need a moratorium while the City works on the ordinance.
4. Marilyn Bardet – Ms. Bardet asked for an extension on the Seeno EIR review period. She has been concentrating on the Jefferson Ridge area. Three major areas of the City are being discussed at the same time. This issue is huge. She does not believe the Water's End residents have all subscribed to the Benicia Herald. There should be a better way to get the information out to the residents who might not get the paper. She wrote a letter to Mr. Knox asking for a 15-day extension on the Seeno draft EIR review.
5. Bob Craft – Mr. Craft reiterated Ms. Bardet's comments. Extending the EIR review would be the right thing to do. It is an important project. It will change Benicia forever and should be carefully considered. The citizens should have three months to review it. He would like to see a 2-4 week extension.
6. Dana Dean – Ms. Dean stated she is a land use attorney. They need more time to review the Seeno EIR. To do it in tandem with the other projects going on in town is asking too much. She would like the comment period extended. She loves Bob Craft. He is a hero in town. He is amazing.

7. Dave Macellum - Mr. Macellum stated that he was the Community Liaison for Partnership Health Plan of California. He discussed a program for low-income seniors and disabled individuals. It is a totally non-profit agency. They are doing outreach to the community to let people know about the program. They have identified 300 Benicia citizens who qualify for the program. He wanted to get the word out to the citizens. Anyone interested should call (866) 249-9933.

Council Member Patterson asked Ms. McLaughlin about the possibility of Council giving direction for an extension for the Seeno EIR. Since it is not on the agenda, nothing could be voted on tonight. Council could state its intention tonight that the comment period would be extended and the public could continue to comment on it. It could then be agendized for a future meeting.

Mr. Knox stated that the document was made available on 1/9. The comment period is 45 days. It comes to Council for adequacy determination on 4/17. If the comment period were extended, the date it comes to Council would also be delayed.

Mayor Messina stated that the applicant has been waiting to get things done. Mr. Erickson stated that even though the comment period was closing, Council could continue to take comments up until it was brought back to Council.

Council Member Patterson stated that the comments had to be put in writing. The late comments could be challenged. She would like to have a bullet proof review. She would like a two-week extension.

Mayor Messina stated that Council could not take an action on this tonight. His sense was that the only way around this was to schedule a special meeting. He asked if it was the pleasure of the Council to have a special meeting on Friday, February 23, 2007. Council could not confirm availability. The City Manager's office would confirm scheduling and post the public meeting, following all normal noticing procedures.

CONSENT CALENDAR:

Council pulled items VII-C and VII-G.

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

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

Noes: None

The Minutes of January 16, 2007 and February 6, 2007 were approved.

RESOLUTION 07-13 - A RESOLUTION EXTENDING THE EMPLOYMENT AGREEMENT WITH JAMES R. ERICKSON UNTIL JUNE 30, 2007

RESOLUTION 07-14 - A RESOLUTION APPROVING THE 2006 CITYWIDE RADAR SPEED SURVEY, WHICH CONFIRMS THE SPEED LIMITS

ESTABLISHED ON CERTAIN STREETS IN ACCORDANCE WITH CHAPTER 10.12, SPEED LIMITS, OF TITLE 10, VEHICLES AND TRAFFIC, OF THE BENICIA MUNICIPAL CODE

RESOLUTION 07-15 - A RESOLUTION ACCEPTING A GRANT DEED OF EASEMENT FOR A WATERLINE AT 5130 FULTON DRIVE IN FAIRFIELD (APN 0180-140-020) AND AUTHORIZING THE CITY CLERK TO RECORD THE GRANT DEED OF EASEMENT

RESOLUTION 07-16 - A RESOLUTION ACCEPTING THE WATER TREATMENT PLANT IMPROVEMENT PLANT PROJECT AS COMPLETE, INCLUDING THE FINAL CHANGE ORDER, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

RESOLUTION 07-17 - A RESOLUTION REQUESTING PERS AUTHORIZE JAMES TRIMBLE TO EXCEED 960 HOURS AS A RETIREE TO ALLOW HIM TO WORK FOR THE CITY OF BENICIA AND TO FILL AN URGENT NEED

RESOLUTION 07-18 - A RESOLUTION APPROVING THE ABAG REPORT "TAMING NATURAL DISASTERS" AS THE CITY OF BENICIA'S LOCAL HAZARD MITIGATION PLAN

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 15.04.010 (ADOPTION BY REFERENCE) OF CHAPTER 15.04 (CALIFORNIA BUILDING CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE TO INCORPORATE UPDATES TO STRUCTURAL STANDARDS IN 2001 CALIFORNIA BUILDING STANDARDS CODE

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Review of the Land Exchange Proposal benefiting the West 14th Street Public Access:

Council Member Patterson stated that she asked the City Manager and City Attorney if it would be appropriate, when Council takes action on this item, to memorialize the fact that the City was anticipating future action as a condition of approval of this item.

Public Comment:

1. Richard Bortolazzo – Mr. Bortolazzo stated that he thought the concern was that he would put a duplex on the property. He will be building a house on the property, so he did not have a problem with the restriction Council Member Patterson was referring to.

On motion of Council Member Patterson, seconded by Council Member Whitney, Council approved the review of the land exchange proposal benefiting the West 14th Street Public Access, on roll call by the following vote:

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

Award of a consultant agreement for engineering for Multi-Location Water Line Replacement Project:

Council Member Patterson asked to what degree this has been and will be coordinated with the Army Corps of Engineers review of the site. Mr. Schiada stated that this was part of the area that went through the review as far as the remaining ordinance. Staff would be looking at that review to see if there needs to be digging or core sampling in the area before it goes out to construction. That would be part of the design process. Council Member Patterson asked if that was part of the agreement. Mr. Schiada stated that he did not think it was something that was specifically identified, but was something that Staff put in the language – that they needed to do sub-service analysis as part of the design review process. This is something that Staff could ensure happens, as it is taking the lead role on managing the consultants. Council Member Patterson asked to what extent Staff had to notify the Army Corp of Engineers as to what is going on. Mr. Schiada stated that at this stage, it is just a matter of getting them involved in the design process. The formal noticing gets into effect when they start digging. That would be worked out with the Army Corp of Engineers when the design process is started. Council Member Patterson asked why an outside consultant was being used in this project. Mr. Schiada stated that the City has typically used outside consultants for its utility line projects. It is a matter of time. Staff is very small, and they are focusing on small projects or street overlay projects. This project involves a lot of time and expertise that the City Staff just does not have time for.

Vice Mayor Schwartzman asked if this type of project was going on all the time. Mr. Schiada stated that this project was a larger scale project. Every year, as part of the maintenance program, they focus on small repairs in spot locations – strictly maintenance issues. This project is looking at putting in new lines, configuration of loop systems, etc. The smaller routine maintenance projects are typically done in-house. Vice Mayor Schwartzman stated that the reason he was inquiring about this was to throw out the possibility of hiring someone who has the expertise, so the City would not have to pay consultant fees. He was not suggesting the issue be discussed tonight. He just wanted to throw it out there for future thought. Mr. Schiada stated that was an issue that would be brought forward as part of the budget process.

Council Member Patterson stated that there was a tremendous need for a person with the right skill set for storm water management.

RESOLUTION 07-19 - A RESOLUTION APPROVING A CONSULTANT AGREEMENT FOR ENGINEERING SERVICES FOR THE MULTI-LOCATION WATER LINE REPLACEMENT PROJECT WITH PAKPOUR CONSULTING

GROUP FOR A NOT-TO-EXCEED COST OF \$120,000 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

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

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

Noes: None

Mr. Erickson confirmed that the proposed 2/23 special meeting on the Seeno EIR needed a 72-hour notice, which would go beyond the acceptable notice time/date. Mayor Messina suggested having the meeting on Saturday, 2/24. Council Member Patterson stated that she would not be in town on Saturday. Mayor Messina stated that his only suggestion would be to have her phone in. He stated Council and Staff would do their best to schedule the meeting to accommodate everyone. The public should tune in to channel 27 for details on the meeting date and time. It would be posted according to regulations.

PUBLIC HEARINGS:

Draft Lower Arsenal Mixed-Use Specific Plan:

Charlie Knox, Community Development Director, reviewed the Staff report.

Mr. Stefan Pellegrino, Opticos Design, presented a PowerPoint presentation on the Lower Arsenal Mixed-use Specific Plan (hard copy on file).

Mayor Messina stated that the policy decision that drove this was when the General Plan was adopted for this mixed-use area. The plan has now changed. The City has gone beyond implementing the General Plan to now modifying the General Plan.

Mr. Knox stated that the project was initiated to implement the mixed-use overlay from the General Plan. What was presented to the Planning Commission, and what is now being presented to Council is the community's best effort to date to determine what mixed-use means, when the General Plan Overlay of mixed-use is applied to the Arsenal. These are the concepts that have come to light. Mayor Messina stated that an EIR was done to implement the General Plan. He asked if we are making changes to the General Plan that would be different. If this is consistent with the General Plan, why does the City need another EIR? Mr. Knox stated that the change in the style of development that is being contemplated from the existing underlying zoning and land use designation in the General Plan would probably in and of itself would require an EIR. Also the State basically allows the plan as a program to be evaluated under a Program EIR, which is different from a Project EIR, because it assumes that specific projects would be coming in that could coattail on what has been done in the EIR and go forward without doing their own level of environmental review at the EIR level. The community and City could be paid back for the cost of the EIR. Additionally, some of the major development sites will pay back in kind to the City; significant infrastructure improvements (curb and gutter, sidewalk, etc.). Mayor Messina asked what the timeline was for the project. Mr. Knox stated that the timeline for this project is to finish by August, which is exceptionally accelerated. He was confident the

City could meet that deadline. He hoped to get proposals in for the EIR some time this week.

Council Member Whitney asked Mr. Pellegrino for some examples of what could be considered an 'economically viable destination campus.' Mr. Pellegrino stated that Fort Mason (San Francisco) was one example.

Mayor Messina asked the public to limit its comments to 3 minutes, since there were so many citizens who wanted to speak on this item.

Council Member Patterson stated that she wanted to be clear that what Council was looking for was the scope and the extent of the EIR's assessment, and not the pros and cons of Option I or Option II. Also, it has been suggested that there were additional options available. It is important that people understand that what was before Council tonight was to give direction to Staff to the extent of the preparation of the EIR.

Public Hearing Opened.

Public Comment:

1. Bob Whitehead – Mr. Whitehead stated that the Opticos Plan was not a practical plan. The proposal does not reflect the actual shape or recognize that the property is privately owned. Opticos said that they did not receive input from the community to develop the Ridge Area for senior housing. He knows Opticos did received direction from the landowners and the developer in September 2006 that a project for senior housing was planned. He believed that senior housing is an excellent idea for the area and that the Benicia community would welcome the project with open arms. He respectfully requested that Option II (a) be included in the plan.
2. Dana Dean – Ms. Dean stated that she was an attorney representing Amports. Regarding Yuba, she asked Council to adopt Staff and the Planning Commissions recommendation to remove Yuba from this document. This was never noticed as a document that would include Yuba. Had that been done, they would have commented very differently. If the City leaves it in, it leaves the entire process subject to attack.

Council Member Patterson asked Ms. Dean about her comment 'never noticed'. Ms. Dean stated that the property owners understood from the consultants and frankly, everyone involved, that it would be discussed, but not included as a vision. Any time you put something in a document like this, somewhere down the line, someone could rely on it as a basis of understanding of what was intended for the property. Had the property owners known that, they would have and led this very differently. Council Member Patterson asked if it was not true that the Council action that was taken to approve the contract's title, in and of itself, was the Lower Arsenal and Yuba. Ms. Dean stated that if you present a document and then tell someone something very different, you are making a mistake and leaving yourself open to attack. She does not want to make it sound like she was going to be an aggressive litigator on this issue. She was hoping that Council would respect and understand

- that she and her client have already gone through this with the Planning Commission. The greater issue is that she stands by her statement that the document is hugely inconsistent with many aspects of the General Plan, mainly the overarching goal of sustainability and livability. The document largely ignores the reality of the industrial history and use of the area. In truth, before environmental review, the document should be revised with the following considerations with regards to design: 1) the plan does a great job of locating buildings in a way that looks good, but are they located in such a way as to minimize the impacts of noise, sound, odors, etc. The plan needs to contemplate orientations that minimize light, noise, and odors. 2) The form based code should include standards for the placement and character of windows and other openings that consider that, and 3) the floor area ratios need to be coordinated. She stated that if Council was going to adopt the plan, it should take a look at what the code allows for out there. Regarding the resolution before Council, she asked Council to accept, not approve the plan.
3. Dennis McCray, Executive Director, Solano Affordable Housing Foundation – Mr. McCray stated that he had an agreement with Mr. Bortolazzo and Mr. Whitehead to purchase their eight acres of property which is located along the Jefferson Ridge. They have extensively reviewed the Opticos document. They want to see Option II (a) included in the EIR study as a residential option. It is the only one of the options that could be built with private funds. The property has been in private hands for over 30 years. The site is designated in the General Plan to include residential uses. It brings private dollars for improvement to an area that has been in decay for several decades. The land plan that they submitted was respectful of the Arsenal area. The plan would provide some much needed affordable senior housing.
 4. Richard Bortolazzo – Mr. Bortolazzo stated the property had been zoned for office/commercial for the past ten years. In ten years, he and his partner have not been approached by one office/commercial developer to build anything. They bought the Command Post out of foreclosure. Ms. Reed Robbins bought the Jefferson Street Mansion out of foreclosure. The Madison Building was foreclosed upon. The Bachelor Officer's Quarters were foreclosed upon twice. He bought the Jefferson Ridge property from West America Bank after foreclosure. There is the vibrant commercial history in the Arsenal. He asked Council to add Option II (a), which provides for senior housing. It would be a good deal. It is the only option with any economic reality to it. The property remains vacant.
 5. Katherine Austin – Ms. Austin stated that she was the architect for the Solano Affordable Housing Foundation. They would like to see option II (a) considered. They considered many things when designing the senior housing. They intend to use the latest in green building technology. They have preserved the view corridors. They would place Historic District kiosks throughout the site. The architecture could be adaptively reused over time.
 6. William Blair – Mr. Blair stated that he was in favor of option II (a). There are lots of people who are selling their homes and taking the profits to live in other more affordable areas. This could allow some of those people to stay in the community.
 7. Rod Herman – Mr. Herman stated he supported plan II (a) in the EIR review process. The plan makes sense fiscally and provides some much needed senior housing. Over the past ten years, he has seen Council reject many proposals that

- made sense, but were turned down simply out of the fear of the unknown by a small but vocal group of citizens in town. He discussed when the Circle K project was turned down – the initial fears never came to light with a similar project that was built on Columbus Parkway. Human nature often causes us to fear the unknown and expect the worst. Proposal II (a) would be a win win situation.
8. David Fewins – Mr. Fewins stated that he owns property in the Arsenal. He would like to see some plans to enhance economic development in the area. He saw Options I and II as sort of a ‘field of dreams’. The property in question has been vacant for over 30 years. He supports plan II (a).
 9. Earl Miller – Mr. Miller stated that he was in favor of plan II (a). We need to do something in this community for our seniors as well as our children.
 10. Todd Willis – Mr. Willis stated that he reviewed the plan. He urged Council to adopt plan II (a). It is about affordable senior housing.
 11. Marilyn Bardet – Ms. Bardet stated that at the Opticos visioning workshop, citizens put together an alternative ‘no development’ vision for the Jefferson Ridge. She stated that Option I best fulfills goals and policies of the General Plan pertinent to Arsenal mixed-use development, preservation and revitalization of the valuable Historic District, as well as protection of community health and safety, and port security. She has gone to great lengths to give Council (via correspondence - hard copy on file) descriptions of Options I and III. The community prefers Option I. As Mr. Dean pointed out to the Planning Commission, he was very optimistic that they could, through private and public partnering, through a land trust, help to acquire the property, with the support of some major corporate players in town. She does not believe that we will have heritage tourism in this town if we do not preserve our National Historic District. We will have a residential town ignoring its historic assets. She believes that the EIR should fully explore the advantages of developing our heritage tourism in relation to Options I and III. Senior housing does not belong on the Ridge in a National Historic District. The senior housing could be put elsewhere.
 12. Tom Adams – Mr. Adams stated that he was partially responsible for the timing of this plan being brought forward. Essentially, the discussion was being had because of the Jefferson Park Villas Project that he and his partners brought before the City one year ago. Nothing had been done about the mandates put forth in the General Plan about establishing a mixed-use district in the Downtown and Arsenal for over six years. It was the same kind of plan we heard six years ago. Since 1998 when various properties in the Ridge area were purchased out of foreclosure, no one has seriously proposed more office space in the area as this plan does. There appears to be great interest in living in the Arsenal from both individuals and artists. The add on Plan II (a) is a sound alternative. It would fit perfectly into the area. He urged Council to include Plan II (a).
 13. Mitchell Churnock – Mr. Churnock stated that everyone present were people who make the Downtown area work. There are eleven houses in the area, and they do not want 100 cars driving up and down their street. He made the street one way. He put the signs up, and the City kept replacing them. He would like the property to look better. However, the proposed buildings don’t go with the architecture of his

street. If we are going to put seniors up there, there needs to be something for them to do.

14. Mark Hajjar – Mr. Hajjar stated that he owns property at 1025 Grant Street. He and his partner are in the process for plan approval from the City. He requested the plan be revised to include that the maximum height of the buildings be amended to 38 ft.
15. Don Dean – Mr. Dean stated that he wrote a letter to Council on 2/16 where he went into detail about Option I (hard copy on file). The City as a whole has not done a good job marketing the area and making good use of it. Some of the simple things that could be done would be to put public restrooms out there, commercial kitchen, interpretive center, small conference center, etc.

Council Member Patterson asked to what extent Mr. Dean relied on the 1970's California Department of State Parks and Recreation Plan for the Arsenal. Mr. Dean stated that he did not rely on the plan at all. His ideas are just logical ideas. Council Member Patterson stated that in his letter, he stated that the EIR analysis for Option I should include some of the potential funding source for implementing Option I. At the Planning Commission meeting, he had indicated that all they really need is a statement from the City that there is interest in the area being used in a manner that the State thought about in the early 1970's as a historic destination point memorial arsenal park. She asked what was the nature of what was needed from the City. Is that something suitable for the EIR to take a look at? Mr. Dean stated that it would be suitable for the EIR to lay out the process where that might happen. That might be a funding possibility for acquisition of the property. The key is that the City would need to take some action to say that is what it wants to do.

16. Abby Willover – Ms. Willover stated that there was a lot of talk during the presentation about the term 'campus', which is what software companies often are referred to. It is a beautiful piece of property; however, it is not a tourist destination. The proposal for senior housing would enhance the area. She was concerned to hear the City views it as a tourist destination. That is wishful thinking. Why would anyone go there? She urged Council to support plan II (a).
17. Gary Newhall – Mr. Newhall stated that a lot of money was spent on the Opticos Plan. There were a lot of 'urban planners' in the room who were adding to the plan. We should stick with what we have.
18. Belinda Smith – Ms. Smith stated that she was in favor of Options I and II. She was in opposition to the proposed Option II (a). If it had been presented when this was going to the Planning Commission, it could have been considered. It was a very open process. Introducing Option II (a) at this late is not fair to the rest of the public.

Public Hearing Closed.

Mr. Knox reviewed Options I and II in the Opticos Plan (hard copy on file). He reviewed the proposed Option II (a).

Vice Mayor Schwartzman referred to the plan where it discussed parking spaces. It refers to 'First Street.' He thought that might be a mistake, as he did not believe they were talking

about First Street. He then questioned the validity of the information on the number of households listed in the Plan. Regarding plan II (a) – aren't there really two extra plans being presented? He stated that Ms. Bardet was asking for Option III to be considered. He asked Staff what the ramifications for adding or not adding the other options.

Mr. Knox stated that there was not a great deal of ramifications. It is not that big a deal to add in alternative options. Vice Mayor suggested adding both Options II (a) and III or neither. It seems that the public would be served by having as many choices as possible. Mr. Knox stated that the caveat to that was an assumption based on the comments made, was that one of the options, the one that is more fully developed, which is Option II, would be the one that was fully explored as the preferred alternative. There has to be a preferred alternative in a project. The other alternatives would be explored in detail, however, that would be the one would be the one most fully explored. We are looking at one 8-acre piece of property with different ideas for dealing with it.

Council Member Patterson stated that she was looking forward to the EIR process because it is a rational presentation of data and assessment. That should help in the decision-making and possibly clear the air, and quite possibly get to some facts. She submitted three pages of comments for the EIR. The intent of her memo is to indicate that the EIR should accomplish a few major things. One would be with reference to the Opticos Plan, which refers to some policies that are necessary for the Specific Plan to go forward. She would like to see a table of those policies and have the discussion to see what it would take to develop those policies. For example, the City would need a demolition ordinance, tree ordinance to be effective in the preservation of heritage trees, updated noise ordinance, etc. Those types of ordinances are driven by the potential impacts. The second area she was still not clear about (and would like to see the EIR talk about) is the Yuba portion of what she thought was the original project. Council heard tonight that there was not proper noticing. Council also heard that was not meant to be a threat for litigation, but you never know. She wants to be careful that the City does not step over the line. On the other hand, the General Plan is very specific in stating that as City policy, we do not want to react to applicants proposals and that the City is to drive the vision planning for the Yuba and Arsenal. It was the specific intention of the General Plan. The rest of her comments were specific to certain pages and language in the document. She trusts Staff will look at and respond to her written comments. She wanted to ensure that the City incorporates all comments that are received. She wants to ensure they are not selective about which comments are included. She wanted to discuss the senior housing issue. She was concerned about that issue. It is important that not only do people live in a good place, but they have to be able to get out and walk if the wish to. She can't imagine having senior housing in this area with the topography, etc. It could create isolation and a lack of physical activity. She would like to see the senior housing in a proper place. She would like the EIR to verify or not verify her conclusions.

Mayor Messina stated that Council should include the additional options that had been discussed. There is also the option to buy the land and turn it into a park. That option should be included as well. The City should use the most intense option as the preferred option. That forces the most work to be done. If the City does anything less that would be benign. The City would cover the majority of the hazards if it looks at it from that

perspective. He believed the City should take the Yuba out. One of the initial intents of having Opticos come in was that the Council wanted to have some form based zoning come out of it. Regarding the comment about continuing to use the Arsenal Historic Conservation Plan. Trying to marry the two plans has caused problems. He knew it had caused problems Downtown and in the Arsenal. He suggested not using that. He suggested using the new plan that is being developed and have it be the standard. In terms of historic properties, the Department of Interior Standards should be in charge of that.

Council Member Whitney stated that when the process started, his hope was that the City would stop drifting on this. The City has been drifting on this for decades. With this plan, the City would be getting section three form based codes. That will allow the City to go forward with whatever shows up out there. The other part of the process has been a vision. There are currently four 'visions'. All four options should be included. The preferred option should be the most intense.

Council Member Hughes stated that he agreed with Council regarding including the additional two options included. He agreed that the Yuba site should be removed from the plan.

Mayor Messina stated that there seemed to be a consensus to remove item 9 – the vision for Yuba.

Vice Mayor Schwartzman asked what effects would come out of replacing or retiring the Historic Conservation Plan. Mr. Knox stated that it was a tough question. There is a lot going on that involves incorporating the standards in that plan or updating it. The City is nearing approval from the State for CLG status for the HPRC. He was not sure what the State would say about that.

Mayor Messina stated that he was proposing taking whatever is needed from the Arsenal Conservation Plan and incorporating it into this plan, so there would just be one plan.

Council Member Patterson stated that her understanding was that the historic plan covers a greater area than the specific plans. She does not want the City to suffer the unintended consequence of missing some important areas. Mr. Knox stated that the City was running into the same issue with the Downtown Plan. It would be his preference with both the Downtown Plan and the Arsenal Plan to just have one document for each. The goal is to have one book and have all that is necessary for development in one place. Council Member Patterson stated that one possible solution would be to take all of the elements as had been suggested, use it as one of the policy issues to discuss an EIR – to integrate all of the elements of the Historic District for that section of the specific plan that is covered by it. It would not be completely satisfactory, but for the level of economic activity that the City is interested in occurring, that might work.

Mayor Messina stated that the goal is to have one book, and have all that is necessary for that location. Council Member Patterson clarified that it would have to be done very carefully.

Vice Mayor would go for the 'one book' but he would want to make sure the areas outside the specific plan are still going to be governed by the Historic Plan. If that could be done, he would be fine with it

Council Member Patterson stated that Council might not have the time to do that. However, what it could say in the table of policies is that prior to issuance of the first building permit, it would be done.

Mr. Knox stated what is being discussed was an implementation measure of this plan, that would go into this table, a policy that says the City shall accommodate development through the incorporation of the Arsenal Historic Conservation Plan policies and guidelines, into this plan. He did not know the timeline on doing that. There is a price tag on doing that, which has not been looked into yet. It may have significant consequences with the City's CLG status. He could not imagine that it would not have significant delays on the timing on the adoption of the plan, it were to be included right now. He also could not imagine that it would not delay the first building permit.

Mayor Messina stated that the problem is that the City has to send the public to six different locations to get answers. This would eliminate that problem. He suggested having one document for the Arsenal that is covered by this specific Plan. There could still be another document that applies to areas outside the Arsenal. Mr. Knox stated that it may be, for the time being, something simple as incorporating the applicable portions of the Arsenal Historic Conservation Plan. Not as an implementation measure or policy, but as direction to Opticos and the EIR consultants, specifically include in this document, the applicable portions of the Arsenal Historic Conservation Plan. Council Member Patterson stated she thought that would work.

Council Member Patterson stated that on item #9, she would like to see a comma and an explanation about the process and timing as to how the City will deal with the need for having a vision. What happens on Yuba will affect the Arsenal. All of Council's good work could be thwarted. She would like to see the vision plan for Yuba be removed, with a substitute process with a time certain.

Mayor Messina was stated that he was comfortable with removing it.

Council Member Patterson suggested stating that the EIR will identify potential impacts of development on the Yuba and that it would be mitigated by.. (end of comment).

Vice Mayor Schwartzman stated that he was comfortable with removing item #9 but would want to make sure it needs to be looked at in the very near future.

Council Member Whitney stated that he would support removing item #9, however, he would want it removed cleanly, without attachments, commas, etc. It needs to be discussed, debated, etc. later.

Council Member Hughes supports leaving item #9 out and discussing it at a later date.

Council Member Patterson talked about the comments submitted by Mr. Dean. Is the intention to 'flush out specifics' Mr. Knox stated that Mr. Dean's comments were good. Council Member Patterson was not comfortable with having the senior housing as the preferred project. She agreed having it looked at would be beneficial. Mr. Knox stated that Option II was the most intensive project, not Option II (a).

Vice Mayor Schwartzman noted that he had ex parte conversations with Ms. Bardet, Mr. Bortolazzo, and the Senior Housing Group. He would like to add the reference to increasing the maximum height to 38 ft. as requested by Mr. Hajjar in the EIR. Council majority indicated it was comfortable including that.

Council Member Whitney stated that he had ex parte communications with Ms. Bardet, Mr. Bortolazzo, and the Senior Housing Group.

Council Member Hughes stated that had ex parte communications with Ms. Bardet, Mr. Bortolazzo, and the Senior Housing Group.

Mayor Messina stated that he had ex parte conversation with various individuals as well.

Council Member Patterson stated that she had ex parte communications with various individuals; however, she did not learn anything that was not before Council this evening.

Vice Mayor Schwartzman clarified the changes to the resolution to be: adding changes as suggested by Planning Commission to Option II, adding Option II (a), Option III, adding reference to 38 sq. ft. on Grant Street, adding Don Dean's comments, and adding Council Member Patterson's written comments.

RESOLUTION 07-20 - A RESOLUTION APPROVING A DRAFT LOWER ARSENAL MIXED-USE SPECIFIC PLAN FOR THE PURPOSE OF INITIATING ENVIRONMENTAL REVIEW

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

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

Noes: None

Mayor Messina stated that he would be excusing himself from the next agenda item due to a conflict of interest. He urged his colleagues that there are numbers of areas that Council will get into in this topic, including the Seeno Project, which he could fully participate in. He asked that Council limit its discussion to those items that relate to items specific to the items he cannot participate in, and allow him to participate in the discussion on the broad issues. He stated that Vice Mayor Schwartzman would chair the remainder of the agenda.

Mayor Messina called for a 5-minute break at 10:06 p.m.
The meeting resumed at 10:12 p.m.

ACTION ITEMS:

Consideration of an ordinance to regulate formula businesses:

Charlie Knox, Community Development Director, reviewed the staff report.

Mr. Erickson stated that in terms of providing input, the EDB would be interested in providing input on this issue. Before Council finalizes direction to Staff, the EDB should be asked to provide input. Also, Benicia Industrial Park Association (BIPA) and the Chamber of Commerce might be interested in providing input as well.

Vice Mayor Schwartzman stated that he understood what Mr. Erickson was saying, especially with regards to BIPA and the Chamber of Commerce.

Council Member Whitney stated that he owns a small business. It is tough out there. He believes in letting the market places set the bar. Having said that, regarding the small town ambiance, is anyone thinking about the Jack in the Box out on I-680? All conversations have revolved around Starbucks. He was not happy with Starbucks. Starbucks came into town and disrespected Staff and Council. They had the opportunity to approach Council and Staff but did not. Having a short-term moratorium might establish some trust and provide a cooling off period. He suggested a very narrow based moratorium between Rrags and the First Street area.

Vice Mayor Schwartzman stated that if Council would be discussing a moratorium on First, he might need to excuse himself, because the discussion would be getting very narrow. He asked Ms. McLaughlin if he needed to excuse himself if the moratorium was addressing First Street. Ms. McLaughlin stated that would be an interesting discussion on how that would affect Council. Since Solano Square and Davies Square are within 500 ft. of Council Member Patterson's home, which is presumed to be in conflict of the Conflict of Interest Code.

Council Member Whitney clarified that the moratorium he referred to would only address coffee shops.

Council Member Patterson stated that the point was to make the moratorium citywide. That way, there would not be a conflict issue.

Ms. McLaughlin suggested broadening the area and making it citywide. Also, the 45 day period would allow the City to obtain advice from the FPPC to see if a moratorium on this would impact more Council Members.

Council Member Hughes stated he was leaning in the direction Council Member Whitney suggested. He would like to limit it to the extent Council was able. Ms. McLaughlin Council Member Hughes stated that a while back, Seeno stated that their project would not be impacted by any ordinance that was put in place today. Mr. Knox stated that it was

difficult to say with Seeno. They have existing zoning right now. The application was certified complete. Seeno has a right to move forward with the rules in place at the time the permit was approved.

Ms. McLaughlin stated that Mr. Knox's comments were a good summary of what Seeno says is the case. Seeno states that because they have a vesting tentative map that the use rules in place that were in place a few years ago are what apply now. So, the City would not be able to apply the proposed formula ordinance on the Seeno Project. There is a slight difference in the EIR in terms of big box. The analysis of the EIR excludes big box.

Council Member Patterson clarified that Seeno was asserting that any state statues or potential federal requirements that come into effect after the application was filed or prior to the issuance of a building permit or the development agreement, that none of those would apply (increased water quality standards, etc.). Ms. McLaughlin stated that Seeno would have to comply with things relating to public health and safety. However, things like a moratorium (which is more of a 'preference'); they would probably not have to comply with.

Vice Mayor Schwartzman stated that if these discussions were something that Mayor Messina could participate in, Council needed to keep that in mind.

Council Member Hughes stated that Council needed to get its arms around this issue. There are a lot of loopholes. Ms. McLaughlin stated that at this point in time, Council could not adopt an ordinance that would be effective in preventing Starbucks from going in Rose Center or the Blockbuster building, or that would prevent a Starbucks from going into the Seeno Project.

Council Member Patterson clarified the chain of events leading up to tonight's discussion. This has been in the process since last October. She is tired of being beaten up for reasons she had nothing to do with. There were no laws in the City to prevent Starbucks from coming in. The business license does not do that. She was hoping the moratorium would provide the cooling off period so the EDB and other folks can get involved. She does not want to see this issue slow down. She suggested having a joint meeting. This needs to be on a fast track. This needs to be clarified tonight, adopt a schedule, and then move forward. The moratorium would help a little bit.

Council Member Whitney stated that a moratorium was 45 days. It could be extended up to two years (in increments).

Mr. Erickson stated that the initial period for a moratorium was 45 days. Moratoriums generally last months and months, sometimes years. He had a hard time believing the moratorium in question would only be 45 days. You have to ask yourself, what is the impact of an ongoing moratorium on the economic health of the City. It might not do the best for the City's reputation as a City that is ready for business.

Council Member Patterson stated that the emergency moratorium would be Citywide and would be narrowed to businesses that sell food with a primary emphasis on coffee. That gets at the problem that the community has. It also protects the food businesses that do not focus on coffee. She was struck by the comment that this needs to be done right. She likes the idea of getting the EDB, BIPA, Chamber, etc. involved; however, she does not want the City to be unprotected.

Vice Mayor Schwartzman stated that regarding bringing the Chamber and BIPA in, he has been asking them for months to come in and have their voices heard. They are now on notice. He is not in favor of a moratorium. There is not a health, safety, and welfare issue. He was not happy with Starbucks. They did not discuss issues with Staff or Council. The ordinance would not affect the Seeno Project. What are the uses that are available to Seeno right now?

Mr. Knox stated that in the preliminary discussions with Ms. McLaughlin, himself, and the attorneys for Seeno, though they may argue this in the future, they are in agreement with the Basic Office of Planning and Research and U.C. Hastings Report of 2005 that defines big box as 80,000 sq. ft and includes definitions for the other kinds of uses that were discussed (single category stores at 20,000 sq. ft.). The fiscal impact analysis that supports the EIR, which is part and parcel of the document, also self-limits the Seeno Project from any regional retail. Even though the project description might be flawed, other portions of the document clearly state that it would. If they want to propose regional retail or big box, Seeno would have to supplement the EIR. Right now, big box would be set at 80,000 sq. ft.

Council Member Patterson stated that the effect on Seeno with an ordinance might not be adequate, but there are tools that could be used (site plan, road pattern, etc.) Council should not shy away from what it needs to do because of the Seeno problem.

Council Member Whitney asked at what point the moratorium could be stopped. If this moratorium would be tailored and specific, it could work.

Public Comment:

1. Chuck Shaw – Mr. Shaw recommended Council take the opportunity to fully digest the actions being taken regarding the big box issue. It should consider involving the property owners in the area. There are some major zoning issues being proposed.
2. Kim Winston – Ms. Winston clarified for Council Member Whitney that Starbucks had contacted Council. It was noted in the December 5, 2007 City Council minutes that Starbucks contacted Council Member Patterson regarding their position in the community. Council Member Patterson informed her that development issues were ministerial matters and were typically handled by Staff. Starbucks has reached out and followed the processes they were guided to follow. Starbucks did not usurp the Council. She was told that those were ministerial matters that were handled by Staff, so that is where they directed their time and efforts. She was concerned that as business owners in the community, when you talk about moratoriums and other items were not agendized. She was also concerned about the focus on Starbucks as a company. When she heard the term ‘bullets aimed at’ it really concerns her. With

regards to the concerns, she has listened to the public comment on January 21, 2007, Starbucks focused on the concerns stated by the public at that meeting. Formula retail is much bigger than Starbucks. She suggested that Council give strong consideration and consult the EDB, Chamber, etc. These actions have strong repercussions on businesses and developers. She asked Council to think about the processes, moratoriums, public policies, etc. She was here to support her colleagues who were very hurt by the comments made at the Council meetings.

Council Member Patterson asked why Ms. Winston called her in the first place. Ms. Winston stated that some of the partners called her and stated there were concerns being raised with the Council and citizens. She stated that Council Member Patterson's email address was indicted in the meeting minutes as the point of contact with issues relating to formula retail. That is why she reached out to Council Member Patterson. Council Member Patterson stated that when Starbucks was planning the 4th and 5th Starbucks in town, Council was not consulted. Why did they not come a year ago and talk to Council, Staff, etc. Council would have liked to know that there would be 5 Starbucks. Council Member Patterson stated that she took extreme umbrage and exception to the idea that Council delegated the process to Staff, and that it did not care. She would have liked to have known that there would be five Starbucks.

Ms. Winston stated that she did not mean to imply that Council was disinterested. She stated that Council Member Patterson told her that the issues were ministerial. In most cities across the country, these issues are decided at the staff and Planning commission level. She stated that Council Member Patterson did not suggest Starbucks direct their comments to staff, they directed their emphasis there. She stated that Council Member Patterson did not suggest that these were unimportant issues. The Safeway Starbucks is run by Safeway. They use Starbucks' licensing agreement to operate the site. They use Safeway employees to work there. Regarding the two Starbucks stores currently under development, they have gone through the City's processes. Those were permitted uses according to the business partners who are developers in this community. The developers contacted Starbucks. Starbucks has been respectful of the community. Starbucks did not contact Council, and for that she apologized. They followed the process, abided by the rules, and are operating under the guidelines that are appropriate for their business. Starbucks is grateful for the support of the community.

Vice Mayor Schwartzman asked Ms. Winston when in the process of a new store going in, does she find out about it. Ms. Winston stated that she gets involved when it gets to the civic level. She referred to her coworker, who is a Development Manager (no name given). The Development Manager stated that she covered most of the North Bay and up to the Reno area. She gets involved when she gets a call from a developer to see if Starbucks is interested in development. Vice Mayor Schwartzman asked her how she would feel about opening up another Starbucks in Benicia. She stated that personally, she would not want to open up another Starbucks at this time. He asked her if she had control whether or not another

Starbucks would be opening up anytime soon in Benicia. She stated that she would not be signing a lease for another store in Benicia. Vice Mayor Schwartzman stated that what he was leading up to was finding out if there was something Council could have on record, if she is someone who has control, that for the next year, she could commit that there would not be another application for a Starbucks in this town. She stated that was not completely her decision. Personally, she would say yes, however, that decision would have to come from the top town. Ms. Winston stated that she did not see another Starbucks in Benicia for another year. There is not another Starbucks on the plan for the next 12 months.

Vice Mayor Schwartzman stated that he knew there were people in this community who love Starbucks. They seek out Starbucks stores. He does not think Starbucks is all bad. He knows they treat their employees very well. However, he was concerned about the City's independence.

3. Johnnice Downs – Ms. Downs stated that she worked for the California Restaurant Association. Membership ranges from small mom/pop restaurants to large corporations. She wanted to express concern as well as opposition to the proposal to restrict certain businesses. This would penalize certain types of businesses. The restaurant business is an entertainment and hospitality business.

Council Member Whitney stated that businesses that come in town were corporate citizens. Corporate citizens are no different than private citizens, and the City expects the same level of behavior from them. That is the issue here. He goes to many coffee places in town, Starbucks included. It is a question of behavior. It is how you act as a corporate citizen in the community.

Ms. Downs stated that she did not directly represent Starbucks. Her company represents restaurants all over California. She wants to be able to offer choices and diversity in Benicia. Regarding restaurants, they advocate being good neighbors and following the appropriate guidelines for each jurisdiction.

4. Gary Newhall – Mr. Newhall stated that Starbucks representative had been misleading. He does not see the separation with the Starbucks at Safeway. He was gratified to hear Council Members Hughes and Whitney had changed their tune. He encouraged Vice Mayor Schwartzman to do the same. Council needs to send a strong message to Starbucks. There is a predatory corporate business in our midst that needs to be addressed.
5. Gary Moss – Ms. Moss stated that the Starbucks representative was a scout. Her job is to scout out areas. There was no respect from Starbucks when they came to town. Council Member Whitney received some information from the citizens regarding a Sherman Act violation in Seattle. Fifty-nine Starbucks went into a 2-mile area of Seattle. That is not a good neighbor policy. He told Council Member Patterson she had to pick a side. Benicia has to send a message to Starbucks to not come into our backyard and make a mess. It is their predatory way of doing business that he has trouble with. Charity starts at home.
6. Sue Kleinman – Ms. Kleinman stated that she was a member of the EDB. The EDB would be interested in providing input on this issue. She wanted to speak as a

citizen. Consumers like choice and they vote with their feet. She makes her choice on who gives her the best service and product. You should not penalize the businesses that found a good formula. She is against the moratorium and ordinance. It is basically protectionism. It is a form of socialism. It would have repercussions. The market place is constantly changing. She would like to see Trader Joe's come into town.

7. Tom Carey – Mr. Carey represents the developer of the Rose Center. There are people on both sides. An urgency ordinance is not the right vehicle. There are some specific legal findings. The finding that is critical is whether there is a current and immediate danger to health, safety, and welfare. He is concerned it would cast the net on businesses such as food and restaurants. He suggested Council remember its legal obligation.
8. Mary Wika – Ms. Wika stated that Starbucks prevents choice. Citizens will not have a choice if there are no other stores remaining other than Starbucks. What justifies opening five formula based coffee houses? That is not balanced in a town with 27,310 citizens. Starbucks monopolizes 75% of the coffee retail in the United States. Starbucks pays two to three times the fair market rental value for space. This is not a free market. She is not scared of fair competition. She requested a temporary immediate emergency moratorium on formula retail coffee shops. There are no other formula based businesses that have been more saturated than the coffee shops. The formula business ordinance needs more work and citizens need to have more input. It should include the number of retail coffee shops citywide in Benicia should be limited to three establishments from the date the ordinance is adopted, a new formula coffee shop shall only be allowed if it replaces an existing formula shop once it closes. Let's preserve the diversity that Benicia is trying to maintain. When Council talks about a moratorium, why would they leave her out?

Council Member Whitney stated that the when people talk about the issue of the 'small town atmosphere' they are not talking about Raley's, Burger King, strip malls, etc. They are talking about the First Street corridor. He sees the 'strip malls' as opportunities for people to come in and off of the freeways for easy access. He knows local residents go there as well.

Ms. Wika stated that she had been in her space for 13 years. According to the General Plan, it states her area is supposed to be residential. Many people are against these types of areas being left out. Council needs to look at the General Plan to see what it says.

Council Member Whitney stated that this was nothing against her or her business. He is in the mortgage business. A lot of lenders have come into Benicia. No one has shed any tears for the mortgage industry. He understands there is competition out there. He hopes his as well as her business survives. The small town ambiance has been with the character we have on First Street. He understands her plight. They will have to agree to disagree.

Vice Mayor Schwartzman clarified that if there were a moratorium it would have to be citywide. He asked Ms. Wika if she was a Benicia resident. She stated she was not, but you don't have to be. Vice Mayor Schwartzman stated that she did not have to be, he just wanted that clarified.

9. Abby Willover – Ms. Willover stated that business was tough and you have to compete in a level playing field. How would Council Member Whitney feel if five Di-Tech opened in this area? Starbucks operates in a wolf pack mentality. Starbucks has a high profile. Rags and Java City have a small profile. She would like to ask Council for some common decency. There are ways for the City to stop it. What Starbucks is doing is wrong. Council needs to send Starbucks a strong message.
10. Maria Teresa Matthews – Ms. Matthews stated that she owns Baskin Robbins with her husband. Regarding the moratorium, would that go for iced coffees as well? She stated that Baskin Robbins came up with the 'Coffee Blast.' Starbucks copied them with the frappacino drink. Starbucks is a company where if they don't make money, they can still survive. Small businesses cannot survive if they don't make money. She was representing herself, not Baskin Robbins. She and her husband often donate to the community. She asked Council to write a strong ordinance so there are not future problems such as this one being discussed tonight.
11. Bob Craft – Mr. Craft stated that this town starts at Lake Herman and goes to the Straights. Regarding Starbucks, the horse has already left the barn. He heard the CEO of Starbucks say on the news last week that they would never go into a town where the governing body did not want them. He supports the concept of a well-crafted ordinance. Council needs to take a stand on this issue.
12. Sam Tran – Mr. Tran stated that he had no problem with competition. Competition has to have checks and balances. Competition keeps businesses alive. When five Starbucks come in, it is not balanced. You have to have fair competition. Service and consumer demand is a big part of business. He knows that businesses change, but there has to be fair competition.
13. Tony Shannon – Mr. Shannon discussed the issue of uniqueness. Formula based businesses don't always stick around. He talked about when Blockbuster came into town and Video Time could not survive. Baskin Robbins – Maria Teresa and her husband won business of the year for 2006 – largely in part because of their dedication to the community. He doubted that the City would see that level of participation from Starbucks. Businesses like Starbucks give us 'homogenization.'

Council Member Patterson asked if Mayor Messina could come back to consider a citywide moratorium. Ms. McLaughlin stated that if Council were considering a citywide moratorium on restaurants and eating establishments, he would still be conflicted out because that is what his business is.

Council Member Patterson offered a motion to adopt an emergency moratorium on formula based restaurant businesses whose primary focus is on coffee. The findings on the public health, safety, and welfare is based on the fact that the City's General Plan is very specific about protecting the unique and small town character of Benicia, which is threatened by an undue number of formula based coffee shops. Council Member Whitney seconded the motion.

Vice Mayor Schwartzman asked what the process was, procedurally, regarding Starbucks coming to town again. Mr. Knox stated that regarding the Blockbuster building; the space is a permitted use. He was not aware of a way where an emergency moratorium would prevent someone from going into an already permitted space. Regarding the Rose Center, since the project had already been approved, it would not change that either. An emergency moratorium would not affect the 4th or 5th Starbucks. The whole reason the State created vesting tentative maps was to prevent cities from enacting last minute ordinances that would frustrate property owners from getting a use that was allowed, at the time, on the books.

Vice Mayor Schwartzman stated there were definite differences between a chain, franchise, and a co-op. Regarding the moratorium, the findings have show there is a threat to health, safety, and welfare. Starbucks followed the rules. This needs to move forward. He empathizes with all small business owners. Just because a Starbucks comes in, it does not automatically mean the independents won't succeed. Cafe Voltaire opened up just about the same time the First Street Starbucks opened up. Her business is surviving because she finds ways to offer things that places like Starbucks don't offer. He has not been in a Starbucks as far back as he could remember. He has been at all the independent coffee shops and has seen the owners, but has never seen Ms. Wika in her shop in all the years he has gone there. That does not mean that is wrong. It just tells him as an individual that maybe there is something else that could be done to be creative and build a business. This particular issue does not go to an issue of public health, safety, or welfare, and therefore could not support the moratorium.

Public Comment:

1. Ms. Wika stated that it was an unfair attack on her by Vice Mayor Schwartzman - when he asked if she lived in Benicia. It is not a prerequisite. Local developers don't live in Benicia. She lives within ten miles of Benicia. She has lived in Benicia - at the coffee shop - for thirteen years. Lately she has been at Stanford Hospital, as her father is dying. She has been taking care of her parent. It was a very unfair attack on her.

Vice Mayor Schwartzman asked Ms. Wika to keep in mind that Council had been attacked for months, stating they are not doing anything. Council cares about this town and its independence.

Ms. Wika stated that Vice Mayor Schwartzman attacked her personally. Council has been attacked by everybody. It tells her where Council's mind is when it makes statements like that. It is very discriminating. It is not a prerequisite. She has paid her dues here. She shops here, pays taxes here, her kids have gone to school here, etc.

Vice Mayor Schwartzman stated that he apologized if he offended Ms. Wika. He still does not feel this is a public health, safety, and welfare issue.

Ms. Wika asked that Ms. McLaughlin explain that issue further.

Ms. McLaughlin read the government code 65858 regarding health, safety, and welfare. To protect the public health, safety, and welfare, the City may adopt, as an urgency measure, an interim ordinance prohibiting uses. Ms. Wika asked if that was all it said. Ms. McLaughlin stated that it went on for two pages.

Council Member Patterson stated that 'welfare' means a sense of well-being and the wholeness of a community, etc. It is a broad term. It goes back to the founding of a country. Over the years, we have gotten away from that understanding of welfare. A moratorium is a prudent course of action. That is what the community is asking for. Patience has run out for many folks. Vice Mayor Schwartzman is the critical vote. It is a small price to pay.

Vice Mayor Schwartzman stated that there were different sides to this and there is also the issue of free enterprise.

Council Member Hughes stated that this is such an emotional issue. He personally feels bad that it has dragged on for so long. This is a balancing act. Not everyone here tonight is in favor of a moratorium. When he said he would consider a moratorium, he stated that it would have to be restricted. He was not in favor of a citywide moratorium. There could be unintended consequences. He will be voting no because he does not think it will achieve what some people might think it will.

Council Member Whitney stated that he would be voting in favor of a moratorium. He made a commitment to some people and said he would do everything he could to create a cooling off period to give us a chance to work through this issue. Initially he was focusing on a narrow moratorium, however, since that cannot be done, he will stick with his commitment and vote in favor of a moratorium.

On motion of Council Member Patterson, seconded by Council Member Whitney, Council did not approve an emergency citywide moratorium, on roll call by the following vote:

Ayes: Council Members Patterson and Whitney

Noes: Council Members Hughes and Schwartzman

Abstain: Mayor Messina

Vice Mayor Schwartzman asked Mr. Knox what the fastest way was to get the ordinance moving. Mr. Erickson stated that with Council's direction, it needed to go to the Planning Commission. He encouraged sending it to the EDB for comments and feedback very soon. The EDB meets monthly. The next Planning Commission is on March 8, 2007. Mr. Knox stated that based on Council's comments, the current draft is not ready for their feedback. Does it need to be citywide; should Solano and Davies Square be included, etc? Ms. McLaughlin suggested that Council not give them direction on locational aspects. Perhaps it should be sent to the Planning Commission for them to consider those issues.

Council Member Patterson stated that was what she was going to recommend, that the Planning Commission consider those issues and bring it back to Council. The community

could attend the meeting and have input. If Council narrows it down, there is a potential for conflict.

Vice Mayor Schwartzman encouraged citizens and businesses to stay involved in the process.

Council Member Patterson asked the Planning Commission to consider the issue of 'franchise'.

Vice Mayor Schwartzman stated that the discussion should include franchise, chain, etc.

Ms. McLaughlin suggested having them consider a definition for big box and formula based businesses.

Council Member Patterson stated that she would also like to have the design standards issue included as well.

At 12:03 a.m. on February 21, 2007, Vice Mayor Schwartzman continued all remaining agenda items to a future meeting.

Viability of the City of Benicia/Valero Water Reuse Project. (People Using Resources Efficiently Committee):

Continued:

INFORMATIONAL ITEMS:

Reports from the City Manager:

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina) Next Meeting Date: February 21, 2007
2. Association of Bay Area Governments (ABAG) (Mayor Messina) Next Meeting Date: April 19, 2007
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: March 9, 2007
4. League of California Cities (Mayor Messina) Next Meeting Date: April 30, 2007
5. School District Liaison (Council Members Whitney and Hughes) Next Meeting Date: April 12, 2007
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) Next Meeting Date: March 7, 2007
7. Solano EDC Board of Directors (Mayor Messina) Next Meeting Date: March 15, 2007
8. Solano Transportation Authority (STA) (Mayor Messina) Next Meeting Date: March 14, 2007
9. Solano Water Authority/Solano County Water Agency (Mayor Messina) Next Meeting Date: March 8, 2007

10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) Next Meeting Date: April 19, 2007
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney) Next Meeting Date: February 21, 2007
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) Next Meeting Date: February 22, 2007
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) Next Meeting Date: February 28, 2007
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson) Next Meeting Date: February 26, 2007

COMMENTS FROM COUNCIL MEMBERS:

Consideration of an ordinance as proposed by the subcommittee of the Youth Action Task Force on regulating retail alcohol sales:

Continued

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 12:03 a.m. on February 21, 2007.

Lisa Wolfe, City Clerk