

March 10, 2011

BENICIA PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS

AGENDA

Thursday, March 10, 2011

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

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

II. ADOPTION OF AGENDA

III. OPPORTUNITY FOR PUBLIC COMMENT

This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN

B. PUBLIC COMMENT

IV. WELCOME NEW MEMBERS; ELECTION OF OFFICERS (CHAIR AND VICE CHAIR)

V. PRESENTATION

A. NONE

VI. CONSENT CALENDAR

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

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on

a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

A. Approval of [Minutes](#) of January 26, 2011

V. REGULAR AGENDA ITEMS

A. REVIEW OF PROPOSED ZONING TEXT AMENDMENT TO REMOVE THE LISTING OF [SIGN PERMIT FEES](#) IN SECTION 16.08.030 OF THE CITY OF BENICIA MUNICIPAL CODE AND TO ADOPT A FEE FOR A [SIGN PERMIT VARIANCE](#)

PROPOSAL: Recommend that the City Council approve a zoning text amendment to amend section 16.08.030 in Title 16 (Sign Ordinance) to remove reference to specific fee amounts for sign permits. Instead, staff recommends that the ordinance simply refer to the Master Fee Schedule to determine the costs associated with processing sign permits. In addition, the fee for a sign permit variance is recommended to be updated and included in the Master Fee Schedule.

Recommendation:

Adopt a resolution recommending the City Council amend Benicia Municipal Code Section 16.08.030 by removing fee amounts for sign permits, and, instead refer to the City of Benicia Master Fee Schedule; and establish a sign variance fee to be included in the Master Fee Schedule.

B. [THE RELLIK TAVERN, 726 FIRST STREET, USE PERMIT AMENDMENTS PLANNING APPLICATION NUMBER: 11PLN-3; APN: 089-341-010](#)

PROPOSAL:

On December 11, 2008, the Planning Commission approved a Use Permit for the Rellik Tavern and set forth conditions of approval including for hours of operation and limiting live music events to 12 per year. Currently, the owner of the Rellik Tavern is requesting that this restriction be removed. Staff recommends removing previously set limitations on live entertainment and instead adhere to the permitted hours of operation for such uses as codified in the Downtown Mixed Use Master Plan's Town Core Zone District. In addition, staff recommends minor clean up in reference to adopted noise level standards.

Recommendation:

Approve amended conditions of approval for a previously approved Use Permit for a bar establishment known as the Rellik Tavern located at 726 First Street, based on the findings and subject to the conditions listed in the draft resolution.

C. REVIEW AND DISCUSS UPDATES TO THE PLANNING COMMISSION'S RECOMMENDED [PRIORITY PROJECTS](#) AND DISCUSSION TOPICS FOR FISCAL YEARS 2011-2012 AND 2012-2013

PROPOSAL:

The Commission will review its list of recommended actions for the City of Benicia's Strategic Plan, as well as ongoing topics for discussion and action by the Commission. This list is reviewed, updated, and prioritized on an annual basis by the Planning Commission and subsequently forwarded on to the City

Council for its consideration during the biannual strategic planning process. Items may be added to or removed from the list by a majority consensus of the Planning Commission. All City Board and Commission work plans are determined by the City Council. This list will be reviewed as part of the 2011-2013 strategic planning/budget process.

Recommendation:

Review, discuss, and make recommendations for City priority projects and future Planning Commission discussion topics.

VI. COMMUNICATIONS FROM STAFF

Open Government Training - April 2011

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

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

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

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

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

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

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Public Works & Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Public Works & Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Kathy Trinque, Administrative Secretary, as soon as possible so that it may be distributed to the Planning Commission.

 [Draft Minutes of January 26, 2011 Meeting](#)

 [Agenda Staff Report Sign Permits and Fees](#)

 [Agenda Staff Report Rellik Tavern](#)

 [Agenda Staff Report Planning Commission Priority Projects and Discussion Topics](#)

DRAFT



**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
SPECIAL MEETING MINUTES**

**Wednesday, January 26, 2011
7:00 p.m.**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Richard Bortolazzo, Don Dean, Rod Sherry, Lee Syracuse,
and Acting Chair, Rick Ernst

Absent: Commissioner Brad Thomas

Staff Present: Lisa Porras, Senior Planner
Melissa Morton, Land Use and Engineering Manager
Heather McLaughlin, City Attorney
Kathy Trinique, Administrative Secretary

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

II. ADOPTION OF AGENDA

On motion of Commissioner Syracuse, seconded by Commissioner Sherry, the agenda was adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Sherry, Syracuse and Acting Chair Ernst

Noes: None

Absent: Commissioner Thomas

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

A. Approval of Minutes of December 9, 2010

On motion of Commissioner Bortolazzo, seconded by Commissioner Dean, the Consent Calendar was adopted by the following vote:

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

V. REGULAR AGENDA ITEMS

A. AMENDMENT OF THE INCLUSIONARY HOUSING ORDINANCE TO CLARIFY DEFINITIONS

PROPOSAL:

Staff requests Planning Commission review of the proposed revisions to the Inclusionary Housing ordinance and adopt a resolution recommending approval by the City Council. The City's Inclusionary Housing ordinance contains definitions, particularly in determining rent for low and very-low income households, that are difficult to understand and interpret. The City Attorney's Office has made recommended changes to the definitions in the Inclusionary Housing Ordinance to remove the redundancies and clarify the figures to be used to determine appropriate rent for low and very-low income inclusionary housing rental units.

Recommendation:

Review proposed revisions to the Inclusionary Housing ordinance and adopt a resolution recommending approval by the City Council.

Heather McLaughlin, City Attorney, gave a brief overview of this item. This ordinance is primarily a housekeeping item to clarify the existing ordinance.

The Commissioners had no comments or questions.

There were no comments received from members of the public.

There was no further discussion on this item by the Commission.

On motion of Commissioner Bortolazzo, seconded by Commissioner Syracuse, the resolution recommending City Council approval of an amendment to clarify definitions in the Inclusionary

Housing Ordinance in Section 17.17.70.320 pertaining to affordable rent determinations was adopted by the following vote:

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

B. MEDICAL MARIJUANA DISPENSARY BAN

PROPOSAL:

In 2009, the City Council adopted a moratorium on the establishment of medical marijuana dispensaries and hookah lounges. This was in response to an inquiry regarding opening a medical marijuana dispensary. Like many cities, Benicia has a “permissive” zoning system, under which any use—including medical marijuana dispensaries—that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically regulate such dispensaries, the City’s practice has always been to deem dispensaries prohibited. Nevertheless, the City adopted the previous moratorium to make this policy explicit. Since the moratorium is due to expire, permanent rules should be enacted.

Recommendation:

Recommend, by motion, that the City Council adopt the ordinance to prohibit medical marijuana dispensaries except in limited, specified licensed facilities.

Heather McLaughlin, City Attorney, provided an overview of the staff report and attachments for this item. This ordinance would provide a permanent moratorium. In 2009, the City Council adopted a moratorium on the establishment of medical marijuana dispensaries and hookah lounges, in response to an inquiry regarding opening a medical marijuana dispensary. Since the current moratorium is due to expire, permanent rules should be in place. The reason this is coming before the Planning Commission now is that the City was waiting for the outcome of several court cases and the November statewide vote on Proposition 19.

There are two corrections to the staff report. On page 2 at the bottom of the page, the sentence “As noted above, while medical marijuana dispensaries are not uses defined in the Benicia Municipal Code” is not a complete sentence, but it refers to the Executive Summary statement “Like many cities, Benicia has a “permissive” zoning system, under which any use –including medical marijuana dispensaries – that is not expressly enumerated as a permitted use is deemed to be prohibited. Thus, although the Benicia Municipal Code does not specifically regulate such dispensaries, the City’s practice has always been to deem dispensaries prohibited.”

The second correction is on page 4. After additional research, staff found that the city of Vallejo has eight medical marijuana dispensaries instead of two.

This item was recently discussed at the Youth Action Coalition meeting. The Youth Action Coalition considers marijuana to be the #2 substance abuse problem in Benicia among youth. The local youth consider it an easy substance to obtain.

Ms. McLaughlin reviewed the details of the draft ordinance and the additional information attached to the staff report.

Commissioners discussed the following: whether the estimated enforcement cost of \$60,000 is for one or more than one dispensary; is that the same as enforcement for any business; how that cost compares to a bar on First Street; are there statistics about the gender and age of customers; do we know how many legitimate users reside here; what are the crime trends for this specific use; considering the ratio of cities who allow dispensaries versus those who don't allow them; is there some benefit for allowing this type of business; how does the tax structure work and what kind of revenues could it generate.

Ms. McLaughlin responded: \$60,000 is the estimated cost to enforce one dispensary. Her research shows that the cost is much higher to enforce marijuana dispensaries because additional inspections are required. A doctor's recommendation is required to obtain medical marijuana and there are many illnesses that would qualify a person to obtain this substance. We don't know how many Benicia residents are legitimate users. Page 9 of the staff report addresses Benicia's local crime statistics, but we don't have the specific crime trend statistics. In cities that allow dispensaries it has been found that it is easier for residents to obtain the substance, and it may provide a revenue stream. The major consideration is what do we want for our city. The taxes we would receive are sales tax and license tax. We don't know how much revenue would be generated.

The Public Hearing was opened:

Benjamin Hirsch spoke in favor of allowing marijuana dispensaries in Benicia and against the ordinance banning them. He stated that both his parents use medical marijuana and they do not wish to travel to Vallejo to purchase because of crime and safety concerns. Everything else is offered here in Benicia, why not medical marijuana? Crime is anywhere.

Abe Gardner of Rose Drive spoke in favor of allowing marijuana dispensaries in Benicia and against the ordinance banning them. He stated there are 3 issues to be considered when making this decision: (1) its effect on safety; (2) its access for residents, and (3) financial – there are enforcement costs to the City whether or not an ordinance is in place. He stated that he would like to see Benicia receive the tax revenue instead of another city. He personally knows 2 people who use medical marijuana. Buying locally allows residents to purchase smaller quantities when needed. He stated that the City should survey to find out how many residents legally use it.

Steven Shiretta of 364 East O Street spoke in favor of allowing marijuana dispensaries in Benicia and against the ordinance banning them. He stated that the Commission is not well

informed about this issue. When considering this item, the City should first know how many residents there are who legally use it.

The Commission discussion continued about whether there is a website that can be checked to determine the number of residents that use marijuana for medical purposes; whether ID cards are voluntary; if citizens may purchase marijuana without having an ID card; and what the process would be if the City wants to allow dispensaries.

Ms. McLaughlin responded that the Commission may recommend that the City Council adopt the ordinance with a further recommendation for continued study. The ban would be in place until it is determined that the Council wishes to move forward.

The Public Hearing was closed.

Acting Chair Ernst commented about the process to regulate dispensaries and keeping minors from purchasing marijuana.

Commissioner Dean stated that he does not support the staff recommendation but prefers a policy supporting dispensaries here in Benicia. He prefers a strict policy written with thought, study, and community discussion. He noted that he personally knows someone who benefits from medical marijuana use.

Commissioner Bortolazzo agreed with Commissioner Dean and does not support the staff recommendation.

Commissioner Sherry would like to see an ordinance be written that will work for all residents.

Acting Chair Ernst stated that he agreed with the comments made by other Commissioners. He asked Ms. McLaughlin what is the next step in the process.

Ms. McLaughlin responded that the ordinance will be going before City Council either way since the current ban on medical marijuana dispensaries ends on March 20. Without a new ordinance in effect, should the City receive an application, staff would have to determine how it would fit into a current use category. The second to the last attachment in the agenda packet lists the additional items the City may want to study before proceeding with legalizing dispensaries.

Commissioner Sherry stated that he feels pressed to make a decision, with little time for additional consideration.

Commissioner Syracuse made a motion recommending that City Council adopt the ordinance prohibiting medical marijuana dispensaries except in limited, specified licensed facilities.

No Commissioners seconded the motion.

Commissioner Dean made a motion not to adopt staff's recommendation, that City Council move forward with adoption of an ordinance to allow medical marijuana dispensaries in Benicia.

The motion was seconded by Commissioner Bortolazzo and adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Sherry, Syracuse and Acting Chair Ernst

Noes: None

Absent: Commissioner Thomas

Abstain: None.

VII. COMMUNICATION FROM STAFF

None.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Sherry asked if a timeline for appointment of new commissioners had been determined.

Melissa Morton responded that the City has received applications for the two openings on the Planning Commission but we have not yet received a timeline for their appointment. The deadline for applications closes on January 31. Since staff currently has no items to schedule for the February meeting, it is likely that we will have new commissioners appointed in time for the March meeting when we will hold election of officers.

IX. ADJOURNMENT

Meeting was adjourned at 8:05 pm.

AGENDA ITEM
PLANNING COMMISSION MEETING: MARCH 10, 2011
REGULAR AGENDA ITEMS

DATE : February 16, 2011

TO : Planning Commission

FROM : Lisa Porras, Senior Planner

SUBJECT : **REVIEW OF PROPOSED ZONING TEXT AMENDMENT TO REMOVE THE LISTING OF SIGN PERMIT FEES IN SECTION 16.08.030 OF THE CITY OF BENICIA MUNICIPAL CODE AND TO ADOPT A FEE FOR A SIGN PERMIT VARIANCE**

PROJECT : The proposed zoning text amendment would remove the list of sign permit fees in the City of Benicia Sign Ordinance Section 16.08.030 and set forth sign variance fee in the Master Fee Schedule.

RECOMMENDATION:

Adopt a resolution recommending the City Council adopt an ordinance to amend Benicia Municipal Code Section 16.08.030 removing fee amounts for sign permits, and instead refer to the City of Benicia Master Fee Schedule; and establish a sign variance fee which is to be included in the Master Fee Schedule.

EXECUTIVE SUMMARY:

Staff requests Planning Commission approval of a zoning text amendment to amend Section 16.08.030 in Title 16 (Sign Ordinance) to remove reference to specific fee amounts for sign permits. Instead, staff recommends that the ordinance simply refer to the Master Fee Schedule to determine the costs associated with processing sign permits. In addition, the fee for a sign permit variance is recommended to be updated and included in the Master Fee Schedule. The Planning Commission's approval will be in the form of a recommendation to the City Council.

BUDGET INFORMATION:

No impact identified.

ENVIRONMENTAL ANALYSIS:

Staff has reviewed the project and determined it is Categorically Exempt under Section 15305 – Minor Alterations in Land Use Limitations of the California Environmental Quality Act (CEQA), which applies to minor alterations in land use limitations in areas with an average slope of less than 20% that do not result in any changes in land use or density. The proposed modifications to Title 17 do not result in changes to land use.

BACKGROUND:

At present, the City of Benicia Sign Ordinance lists fee amounts ranging from \$5.00 to \$25.00 to process a sign permit. In addition, the Sign Ordinance sets forth a sign variance fee of \$25.00, which is added to any sign permit fee. These fees, as presently listed in the Sign Ordinance, are not consistent with those found in the City Council adopted Master Fee Schedule, which sets sign permit fees at \$150.00 (per site), and at \$450.00 (multi-tenant building), and does not list a sign variance fee. Presently variance fees listed in the Master Fee Schedule range from \$1,500 to \$1,750. To maintain consistency, and to avoid having to make amendments to the Sign Ordinance each time the Master Fee Schedule is updated, staff recommends removing specific fee amounts from the Sign Ordinance and instead, have the Ordinance refer to the City of Benicia Master Fee Schedule for sign permit fees (see attached Draft Ordinance).

Because fees for Sign Permits have been discussed and adopted by the City Council and set forth as \$150 or \$450 there is no additional action required. However, staff recommends that the sign variance fee listed in the Ordinance at \$25.00 be updated or reestablished at another rate. Staff recommends setting the fee for a sign variance at \$150.00.

FURTHER ACTION:

Planning Commission action will be a recommendation to the City Council.

Attachments:

- Draft Resolution
- Exhibit A – Sections 16.08.030 of the Benicia Municipal Code
- Draft Ordinance
- Master Fee Schedule

DRAFT RESOLUTION

RESOLUTION NO. 11-__ (PC)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
RECOMMENDING CITY COUNCIL APPROVAL OF A ZONING TEXT
AMENDMENT TO MODIFY SECTION 16.08.030 OF THE SIGN ORDINANCE TO
REMOVE CITATION OF SPECIFIC FEE AMOUNTS FOR SIGN PERMITS AND
ADOPT AN UPDATED SIGN VARIANCE FEE IN THE MASTER FEE SCHEDULE**

WHEREAS, the Planning Commission at a regular meeting on March 10, 2011 conducted a public hearing, considered all testimony and documents and reviewed the proposed text amendment.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends the City Council approve a zoning text amendment to modify Section 16.08.030 that cites specific sign permit fee amounts and replace it with a reference to the City Council adopted Master Fee Schedule and establish a sign variance fee at \$150.00 in the Master Fee Schedule; and

BE IT FURTHER RESOLVED THAT the Planning Commission of the City of Benicia finds that:

- a) The proposed actions exempt from California Environmental Quality Act review under Section 15305 – Minor Alterations to Land Use Limitations because the proposed changes do not result in changes in land use.
- b) The proposed actions are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and the purposes of the Sign Ordinance.
- c) The proposed actions are consistent with the goals, policies, programs, and maps of the General Plan.

* * * *

On a motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 10th day of March, 2011, and adopted by the following vote:

Ayes
Noes:
Absent:

Planning Commission Chair

EXHIBIT A

**EXISTING SIGN ORDINANCE
BENICIA MUNICIPAL CODE SECTION 18.08.030 - FEES**

18.08.030 Fees.

A. The fee for a sign permit without variance is:

1. Five dollars¹ if the application is for a sign less than 10 square feet in area;
2. Ten dollars¹ if the application is for a sign between 10 and 25 square feet in area;
3. Twenty-five dollars¹ if the application is for a sign more than 25 square feet in area.

B. The fee for a sign permit with variance is the amount in subsection (A) of this section plus \$25.00.¹

C. The fee shall be paid at the time of filing the application and is not refundable.

D. No fee is required where the application is for:

1. Service club sign, BMC 18.16.090;
2. Neighborhood association sign, BMC 18.16.060;
3. Community directional sign, BMC 18.16.030;
4. A sign in lawful use on the day the ordinance codified in this title takes effect. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-929).

DRAFT ORDINANCE

18.08.030 Fees.

A. The fee for a sign permit with or without a variance is set forth in the City of Benicia Master Fee Schedule. :

- ~~1. Five dollars if the application is for a sign less than 10 square feet in area;~~
- ~~2. Ten dollars if the application is for a sign between 10 and 25 square feet in area;~~
- ~~3.1. Twenty five dollars if the application is for a sign more than 25 square feet in area.~~

~~B. The fee for a sign permit with variance is the amount of subsection (A) of this section plus \$25.00~~

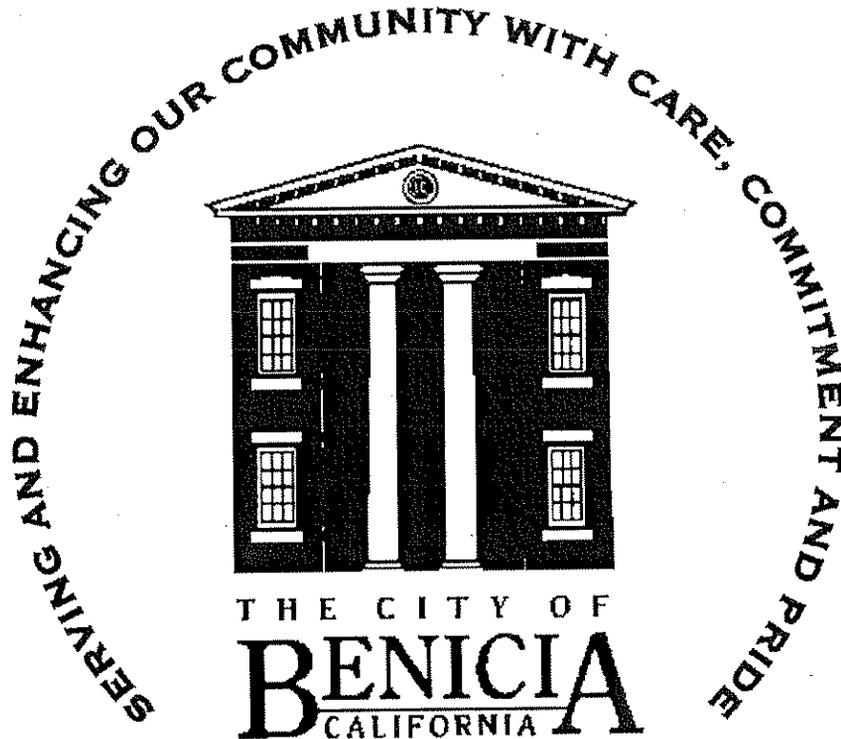
~~C.B.~~ The fee shall be paid at the time of filing the application and is not refundable.

~~D.C.~~ No fee is required where the application is for:

1. Service club sign, BMC 18.16.090;
2. Neighborhood association sign, BMC 18.16.060;
3. Community directional sign, BMC 18.16.030;
4. A sign in lawful use on the day the ordinance codified in this title takes effect (Ord. 77-12 N.S. § 1. 1977; prior code § 8-929).

MASTER FEE SCHEDULE

City of Benicia



Master Fee Schedule

Effective October 20, 2010

Community Development City of Benicia Master Fee Schedule

#	Service Fee Description	Revised Effective 04/21/10
Planning Applications		
401	General Plan Amendment	\$2,875
402	Projects of 0-10 acres	\$50 per acre
403	Projects of 10.01-20 acres	\$25 per acre
404	Projects over 20.01 acres	\$10 per acre
405	Zone Change/Overlay District	\$2,200
406	Projects of 0-10 acres	\$50 per acre
407	Projects of 10.01-20 acres	\$25 per acre
408	Projects over 20.01 acres	\$10 per acre
409	Annexation	\$1,500
410	Condominium Conversion	\$2,250
411	Development Agreement	\$3,500
412	Ordinance Revision	\$2,500
413	Overlay District Plan	\$2,750
414	Planned Development	\$3,025
415	Projects of 0-10 acres	\$50 per acre
416	Projects of 10.01-20 acres	\$25 per acre
417	Projects over 20.01 acres	\$15 per acre
418	Use Permit (Commission)	\$1,800
	Office projects up to 2,500 sq. ft. Residential projects up to 6 units Commercial/Industrial up to 7,500 sq. ft.	
419	Use Permit (Commission)	\$2,275
	Office projects up to 2,501-7,500 sq. ft. Residential projects up to 7-20 units Commercial/Industrial up to 7,501-20,000 sq. ft.	
420	Use Permit (Commission)	\$2,730
421	Use Permit (Staff)	\$1,275
422	Use Permit (Day care or Temporary)	\$750
423	Variance (Staff-Single Family Residences)	\$1,500
424	Variance (Commission)	\$1,750
425	Residential Design Review - (Commission level) Outside H District; Single Family Exempt	\$1,750
426	Commercial Design Review (Commission level)	\$1,750
427	Commercial Design Review (Staff level)	\$1,025
428	Residential Design Review (Commission level, Major) H District Only	\$600
429	Residential Design Review (Commission level, Minor) H District Only	\$300
430	Commercial Design Review (Commission or staff level, Minor)	\$350

Effective October 20, 2010

Community Development City of Benicia Master Fee Schedule

#	Service Fee Description	Revised Effective 04/21/10	
431	Design Consultation Administration	15% of total contract cost	
432	Accessory Dwelling Unit (Administrative Permit)	\$175	
433	Appeal	\$150	
434	Extension of Approval (Staff)	\$175	
435	Extension of Approval (Commission)	\$225	
436	Game Center Permit	\$250	
437	Home Occupation	\$50	
438	Building Permit Review	\$50	
439	Mills Act Contract	\$550	
440	Sign Permit (Per Site)	\$150	
441	Sign Program (Multi-tenant Building)	\$450	
442	Transfer of Density	\$1,250	
443	Zoning Compliance Letter	Standard Letter (Applicant provides template)	\$125
444	Zoning Compliance Letter	Detailed Letter	\$250
445		Each additional hour after first	\$25
	Environmental Review		
446	Exemption from CEQA (filed)	\$250	
447	Initial Study	\$1,300	
448	Negative Declaration	\$300	
449	Mitigated Negative Declaration	\$600	
450	Mitigation Monitoring Program	\$500	
451	Verification of Determination	\$150	
452	Administration-Environmental Reports	25% of total contract cost	
453	State Fish & Game Department Fee	Environmental Impact Report	\$2,842.25
454	State Fish & Game Department Fee	Negative Declaration/Mitigated Negative Dec.	\$2,060.25
473	State Fish & Game Department Fee	Certified Regulatory Program	\$999.50
	Subdivision Applications		
455	Parcel Map - Minor Subdivision	\$2,375	
456	Tentative Map	\$3,250	
457		Per unit/lot	\$50
458	Vesting Parcel Map	\$2,750	

Effective October 20, 2010

AGENDA ITEM
PLANNING COMMISSION MEETING: MARCH 10, 2011
REGULAR AGENDA ITEMS

DATE : February 28, 2011

TO : Planning Commission

FROM : Lisa Porras, Senior Planner

SUBJECT : **MODIFICATIONS TO CONDITIONS OF APPROVAL FOR
A PREVIOUSLY APPROVED USE PERMIT FOR THE RELLIK TAVERN
LOCATED AT 726 FIRST STREET**

PROJECT : 726 First Street (Rellik Tavern)
11PLN-3
APN: 089-341-010

RECOMMENDATION:

Approve amended conditions of approval for a previously approved Use Permit for a bar establishment known as the Rellik Tavern located at 726 First Street, based on the findings and subject to the conditions listed in the attached draft resolution.

EXECUTIVE SUMMARY:

On December 11, 2008, the Planning Commission approved a Use Permit for the Rellik Tavern and set forth conditions of approval, in particular, for the hours of operation and for live music events. Currently, the owner of the Rellik Tavern is requesting modifications to conditions addressing live entertainment. Staff recommends removing previously set limitations on live entertainment and instead, adhering to the permitted hours of operation for such uses as codified in the Downtown Mixed Use Master Plan's Town Core Zone District. In addition, staff recommends minor clean up in reference to adopted noise level standards.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 2.00: Strengthen the Economy
 - Strategy 2.10: Small business assistance

- Strategy 2.20: Facilitate and encourage sustainable development (providing substantial economic benefits while preserving Benicia's environment)
- Goal 3.00: Strengthen Downtown

GENERAL PLAN CONSISTENCY:

- Seek to make downtown a thriving and vigorous community center offering a variety of activities and attractions for residents and visitors. (Source: General Plan Policy 2.12.3, p. 49)
- Work to attract economically viable businesses that will create nightlife downtown such as restaurants, cafes, movie theaters, and other entertainment uses. (Source: General Plan Program 2.12.B, p. 48)

BUDGET INFORMATION:

There are no anticipated budgetary impacts.

ENVIRONMENTAL ANALYSIS:

The previously approved use permit for the project was Categorically Exempt under Section 15301 of the State of California Environmental Quality Act (CEQA). This exemption includes interior and exterior alterations of existing private facilities. The proposed modifications to the conditions of approval are minor and do not alter the previously established CEQA exemption.

BACKGROUND:

Applicant/Owner:	DiZy Enterprizes – Delando and Zoe Pegan
General Plan designation:	Downtown Commercial/Mixed Use
Zoning designation:	Town Core (TC)
Existing use:	Bar/Tavern/Night Club (dba Rellik Tavern)
Proposed use:	no changes
Adjacent zoning and uses:	
North:	Town Core; Commercial
East:	Town Core; Public & Semi-Public, Commercial
South:	Town Core; Commercial
West:	Town Core – Open; Vacant lot

SUMMARY:

Project Description:

In December 2008, the Planning Commission granted the Rellik Tavern a Use Permit to operate seven days a week from 6:00 am to 2:00 am. In addition, the Planning Commission limited the hours for live music, bands, etc. as follows:

Condition #8, Resolution 08-13

- Monday - Thursday: 6:00 p.m. - 10:00 p.m.
- Friday: 5:00 p.m. - 1:00 a.m.
- Saturday: 12:00 p.m. - 1:00 a.m.
- Sunday: 12:00 p.m. - 10 p.m.

During the times listed above for live music, the Commission went further to regulate that any amplified music shall be limited to twelve (12) times per year and that during each event the applicant is to notify the City (Condition #10, Resolution 08-13). Condition #11 permitted the applicant to request an exemption from the hours of live entertainment for a City event and referenced Condition #10 as not applying to such events.

The Rellik Tavern is requesting to modify certain conditions of approval to its previously approved use permit relating to live entertainment. The applicant requests to completely remove Condition #10 and remove the last sentence of Condition #11, which are set forth below:

Condition #10, Resolution 08-13

Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event.

Condition #11, Resolution 08-13

On a case by case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (condition #8) for any citywide event. The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event. Such events shall not count towards the permittee's twelve (12) live entertainment events per calendar year.

Staff supports the applicant's request and recommends additional amendments to Conditions #8, #9 and #12 pertaining to live entertainment to make them consistent with the City's Downtown Mixed Use Master Plan and the City's Noise

ordinance. In addition, staff recommends amending Condition #24 to provide for future monitoring of the proposed revised conditions of approval.

Staff Analysis:

Staff's analysis of the proposed amendments to the conditions of approval of the use permit are set forth below in chronological order.

Condition #8 -

The current hours for live entertainment, as stipulated under Condition #8 of the Use Permit per Resolution 08-13 are as follows:

- Monday - Thursday: 6:00 p.m. - 10:00 p.m.
- Friday: 5:00 p.m. - 1:00 a.m.
- Saturday: 12:00 p.m. - 1:00 a.m.
- Sunday: 12:00 p.m. - 10 p.m.

Staff recommends modifying Condition #8 because it is partially inconsistent with land use regulations specified for the Town Core Zone District within the Downtown Mixed Use Master Plan. The Downtown Mixed Use Master Plan permits a bar/tavern/night club¹ (which includes, by definition, live music events) to operate in the Town Core zone district from 7:00 am to 9:00 pm. Use permit conditions should apply only to conditions allowed outside those hours. Therefore, staff recommends modifying the condition to show that the hours for live music, etc. are extended by one (1) hour, or until 10:00 p.m. Monday through Thursday; by four (4) hours, or until 1:00 a.m. Fridays and Saturdays; and, by one (1) hour, or until 10:00 p.m. on Sunday.

Condition #9 -

Currently, Condition #9, states:

"Solo acoustical musicians/instrumentalists requiring amplification shall be exempt from Condition #8."

¹ **Bar/Tavern:** A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a microbrewery ("brew-pub"), and other beverage tasting facilities. **Night Club:** A facility serving alcoholic beverages for on-site consumption, and providing entertainment, examples of which include live music and/or dancing, comedy, etc. Does not include adult oriented businesses. –Downtown Mixed Use Master Plan, adopted by City Council September 2007.

Staff recommends eliminating this condition finding that it is unnecessary and somewhat confusing in light of the other recommended changes in the conditions of approval set forth in this staff report.

Condition #10 -

Condition #10 currently reads:

"Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event."

Staff recommends removing Condition #10, as requested by the applicant, because the City can monitor any "amplified music" under the City's Noise ordinance. Moreover, the applicant has worked with the Benicia Police Department to review all noise complaints made about the establishment since it has opened and has installed a sound deadening awning at the rear of the tavern to address the noise complaint made by one neighbor, who is satisfied with the modification. The Benicia Police Department has indicated that it has no concerns about eliminating this condition of approval.

Condition #11 -

Condition #11 currently states:

On a case by case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (condition #8) for any citywide event. The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event. Such events shall not count towards the permittee's twelve (12) live entertainment events per calendar year.

The Applicant has requested that the condition be modified to read as follows:

On a case by case basis, the permittee may request exemption from the hours of indoor live entertainment (condition #8). The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event.

Staff supports eliminating the last sentence of Condition #11 because it refers to Condition #10, which staff recommends removing, and also recommends not tying it to citywide events.

Condition #12 -

Condition #12 currently provides:

Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.080(C), sound levels emanating from sound-amplifying equipment shall be limited to seventy-five (75) decibels, as measured from the property line.

Staff recommends modifying Condition #12 to correctly align with section 8.20.190 of the Noise Ordinance which limits acceptable noise levels in commercial areas at 60 and 65 decibels at certain times throughout the day, rather than 75 decibels set forth in the existing Condition #12.

Condition #24 -

Staff recommends adding the following sentence to Condition #24 so that the City can monitor the recommended changes to the conditions of approval for the use permit:

If issues warrant further discussion, the Public Works and Community Development Director shall agendaize a hearing before the Planning Commission to consider remedies and possible amendments to this resolution and the conditions of approval within.

Use Permit Findings, BMC 17.104.060 (A)

In approving the Use Permit for Relik Tavern, the Planning Commission made the following findings, which are not changed by the proposed modifications to certain conditions of approval:

- a. The proposed use is categorically exempt from California Environmental Quality Act review under Guidelines Section 15301, which applies to interior and exterior alterations of existing facilities.
- b. The proposed uses are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and with the Downtown Mixed Use Master Plan, which allows for bar establishments and live entertainment in the Town Core zoning district, subject to the conditions listed below.

- c. The proposed conditional use is required to comply with the provisions of the Noise Ordinance (BMC Chapter 8.20), as well as with all other City ordinances, as discussed in the staff report.
- d. The proposed bar and restaurant are consistent with the goals, policies, programs, and maps of the General Plan. Specifically, the proposal is consistent with General Plan Goal 2.12 B (p. 48), "Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses."

CONCLUSION:

The proposed modifications to Use Permit Resolution 08-13 (see Attachment *Amendments to Resolution 08-13*) meet the purpose and intent of the General Plan and the Downtown Mixed Use Master Plan.

FURTHER ACTION:

The Planning Commission action will be final unless appealed to the City Council within ten (10) business days.

Attachments:

- Draft Resolution
- Amendments to Resolution 08-13
- Planning Commission Resolution 08-13
- Benicia Municipal Code Section 8.20 – Noise Regulations
- Written Statement from Applicant

DRAFT RESOLUTION

RESOLUTION NO. 11- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA AMENDING CERTAIN CONDITIONS OF APPROVAL SET FORTH IN RESOLUTION 08-13 APPROVING A USE PERMIT FOR A BAR/TAVERN/NIGHT CLUB KNOWN AS THE RELLIK TAVERN AT 726 FIRST STREET

WHEREAS, Mr. Delando Pegan of DiZy Enterprises, has requested modification to the conditions of approval to the Use Permit for a bar/tavern/night club at 726 First Street that was approved by the Planning Commission pursuant to Resolution 08-13; and

WHEREAS, staff recommends further amendments to other conditions of approval to provide consistency with the Downtown Mixed Use Master Plan and the City's Noise Ordinance and to allow for monitoring of the revised conditions of approval; and

WHEREAS, the Planning Commission at a regular meeting on March 10, 2011 conducted a public hearing and reviewed the proposed project.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the following modifications to the conditions of approval to the Use Permit for the Rellik Tavern at 726 First Street:

- a. Condition #8: Except as otherwise provided in the Downtown Mixed Use Master Plan Town Core Zone District, which sets hours for bars/taverns/night clubs from 7:00 a.m. – 9:00 p.m.; live music and similar events shall be limited to the following hours:
 - Monday - Thursday: until 10:00 p.m. (1 additional hour)
 - Friday and Saturday: until 1:00 a.m. (four additional hours)
 - Sunday: until 10:00 p.m. (1 additional hour)
- b. Condition #9: eliminated.
- c. Condition #10: eliminated.
- d. Condition #11: On a case by case basis, the permittee may request exemption from the hours of indoor live entertainment (condition #8). The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event.
- e. Condition #12: Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.190, sound levels shall be limited to sixty (6) decibels between 10:00 p.m. and 7:00 a.m., and limited to sixty-five (65) decibels between 7:00 a.m. and 10:00 p.m. as measured from the property line.

- f. Condition #24: Use Permit conditions of approval shall be reviewed on as needed basis by the Public Works and Community Development Department and Police Department. If issues warrant further discussion, the Public Works and Community Development Director shall agendize a hearing before the Planning Commission to consider remedies and possible amendments to this resolution and the conditions of approval within.

BE IT FURTHER RESOLVED THAT the City of Benicia Planning Commission hereby determines that the following prior findings for the use permit approval for the Rellik Tavern set forth in Resolution 08-13 are not changed by the amended conditions of approval:

- a. The proposed use is categorically exempt from California Environmental Quality Act review under Guidelines Section 15301, which applies to interior and exterior alterations of existing facilities.
- b. The proposed uses are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and with the Downtown Mixed Use Master Plan, which allows for bar establishments and live entertainment in the Town Core zoning district, subject to the conditions listed below.
- c. The proposed conditional use is required to comply with the provisions of the Noise Ordinance (BMC Chapter 8.20), as well as with all other City ordinances, as discussed in the staff report.
- d. The proposed bar and restaurant are consistent with the goals, policies, programs, and maps of the General Plan. Specifically, the proposal is consistent with General Plan Goal 2.12 B (p. 48), "Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses."

* * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on March 10, 2011 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Planning Commission Chair

**PROPOSED AMENDMENTS TO
RESOLUTION 08-13**

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "October 20, 2008" prepared by Steve McKee, attached as an exhibit and on file with the Community Development Department.
2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
3. Planning Commission Resolution 08-13 set operating hours for the establishment from 6:00 a.m. to 2:00 a.m., seven days per week.
4. Pursuant to the City Attorney's legal opinion regarding the State of California Labor Code, the smoking lounge portion of this proposal shall not be allowed.
5. Exterior alterations shall obtain necessary design review approvals from the Historic Preservation Review Commission (HPRC). Following HPRC design review approval, the applicant shall submit the final design of the enclosed outdoor patio to the Planning Commission for final review and consideration.
6. No alcohol service/table service shall be permitted in the enclosed patio area.
7. Outdoor enclosed patio design shall address noise attenuation, create a buffer between the commercial bar use and neighboring residential uses, provide a secure environment that can be monitored by Rellik staff, and maintain all legal exiting requirements. Rear door from establishment to patio shall have a self-enclosing mechanism.
8. Except as otherwise provided in the Downtown Mixed Use Master Plan Town Core Zone District, which sets hours for bars/taverns/night clubs from 7:00 a.m. – 9:00 p.m.; live music, and similar events shall be limited to the following hours:
 - Monday - Thursday: ~~6:00 p.m. until~~ 10:00 p.m. (1 additional hour)
 - Friday and Saturday: ~~5:00 p.m. until~~ 1:00 a.m. (four additional hours)
 - Saturday: ~~12:00 p.m. – 1:00 a.m.~~
 - Sunday: ~~12:00 p.m. until~~ 10:00 p.m. (1 additional hour)
- ~~9. Solo acoustical musicians/instrumentalists requiring amplification shall be exempt from Condition #8 [condition #10].~~
- ~~10. Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event.~~
11. On a case by case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (condition #8) ~~for any citywide event.~~ The

request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to the event. ~~Such events shall not count towards the permittee's twelve (12) live entertainment events per calendar year.~~

12. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.030(C)190, sound levels ~~emanating from sound-amplifying equipment shall be limited to seventy-fivesixty (7560) decibels between 10:00 p.m. – 7:00 a.m., and limited to sixty-five (65) decibels between 7:00 a.m. – 10:00 p.m., as measured from the property line.~~
13. Live entertainment shall not take place in any exterior area at any time. Music from interior performances shall not be transmitted to outdoor areas; doors and windows shall remain closed during all live entertainment performances.
14. The total number of occupants present at live entertainment events shall not exceed the total allowed occupant capacity of the bar, which shall be posted in compliance with the Uniform Building Code.
15. In the case of a private event, Licensee(s) shall provide written notification to the Investigation Commander of the Benicia Police Department at least two (2) weeks prior, concerning all contracted events occurring on the premises. Notification shall include the date of the event, the start and end time, and estimated number in attendance. If the contracted event is agreed upon prior to the two (2) week period of the occurrence, the licensee(s) shall notify the Investigation Commander of the Benicia Police Department in writing within 24 hours of the contracted event.
16. Current contact information for all business owners shall be on file with the Police Department and the Community Development Department; any changes shall be reported to both departments within 15-calendar days.
17. The operator of the establishment shall be responsible for monitoring clients' behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood.
18. No alcohol shall be consumed outside of the business establishment, other than in the enclosed outdoor patio area.
19. All employees shall attend the Responsible Beverage Service training; certificates must be renewed and kept current in the time frame established by the program, and certificates must be kept at the establishment and available upon request.
20. Owner / Manager shall attend all restaurant and / or bar owner meetings called by the Chief of Police.
21. The applicant shall obtain all proper permits required by the Solano County Health and Social Services Department for light food service prior to food service operation.

The applicant shall obey all Health Department general conditions, laws, and regulations relative to their food service operation.

22. This establishment is subject to all requirements of the Fire and Life Safety Division, in relation to its enforcement of the Uniform Building Code and Fire Code
23. The applicant shall obey all subsequent ABC general conditions, laws, and regulations relative to their liquor license.
24. Use Permit conditions of approval shall be reviewed on an as needed basis by the Community Development Department and Police Department. If issues warrant further discussion, the Community Development Director shall agendize a hearing before the Planning Commission to consider remedies and possible amendments to this resolution and the conditions of approval within.
25. In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.
26. All exterior modifications will require Design Review approval from the Historic Preservation Review Commission.
27. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

PLANNING COMMISSION RESOLUTION 08-13

RESOLUTION NO. 08-13 (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR A BAR ESTABLISHMENT WITH LIVE ENTERTAINMENT AT 726 FIRST STREET

WHEREAS, Mr. Delando Pegan of DiZy Enterprises, has requested Use Permit approval for a bar establishment with live entertainment at 726 First Street; and

WHEREAS, the Planning Commission at a regular meeting on December 11, 2008 conducted a public hearing and reviewed the proposed project.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the bar establishment with live entertainment at 726 First Street.

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a. The proposed use is categorically exempt from California Environmental Quality Act review under Guidelines Section 15301, which applies to interior and exterior alterations of existing facilities.
- b. The proposed uses are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and with the Downtown Mixed Use Master Plan, which allows for bar establishments and live entertainment in the Town Core zoning district, subject to the conditions listed below.
- c. The proposed conditional use is required to comply with the provisions of the Noise Ordinance (BMC Chapter 8.20), as well as with all other City ordinances, as discussed in the staff report.
- d. The proposed bar and restaurant are consistent with the goals, policies, programs, and maps of the General Plan. Specifically, the proposal is consistent with General Plan Goal 2.12 B (p. 48), "Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses."

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

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "October 20, 2008" prepared by Steve McKee, attached as an exhibit and on file with the Community Development Department.

2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
3. Hours shall not exceed 6:00 a.m. to 2:00 a.m., seven days per week.
4. Pursuant to the City Attorney's legal opinion regarding the State of California Labor Code, the smoking lounge portion of this proposal shall not be allowed.
5. Exterior alterations shall obtain necessary design review approvals from the Historic Preservation Review Commission (HPRC). Following HPRC design review approval, the applicant shall submit the final design of the enclosed outdoor patio to the Planning Commission for final review and consideration.
6. No alcohol service/table service shall be permitted in the enclosed patio area.
7. Outdoor enclosed patio design shall address noise attenuation, create a buffer between the commercial bar use and neighboring residential uses, provide a secure environment that can be monitored by Rellik staff, and maintain all legal exiting requirements. Rear door from establishment to patio shall have a self-closing mechanism.
8. Indoor live entertainment shall be limited to the following hours:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 1:00 a.m.
 - Saturday: 12:00 p.m. to 1:00 a.m.
 - Sunday: 12:00 p.m. to 10 p.m.
9. Solo acoustical musicians/instrumentalists requiring amplification shall be exempt from Condition #8.
10. Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event.
11. On a case-by-case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (Condition #8) for any city-wide event. The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event. Such events shall not count towards the permittee's allotted twelve (12) live entertainment events per calendar year.
12. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.080(C), sound

sound levels emanating from sound-amplifying equipment shall be limited to seventy-five (75) decibels, as measured from the property line.

13. Live entertainment shall not take place in any exterior area at any time. Music from interior performances shall not be transmitted to outdoor areas; doors and windows shall remain closed during all live entertainment performances.
14. The total number of occupants present at live entertainment events shall not exceed the total allowed occupant capacity of the bar, which shall be posted in compliance with the Uniform Building Code.
15. In the case of a private event, Licensee(s) shall provide written notification to the Investigation Commander of the Benicia Police Department at least two (2) weeks prior, concerning all contracted events occurring on the premises. Notification shall include the date of the event, the start and end time, and estimated number in attendance. If the contracted event is agreed upon prior to the two (2) week period of the occurrence, the licensee(s) shall notify the Investigation Commander of the Benicia Police Department in writing within 24 hours of the contracted event.
16. Current contact information for all business owners shall be on file with the Police Department and the Community Development Department; any changes shall be reported to both departments within 15-calendar days.
17. The operator of the establishment shall be responsible for monitoring clients' behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood.
18. No alcohol shall be consumed outside of the business establishment, other than in the enclosed outdoor patio area.
19. All employees shall attend the Responsible Beverage Service training; certificates must be renewed and kept current in the time frame established by the program, and certificates must be kept at the establishment and available upon request.
20. Owner / Manager shall attend all restaurant and / or bar owner meetings called by the Chief of Police.
21. The applicant shall obtain all proper permits required by the Solano County Health and Social Services Department for light food service prior to food service operation. The applicant shall obey all Health Department general conditions, laws, and regulations relative to their food service operation.
22. This establishment is subject to all requirements of the Fire and Life Safety Division, in relation to enforcement of Uniform Building Code and Fire Code

23. The applicant shall obey all subsequent ABC general conditions, laws, and regulations relative to their liquor license.
24. Use Permit conditions of approval shall be reviewed on an as needed basis by the Community Development Department and Police Department.
25. In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.
26. All exterior modifications will require Design Review approval from the Historic Preservation Review Commission.
27. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * *

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on December 11, 2008 by the following vote:

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



Dan Healy
Planning Commission Vice Chair

BENICIA MUNICIPAL CODE
SECTION 8.20 – NOISE REGULATIONS

**Chapter 8.20
NOISE REGULATIONS¹**

Sections:

- 8.20.010 Declaration of policy.
- 8.20.020 Definitions.
- 8.20.030 Sound-amplifying equipment – Purpose of provisions.
- 8.20.040 Sound-amplifying equipment – Registration – Required.
- 8.20.050 Sound-amplifying equipment – Registration – Statement filing and approval.
- 8.20.060 Sound-amplifying equipment – Registration – Fee.
- 8.20.070 Sound-amplifying equipment – Appeal from disapproval.
- 8.20.080 Sound-amplifying equipment – Use regulations.
- 8.20.090 Radios, television sets and similar devices.
- 8.20.100 Hawkers and peddlers.
- 8.20.110 Drums – Use restricted.
- 8.20.120 Schools, hospitals and churches.
- 8.20.130 *Repealed.*
- 8.20.140 Machinery, equipment, fans and air conditioning.
- 8.20.150 Construction of buildings and projects.
- 8.20.160 Vehicle repairs.
- 8.20.170 Motor-driven vehicles.
- 8.20.180 Sound level measurement criteria.
- 8.20.190 Ambient base noise level.
- 8.20.200 Excessive noise prohibited.
- 8.20.210 Petition for temporary relief from regulations.
- 8.20.220 *Repealed.*
- 8.20.230 Violation – Additional remedy.

8.20.010 Declaration of policy.

It is declared to be the policy of the city to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power. At certain levels noises are detrimental to the health and welfare of the citizenry and in the public interests shall be systematically proscribed. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-101).

8.20.020 Definitions.

As used in this chapter, unless the context otherwise clearly indicates, the words and phrases used in this chapter are defined as follows:

A. "Ambient noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from any sources near and far. For the purpose of this chapter, ambient noise level is the level obtained when the noise level is averaged over a period of 15 minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made.

- B. "Commercial purpose" means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.
- C. "Decibel" means a unit of level when the base of the logarithm is the tenth root of 10 and the quantities concerned are proportional to power.
- D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger, or work by private or public utilities when restoring utility service.
- E. "Frequency" of a function periodic in time means the reciprocal of the primitive period. The unit is the hertz and shall be specified.
- F. "Hertz" means the complete sequence of values of a periodic quantity which occurs during a period.
- G. "Microbar" means a unit of pressure commonly used in acoustics and is equal to one dyne per square centimeter.
- H. "Motor vehicles" includes, but is not limited to, mini-bikes and go-carts.
- I. "Noncommercial purpose" means the use, operation or maintenance of any sound equipment for other than a commercial purpose. "Noncommercial purpose" means and includes, but is not limited to, philanthropic, political, patriotic and charitable purposes.
- J. "Period" of a periodic quantity means the smallest increment of time for which the function repeats itself.
- K. "Periodic quantity" means oscillating quantity, the values of which recur for equal increments of time.
- L. "Person" means a person, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature.
- M. "Sound-amplifying equipment" means any machine or device for the amplification of the human voice, music, or any other sound. "Sound-amplifying equipment" shall not include standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. "Sound-amplifying equipment," as used in this chapter, shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.
- N. "Sound level" or "noise level," in decibels (dB), is the sound measured with the "A" weighting and slow response by a sound level meter.

O. "Sound level meter" means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for sound level meters S1.4-1971 or the most recent revision thereof.

P. "Sound truck" means any motor vehicle, or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto any sound-amplifying equipment. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-102).

8.20.030 Sound-amplifying equipment – Purpose of provisions.

The council enacts this legislation for the sole purpose of securing and promoting the public health, comfort, safety and welfare of its citizenry. While recognizing that the use of sound-amplifying equipment is protected by the constitutional rights of freedom of speech and assembly, the council nevertheless feels obligated to reasonably regulate corrective constitutional rights of the citizens of this community to privacy and freedom from public nuisance of loud and unnecessary noise. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-501).

8.20.040 Sound-amplifying equipment – Registration – Required.

It is unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the city a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purposes of giving instructions, directions, talks, addresses, lectures, or transmitting music to any person or assemblages of persons in or upon any street, alley, sidewalk, park, place or public property without first filing a registration statement and obtaining approval thereof as set forth in BMC 8.20.050 through 8.20.080. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-502).

8.20.050 Sound-amplifying equipment – Registration – Statement filing and approval.

A. Every user of sound-amplifying equipment shall file a registration statement with the city manager or his designee 15 days prior to the date on which the sound-amplifying equipment is intended to be used, which statement shall contain the following information:

1. The name, address and telephone number of both the owner and user of the sound-amplifying equipment;
 2. The maximum sound-producing power of the sound-amplifying equipment which shall include the wattage to be used, the volume in decibels of sound which will be produced, and the approximate distance for which sound will be audible from the sound-amplifying equipment;
 3. The license and motor number if a sound truck is to be used;
 4. A general description of the sound-amplifying equipment which is to be used;
- and

5. Whether the sound-amplifying equipment will be used for commercial or noncommercial purposes.

B. The city manager, or his designee, shall return to the applicant an approved certified copy of the registration statement unless he finds that:

1. The conditions of the motor vehicle movement are such that in the opinion of the city manager, use of the equipment would constitute a detriment to traffic safety; or
2. The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or
3. The registration statement required reveals that the applicant would violate the provisions set forth in BMC 8.20.080 or any other provisions of this code.

C. In the event the registration statement is disapproved, the city manager or his designee shall enforce upon the statement his reasons for disapproval and return it forthwith to the applicant. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-503).

8.20.060 Sound-amplifying equipment – Registration – Fee.

Prior to the issuance of the registration statement, a fee in the amount of \$25.00 per day, or any portion thereof, shall be paid to the city, if the loudspeaker or sound-amplifying equipment is to be used for commercial purposes. No fee shall be required for the operation of a loudspeaker or sound-amplifying equipment for noncommercial purposes. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-505).

8.20.070 Sound-amplifying equipment – Appeal from disapproval.

Any person aggrieved by disapproval of a registration statement may appeal the disapproval to the city council pursuant to Chapter 1.44 BMC. (Ord. 07-37 § 1; Ord. 77-2 N.S. § 1, 1977; prior code § 12-504).

8.20.080 Sound-amplifying equipment – Use regulations.

The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:

- A. The only sounds permitted shall be either music or human speech, or both.
- B. The operation of sound-amplifying equipment shall only occur between the hours of 9:00 a.m. and 8:00 p.m. each day except on Sundays and legal holidays. No operation of sound-amplifying equipment for commercial purposes shall be permitted on Sundays or legal holidays. The operation of sound-amplifying equipment for noncommercial purposes on Sundays and legal holidays shall only occur between the hours of 9:00 a.m. and 9:00 p.m.
- C. Sound levels emanating from sound-amplifying equipment shall not exceed 15 decibels above the ambient base noise level.

D. Notwithstanding the provisions of subsection (C) of this section, sound-amplifying equipment shall not be operated within 200 feet of churches, schools, hospitals, or city or county buildings unless specifically authorized by the city manager or his designee.

E. In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing, or a nuisance to reasonable persons of normal sensitiveness within the area of audibility. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-506).

8.20.090 Radios, television sets and similar devices.

A. Use Restricted. It is unlawful for any person within any residential zone of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitiveness residing in the area.

B. Prima Facie Violation. Any noise level exceeding the ambient base level at the property line of any property or, if a condominium or apartment house, within any adjoining apartment, by more than five decibels shall be deemed to be prima facie evidence of a violation of the provisions of this section. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-201).

8.20.100 Hawkers and peddlers.

It is unlawful for any person within the city to sell anything by outcry within any area of the city zoned for residential uses. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licensed public entertainment events. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-202).

8.20.110 Drums – Use restricted.

It is unlawful for any person to use any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the city. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise duly authorized to engage in such conduct. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-203).

8.20.120 Schools, hospitals and churches.

It is unlawful for any person to create any noise on any street, sidewalk or public place adjacent to any school, institution of learning or church while the same is in use, or adjacent to any acute hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such street, sidewalk or public place indicating the presence of a school, church or hospital. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-204).

8.20.130 Animals and fowl.

Repealed by Ord. 07-72. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-205).

8.20.140 Machinery, equipment, fans and air conditioning.

It is unlawful for any person to operate any machinery, equipment, pump, fan, air conditioning apparatus, or similar mechanical device in any manner so as to create any noise which would cause the noise level at the property line of any property to exceed the ambient base noise level by more than five decibels. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-206).

8.20.150 Construction of buildings and projects.

It is unlawful for any person within a residential zone, or within a radius of 500 feet therefrom, to operate equipment or perform any outside construction or repair work on buildings, structures, or projects or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or any other construction type device between the hours of 10:00 p.m. of any one day and 7:00 a.m. of the next day in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance unless beforehand a permit therefor has been duly obtained from the city manager or his designee. No permit shall be required to perform emergency work as defined in BMC 8.20.020. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-301).

8.20.160 Vehicle repairs.

It is unlawful for any person within any residential area of the city to repair, rebuild, or test any motor vehicle between the hours of 10:00 p.m. of one day and 7:00 a.m. of the next day in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-401).

8.20.170 Motor-driven vehicles.

It is unlawful for any person to operate any motor-driven vehicle within the city in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance; provided, however, any such vehicle which is operated upon any public highway, street, or right-of-way shall be excluded from the provisions of this section. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-402).

8.20.180 Sound level measurement criteria.

Any sound level measurement made pursuant to the provisions of this chapter shall be measured with a sound level meter using the "A" weighting. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-103).

8.20.190 Ambient base noise level.

Where the ambient noise level is less than designated in this section the respective noise level in this section shall govern.

Sound Level A, decibels
Community Environment Classification

Zone		Very Quiet (rural, suburban)	Quiet (suburban)	Slightly noisy (suburban, urban)
R1 and R2	10:00 p.m. to 7:00 a.m.	40	45	50
R1 and R2	7:00 p.m. to 10:00 p.m.	45	50	55
R1 and R2	7:00 a.m. to 7:00 p.m.	50	55	60
R3 and R4	10:00 p.m. to 7:00 a.m.	45	50	55
R3 and R4	7:00 a.m. to 10:00 p.m.	50	55	60
Commercial	10:00 p.m. to 7:00 a.m.		55	60
Commercial	7:00 a.m. to 10:00 p.m.		60	65
M1	anytime		70	70
M2	anytime		75	75

(Ord. 77-2 N.S. § 1, 1977; prior code § 12-104).

8.20.200 Excessive noise prohibited.

A. Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to wilfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

B. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

1. The level of the noise;
2. The intensity of the noise;
3. Whether the nature of the noise is usual or unusual;
4. Whether the origin of the noise is natural or unnatural;
5. The level and intensity of the background noise, if any;
6. The proximity of the noise to residential sleeping facilities;
7. The nature and zoning of the area within which the noise emanates;

8. The density of the inhabitation of the area within which the noise emanates;
9. The time of day or night the noise occurs;
10. The duration of the noise;
11. Whether the noise is recurrent, intermittent, or constant; and
12. Whether the noise is produced by a commercial or noncommercial activity.
(Ord. 77-2 N.S. § 1, 1977; prior code § 12-601).

8.20.210 Petition for temporary relief from regulations.

Any person may petition the city council for temporary relief from provisions of this chapter by written request directed to the city clerk. The city council shall hear such petition at the next regular city council meeting not less than five days after the filing of said request. Upon hearing all the evidence, the city council may grant temporary relief from the provisions of this chapter upon such terms and conditions as the council may see fit if the council finds that the temporary relief does not endanger the health, welfare or safety of the residents of the city. The temporary relief may not exceed 30 days in duration. The applicant for relief may not exceed the provisions of this chapter until such time as the permit of the city has been issued. The decision of the city council shall be final. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-701).

8.20.220 Violation – Penalty.

Repealed by Ord. 03-9. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-105).

8.20.230 Violation – Additional remedy.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this chapter, which operation or maintenance causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-106).

¹ For statutory provisions on noise control, see Health and Safety Code § 46000 et seq.

This page of the Benicia Municipal Code is current through Ordinance 10-02, passed August 17, 2010.
Disclaimer: The City Clerk's Office has the official version of the Benicia Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.ci.benicia.ca.us/>
(<http://www.ci.benicia.ca.us/>)
City Telephone: (707) 746-4201
Code Publishing Company
(<http://www.codepublishing.com/>)

WRITTEN STATEMENT FROM APPLICANT

DiZy Enterprises L.L.C. dba The Rellik Tavern request to amend the current Use Permit regarding live music, specifically Condition #10 and #11. DiZy Enterprises request that Condition #10 be completely eliminated and that Condition #11 be amended to read as follows.

11. On a case-by-case basis, the permitted may request exemption from the hours of operation of indoor live entertainment (Condition #8). The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to the event.

DiZy Enterprises L.L.C. also request that there be mutually acceptable verbiage to better define the differences between indoor live music and amplified music such as our house sound system or DJs.

The original Use Permit conditions were requested and worked out with Lieutenant Mike Daley, Mike Marcus, DiZy Enterprises L.L.C. and our police liaison Wade Gomes of WG Consulting. These conditions were made with the understanding that they would one day (after being in business for some time) be re-evaluated. The Planning Commission upon approving our use permit acknowledged that we would probably desire a future amendment. Wade Gomes of WG Consulting and Lt. Bob Oettinger have recently met to discuss these proposed changes and it is our understanding that Lt. Bob Oettinger would be supportive of amending our use permit as requested.

Lt. Oettinger was also kind enough to supply Wade Gomes with requested copies of all police reports pertaining to complaints made about The Rellik Tavern. Upon reviewing the police reports it was noted there was only one unfounded police report that refers to a live music complaint. It was also noted that upon arrival of the officers no music

could be heard. There were only seven noise complaints in 2010 with five of those being made by a single source. Those five complaints referred to noise off our rear smoking deck. We have since installed, at some expense, a sound deadening awning. The neighbor is now very satisfied and the problem has been eliminated. The other two complaints were not sustained.

It is DiZy Enterprises L.L.C. belief that The Rellik Tavern has proven to be a trouble free and positive addition to the First Street Business Community. The Rellik Tavern has contributed largely to making First Street Benicia a Bay Area destination. Based on the fact that no other similar business on First Street is restricted with these same conditions our requested use permit amendment will give us parity and an opportunity to increase our patronage. It is our opinion these requested changes to our use permit will be a win for us by increasing our business as well as a win for the city by drawing more people to the First Street area.

AGENDA ITEM
PLANNING COMMISSION MEETING: MARCH 10, 2011
REGULAR AGENDA ITEMS

DATE : February 28, 2011

TO : Planning Commission

FROM : Lisa Porras, Senior Planner

SUBJECT : **REVIEW AND DISCUSS UPDATES TO THE PLANNING COMMISSION'S RECOMMENDED PRIORITY PROJECTS AND DISCUSSION TOPICS FOR FISCAL YEARS 2011-2012 AND 2012-2013**

RECOMMENDATION:

Review, discuss, and make recommendations for City priority projects and future Planning Commission discussion topics.

EXECUTIVE SUMMARY:

This list provides the basis for recommended actions for the City of Benicia's Strategic Plan (Attached Draft for 2011-2013), as well as ongoing topics for discussion and action by the Commission. This list is reviewed, updated, and prioritized on an annual basis by the Planning Commission and subsequently forwarded on to the City Council for its consideration during the biannual strategic planning process. Items may be added to or removed from the list by a majority consensus of the Planning Commission.

All City Board and Commission work plans are determined by the City Council. This list will be reviewed as part of the 2011-2013 strategic planning/budget process.

BUDGET INFORMATION:

There are no anticipated budgetary impacts.

BACKGROUND:

The Planning Commission last reviewed its priority projects list in October 2009. The list was expanded at that time to include items that require periodic review, plus sections for new topics and completed tasks/projects.

This list is being brought back to the Planning Commission for review, consideration, and possible amendments to coincide with the City Council's strategic planning and budget process.

SUMMARY:

Staff is requesting that the Commission re-evaluate the list to add, delete, reorder, and rank projects and discussion topics. The Council will determine which projects will be completed and funded, and staff and the Planning Commission will be able to follow an approved work plan. Discussion topics to be decided by the Commission will be agendaized based on meeting availability and staff workload. The intent of the discussion items is to provide a forum for issues the Commission believes are most important. It is not the intent to have a discussion item on every Planning Commission agenda.

FURTHER ACTION:

The Planning Commission's final recommendation for priority projects will be forwarded to City Council for its consideration during the City's biannual strategic planning and budget process.

Attachments:

- ❑ Draft Planning Commission Priority Projects and Discussion Topics
- ❑ City of Benicia DRAFT Strategic Plan FY 2011-2013
- ❑ 2010 Discussion Topics – Completed: Gateways
- ❑ 2010 Discussion Topics – Completed: Restaurants, Bars, Live Entertainment

**DRAFT PLANNING COMMISSION PRIORITY
PROJECTS AND DISCUSSION TOPICS**

Priority	Projects	Status (March 2011)
1	Adopt and implement the Lower Arsenal Specific Plan and provide necessary funding	<p>ON HOLD On hold pending hazard remediation process.</p>
2	Ensure that the Benicia Business Park is appropriately planned and environmentally mitigated.	<p>INACTIVE Application withdrawn. 2010 State Planning Grant was not awarded.</p>
3	Complete and implement the Climate Action Plan (CAP), adopt standards for green building and energy efficiency, and develop funding for energy efficiency projects (such as solar installation)	<p>IN PROGRESS Climate Action Plan adopted September 15, 2009. Community Sustainability Commission formed; working with staff to prioritize and implement 20 of the 120 strategies identified, including standards for green building, energy efficiency and renewable energy projects.</p>
4	Enhance the appearance of City gateways	<p>COMPLETED Planning Commission discussed on February 11, March 11, and April 8, 2010. Developed "<i>Principles for Gateway Priorities, Components, and Process</i>" for submission to Council.</p>
5	Update and/or develop consistent operating policies for restaurants/bars (e.g., entertainment, sidewalk access, alcohol restrictions, etc.)	<p>COMPLETED (?) On March 11, 2010 the Planning Commission received examples of conditions of approval, relevant general plan policy language, regulatory standards, and land use definitions. Staff recommends that the Planning Commission continue to treat, review, and assess these uses through the Use Permit process due to the variety of circumstances that may apply.</p>

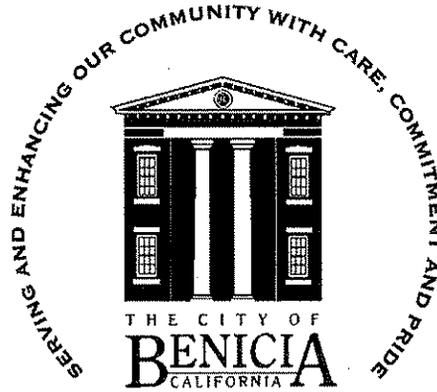
DRAFT

6	Review opportunities for additional pedestrian amenities for First Street	<p>UNCERTAIN – REMOVE (?) Requires further clarification from the Commission regarding intent.</p>
7	Seek ways to fund and construct a train and/or transit station	<p>IN PROGRESS – LONG TERM Staff continues to work with STA and MTC to pursue and secure possible funding.</p>
8	Study westside waterfront pathway system	<p>REMOVE Public right-of-way does not exist to support this concept.</p>
9	Review Southampton open space policies (seek to intensify allowed uses in the open space areas)	<p>REMOVE Southampton Open Space is deed restricted against other uses.</p>
10	Determine the feasibility of expanding Lake Herman and restoring Pine Lake (to expand water storage and capacity)	<p>REMOVE These objectives are not realistic from a permitting or public safety perspective.</p>
Priority	Planning Commission Discussion Topics	Status
1		
2		
3		

ITEMS	PERIODIC REPORTS/REVIEWS	STATUS/TIMELINE
1	General Plan Implementation report	Done on a yearly basis, every 4 th quarter.
2	Review of the City's Capital Improvement Program for General Plan Compliance	Completed every 2 years; coincides with the City Budget cycle.

- This list to be reviewed and updated once every year, during the first quarter (January, February, March)
- All projects require Council direction and funding.
- Discussion Topics will be placed on the Planning Commission's agenda based on Council direction, staff workload, and agenda availability.
- The Planning Commission Chair and staff work together to review and finalize the Planning Commission Agenda.

**CITY OF BENICIA DRAFT STRATEGIC PLAN
FY 2011-2013**



City of Benicia

Strategic Plan

FY ~~2009~~ – ~~2011~~ 2011-2013

Strategic Planning

The Strategic Planning process is a proven and thoughtful method for determining how an organization's resources can be most wisely allocated. Strategic Planning requires research and analysis before making resource allocation decisions; strategic planning decisions are not randomly made. Strategic Planning requires research and analysis that is:

1. **COMPREHENSIVE:** all of the City's functions and responsibilities are reviewed prior to allocation decisions.
2. **LONG-TERM:** the City's long-term needs and opportunities are reviewed prior to making allocation decisions.
3. **INCLUSIVE:** all stakeholders are invited and encouraged to participate in needs and opportunities assessment prior to allocation decisions.

Strategic Plan Elements

1. **MISSION STATEMENT:** a statement of the City's ultimate purpose and the difference it wishes to make for the community.
2. **VISION STATEMENT:** the character-defining elements of the ideal organization.
3. **VALUES STATEMENT:** the guiding principles the organization believes are right and should guide conduct.
4. **STRATEGIC ISSUES:** the major needs and opportunities facing the organization over the next two to five years that most impact achievement of the Mission and Vision. Numerous, important issues face any organization. The identified Strategic Issues are those that are perceived to be most critical.
5. **STRATEGIES:** one or more approaches to take in order to address the Strategic Issues.
6. **STRATEGIC PLAN ACTION ITEMS:** the specific projects and programs that will be pursued by the organization in the budget period (two years) to implement the Strategies.

The Strategic Plan differs from the City's General Plan in that the General Plan reflects the City's long-range vision. The Strategic Plan is a plan for the next two-five years that will help the City accomplish the goals of the General Plan with shorter-term strategies and actions.

Key points to keep in mind when developing a Strategic Plan include:

- Strategic Planning proceeds from the assumption that resources are limited so we must allocate them based on a review and identification of the highest priorities for the upcoming planning period (two-five years).

- Strategic Plan issues are the five +/- problems and opportunities that will arise in the planning period that will most impact achievement of the City's mission, vision and values.
- Strategic Plan strategies are the most promising approaches or general direction that will resolve the five Strategic Issues.
- Strategic Actions are the most effective projects, programs or activities that will execute or implement the strategies.
- Actions selected can be new, already planned, or on-going. The point is identifying and selecting actions that will best address the strategies and issues identified in the plan.
- The package of actions selected should not be comprised of only those that are easily achievable. Instead, they should be ambitious, while realistically achievable within resources that can be assembled within the planning period.
- Ultimately, resources required will be considered and evaluated in the budget process. The budget process is about allocating available resources to priorities established by the City Council.
- The last major policy step in the Strategic Planning process is budget adoption.

Implementation Process

The City's Strategic Plan is achieved by pursuit of the following activities:

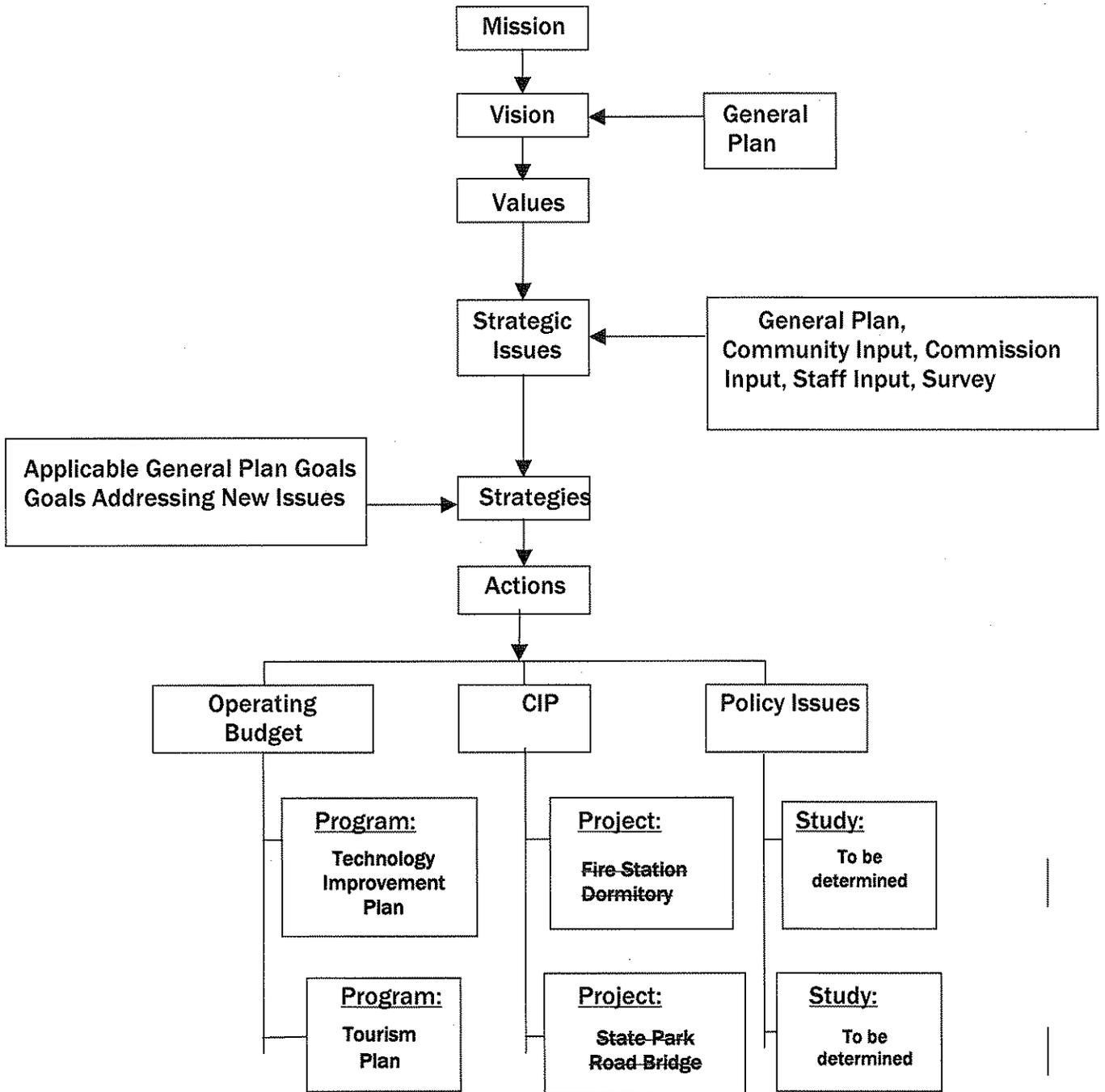
1. **BUDGET APPROPRIATION:** allocating our discretionary budget dollars to projects and programs that will address Strategic Plan Issues.
2. **DEPARTMENT STRATEGIC PLANS:** establishment of Strategic Plans by each department that include Actions that address Strategic Plan Issues.
3. **EMPLOYEE PERFORMANCE PLANS:** including objectives in the Performance Plan of every employee that addresses Strategic Plan Issues.

4. **MONITORING PLANS:**

- a. Employee Performance Plans: supervisors personally review and discuss the employee's performance plan on a quarterly basis.
- b. Strategic Action Plan: City Manager and Department Heads review progress once per month at staff meetings, and once per quarter at Council meetings.
- c. Performance Measures: The ~~2009-2011~~2011-2013 Budget has performance measures identified in each of the department narratives. These measures will be useful for tracking progress on both the Citywide Strategic Plan Actions, as well as other departmental priorities.

The following pages illustrates the process, as well as each of the City's Strategic Plan elements and together comprise the City's Strategic Plan for ~~2009-2011~~2011-2013.

Benicia Strategic Planning Process



City of Benicia

Mission, Vision and Values

City Mission:

- **Excellent Service**

City Vision:

- **To work together to build a sustainable community**

City Values or Guiding Principles:

- **Respect**
- **Responsiveness**
- **Integrity**
- **Inclusiveness & Collaboration**
- **Teamwork**

STRATEGIC ISSUE 1: Protecting Community Health and Safety

STRATEGIES

ACTIONS

- | | |
|---|--|
| <p>1) Provide modern and functional public safety facilities</p> | <p>1) (a) Investigate funding strategies for a functional police building and research updating existing plan to meet LEED certification
 (b) Construct Fire Station 12 dormitory (completed) <u>Evaluate need to replace emergency generators at Station 11 and City Hall</u></p> |
| <p>2) Maintain adequate staffing for public safety and a strong EMS program</p> | <p>2) (a) Apply for a police staffing economic stimulus grant for two FTE Officers and one FTE Police Service Technician/CSO
 (b) Maintain current public safety staffing service levels
 <u>(c) Explore opportunities for resource sharing/collaboration with other fire service agencies.</u>
 <u>(d) Explore opportunities for consolidation of fire and emergency medical dispatch services with other agencies.</u></p> |
| <p>3) Provide a high state of preparedness for disasters/emergencies</p> | <p>3) (a) Educate our citizens on the Community Alert Notification System, and conduct EOC trainings
 (b) Establish a community real-time air monitoring system to alert the City and affected community of significant air quality issues
 <u>(c) Conduct Emergency Operations Center Exercises, at least twice annually.</u>
 <u>(d) Ensure all city employees are trained at the proper levels to meet the National Incident Management System Standards.</u></p> |
| <p>4) Promote community preservation and prevent nuisances through increased code enforcement, environmental strategies and community education</p> | <p>4) Leverage code enforcement resources to resolve systemic quality of life issues</p> |
| <p>5) Promote community and personal health</p> | <p>5) (a) Address issues in healthy kids survey to reduce alcohol experimentation, access and use by Benicia Youth
 <u>(b) Improve smoking ordinance</u></p> |

STRATEGIC ISSUE 1: Protecting Community Health and Safety - Continued

PRIMARY GENERAL PLAN GOALS

- ▶ GOAL 2.28: Improve and maintain public facilities and services.
- ▶ GOAL 4.22: Update and maintain the City's Emergency Response Plan.

STRATEGIC ISSUE 2: Protecting and Enhancing the Environment

STRATEGIES	ACTIONS
1) Reduce greenhouse gas emissions and energy consumption	1) (a) Approve Climate Action Plan, including renewable energy projects (completed) (b) Establish 2009-2011 Climate Action Work Program, e.g., tree planting, watershed acquisition (completed) (ea) Establish Pursue financing mechanism per AB 811 for home and business solar, wind and/or energy conservation methods (db) Facilitate private construction of at least one alternative energy project (e) Implement approved, initial VIP Settlement 2008 Projects (completed) (f) Prepare and adopt VIP Settlement 2008 Plan for 2010 and 2011 (completed)
2) Implement new water conservation projects/programs	2) Prepare a list of VIP Settlement 2008 water conservation projects and programs for recommendations to the Sustainability Commission (completed) <u>Pursue water conservation projects as opportunities arise</u>
3) Pursue and adopt sustainable practices	3) (a) Pursue LEED certification for community center (b) Negotiate <u>Implement</u> sustainable solid waste agreement
4) Protect air quality	4) Pursue multiple mass transit opportunities (See Issue #4, Strategy/Action #2)

PRIMARY GENERAL PLAN GOALS

- ▶ Overarching Goal of the General Plan: Sustainability
- ▶ GOAL 2.36: Ensure an adequate water supply for current and future residents and businesses.
- ▶ GOAL 3.27: Improve energy efficiency.

STRATEGIC ISSUE 3: Strengthening Economic and Fiscal Conditions

STRATEGIES

ACTIONS

- | | |
|--|---|
| <p>1) Implement tourism plan</p> | <p>1) (a) Implement/maintain tourism website (completed)
 (ba) Fund and prepare TBID proposal
 (eb) Replace Nationwide sign with tourism sign on I-680 freeway
 (dc) Tourism brand promotion and marketing</p> |
| <p>2) Strengthen Benicia Industrial Park competitiveness</p> | <p>2) (a) Perform Benicia Industrial Park Technology Needs Assessment
 (ba) Approve and implement a road resurfacing project (See Issue #4/ Action 1c)</p> |
| <p>3) Retain and attract business</p> | <p>3) Continue and expand business support tools and policies that balance sustainability with economic vitality</p> |
| <p>4) Manage City finances prudently</p> | <p>4) Prepare and maintain balanced budget with strong emergency reserve and capital replacement funding</p> |
| <p>5) Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources</p> | <p>5) (a) Plan for sustainable Benicia Business Park including 1) obtaining PDA pursuing grants for transit oriented development area and Intermodal Station planning and 2) obtaining STA/MTC Intermodal Station planning grant
 (b) Adopt an Plan for investment in the Arsenal Specific Plan and implement including hazard remediation
 (c) Update zoning code to encourage clean energy, high-tech R&D uses in industrial districts</p> |

PRIMARY GENERAL PLAN GOALS

- ▶ GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.
- ▶ GOAL 2.28: Improve and maintain public facilities and services.
- ▶ GOAL 2.7: Attract and retain industrial facilities that provide fiscal and economic benefits to – and meet the present and future needs of – Benicia.

STRATEGIC ISSUE 4: Preserving and Enhancing Infrastructure

STRATEGIES

ACTIONS

- | | |
|---|---|
| <p>1) Provide safe, functional and complete streets</p> | <p>1) (a) Complete State Park Road Bridge (completed)
 (b) Complete BHS traffic signal project (completed)
 (ea) Fund street maintenance at a level that will maintain or raise pavement management index rating
 (db) Obtain funding for and begin construction of Benicia Bridge /Arsenal Pedestrian Path Project
 (ec) Implement traffic calming work program</p> |
| <p>2) Increase use of mass transit</p> | <p>2) (a) Complete plans for and begin construction of park-and-ride facilities at City Park and W. Military at Southampton
 (b) Pursue designation for a WETA-Ferry stop in downtown area
 (c) Obtain funding for planning of an intermodal transportation station in vicinity of Benicia Industrial Park and proposed Benicia Business Park
 (d) Evaluate feasibility of merging transit services with Vallejo and STA (completed)</p> |
| <p>3) Address technology needs</p> | <p>3) (a) Prepare a City government technology improvement plan
 (b) Acquire and implement: 1) Agenda management software, 2) streaming video (completed), 3) upgraded public safety technology, and 4) enhanced GIS capabilities</p> |
| <p>4) Provide adequate funding for ongoing infrastructure needs</p> | <p>4) (a) Improve <u>Implement a plan for funding</u> of reserves for vehicle, equipment and facilities infrastructure
 (b) Fund bridge maintenance program</p> |

STRATEGIC ISSUE 4: Preserving and Enhancing Infrastructure - Continued

PRIMARY GENERAL PLAN GOALS

- ▶ GOAL 2.15: Provide a comprehensive system of pedestrian and bicycle routes which link the various components of the community: employment centers, residential areas, commercial areas, schools, parks, and open space.
- ▶ GOAL 2.17: Provide an efficient, reliable, and convenient transit system.
- ▶ GOAL 2.19: Promote a regional (San Francisco, Oakland, Alameda) and local (Martinez, Port Costa, and Crockett) ferry service.
- ▶ GOAL 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit, balancing vehicle-flow improvements with multi-modal considerations.
- ▶ GOAL 2.28: Improve and maintain public facilities and services.

STRATEGIC ISSUE 5: Maintain and Enhance a High Quality of Life

STRATEGIES

ACTIONS

- | | |
|---|---|
| <p>1) Provide <u>Operate</u> community activity centers</p> | <p>1) (a) Complete design of Community Center (completed)
 (b) Complete construction of Community Center (completed)
 - <u>(a) Open community center?</u></p> |
| <p>2) Implement the Downtown Master Plan</p> | <p>2) (a) Pursue outside funds for Downtown improvements (streetscape, parking and traffic calming enhancements)
 (b) Prepare and approve a mixed-use project for the City's E Street lot
 (c) Pursue planning grant for Downtown Waterfront Park</p> |
| <p>3) Promote arts and culture</p> | <p>3) Establish arts & cultural commission (completed) 3) <u>(a) Continue funding for non-profit arts and culture organization grants</u>
 <u>(b) Pursue funding sources for arts and culture activities</u></p> |
| <p>4) Preserve City-owned historic structures</p> | <p>4) (a) Complete and <u>Begin</u> occupancy of Commanding Officer's Quarters
 (b) Improve and restore City-owned historic structures (e.g., Benicia Historical Museum, SP Depot, Clocktower)</p> |
| <p>5) Provide support to disadvantaged segments of the community</p> | <p>5) (a) Obtain neighborhood stabilization and CDBG grants to provide a transitional shelter
 (b) Facilitate construction of affordable housing per updated Housing Element
 (c) Continue funding for Human Services grants</p> |
| <p>6) Enhance <u>Support</u> Benicia Public Library's capacity <u>ability</u> to meet the <u>public's</u> expanding needs for information, communication and literacy</p> | <p>6) Obtain funding for Library basement <u>Provide ongoing support for library and literacy services</u></p> |

STRATEGIC ISSUE 5: Maintain and Enhance a High Quality of Life – Cont.

PRIMARY GENERAL PLAN GOALS

- ▶ GOAL 2.11: Encourage the retention and continued evolution of the lower Arsenal into a historical/cultural/commercial/industrial center of mutually compatible uses.
- ▶ GOAL 2.12: Strengthen the Downtown as the City's central commercial zone.
- ▶ GOAL 2.30: Maintain and improve existing parks and recreation programs.
- ▶ GOAL 3.1: Maintain and enhance Benicia's historic character.
- ▶ GOAL 3.3: Increase public awareness of cultural resources and activities.
- ▶ GOAL 3.4: Support the library and the services it provides the community.

**2010 DISCUSSION TOPICS –
COMPLETED: GATEWAYS**

Principles for Gateway Priorities, Components, and Process

As Recommended by the City of Benicia's Planning Commission
April 8, 2010

Gateway Priorities

The City of Benicia's 1999 General Plan identifies five (5) gateways. Of these, priority should be placed on the Southern Gateway. The General Plan also provides specific policy language pertaining to Pine Lake, which also should be amongst the top priorities for Gateway treatment.

1999 General Plan - Gateways, Figure I-3	Planning Commission Priorities
Northern Gateway at I-680 and Lake Herman Road	
Lake Herman Gateway along Lake Herman Road just east of Lake Herman	
Southern Gateway at the intersection of I-680 and I-780	✓
Western Gateway at I-780 and Rose Drive/Columbus Parkway	
Marina and the Port as approached from the Carquinez Strait	
1999 General Plan – Pine Lake, Policy 2.11.3, Program 2.11.A	✓

The City should give attention to additional gateways not necessarily identified in the 1999 General Plan. These could include:

Additional (Internal) Gateways	Planning Commission Priorities
Local roads/neighborhoods Along bike/pedestrian paths Inside/alongside parks Focal points/landmarks A designated "city tree"	✓ East 2 nd Street exit off I-780 eastbound (replace existing) ✓ East 2 nd Street exit off of I-780 westbound exit – island treatment

Additional guidance to help discern priorities for gateways include the following:

- A. Generally, priority should be given to gateways that are most used and traveled by.
- B. If limited funds are available, attention should be given to the most visible of all gateways, which should be developed to maximize its presence.

- C. The City should seek opportunities where new development can provide or help provide gateways, such as the Seeno development that could assist in establishing the Northern Gateway at I-680 and Lake Herman Road.
- D. There are gateways listed in the General Plan. There are also gateways not listed in the General Plan that have been identified through this process. Should funding become available for gateways that are not listed in the General Plan, it should be considered appropriate to pursue development of such gateways.

Gateway Components

1. Consider the art community's ability to infuse artistic elements into gateways, or as a feature in a gateway.
2. Each gateway should have its own unique features, depending upon location and context.
3. Every gateway should be different, however a unifying theme amongst all gateways such as an art piece or common landscape/hardscape features should be incorporated.
4. Gateways should include three basic elements: landscaping, art, and signage.
5. The scale of a gateway needs to be contextual. For example, a gateway located off a highway needs to be large enough to give an impression; in contrast, an interior gateway could be more modest in size.
6. Consider what kind of statement the City of Benicia should make, and to whom, such as visitors, local residents and businesses, and historic interests.

Gateway Process

1. Develop a process/work program to begin implementation, when feasible.
2. Seek funding opportunities whenever possible, including leveraging resources that may already be set aside in certain locations, or for certain projects.
3. Consider design competitions, and/or charrettes.
4. Invite the public and the art community, such as Arts Benicia, to participate and play a role in shaping gateways.
5. Include boards and commissions, such as: Art and Culture Commission, the Historic Preservation and Review Commission, Parks Recreation and Cemetery Commission, and Economic Development Board.
6. Include participation by the schools.
7. The public should have an opportunity to comment on Pine Lake applications/plans.

**2010 DISCUSSION TOPICS –
COMPLETED
RESTAURANTS, BARS, LIVE ENTERTAINMENT**



Public Works &
Community Development Department
MEMORANDUM

Date: March 11, 2010
To: Planning Commission
From: Lisa Porras *lp*
Senior Planner
Re: Commission Priority Discussion Item #5

On April 8, 2010 staff plans to agendaize the Commission's priority discussion item #5 addressing regulations for bars, restaurants, live entertainment, sidewalk table service, and alcohol beverage service. The Planning Commission requested that staff prepare this item due to the lack of consistency in the application of conditions of approval for uses that serve alcohol including bars, restaurants. The attached examples of project conditions of approval bear this out. The Planning Commission also included sidewalk table service in their request for information. There are some significant differences in the manner in which the City's zoning standards treat alcohol related uses. These differences are geographic in nature (e.g. Downtown versus other parts of the city). The standards also differ in their various permit thresholds and definitions. Staff will provide additional information at the April meeting, including:

1. Recommendation for a standard list of conditions for establishments serving alcohol;
2. List of special conditions that might be applied based on a proposed establishment's proximity to sensitive receptors or other concerns; and,
3. Communication from the Police Department relevant to their issues relevant to establishments that serve alcohol.

Some of the issues that may be raised by the Planning Commission may not be able to be addressed by conditions of approval. In addition, conditions of approval are not applied to ministerial (by right) projects and instead rely on the requirements of zoning standards. As a result, this process may obviate the need for some Zoning Ordinance changes to address those issues. If that becomes the case, and depending on the complexity, staff will need to work with both the Planning Commission and the City Council to establish this among Benicia's other legislative priorities.

(over)

The following materials are provided for the Commission to review prior to commencing the discussion on April 8, 2010:

- General Plan Goals, Policies, and Programs
- Zoning Regulations
 - Use Regulations **outside** the Downtown Mixed Use Master Plan Area
 - Use Regulations **inside** the Downtown Mixed Use Master Plan Area
 - Title 17 Use Definitions
- Sidewalk and Table Permit Application/Requirements
- Implementation
 - Conditions of Approval as Adopted for Use Permits between 2006 and through 2009. This includes the following projects: (1) The Rellik Tavern, 726 First Street, (2) Luca Restaurant, 439 First Street, (3) Sahara Restaurant, 907 First Street.

Relevant City of Benicia General Plan Policy Language

GOAL 2.12: Strengthen the Downtown as the City's central commercial zone.

- Program 2.12.B: Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses.
- Program 2.12.I: Work with existing restaurants and cafes to provide sidewalk food service where the service will not impede pedestrian flow and where adequate sidewalk space exists.

GOAL 3.7: Maintain and reinforce Benicia's small-town visual characteristics.

- Policy 3.7.2: Encourage "place-making"—the arrangement of built elements to create indoor or outdoor spaces that are recognizable and suitable for a specific function or functions.

"Place making" and "place definition" are among the most important functions of urban design. "Place" can be manifested in many forms: a street closed off for a neighborhood or regional fair; a cafe on the sidewalk or in a courtyard adjacent to it; a front porch where neighbors gather; or a small intimate patio or porch on the private side of the building where one can take a respite from urban life.

Use Regulations OUTSIDE the Downtown Mixed Use Master Plan Area

USE	ZONE									
	Community Commercial	Office Commercial	General Commercial	Waterfront Commercial	Limited Industrial	General Industrial	Water Related Industrial	Industrial Park		
Eating and Drinking Establishment	Permitted	Permitted	Permitted	Permitted	L4	L4.1	L4	L4		
With Wine & Beer	Permitted	Permitted	Permitted	Permitted	L4	L4.1	L4	L4		
With Full Alcohol	Use Permit	Use Permit	Use Permit	Use Permit	Use Permit	Use Permit	Use Permit	Use Permit		
With Live Entertainment	Not allowed.	Not allowed.	Use Permit	Use Permit	Not allowed.	Not allowed.	Not allowed.	Not allowed.	Not allowed.	Not allowed.
With Take-Out	Use Permit (E)	Not allowed	Permitted (E)	Permitted (E)	L4 (D)	L4.1 (D)	L4 (D)	L4 (D)		
Drive Up	Use Permit	Not allowed	Use Permit	Not allowed						
Limited	Permitted	Permitted	Permitted	Permitted	L4 (D)	L4.1 (D)	L4 (D)	L4 (D)		
Formula	Use Permit (L)	Not allowed	L19 (L)	Not allowed						
Truck Stop	Not allowed	Not allowed	Use Permit	Not allowed						

L-4 Permitted as a secondary use in a building, occupying no more than 2,500 square feet of the building floor area.
 L-4.1 Permitted as a secondary use in a building occupying no more than 2,500 square feet of the building area. A use permit is required for secondary uses occupying building areas of 2,501 to 5,000 square feet, or where the use is the primary use of a building.
 L-19 Formula businesses are a permitted use in the CG zone except for the Solano/Davies Square areas (bounded by Military, N and West and East Second Streets) where a use permit is required.

Use Regulations OUTSIDE the Downtown Mixed Use Master Plan Area

(E, D) 17.70.090 Eating and drinking establishments with take-out service.

The following supplementary development regulations shall apply to eating and drinking establishments with take-out service other than limited take-out service, as defined:

- A. No Walk-Up Service in CC and CG Districts. Food shall be delivered to patrons within a car or within a building, or enclosed or covered outdoor eating area.
- B. Minimum Separation. Establishments shall not be closer than 500 feet to a public or private school, park, or playground in an R, OS, or PS district.
- C. Litter Control. Identifiable containers and napkins shall be used for all carry-out food, and all litter resulting, including litter on adjacent property and public rights-of-way, shall be promptly removed. A use permit may require the operator to retain a contract litter cleanup service if the community development director determines that a litter problem exists. (Ord. 87-4 N.S., 1987).

(L) 17.70.350 Formula businesses.

In the combined CD district and Solano/Davies Square areas (bounded by Military, N and West and East Second Streets), no more than one establishment of any particular formula business shall be allowed. Approval of a use permit for a formula business requires that the planning commission find that the proposed establishment will:

- A. Complement existing uses and enhance the economic health of the surrounding area;
- B. Be operated in a nonobtrusive manner that preserves the city's or area's distinctive character, ambiance, and small-sized city and historic nature;
- C. Not result in a concentration of formula businesses in the vicinity or citywide;
- D. Promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;
- E. Contribute to an appropriate balance of local, regional or national-based businesses and small, medium and large-sized businesses in the community; and
- F. Avoid an appearance commonly associated with strip retail or shopping centers. (Ord. 07-12 § 4).

**BENICIA MUNICIPAL CODE – TITLE 17 ZONING REGULATIONS
USE DEFINITIONS**

17.16.050 Commercial use classifications.

L. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises.

1. With Wine and Beer Service. Alcoholic beverages served are limited to wine and beer.

2. With full alcoholic beverage service.

3. With Live Entertainment. Establishments offering live entertainment, as defined in Chapter 17.12 BMC.

4. With Take-Out Service. Establishments at which 20 percent or more of the transactions are sales for off-site consumption, and which serve or deliver prepared food to persons in vehicles or have more than two work stations at which employees package or service prepared food and receive payment.

a. Drive-Up. Service from a building to persons in vehicles through an outdoor service window.

b. Limited. Establishments that do not serve persons in vehicles.

5. Truck Stop. A facility geared primarily to providing services for truckers, including on-site fueling, repair and servicing of freight trucks; restaurant facilities; restrooms; towing services; overnight accommodations and related services.

17.12.030 Definitions.

"Entertainment, live" means regulations pertaining to live entertainment in this chapter apply to the following activities where they occur on a scheduled basis three or more days during a calendar year on the site of a use other than a public or semipublic use:

A. A comedy act, musical, theatrical, or dance recital performed by one or more persons, regardless of whether performers are compensated;

B. Any form of dancing by patrons or guests at a business establishment;

C. A fashion show, except when conducted within an enclosed building used primarily for the manufacture or sale of clothing.

Use Regulations INSIDE the Downtown Mixed Use Master Plan Area

USE	DOWNTOWN MIXED USE MASTER PLAN REGULATIONS				
	Town Core	Town Core Open	Neighborhood General	Neighborhood General Open	
				Minor Use Permit (staff review)	General Open
Restaurant, Café, Coffee Shop	Permitted	Minor Use Permit (staff review)	Not allowed	Minor Use Permit (staff review)	
Bar, Tavern, Night Club open from 7:00 AM until 9:00 PM	Permitted	Use Permit	Not allowed	Not allowed	
Bar, Tavern, Night Club open from 9:00 PM until 7:00 AM	Use Permit	Not allowed	Not allowed	Not allowed	

See definitions below:

Bar, Tavern, Night Club:

Bar, Tavern: A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. Includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. May also include beer brewing as part of a microbrewery ("brew-pub"), and other beverage tasting facilities.

Night Club: A facility serving alcoholic beverages for on-site consumption, and providing entertainment, examples of which include live music and/or dancing, comedy, etc. Does not include adult oriented businesses.

Use Regulations INSIDE the Downtown Mixed Use Master Plan Area

Restaurant, Cafe, Coffee Shop: A retail business selling ready-to-eat food and/or beverages for on- or off-premise consumption. These include eating establishments where customers are served from a walk-up ordering counter for either on- or off-premise consumption ("counter service"); and establishments where customers are served food at their tables for on-premise consumption ("table service"), that may also provide food for take-out, but does not include drive-through services.

CITY OF BENICIA SIDEWALK TABLE PERMIT
APPLICANT'S INDEMNIFICATION STATEMENT

I hereby acknowledge that I have applied for a permit to allow the placement and use of sidewalk tables for business purposes in front of my business premises. Upon City approval of a Sidewalk Table Permit, I agree to hold the City of Benicia and its officers and employees harmless from, and will indemnify them against, all claims, liability, and loss, and in particular from and against all such claims, liability, and loss predicated on active or passive negligence of the City of Benicia resulting directly or indirectly from operations under an approved Sidewalk Table Permit. This hold-harmless obligation shall not terminate during the life of the permit. If any damage occurs to City facilities incurred as a result of the sidewalk table use, I acknowledge that I shall be charged with the cost of the repairs of such damage. This permit may be revoked at any time at the option of the Director of Public Works if it appears to the Director that continuing the sidewalk table use, whether because of changed conditions or otherwise, interferes with adequate or safe public use of the right-of-way involved. Upon revocation of the permit, all furniture and appurtenances associated with the sidewalk table use shall be removed from the right-of-way area, and shall not be replaced within that area until such time as the Director determines the use may once again be continued.

Date

Applicant's signature

Print applicant's name

Print business name

FOR DEPARTMENT USE ONLY-----

Permit number _____

Date received _____

CONDITIONS OF APPROVAL:

1. Tables shall be kept a minimum of 2 feet from the curb face, and a clear walkway area of at least 5 feet in width shall be maintained for the entire frontage. A clear area of at least 5 feet in width shall be maintained at all building entries.
2. Tables shall not block access to fire emergency facilities, including hydrants and Fire Department connections.
3. Furniture shall be restricted to the frontage of the applicant's business, and shall not encroach on the frontage of any other business.
4. Furniture and trash receptacles shall be removed completely from the sidewalk area daily prior to the close of business.
5. All litter shall be removed from the site and surrounding premises as necessary, and those areas shall be kept neat and free of trash. Spilled liquids and foods shall be removed immediately.
6. Any necessary permits shall be obtained from the Solano County Department of Environmental Health Services prior to the use of sidewalk tables.
7. The applicant shall sign the Applicant's Indemnification Statement attached to this application.
8. The applicant shall not drill holes into or otherwise damage the sidewalk for the purpose of installing posts or anchorages. Furniture shall be equipped with non-skid devices to prevent damage to the sidewalk.

Additional Conditions: _____

APPLICANT'S STATEMENT: I have read the information regarding the conditions of approval listed above, as well as the City's "Sidewalk Table Policies and Standards". I agree to abide by and conform to these conditions, to the Policies and Standards, and to all provisions of the Benicia Municipal Code pertaining to the conduct of my business. I am aware that if I do not operate my business in compliance with these regulations, my permit may be revoked by the Planning Director upon verbal or written notice.

Date

Applicant's signature

DEPARTMENT USE ONLY-----

Date received: _____ Permit number: _____

Approved by: Planning _____ Date approved: _____

P. Works _____ Date approved: _____

APPLICATION FOR SIDEWALK TABLE PERMIT--CITY OF BENICIA

PLEASE NOTE: To obtain a permit to place tables on the City sidewalk, you must verify that the use of the tables will meet the City's "Sidewalk Table Policies and Standards". Many of those requirements are listed below in the conditions of approval. Please read the policy and standards thoroughly to verify that you can meet those requirements.

PLEASE COMPLETE ALL ITEMS. TYPE OR PRINT IN DARK INK.

Business name: _____

Business address: _____

Applicant's name: _____

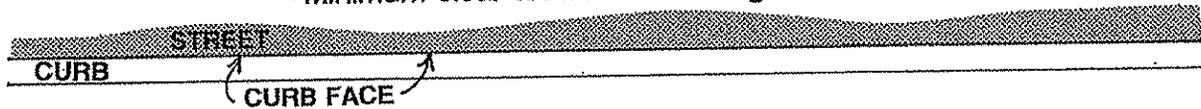
Mailing address: _____

Phone number: _____

of tables proposed: _____ Hours of operation: _____

ON THE PLOT PLAN BELOW, draw the position of each table you plan to place on the sidewalk, noting the dimensions as shown on the sample plot plan. Include all existing obstructions on the sidewalk (trees, fire hydrants, signs, etc.). Please note the following requirements:

- Minimum distance between curb face and nearest table: 2'
- Minimum clear area at all building entries: 5'



SIDEWALK

BUILDING

PLEASE NOTE--THE FOLLOWING INFORMATION MUST BE ATTACHED TO THIS APPLICATION: Attach color photographs of the furniture proposed for use (manufacturers' brochures are acceptable). Include photos of umbrellas, trash containers, and any other types of furniture/accessory items that will be used.

Chapter 9.04
ALCOHOLIC BEVERAGE CONSUMPTION¹

Sections:

- 9.04.010 Public consumption prohibited.
- 9.04.020 Exceptions.
- 9.04.030 Alcohol permit.
- 9.04.040 Repealed.

9.04.010 Public consumption prohibited.

Except as provided in BMC 9.04.020, it is unlawful for any person to consume an alcoholic beverage or possess an open container of an alcoholic beverage in or upon any public street, sidewalk, alley, lane, way, highway or parking lot; or upon the grounds of any public building or facility; or upon any private parking lot, including unimproved land suitable and used for the parking of vehicles, which is open to the public, whether or not any fee is charged for the entry to or use of space in the parking lot.

The consumption of alcoholic beverages in public parks and playgrounds is regulated by Chapter 12.28 BMC. (Ord. 95-9 N.S.; Ord. 76-21 N.S. § 1, 1976; prior code § 12-1001).

9.04.020 Exceptions.

A. BMC 9.04.010 shall not be construed as to make it unlawful for any person to consume an alcoholic beverage or to possess an open container of alcoholic beverage within any public building or facility, or upon any public golf course or golf driving range; further, BMC 9.04.010 shall not be construed to make punishable any act or acts which are prohibited or made punishable by any law of the state.

B. It shall not be unlawful for a person to consume an alcoholic beverage or possess an open container of an alcoholic beverage when the person is attending a function operating under an alcohol permit issued in accordance with BMC 9.04.030. (Ord. 95-9 N.S.; Ord. 76-21 N.S. § 1, 1976; prior code § 12-1002).

9.04.030 Alcohol permit.

No person shall give or sell to another person any alcoholic beverage while in or upon any public street, sidewalk, alley, lane, way, highway or parking lot; or in any public park or playground, or upon the grounds of any public building or facility; or upon any private parking lot, including unimproved lands suitable and used for the parking of vehicles, which is open to the public, whether or not any fee is charged for the entry to or use of space in the parking lot; without first obtaining a permit issued by the city. The city council shall, by resolution, establish the procedure for obtaining an alcohol permit, including the fees for such permits. (Ord. 95-9 N.S.).

9.04.040 Violation – Penalty.

Repealed by Ord. 03-9. (Ord. 95-9 N.S.; Ord. 76-21 N.S. § 1, 1976; prior code § 12-1003).

**SAMPLE CONDITIONS OF APPROVAL TAKEN
FROM PREVIOUS USE PERMIT REQUESTS**

**Sample Conditions of Approval
taken from Previous Use Permit Requests
(2006-2009)**

The Rellik Tavern: (726 First Street)

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "October 20, 2008" prepared by Steve McKee, attached as an exhibit and on file with the Community Development Department.
2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
3. Hours shall not exceed 6:00 a.m. to 2:00 a.m., seven days per week.
4. Pursuant to the City Attorney's legal opinion regarding the State of California Labor Code, the smoking lounge portion of this proposal shall not be allowed.
5. Exterior alterations shall obtain necessary design review approvals from the Historic Preservation Review Commission (HPRC). Following HPRC design review approval, the applicant shall submit the final design of the enclosed outdoor patio to the Planning Commission for final review and consideration.
6. No alcohol service/table service shall be permitted in the enclosed patio area.
7. Outdoor enclosed patio design shall address noise attenuation, create a buffer between the commercial bar use and neighboring residential uses, provide a secure environment that can be monitored by Rellik staff, and maintain all legal exiting requirements. Rear door from establishment to patio shall have a self-closing mechanism.
8. Indoor live entertainment shall be limited to the following hours:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 1:00 a.m.
 - Saturday: 12:00 p.m. to 1:00 a.m.
 - Sunday: 12:00 p.m. to 10 p.m.
9. Solo acoustical musicians/instrumentalists requiring amplification shall be exempt from Condition #8.
10. Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event.

11. On a case-by-case basis, the permittee may request exemption from the hours of operation of indoor live entertainment (Condition #8) for any city-wide event. The request shall be made in writing to the Community Development Department at least seventy-two (72) hours prior to event. Such events shall not count towards the permittee's allotted twelve (12) live entertainment events per calendar year.
12. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.080(C), sound levels emanating from sound-amplifying equipment shall be limited to seventy-five (75) decibels, as measured from the property line.
13. Live entertainment shall not take place in any exterior area at any time. Music from interior performances shall not be transmitted to outdoor areas; doors and windows shall remain closed during all live entertainment performances.
14. The total number of occupants present at live entertainment events shall not exceed the total allowed occupant capacity of the bar, which shall be posted in compliance with the Uniform Building Code.
15. In the case of a private event, Licensee(s) shall provide written notification to the Investigation Commander of the Benicia Police Department at least two (2) weeks prior, concerning all contracted events occurring on the premises. Notification shall include the date of the event, the start and end time, and estimated number in attendance. If the contracted event is agreed upon prior to the two (2) week period of the occurrence, the licensee(s) shall notify the Investigation Commander of the Benicia Police Department in writing within 24 hours of the contracted event.
16. Current contact information for all business owners shall be on file with the Police Department and the Community Development Department; any changes shall be reported to both departments within 15-calendar days.
17. The operator of the establishment shall be responsible for monitoring clients' behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood.
18. No alcohol shall be consumed outside of the business establishment, other than in the enclosed outdoor patio area.
19. All employees shall attend the Responsible Beverage Service training; certificates must be renewed and kept current in the time frame established by the program, and certificates must be kept at the establishment and available upon request.

20. Owner / Manager shall attend all restaurant and / or bar owner meetings called by the Chief of Police.
21. The applicant shall obtain all proper permits required by the Solano County Health and Social Services Department for light food service prior to food service operation. The applicant shall obey all Health Department general conditions, laws, and regulations relative to their food service operation.
22. This establishment is subject to all requirements of the Fire and Life Safety Division, in relation to enforcement of Uniform Building Code and Fire Code
23. The applicant shall obey all subsequent ABC general conditions, laws, and regulations relative to their liquor license.
24. Use Permit conditions of approval shall be reviewed on an as needed basis by the Community Development Department and Police Department.
25. In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.
26. All exterior modifications will require Design Review approval from the Historic Preservation Review Commission.
27. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

Luca Restaurant: (439 First Street)

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "September 22, 2008" prepared by the applicant, attached as an exhibit and on file with the Community Development Department.

2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
3. Establishment hours shall be seven days per week, from 6:00 a.m. to 2:00 a.m.
4. Indoor live entertainment shall only be allowed during the following hours:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 11:00 p.m.
 - Saturday: 12:00 p.m. to 11:00 p.m.
 - Sunday: 12:00 p.m. to 10 p.m.
5. No amplified music shall be permitted under any circumstance.
6. Live entertainment shall not take place in any exterior area at any time. Music from interior performances shall not be transmitted to outdoor areas.
7. Additional insulation between the first and second floors shall be installed as part of the interior tenant improvements as a means of sound attenuation to buffer the second floor uses from the noise associated with live entertainment, prior to offering live entertainment.
8. If the upstairs use changes from a residential use to another use classification, Conditions 4-7 shall be reviewed by the Community Development Department and the Planning Commission.
9. The operator of the establishment shall be responsible for monitoring clients' behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood.
10. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20.
11. The total number of occupants present at live entertainment events shall not exceed the total allowed occupant capacity of the catering room/wine bar, which shall be posted in compliance with the Uniform Building Code.
12. This establishment is subject to all requirements of the Fire and Life Safety Division, in relation to its enforcement of the Uniform Building Code and Fire Code
13. The applicant, or designee, shall modify the rear exit to be ADA accessible. All exterior modifications will require Design Review approval from the Historic Preservation Review Commission.

14. Prior to the final inspection, the trash enclosure shall meet all storm water regulations.
15. Prior to the final inspection, an under-sink grease trap shall be installed.
16. City Use Permit approval for serving alcoholic beverages is contingent on the applicant receiving approval from Alcoholic Beverage Control (ABC). The applicant shall obey all subsequent ABC general conditions, laws, and regulations relative to their liquor license.
17. The following conditions apply to outdoor dining and beverage service:
 - a. A sidewalk encroachment permit is required from the Public Works department.
 - b. A permanent or semi-permanent sidewalk barrier shall be required to limit alcohol beverage service to a contained area pursuant to ABC regulations. Final design will require Historic Preservation Review Commission approval.
 - c. A maximum of two (2) tables on First Street and six (6) tables along West E Street will be permitted, subject to the conditions of an encroachment permit.
 - d. Outdoor dining shall cease at 10:00 p.m. except for the 3 tables located west of the bar entrance, which shall be allowed to operate until 1:00a.m.
18. Conditions shall be reviewed on an as needed basis by the Community Development Department and Police Department.
19. In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.
20. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to

the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

Sahara Restaurant: (907 First Street)

1. The restaurant with outdoor dining for which this permit was applied, shall substantially comply with the plans and statement related to this use, submitted by Stein Eriksen, consisting of one sheet, dated February 6, 2007 and marked Exhibit A and on file with the Community Development Department, subject to the following conditions. This use permit does not allow outdoor live entertainment except to the extent expressly provided in this resolution.
2. This approval is for outdoor dining as an accessory use to a restaurant and payment of an in-lieu parking fee.
3. This project shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
4. Outdoor dining shall be allowed in the patio area to the west of the restaurant Sunday through Thursday 11 a.m. to 9 p.m. and Friday and Saturday from 11 a.m. to 10 p.m. The outdoor dining area shall be limited to the area shown on the plans date stamped December 29, 2006 measuring approximately 600 square feet.
5. The operator of the establishment shall be responsible for monitoring patron behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood. Should the operator of the establishment fail to monitor patron behavior, the Planning Commission shall hold a public hearing to address this issue.
6. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, Benicia Municipal Code Chapter 8.20.
7. Exterior lighting shall be downward facing and shall meet Benicia Municipal Code Section 17.70.240.
8. The restaurant is subject to all requirements of the Fire and Life Safety Division, in relation to its enforcement of the Uniform Building Code and Fire Code.
9. The applicant shall enter into an in-lieu parking fee agreement with the City within 90 days of the effective date of this Use Permit, and shall work with the Community Development Director, or designee, in establishing the terms and

conditions of said agreement. The agreement may provide for a payment plan and shall be recorded.

10. The restaurant with live entertainment, for which this permit was applied, shall substantially comply with the statement submitted by Stein Eriksen, dated January 28, 2007.
11. Outdoor live entertainment shall be allowed on Farmers Market days, currently Thursdays, from 4:00 p.m. to 8:00 p.m. and on special event days including, Independence Day, The Waterfront Festival, the Peddler's Fair and the Handicraft Fair. Music on these special event days shall be allowed from 1:00 p.m. to 6:00 p.m. The applicant shall post a notice on the premises announcing the date and time of the scheduled music venue. Said notice shall be posted at least five (5) days in advance of the date of the music event.
12. If outdoor live entertainment is desired on special event days other than those days identified in Condition Number 11 above, it shall require prior approval by the Community Development Director and Police Chief. The applicant shall provide mailing notice materials in accordance with the Community Development Department Mailing Notice Requirements handout. A public notice shall be mailed to all property owners within a 300-foot radius of the premises at least 10 days prior to the Community Development Director and Police Chief taking action on the request for additional music events. The public notice shall identify the date, time and music venue.
13. All employees shall attend the Responsible Beverage Service training annually. Certificates of completion shall be retained at the restaurant and made available upon request.
14. The restaurant owner/manager shall attend all restaurant owner meetings called by the Police Chief.
15. The restaurant shall remain a restaurant in perpetuity with beer/wine sales allowed only as a supplement to customers dining. Customers shall not be allowed to order drinks and sit inside or outside without meal service. Alcoholic beverages shall be served with food.
16. No alcoholic beverage signs or display of alcoholic beverages shall be allowed inside or outside the restaurant. Alcoholic beverage advertisement shall be limited to the menu only.
17. All laws governing the serving of alcohol shall be obeyed.
18. All exiting from the project will meet CBC requirements.

19. A Knox Box access system shall be provided in accordance with the Uniform Fire Code, Section 902.4. Contact the Fire and Life Safety Division at (707) 746-4273 for details.
20. In the event of violations of the conditions of the use permits, the Community Development Director may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of approval, or potential revocation of the Use Permit, pursuant to BMC Section 17.104.090.
21. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

Issy's Restaurant: (1034 First Street)

1. Any alteration of the approved plans dated December 12, 2005 (Attachment A) outside of the ones required to satisfy these conditions shall be requested in writing and approved by the Community Development Director or designee prior to changes being made in the field.
 2. All signs subject to Benicia Municipal Code Section 18 shall be approved by the Planning Department prior to installation.
 3. Hours of operation shall not exceed 11:00am – 9:30pm daily.
 4. Food service shall be offered concurrently with beverage sales during all hours of operation.
 5. All employees shall attend Responsible Beverage Service (RSB) training within 6 months of approval of the Use Permit. New employees shall also attend RSB training within 60 days of hire. All employees shall continue to attend annual RSB training. RSB training courses are provided by several agencies including; City of Benicia Police Department, Alcohol and Beverage Control, etc.
 6. The owner and/or manager will make a good faith effort to attend all bar/restaurant meetings called by the Police Department. Members of the
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Police Department conduct these meetings twice a year. Notification of these meeting will be sent by mail.

7. This approval shall expire two years from the date of approval, unless made permanent by establishing the proposed use or extended in writing by the Community Development Director.
8. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
9. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attach set aside, void or annul an approval of the Planning Commission, City Council, Planning Director or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions or proceedings.