

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
APRIL 3, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, April 3, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Lisa Wolfe, City Clerk, read the announcement of Closed Session.

CLOSED SESSION:

**A. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION**

**Initiation of litigation pursuant to subdivision (a) of Section 54956.9**

**Number of potential cases: 1**

**B. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

**Property: Mills School**

**Negotiating Parties: City Manager/Parks & Community Services Director**

**Under Negotiation: Instruction to negotiators on lease terms.**

**C. CONFERENCE WITH LABOR NEGOTIATOR**

**(Government Code Section 54957.6 (a))**

**Agency negotiators: City Manager**

**Employee organization: Benicia Senior Management Group**

ADJOURNMENT TO CLOSED SESSION:

Mayor Messina adjourned the meeting to Closed Session at 6:01 p.m.

RECONVENE OPEN SESSION:

Mayor Messina reconvened the Open Session at 6:36 p.m.

INFORMATIONAL ITEMS:

Study session to consider adoption of a Code of Conduct and Best Practices – Continued from the March 20, 2007 City Council Meeting:

Mayor Messina proposed going through the Code of Conduct item-by-item to hear Council's comments and concerns. Anything that Council was not able to get through by 7:00 p.m. would be continued to a future meeting.

Council Member Patterson stated that the intent seemed to be that Council would go through the report item-by-item on things that were common sense and good practices. It was her understanding that Council would not be voting on this item tonight, and would have to continue remaining discussion to a future meeting.

Mayor Messina stated that he had hoped to have more than 20 minutes to discuss this item.

Mr. Erickson stated that he felt Council could get through the items quickly. It would be a good idea to quickly go through each item to understand what they are about.

Council Member Hughes stated that he thought Council had already gone through these items. He thought Council was only going to discuss the 'exceptions.' He agreed with Council Member Patterson that a lot of the things were common sense and routine, and did not need to be covered in detail.

Mayor Messina suggested going through an abbreviated form of the report and if there are no comments or questions from Council, they could move on to the next topic.

Vice Mayor Schwartzman stated that he had a question on number 15, but also wanted to discuss the issue of the number of commissions and boards individuals could be on. He stated that this was the third meeting where this item had been discussed. If Council does not get through it tonight, it needs to be completed at the next meeting.

Mr. Erickson stated that the scheduling issue was his fault. It was intended to be at the end of the regular meeting. Somehow, he got it mixed up and put it at the end of the study session meeting

Complies with the Law:

Mr. Erickson stated that the election season was approaching. Sometimes people don't know about the issue of 'not seeking political support from City staff.' It is not a good idea to ask them to put a sign in their yards, etc. That is something that people should be aware of.

Conduct at public meetings:

Mr. Erickson stated that there had been a lot of talk lately about civility and conduct at meetings. This reflects the overall behavior at Council meetings, not just on the part of Council, but the public as well.

Council Member Patterson stated that there had been testimony that the process intimidated the public. It is Council's job to make sure the public understands the process. Council should be as generous and open as it can with the public within the rules it has adopted. There should be training on this issue, and possibly include the public. As Council moves forward with a good Code of Conduct, there should be training for the public. Mr. Erickson confirmed there was training that was available.

Conflicts of Interest:

Mr. Erickson stated that there had been considerable interest in Council broadening this policy as much as possible so everyone could have the opportunity to vote on matters. To the extent the policies get narrowed, there becomes more conflict.

Public Comment:

1. Susan Street – Ms. Street stated that she was curious to know where in this Code of Conduct it discusses the attendance by Council Members to board and commission meetings. Mayor Messina informed her that it was item #15, and they had not gotten to that point.

Gifts and favors:

Vice Mayor Schwartzman asked what the FPPC's rules were on this.

Council Member Patterson stated that in the Open Government Ordinance, it follows the FPPC rules, however, in some instances; the rules are enhanced and sometimes go above and beyond the FPPC rules. In some of these items, if Council were to import the current Open Government Ordinance and add additional language, it would strengthen it and would have a seamless transition from the Code of Conduct to the Ordinance.

Vice Mayor Schwartzman stated that the last sentence of this section seemed a little vague.

Representation of Private Interests:

Council Member Patterson read this section. Although this is a code, it is actually stronger than the language in the Open Government Ordinance. This is the right way to go. We recently saw a demonstration of a commissioner standing in front of his commission representing a private interest. She regrets that was allowed to go on. She hopes that this will reinforce what the law says and also be a training experience for the commissioners.

Mayor Messina stated there were some exceptions in the government code. There was one instance that he remembered where a council member was doing some home improvements and had to represent himself to the council because he was the sole

property owner. There are also exceptions for certain professionals, one of which is an architect who is the solo practitioner. He believed there were some allowances for that. The city may want to look into that and reword this section if necessary.

Ms. McLaughlin confirmed that the government code had a number of provisions relating to that, as does the Open Government Ordinance. The incident referred to by Council Member Patterson was truly incorrectly done. The City is currently conducting Open Government training to all of the commissions.

Mr. Erickson stated that if the Code of Conduct were adopted, the premise would also apply to commissions. There would then be training that would go along with it.

#### Third Party Interests:

Vice Mayor Schwartzman stated this might need to be looked into a little bit more.

#### Independence of Boards and Commissions:

#### Public Comment:

1. Susan Street – Ms. Street asked if this portion was up for discussion, or was it already a done deal? She hoped it would urge Council Members to go to commission and board meetings. It should be urged, not allowed. They (Council Members) would learn things from going to those meetings.
2. Mary Magill – Ms. Magill stated that if Council were all professionals, they would know the differences between influence and undue influence. It is common sense.
3. John Furtado – Mr. Furtado stated that he went on various city websites to look into this issue. He is for commonsense behavior. In the City of Clayton, they had a very inclusive environment. There were representatives from the planning commission and other various commissions who attended council meetings to report what took place at the various meetings. The websites for other cities had board and commission guidelines and policies listed on them – as well as liaison positions between commissions and council, etc. There is a lot of information listed out there. He found the City's website difficult to navigate. On the issue of commissioners being able to serve on more than one commission, the City of San Ramon has the rule that individuals can only serve on one commission. Maybe there should be a check and balance on the board/commission applications. It might serve the City well to have a mission statement, shared values statement, goals statement, etc. 7
4. Jon Van Landschoot – Mr. Van Landschoot stated that he saw some internal conflicts here. Many commissions and boards have Council representatives there. Late at night, they have those Council Members report on what Council has been doing. Why would they stop that? It does not make sense. There was a recent instance where Council sat with the Planning Commission, HPRC, and EDB sat down together and influenced each other in public view. There may be a problem with the First Amendment. How can they tell people they are not allowed to speak? He agrees that people should only be on one commission/board.

Vice Mayor Schwartzman stated that on this issue, he is fine with Council Members going to meetings. Sometimes questions are asked in a particular way. He would be more of the opinion that he would be very reluctant to have any Council member speak. They should only observe at the meetings.

Council Member Whitney asked Ms. McLaughlin, with regards to the Planning Commission, was Council on this issue if they are at a Planning Commission meeting, and then an item that was discussed at that meeting was brought before Council on appeal. Ms. McLaughlin stated that on the boards where items could come before Council on appeal, they should be careful not to participate in those decisions, just in case someone claims they are not being impartial when the appeal comes before them. Council Member Whitney stated that there are certain committees that Council Members are appointed to. That is not what this item is addressing. It is addressing boards and commissions where there is not a Council Member appointed. He agrees that if Council Members attend board and commission meetings, it should be an observational role.

Council Member Hughes stated that he was happy with the way it is written right now. He has been to various meetings and has not spoken, as he did not want to influence them. He urged Council to use common sense, honesty, and integrity.

Addition of #18 – whether or not people could serve on more than one board or commission:

Vice Mayor Schwartzman stated that he would like to have it limited to allowing individuals to membership on one board or commission.

Mr. Erickson reviewed the instances where people are currently serving on more than one board or commission – Library Board of Trustees, PURE, HPRC, and Board of Appeals.

Vice Mayor Schwartzman stated that he was not suggesting there were problems with this. He wanted to make sure that the City would not have problems with this issue in the future. It is a prudent, practical thing to do. There are a lot of people that apply to be on the boards and commissions. He did not think that the City would have a hard time filling the openings. However, he would be open to making an exception to the rule if it were an ad-hoc (such as PURE) committee. That might be a little different. For the general, normal boards and commissions, he would still advocate for individual's only serving on one of them.

Council Member Patterson stated that it is a positive statement to follow what the City states on the top of the applications, which states that the City encourages the widest representation of participations from the different regions of the City, economic, social, and environmental interests. She supports the idea that a person should not be on more than one board or commission. The issue of ad-hoc committees might need to be revisited. Council should encourage the widest participation on its committees. For that reason, it should limit its appointed commissioners to one commission.

Council Member Hughes stated that he respectfully disagreed. He would hate to put limitations on this. The mayor nominates individuals. Council gets to vote on that nomination. There may be situations where it makes sense for the community to have one person on multiple board/commissions. He would rather look at this issue on a case-by-case basis to make sure the City gets the best individual for each opening.

Council Member Patterson requested giving direction to staff to bring this back for action at the next meeting.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:08 p.m.

SIGNING OF THE MILLS LEASE AGREEMENT:

Mayor Messina stated that the City and BUSD recently concluded an agreement for the lease of Mills school.

President Fulton stated that there was a joint meeting with BUSD and City Council last week. They ended up with an agreement that was a win-win for the City, BUSD, and every citizen in town. For BUSD, it was the last chapter of a sad and tragic closure of a school, but a happy event where the facility will now be reopened to the public and serve as a community center, which BUSD is very happy about. He thanked everyone who worked on this agreement over the past year.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
APRIL 3, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:08 p.m. on Tuesday, April 3, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin announced that on item A - Council received information from Staff and gave direction to Staff. Staff will bring this item back to Council in Open Session for further discussion. Staff and Council did not meet in Closed Session to discuss the other two items.

Openings on Boards and Commissions:

- Historic Preservation Review Commission:  
One full term to February 28, 2011
- Library Board of Trustees:  
Two full terms to June 30, 2010
- Benicia Housing Authority Board of Commissioners  
One full term to June 30, 2011
- Economic Development Board  
Two full terms to June 30, 2011

APPOINTMENTS:

None

PRESENTATIONS:

Zoolatry Exhibit Video:

Mr. Del Lacey and Ms. Elisabeth Gulick, Arts Benicia, introduced a video titled 'ZOOLATRY'.

PROCLAMATIONS:

National Public Safety Telecommunicator Week - April 8 – 14, 2007

ADOPTION OF AGENDA:

Mr. Erickson stated that there were a few additional ordinances before Council regarding the formula based businesses.

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

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

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Richard Tipton - Mr. Tipton thanked Council for its support of the Peggy Martin Lane item. Ms. Martin has left a very big footprint on the City of Benicia. She was instrumental in the cleaning up of the City Cemetery and the Commodore Jones Point renaming a few years ago. If any of the Council Members run for reelection, he will vote for them.

CONSENT CALENDAR:

Council pulled item VII-E.

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

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

Noes: None

Council approved the Minutes of March 20, 2007.

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION OF 1.16.010 (GENERAL MUNICIPAL ELECTION) OF CHAPTER 1.16 (GENERAL MUNICIPAL ELECTIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE REGARDING CORRECTING THE NOTICE PROVISIONS FOR GENERAL MUNICIPAL ELECTIONS

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION OF 1.01.010 (ADOPTION OF CODE)) OF CHAPTER 1.01 (CODE ADOPTION) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE REGARDING CHANGING THE PUBLISHER'S NAME

RESOLUTION 07-29 - A RESOLUTION APPROVING THE CHANGE OF THE ALLEY NAME OF KUHLAND ALLEY, WEST OF FIRST STREET, TO PEGGY MARTIN LANE

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Authorization of an interfund loan to purchase emissions devices for Benicia Breeze buses:

Council Member Hughes inquired about page VII-E-2 – background – why did the City assume it was exempt at the time? Mr. Erickson stated that the current Staff was not around when the assumption was made. With the information they had at the time, they believed that to be true.

Mr. Sousa stated that back in that time period, there was a 10-bus exclusion rule for the National Transportation Development Reporting. Staff used that federal exclusion for the state exclusion. Later, Staff found out that was not the case, and it did not apply.

Council Member Hughes inquired about the issue of ‘avoidance of penalties. What are the penalties? Mr. Sousa stated that there were a number of large penalties for non-reporting, most of which are to keep people from thinking they could skirt the reporting requirement. As soon as Staff notified the California Air Resource Board that the City needed to comply, they began to develop a plan with them to go back and report all of the previous years where it had not reported. In doing that, the California Air Resource Board has agreed to waive a substantial amount of the penalties. Staff is currently developing a compliance plan to move forward and prove to the California Air Resource Board that it is the City’s intention to comply with all of the regulations and then negotiate a waiver of the balance of the penalties.

Council Member Hughes inquired about the repayment of the loan. Mr. Sousa stated that the Transit Fund receives Transportation Development Act funds each year. The City has fully committed those funds for operation of the transit system. In the future, the City will make sure it reserves enough funds each year to repay the loan. It will be borrowing the money from the General Fund. The money it is borrowing came from an increase in sales taxes that was reported to the City last month. He was very confident that the money would be there to pay back the General Fund.

Council Member Patterson stated that her concern with this item was that it was an interfund loan of \$250,000. It is terrific that the City was meeting the high standards for air quality. She was sorry the City had not been compliance sooner, particularly because of the high rate of asthma in children, particularly in Solano County. Also, she was concerned that the City was retrofitting an older fleet. She understood there were alternatives. She was not sure about the financial implications of those alternatives. She would like to pursue those alternatives tonight.

Mr. Sousa stated that the City was obligated to the three busses until 2012. The leased busses do not accept the devices that they are working on. Staff was hoping Council would set aside enough money to retrofit those busses should the devices become available in the near future. However, they would be retrofitting a new bus. What they could do is use that same amount of money (\$25,000 per bus for a total of \$75,000) out of the \$250,000. He stated that \$75,000 was enough to buy a fairly good bus on the market that already has the devices installed on it. Council could amend tonight's report to set aside \$75,000 for the purchase of a newer bus that already has the retrofits, and the Staff could come back with a follow-up report to tell Council if the market has produced the device we need, or if the City found another bus that would be more optimum.

Council Member Patterson stated that she would support changing the language to provide for some flexibility so that they could set aside money to purchase a newer bus that already has the retrofits.

Vice Mayor Schwartzman asked if the Transportation Development Act money was paid monthly, annually, etc. Mr. Sousa stated the money was put into a holding fund at the County and each year, the City submits a draw against it. The County then sends the City a payment based upon what the budget is for running the transit system. They also take some of that money and give it to the STA and MTC. Vice Mayor Schwartzman asked how moving the budget around (to repay the loan) would change the operations. Mr. Sousa stated that Staff hoped it would not affect any of the operations. Mr. Andoh is currently researching some grants. Some of the funding sources were supplemental. Between the grants and minor modifications, Staff doesn't think there will be any interruptions to service. However, if there were, Staff would bring any changes in operations back to Council.

Council Member Whitney asked if there were penalties for early termination of the lease. Mr. Sousa stated that the busses are leased for \$500/month per bus. That would be very hard to replace. Mr. Andoh found a company that happened to have the busses available. You are required to retain the busses for a number of years, and then you trade them in for federal money to buy a new one. The cancellation of the lease is at the City's discretion.

Mr. Andoh stated that he had researched various options in leasing busses. To date, they have been unable to find busses that can accommodate the devices that are certified. The drop-dead date to have this resolved is December 31, 2007. In speaking with AC Transit, he found that they would be disposing ten 1998 NAMBI busses in order to get newer busses. The busses do have the particulate traps in them. AC Transit will present Mr. Andoh's request to their general manager to see if they could transfer those busses to the City. Mr. Andoh is comfortable that with MV Transportation's assistance, he will be able to meet the deadline.

Mayor Messina stated that the right thing to do is to improve the air as quickly as we can. Council needs to give Mr. Andoh as much support as possible, so if the wording could be changed to provide some flexibility, that would be okay.

Council Member Patterson suggested adding the language ‘or, an alternative would be to purchase or acquire new busses that meet the timing and air quality standards. If additional funds are needed, staff must come back to Council.

RESOLUTION 07-30 - A RESOLUTION AUTHORIZING AN INTERFUND LOAN TO PURCHASE EMISSIONS DEVICES FOR BENICIA BREEZE BUSES

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

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

PUBLIC HEARINGS:

Draft Downtown Mixed Use Master Plan:

Mayor Messina stated that he had to excuse himself due to a conflict of interest, as he owns a business in the Downtown Area.

Vice Mayor Schwartzman announced that he had to excuse himself due to a conflict of interest, as he owns a business in the Downtown Area.

Council Member Whitney chaired this portion of the meeting.

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

Mr. Erickson stated that the E Street lot was a City owned lot. It is a two-acre lot. There is a lot of potential good this property could do for the City. There is a parking demand in the Downtown Area. This lot should play some role in that parking demand; however, it should not play the exclusive role. There could be a beneficial development that fits this plan on that lot. If the City requires the ground floor level of the development be commercial, it may be unduly prohibitive in terms of the market for development as to whether that is practical, feasible, and economical. Because it is not on First Street, the City needs to look at whether it is appropriate to preclude residential on the ground floor. Staff is looking for flexibility, not rigidity, and following the basic premise that the majority of the commercial activity is on First Street, not the side streets.

Mr. Knox stated that the reason Council was looking at this tonight was to determine if this is the draft that is to be reviewed for consistency with CEQA, specifically through the mitigated negative declaration, as opposed to the EIR process. Staff has determined that it is unlikely that the level of significance for one or more of the potential impacts would be such that an EIR would be required.

Mr. Erickson stated that regarding the E Street lot, when you are talking about potential development, certainly Staff is talking about something down the road and not something that would be simply pulled out of someone’s mind. It would be a neighborhood process to make sure that whatever happens on that lot has the clearance of what the community

would like to see on that lot. It should be something that is beneficial to both the community and the City.

Council Member Hughes stated that he wanted to simplify this. It appears to him that designating this as town core zoning leaves the City's options open. It does not prohibit anything, but still leaves options open.

Council Member Patterson inquired about the height issue. She understood that the 35 ft. to eave was to maintain a certain scale. The problem at the planning commission was in terms with, for instance, the Italianate style, which would be a solid 40-ft. structure across the face of the street. You need to have an idea of what the structure would look like. Currently, the City uses story poles. She asked if it was common practice to use streetscape perspectives. Mr. Knox confirmed it was. Council Member Patterson stated that the reason the City is using form based code is to avoid straightjacket designs, but how do you address the mass, scale, etc.? In addition to the story poles and streetscape perspectives, what else could be used? One of the major roles of the HPRC is to look at what the building will look like from the street perspective. The story poles are a great idea. It gives people an idea of what they can expect before the building goes up. There are some direct standards on building heights. Council Member Patterson stated that it would be possible to go forward with the project description, and be able to have in the negative declaration, for compliance with CEQA, a statement such as 'the whole of the project shall be considered for design review by the HPRC' so that it is clear that in adopting the Downtown Mixed Use Master Plan that it is the whole of the project that has to be reviewed.

Mr. Knox stated that the exception would be it is the purview of the HPRC that alterations to the exterior of historic buildings, including landmarks and non-residential structures larger than duplexes.

Council Member Patterson stated that she would like see the mitigation measure eliminating the exemption of the single family homes in the historic overlay. That would get back to the whole of the project review. She asked Mr. Erickson to clarify what he was suggesting as a mitigation measure.

Mr. Erickson stated that design, use, and financing are fair game for a community conversation. The City would look at what the neighbors in the surrounding area feel is appropriate in terms of use and design, however, not limit it to the neighbors, but make it open to the public. The property has a lot to do with the success of the Downtown Area in general. Whether it is with a mitigation measure or commitment, it needs to occur.

Council Member Whitney asked Mr. Stefan Pellegrini, OPTICOS, if he had any comments on Exhibit A – changes to the draft plan. Mr. Pellegrini stated that they (OPTICOS) had been through a good discussion with the Community Development Director and were comfortable with the changes that the Planning Commission has made.

Public Hearing Opened.

Public Comment:

1. Robert Alfandary – Mr. Alfandary stated that he represented the owners of the Tannery Building. They had some real problems with the 35-ft. limit. The Tannery is on the waterside of the street. There is no influence with residential. There is a 40 ft. building across the street. They also own the Captain Blyther's building. There is no problem with that. They also own an open lot in the area. They don't intend to do anything with the building at this time. They are not developers. They just want to hold it as is for now. But, for the future, they just don't know. Developers have told them that reducing the height would substantially diminish the value of the property. They have been given a figure of (property value loss) of \$500,000. He did not know if that was correct or not. They just don't know what the future holds for that building. There is no reason not to maintain a 40-ft. limit for buildings below B Street. That would negatively impact them. The City could be opening itself up for reverse condemnation suits. If the property were ever to be developed by developer, they would have to deal with BCDC. In an email on January 12, 2007, Mr. Knox indicated that he would recommend to the Planning Commission that the 40-ft. limit be maintained, however, they chose not to do so.
2. Gerald Christensen – Mr. Christensen wanted to discuss resolution 07-03 (Planning Commission Resolution). He and his neighbors don't have a problem having businesses on their block, as long as they don't negatively impact their property values. Parking is also a concern. The parking burden should be put on the business owners not the residents of the street. That could be resolved by putting up restricted parking signs and then giving the residents unlimited parking passes.
3. Susan Street – Ms. Street asked Staff when story poles were done, would it be to the eaves or the roofline. Mr. Knox confirmed that the story poles would be to the roofline. Ms. Street discussed the East Second Street parking lot. Council has the opportunity to make sure something good happens with that. It could set a policy for the lot if they set up a vision for it. It could set some imaginative parameters.
4. Richard Bortolazzo – Mr. Bortolazzo referenced the study (key findings). He stated that he owned three buildings on First Street. Under this set of guidelines, his office (which used to be a Bank of America), if ever vacated, would not be able to be allowed to put office space in the building, as it would be relegated to retail. It is not retail space, it is a bank building. Mr. Knox stated that in his initial presentation, he discussed the potential of amending that requirement so that offices would be allowed on the ground floor. He specifically had stated that medical and dental offices would be required to be on upper floors or behind ground floor uses. Mr. Bortolazzo stated that he would recommend that as well. Mr. Bortolazzo stated that on his second building, 827 First Street, you have to enter a bedroom to get into the building, and it is not suitable for retail space. That is something to consider. The third building, the Bond building is a retail building and is suitable for retail. He encouraged Council to allow office and commercial. He does not care about bed/breakfast, daycare, lodging etc. on First Street. He felt there should be personal services, office, professional, and administrative, office business, and business support services. He understood that if you put medical on

the second floor, they would be required to have an elevator, which they should consider.

5. Steve Getz – Mr. Getz commented on how the environmental evaluation will be done on this project, particularly from the standpoint of the height limit. Would they encourage the removal of the structures that give First Street the character people would like to see preserved. He would be interested in seeing how the height limit affected the property values. He would be interested in seeing how the height issue would come into play. The historic structures on First Street give the kind of character and feel that we are trying to preserve through the Master Plan. If you are adopting regulations in the Master Plan that might damage some of the historical resources, it deserves close evaluation in the environmental review.
6. Kirk Arneson – Mr. Arneson read the following prepared statement: ‘I represent the Arneson-Shannonhouse Trust. Five beneficiaries of this trust live and vote in Benicia. Please consider my comments as representing all beneficiaries of the trust. We own five parcels in the Historic District: there are two commercial buildings on First Street and four residences on those parcels.

We wholeheartedly support historic conservation in Benicia. We support the Historic Conservation Plan which was intended as and we believe legally is, and overlay that replaces the General Plan or any other zoning ordinances.

We believe that every building in the Historic Area, including non-historic single-family homes, must be subject to design review and in keeping with the historic character of the town. It is particularly important that when new structures are built that they be compatible with the surrounding historic structures in scale and form. That is not to say that they should be replicas of historic buildings, but rather that they ought to be compatible.

We believe that the City ought to demonstrate its commitment to the Historic Plan by adopting the original OPTICOS recommendations, including the recommendations for the City lot on East E Street and East Second Street, for which we, the taxpayers, have paid a vast sum of money. It is long past time for the Council to stop trying to hinder historic preservation in Benicia.’

7. Kathleen Olson – Ms. Olson asked for a clarification on the height requirement and if it included a restriction to the number of stories.

Mr. Knox stated that the number of stories had not been an issue at the Planning Commission yet. It is currently at 2.5. The recommendation was to take OPTICOS’ recommendation of 35 ft. to the eve, and go with the 40 ft. He would not want to go above 40 ft. If we go to 40 ft. or stay at 35 ft. it would be creating lesser impact than exist with the City’s current zoning. On whether it should be 35 ft. or 40 ft., he does not really have a strong feeling. If he had a choice, he would stick with 40 ft. to the roof, combined with 35 ft. as stated by OPTICOS. That would take care of Mr. Alfandry and Ms. Olson’s concerns.

Council Member Patterson asked Staff about the massing of an Italianate, which one would not want at 40 ft., First Street, the issue of variability on First Street, and finally the issue raised by Mr. Getz regarding the 40 ft. It sounds like what Staff is saying is that there ought to be a consideration in the CEQA as to how that ought to work.

Mr. Knox stated that right now, the City does allow 40 ft. The City would permissibly allow a 40 ft. flat roof building along First Street. What the Planning Commission was saying is that 35 ft. seems like it would be a more appropriate height limit. He was not sure if he could agree with that. There are not a lot of buildings that push that limit in the Downtown Area. One of the reasons the City has the HPRC is to maintain the historic context and integrity. He was not sure if one building would destroy that context.

Council Member Patterson stated that through the 35 ft. limit, it would give the options under design review. It places the burden on the applicant that the 40 ft. does not create an impact to the overall streetscape. If you do a 40 ft., you put the burden of resisting that on the decision making body, which is more difficult. We are dealing with few areas on First Street that are very sensitive as we do the infill.

Ms. Olson affirmed stated that she disagreed with Council Member Patterson's conclusion that it is easier for the applicant to get a variance than the commission to find a reason to shorten the height of the building. She wanted to affirm Staff's suggestion that office use as defined be a permitted use on the ground floor. There is plenty of support in the Plan that warrants that. She asked about HPRC's reviewing the entire plan. She was not sure what that was about. She understood that HPRC would review applications for new construction and a building permit around exterior changes to buildings within the plan.

Mr. Knox confirmed that was correct, except for single-family residences. Ms. Olson clarified that in the town core (First Street) HPRC still prevails. Ms. Olson stated that the Historic Conservation Plan supersedes the Master Plan.

Mr. Knox stated that was not correct. The number two recommendation from the Planning Commission was that the stricter provisions in the Downtown Historic Conservation shall supersede the Master Plan in the event of a conflict. Ms. Olson stated that she would like this plan to be as thorough as possible. She would like the perspective to be that it really fits. She wants it to be as clear and straight forward as possible.

8. Donnell Rubay – Ms. Rubay complimented staff and OPTICOS for this plan. The plan has cost \$250,000. She largely supports the Planning Commission's recommendations. A primary goal of the plan was to resolve major planning problems in the Arsenal and Downtown. Perhaps the primary problem has not been resolved with the plan. Benicia has a Downtown Historic District that subjects certain property owners to restrictions but does not require design review

for some of their neighbors. One of the recommendations from the State Office of Historic Preservation was to require design review for all buildings in the Historic District. The way it stands now, a non-historic property owner could build a house that is not compatible with the neighbors, which affects property values. She submitted a memo (on file) to the City regarding her concerns.

Mr. Knox stated that he sympathized with Ms. Rubay's perspective regarding about the delays, many of which occurred during the year before he came on board. From a policy-making perspective, the Historic Conservation Plan will supersede. Given the fact that the two plans have different boundaries, not the least of which would be exacerbated by the fact that the Historic Conservation Plan, when it comes to Council this summer, will have expanded boundaries, he thinks it is a policy issue for the Historic Conservation Plan. This is potentially a big issue. He knows that there is some Council sentiment about expanding the design review function to include single-family residences that are not historic. This is a controversial issue. It needs to start at the HPRC. It needs a recommendation from them. When it gets to the Planning Commission and Council, there needs to be recognition that there are huge impacts on how the Community Development Department does business. The Community Development Department would need a full time person to deal with this specific issue. It requires a policy decision from Council as well as an update to the strategic plan. It is a big policy change, and he does not necessarily disagree with it.

Council Member Whitney stated that clearly, there were citizens who were of a second-class citizen status because of this. Mr. Knox stated that in Ms. Rubay's conversations with Lucinda Woodward; clearly there is no objection on the part of the State Office of Historic Preservation to pay more attention to what is going up around historic buildings. There is some equity issue when a historic building can only be the size it was built at and the one next door can be the maximum zoning limit. Council Member Whitney stated that this was clearly an issue that needs more discussion, however, maybe not tonight. Mr. Knox stated that there are some complications in the boundary issues between the Historic Conservation Plan and this plan. Ms. Rubay could argue to do this twice, right now and when the Historic Conservation Plan comes up for review. The City is very close to achieving its CLG status. There is a lot of integrity built into the Historic Conservation Plan, personally that is where he believes where this belongs. However, if Council believes it should be in the Downtown Mixed Use Master Plan that is something the City could live with. That is something that would need to be brought back to Council and discuss how Staff could administer that with an increase in staff.

9. Jon Van Landschoot – Mr. Van Landschoot stated that he was a second-class citizen because he owns a historic property. He can't change it, except to paint it. There has to be continuity with the Historic Conservation Plan, Historic District, and the historic town. He discussed the timing of when the story poles are put up. Mr. Knox stated that the idea was for the story poles were to go up before any

project was approved. It ought to be a fair process. He would like to have the certainty that someone could potentially buy they house next to his, have it burn down, and then build lot line to lot line simply because they can. That would not be fair.

10. Pat Donaghue – Mr. Donaghue read a prepared statement: ‘I support the OPTICOS plan. I have concerns.

Currently, the Benicia General Plan, the zoning ordinance, and the Downtown Historic Conservation Plan (DHCP) are not in sync.

State law requires the zoning plan, the DHCP, and other specific plans to conform to the General Plan. Court cases consistently uphold this concept. On September 6, 1985, the California Court of Appeal, Fourth District, Division 2, in deBottari v. The City of Norco held that the General Plan was in the nature of a constitution upon which valid ordinances must be based, that only limited amendments to the General Plan were allowed, and held for the plaintiff because the actions of the City of Norco did not follow the general plan.

On December 31, 1990, the Supreme Court of California in Leshar Communications v. City of Walnut Creek held that an initiative that was inconsistent with the General Plan was invalid.

The “Regulating Plan” of the OPTICOS Downtown Mixed Use Master Plan is inconsistent with the land use diagram of the General Plan. Other items of the OPTICOS plan are inconsistent with the General Plan. Provisions of the OPTICOS plan also conflict with the DHCP and the zoning ordinance.

Unless the OPTICOS plan is an amendment to the General Plan, it must comply strictly with the General Plan. It should be consistent with the DHCP and the zoning ordinance.

The OPTICOS plan offers an excellent tool for guiding future development. It needs to be fine tuned to bring it into compliance with the General Plan.’

Mr. Knox stated that he respects and enjoys working with Mr. Donahue; however, he disagreed with his statement regarding the General Plan. The reason the City is doing this plan is because since 1999 the General Plan has called for with a specific map overlay in both the Arsenal and Downtown Area, an application of a mixed use designation for Downtown. This plan is an implementation tool that implements the mixed use overlay in the General Plan.’

11. Council Member Patterson – Council Member Patterson stated that the CEQA negative declaration process would take a look at the proposed project of the Master Plan for its consistency with the General Plan. If it found some inconsistency with the General Plan, it could offer the opportunity to amend the General Plan if necessary. When the plan came back to Council for adoption, it could offer an amendment if it were necessary to do so. Mr. Knox stated that it

could be in the form of an amendment to the project or plan itself, or as a mitigation measure. Council Member Patterson clarified that it would have to find specific cases where it was in conflict and would impede the goals and policies of the General Plan.

#### Public Hearing Closed

Council Member Hughes stated that 40 ft. to the roof and 35 ft. to the eave is where he is at with this. As far as the E Street Lot, he supports town core zoning, as it leaves options open for the City. He asked Mr. Knox about allowing ground floor office uses. Mr. Knox stated that what he previously stated was in response to the Planning Commission's recommendation #10, which was to allow ground floor office uses, but with staff level review. Mr. Knox stated that his feeling was that there was not much staff could offer in terms of a use permit for an office that would be different in terms of operating characteristics. He thought it was an undue placing in staff's control as to whether or not the City wanted office. He thought it would be more appropriate for Council to determine. His recommendation was to allow certain types of offices without any restrictions, specifically business support services, office: business, service, and office: professional administrative. He did not go the next step of recommending medical services. Putting them on the second floor would require ADA. It is not clear to him that First Street is an appropriate place for those types of businesses. There are a great deal of traffic and parking impacts as a result. For that reason, he did not recommend the remainder of the list. Council Member Hughes asked about the exemption for single family homes in the Historic Area. It's not that he disagrees with Ms. Rubay; however, he does not want to incorporate in this tonight.

Council Member Patterson stated that she was persuaded by the process, but also by the Tahoe phenomena. When the Tahoe Compact protection measures were put into place and Tahoe was going to be protected, there was a land rush. Until the regulations were put into place, there were over 10,000 lots created. The state spent the next ten years, and our tax dollars trying to mitigate the effects of those 10,000 lots. Benicia is a small city, not like Lake Tahoe. But, we should be wary of delaying action and establishing the rules earlier than later. There could be options. The negative declaration could offer the mitigation measure, so that when we adopt, we eliminate the exemption of single family, or have some measure that bides some time but does not allow things to slip through. This needs to be taken quite seriously.

Council Member Whitney stated that he liked the 35 ft. to eave and 40 ft. to peak idea as stated by Mr. Knox. He liked the town core idea and offices being permitted use. He was interested in the parking restrictions as offered up by one of the residents. Mr. Knox stated that a solution to that would be to take the neighborhood general open parking requirement that accrues to uses over 1,000 sq. ft. and require that for all uses.

Council Member Whitney stated that he had an ex parte conversation with Ms. Bardet regarding the 'second class citizen' issue. He asked Mr. Knox what the timeframe was for the Downtown Historic Conservation Plan. Mr. Knox stated that the timeframe was that

the May 24, 2007 HPRC meeting would be solely devoted to review to the update of the Historic Conservation Plan for Downtown. It could be at the Planning Commission in June and at Council in July. Council Member Whitney stated that in fairness to the individuals who would not be in favor of this, it would make more sense to allow to go through the Downtown Historic Conservation Plan process, with the clear understanding that this is a topic that Council will discuss, and that it will not be postponed and it would be up for debate.

Council Member Patterson asked Mr. Knox to explain how the 35 ft. to eave and 40 ft. to roof applications would work. Mr. Knox stated that it would be part of the project description. He stated that it should be 35 ft. to the eave and 40 ft. to the peak for a roof that has pitch to it, and 35 ft. for a roof that is flat. Council Member Patterson clarified that what Council is doing on tonight is the project description for the purposes of the CEQA negative declaration. Any suggestions on potential mitigation measures are only for the record and that is what the independent third party consultants would take a look at. Mr. Knox stated that it was his understanding that in house staff would have the ability to do the negative declaration. Council Member Patterson stated that she agreed with the use permit for office on the ground floor. The market place has a lot to do with this. On the City lot, the project description would be the town core. She would like to see that the mitigation measure look at the planning process. It would be a mitigation measure to conduct a neighborhood improvement charrette that would include a financing scheme to improve existing properties as well as the design for future use of the City lot.

Council Member Whitney asked Council Member Patterson to clarify her comment on financing schemes. Council Member Patterson stated that in the Master Plan, it has a menu of financing schemes to help implement things such as street furniture, parking improvements, etc. It would basically be carrying that through for the East E Street area.

Council Member Patterson asked Staff to assure her that when the office uses are on the side streets, there would not be monument signs, outside lighting, etc. She would also like to add a potential mitigation measure that there be an observation in the Master Plan that there is a deficiency of public space in the Downtown Area. Outside the study area, there is a great public space – the Waterfront. As a mitigation measure, it actually anchors First Street and it becomes eligible for future planning and future improvements that would bring that public use to fruition. As another mitigation measure, she would like to see some language that deals with demolition. There has been a need for a demolition ordinance. Some of the issues for historic buildings are that you can't prohibit certain actions. At least you could go through a public process at looking at demolition. There was a near death experience on the Yuba property, and it was for the lack of a demolition ordinance.

Council Member Whitney recapped that Council was looking to approve the draft Downtown Mixed Use Master Plan that has been reviewed by the Planning Commission, with any additional amendments made by Council.

Mr. Erickson stated that on the E Street Parking lot, it would be a good process to work on a neighborhood process. He was concerned that there was an interpretation that there

was a commitment on the part of the City to be exact in terms of adjoining properties, financing, etc. He wanted to make sure it was a fuller process to make sure the neighborhood review process was open and the impacts of the project are determined, but without a commitment to any piece of property or to a specific financing.

Council Member Patterson clarified that the intent was to find tools so you have a self help mechanism to get things kick started for an area that has been bounced about in terms of treatment. The mitigation measure would define that process.

Ms. McLaughlin reviewed the following changes to the resolution: Exhibit A (page VII-A-7) would be modified and attached to the City Council Resolution. #1 would be changed so that the height of the buildings would not exceed 35 ft. at the eve and 40 ft. at the peak for buildings with pitched roofs and 35 ft. for flat roofs. Mr. Knox stated that he thought the language should be left as is and add the phrase ‘for the town core zoning’ because he thought the Planning Commission’s recommendation that for the other district, that was fine. Ms. McLaughlin stated that the next change Council made was to item #10 – to allow business support services, office: business, service, and office: professional administrative. A new #12 was going to be added to state that there would be a parking standard of one space per 1,000 sq. ft. for the neighborhood general open zone district.

RESOLUTION 07-31 - A RESOLUTION APPROVING A DRAFT DOWNTOWN MIXED USE MASTER PLAN FOR THE PURPOSE OF INITIATING ENVIRONMENTAL REVIEW

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

Ayes: Council Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

Mayor Messina called for a 5-minute break at 9:25 p.m.

The meeting resumed at 935 p.m.

Consideration of an ordinance to regulate formula businesses:

Mayor Messina stated that he had to excuse himself from this portion of the meeting due to a conflict of interest, as he owns a business on First Street.

Vice Mayor Schwartzman chaired this portion of the meeting.

Vice Mayor Schwartzman suggested separating the formula businesses, the big box issues up so that the Mayor could participate in the second part of the meeting.

Council Member Whitney stated that he did not have a problem with that. This group of elected officials has always reached out to try and include everyone.

Council Member Patterson asked for clarification on how the ordinance could be split up. Ms. McLaughlin stated that she had drafted three different ordinances for review. Council Member Patterson clarified that the reason there are conflicts is not because of undue influence, but because of material private interest in a decision. Ms. McLaughlin stated that the issue with the Mayor's conflict of interest is that he owns an eating and drinking establishment. It is reasonably foreseeable that adopting an ordinance regulating formula business – eating and drinking establishments would have an impact on his business.

Council majority agreed to split the ordinances up in order to allow for greater participation. Council would discuss the proposed ordinance regulating formula based businesses first.

Vice Mayor Schwartzman presented an alternative idea of splitting the City into five commercial quadrants, North, South, East, Central, and West. He proposed there could only be one named formula business within one quadrant. Before a named formula business wanted to open another one in a given area, they would have to close one where the concentration is. It would allow some new property rights; commercial property owners could rent their spaces, etc.

Council Member Hughes clarified that there could be one type of the same business in each quadrant.

Council Member Patterson stated that there could be too many formula businesses with that scenario. The difficulty is essentially a cultural aspect of what we don't want to become. We have to have a reason for people to want to come Downtown. It would not be protecting the Downtown Area. She is fearful of what this proposal would mean for the Downtown Area.

#### PROPOSED FORMULA BUSINESSES ORDINANCE:

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

#### PUBLIC HEARING OPENED.

#### Public Comment:

1. Mary Magill – Ms. Magill stated that the City does not need anymore fast food businesses. Once you start letting the formula businesses in, you get a ticky-tacky look. There is not question that too many of those stores are no class, no future, etc. She kind of liked Vice Mayor Schwartzman's suggestion, but was concerned about the numbers of businesses that could come in.
2. Martha Christopher – Ms. Christopher is the Chair from the Benicia Chamber of Commerce. She read the following prepared statement: 'Benicia has a vibrant and diverse business community, ranging form small retailers to large corporations. These businesses contribute to both the charm and economic vitality of our City. Most citizens recognize that our quality of life is dependent on our business community for its contribution to our economy. Currently, Benicia is known for being business friendly.'

We are concerned that the proposed ordinance to regulate formula based and big box business may cause this perception to change. We agree with the desire to maintain the charm of First Street, and we can support limiting one establishment of any particular formula business in the Commercial Downtown District. However, we oppose ‘limiting no more than three establishments of any particular formula business citywide.’ This section of the proposed ordinance is restrictive, negatively impacts property owners, and eliminates consumer choice. We recommend this provision be dropped.’

Ms. Christopher stated that she had more comments, but would hold them until the big box issue was discussed.

3. Harry Newhall – Mr. Newhall stated that Starbucks was trying to take over the businesses in the country. The Planning Commission did a great job in identifying what a formula based business is. It is incumbent on Council to draft an ordinance to protect the City from these types of businesses.
4. John Furtado – Mr. Furtado stated that the City was missing an opportunity here. There should be a balance between the planning commission and the Council. He would like to see a reasonable, inclusive plan. Think about the missed opportunity for communications.
5. Susan Street – Ms. Street stated that Council had a huge opportunity to decide what it wants this town to look like. It could say that Downtown is what makes Benicia special. If they allow formula based businesses anywhere, it would be ignoring the Downtown area.
6. Marilyn Bardet – Ms. Bardet stated that Benicia is a special place where people could get to know shopkeepers. We should recruit what types of businesses we want here.
7. Mike Ioakimedes – Mr. Ioakimedes stated that we seem to be going to great lengths to figure out what we don’t want instead of what we do want. We need to look at the community character, as described in the General Plan. It is important for the gateway areas to be reflective of the community. We need to figure out how to protect the small businesses.
8. Mike Paric – Mr. Paric stated that many of the formula based businesses are locally owned and operated. Not everyone can afford to start a business from scratch. Sometimes, they have to buy into a certain business. Kinder’s is a formula based business. It is a great addition to First Street, but it is indeed a formula based business. Some business owners are being classified as ‘evil’ simply because the type of business they own. We want to make sure we keep the uniqueness of Benicia by keeping the citizens employed.
9. Tony Shannon – Mr. Shannon stated that the City spent a lot of money to figure out what the citizens of Benicia want. That is something that needs to be taken into account. We should ask if it contributes to the charm, small town feel, etc. He listed examples such as when Blockbuster Video came in and Video Time went out. There have been instances in town where formula based businesses chased small businesses out of town.
10. Jon Van Landschoot – Mr. Van Landschoot stated that formula based businesses keep local dollars out of the City. Mr. Ioakimedes had a great idea about being

positive. The City has to have a legal back wall to say that ‘we don’t want you’ to this type of business.

Public Hearing Closed.

Mr. Erickson stated that some mention had been made about economics and the City’s economy. Something Staff thinks about is how to strengthen the economics of the community. There are some very attractive properties in the Downtown Area. If we are not careful, we will put a break on the economics that we have. The limit on three businesses citywide could be a problem. That number should be revisited. Regarding what residents and consumers in Benicia are looking for – the City found that residents felt there was a lack of shopping in town.

Council Member Patterson asked Mr. Erickson how other communities such as Carmel, Sausalito, Calistoga, etc. survive when they adopt fairly rigorous ordinances limiting retail businesses.

Mr. Erickson stated that the City of Carmel has a uniqueness that goes way beyond the type of business that they chose to limit. It is easier in a town that has a reputation seen as a ‘Carmel’ or ‘St. Helena.’ However, we don’t have that regional or national reputation as a destination place yet. It goes beyond any businesses that they have limited in the towns.

Council Member Patterson asked about the City of Calistoga. It is closer to home and it is doing very well. It was the test case for formula businesses. Mr. Erickson stated that that he did not know. He also does not know how the average resident in Calistoga has benefited by the City’s success. Council Member Patterson stated that her favorite hardware store (Ace Hardware) is in Calistoga. They have a very good variety of supplies. The protection of the special qualities of small towns is through some sort of regulation with the formula based businesses, especially restaurants. She does not disagree with the Planning Commission to take retail off. Council needs more time to think about that. The problem with the restaurants is that it kind of has the defining experience when coming Downtown. There are great places to eat in Calistoga. There is a huge range of quality and price. That is the thing our City has to offer. Benicia wants people to come Downtown and the City has to put its best foot forward. It is so important to focus on the special aspects of Downtown. She agreed that the issue of what people think of Benicia when they drive by was an important issue. It is the sense of the ease of going to the restaurants that are on the periphery, and not need to drive Downtown. There should be some rules that apply to the outlying areas. She does not know what the tipping point is. She hopes she does not live to see the point where the City has past that. Allowing five McDonalds, Quiznos, etc. is not the way to do that.

Council Member Hughes stated that it seems to be a balance with maintaining the small town charm and providing the citizens with choices. There is another balance between the free market and protecting the City’s small business owners. There is not an easy answer to this. He supported limiting the formula based businesses in the Downtown Area. He

supports the Planning Commission's recommendation of not more than one of the same formula business. He might even be willing to support a formula business that wants to move on First Street requiring a use permit. He clarified that the area he was referring to was First Street, not including Solano Square and Davies Square. He did not support three of the same formula businesses citywide. It would be putting too many limits on that. That might be preventing a business from coming into the community that could add value to the community. There are very intelligent citizens in this community. They will decide with their feet and wallets if a business will survive. He does not know what the magic number is. He does not think three is the answer. He was not sure if he wanted to put a number limit on it.

Council Member Whitney stated that the Downtown area is where people go to hang out. It is the community's living room. He includes Solano Square and Davies Square in that mix. He was focused on that area. People tend to get fear-based, divided, angry, choosing sides, etc. The community cannot win with that. Trying to get your arms around this is tough. There are things the City could do to create incentives on First Street that allow and define what kind of businesses we want. They could look at the business license fees. He had a conversation with Sam at Rrags. He asked if Amalia Lorentz could come by Rrags and give him some tips on how he could improve his business, market his business, make it better, etc. Sam agreed and they sat down and had a conversation about it. Hopefully that will prove beneficial to him. The City should be focusing on how to build the First Street corridor. The residents will make decisions with their pocket books. The strip malls in the outlying areas are designed for formula based businesses. Let's stop demonizing businesses. People that own businesses such as Baskin Robbins are not evil people. He was not pleased with Starbucks. Someone could have had the conversation with the City to let them know their intention was to open up so many Starbucks. There are things that could be done to create incentives. He could go along with the Planning Commission's recommendation of having one formula based business in the First Street Corridor (as defined by the Economic Development Board. He did not know how Staff came up with the magic number of three.

Council Member Patterson asked Staff how many ordinances were looked at in December. Mr. Knox stated that he thought it was about ten ordinances or so. Council Member Patterson stated that she thought it was more than ten. She asked what the General Plan says about Davies Square and Solano Square and their connection to First Street. Mr. Knox stated that there was an indication that Solano Square was connected to First Street. Council Member Patterson stated that there was an organic connection that is desired. When she was watching the Planning commission meeting, she was frustrated, as they were not connecting some of the planning ideas. She was also frustrated when they were defining the formula business and looking at the findings that would be made for those that required a use permit (page VIII-B-6). She is not sure what 'non-obtrusive' means. That would need to be defined further. It is the City's historic character that is at risk, along with the locally owned businesses. That was what Calistoga was able to preserve. They were able to defend their formula ordinance because the General Plan was very clear. Council needs to be particularly careful about that. On finding #3, she is not sure what 'concentration' means. Is that two or more, three or more? The City needs to

strike a balance where it allows one of each type for the Downtown Area that includes Solano Square and Davies Square that it would require each of those to go through a use permit process. With a proper definition of those terms, she would like to add to the #7 finding, that the City wants to promote a 'one of a kind, locally owned' whenever possible. If the City states that there is a standard to meet, it would define, promote, and further the interest of Benicia

Council Member Hughes clarified that what he previously stated that he would support did not include Solano Square and Davies Square.

Council Member Patterson stated that Solano Square and Davies Square were part of the Downtown Area. Including those areas would create more of a walkable sense. In terms of the rest of the town, she had a strong concern about making it possible for any number of formula businesses to locate in town. There are approximately 6,000 chain businesses in the United States. Benicia could end up having all the stores in Downtown being chain businesses. There should be a distinct regulation for the whole of the City, and a distinct regulation for the Downtown Area.

Vice Mayor Schwartzman stated that the City needed to do a better job in getting people to go to the Downtown Area. The City needs to advertise and get the economic development involved to bring people Downtown. He would be okay limiting it to one formula business in each quadrant. He would like to include Solano Square and Davies Square in the Downtown Area. He was okay with use permits. He was okay with putting only one formula based business in his definition of the Downtown Area.

Council Member Whitney suggested adopting the Planning Commission's recommendations for the First St. Corridor, but amend it to include Solano and Davies Square.

It was motioned by Council Member Whitney, seconded by Council Member Patterson, for Council to adopt the Planning Commission's recommendations for the First St. Corridor, but amend it to include Solano and Davies Square.

Council Member Patterson stated that the Planning Commission was not comfortable with the limit of ten businesses in the area that included Solano Square, Davies Square, and the Downtown Area. Recognizing that, maybe the number could be changed to a higher number. She stated that she would like to see a higher number. She wanted to see some success with this ordinance. She suggested bumping the limit to 13 formula businesses in the Downtown Area. That would provide for four additional businesses in the future.

Council Member Hughes stated that he might be swayed to include Solano Square and Davies Square in the Downtown Area; however, he could not be swayed to pick an arbitrary number. He could not support that, whether it was ten or thirteen. Vice Mayor Schwartzman stated that he would prefer the number to be twelve.

Council Member Whitney clarified that Council Member Hughes would rather not have any ceiling at all and follow the statement 'only one formula based business' with the inclusion of a use permit requirement.

Vice Mayor Schwartzman asked Mr. Knox what flexibility a use permit would provide. Mr. Knox stated that there were some 'terms of art', words that could be interpreted by the Planning Commission. It is the Planning Commission's job to interpret that language in terms of a specific application and terms of approval. The Planning Commission never had a chance to review the idea of only one of each type (including Solano Square and Davies Square). All of the findings that the Planning Commission has to make are subject to a certain degree. One of the major constraining factors is the idea of 'concentration.'

Mr. Erickson stated that the use permit process has some clout in the way of exercising some discretion on the part of the commissioner or whoever is going to exercise that. In figuring out what the magic number should be, everyone should be wise in choosing that number. It would be nice to have a rationale or foundation for choosing the number. He did not think that had been weighed out tonight.

Council Member Hughes stated that he hates to select a number, and then hit that number, and then have a really great formula based business want to come into the Downtown Area, but not be able to because we hit the number. The language we have for the requirement of a use permit provides the City a lot of flexibility to look at this on a case-by-case basis. That is a safer route than picking an arbitrary number.

Council Member Patterson stated that the number was not arbitrary. It started off by restricting what was on First Street, and acknowledging what was already there. Then they added Solano Square and Davies Square and did the +1 rule. The number was thought through and was not arbitrary. She suggested that if Council moves forward with the motion, it should clarify the finding that goes with the use permit and insert the word 'historic' on finding #2. She suggested the term 'non obtrusive' be modified so it was consistent with the General Plan. There should be some reference to the finding that Benicia is a small size city with small town atmosphere. She was not sure how to insert something about locally owned businesses. Mr. Knox stated that Council could add the idea of locally owned and unique businesses into #5.

Council Member Patterson clarified that the motion was that Council was defining the town core area; Council could live with the limit of 12, and that based on the use permit as modified by the discussion.

Council Member Whitney stated that his goal was trying to get all four Council Members to go along with that. It might be wishful thinking.

Mr. Knox stated that use permit was a safeguard and provided an extra step in the process. It does represent options for the Planning Commission to apply those findings. It would be appealable to the Council.

Mr. Erickson stated that there was a considerable amount of control that the City gains through the use permit process.

Council Member Whitney stated that he would be open to amending his motion to try to get Council Member Hughes to join the rest of the Council to include Solano Square and Davies Square in the First Street corridor.

Vice Mayor Schwartzman stated that if it were not for the use permit, he would not be as comfortable with eliminating the numbers. There was a methodology to the numbers. He wants to see economic development trying to do everything they can to attract local businesses.

Council Member Patterson stated that it was a teeter-totter. She has way too much experience in other cities with this problem. It is wishful thinking that if Council does not put a limit on the number of formula restaurants, that the use permit will work fine. It is a good tool, but we need more.

Council Member Whitney stated that he was compelled by what Council Member Hughes stated about the arbitrary number.

Council Member Patterson stated that other communities did this right. The number was not arbitrary. The successful ordinances in the State prohibit formula restaurants in the downtown area. That is the basis for a successful ordinance.

Vice Mayor Schwartzman clarified the motion. It was for having only one formula business in the Downtown area, the Downtown Area would include Solano Square and Davies Square, with a total number of 13, and there would be use permits.

On motion of Council Member Whitney, seconded by Council Member Patterson, Council did not approve a motion to have only one formula business in the Downtown area, the Downtown Area would include Solano Square and Davies Square, with a total number of 13, and there would be use permits, on roll call by the following vote:

Ayes: Council Members Patterson and Whitney

Noes: Council Members Hughes and Schwartzman

Abstain: Mayor Messina

Vice Mayor Schwartzman asked if there was a magic number that Council could live with.

Council Member Hughes offered an alternate motion that the ordinance would be one of the same formula businesses in the Downtown Area, including Davies Square and Solano Square, and there would be a requirement for a use permit.

On motion of Council Member Hughes, seconded by Council Member Whitney, the proposed Introduction and First Reading of an Ordinance (as described by Council Member Hughes) was approved as amended, on roll call by the following vote:

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

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, Council voted against having the City divided into five commercial quadrants (the Downtown area, East, North, Central, and West), no more than one formula based business be allowed in one quadrant, and if a particular formula business has one existing location in a particular quadrant, they could not open up a new store unless they close one in an existing quadrant, and a use permit would be required, on roll call by the following vote:

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

Mr. Erickson stated that there had been no staff analysis on the quadrants as defined by Vice Mayor Schwartzman. Council Member Patterson agreed that it was a nice idea, but she did not think that everyone fully understands it.

Vice Mayor Schwartzman stated that he did not like the number of three.

Council Member Hughes stated that there was still the protection of the use permit. The City could still say yes or no to the businesses that come in. He would be supportive of not having the limits, not going with the quadrants, and just having the use permit requirement.

Council Member Patterson asked if this requirement were available for the Rose Drive and Columbus Parkway project, would this have allowed the City to have the proper materials for the buildings if they had gone through a use permit. Mr. Knox stated that in looking at the findings, Council would have been able to control appearance, so indeed, yes. Council Patterson stated that in that case, the City would not be stuck with stucco. Mr. Knox stated that would be up to the Planning Commission. Something that needs a use permit could have been built into the review of the Rose Center Project. This would put an additional layer where the Planning Commission could say that regardless of what Design Review has approved, the appearance is or is not appropriate in terms of community character, and they could change it. Council Member Patterson stated that for that reason, she could support a motion that required a use permit, pursuant to the changes Council has made for any formula business outside of the Downtown Area, without a number.

On motion of Council Member Hughes, seconded by Council Member Patterson, Council did not approve the City requiring any formula business to obtain a use permit in the CC, CG, and CD zones, on roll call by the following vote:

Ayes: Council Members Hughes and Patterson  
Noes: Council Members Schwartzman and Whitney  
Abstain: Mayor Messina

Council discussed the issue of Commercial General (CG), particularly in the Southampton Center area.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council did not approve that for Commercial General Areas (CG), the City only allows one of a formula business in a commercial zone, without requiring a use permit, on roll call by the following vote:

Ayes: Council Members Hughes and Schwartzman

Noes: Council Members Patterson and Whitney

Abstain: Mayor Messina

Vice Mayor Schwartzman stated that at the late hour, he did not think Council would be able to come to a conclusion on this issue.

At 11:47 p.m., Vice Mayor Schwartzman continued all remaining agenda items to a future meeting.

Public Comment:

Donnell Rubay – Ms. Rubay read the following prepared statement: ‘It appears that the Mayor wishes to change the Benicia Zoning code so that despite what the Historic Plan may say, properties may be developed to the height, density and setback allowances of underlying zoning.

As I understand it - and I ask the City Attorney to correct me if I’m wrong - because of state CEQA law - changes to an historic resource (in Benicia this includes listed historic buildings and the historic districts themselves) must comply with the Secretary of the Interior’s Standards, or an Environmental Impact Report is required.

So, in order to protect historic structures and districts, alterations to the structures or districts must comply with the Secretary of the Interior’s Standards. Compliance with these standards may impact density, height, setback, etc.

According to the Historic Preservation Review Commission ordinance: The purpose of the HPRC includes “to preserve, protect, enhance, and perpetuate” Benicia’s “historic structures, districts and neighborhoods.” Yet if the HPRC is required to follow the Mayor’s proposed ordinance - it won’t be allowed to ensure that alterations to an historic structure or to a district comply with the Secretary’s Standards - therefore, the HPRC will not be able to do its job. However, property owners who harm historic structures or an historic district would still be violating state CEQA law.

So, if the HPRC can’t protect historic resources (because it can’t regulate height, density, setback etc.) yet property owners would still be violating state CEQA law even with HPRC approval - we have the potential for a confusing situation.

It’s been my understanding that, a reason the City has spent hundreds of thousands of dollars on the Downtown Specific Plan and on the update of the Historic Plan, is because

the City wants to be clear and fair to property owners. If this is true - then, if you pass this ordinance you really need to give historic property owners a plan as to how they may build to the limits of zoning and comply with CEQA.

Now a few years back I asked the mayor this question. And to his credit, he did have a plan. His plan was that historic property owners could simply move their historic buildings off of their property, including out of the historic district.

The problem with this plan, however, is that if historic property owners are moving their historic buildings outside of the historic district, we really don't need a Historic Plan. So, and I really need to emphasize this, if it is true that you want clarity and fairness in our community, either: provide historic property owners with a plan as to how they may build to the limits of zoning and comply with CEQA; or if the plan is allow historic property owners to move their properties outside of the historic district then, please, begin the process of eliminating the Historic Plan as soon as you approve this ordinance'

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

Reports from the City Manager:

Continued.

COMMENTS FROM COUNCIL MEMBERS:

Request for consideration of an ordinance clarifying the scope of design review authority:

Continued.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:54 p.m.

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Lisa Wolfe, City Clerk