

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
APRIL 18, 2006

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 18, 2006, 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, Schwartzman, Whitney, and Mayor Messina

Absent: Council Member Patterson

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).

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

**A. CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6 (a))**

**Agency negotiators: City Manager, Human Resources Director, Bill Avery
of Avery & Associates**

**Employee organizations: Benicia Dispatchers Association, Benicia Police
Officers Association, Benicia Public Service Employees Association**

**Unrepresented employees: Police Managers, Professional/Confidential,
Middle Management, Supervisory and Senior Management**

**B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)**

Name of case:

City of Benicia v. Benicia Harbor Corporation

**C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9)**

Number of potential cases: 1

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:02 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
APRIL 18, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, April 18, 2006, 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, Schwartzman, Whitney, and Mayor Messina

Absent: Council Member Patterson

PLEDGE OF ALLEGIANCE:

The Benicia Police Department volunteers 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 the following actions taken at Closed Session:

- A. Conference with Labor Negotiator – Council received information from Staff.
- B. Conference with Legal Counsel – Existing Litigation – Council gave direction to Staff.
- C. Conference with Legal Counsel – Anticipated Litigation – Council received information from Staff.

Openings on Boards and Commissions:

- Human Services Fund Board:
 - One unexpired term to June 30, 2008
 - One unexpired term to June 30, 2009
 - Three full terms to June 30, 2010
- Benicia Housing Authority Board of Commissioners:
 - Two full terms to June 30, 2010
- Economic Development Board:
 - Three full terms to June 30, 2010
- Library Board of Trustees:
 - One full term to June 30, 2009
- Parks, Recreation and Cemetery Commission:
 - One full term to July 30, 2010

Notification of change in dates for limiting water use:

Mr. Dan Schiada, Public Works Director, announced that due to wet weather, the plant shutdown originally scheduled for April 13, 2006 was delayed for two weeks. Therefore, the public's cooperation is needed in restricting water use on April 26 and 27, 2006. He requested the public not do any outdoor watering and limit indoor water use as much as possible. Major construction is occurring at the Water Treatment Plant. On April 27, 2006, the contractor will be performing a critical tie-in of new facilities that will necessitate shutting down the plant for an extended period of time. In order to continue to provide the community's residents and businesses with water during the shutdown, the City is asking for everyone's cooperation in limiting their use as much as possible. Updated information on this issue will be provided through the City's website, Channel 27, and the Benicia Herald newspaper.

APPOINTMENTS:

RESOLUTION 06-47 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF GUY YOUNG AS THE VALERO REPRESENTATIVE TO PEOPLE USING RESOURCES EFFICIENTLY (PURE)

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: None
Absent: Council Member Patterson

RESOLUTION 06-48 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MAYOR STEVE MESSINA TO THE WATER TRANSIT AUTHORITY COMMUNITY ADVISORY COMMITTEE

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: None
Absent: Council Member Patterson

PRESENTATIONS:

Benicia Historical Museum:

Ms. Ann Hansen, Benicia Historical Museum Board of Directors, provided an update on the activities at the Benicia Historical Museum. The Museum has installed three new computers in its offices. Mr. Harry Wassmann turned the curatorship over to Ms. Beverly Phelan. Mr. Roger Kelly is now on board as the Museum's Director. The Museum has an outstanding women's display. The Museum's commemoration of the 1906 earthquake and its effect on Benicia went on display on 4/18/06. The Museum continues its expansion of the new exhibits. The museum hopes to expand on its exhibit of men and women's organizations and their origins up to the present time. The Museum is applying for a grant from the History Channel, which requires involve from school children in the program. There is a local group in Benicia that is interested in providing shelter for the approximately 100-year old fishing vessel that is currently being covered by a tarp. The

group recently repaired the engine on the vessel and continues to provide for the vessel's upkeep. The Museum is working with City staff on various projects. The Museum is working on the Spanger Garden. The project should be completed in 2006. The City is working with the Museum on the striping in the parking lot. The roof repair should be completed sometime this year. Signage throughout the City for the Museum is improving. There has been increased membership. The Museum will host its first murder mystery dinner. The hall floor repair was completed. They hope to have the new walking tour booklet and brochure finished soon. The Museum has a tremendous obligation to preserve the assets of the City. It takes its stewardship very seriously. The Museum will be reviewing its mission statement and goals on 4/28/06. The public was invited to attend the morning session. She thanked Council and Staff for their support.

Council Member Whitney stated that being on the Museum's Board has been a great experience for him. Now that the floors have been repaired, the museum is up to full capacity. There is very little meeting space in town. The meeting space at the museum is a wonderful place.

Valero Property Tax Appeal Update:

Mr. Marc Tonneson, Acting Assessor/Recorder, Solano County, stated that the last update was on 9/20/05. He was hoping to bring good news to tonight's meeting. They have met with Valero over the past seven months. They have not been able to reach a conclusion with Valero on the property value. The numbers they have vs. the numbers Valero has are very different. He believes they will end up going to hearings, although not for a lack of effort on theirs or Valero's part.

Council Member Hughes stated that this was a frustrating issue. He asked where this issue was heading. It sounds like it could drag on for a long time and cost a lot of money. He asked if there had been an independent risk assessment for the City of Benicia. Mr. Tonneson stated that there has not been a risk assessment done. However, the County is confident with its assessment value of Valero. Mr. Erickson stated that the County hired a special consultant to look into this matter. Council Member Hughes stated that he was concerned about the dollars that have been and will be spent on this matter.

Vice Mayor Schwartzman stated that there is obviously an issue with the appraisal value. He asked if there was anything that the County could discuss at this time to provide some insight on the matter. Mr. Tonneson stated that Valero is relying on the cost and market approach. The County's approach was different. Valero feels confident about its appraisal. Vice Mayor Schwartzman discussed the various approaches to doing appraisals. The County seems to have used the income approach. Vice Mayor Schwartzman asked if the approach used for Anheiser Busch's appraisal was an income approach. Mr. Tonneson stated that a cost approach was used for Anheiser Busch. It was a different type of appeal. In the Valero appeal, there is no agreement on which approach to use.

Mayor Messina stated that he remembered that the City was helping with the appraisal cost, but not the court costs. Mr. Erickson stated that the City's participation consisted of helping out with the cost of the so-called experts the County is using.

PROCLAMATIONS:

- National Poetry Month – April 2006 – Mr. Joel Fallon, Poet Laureate invited the public to attend 'Poet's Picnic in the Park' at the Civic Center Park on April 23, 2006.
- Sexual Assault Awareness Month – April 2006 – Ms. Eileen Shannon, SafeQuest Solano, accepted the proclamation.
- National Volunteer Week – Volunteer Police Program – April 23-29, 2006 – Officer Patti Barron accepted the proclamation. The Benicia Police Volunteers donated 5,729 hours of service over the past year, which equates to a dollar value of \$103,695.00.

ADOPTION OF AGENDA:

Public Comment:

1. Robert Moore – Mr. Moore requested Agenda item XI-A be moved up to be discussed earlier in the agenda.

Ms. McLaughlin stated that it could be moved up, but must be voted on and approved by the Council majority.

Mayor Messina suggested this item follow directly after the Consent Calendar.

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

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

Noes: None

Absent: Council Member Patterson

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items received.

PUBLIC COMMENT:

1. Dana Dean – Ms. Dean discussed the Valero property tax appeal. She is concerned about how long this issue will draw out. She does not think the general public has a good idea on how this issue will affect Benicia. She hopes Council will allow Mr. Tonneson to regularly update the public on the issue.
2. Jon Van Landschoot – Mr. Van Landschoot asked for a point of order regarding moving items up on the agenda. Mr. Van Landschoot stated that item IX-C should be moved up to be the first item discussed under Action Items.

Council voted unanimously to move item IX-C to be the first item discussed under Action Items.

CONSENT CALENDAR:

Council pulled items VII-B, VII-C, VII-D, VII-H, VII-I.

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

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

Noes: None

Absent: Council Member Patterson

The minutes of April 4, 2006 were approved.

RESOLUTION 06-49 - A RESOLUTION ACCEPTING THE BIDS FOR THE WATER DISTRIBUTION SYSTEM IMPROVEMENT PROJECT, AWARDED TO NORTH BAY CONSTRUCTION, INC. OF PETALUMA, CALIFORNIA, IN THE AMOUNT OF \$5,984,800 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 06-50 - A RESOLUTION AWARDED A CONSULTANT AGREEMENT FOR CONSTRUCTION MANAGEMENT/ENGINEERING SUPPORT SERVICES FOR THE WATER DISTRIBUTION SYSTEM IMPROVEMENT PROJECT TO CAMP DRESSER & MCKEE, INC. FOR A NOT-TO-EXCEED COST OF \$897,501 AND AUTHORIZING THE CITY MANAGER TO SIGN THE DOCUMENT ON BEHALF OF THE CITY

RESOLUTION 06-51 - A RESOLUTION APPROVING ADDITIONAL APPRAISAL EXPENSES FOR THE VALERO REFINERY ASSESSMENT APPEAL

RESOLUTION 06-52 - A RESOLUTION SUPPORTING THE STATE BALLOT MEASURE FOR A CONSTITUTIONAL AMENDMENT TO PREVENT FUTURE STATE DIVERSIONS OF PROPOSITION 42 REVENUES

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Council Member Hughes stated that he had a general question that related to all three items involving denial of claims.

Mayor Messina stated that the three items listed below (VII-B, VII-C and VII-D) could be discussed and voted on collectively.

Council Member Hughes asked Staff what the City was doing to prevent future floods (as listed in the claims). Ms. McLaughlin stated that all of the claims were the results of an extraordinary amount of rains on 12/31/05. The drain system was not able to

accommodate the extraordinary amount of water going through them. The City has taken all reasonable actions at this point in time. The facilities are designed in accordance with the County requirements. This was definitely an unusual event.

Denial of the claims against the City by American Housing and Diane Baranik and referral to insurance carrier:

Denial of the claims against the City by Babot, Bond, Brandt, Cornwell, Dally, Hull, Johnson, Kenyon-Collins, Linderman, Marracino, Maxwell, Pruitt, Riedinger, Sharon, and Stevens and referral to insurance carrier:

Denial of claims against the City by Pollock, Ramos, Slaviero and Wapner and referral to insurance carrier:

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council voted to approve the denial of claims against the City as listed above (VII-B, VII-C and VII-D), on roll call by the following vote:

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

Noes: None

Absent: Council Member Patterson

Approve the new job description for the classification of Division Chief and establishing the salary range:

Mayor Messina stated that he had concerns with this item. He would rather see that the work be pushed down to the lower staff levels.

Council Member Hughes asked what the City's options was if the classification were not approved. Chief Hanley stated that over the past four years, he has been using himself and the two deputy chief's to respond to mutual aid calls. Someone has to be on call for this 24 hours per day, 7 days per week. He recommended this process continue with the three positions.

Council Member Whitney stated that he did not see the logic in having the two deputy chiefs rotate every other week. Chief Hanley stated that having a Division Chief would cost the City approximately \$983.00 per month. He discussed various scenarios where having a Division Chief would be advantageous.

RESOLUTION 06- - A RESOLUTION APPROVING A NEW JOB DESCRIPTION OF DIVISION CHIEF AND ESTABLISHING THE SALARY RANGE

Council Member Hughes made a motion to approve the above Resolution. The motion died for lack of a second.

Approve the January 1, 2006 to June 30, 2006 amendments to the base salary in the Labor Agreements with the Senior Management Group, Middle Management Group, Benicia Dispatchers' Association and Benicia Public Services Employees' Association

Council Member Hughes asked why the City would not wrap this up in the other agreement. Ms. O'Connell stated that one of the bargaining clauses is that the current contract could be opened up if they were not at the appropriate levels of salary. What is being done right now is that the current contract is being opened up so the group can be at the appropriate salary level. Council Member Hughes asked Mr. Erickson if there was agreement between the labor groups and employees that this was a fair strategy. Mr. Erickson stated that it was his understanding that the City has the employee organization's consent. There may be some separate employees that do not agree.

Vice Mayor Schwartzman discussed the Firefighter's negotiation process. He stated that what he thinks is being done is that the City is getting the other employee groups from January 2006 to June 2006.

Council Member Hughes stated that he was not comfortable that this process is going to be accurate. Council has not had enough input from the employee groups.

Mayor Messina asked Staff if there was any likelihood that if the requested adjustments were made, any groups would be bumped above the appropriate level. Ms. O'Connell stated that the likelihood of that happening was very slim.

RESOLUTION 06-53 - A RESOLUTION APPROVING THE JANUARY 1, 2006 TO JUNE 30, 2006 AMENDMENTS TO BASE SALARY IN THE LABOR AGREEMENTS WITH THE SENIOR MANAGEMENT GROUP, MIDDLE MANAGEMENT GROUP, BENICIA DISPATCHERS' ASSOCIATION AND BENICIA PUBLIC SERVICES EMPLOYEES' ASSOCIATION

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

Ayes: Council Members Schwartzman, Whitney, and Mayor Messina

Noes: Council Member Hughes

Absent: Council Member Patterson

PUBLIC HEARINGS:

None

COMMENTS FROM COUNCIL MEMBERS:

Request for consideration of negotiating leases with Boy Scouts & Girl Scouts for use of City-owned property:

Mayor Messina stated that he wanted this item brought back for discussion partly because of the comments made by the Scout's at the last Council meeting, as well as a letter Council received from the Scout's advising Council that they (Scout's) had looked at the various options available to them and felt that the most preferred option was to re-lease the land that was previously used (on East Fourth and L Street) to rebuild on the property.

Vice Mayor Schwartzman asked Mayor Messina if he was looking for Council to make a decision on this item tonight. Mayor Messina stated that based on the Scout's requests,

they would like Council to make a decision tonight. However, a final action would not be taken tonight.

Public Comment:

1. Robert Moore – Mr. Moore works for Affordable Housing Affiliation (AHA). AHA has been working with the City to develop affordable housing on the property located on East Fourth and East L Streets. The property was zoned suitable for affordable housing. It is unclear whether the City is ready to complete the commitment to affordable housing. He stated that City's Housing Element refers to this site as 'an affordable housing project currently in process.' In the quantified objectives on page 23, the Housing Element specifically dedicates the property as affordable housing and relies on it as a way to meet the Regional Housing Needs Determination. It states that the site is an affordable housing project that has the potential to be affordable to very low and low-income households and therefore included those potential 12.5 units to meet their Regional Housing Needs Determination in appendix A-43. The City certifies that it will be 100% affordable to low income in table 42, appendix A-48 and also in appendix F. Additionally there is a description of the site on A-44 where the City confirms that this site is part of its 'affordable housing strategy.' The City sold five City-owned sites for market rate development to obtain the funds specifically for affordable housing development as indicated in Appendix A-44 and 45. There are two Housing Element programs that are the most compelling. First is program 1.02 which does not specifically refer to the site, but states that the City will maintain and expand its relationship with non-profit developers and will, among other things, maintain an available site inventory and provide the inventory to non-profit housing providers. This is important because there are limited sites in the City and the City has already declared this site to be part of the available site inventory. Second, this site is specifically identified as an affordable housing project in Program 1.07 on page 9. A status report is to be prepared and disseminated through various sources, including the City's own website. AHA has not been able to confirm that such reports exist. The Housing Element is part of the City's constitution, which commits this site to affordable housing. To further reduce the already minimal available sites for potential affordable housing appears contrary to many of the Goals, Policies, and Programs created by the Housing Element. In addition to the commitments of the Housing Element, AHA is familiar with State Law that compels the City to make the site available for affordable housing. The law regarding surplus land is found in Health & Safety Code section 54220. If the property owned by the public agency does not fall under one of the exceptions, the public agency must offer to sell or lease the property for the purpose of developing low and moderate-income housing. The City should carefully review and comply with the requirements of this law. Beyond the legal measures of how this site should be treated are the practical considerations. At a recent City Council meeting, the Mayor commented that the City should be looking for affordable housing development proposals that don't require outlay of City funds. Mr. Moore had previously pointed out that the proposal from AHA was exactly that. AHA is proposing to purchase the site from

the City as per the Housing Element and State Law. No City grant or fee waivers are requested, and AHA is willing to compete with other affordable housing developers for the privilege of providing this amenity. The Mayor appears to be ready to ignore these facts in order to offer the site to the Boy Scouts. While other options for the Scouts have been identified, most have not been fully explored, and new options have not been considered. Mr. Moore certainly believes the Scouts deserve access to a worthwhile facility. However, it seems incredibly premature to strive to undo the work that the Housing Element requires and possibly violate State Law to make a hasty decision on the new home for the Scouts. Mr. Moore believes that a location far more suitable for the Scout exists in a current community facility. He proposed that the City use the proceeds from the sale of the East Fourth/East L Street site to fund improvements to an existing facility that would better suit the Scout's needs. He requested the City stop its current swing away from supporting affordable housing. Comments and actions, or lack thereof, by the Council that are in conflict with the Housing Element, and the very real needs of lower-income Benician's are a step backward from the progress made in recent years. The need is still great and AHA is ready to assist the City in addressing that need.

Mayor Messina stated that some of Mr. Moore's statements were argumentative and untrue. AHA has invested funds in the site and is trying to bulldoze Council into following only one course of action. Council has, in the past, looked towards providing affordable housing. On the day he became Mayor that was the number one priority for him. There have been several affordable housing developments built (he listed various developments). The City has taken steps to show its dedication to affordable housing. Council should not be railroaded into turning sites into affordable housing. There is no doubt that Council is committed to providing affordable housing. He did not say that the City should not spend money on affordable housing. The City has and will continue to spend money on affordable housing. The City needs to find ways to get the most bang for its buck. He discussed the Burgess Point project. He understands Mr. Moore's passion. The City has to look to the promises it made to the Scouts. The Scouts asked the City to pursue one course of action.

Council Member Whitney stated that it is fair to say that there used to be a message out there that 'affordable housing need not apply.' This Council continues to support affordable housing. He asked Mr. Moore for a copy of the codes that he referenced in his public comment. He would like the City Attorney to review and respond to the comments.

Vice Mayor Schwartzman stated that he did not believe the City should be railroaded into using sites for affordable housing or a site for the Scouts. The City needs to keep its options open. The City has done affordable housing in the past; however, the inclusionary housing has been there for a while. He is not saying the site should be anything in particular at this time.

Council Member Hughes stated that it was a high priority for him to provide a home for the Scouts. However, he does not believe the City has explored all available options for sites for the Scouts. He would like to see Staff and the Scouts sit down so that everyone understands the pros and cons of all suggested locations. He wants to make sure the Scouts understand all of their options.

Vice Mayor Schwartzman stated that a tour is scheduled for the Mills site tomorrow. The City's obligation is to find a site that is usable and workable for the Scouts.

2. Kitty Griffin – Ms. Griffin stated that Mr. Schwartzman stole her lines. The railroading seems to be going on prematurely for the Scouts. The City Attorney needs to look into the comments made by Mr. Moore, with regards to the codes. Much of the community might agree with the comments made by Vice Mayor Schwartzman. She stated that there has not been enough done with regards to affordable housing.
3. Mariana Moore – Ms. Moore stated that she was disturbed by the Mayor's term 'railroading'. A better term would have been 'accountability.' The City has agreed to do certain things and should be held accountable for doing those things.

Council Member Hughes asked Mr. Erickson if the Scouts had been invited to the tour of Mills that is scheduled for tomorrow. Mr. Erickson stated that he was not sure, but would look into it and contact the Scout's if it has not already been done.

4. Jim Watson - Mr. Watson stated that there needs to be alternative sites available for affordable housing. Having a diverse community will only strengthen it.
5. Tracy Devincenzi – Ms. Devincenzi stated that the Scout's have never gone to Council and said that they want a specific place to meet. They have simply discussed a need for space. They are open to discussion and are flexible to alternative options. The Scout's want what is best for the community. She is not sure if anyone from the Scout's would be available for the tour of Mills due to Spring Break.

Mayor Messina suggested the City aid the Scouts in setting up a tour of the Mills site if they are not available for tomorrow's tour.

6. Dana Dean – Ms. Dean thanked Ms. Devincenzi for her comments. She was uncomfortable with the competing interests in this issue. The City has identified a housing element that it is not following through on. She suggested the City Attorney look into the issue.
7. Jon Van Landschoot – Mr. Van Landschoot stated that it sounds like the City has promised the land to two people. The City looks odd. It is pitting two great organizations against each other. He does not believe the Mills site is best, as it does not seem like it would be a long-term solution for the Scouts.

Council Member Hughes asked Mr. Erickson if the City heard from the 7-11 Committee as to when they will have an answer on the Mills site. Mr. Erickson stated that he does not have a precise date. He understood that the 7-11 Committee would be finished with its deliberations before the end of the school year.

Mayor Messina stated that he heard (unofficially) that the 7-11 Committee might not be finished until July or August. He has also heard unofficially that if BUSD leases the property, it would most likely be a short-term lease.

Council Member Hughes would like to hear directly from the 7-11 Committee as to what its intentions are.

Vice Mayor Schwartzman stated that he did not believe the City was pitting two organizations against each other. He did not think tomorrow's tour would be the answer to all questions. The City needs to hear from the School District on the issue.

Council Member Whitney stated that he did not believe the City was pitting two groups against each other.

Mayor Messina directed Staff to have a report ready for the 5/16 Council Meeting as to the options on this issue. He wants Staff to meet with the Scouts to see what their preferred options would be. He wants the City Attorney to review the comments made by Mr. Moore. He wants the City Attorney to have some conversations with HCD regarding the issues raised about affordable housing. Ms. McLaughlin stated concerns with the short time frame for Staff to accomplish the requests made by the Mayor.

Council Member Schwartzman wants Staff to tell Council what steps would need to be taken if the site was used for affordable housing – with regards to developers, etc.

Council Member Whitney asked how soon the City Attorney could have a response to Mr. Moore's comments. Ms. McLaughlin stated that the middle of next week should be sufficient time.

ACTION ITEMS:

Consideration of a new ordinance, pursuant to State law and a court decision, for maintenance and repair of sidewalks by amending the Municipal Code to incorporate State procedures and to require property owners to keep their sidewalks in good repair:
Heather McLaughlin, City Attorney, reviewed the Staff report.

Mayor Messina asked about the Highway Code. He believed this was a move to bring the City into compliance with the Highway Code. Ms. McLaughlin confirmed that was correct. Residents currently have an obligation to maintain their sidewalks. Mayor Messina asked if the landscaping was including. It was. He finds it somewhat unfair that citizens may be required to maintain a sidewalk that is damaged by a tree they were required to plant. Ms. McLaughlin discussed the list of preferred trees that the City has. Certain items could be grand fathered in. The City has the ability to regulate through design review and other issues. It was her understanding that the Joint Sidewalk Repair Program was put into place in part to balance the effect of having to do more decorative sidewalk finishes vs. just pouring down concrete.

Vice Mayor Schwartzman had concerns about the issue of grandfathering items in. That is why he likes the Joint Sidewalk Repair Program. It is a shared issue. Ms. McLaughlin discussed the case-by-case basis that the issues would have to be evaluated on. If the repair were due to the City's negligence, the City would take care of it. Vice Mayor Schwartzman discussed the possibility of a City-approved tree damaging a sidewalk. It is not fair to make the property owner pay for those repairs. Mr. Schiada discussed the trees planted in the Southampton area. The trees had more room to grow. Staff's concerns are mostly on First Street. The benefit of the Joint Sidewalk Program is that the City is willing to contribute towards the removal of the damaged sidewalks. He briefly discussed the issues with the sidewalk in front of Hagan's Clocks. It was clearly an issue of the trees causing the damage to the sidewalk. Most of the issues with damaged sidewalks have been on First Street. Sidewalks on open space between subdivisions would still be the City's responsibility

Public Comment:

1. Mike Ioakimedes – Mr. Ioakimedes discussed the trees on the 300 block of First Street. He is concerned that the sidewalks that are being replaced on First Street may need to be replaced again if the offending trees are not replaced. The sidewalk ordinance needs to be in line with the Tree ordinance.
2. Jon Van Landschoot – Mr. Van Landschoot stated that he is amazed that he agreed with the Mayor a second time in a month. This issue should be discussed at a Tree Committee meeting. People don't know much about this issue. He likes the Joint Sidewalk Repair Program. He likes the cooperative approach. The burden should not be shifted to the citizens. The citizens did not build the sidewalks.
3. Kathy Brown – Ms. Brown stated that it is unfortunate that we live in a society where every crack in a sidewalk brings up a lawsuit. She likes the issue of shared liability, but it's hard to assign responsibility. If the sidewalks are to remain a public right-of-way, the City should share in the cost of maintaining and repairing them.

Vice Mayor Schwartzman asked for clarification on the issue of 'shifting all of the responsibility' to the property owner. Ms. McLaughlin stated that it is shifting the property owner's share of responsibility onto them. Vice Mayor Schwartzman asked who was responsible for deciding a sidewalk is in disrepair. There was not a clear answer. Vice Mayor Schwartzman stated that it seems vague. If the City is going to have an ordinance, there needs to be criteria and policy so that as much ambiguity as possible is taken out of the decision. He discussed signs placed on sidewalks and the issue of realty signs. If a citizen has a tree that is causing the issue, and the tree needed to be removed, could the City aid, since it has tools to remove trees? He suggested if the city had the tools to aid the citizens, it might be something working into the program in the future. Mr. Schiada discussed the current sidewalk program. The property owner takes care of the tree. The City's responsibility would be to remove the sidewalk and material, and the citizen would be responsible for the tree. If it were a City tree, the City would be responsible for it.

Mr. Marcus Beverly, ABAG, discussed current practices in other cities. Benicia's current program is very good compared to other cities. The only thing that would be

changed with the proposed ordinance is that it would state that if the property owner failed to maintain and repair the sidewalk, they could be responsible for repairing it. He stated that he was ready to help the City with developing the ordinance if they would like his assistance.

4. Robert Brown – Mr. Brown discussed the recent newspaper article discussing the sidewalk ordinance. He wished the City would give people more notice of important issues such as this.

Council Member Whitney asked if sidewalk repairs were a budgeted line item. It is. Approximately \$10,000 is budgeted for annually for sidewalk repairs. It is a citywide program. It is not only in place for First Street. All sidewalk repairs have to be prioritized. Council Member Whitney asked about the sidewalk inspection program. Mr. Schiada reviewed the program. The proposed changes are a way to clearly identify the responsibility of the City and property owners.

Vice Mayor Schwartzman stated that this (sidewalk ordinance) is something that probably needs to be done. He does not have a problem with the overall concept. However, the timing is off. He suggested getting the tree ordinance squared away. He suggested having concrete guidelines in place, that way if the sidewalk ordinance passes, the City will have something to give the property owner in the event an issue comes up. He suggested deferring this item until the details are worked out.

Ms. McLaughlin stated that she was not keen on the idea of the guidelines. It leaves the City open to a huge liability. The City has a wide variety of cracks in the Downtown sidewalks. While the guidelines might be a good idea, she feels that the goals can be achieved in another way rather than establishing standards/guidelines that cannot be met.

Mayor Messina stated that he does not have a problem with the overall ordinance. However, the policies need to be looked at. He suggested approving the ordinance and having Staff go back and review the sidewalk policy and tweak it, taking into account the issues with trees, the Joint Sidewalk Repair Program, etc.

Vice Mayor Schwartzman felt comfortable with the Mayor's suggestion, however, the policy issues need to be looked at.

Council Member Hughes asked about educating the public on the issue. Ms. McLaughlin stated that the City could educate the public once the tree ordinance is up and running.

Council Member Whitney stated that this would be a good opportunity to educate the public on the Joint Sidewalk Repair Program, stump grinding availability, etc. He then clarified that the property owner's responsibility is not changing.

**ORDINANCE 06- - AN ORDINANCE ADDING NEW CHAPTER 12.48
(MAINTENANCE AND REPAIR OF SIDEWALKS) TO TITLE 12 (STREETS,
SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE**

Council Member Whitney made a motion to approve the introduction and first reading of the ordinance, with additional direction to Staff to look into the issues brought up by Council.

On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, the above introduction and first reading of an ordinance was approved, on roll call by the following vote:

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

Noes: None

Absent: Council Member Patterson

Mayor Messina called for a 5-minute break at 9:32 p.m.

The meeting resumed at 9:37 p.m.

Presentation of the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ending June 30, 2005 and recognition of previous year's Certificate of Achievement for Excellence in Financial Reporting:

Rob Sousa, Finance Director, reviewed the Staff report.

Mayor Messina stated that the Audit and Finance Committee has recommended the approval of the CAFR.

Council Member Hughes stated that he was pleased with the report.

Council Member Whitney congratulated Mr. Sousa on a job well done.

Vice Mayor Schwartzman stated that Staff did an excellent job with this.

On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, Council approved the CAFR for the fiscal year ending June 30, 2005, and authorized Staff to distribute the document to recipient agencies, on roll call by the following vote:

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

Noes: None

Absent: Council Member Patterson

Adoption of a general liability risk management program:

Heather McLaughlin, City Attorney, reviewed the Staff report on this item.

RESOLUTION 06-54 - A RESOLUTION OF THE CITY OF BENICIA
FORMALIZING ITS GENERAL LIABILITY RISK MANAGEMENT PROGRAM

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

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

Noes: None

Absent: Council Member Patterson

INFORMATIONAL ITEMS:

Reports from City Manager:

None

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina)
Next Meeting Date: April 19, 2006
2. Association of Bay Area Governments (ABAG) (Mayor Messina)
Next Meeting Date: April 20, 2006
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: May 5, 2006
4. League of California Cities (Mayor Messina)
Next Meeting Date: May 17-18, 2006
5. School District Liaison (Council Members Whitney and Hughes)
Next Meeting Date: May 11, 2006
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) Next Meeting Date: May 3, 2006 – Council Member Whitney stated that he and Council Member Patterson recently met with Mr. Syar. They discussed a watershed management program.
7. Solano EDC Board of Directors (Mayor Messina)
Next Meeting Date: May 25, 2006
8. Solano Transportation Authority (STA) (Mayor Messina)
Next Meeting Date: May 10, 2006
9. Solano Water Authority/Solano County Water Agency (Mayor Messina)
Next Meeting Date: May 11, 2006 – Mayor Messina stated that at the last meeting, the Committee was advised that there have been some recent court cases that have strengthened the role of the Area of Origin water rights. This makes the reliability of our water increase. Even with the rain, we do not have 100% water supply. He would like the City Attorney to become familiar with the court cases in case it becomes an issue in the future.
10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) Next Meeting Date: April 20, 2006
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney)
Next Meeting Date: June 19, 2006
12. Valero Community Advisory Panel (CAP) (Council Member Hughes)
Next Meeting Date: June 22, 2006
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) Next Meeting Date: April 26, 2006 – Council Member Whitney discussed the recent 'Every 15-Minutes' program that was completed at Benicia High School. The program has been a huge success. It has put the issue of driving under the influence at the forefront. Chief Trimble stated that the most recent program was the most sincere of the three that have been completed. The students and adults involved took it very seriously. He stated that this program has absolutely saved lives in this community. Since the program began, Benicia has only had one arrest of a person under the age of 18 years old arrested for driving under the influence.

Council Member Hughes stated that although the program is called ‘Every 15 Minutes’, since the program came to this community, the stats reflect ‘every 22 minutes.’

ABAG/CAL FED Task Force/Bay Area Water Forum – Council Member Patterson: Next meeting date: To be determined.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:49 p.m.

Lisa Wolfe, City Clerk