

BENICIA HISTORIC PRESERVATION REVIEW COMMISSION

CITY HALL COMMISSION ROOM

SPECIAL MEETING AGENDA

Thursday, April 29, 2010

6:30 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

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

II. ADOPTION OF AGENDA

III. OPPORTUNITY FOR PUBLIC COMMENT

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

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

A. WRITTEN

B. PUBLIC COMMENT

IV. PRESENTATION

A. OPEN GOVERNMENT PRINCIPLES

The Open Government ordinance requires that all public officials and some employees read the Open Government Ordinance and attend an annual training on the ordinance. This training will also include a review of the Brown Act, the City's Code of Conduct and other related documents.

V. CONSENT CALENDAR

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

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Historic Preservation Review Commission meeting, prior to the reading of the Consent Calendar.

A. Approval of Minutes of March 25, 2010

B. 251 WEST G STREET – DESIGN REVIEW TO MODIFY THE FRONT FAÇADE

10PLN-15 Design Review

251 West G Street; APN 89-111-130

PROPOSAL:

The applicant requests design review approval to modify the front façade of the existing non-contributing building located within the boundaries of the Downtown Historic District. The proposed modifications include restoration of the original siding, replacing the window on the front façade, a new entry door and the addition of brick veneer to the exposed foundation.

Recommendation: Approve design review request to modify the front façade of the existing single-family residence at 251 West G Street, based on the findings and conditions of approval set forth in the proposed resolution.

VI. REGULAR AGENDA ITEMS

A. 560 FIRST STREET – CONTRA COSTA FEDERAL CREDIT UNION

10PLN-20 Design Review

560 First Street, Units B-106 and B-108, APN: 89-371-110

PROPOSAL:

The applicant requests design review approval to modify the front façade of the two existing commercial storefronts of the non-contributing building located within the boundaries of the Downtown Historic District. The proposed modifications on the First Street façade include removing the existing recessed entry and windows and replacing them with all new walls, windows, an ATM and night depository.

Recommendation:

Approve design review request to modify the façade of the existing commercial storefronts at 560 First Street, Units B-106 and B-108, based on the findings and conditions of approval set forth in the proposed resolution.

A. TOURISM-ORIENTED DIRECTIONAL SIGNAGE PROGRAM

The Commission and public will review the Economic Development Division's plan for another round of tourism-oriented directional signage program as it related to the Arsenal Historic Conservation District.

VII. COMMUNICATIONS FROM STAFF

A. UPDATE TO DOWNTOWN HISTORIC CONSERVATION PLAN

Staff will provide an updated copy of the Downtown Historic Conservation Plan, which incorporates all amendments per adopted resolutions.

B. MAY – NATIONAL PRESERVATION MONTH

Staff will provide an overview of National Preservation Month, including various activities in the community.

VIII. COMMUNICATIONS FROM COMMISSIONERS

IX. ADJOURNMENT

Public Participation

The Benicia Historic Preservation Review Commission welcomes public participation.

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

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

Disabled Access

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

Meeting Procedures

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

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

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

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

Public Records

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

AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION MEETING:
APRIL 29, 2010
INFORMATIONAL ITEMS

DATE : March 16, 2010
TO : Historic Preservation Review Commission
FROM : City Attorney
SUBJECT : **COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING**

RECOMMENDATION:

Complete open government awareness training.

EXECUTIVE SUMMARY:

The Open Government ordinance requires that all public officials and some employees read the Open Government Ordinance and attend an annual training on the ordinance. This training will also include a review of the Brown Act, the City's Code of Conduct and other related documents.

BUDGET INFORMATION:

There is no fiscal impact.

BACKGROUND:

The training includes a review of the Brown Act, conflict of interest issues, ethics, due process and open government tips for effective meetings. Please sign and return the certificate of completion (provided at the meeting) to the City Clerk's office or the City Attorney's office once you have read the ordinance and completed the training. It is not necessary to sign and return page 4 of the Code of Conduct since your signature on the certificate of completion includes verification that you have reviewed the Code.

Attachments:

- Title 4 of the Benicia Municipal Code (Open Government Ordinance)
- The 2010 Brown Act
- Participating in City Council Meetings
- Open Government Tips
- Code of Conduct
- Can I Vote?

TITLE 4



**Title 4
OPEN GOVERNMENT**

Chapters:

- 4.04 In General**
- 4.08 Public Access to Meetings**
- 4.12 Public Information**
- 4.16 Ethics**
- 4.20 Open Government Commission**

**Chapter 4.04
IN GENERAL**

Sections:

- 4.04.010 Goal.
- 4.04.020 Findings and purpose.
- 4.04.030 Fundamental rights.
- 4.04.040 Copies to be provided.
- 4.04.050 Definitions.

4.04.010 Goal.

It is the goal of this title to make it easier for people to access city government so that they may be more informed about what their city is doing and so that they may be involved in a more meaningful and knowledgeable way. Open meetings, easier access to public records, ethical guidelines and a watchdog commission will help increase the public trust and confidence in the city government and will increase the public awareness and knowledge about their government. A well-educated public and ethical officials are essential to good government. (Ord. 05-06 § 1).

4.04.020 Findings and purpose.

The city council finds as follows:

- A. The Ralph M. Brown Act states: "The people of this State do not yield their sovereignty to the agencies which serve them."
- B. It is the city's duty to serve the public and to accommodate those who wish to obtain information about or participate in the process of making decisions.
- C. Elected city officials, commissions, boards, advisory bodies and other agencies of the city exist to conduct the people's business. This title is intended to assure that the deliberations of these bodies and the city's operations are open to the public.
- D. This title is intended in part to clarify and supplement the Ralph M. Brown Act and the California Public Records Act to assure that the people of the city of Benicia can be fully informed and thereby retain control over the instruments of local government in their city.
- E. This title is intended to list and implement fundamental rights of each member of the public. (Ord. 05-06 § 1).

4.04.030 Fundamental rights.

Fundamental rights of each member of the public include, but are not limited to:

A. The right to receive meaningful, advance notice of agendas and packets of all meeting materials.

B. The right to attend, listen to and participate in all meetings without cost, signup, giving name or address or any personal information.

C. The right to speak with a meaningful amount of time on every agenda item separately, including each consent item, closed session or any report items without being required to sign up, give his/her name, or address, or any other information.

D. The right to interrupt the body for a point of order or clarification except to the extent that it becomes unduly disruptive.

E. The right to speak on any subject not on the agenda so long as the subject relates to the business of the body.

F. The right to criticize the body or members for their official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

G. The right to pull consent agenda items for public review and discussion.

H. The right to comment on every agenda item either during the public comment period on that item, under the general public comment period or in writing.

I. The right to use presentation tools when commenting.

A plaque listing these rights will be placed at the entrance of the council chambers. These rights shall be read aloud by the presiding official to the public at the start of each meeting unless the rights are posted in the meeting room. If the rights are posted, the presiding officer may state the rights are posted instead of reading them. (Ord. 05-06 § 1).

4.04.040 Copies to be provided.

The office of the city attorney shall provide any person with a copy of the Brown Act or Public Records Act or this title without charge. (Ord. 05-06 § 1).

4.04.050 Definitions.

The following words and phrases, whenever used in this title, shall be construed as hereafter set out unless it shall be apparent from the context that they have a different meaning. Unless defined herein, the definitions in the Ralph M. Brown Act and the California Public Records Act and related laws shall govern.

A. "Agenda packet" means the nonconfidential portion of a body's agenda-related materials. "Agenda packet" includes materials that:

1. Were distributed by the city to a majority of the members of a body prior to or at the meeting; and

2. Relate to an item on the agenda.

B. "Body" means:

1. The Benicia city council;

2. Any board, commission, task force or committee, which is established by city ordinance or by motion or resolution of the city council or created as a result of federal, state or local grants;

3. Any advisory board, commission or task force created and appointed by the mayor and approved by the city council; or

4. Any standing committee of any body specified in subsections (B)(1), (B)(2) or (B)(3) of this section.

"Body" shall not mean any congregation or gathering which consists solely of employees of the city of Benicia or consists of employees and representatives of companies providing employees' benefits including, but not limited to, retirement and health care plans.

C. "Criticize" means to provide verbal or written critical comments, regarding the official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

D. "Days" means calendar days.

E. "Department" means a department of the city of Benicia.

F. "Information request facilitator" means the person who shall assist members of the public with their public information requests. For general requests, it means the city clerk in accordance with BMC 4.20.030(D). For department-specific requests, it means the department director or designee.

G. "Interrupt" means to stand and raise one's hand and, in accordance with Robert's Rules of Order, wait for recognition by the presiding officer before speaking.

H. Meeting.

1. "Meeting" shall mean any of the following:

a. A congregation of a majority of the members of any body in which any item within its subject matter jurisdiction is heard, discussed or deliberated;

b. Any use of direct communication, personal intermediaries or communications media to cause a majority of the members of a body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereon; and

c. Any meal or social gathering of a majority of the members of a body immediately before, during, or after a meeting of a body. For the purposes of this definition, "immediately before" means the four hours prior to a meeting.

2. "Meeting" shall not include any of the following:

a. Individual contacts or conversations between a member of a body and any other person;

b. The attendance of any number of the members of a body at a conference, or at any meeting or gathering organized to address a topic of local community concern and which is open to the public; provided, that a majority of the members of a body refrains from collectively discussing, other than as part of the scheduled program, the topic of the meeting or gathering or any other business within the subject matter jurisdiction of that body;

c. The attendance of any number of the members of any body at a purely social, recreational, educational or ceremonial occasion; provided, that a majority of the members of any body refrains from discussing any business within the subject matter jurisdiction of the body; and provided, that the gathering does not qualify as a meeting under subsection (H)(1)(c) of this section; and

d. The attendance of a majority of the members of a body at a standing committee; provided, that the members of the body who are not members of the standing committee do not participate personally or through representatives.

I. "Notice" means the posting of an agenda in a location that is freely accessible to the public 24 hours a day and as additionally specified in BMC 4.08.030, 4.08.050 and 4.08.060.

J. "Public information" means the content of "public records" as defined in the California Public Records Act (Government Code Section 6250 et seq.) whether contained in public records or in oral communications.

K. "Public official" means all elective officials and members of all official boards, commissions and committees of the city.

L. "Online" shall mean accessible by computer without charge to the user.

M. "The Public Records Act" shall mean Government Code Section 6250 et seq.

N. "Ralph M. Brown Act" shall mean Government Code Section 54950 et seq.

O. "Software or hardware failure" means solely technological failures of software or hardware that are unforeseeable. This term includes failures such as those caused by natural disasters or acts of God, and technical failures against which the city has taken customary precautions.

P. "Standing committee" shall mean any number of members of a body which totals less than a quorum and which has (1) a continuing subject matter jurisdiction, or (2) a meeting schedule fixed by charter, ordinance, resolution or formal action of the body.

Q. "Weeknight" shall mean after 5:00 p.m. on any day of the week except for Saturday or Sunday. (Ord. 07-22 § 1; Ord. 06-11 § 1; Ord. 05-06 § 1).

Chapter 4.08 PUBLIC ACCESS TO MEETINGS

Sections:

- 4.08.010 Meetings to be open and public – Application of Brown Act.
- 4.08.020 Conduct of meetings for public agencies covered by this title.
- 4.08.030 Notice requirement – Emergency meeting.
- 4.08.040 Conduct of business – Time and place for meeting.
- 4.08.050 Notice and agenda requirements – Regular meetings.
- 4.08.060 Notice and agenda requirement – Special meetings.
- 4.08.070 Agenda packets as public records – Agenda subscribers.
- 4.08.080 Barriers to attendance prohibited.
- 4.08.090 Public testimony at regular and special meetings.
- 4.08.100 Minutes and recordings.
- 4.08.110 Public comment by members of bodies.
- 4.08.120 Agenda descriptions and oral disclosures.
- 4.08.130 Statement of reasons for closed sessions.
- 4.08.140 Conduct of closed session.
- 4.08.150 Disclosure of closed session discussions and actions.
- 4.08.160 Ex-parte communications.

4.08.010 Meetings to be open and public – Application of Brown Act.

All meetings of bodies defined in BMC 4.04.050 shall be open and public, to the same extent as if that body were governed by the provisions of the Ralph M. Brown Act (Government Code Section 54950 et seq.) unless greater public access is

required by this chapter, in which case this chapter shall be applicable. (Ord. 05-06 § 1).

4.08.020 Conduct of meetings for public agencies covered by this title.

To the extent not inconsistent with state or federal law, a body may require, as a condition of any express delegation of power to any public agency, including joint powers authorities, whether such delegation of power is achieved by legislative act, contract, lease or other agreement, that any meeting by such a public agency at which an item concerning or subject to the delegated power is discussed or considered shall be conducted pursuant to the Ralph M. Brown Act. (Ord. 05-06 § 1).

4.08.030 Notice requirement – Emergency meeting.

Emergency meetings shall be held in accordance with Government Code Section 54956.5 which states:

(a) For purposes of this Section, “emergency situation” means both of the following:

(1) An emergency, which shall be defined as a work stoppage, crippling activity, or other activity that severely impairs public health, safety, or both, as determined by a majority of the members of the legislative body.

(2) A dire emergency, which shall be defined as a crippling disaster, mass destruction, terrorist act, or threatened terrorist activity that poses peril so immediate and significant that requiring a legislative body to provide one-hour notice before holding an emergency meeting under this Section may endanger the public health, safety, or both, as determined by a majority of the members of the legislative body.

(b)(1) Subject to paragraph (2), in the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, a legislative body may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of Section 54956 or both of the notice and posting requirements.

(2) Each local newspaper of general circulation and radio or television station that has requested notice of special meetings pursuant to Section 54956 shall be notified by the presiding officer of the legislative body, or designee thereof, one hour prior to the emergency meeting, or, in the case of a dire emergency, at or near the time that the presiding officer or designee notifies the members of the legislative body of the emergency meeting. This notice shall be given by telephone and all telephone numbers provided in the most recent request of a newspaper or station for notification of special meetings shall be exhausted. In the event that telephone services are not functioning, the notice requirements of this Section shall be deemed waived, and the legislative body, or designee of the legislative body, shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible.

(c) During a meeting held pursuant to this Section, the legislative body may meet in closed session pursuant to Section 54957 if agreed to by a two-thirds vote of the members of the legislative body present, or, if less than two-thirds of the members are present, by a unanimous vote of the members present.

(d) All special meeting requirements, as prescribed in Section 54956 shall be applicable to a meeting called pursuant to this Section, with the exception of the 24-hour notice requirement.

(e) The minutes of a meeting called pursuant to this Section, a list of persons who the presiding officer of the legislative body, or designee of the legislative body, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

(Ord. 05-06 § 1).

4.08.040 Conduct of business – Time and place for meeting.

A. Unless proscribed by council ordinance, every body established by city council ordinance shall establish by formal action the time and place for holding regular meetings and shall conduct such regular meetings in accordance with such resolution or formal action. Whenever reasonably possible bodies shall conduct their regular meetings on weeknights except when the body determines that the subject matter would be more appropriately discussed at another time.

B. Regular and special meetings of every body shall be held within the city of Benicia except to do any of the following:

1. Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the body is a party;

2. Inspect real or personal property which cannot be conveniently brought to Benicia; provided, that the topic of the meeting is limited to items directly related to the real or personal property;

3. Participate in meetings or discussions of multi-agency significance that are outside Benicia. However, any meeting or discussion held pursuant to this subsection shall take place within the jurisdiction of one of the participating agencies and be noticed by all participating agencies. Agencies include local agencies such as school districts, counties, cities or other public agencies as specified in the Brown Act; or

4. Meet outside the city of Benicia with elected or appointed officials of the United States or the state of California or counties.

C. If a meeting is held outside of the city, the location of the meeting shall be posted in the city.

D. If a regular meeting for any body falls on a holiday, the meeting shall be held on the next scheduled regular meeting day unless otherwise noticed as a special meeting for which notice is given at least six days in advance.

E. If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet in the customary location, the meetings may be held for the duration of the emergency at some other place specified by the presiding official of the body or his or her designee. The change of meeting site shall be announced, by the most rapid

means of communication available at the time, in a notice to media organizations who have requested written notice of meetings.

F. If a quorum of a body becomes present at a meeting of a standing or ad hoc committee of said body, the body may not take action at the meeting of the committee unless the meeting has been properly noticed as a meeting of the body itself. The standing or ad hoc committee of a body may take action at the meeting consistent with the committee's jurisdiction and authority.

G. Every body shall ensure that video screens or presentation boards are reasonably viewable by both the body and the public.

H. To ensure business is conducted in the open, bodies should avoid taking breaks during discussion of a particular agenda item. If a break is needed or if the item is continued to a future meeting, each member of the body shall disclose orally on the public record the general nature of any conversations during the break or continuance pertaining to the item.

I. Unless proscribed by council ordinance, each body established by ordinance shall establish and publish an annual schedule of regular meetings. (Ord. 07-02 § 1; Ord. 06-11 § 2; Ord. 05-06 § 1).

4.08.050 Notice and agenda requirements – Regular meetings.

A. Six-Day Advance Notice Requirement for Regular Meetings of Bodies. The city council, and any body defined in BMC 4.04.050, shall provide notice before any regular meeting by:

1. Posting a copy of the agenda in a location freely accessible to the public 24 hours a day no later than six days before the date of the meeting;

2. Filing a copy of the agenda and a complete agenda packet with the office of the city clerk and the Benicia Public Library no later than five days before the date of the meeting; and

3. Posting a copy of the agenda online at the city's web site no later than six days before the date of the meeting. Notwithstanding this subsection, the failure to timely post a copy of the agenda because of software or hardware failure, as defined, shall not constitute a defect in the notice for a regular meeting, if the body complies with all other posting and noticing requirements.

B. Supplemental Agenda and Related Material Requirements for Regular Meetings of Bodies.

1. Notwithstanding the notice provisions of subsection (A) of this section, a posted agenda or agenda-related materials may be amended or supplemented no later than 72 hours before a regular meeting and only for the following reasons or under the following conditions. The amended or supplemented posted agenda or agenda-related materials shall state for the record what supplemental or amended material is under consideration and/or how the agenda is proposed to be amended. Agendas or agenda-related materials, may only be amended or supplemented:

a. To add an item due to an emergency or urgency, provided the body makes the same findings as required by subsection (D) of this section before taking action;

b. To deleted or withdraw any item from a posted agenda;

c. To provide additional information to supplement the agenda-related material previously filed with the office of the city clerk; provided, that the additional information was not known to staff;

d. To correct technical, nonsubstantive errors or omissions, or to change a stated financial amount that decreases the body's obligation under a proposed agreement, or to clarify the agenda title in a manner that does not substantively change the nature of the action to be taken on the agenda item;

e. To consider the recommendations, referrals, minutes or actions taken on any item heard by a standing committee of the city council; provided, that the item has not been materially changed by the committee or materially changed after the committee considered the item; or

f. To continue an agenda item to the next regular meeting of the body so long as members of the public are given an opportunity to address the body on the item at the meeting from which the item is continued.

2. If substantial supplemental information is received from the applicant or a member of the public less than 72 hours prior to a regular meeting, the body shall either (1) automatically continue the item to the next regular meeting or a special meeting, or (2) decide that there was adequate notice to allow consideration of the additional information. Substantial supplemental information is written information that (1) could not be said or read within the oral public comment period, (2) is, according to a majority vote of the body, too technical or detailed to be readily understood, and (3) is new information not discussed in prior staff report or documents previously provided to the body.

C. Excuse of Open Government Notice Requirements. If an item appears on an agenda but the body fails to meet any of the additional notice requirements under this section, the body may take action only if:

1. The minimum notice requirements of the Brown Act have been met; and

2. The body, by a two-thirds vote of those members present, adopts a motion determining that, upon consideration of the facts and circumstances, it was not reasonably possible to meet the additional notice requirements under this section and any one of the following exists:

a. The need to take immediate action on the item is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;

b. There is a need to take immediate action which relates to federal or state legislation or the body's eligibility for any grant or gift; or

c. The item relates to a purely ceremonial or commendatory action.

D. Action on Items Not Appearing on the Agenda. Notwithstanding subsection (C) of this section, a body may take action on items not appearing on a posted agenda only if:

1. The matter is an emergency. Upon a determination by a majority vote of the body that work stoppage, crippling disaster or other activity exists which severely impairs public health, safety or both; or

2. The matter is urgent. Upon a determination by a two-thirds vote of those present, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that there is a need to take immediate action which came to

the attention of the body after the agenda was posted; that there was adequate public notification considering the subject matter to be considered; and that the need to take immediate action:

- a. Is required to avoid a substantial adverse impact that would occur if the action were deferred to a subsequent special or regular meeting;
- b. Relates to federal or state legislation; or
- c. Relates to a purely ceremonial or commendatory action.

E. Nothing in this section shall prohibit a body from taking action to schedule items for a future meeting to which regular or special meeting notice requirements will apply, or to distribute agenda-related materials relating to items added pursuant to subsection (D) of this section before or during a meeting.

F. Nothing in this section shall prohibit the office of the city attorney from conforming a document to comply with technical requirements as to form and legality. (Ord. 09-19 § 1; Ord. 07-03 § 1; Ord. 05-06 § 1).

4.08.060 Notice and agenda requirement – Special meetings.

A. If the presiding official or senior staff member to the body finds that waiting for the next available regular meeting of the body would make it impossible to take meaningful action or the regular meeting will be cancelled due to a lack of quorum or a city holiday, a special meeting of any body may be called at any time by the presiding official thereof or by the senior staff member to the body. All bodies calling a special meeting shall provide notice by:

1. Posting a copy of the agenda in a location freely accessible to the public at least 72 hours (excluding Saturday, Sunday and holidays) before the time of the meeting set forth in the agenda. The posting time for a special meeting due to the body's regular meeting falling on a holiday shall be six days;
2. Filing a copy of the agenda and a complete agenda packet with the office of the city clerk and the Benicia Public Library at least 48 hours (excluding Saturdays, Sundays and holidays) before the time of the meeting set forth in the agenda.
3. Delivering a copy of the agenda to each member of the body, to each local newspaper of general circulation, to each agenda subscriber, and to each media organization which has previously requested notice in writing, so that a copy of the agenda is received at least 24 hours before the time of the meeting set forth in the agenda. Receipt of the agenda shall be presumed upon reasonable proof that delivery was made.

B. Bodies specified in BMC 4.04.050 shall, in addition to the noticing requirements of this section, post a copy of the agenda for any special meeting online at the city's web site at least 72 hours before the time of the meeting set forth in the agenda. Failure to timely post a copy of the agenda online because of software or hardware failure, as defined, shall not constitute a defect in the notice for a special meeting if the body complies with all other posting and noticing requirements.

C. No business other than that set forth in the agenda shall be considered at a special meeting. Each special meeting shall be held at the regular meeting place of the body except that the body may designate an alternative meeting location; provided, that such alternative location is specified in the agenda.

D. To the extent practicable, the presiding official or the majority of members of any body may cancel a special meeting by delivering notice of cancellation in the same manner and to the same persons as required for the notice of such meeting.

E. Special meetings may not be scheduled on the same day as a previously scheduled regular meeting that was not noticed in compliance with this chapter if the special meeting is called to consider any of the items that were included in the notice for such regular meeting. (Ord. 09-20 § 1; Ord. 05-06 § 1).

4.08.070 Agenda packets as public records – Agenda subscribers.

In addition to providing access to all records which are public records pursuant to the California Public Records Act (Government Code Section 6250 et seq.) and this title, every body specified in BMC 4.04.050 shall make available for immediate public inspection and copying all agendas and agenda-related materials.

A. All agendas shall be posted on the city's web site and the city's cable channel and available at the Benicia Public Library. Complete agenda packets for each body shall be posted on the city's web site to the extent fiscally and technologically feasible and shall be available for review at the Benicia Public Library and at the city manager's office during normal business hours. The time for compliance with this subsection shall be in accordance with the time of the posting of the agenda for the meeting.

B. All agendas of every body shall be available to the public by an email subscription. Such service shall be provided free of charge and shall be provided to the subscriber until the request for the service is cancelled by the subscriber or the email address is no longer valid. The email shall be sent at the time of the posting of the agenda for the meeting. The city clerk shall establish the email subscribers list for the city council agendas. The secretary to other bodies shall establish and maintain the email subscribers list for the respective bodies.

C. Paper copies of the agenda and agenda packet shall be available to members of the public for every body upon payment of the fee established by city council resolution. Every body shall establish a subscription list for the agenda and/or agenda packet so that members of the public may subscribe to the agenda and/or agenda packet upon payment of the fee established by the city council. The fee shall not exceed the direct costs of copying the agenda and agenda packet and the reasonable mailing costs of the agenda and agenda packet. In order to enhance public participation and involvement, the fees for the agenda subscription shall be waived for anyone who reports on city government and makes the reports available to members of the public. Subscriptions for the agenda and/or agenda packet shall be valid for one year. The city clerk or the secretary to other bodies shall send the subscriber a note to resubscribe and pay the subscription fee with the last agenda and/or agenda packet that is mailed to a subscriber.

D. Every body shall make available for immediate public inspection and copying the agenda packet that has been distributed to a majority of its members. The right to immediate public inspection and copying provided in this section shall not include any material exempt from public disclosure under this title or under state or federal law. Neither this section nor the California Public Records Act shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that Act or this title.

E. All requests by agenda subscribers to receive agendas or agenda-related materials may be made by mail, telephone or email to the office of the city clerk or city manager's office. The city clerk shall maintain a list of all bodies and shall immediately forward a copy of the written request to the appropriate body to ensure compliance with the request.

F. Notwithstanding any other provision of this title, the failure of an agenda subscriber to timely receive the agenda or agenda-related material pursuant to this section shall not constitute grounds for invalidation of the actions of the body taken at the meeting for which the agenda or the agenda-related material was not timely received. (Ord. 05-06 § 1).

4.08.080 Barriers to attendance prohibited.

A. No body specified in this title shall conduct any meeting, conference or other function in any facility which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever a body anticipates that the number of persons attending the meeting may exceed the legal capacity of the room, a public address system or television shall be used to the extent technologically and fiscally reasonable to permit the overflow audience to listen to the proceedings.

B. Any person attending an open meeting of a body shall have the right to record, photograph or broadcast the proceedings unless such activities constitute a persistent disruption of the proceedings. (Ord. 06-11 § 3; Ord. 05-06 § 1).

4.08.090 Public testimony at regular and special meetings.

A. Every agenda for every regular or special meeting shall provide a public comment section on the agenda as an opportunity for members of the public or for members of the body to directly address a body on items of interest to the public that are within the body's subject matter jurisdiction; provided, that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2 and BMC 4.08.050(D). Except as provided in subsection (C) of this section, speakers shall limit their comments during the public comment section of the agenda to nonagendized items.

B. Every agenda for regular or special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. Public comments on closed session items shall be taken before the closed session is convened. The presiding official of any body may request speakers representing similar views to designate a spokesperson in the interest of time. Spokespersons for the proponent(s) of an agenda item and for the opponent(s) shall each have 15 minutes to present their case. The spokesperson for the proponent(s) shall have five minutes to present any rebuttal. Other speakers may be requested to keep their remarks concise.

C. At the presiding official's discretion, the official may grant up to 10 minutes to a speaker who desires to speak on multiple agenda items so that the speaker shall address all items at one time before the body's consideration of those items. Such comments shall be made under the public comment part of the agenda.

D. Every body shall adopt a rule providing that each person wishing to speak on an item shall be permitted to speak once based upon previously adopted time constraints which are reasonable and uniformly applied. Except as otherwise provided by this section, it shall be the policy of the city that all speakers are entitled to up to five minutes of speaking time per agenda item.

E. Members of the public who speak on an agenda item or under public comment do not have to give their name or address should they choose not to.

F. Written material submitted by members of the public shall be retained as part of the official agenda file and available for review by other members of the public in accordance with Chapter 4.12 BMC.

G. No body shall abridge or prohibit public criticism of the policies, procedures, programs or services of the body or agency, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, even if the criticism implicates the performance of one or more public employees. Nothing in this subsection shall confer any privilege or protection beyond that which is otherwise provided by law. (Ord. 07-04 § 1; Ord. 06-04 § 1; Ord. 05-06 § 1).

4.08.100 Minutes and recordings.

A. All bodies shall record the minutes for each regular and special meeting convened under the provisions of this chapter. At a minimum, the minutes shall state the time the meeting was called to order, the names of the members attending the meeting, a one-sentence summary of, and the roll call vote on, each matter considered at the meeting, the time the body began and ended any closed session, any letters submitted on agenda items, those members of the public who spoke on each matter if the speakers identified themselves, and the time the meeting was adjourned. The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

B. Every body specified in BMC 4.04.050 and established by city ordinance shall make an audio and where possible economically and technically a visual recording of every open regular meeting. Other bodies shall audiotape each regular and special open meeting and may make a visual recording of any meeting. Any recording of any open meeting shall be a public record subject to inspection and copying. For the city council and bodies established by ordinance, the recording shall not be erased, deleted or destroyed for at least four years. For all other bodies, the recording shall not be erased, deleted or destroyed for at least two years. If, during the four- or two-year period, a written request for inspection or copying of any recording is made, the recording shall not be erased, deleted or destroyed until the requested inspection or copying has been accomplished. Inspection of any such recording shall be provided without charge on a player or computer made available by the body. (Ord. 05-06 § 1).

4.08.110 Public comment by members of bodies.

Every member of a body retains the rights of any citizen to comment publicly on the wisdom or propriety of government actions, including those of the body of which

he or she is a member. Bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials to express their judgments or opinions, including those judgments or opinions pertaining to the disclosure or nondisclosure of discussions or actions taken in closed session. However, the release of specific factual information made confidential by state or federal law including, but not limited to, privileged attorney-client communications, other than by the procedures set forth under state law or this title, may constitute grounds for censure or for an action for injunctive or declaratory relief by the body. Nothing in this section shall confer any privilege or protection for expression beyond that which is otherwise provided by law. (Ord. 05-06 § 1).

4.08.120 Agenda descriptions and oral disclosures.

A. Agendas for meetings shall provide a brief description of the item under consideration. To the extent appropriate, information that should be described includes the following: the commonly used name and location of the property under consideration; names of proposed appointees, contractors or parties to an agreement; and the general nature of the action(s) under consideration. The use of acronyms, jargon and "double speak" should be avoided.

B. Closed session descriptions shall comply with the permissive provisions of Government Code Section 54954.5 in describing items for closed session.

C. In the case of an item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

D. Any action taken on items that are not described in accordance with this section is subject to invalidation pursuant to the provisions of Government Code Section 54960.1. (Ord. 05-06 § 1).

4.08.130 Statement of reasons for closed sessions.

A. Prior to adjourning to any closed session, a body shall announce in open session the general reason or reasons for the closed session, and must cite and explain the statutory or case authority under which the session is being closed.

B. In the case of a closed session item added to the agenda pursuant to Government Code Section 54954.2(b) or BMC 4.08.050(D), the statement shall be made in open session concurrent with the findings required pursuant to that section.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B) or a court orders disclosure.

D. Nothing in this section shall require or authorize a disclosure of information that is confidential under law. (Ord. 06-11 § 4; Ord. 05-06 § 1).

4.08.140 Conduct of closed session.

A. A body shall consider in closed session only those matters specified in the statement required in BMC 4.08.130.

B. The following provisions of the Brown Act apply to the conduct of closed session by bodies and are hereby incorporated by reference as though fully set

forth herein: Government Code Sections 54956.8; 54956.9; 54956.95; 54957; and 54957.6.

C. No minutes for a closed session, but a tape recording of the closed session shall be made. The tapes shall remain confidential pursuant to Government Code Section 54960 unless the body elects to disclose the information in accordance with BMC 4.08.150(B) or a court orders disclosure. (Ord. 05-06 § 1).

4.08.150 Disclosure of closed session discussions and actions.

A. In accordance with Government Code Section 54963 and as provided below, a person present at a closed session may not disclose confidential information received.

B. In addition to the required disclosures pursuant to Government Code Section 54957.1 and subsection (C) of this section, the body may, by motion and vote in open session, elect to disclose any other information obtained in closed session which a majority of the members of the body deems to be in the public interest. Any disclosure pursuant to this section shall be made through the presiding official or such other person present in the closed session, designated to convey the information.

C. Immediately following the closed session a body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

1. Real Property Negotiations. Approval of an agreement concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval requires action from another party to the negotiations, the body shall disclose the fact of its approval, the substance of the agreement and the body's vote or votes thereon after the other party or its agent has informed the body of its action upon (a) inquiry by any person, and (b) in any event, at the next meeting of said body. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or if there are multiple contiguous or closely located properties that are being considered for transfer, the report specified in this section need not be made until the conditions have been satisfied or an agreement has been reached with respect to all the properties, or both.

2. Litigation. Direction or approval given to the body's legal counsel to prosecute, defend, seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation under Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the body's intentions would not be contrary to the public interest. The report shall identify the names and capacities of all parties to the litigation, the court of jurisdiction and case number, the type of case, any existing claim or order to be defended against, or any factual circumstances or contractual dispute giving rise to the litigation.

3. Settlement. If a body accepts a settlement offer signed by an opposing party, the body shall report its vote of approval and identify the substance of the

agreement. If final approval rests with another part or with the court, the body shall disclose its vote of approval and the substance of the agreement to any person upon inquiry as soon as the settlement becomes final, but in no case later than the next meeting following final approval of settlement. A body shall neither solicit nor agree to any term in a settlement agreement which would preclude the release, upon request, of the text of the settlement agreement itself and any related documentation communicated to or received from the adverse party or parties. Where the disclosure of documents in settled litigation could affect litigation on a closely related case, the report, settlement agreement and any documents described in this section need not be disclosed until the closely related case is settled or otherwise finally concluded.

D. Reports required to be made pursuant to this section may be made orally or in writing. Copies of any contracts, settlement agreements, or other documents related to the items or transactions that were finally approved or adopted in closed session and which contain the information required to be disclosed under this section shall be made available for inspection and copying, upon request, at the time the report is made or after any substantive amendments have been retyped into the document.

E. A written summary of the information required to be reported immediately pursuant to this section, or documents containing that information, shall be made available for inspection and copying by the close of business on the next business day following the meeting.

F. Action taken in closed session which is not immediately disclosable under this section shall be disclosed and noticed under the procedures set forth in subsection (C) of this section at such time as disclosure is required. (Ord. 05-06 § 1).

4.08.160 Ex-parte communications.

While it is the city's policy to encourage communications between the public and officials, the city recognizes that Constitutional due process protections may limit communications with council members or board or commission members outside of a public meeting. Therefore, the city's policy on ex-parte communications discourages officials from discussing appeals or enforcement matters with members of the public except during the body's formal consideration of the matters. These matters should not be discussed during site inspections or field trips that are not part of an agenda meeting. If such discussions take place, officials must publicly disclose at the start of the agenda presentation of the item, the substance of any such discussions they have had with anyone other than another member of the body or staff member. This policy applies to any appeal or enforcement matter which is pending, or is reasonably expected to come before the body on which the official sits. (Ord. 05-06 § 1).

Chapter 4.12 PUBLIC INFORMATION

Sections:

- 4.12.010 Release of documentary public information.
- 4.12.020 Release of oral public information.

- 4.12.030 Public review file – Policy body communications.
- 4.12.040 Non-exempt public information.
- 4.12.050 Disclosure requests.
- 4.12.060 Immediate disclosure request.
- 4.12.070 Withholding restrictions.
- 4.12.080 Justification for withholding.
- 4.12.090 Fees for copying.
- 4.12.100 Web site information.
- 4.12.110 Requests made by email.
- 4.12.120 Policy regarding purchase and use of computer systems.

4.12.010 Release of documentary public information.

Release of public records by a body or by any department, whether for inspection of the original or by providing a copy, shall be governed by the Public Records Act in any particulars not addressed by this chapter. The provisions of Government Code Section 6253.9 are incorporated herein by reference. (Ord. 05-06 § 1).

4.12.020 Release of oral public information.

Release of oral public information shall be accomplished as follows:

A. Every department director shall be responsible for being knowledgeable about the affairs of the respective agency or department, to facilitate the inspection and copying of public records and to provide oral public information about agency or department operations, plans, policies, and positions. The department will make every effort to facilitate the information requested and will make it a top priority.

B. It shall be the duty of the department director (or designee) or, in the case of requests not directed to a specific department, the city clerk to provide information on a timely and responsive basis to the public. It shall also be their duty to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

C. Public employees and city board, commission or committee members shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion is not represented as that of the city, department, board, commission or committee and does not materially misrepresent the city, department, board, commission or committee's position. Nothing in this section shall be construed to provide rights to public employees beyond those recognized by law or agreement, or to create any new private cause of action or defense to disciplinary action. (Ord. 05-06 § 1).

4.12.030 Public review file – Policy body communications.

Every body specified in BMC 4.04.050 shall maintain a communications file, organized chronologically and accessible to any person during normal business hours, containing a copy of any letter, memorandum or other writing pertaining to the body's duties which the clerk or secretary of such body has distributed to, or

sent on behalf of, a quorum of the body concerning a matter that has been placed on the body's agenda within the previous 30 days or is scheduled or requested to be placed on the agenda within the next 30 days. Excepted from the communications file shall be commercial solicitations, mail sent bulk-rate, agenda and agenda-related material, periodical publications or communications exempt from disclosure under the California Public Records Act or this title. Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the communications file; provided, that the letter or memorandum of transmittal is included in the communications file and the reports, studies or analyses are readily available for review. (Ord. 05-06 § 1).

4.12.040 Non-exempt public information.

Notwithstanding any right or duty to withhold certain information under the California Public Records Act or other law, the following shall govern specific types of requests for documents and information:

A. Drafts and Memoranda. No completed preliminary drafts or memoranda shall be exempt from disclosure under Government Code Section 6254(a) if said completed preliminary draft or memorandum has been retained in the ordinary course of business or pursuant to law or agency or department policy. Completed preliminary drafts and memoranda concerning agreements, memoranda of understanding or other matters subject to negotiation and pending a body's approval need not be subject to disclosure until final action has been taken or said document is included as part of the public agenda packet for the body, whichever is first.

B. Litigation Material. Unless otherwise privileged or made confidential by law, records of all communications between a body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated.

C. Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254(c):

1. Job pool information, to the extent such information is compiled for reporting purposes and does not permit the identification of any particular individual. Such job pool information may include the following:

- a. Sex, age and ethnic group;
- b. Years of graduate and undergraduate study, degree(s) and major or discipline;
- c. Years of employment in the private and/or public sector;
- d. Whether currently employed in the same position for another public agency;
- e. Other non-identifying particulars as to experience credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the positioning in question.

2. The job description of every employment classification.

3. The resumes of employees, although personal information such as home address shall be deleted.

4. Any adopted memorandum of understanding between the city and a recognized employee organization.

D. Law Enforcement Information.

1. The Benicia police department shall cooperate with all members of the public making requests for law enforcement records and documents under the California Public Records Act or other applicable law. Unless disclosure of the records sought is prohibited by other provisions of state or federal law such as the TNG Order, records and documents exempt from disclosure under the California Records Act pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public to the full extent permitted by law after the district attorney or court determines that a prosecution will not be sought against the subject involved or the statute of limitations for filing charges has expired, whichever occurs first. Information may be redacted from such records and documents and withheld if, based upon the particular facts, the public interest in nondisclosure clearly outweighs the public interest in disclosure. The final decision for disclosure shall be made by the city council and the vote and reasoning of each city council member shall be made public on all nondisclosures. Such redacted information may include:

- a. The names of juvenile witnesses or suspects;
- b. Personal or otherwise private information related or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- c. The identity of a confidential source;
- d. Secret investigative techniques or procedures;
- e. Information whose disclosure would endanger law enforcement personnel, a witness, or party to the investigation; or
- f. Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is likely.

2. The Benicia police department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, the number and types of cases in which discipline is imposed and the nature of the discipline imposed. This record shall be maintained in a format which assures that the names and other identifying information of individual officers involved is not disclosed directly or indirectly.

E. Contracts, Bids and Proposals. Contracts, contract bids, responses to requests for proposals and all other records of communications between the city and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract.

F. Budgets and Other Financial Information. The following shall not be exempt from disclosure:

1. Any proposed or adopted budget for the city, including any of their respective agencies, departments, programs, projects or other categories, which

have been submitted to a majority of the members of the city council, or their standing committees.

2. All bills, claims, invoices, vouchers or other records of payment obligations, as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social, legal or other services whose records are confidential by law. The nonconfidential portion, if any, of such records shall be disclosed.

G. Email correspondence retained in the ordinary course of business and not exempt from disclosure shall be made available within three working days upon written or oral request. All such email shall be maintained for two years before being destroyed. (Ord. 05-06 § 1).

4.12.050 Disclosure requests.

A. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records that is submitted to any department or to any body shall be satisfied no later than five business days unless the requestor is advised in writing within one business day that additional time is needed to determine whether:

1. The request seeks disclosable public records or information;
2. The requested records are in the possession of the department processing the request;
3. The requested records are stored in a location outside of the department;
4. The requested records likely comprise a voluminous amount of separate and distinct writings;
5. Reasonably involves another department or other local or state agency that has a substantial subject matter interest in the requested records and which must be consulted in connection with the request.

B. All determinations made pursuant to subsections (A)(1) through (A)(5) of this section shall be communicated in writing to the requestor within five business days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than 10 business days after the written determination pursuant to subsections (A)(1) through (A)(5) of this section is communicated to the requestor. Additional time shall not be permitted to delay a routine or readily answerable request. The written request shall also contain a telephone number, email or facsimile number whereby the requestor may be contacted. The provisions of Government Code Section 6253 shall apply to any written request that fails to state a number by which the requestor may be contacted.

C. The person seeking the information need not state a reason for making the request or the use to which the information will be put, but shall be advised that providing such information may help the city assist the person finding all documents responsive to their request.

D. Unless the record request will be satisfied within one business day, an acknowledgement of receipt of the request or notification that additional time is needed pursuant to subsection (A) of this section shall be sent to the requestor if an address has been provided. (Ord. 05-06 § 1).

4.12.060 Immediate disclosure request.

A. An immediate disclosure request is a request for (1) public records which have been previously distributed to the public, such as past meeting agendas and agenda-related materials, within the past calendar year, or (2) public records such as statements of economic interests that have, by other law, a requirement to be disclosed within a specific shortened time frame. All immediate disclosure requests shall describe the records sought in as focused and specific language as possible so they can be readily identified and shall state the words "Immediate Disclosure Request" across the top of the first page of the request and on any envelope in which the request is transmitted.

B. Notwithstanding any other provision of law and subject to the requirements of this section, a written or oral request to inspect or obtain copies of public records pursuant to an immediate disclosure request that is submitted to any department or to any body shall be satisfied at the earlier of the time required by other law or no later than two business days unless the requestor is advised in writing within two business days that additional time is needed because of the volume of records sought or because the records do not qualify as subject to the immediate disclosure request procedure.

C. All determinations made pursuant to subsection (B) of this section shall be communicated in writing to the requestor within two business days of the date of the request. If additional time is needed or if the records do not qualify for an immediate disclosure request, the request shall be processed in accordance with BMC 4.12.050. (Ord. 05-06 § 1).

4.12.070 Withholding restrictions.

A. No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure by law.

B. Any redacted, deleted or segregated information shall be keyed by footnote or other clear reference to the appropriate justification for withholding. Such redaction, deletion or segregation shall be done personally by the attorney or other staff member conducting the exemption review. (Ord. 05-06 § 1).

4.12.080 Justification for withholding.

Any withholding of information shall be justified, in writing, as follows:

A. A withholding under a permissive exemption in the California Public Records Act or this title shall cite the legal authority and, where the exemption is based on the public interest in favor of not disclosing, explain in practical terms how the public interest would be harmed by disclosure.

B. A withholding on the basis that disclosure is prohibited by law shall cite the applicable legal authority.

C. A withholding on the basis that disclosure would incur civil or criminal liability shall cite any statutory or case law supporting that position.

D. The final decision for withholding information shall be made by the city council. The matter shall be scheduled for action at the next regularly scheduled city council meeting unless such meeting is more than 30 days from the date of the request for action by the council. In the event that the next regular meeting is more than 30 days away, a special meeting shall be called. If the council decides records should

be disclosed, the records shall be disclosed not later than 5:00 p.m. of the next business day following the council meeting unless the council specifies some other time. Each council member's vote and general reason shall be given and recorded in public. Detailed reasons need not be provided when such disclosure would compromise privacy or confidential matters or would subject the city to litigation. (Ord. 07-05 § 1; Ord. 05-06 § 1).

4.12.090 Fees for copying.

A. No fee shall be charged for making public records available for inspection.

B. No fee shall be charged for a single copy of a current meeting agenda.

C. A fee may be charged for:

1. Single or multiple copies of past meeting agendas or any agenda-related materials;

2. Multiple copies of a current meeting agenda; and

3. Any other public record copied in response to a specific request.

D. The city may, rather than making copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.

E. All drafts or final environmental impact reports and environmental impact statements shall be posted either on the city's web site or on the consultant's web site.

F. In addition to the copies routinely required for city official or staff use, the city shall require the applicant for a project that is, or will be, of widespread public interest to pay for up to 20 copies of documents such as environmental impact reports. These copies will be provided on a first-come, first-serve basis at no cost to members of the public. The city manager or designee shall determine if and how many extra copies will be required on a case by case basis.

G. All fees permitted under this section shall be determined and specified in the city of Benicia master fee schedule, as amended. When the cost of writing a receipt and collecting the fees required under this section would exceed the cost of the copies, the copying fee shall be waived. The master fee schedule shall note the maximum amount that may be waived.

H. Nothing in this section shall be interpreted as intending to preempt any fee set by or in compliance with state law. (Ord. 06-11 § 5; Ord. 05-06 § 1).

4.12.100 Web site information.

Each department shall make an effort to ensure its portion of the city's web site is kept current. Each department shall also post public documents that are of interest to a wide number of the public. (Ord. 05-06 § 1).

4.12.110 Requests made by email.

To ensure that email requests are received, records requests made by email shall not be effective until acknowledged by a return email of the city. Immediately upon receipt of an email request for records, the employee shall promptly acknowledge the request by a return email. Departments may establish a designated staff member or designated email address to receive email records requests. (Ord. 05-06 § 1).

4.12.120 Policy regarding purchase and use of computer systems.

A. It is the policy of the city to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this chapter. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall select these systems to ensure convenient, efficient, and economical public access to records.

B. Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:

1. Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
2. Implementing a system that permits paper reproduction of electronic copies of records.

C. Nothing in this section shall be interpreted to require the city to use a system that would prevent it from complying with the security requirements of the state and federal governments for accessing their records. (Ord. 05-06 § 1).

Chapter 4.16 ETHICS

Sections:

- 4.16.010 Policy.
- 4.16.020 Responsibilities of public office and employment.
- 4.16.030 Declaration of open government awareness.
- 4.16.040 Dedicated service.
- 4.16.050 Fair and equal treatment.
- 4.16.060 Use of public property.
- 4.16.070 Obligations to citizens.
- 4.16.080 Conflict of interest.
- 4.16.090 Disclosure of conflict of interest.
- 4.16.100 Representation before bodies.
- 4.16.110 Gifts.

4.16.010 Policy.

The proper operation of city government requires that: (1) public officials and employees be independent, impartial and responsible to the people; (2) government decisions and policy be made using the proper channels of government; and (3) that public office or employment not be used for personal gain. (Ord. 05-06 § 1).

4.16.020 Responsibilities of public office and employment.

Public officials and employees are bound to uphold and carry out the Constitution of the United States, the Constitution of the state of California, and the law and regulations of the city. Public officials and employees shall observe in their official acts the highest ethical standards and discharge faithfully the duties of their offices

or employment regardless of personal considerations. Public officials and employees shall recognize that the public interests must be their primary concern; that they fulfill the public trust invested in them by their conduct; and that conduct in their official affairs should be above reproach. (Ord. 05-06 § 1).

4.16.030 Declaration of open government awareness.

All employees who are required to fill out conflict of interest forms pursuant to the Political Reform Act and the city's conflict of interest code and all public officials shall sign an annual statement stating that they have read the rest of this title, Open Government, and have attended or will attend when next offered, a training session on open government, to be held at least once annually. The statements shall be maintained by the city clerk's office and shall be available as public record. Annual training shall also be provided to city employees who regularly respond to requests for information by the public. All such trainings will be conducted by the city attorney's office with the assistance of the open government commission. (Ord. 07-23 § 1; Ord. 05-06 § 1).

4.16.040 Dedicated service.

Public officials and employees shall not exceed their authority or breach the law or ask others to do so. Public officials and employees shall work in full cooperation with other public officials and employees unless prohibited from doing so by laws or regulations including, but not limited to, attorney-client privilege, privacy or confidentiality laws. (Ord. 05-06 § 1).

4.16.050 Fair and equal treatment.

Except in the case of moving an agenda item up on a particular agenda, preferential consideration of the request or petition of an individual person, group, business or entity shall not be given. No person, group, business or entity shall receive special advantages beyond that which are available to any other person, group, business or entity. (Ord. 05-06 § 1).

4.16.060 Use of public property.

No public official or employee shall request or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit, except when such property is available to the public generally or when such use is incidental as provided by city policy including city manager administrative instructions. No public official or employee shall use the time of any city employee, while said employee is on duty, for personal convenience or profit. (Ord. 05-06 § 1).

4.16.070 Obligations to citizens.

No public official or employee shall use their official position to grant, or assist in granting, any special (whether negative or positive) consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen in the same circumstances. (Ord. 05-06 § 1).

4.16.080 Conflict of interest.

A. Incorporation of the California Political Reform Act. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision in which the public official or employee knows or has reason to know he or she has a disqualifying conflict of interest within the meaning of California Government Code Section 87100 et seq., and any subsequent amendments to those sections. Members of advisory bodies not subject to the Political Reform Act may make, participate in making, or in any way use or attempt to use their official positions to influence decisions on matters within the purview of their body. In the interest of open government, members of all bodies are encouraged to disclose economic interests that are not conflicts under the Political Reform Act.

B. Incorporation of Government Code Section 1090 Et Seq. No public official or employee shall make a contract in which he or she has a financial interest within the meaning of California Government Code Section 1090 et seq. and any subsequent amendments to those sections.

C. Future Employment. No public official or employee shall make, participate in making, or in any way use or attempt to use his or her official position to influence a decision of the city, affecting a person or entity with whom the public official or employee is discussing or negotiating an agreement concerning said public official or employee's future employment. This prohibition shall be for a period of one year from the beginning of the discussion or negotiation or completion of the negotiation on future employment.

D. Incompatible Activity or Employment. Public officials and employees shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with their assigned duties as a public official or employee. (Ord. 07-06 § 1; Ord. 05-06 § 1).

4.16.090 Disclosure of conflict of interest.

A. Public officials and employees shall disclose on the public record any personal, professional or business relationships with any individual who is the subject of or has an ownership or financial interest in the subject of a governmental decision being made by the official or employee where, as a result of the relationship, the ability of the official or employee to act for the benefit of the public could reasonably be questioned. For the purposes of this section, the minutes of a public meeting at which the governmental decision is being made, or if the governmental decision is not being made in a public meeting, a memorandum kept on file at the offices of the city official or the employee's department, shall constitute the public record.

B. Penalties. A court may void any governmental decision made by a public official or employee who fails to disclose a relationship as required by subsection (A) of this section if the court determines that the failure to disclose was willful.

C. Regulations. The open government commission may recommend regulations for adoption by the city council setting forth the types of personal, professional and business relationships that must be disclosed pursuant to this section. (Ord. 05-06 § 1).

4.16.100 Representation before bodies.

No public official on a decision making body shall represent a client, a person or group before the board, commission, committee or the city council on which the public official presently sits. (Ord. 05-06 § 1).

4.16.110 Gifts.

In conformance with the gift limits imposed by California Government Code Section 89503 and any subsequent amendments to that section, no official or employee of the city shall accept any gift, reward, service or gratuity of any kind in excess of the amount set forth pursuant to the Political Reform Act per single source as defined by the Political Reform Act regulations in a calendar year by reason of their employment or office. The provisions of Government Code Section 89503 and the related regulations shall be used to interpret the provisions of this section. (Ord. 07-24 § 1; Ord. 06-11 § 6; Ord. 05-06 § 1).

Chapter 4.20 OPEN GOVERNMENT COMMISSION

Sections:

- 4.20.010 Open government commission.
- 4.20.020 Administrative review and appeal process.
- 4.20.030 Responsibility for administration.
- 4.20.040 Enforcement of ethics chapter.

4.20.010 Open government commission.

A. Duties. In the implementation of this title, the commission shall:

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this title with a priority on simple, standard procedures.

2. Assist in citywide training for implementing the title.

3. Develop and maintain an administrative process for review and enforcement of this title.

4. Propose amendments to the city council of this title as needed.

5. Report to the city council on any practical or policy problems encountered in the administration of this title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, and familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this title. (Ord. 08-05 § 2; Ord. 05-06 § 1).

4.20.020 Administrative review and appeal process.

A. An administrative review and appeal process is hereby established to review whether a meeting was held in violation of this title or records were withheld in violation of this title. No such administrative review process shall preclude, delay or in any way limit a person's remedies under the Brown Act or Public Records Act. Further, such administrative review process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor.

B. Such review process shall include an:

1. Appeal to the city manager who shall make a decision within seven days of the appeal. (This step shall not apply in cases involving the city manager or members of the city council.)

2. Appeal of the city manager's decision to either the commission or a three-member panel of city attorneys, at the option of the person appealing the decision. The commission or three-member panel of city attorneys, as the case may be, shall first review the matter to determine if they have jurisdiction over the matter. If the complaint involves allegations that meetings were held in violation of this title or records were withheld in violation of this title, then they have jurisdiction to hear the matter and may hear the matter in accordance with the procedures established by resolution of the open government commission. The decision on jurisdiction is final unless judicial review is initiated.

3. If the commission or a three-member panel of city attorneys reviews whether a meeting was in violation of this title or records were withheld in violation of this title, their decision may be appealed to the city council. The decision of the city council is final.

C. Enforcement.

1. Upon the conclusion of the administrative review process, as implemented pursuant to subsection (B) of this section, any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her rights under this title.

2. A court may award costs and reasonable attorneys' fees to the plaintiff in an action brought pursuant to this section where it is found that a body has violated this title. The costs and fees shall be paid by the body and shall not become a personal liability of any public official or employee of the body.

3. If the litigation is judged to be frivolous by the court, the defendant body may assert its right to be paid reasonable court costs and attorneys' fees.

D. Mediation. Notwithstanding any other provision of law, any person whose request to inspect or copy public records has been denied by any body, agency or department may demand immediate mediation of his or her request with the Solano County courts mediation service or some mutually agreed-upon person who agrees to volunteer his or her time serving as mediator.

E. Cure and Correction.

1. Nothing in this title shall prevent a body from curing or correcting an action challenged on grounds that a body violated any material provision of Chapter 4.08 BMC. A body shall cure and correct an action by placing the challenged action on a subsequent meeting agenda for separate determinations of whether to cure

and correct the challenged action and, if so, whether to affirm or supersede the challenged action after first taking any new public testimony.

2. In the event the commission, upon the conclusion of a formal hearing conducted pursuant to its administrative review process, determines that a body violated any material provision of this title, the body shall agendize for the challenged action to correct and cure the violation. Any violation shall have no effect on those actions described in Government Code Section 54960.1(d)(1) – (4), inclusive.

F. Reports or Recommendations from Meetings Alleged to Have Been Held in Violation of This Title. If the sole purpose or nature of an action that is challenged for violation of this title is to make or convey an advisory report or recommendation to another body, such body shall not be precluded from hearing or taking action on the item if it is within the authority or jurisdiction for said body to hear or take action on the item in the absence of such report or recommendation.

G. Penalties. The penalty for violation of this title by an elected or appointed official shall be commensurate with the violation and may include penalties, such as censure, including findings of fact and a determination, which shall be given to media selected by the commission.

H. Limitation of Actions. No person may file a complaint with the commission alleging violation of the notice provisions of BMC 4.08.050 if he or she attended the meeting or had actual notice of the item of business at least 72 hours prior to the meeting at which the action was taken. (Ord. 07-08 § 1; Ord. 05-06 § 1).

4.20.030 Responsibility for administration.

A. The city manager shall administer and coordinate the implementation of the provisions of this title for all bodies, agencies and departments under his or her authority, responsibility or control.

B. The city attorney shall staff, or provide staff for, the commission to permit the commission to fulfill the functions and duties set forth herein. The city attorney shall provide the commission with legal assistance, to the extent such assistance does not constitute a conflict.

C. The city clerk in the case of the city council and the assigned department in the case of other bodies shall be responsible for timely posting all agendas and shall make available for immediate public inspection and copying all agendas and agenda-related material filed with it.

D. The city clerk or designee shall act as information request facilitator to assist members of the public with acquiring the information they seek. If it will take longer than 48 hours (excluding Saturdays, Sundays, and holidays) to obtain the information requested by a member of the public then the city clerk will provide a written concise explanation of how and when the information will be made available. (Ord. 05-06 § 1).

4.20.040 Enforcement of ethics chapter.

The city council, and not the open government commission, shall be the enforcement body for alleged violations of Chapter 4.16 BMC. This process shall not be used against employees except the city manager and city attorney since other employees are subject to discipline at the discretion of their supervisor. In the

event of an allegation of a violation of the ethics provisions of this title, the matter shall first be referred to the city attorney for a determination as to whether there is a substantial likelihood that an ethics violation occurred. If substantial cause exists, the city council shall use the administrative process set forth above to resolve the matter except the option of referral to the commission in BMC 4.20.020(A)(2) shall be omitted. In the case of an allegation of an ethics violation committed by an elected official, the process shall proceed directly to the city council for a determination. (Ord. 05-06 § 1).

OPEN GOVERNMENT TIPS



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

DISCLOSE EX PARTE COMMUNICATIONS

BACKGROUND: In *quasi-judicial* matters, when the Council, Planning Commission, Historic Preservation Review Commission, Civil Service Commission or other Board or Commission is deciding the facts of a particular case applicable to a specific piece of property, an abatement matter, a use permit or variance, personnel appeals, license revocations, or an appeal of a lower level decision, it is extremely important for members of the decision-making body to refrain from contacting either party to the dispute or their attorneys. These types of *ex parte* (outside of the record) contacts can give rise to legal attack against the City for violation of due process rights. You are supposed to make your decision based solely on evidence produced at the hearing. If you have received evidence outside of the hearing, and the substance of that contact was not disclosed at the commencement of the hearing so as to give all parties an opportunity to respond and contest it, a court may find that the City's hearing violated the Constitutional due process rights of either party, thus subjecting the City to liability.¹ This policy applies to any *quasi-judicial* matter which is pending, or is reasonably expected to come, before the body on which the official sits.²

BEST PRACTICE – NO EX PARTE COMMUNICATIONS: In matters involving *quasi-judicial* decisions, particularly where the matter is controversial and being contested, and in any enforcement action or appeal of a prior decision, the best practice is for you to avoid all *ex parte* communications about the item. In these types of contested cases, you should refrain from contacting the parties or their attorneys, or getting involved in the dispute prior to the hearing, so as to preserve your ability to make your decision based solely on the evidence produced at the hearing.

DISCLOSURE OF EX PARTE COMMUNICATIONS: If you do get involved in an *ex parte* discussion, you must publicly disclose the substance of any such discussion at the start of the agenda presentation of the item. However, it is not enough just to indicate that you spoke to a party, such as the applicant, or to the neighbors who are contesting the application or project. To ensure due process, you need to disclose what was learned during the conversation so that all parties have an opportunity to respond.³

SITE VISITS: These types of matters should not be discussed during site inspections or field trips that are not part of an agenda meeting. Although individual site visits are allowed and encouraged, they should be disclosed so that your specific observations can be made part of the record.

LEGISLATIVE ACTS: In *legislative* actions, generally applicable to the city as a whole (such as most ordinances), not only is it appropriate to speak and receive information from your constituents, but that is part of your duties as elected and appointed officials. For Open Government purposes, it is suggested that you disclose the information you received outside of the hearing. This is because if the information is important for your decisionmaking process, it may also be important for the other decision makers to hear and consider.

¹ The concern regarding *ex parte* contacts only applies to *quasi-judicial* actions, where the decision making body is acting like a court.

² See also Benicia Municipal Code Section 4.08.160.

³ Any questions or concerns regarding *ex parte* communications and what should be disclosed on the record should be discussed prior to the meeting with the City Attorney.



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS

HOW TO MAKE A MOTION

Background: In a public meeting, it is important for the public to understand what action is taken by the decision making body. It is not always easy to follow what action a public body is proposing if a motion is made that does not specify with sufficient detail the item and the actual action that is being proposed. This handout is designed to assist the public official in calling for action on both simple and complex items.

Simple Items With Little Or No Discussion: For certain items on the agenda, very little if any discussion is needed. Approval of the consent calendar is an example. If the mayor or chair asks for a motion to approve the consent calendar, an individual need merely to respond "so moved"¹ or "I move to approve the consent calendar." This approach may be used for other actions by inserting the identity of the item to be approved.

More Complex Items With Discussion: For items involving a detailed staff report, complex issues, controversy or a great deal of public discussion, it is important for any motion to clearly identify what action is being proposed by the decision making body and the identity of the project or item. This eliminates confusion and allows anyone entering the meeting (or turning on the television) to understand what item is being discussed and the action that is being proposed. It also creates a clean record for the decision making body.

Staff reports generally include a "*recommendation*" section that can be read as an actual motion if this is the action that the decision making body wishes to follow. However, any deviation from the recommendation or changes in the conditions of approval must be cited. For example, a motion to approve a conditional use permit might be made as follows:

"I move to approve a conditional use permit for Good Grub Restaurant located at 360 Main Street to permit outdoor eating subject to the findings and conditions in the attached resolution, with the one change in condition #6 that the bar area must be closed at midnight."

The illustrated motion contains the action, the description and location of the project, cites the resolution and the findings and conditions of approval, as well as a proposed change in one of the conditions of approval.

A decision not to follow a staff recommendation should include findings of fact to support the decision. For example, such a motion contrary to the one made above would be:

"I move to reject the application for a conditional use permit for outdoor eating to Good Grub Restaurant located at 360 Main Street based on the fact there are residential neighbors on two sides of the restaurant that are currently experiencing noise and other problems from the restaurant that would only increase if outdoor dining were permitted."

If this motion were passed, staff would have sufficient information to prepare a resolution rejecting the application for a conditional use permit based on actual findings.

During a meeting, the City Attorney (or staff advisor if there is no City Attorney staffing the meeting) can assist in properly framing a motion if there is any question as to how an action should be proposed.

¹ This is because the motion requested has already been articulated.



OPEN GOVERNMENT TIPS FOR EFFECTIVE MEETINGS DISCLOSE A CONFLICT OF INTEREST

BACKGROUND: Government Code Section 87105 sets forth the requirements of what statements and actions a public official must take if he/she has a financial conflict of interest under the Political Reform Act on an item that is on the agenda for discussion or action.¹ This memo is intended to inform members of the City Council and other City Commissions and Boards when and how to properly disclose a conflict of interest on the record, as well as what to do when such an item is being considered.

WHEN TO DISCLOSE A CONFLICT OF INTEREST: A conflict of interest on an item must be disclosed as soon as the item is announced, but immediately prior to any presentation or consideration of the item. In such cases, it is best to inform the Mayor or Chairperson that you have a conflict of interest on a particular item so that they can make sure you have an opportunity to make your disclosure prior to any discussion of the item.

WHAT TO SAY/HOW MUCH TO DISCLOSE: It is not enough to state that you have a conflict of interest. Pursuant to Government Code Section 87105, you must provide *sufficient detail to inform the public why you have a conflict of interest.*

Conflict Due to Residence: If the conflict of interest is due to the location of your residence, you do not need to provide the address of your residence. However, you do need to state that you reside within 500 feet of the item under consideration.

Conflict Due To Business: If the conflict is due to the location of your business, you should disclose that reason and provide the address of your business.

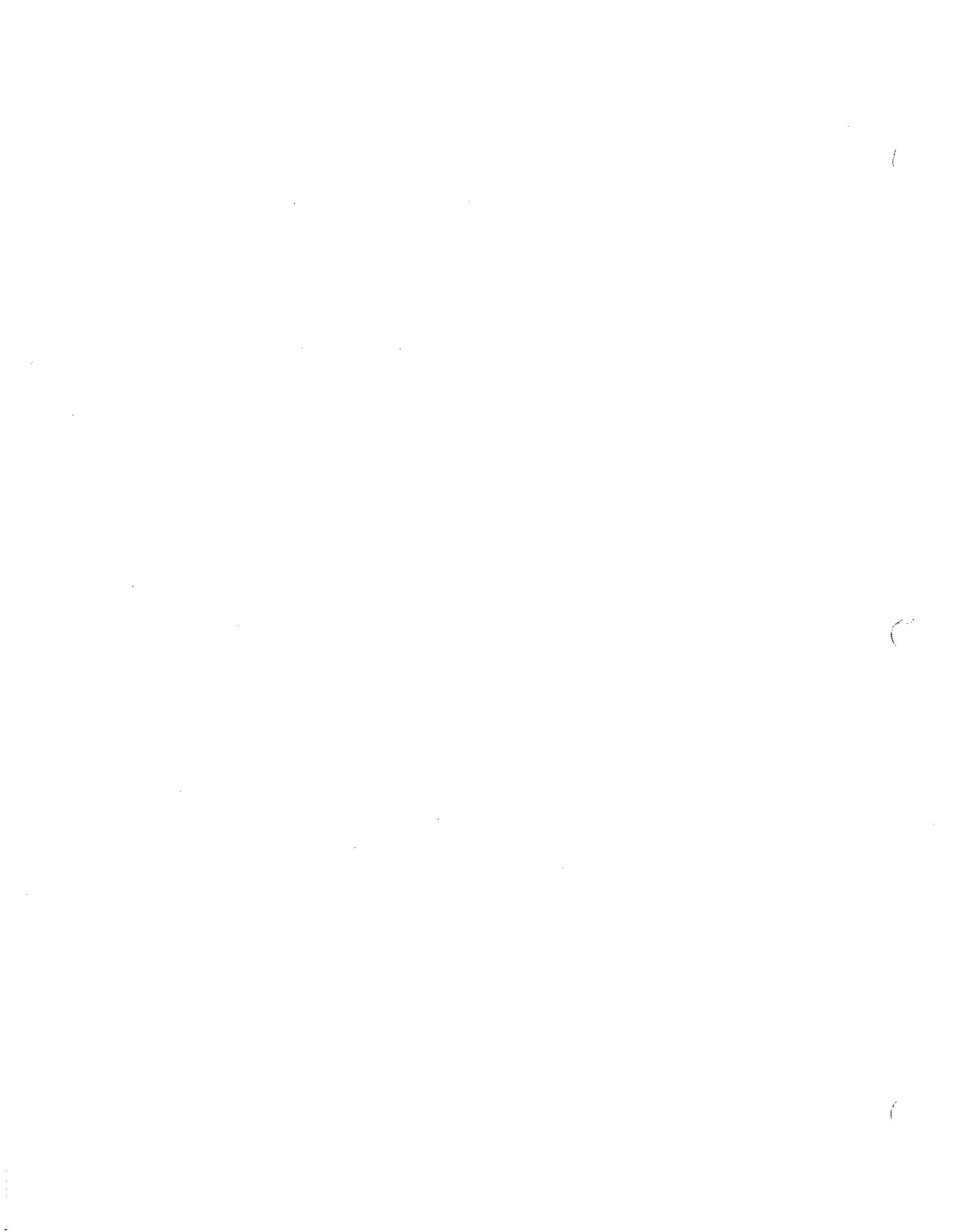
WHAT TO DO DURING DISCUSSION OF THE ITEM: Once the conflict has been disclosed on the record, you must leave the room completely until after the discussion or action on the item is completed. You are not allowed to sit in the audience.

Exceptions: There are two exceptions to this requirement:

- 1) If the item is on the consent calendar, you may remain seated unless another member removes the item from the consent calendar for further discussion.
- 2) If you or an immediate family member have a personal interest in the item due to complete ownership of a residence or business that is impacted by the decision, you may speak during the public comment portion of the item.

¹ Any question regarding whether or not you may have a conflict of interest should be discussed prior to the meeting with the City Attorney.

CODE OF CONDUCT





City of Benicia Code of Conduct for Members of City Council, Boards, Commissions and Committees

Preamble

The residents and businesses of Benicia are entitled to have fair, ethical and accountable local government, which has earned the public's full confidence for integrity. The effective functioning of democratic government therefore requires that:

- Public officials, both elected and appointed, comply with both the letter and spirit of the laws and politics affecting the operations of government;
- Public officials be independent, impartial and fair in their judgment and actions;
- Public office be used for the public good, not for personal gain; and
- Public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility.

To this end, the Benicia City Council has adopted a Code of Conduct for members¹ of the City Council and the City's commissions to assure public confidence in the integrity of local government and its effective and fair operation.

This Code of Conduct describes the manner in which Council Members should treat one another, city staff, constituents, and others they come into contact with in representing the City of Benicia.

The constant and consistent theme through the conduct guidelines is "respect." Council Members experience huge workloads and tremendous stress in making decisions that could impact thousands of lives. Despite these pressures, elected officials are called upon to exhibit appropriate behavior at all times. These guidelines help guide Council Members to do the right thing in even the most difficult situations.

It is also recognized that Council Members have the duty to conduct City affairs in a business-like manner, assuring timely consideration of matters before them and thoughtful expeditious decision-making. These guidelines incorporating best practices among city governments can help guide Council Members to contribute to this end.

¹ For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "Council Member" or "member" refers to any member of the Benicia City Council or any of the City's boards, commissions or committees established by the City Council.

City of Benicia Code of Conduct

1. **Acts in the Public Interest**

Recognizing that stewardship of the public interest must be their primary concern, members will work for the common good of the people of Benicia and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the City Council and the City's commissions².

2. **Comply with the Law**

Members shall comply with the laws of the federal government, the State of California and the City of Benicia in the performance of their public duties. These laws include, but are not limited to: the United States and California constitutions; the City Municipal Code, laws pertaining to conflict of interest, elections campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances, resolutions and policies. Members shall not solicit political support from City Staff (financial contributions, display of signs, name on support list, etc.).

3. **Conduct of Members**

The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of the Council and commissions, the staff or the public.

4. **Respect for Process**

Members shall perform their duties in accordance with the processes and rules of order established by the City Council and commissions governing the deliberation of public policy issues, the involvement of the public, and the implementation of policy decisions of the City Council by City staff.

5. **Conduct at Public Meetings**

Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business of the body; or otherwise interfering with the orderly conduct of the meetings. Members shall commit to practice civility and decorum in discussions and debates. Members shall commit to honoring the role of the Chair in maintaining order, keeping discussion on track, and focusing discussion on agenda items at hand. Members shall avoid debate and argument with the public. Members shall not engage in personal attacks of any kind under any circumstance.

6. **Decisions Based on Merit**

Members shall base their decisions on the merits and substance of the matter at hand, rather than on unrelated considerations.

² For ease of reference in the Code of Conduct and unless the context indicates otherwise, the term "commissions" refers to any of the City's commissions, boards or committees established by the City Council.

- 7. Communication**
Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commission, which they may have received from sources outside of the public decision-making process.
- 8. Conflict of Interest**
In order to assure their independence and impartiality on behalf of the common good, members shall not use their official positions to influence government decisions in which they have a material financial interest.
- 9. Gifts and Favors**
Members shall not take any special advantage of services or opportunities for personal gain, by virtue of their public office, which are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefits which might compromise their independence of judgment or action or give the appearance of being compromised.
- 10. Confidential Information**
Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.
- 11. Use of Public Resources**
Members shall not use public resources that are not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.
- 12. Representation of Private Interests**
In keeping with their role as stewards of the public interest, members of the Council shall not appear on behalf of the private interests of third parties before the Council or any commissions or proceedings of the City, nor shall members of commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.
- 13. Advocacy**
Members shall represent the official policies or positions of the City Council or commissions to the best of their ability when designated as delegates. When presenting their individual opinions and positions, members shall explicitly state they do not represent their body or the City of Benicia, nor will they allow the inference that they do.
- 14. Policy Role of Members**
Members shall respect and adhere to the council-manager structure of city government as provided by state law and City Code. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, commissions, and City Staff.

Members therefore shall not interfere with the administrative functions of the City or the professional duties of City Staff; nor shall they impair the ability of staff to implement Council policy decisions. Members should refrain from:

- Disrupting staff from the conduct of their jobs
- Involvement in administrative functions
- Attending staff meetings unless requested by staff

15. Independence of Boards and Commissions

Because of the value of the independent advice of commissions to the public decision-making process, members of Council shall refrain from using their position to influence the deliberations or outcomes of commission proceedings.

16. Positive Work Place Environment

Members shall support the maintenance of a positive and constructive work place environment for City employees and for residents and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

17. Implementation & Enforcement

As an expression of the standards of conduct for members expected by the City, this Code of Conduct is intended to be self-enforcing. It, therefore, becomes most effective when members are thoroughly familiar with it and embrace its provisions.

For this reason, ethical standards shall be included in the regular orientation for candidates for City Council, applicants to commissions, and newly elected and appointed officials. Members entering office shall sign a statement affirming that they read and understand the City of Benicia Code of Conduct.

This Code shall be reviewed annually by the City Council and City commissions at the annual organization and procedures meeting of each body. At such meeting, Council Members and Commissioners shall sign a statement affirming they have read and understand the Code of Conduct.

The Benicia Code of Conduct expresses standards of ethical conduct expected for members of the City Council and commissions. Members themselves have the primary responsibility to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government.

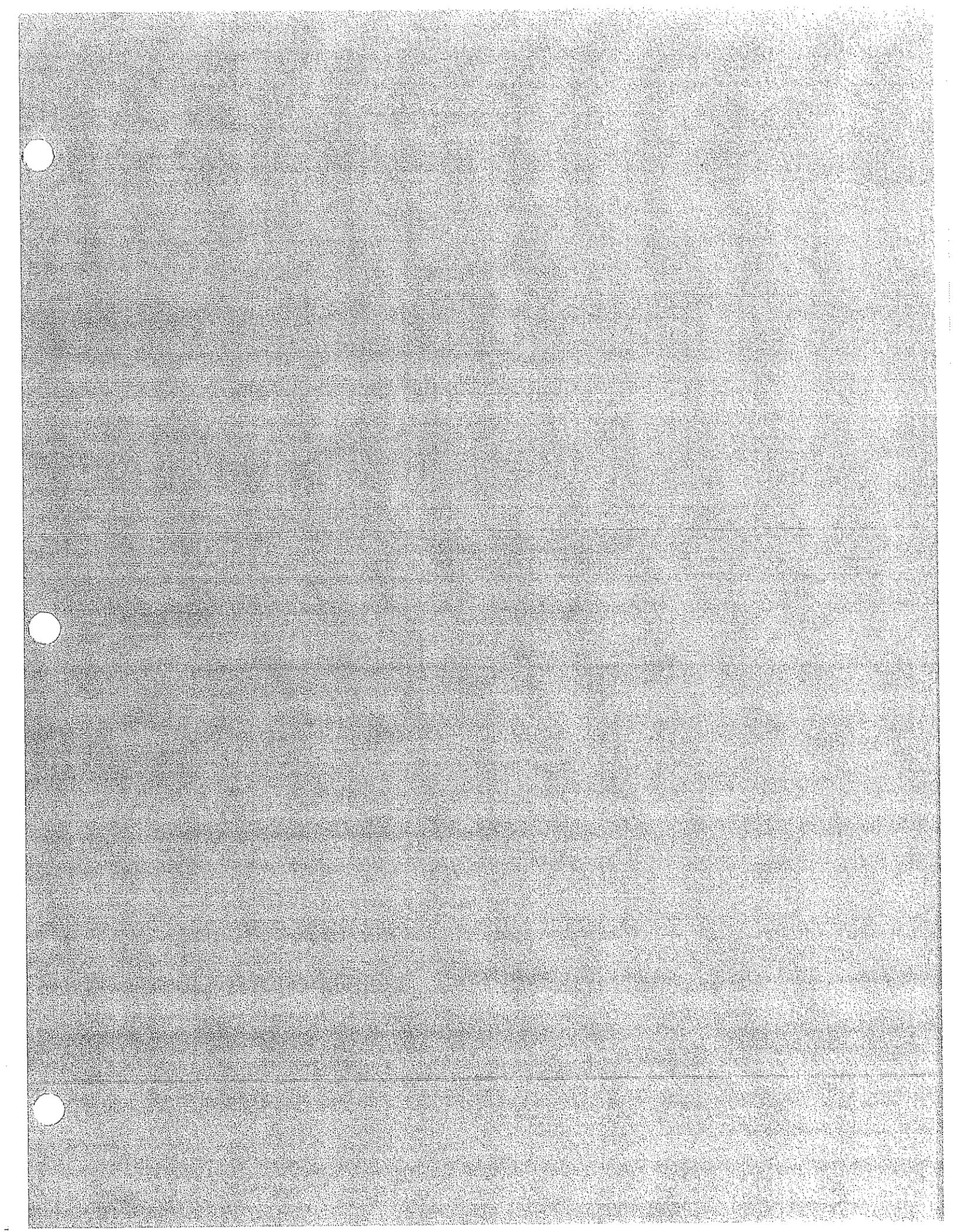
The chairs of commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Conduct are brought to their attention.

I affirm that I have read and understand the City of Benicia Code of Conduct.

Signature

Date

Print Name



CAN I VOTE?

Can I vote?

**A Basic Overview
Of Public Officials'
Obligations Under the
Political Reform Act's
Conflict-of-Interest Rules**



**California
Fair Political
Practices
Commission**



“My home is near the proposed new shopping mall. Can I vote on the issue at next month’s Planning Commission meeting?”

Many of you may have been confronted with such questions. This booklet is offered by the FPPC as a general overview of your obligations under the Political Reform Act’s conflict-of-interest rules. Using non-technical terms, the booklet is aimed at helping you understand your obligations at the “big picture” level and to help guide you to more detailed resources.

Stripped of legal jargon:

➤ You have a conflict of interest with regard to a particular government decision if it is sufficiently likely that



**Fair
Political
Practices
Commission**

Toll-free Advice Line: 1-866-ASK-FPPC

the outcome of the decision will have an important impact on your economic interests, and

➤ a significant portion of your jurisdiction does not also feel the important impact on their economic interests.

The voters who enacted the Political Reform Act by ballot measure in 1974 judged such circumstances to be enough to influence, or to appear to others to influence, your judgment with regard to that decision.

The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise. No one ever has a conflict of interest under the Act “on general principles” or because of personal bias regarding a person or subject. A conflict of interest can only arise from particular kinds of economic interests, which are explained in non-technical terms later in this booklet.

An important note...

You should not rely solely on this booklet to ensure compliance with the Political Reform Act, but should also consult the Act and Commission regulations. The Political Reform Act is set forth at Cal. Gov. Code §§81000-91014, and the Fair Political Practices Commission regulations are contained in Title 2, Division 6 of the California Code of Regulations. Both the Act and regulations are available on the FPPC's web site, <http://www.fppc.ca.gov>. Persons with obligations under the Act or their authorized representatives are also encouraged to call the FPPC toll-free advice line — **1-866-ASK-FPPC** — as far in advance as possible.

If you learn to understand these interests and to spot potential problems, the battle is mostly won because you can then seek help on the more technical details of the law from your agency's legal counsel or from the California Fair Political Practices Commission. **The Commission's toll-free advice line is 1-866-ASK-FPPC (1-866-275-3772).**

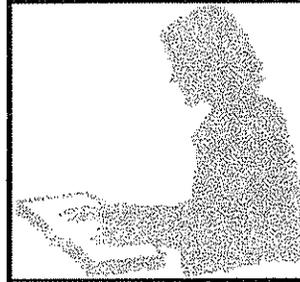
Under rules adopted by the FPPC, deciding whether you have a financial conflict of interest under the Political Reform Act is an eight-step process. If you methodically think through the steps whenever there may be a problem, you can avoid most — if not all — mistakes. These steps are spelled out and explained in general terms in this booklet.

If you learn nothing else from this booklet, remember these things:

- **This law applies only to financial conflicts of interest; that is, conflicts of interest arising from economic interests.**
- **Whether you have a conflict of interest that disqualifies you depends heavily on the facts of each governmental decision.**
- **The most important proactive step you can take to avoid conflict of interest problems is learning to recognize the economic interests from which conflicts of interest can arise.**

On the next page are the eight steps:

Eight steps to help you decide



Step One: Are you a “public official” within the meaning of the rules?

Step Two: Are you making, participating in making, or influencing a governmental decision?

Step Three: What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

Step Four: Are your economic interests directly or indirectly involved in the governmental decision?

Step Five: What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

Step Six: The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

Step Seven: If you have a conflict of interest, does the “public generally” exception apply?

Step Eight: Even if you have a disqualifying conflict of interest, is your participation legally required?

Next, here is a non-technical explanation of each:

Public Official

Step One — Are you a “public official,” within the meaning of the rules?

The Act’s conflict-of-interest rules apply to “public officials” as defined in the law. This first step in the analysis is usually a formality — you are probably a public official covered by the rules. If you are an elected official or an employee of a state or local government agency who is designated in your agency’s conflict-of-interest code, you are a “public official.” If you file a Statement of Economic Interests (Form 700) each year, you are a “public official” under the Act (even if you are not required to file a Form 700, in some cases you may still be considered a public official because the definition covers more than specifically designated employees). The cases that are tougher to determine typically involve consultants, investment managers and advisers, and public-private partnerships. If you have any doubts, contact your agency’s legal counsel or the FPPC.

Governmental Decision

Step Two — Are you making, participating in making, or influencing a governmental decision?

The second step in the process is deciding if you are engaging in the kind of conduct regulated by the

conflict-of-interest rules. The Act's conflict-of-interest rules apply when you:

- **Make** a governmental decision (for example, by voting or making an appointment).
- **Participate** in making a governmental decision (for example, by giving advice or making recommendations to the decision-maker).
- **Influence** a governmental decision (for example, by communicating with the decision-maker).

A good rule of thumb for deciding whether your actions constitute making, participating in making, or influencing a governmental decision is to ask yourself if you are exercising *discretion* or *judgment* with regard to the decision. If the answer is "yes," then your conduct with regard to the decision is very probably covered.

When you have a conflict — Regulation 18702.5 (special rule for section 87200 public officials)

Government Code section 87105 and regulation 18702.5 outline a procedure that public officials specified in section 87200 must follow for disclosure of economic interests when they have a conflict of interest at a public meeting. The full text of this law and regulation may be viewed in the Library and Publications section of the FPPC's website at <http://www.fppc.ca.gov>.

Public officials specified in section 87200 of the Government Code, such as council members, planning commissioners, and boards of supervisors, must pub-

licly identify in detail the economic interest that creates the conflict, step down from the dais **and must then leave the room**. This identification must be following the announcement of the agenda item to be discussed or voted upon, but before either the discussion or vote commences.

Additionally, the disqualified official may not be counted toward achieving a quorum while the item is being discussed.

The identification of the conflict and economic interest must be made orally and shall be made part of the public record.

Exceptions:

- If the decision is to take place during a closed session, the identification of the economic interest must be made during the public meeting prior to the closed session but is limited to a declaration that the official has a conflict of interest. The economic interest that is the basis for the conflict need not be disclosed. The official may not be present during consideration of the closed session item and may not obtain or review any non-public information regarding the decision.
- A public official is not required to leave the room for an agenda item on the consent calendar provided that the official recuses himself or herself and publicly discloses the economic interest as described above.

-
- A public official may speak as a member of the general public only when the economic interest that is the basis for the conflict is a personal economic interest, for example, his or her personal residence or wholly owned business. The official must leave the dais to speak from the same area as the members of the public and may listen to the public discussion of the matter.

Examples:

— *The Arroyo City Council is considering widening the street in front of council member Smith's personal residence, which he solely owns. Council member Smith must disclose on the record that his home creates a conflict of interest preventing him from participating in the vote. He must leave the dais but can sit in the public area, speak on the matter as it applies to him and listen to the public discussion.*

— *Planning Commissioner Garcia is a greater than 10% partner in an engineering firm. The firm represents a client who is an applicant on a project pending before the planning commission. Commissioner Garcia must publicly disclose that the applicant is a source of income to her requiring her recusal. Commissioner Garcia must step down from the dais and leave the room. Since this is not a personal interest that is the basis for the conflict, she **may not** sit in the public area and listen to the discussion.*

— *Supervisor Robertson rents a home to a county employee. The county employee is the sub-*

*ject of a disciplinary matter in a closed session of the Board of Supervisors. During the open session prior to adjourning to closed session, Supervisor Robertson announces that he must recuse himself from participating in the closed session **but does not disclose that the reason for his recusal is a source of income nor does he name the county employee that is the source of income to him.** He may not attend the closed session or obtain any non-public information from the closed session.*

Economic Interests

Step Three — What are your economic interests? That is, what are the possible sources of a financial conflict of interest?

From a practical point of view, this third step is the most important part of the law for you. The Act's conflict-of-interest provisions apply only to conflicts of interest arising from economic interests. There are six kinds of such economic interests from which conflicts of interest can arise:

- **Business Investment.** You have an economic interest in a business entity in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more.
- **Business Employment or Management.** You have an economic interest in a business entity for which you are a director, officer, partner, trustee, employee, or hold any position of management.

-
- **Real Property.** You have an economic interest in real property in which you, your spouse, your registered domestic partner, or your dependent children or anyone acting on your behalf has invested \$2,000 or more, and also in certain leasehold interests.

"The most important thing you can do to comply with this law is to learn to recognize the economic interests from which a conflict of interest can arise."

- **Sources of Income.** You have an economic interest in anyone, whether an individual or an organization, from whom you have received (or from whom you have been promised) \$500 or more in income within 12 months prior to the decision about which you are concerned. When thinking about sources of income, keep in mind that you have a community property interest in your spouse's or registered domestic partner's income — a person from whom your spouse or registered domestic partner receives income may also be a source of a conflict of interest to you. Also keep in mind that if you, your spouse, your registered domestic partner or your dependent children own 10 percent or more of a business, you are considered to be receiving "pass-through" income from the business's clients. In other words, the business's clients may be considered sources of income to you.
- **Gifts.** You have an economic interest in anyone, whether an individual or an organization, who has

given you gifts which total \$360 or more within 12 months prior to the decision about which you are concerned.

- **Personal Financial Effect.** You have an economic interest in your personal expenses, income, assets, or liabilities, as well as those of your immediate family. This is known as the “personal financial effects” rule. If these expenses, income, assets or liabilities are likely to go up or down by \$250 or more in a 12-month period as a result of the governmental decision, then the decision has a “personal financial effect” on you.

On the Statement of Economic Interests (Form 700) you file each year, you disclose many of the economic interests that could cause a conflict of interest for you. However, be aware that not all of the economic interests that may cause a conflict of interest are listed on the Form 700. A good example is your home. It is common for a personal residence to be the economic interest that triggers a conflict of interest even though you are not required to disclose your home on the Form 700.



Directly or Indirectly Involved?

Step Four — Are your economic interests directly or indirectly involved in the governmental decision?

An economic interest which is directly involved in — and therefore directly affected by — a governmental decision creates a bigger risk of a conflict of interest than does an economic interest which is only indirectly involved in the decision. As a result, the FPPC's conflict-of-interest regulations distinguish between economic interests that are directly involved and interests that are indirectly involved.

Once you have identified your economic interests, you must next decide if they are directly involved in the governmental decision about which you are concerned. The FPPC has established specific rules for determining whether each kind of economic interest is directly or indirectly involved in a governmental decision.

The details of these rules are beyond the scope of this guide. In general, however, an economic interest is directly involved if it is the subject of the governmental decision. For example, if the interest is real property, and the decision is about building a donut shop down the block from the property, then the interest is directly involved. If the interest is a business, and the decision is whether to grant a license for which the business has applied, the interest is directly involved.

These are just examples; you should contact your agency counsel, the FPPC and the specific regulations

if you have questions as each case arises. Note also that the next step in the analysis — applying the right standard to determine whether an impact is material — depends in part on whether the interest is directly or indirectly involved. The regulations — Sections 18704 through 18704.5 — and other helpful information can be found on the FPPC's web site, <http://www.fppc.ca.gov>.

Materiality (Importance)

Step Five — What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?

At the heart of deciding whether you have a conflict of interest is a prediction: Is it sufficiently likely that the governmental decision will have a material financial effect on your economic interests? As used here, the word "material" is akin to the term "important." You will have a conflict of interest only if it is reasonably foreseeable that the governmental decision will have an important impact on your economic interests.

The FPPC has adopted rules for deciding what kinds of financial effects are important enough to trigger a conflict of interest. These rules are called "materiality standards," that is, they are the standards that should be used for judging what kinds of financial impacts resulting from governmental decisions are considered material or important.

There are too many of these rules to review in detail in this booklet. Again, you can seek advice for your

"Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them."

– California Political Reform Act of 1974

agency counsel or the FPPC. However, to understand the rules at a "big picture" level, remember these facts:

- If the economic interest is directly involved in the governmental decision, the standard or threshold for deeming a financial impact to be material is stricter (i.e. lower). This is because an economic interest that is directly involved in a governmental decision presents a bigger conflict-of-interest risk for the public official who holds the interest.
- On the other hand, if the economic interest is not directly involved, the materiality standard is more lenient because the indirectly involved interest presents a lesser danger of a conflict of interest.
- There are different sets of standards for the different types of economic interests. That is, there is one set of materiality standards for business entities, another set for real property interests, and so on.
- The rules vary by the size and situation of the economic interest. For example, a moment's thought will tell you that a \$20,000 impact resulting from a governmental decision may be crucial to a small business, but may be a drop in the bucket for a big corporation. For example, the materiality standards

distinguish between large and small businesses, between real property which is close or far from property which is the subject of the decision.

Does a Conflict of Interest Result?

Step Six — Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?

As already mentioned in the introduction, the heart of the matter is deciding whether it is sufficiently likely that the outcome of the decision will have an important impact on your economic interests.

What does “sufficiently likely” mean? Put another way, how “likely” is “likely enough?” The Political Reform Act uses the words “reasonably foreseeable.” The FPPC has interpreted these words to mean “substantially likely.” Generally speaking, the likelihood need not be a certainty, but it must be more than merely possible.

A concrete way to think about this is to ask yourself the following question: Is it substantially likely that one of the materiality standards I identified in step five will be met as a result of the government decision? Step six calls for a factual determination, not necessarily a legal one. Also, an agency may sometimes segment (break down into separate decisions) a decision to allow participation by an official if certain conditions are

met. Therefore, you should always look at your economic interest and how it fits into the entire factual picture surrounding the decision.

“Public Generally” Exception

Step Seven — If you have a conflict of interest, does the “public generally” exception apply?

Now that you have determined that you will have a conflict of interest for a particular decision, you should see if the exceptions in Step 7 and Step 8 permit you to participate anyway. Not all conflicts of interest prevent you from lawfully taking part in the government decision at hand. Even if you otherwise have a conflict of interest, you are not disqualified from the decision if the “public generally” exception applies.

This exception exists because you are less likely to be biased by a financial impact when a significant part of the community has economic interests that are substantially likely to feel essentially the same impact from a governmental decision that your economic interests are likely to feel. If you can show that a significant segment of your jurisdiction has an economic interest that feels a financial impact which is substantially similar to the impact on your economic interest, then the exception applies.

The “public generally” exception must be considered with care. You may not just assume that it applies. There are specific rules for identifying the specific seg-

ments of the general population with which you may compare your economic interest, and specific rules for deciding whether the financial impact is substantially similar. Again, contact your agency counsel, the FPPC and the specific rules for advice and details. The regulations outlining the steps to apply the “public generally” exception can be found on the FPPC website at <http://www.fppc.ca.gov> under regulations 18707-18707.9.

Are you required to participate?

Step Eight — Even if you have a disqualifying conflict of interest, is your participation legally required?

In certain rare circumstances, you may be called upon to take part in a decision despite the fact that you have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances in which your government agency would be paralyzed, unable to act. You are most strongly encouraged to seek advice from your agency legal counsel or the FPPC before you act under this rule.

Conclusion

Generally speaking, here are the keys to meeting your obligations under the Political Reform Act’s conflict-of-interest laws:

-
- Know the purpose of the law, which is to prevent biases, actual and apparent, which result from the financial interests of the decision-makers.
 - Learn to spot potential trouble early. Understand which of your economic interests could give rise to a conflict of interest.
 - Understand the “big picture” of the rules. For example, know why the rules distinguish between directly and indirectly involved interests, and why the public generally exception exists.
 - Realize the importance of the facts. Deciding whether you have a disqualifying conflict of interest depends just as much — if not more — on the facts of your particular situation as it does on the law.
 - Don’t try to memorize all of the specific conflict-of-interest rules. The rules are complex, and the penalties for violating them are significant. Learn to understand the “big picture.” You’ll then be able to look up or ask about the particular rules you need to apply to any given case.
 - Don’t be afraid to ask for advice. It is available from your agency’s legal counsel and from the FPPC.



How To Contact Us:

Mail:

Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Website:

www.fppc.ca.gov

Telephone:

Toll-free advice line:

1-866-ASK-FPPC

(1-866-275-3772)

Regular line: 1-916-322-5660

Enforcement hot-line:

1-800-561-1861

**Fair Political
Practices Commission**





BENICIA HISTORIC PRESERVATION REVIEW COMMISSION

CITY HALL COMMISSION ROOM

REGULAR MEETING MINUTES

Thursday, March 25, 2010

6:30 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey
Absent: Commissioner Crompton (excused)

Staff Present:

Charlie Knox, Director
Gina Eleccion, Management Analyst

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

II. ADOPTION OF AGENDA

On motion of Commissioner White, seconded by Commissioner Mang, the agenda was adopted by the following vote:

Ayes: Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey
Noes: None
Absent: Commissioner Crompton

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

On motion of Commissioner Taagepera, seconded by Commissioner White, the Consent Calendar was approved by the following vote:

Ayes:	Commissioners Donaghue, Mang, McKee, Taagepera, White and Chair Haughey
Noes:	None
Absent:	Commissioner Crompton
Abstain:	None

A. Approval of Minutes of February 25, 2010

B. TANNERY BUILDING – COLOR FOR ENTRANCE DOORS ALONG FIRST STREET

09PLN-01 Design Review
127 First Street; APN 89-24050

PROPOSAL:

Pursuant to Condition No. 15 of Historic Preservation Review Commission (HPRC) Resolution No. 09-13, which approved new entry doors along First Street, the applicant requests HPRC review and approval of the proposed paint color for the new doors.

Recommendation: Review and approve paint color for new entrance doors along First Street for an existing building located at 127 First Street.

V. REGULAR AGENDA ITEMS

A. LOWER ARSENAL MIXED USE SPECIFIC PLAN AND EIR

LOCATION:

The Lower Arsenal is generally bounded by lands adjoining I-780 on the north, lands adjoining I-680 on the east, Port of Benicia land and the Carquinez Strait on the south, and residential neighborhoods extending into downtown Benicia on the west.

PROPOSAL:

The Specific Plan for the Lower Arsenal site, which is designated for mixed uses in the Benicia General Plan, covers four distinct zones, each of which exhibits a unique physical character. The Specific Plan includes a form-based code to shape future development on the project site, with primary emphasis on the physical form and character of new development. After build-out of the Specific Plan, the area could contain approximately 741,865 square feet of mixed uses, 22 new single-family residential units, and 6.39 acres of open space. The Specific Plan area currently contains approximately 525,000 square feet of mixed uses. The Draft Specific Plan is available for public review at the City’s Public Works & Community Development Department or on the City’s website at www.ci.benicia.ca.us.

Recommendation:

Make a recommendation to the Planning Commission and the City Council regarding certification of the Environmental Impact Report and adoption of the Lower Arsenal Mixed Use Specific Plan.

Commissioner McKee recused himself due to economic interest in the Arsenal and left the room.

Charlie Knox, Director, gave an overview of the project. He discussed the workshop that was held at the last meeting and reminded the Commission of their purview. He thanked the Commission for submitting their comments in advance, which were included in the staff report. Based on Commissioner comments, he suggested the Commission start with whether they want to recommend adoption of the Plan. He suggested that if this is the case, the Commission should make recommendations for changes to assist the Planning Commission if it desires to make a recommendation for adoption to the City Council.

Chair Haughey questioned if the form-based code only deals with new construction. Charlie Knox noted that the Arsenal Historic Conservation Plan would supercede when there is a conflict with the Arsenal Specific Plan. Further, Charlie Knox clarified that if the Plan is not adopted, any project could come forward under the current regulations. He clarified that a Specific Plan is intended to implement the General Plan for a specific area.

Commissioner Taagepera asked for clarification on which plan applies to which buildings. Charlie Knox agreed that there are wording errors on page 83 of the Draft EIR. The Plan would replace current zoning but not the Arsenal Historic Conservation Plan. Charlie Knox also noted that the statement regarding the Arsenal Specific Plan being the primary document on page 3.1-2 of the Specific Plan should be stricken. In addition, he recommended striking the word “historic” on Page 3.1-3 in the first bullet.

Commissioner Taagepera commented that she does not believe that impacts to historic resources can be characterized as “less than significant.”

Commissioner Mang questioned why Option 2 would require grading on Jefferson Ridge in Area E. Charlie Knox noted that this was due to the proposed new building complementing the spacing between the Clocktower and the Commanding Officer’s Quarters.

The public hearing was opened.

Jerry Hayes, President, Benicia Historical Society – He noted that the Historical Society met regarding the Specific Plan and has a number of concerns with the report and EIR. The Historical Society submitted a letter to the Commission. He read the letter into the record.

Kerry Carney, 155 East O Street – She thanked the Commission for their service. She commented on HPRC’s charge as outlined in the Benicia Municipal Code. She opposes

the Plan, particularly based on the idea that photographs of resources that could be lost was an adequate mitigation measure.

Belinda Smith, Resident – She submitted a letter to the Commission. She referred to Master Comment 1 related to integrity. She noted that the district would not have been listed on the National Register if it did not have integrity. She does not believe there is any supporting documentation regarding loss of integrity in the Arsenal.

Marilyn Bardet, Resident – She stated that she has been active in protecting the Arsenal. She thanked the Benicia Historical Society for taking a stand, and thanked Belinda Smith for her comments. She does not believe the EIR or Specific Plan properly address the significance of the district. She commented on the form-based code and the elevations proposed. She does not believe there is any rush in adopting the plan. She has been reviewing and has assembled Army Corps and DTSC documents, which are available for review. She believes that Option 1 is acceptable.

Dana Dean, Attorney – She spoke on behalf of Amports. She commented on the purview of the Commission. She believes the Commission should review the entire Plan and EIR. She believes there are problems with the Plan and the EIR. She recommended that the Plan not be adopted and the EIR not be certified. She asked that if the Commission moves forward with Option 1, they include mitigations she requested in previous documents submitted. She requested a response regarding deferred mitigations.

Bob Whitehead, Property Owner – He commented on the Jefferson Ridge area, which currently contains 2 privately owned historic buildings. One of the buildings hasn't had any exterior modifications, where the other does not look as it originally did. He noted that Option 2 distributes the square footage between 6 buildings. He noted there should be an appreciation for both old and new buildings.

Jim Wallace, Resident and Arsenal Leaseholder – He compared to the Boston historic path that navigates among modern buildings to and a national historic battlefield park in Tennessee where spatial relationships between historic features are preserved without new development. The infrastructure of the Arsenal would need to be improved to support a tourist destination.

Jon Van Landschoot, Resident – He said the Arsenal is truly a historic area. Experts say that it is, as it was listed on the National Register. Secondly, he questioned if the EIR protects historic assets in the Arsenal. He cited the absence of the Secretary of the Interior Standards in the EIR and the Plan. He commented on Option 2 and its mitigation measure of photographing resources. He suggested that the Presidio in San Francisco is successful because it is comprised mostly of historic buildings. He does not believe the EIR protects the landscape and view corridors.

Richard Bortolazzo, Property Owner – He questioned if the acreage included in the Housing Element is affected by the ridge property. In response, Charlie Knox noted that the City is being pressed by HCD regarding sites and densities.

The public hearing was closed.

Commissioner Taagepera questioned how many buildings and square feet are proposed under Option 2. Charlie Knox noted that there are 7 major buildings with a few smaller buildings. The maximum new square footage would be 185,000.

In addition, Charlie Knox responded to the issue of deferred mitigation. He noted that a Plan or Program EIR should offer appropriate mitigation measures for projects in the future. He noted that if development is allowed, property owners need to know about remediation. He commented on multi-phase hazards mitigations. If a property owner wants to develop, the property owner must work with DTSC and County Environmental Health.

Chair Haughey asked the Commissioners to convey their concerns with the Plan and the EIR.

Commissioner Taagepera said she does not believe the Plan adequately protects historic resources. She commented on restoration of buildings, and does not see how the Specific Plan addresses restoration or rehabilitation. She stated specific concerns regarding architecture and materials. She was concerned with mimicking architectural styles, which would create a false sense of history.

Commissioner Taagepera said that the EIR was difficult to read. She believes the EIR is inadequate in its analysis of impacts to historic resources. She believes the 1025 Grant Street project is not adequately analyzed in the EIR. New roads have not been analyzed. She cited a SHPO letter regarding the inadequacy of the EIR. She believes the EIR is flawed and that deferred mitigations are not appropriate.

Commissioner White agreed with Commissioner Taagepera's concerns. He believes the Plan would overpower the existing district and he does not support the Plan or the EIR.

Commissioner Mang questioned if Option 2 and 2A are a single item. Charlie Knox noted that they are separate. Commissioner Mang would like to see something happen in the Arsenal and it should be a living area that respects the historic integrity. He noted that the cleanup is a major challenge. He supports Option 2A (Senior Housing), and would like to see some development in the area.

Commissioner Donaghue agrees that there should be some development in the Arsenal. He has concerns with the EIR regarding development on the Jefferson Ridge. He believes the EIR failed to address the historic aspects of the district as a whole. He commented on sustainability and economic development, promoting higher density development that reduces vehicle dependency. He does not support adoption of the Plan or certification of the EIR and instead believes the City should focus on updating the Arsenal Historic Conservation Plan and perhaps zoning for the area.

Chair Haughey commented on historic integrity and development. She stated that the more she reads the Plan, the less she can support it. She would like the integrity retained, but would like to see development. She doesn't want to see anything larger than the Commanding Officer's Quarters. She does not believe the EIR adequately addresses the Plan.

Commissioner Taagepera made a motion, seconded by Commissioner White for the following:

1. Recommend Specific Plan not be adopted
2. Recommend staff revise Plan to reduce significant impacts to district
3. Recommend the EIR not be certified as adequate

Commissioners discussed the motion above.

Commissioner Mang commented that all projects would have their own environmental review. Commissioner Taagepera doesn't think the EIR is legally defensible based on CEQA law. She does not think the mitigation measures are adequate.

Commissioner Donaghue questioned if implementation of this would change the General Plan. Charlie Knox noted that this Plan is intended to implement the General Plan.

Charlie Knox noted that having staff revise the Specific Plan would be a major undertaking, but that with very specific direction, staff could try to accomplish the goals of the Commission. Anything that becomes a lesser project than Option 2 would be covered by the existing EIR. Charlie Knox recommended that if there is a general basis for the Commission's recommendation, it should be included in the motion.

Charlie Knox commented on the Downtown Mixed Use Master Plan and the fact that it's not a Specific Plan. The Arsenal Specific Plan was intended to initiate reinvestment.

Commissioner Donaghue suggested language that the Plan not be adopted because it does not address the type of development that can occur that is consistent with the historic integrity of the district and compliant with the Secretary of the Interior Standards in relation to building form, architecture and protection of open space.

Commissioner Taagepera amended her motion, seconded by Commissioner White, to read as follows:

Recommend the Lower Arsenal Mixed Use Specific Plan not be adopted because it includes development that could adversely affect the National Register District, does not appear to meet the Secretary of the Interior Standards, and does not address sustainability goals and policies of the General Plan.

Recommend the Environmental Impact Report not be certified because impacts to historic resources are not adequately analyzed, and adequate mitigations measures are not included.

Commissioner Taagepera made the above motion, seconded by Commissioner White, and carried by the following vote:

Ayes:	Commissioners Donaghue, Taagepera, White and Chair Haughey
Noes:	Commissioner Mang
Absent:	Commissioner Crompton
Abstain:	Commissioner McKee

VI. COMMUNICATIONS FROM STAFF

Gina Eleccion reminded the Commission and the public that Earth Day is April 22nd. The next HPRC meeting will be a special meeting date on April 29th.

Gina Eleccion also reminded the Commission and the public that May is National Preservation Month. This year's theme is "Old is the New Green". The Commission will promote this concept at Earth Day with sustainable practices for historic property owners.

VII. COMMUNICATIONS FROM COMMISSIONERS

Commissioner Mang commented on the roofline at Big-O. He thought staff did a good job with that.

In addition, Chair Mang noted that he went to an informative workshop in Napa.

VIII. ADJOURNMENT

Chair Haughey adjourned the meeting at 8:52 p.m.

**AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION MEETING
APRIL 29, 2010
CONSENT CALENDAR**

DATE : April 5, 2010

TO : Historic Preservation Review Commission

FROM : Amy Million, Consulting Planner

SUBJECT : **DESIGN REVIEW TO MODIFY THE FRONT FACADE OF 251 WEST G STREET**

PROJECT : 10PLN-00015 Design Review
251 West G Street
APN: 89-111-13

RECOMMENDATION:

Approve design review request to modify the front façade of the existing single-family residence at 251 West G Street, based on the findings and conditions of approval set forth in the proposed resolution.

EXECUTIVE SUMMARY:

The applicant requests design review approval to modify the front façade of the existing non-contributing building located within the boundaries of the Downtown Historic District. The proposed modification includes restoration of the original siding, replacing the window on the front façade, a new entry door and the addition of brick veneer to the exposed foundation.

ENVIRONMENTAL ANALYSIS:

Staff has reviewed the project and determined that it is Categorical Exempt under Section 15301 of the CEQA Guidelines. This exemption permits minor alterations to existing structures.

BACKGROUND:

The subject parcel is located on the north side of West G Street between West Second and West Third Streets in the Downtown Historic District. The house was surveyed in 1986 as part of the City's development of the Downtown Historic Conservation Plan. At that time, it was determined that the building contributed to the Downtown Historic District. The house was surveyed again in 2005 by Carol Roland. Roland notes "*although the house retains the form and massing that continues to identify it as a Craftsman Bungalow, it has been substantially altered.*"

The front entry, porch and fenestration have all been changed in a manner inconsistent with the original style and appearance of the house. Because of these changes, it lacks integrity in design, workmanship, feeling and association. The house should be removed from the list of district contributors". The City Council adopted the survey in 2007 and the building is currently listed as a non-contributing building to the Downtown Historic District.

SUMMARY:

The site measures 67 feet by 145 feet and is developed with a one-story single-family home and a one-story accessory structure. The subject residence was constructed circa 1924 and is architecturally considered to be a Craftsman Bungalow. The building has a low-pitched roof with wide gables and is clad with asbestos siding. The front façade has a three-quarter length enclosed porch. Although the house retains the massing, form, and some architectural details, the front façade has been substantially altered. The original siding has been covered with modern shingles, the large front window replaced and a cement step has been constructed to provide access to the new entry. The roof appears to be original and has exposed rafters.

Project Description

The proposed project involves alterations to the exterior siding, front façade window and front entry.

Exterior Siding: The project involves removing the existing non-original siding and restoring the horizontal wood lap siding beneath. The wood siding would be restored and painted. Brick veneer would be placed along with exposed foundation.

Front Façade Window: The original window on the west side of the front façade has been replaced with a plate glass fixed window. The proposal includes replacing the window with a new wood, 4-over-1 pane window. The new window would have wood trim to match the existing trim.

Front Entry: The existing front entry stairs and landing would be replaced with concrete. A new decorative iron guardrail would be installed in the same location as the existing. The front entry door would be replaced with one more consistent with the Craftsman style. The proposed door is wood with square piece of decorative glass on the top half.

Zoning Ordinance Consistency

The subject property is located in the RS, Single-Family Residential zoning district. The building meets all the setback requirements for the zoning district. No expansion to the subject building is proposed.

Downtown Historic Conservation Plan Consistency

The purpose of the Downtown Historic Conservation Plan (DHCP) is to: 1. Implement the city's general plan, 2. Deter demolition, destruction, alteration, misuse, or neglect of historic or architecturally significant buildings that form an important link to Benicia's past, 3. Promote the conservation, preservation, protection, and enhancement of each historic district, 4. Stimulate the economic health and residential quality of the community and stabilize and enhance the value of

property, and 5. Encourage development tailored to the character and significant of each historic district.

The policies in the DHCP used to evaluate the appropriateness of the proposed alterations within the Downtown Historic District are the Design Guidelines Residential Building Types, New Construction. These guidelines are primarily focused on the design of new buildings, however they are applied equally to additions and alterations to non-historic buildings. Policy 5 encourages *the use of materials commonly used for the construction and finishing of historic buildings in the district and colors which complement those materials and styles*. The primary materials chosen such as wood windows, wood trim, restoration of the original wood siding and addition of brick as an accent material are all consistent with this guideline. The DHCP recommends that historic structures built in the Craftsman style be painted monochrome: medium to dark stained wood or similar paint color. It is staff's recommendation that final paint colors be reviewed and approved by the Public Works & Community Development Director. This recommendation is reflected as a condition of approval in the attached proposed resolution.

Conclusion

Although the subject building is not listed as a historic resource and therefore not evaluated as such, the work proposed will help restore some of its historic integrity and missing historic characteristics. The proposed exterior changes are consistent with the Downtown Historic Conservation Plan and Zoning Ordinance.

FURTHER ACTION:

The Historic Preservation Review Commission's action will be final unless appealed to the Planning Commission within ten business days by filing of the appropriate form and payment of the appropriate fee.

Attachments:

- Project Plans
- Proposed Resolution

PROJECT PLANS

PROPOSED RESOLUTION

RESOLUTION NO. 10- (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING DESIGN REVIEW TO MODIFY THE FRONT FAÇADE OF 251 WEST G STREET (10PLN-00015)

WHEREAS, Jack Maccoun, property owner, has requested design review approval to modify the front façade of the existing single-family residence located at 251 West G Street; and

WHEREAS, the Historic Preservation Review Commission at a special meeting on April 29, 2010 conducted a public hearing and reviewed the proposed project.

NOW, THEREFORE BE IT RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

- a) This project is Categorically Exempt under Section 15301 of the CEQA Guidelines, as a minor alteration to an existing structure.
- b) The project is consistent with the Downtown Historic Conservation Plan policies and design guidelines.
- c) The design of the project is consistent with the purposes of Title 17 of the Benicia Municipal Code.

BE IT FURTHER RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby approves the proposed project subject to the following conditions:

1. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit.
2. The plans and maps submitted for approval and development of the site shall be in substantial compliance with the plans dated received "March 10, 2010" marked Exhibit "A" and consisting of 2 sheets on file in the Public Works & Community Development Department.
3. Any alteration of the approved plans, including substitution of materials or changes in paint colors, shall be requested in writing and approved by the Public Works and Community Development Director or designee prior to changes being made in the field.
4. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
5. The final paint color shall be review and approved by the Public Works & Community Development Director or designee.

6. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Public Works and Community Development Director's, Historic Preservation Review Commission or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a regular meeting of the Historic Preservation Review Commission on April 29, 2010 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Steve McKee, Historic Preservation Review Commission Vice Chair

**AGENDA ITEM
HISTORIC PRESERVATION REVIEW COMMISSION MEETING
APRIL 29, 2010
REGULAR AGENDA ITEM**

DATE : April 22, 2010

TO : Historic Preservation Review Commission

FROM : Amy Million, Consulting Planner

SUBJECT : **DESIGN REVIEW TO MODIFY THE GROUND-FLOOR
FACADES OF 560 FIRST STREET**

PROJECT : 10PLN-00020 Design Review
560 First Street
APN: 89-371-110

RECOMMENDATION:

Approve design review request to modify the façade of the existing commercial storefronts at 560 First Street, Units B-106 and B-108, based on the findings and conditions of approval set forth in the proposed resolution.

EXECUTIVE SUMMARY:

The applicant requests design review approval to modify the front façade of the existing non-contributing commercial building located within the boundaries of the Downtown Historic District. The project will alter the exterior of two commercial spaces to accommodate the new bank (Contra Costa Federal Credit Union). The proposed modifications include removing the existing recessed entry and windows and replacing them with all new walls, windows, ATM and depository on the First Street façade and relocating an entry door on the rear façade facing the courtyard.

ENVIRONMENTAL ANALYSIS:

Staff has reviewed the project and determined that it is Categorically Exempt under Section 15301 of the CEQA Guidelines. This exemption permits minor alterations to existing structures.

BACKGROUND:

The subject parcel is located on the east side of First Street between West F and West E Streets in the Downtown Historic District. In 2007, the City Council approved an update of the Downtown Historic Resource Inventory. The subject building is under 50 years old and therefore

was not included in the survey. Due to its location within the district, the building is currently listed as a non-contributing building to the Downtown Historic District.

SUMMARY:

The proposed bank will occupy what are currently two individual commercial spaces within an existing commercial complex on First Street. The bank is proposing exterior alteration to the front and rear storefronts to accommodate the new use. The majority of the exterior alterations are to Unit B-108, which is the southern most commercial space.

Project Description

Front Street Façade: The project involves removing the existing recessed front entry and windows on Unit B-108 and installing a new ATM, depository and windows. The proposed new walls, windows and doors will match the existing. The proposed ATM will be the typical design used for all Contra Costa Federal Credit Union ATMs. As stated in the plans and reiterated in the conditions of approval, all the materials used will match the existing building materials.

Courtyard Façade: Add a new door on the north side of the façade and remove an existing entry door and replace with a new window to match the existing windows. The new entry configuration will provide direct access to the bank lobby from the courtyard and parking lot in the rear. As stated in the plans and reiterated in the conditions of approval, all the materials used will match the existing building materials.

Downtown Mixed Use Master Plan (DMUMP)

The subject property is located in the TC, Town-Core zoning district. The proposed bank and ATM are permitted uses as shown in the Land Use table under *Services: Business, Financial, Professional* of the DMUMP. No expansion to the subject building is proposed.

Downtown Historic Conservation Plan Consistency

The purpose of the Downtown Historic Conservation Plan (DHCP) is to: 1. Implement the city's general plan, 2. Deter demolition, destruction, alteration, misuse, or neglect of historic or architecturally significant buildings that form an important link to Benicia's past, 3. Promote the conservation, preservation, protection, and enhancement of each historic district, 4. Stimulate the economic health and residential quality of the community and stabilize and enhance the value of property, and 5. Encourage development tailored to the character and significant of each historic district.

The policies in the DHCP used to evaluate the appropriateness of the proposed alterations within the Downtown Historic District are the Street Wall Commercial Building, Types 1 and 2. Type 1 buildings are Street Wall Buildings with Parapet and Type 2 buildings are Street Wall Buildings with Roof. The subject building is a mix of Type 1 and Type 2 located within the Upper First Street area. These guidelines apply to both existing and new commercial buildings, including those with historic designations. Commercial Building Types 1 and 2 primarily focused on the design of new buildings; however they are applied equally to additions and alterations to non-historic buildings.

Policy 5: Storefront and Glazing Materials encourages the use of glass doors in frames to match the storefront framing and clear or lightly tinted glass in painted wood frames or factory finished colored aluminum frames. The proposed new walls, windows and doors will match the existing in size, design and materials. The windows and doors will be comprised of clear glass within factory finished black aluminum frames.

The Upper First Street area is “characterized by an almost uninterrupted wall of buildings which line the sidewalk’s edge. This quality defines a specific streetscape which is urban and active as it allows for a continuous expanse of retail shops at grade which front onto the public sidewalk.” The proposed bank and ATM will be harmonious with the design of the other commercial storefronts on First Street and further define the urban active streetscape.

Conclusion

City staff has expressed concern that additional trash that may be created from the ATM. The proposed ATM is designed with a small waste depository. In addition, there is a City of Benicia trashcan on the corner of First Street and West F Streets approximately 30-feet away. To address this concern staff suggests conditioning the approval as follows: *The applicant shall be responsible for maintaining the area around the ATM (picking up transaction receipts and other debris). Should at anytime the Community Development Director find that trash in the vicinity of the ATM has a negative impact on downtown and can be reasonably assumed to be related to the design/location of the ATM, the Director shall reexamine the subject approval and look for alternative options for waste disposal and/or clean up, which may include installation of a new trash can to City specifications, installed and maintained at applicant's expense.* This is reflected in condition #8 of the proposed resolution.

Per the discussion outlined within the staff report, staff finds that the proposed exterior changes are consistent with all applicable ordinances and the Downtown Historic Conservation Plan.

FURTHER ACTION:

The Historic Preservation Review Commission's action will be final unless appealed to the Planning Commission within ten business days by filing of the appropriate form and payment of the appropriate fee.

Attachments:

- Project Plans **
- Proposed Resolution

*** (If viewing online this attachment is available at the Public Works and Community Development Department and the Public Library.)*

PROJECT PLANS

PROPOSED RESOLUTION

RESOLUTION NO. 10- (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA APPROVING DESIGN REVIEW TO MODIFY THE COMMERCIAL STOREFRONT OF 560 FIRST STREET, UNITS B-106 AND B-108 (10PLN-00020)

WHEREAS, David Green on behalf of Contra Costa Federal Credit Union, has requested design review approval to modify the front façade of the existing commercial store fronts located at 560 First Street; and

WHEREAS, the Historic Preservation Review Commission at a special meeting on April 29, 2010 conducted a public hearing and reviewed the proposed project.

NOW, THEREFORE BE IT RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby finds that:

- a) This project is Categorically Exempt under Section 15301 of the CEQA Guidelines, as a minor alteration to an existing structure.
- b) The project is consistent with the Downtown Historic Conservation Plan policies and design guidelines.
- c) The design of the project is consistent with the purposes of Title 17 of the Benicia Municipal Code.

BE IT FURTHER RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby approves the proposed project subject to the following conditions:

1. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit.
2. The plans and maps submitted for approval and development of the site shall be in substantial compliance with the plans dated received "March 31, 2010" marked Exhibit "A" and consisting of 5 sheets prepared by Robert G. Sarnoff, AIA on file in the Public Works & Community Development Department.
3. Any alteration of the approved plans, including substitution of materials or changes in paint colors, shall be requested in writing and approved by the Public Works and Community Development Director or designee prior to changes being made in the field.
4. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
5. The exterior paint shall match the subject building's existing paint.

6. The proposed exterior lighting for the ATM shall be shielded and directed downward.
7. All new materials such as walls, glass settings and glazing shall match the subject building's existing materials.
8. The applicant shall be responsible for maintaining the area around the ATM (picking up transaction receipts and other debris). Should at anytime the Community Development Director find that trash in the vicinity of the ATM has a negative impact on downtown and can be reasonably assumed to be related to the design/location of the ATM, the Director shall reexamine the subject approval and look for alternative options for waste disposal and/or clean up, which may include installation of a new trash can to City specifications, installed and maintained at applicant's expense.
9. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Public Works and Community Development Director's, Historic Preservation Review Commission or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted at a special meeting of the Historic Preservation Review Commission on April 29, 2010 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Toni Haughey, Historic Preservation Review Commission Chair



**Economic Development Division
City Manager's Office**

MEMORANDUM

Date: April 29, 2010
To: Historic Preservation Review Commission
From: Amalia Lorentz, Economic Development Manager
Re: **Tourism-Oriented Directional Signage Program**

RECOMMENDATION:

Review the Economic Development Division's plan for another round of tourism-oriented directional signage program as it relates to the Arsenal Historic Conservation District.

BACKGROUND/DISCUSSION:

Supporting tourism is one of the Council's Strategic Plan goals for 2009-11, and investing in tourism-oriented capital improvements, such as wayfinding signage, was a recommendation of the Economic Development Strategy approved by the Council in 2007. Signage was strongly recommended by the Tourism Branding Plan approved by the Council in 2008, which resulted in a new tourism brand evoked by the slogan, "A Great Day By the Bay".

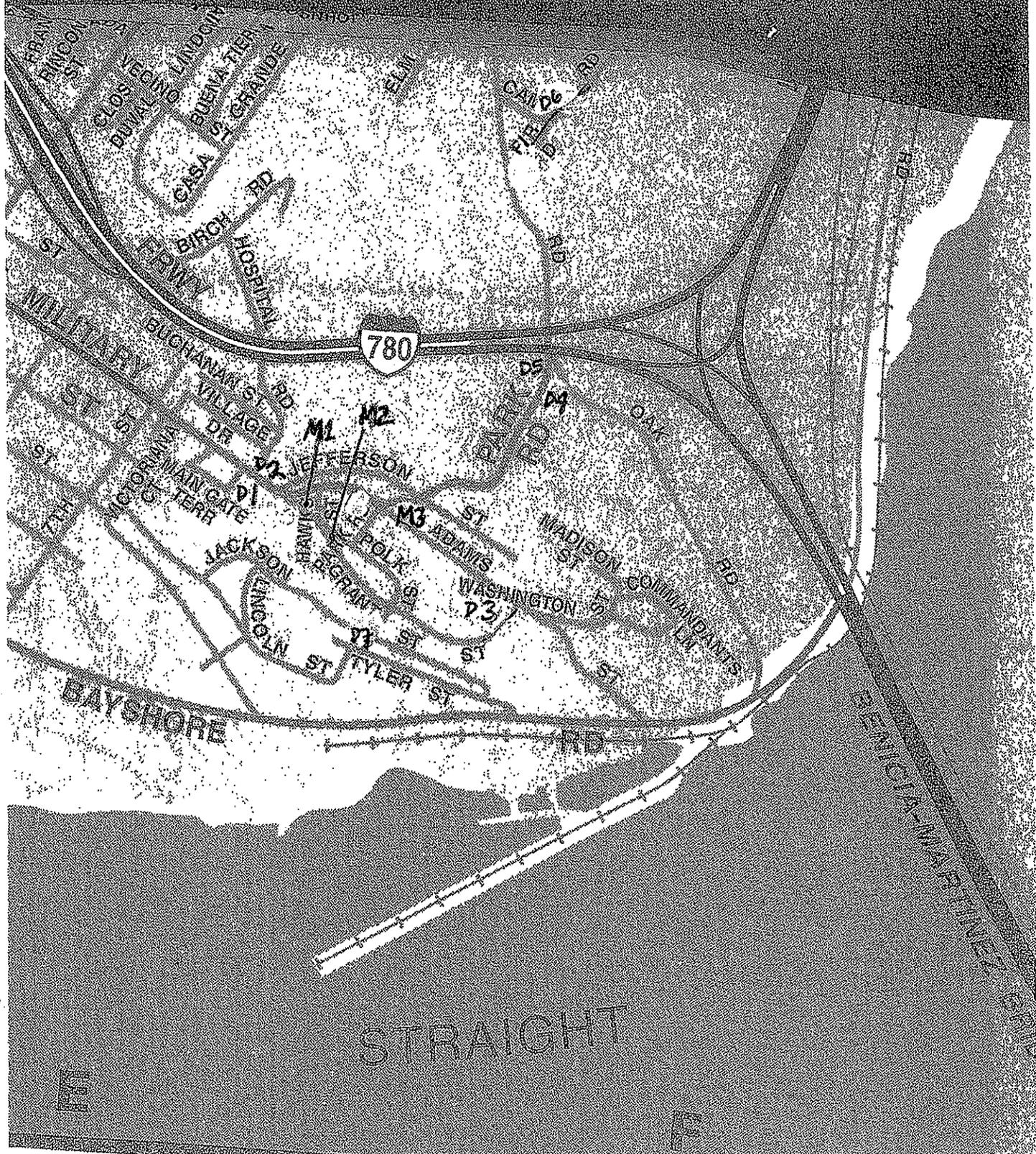
Since then, Staff prepared a tourism-oriented directional signage program using the new brand, to be implemented over at least three years. The first phase, installed in 2008, focused on downtown and was reviewed by the HPRC in the context of the Downtown Historic Conservation District. The second phase, installed in 2009, covered most freeway exits. The third phase, in the planning stage now, will cover the Arsenal.

In the Arsenal, seven new directionals are proposed. These will be identical (other than text, obviously) to the Phase I and II signs already installed throughout town. Additionally, the three existing large blue rectangular street signs will be redone in the brown and white style of the new directionals, featuring the logo. The complete list of signs and their locations is attached to this memo.

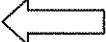
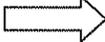
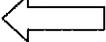
No new sign will be located so that it blocks visibility of any other existing public sign, including historic markers.

Attachments:
Location map
Phase III list
Directional example

Arsenal Tourism Signage



Phase III Sign Program
Arsenal area

Sign ID	Location	Text
D1	Military East south side (east of Main Gate Terrace) <i>Replace existing "map" sign and posts</i>	Art Center  Museum  Clocktower Commanding Officer's Qrtrs.
D2	Military East @ Hospital, NE corner	Historic Downtown Waterfront  Civic Center
D3	Adams @ Grant, SW corner near 1090 Adams <i>Remove existing blue sign on north side of street.</i>	Clocktower  Commanding Officer's Qrtrs.
D4	Park @ Oak, SE corner	Museum  Visitor Info
D5	Park @ Oak, west side (against hill)	Historic Arsenal District  Historic Downtown Art Center Museum 
D6	Camel Road (museum driveway) just outside museum gate (for exiting traffic) at Fir	Historic Arsenal District  Historic Downtown Art Center Waterfront Civic Center
D7	Polk/Jackson/Tyler, NW corner	Arts Benicia  940 Tyler  More Businesses
M1	In front of office building at Adams/Grant, entry to Arsenal <i>Replace existing blue sign and posts.</i>	Use existing street/arrow text and add "Port of Benicia":  Adams Port of Benicia Grant Polk Jackson  Tyler

M2	In island at Park/Grant intersection <i>Replace existing blue sign.</i>	Use existing street/arrow text plus "Art Center": Grant  Polk Jackson  Tyler Art Center
M3	Park/Adams, NE corner <i>Replace existing blue sign.</i>	Park Road  Museum Port of Benicia Clocktower Commanding Officer's  Qrtrs. Adams Street

Notes:

Sign type D is identical to existing tourism directionals downtown and at gateways.

Sign type M is brown with white lettering and logo on bottom, but signs are oriented horizontally (instead of vertically), larger than sign type D, and mounted on two wood poles rather than one metal pole. M1-3 replace existing blue signs of the same size.

New wood posts for sign type M.

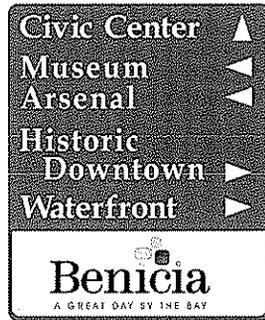
D7 pending property owner discussion.

Blue street signs may be considered for changing back to City standard white.

Arts Benicia and Museum are asked to remove all their existing stand-alone signage once new signs are installed.

JR Schneider asked to remove wall-mounted monument-type entry sign.

30"



36"



Public Works & Community Development Department
MEMORANDUM

Date: April 22, 2010
To: Historic Preservation Review Commission
From: Amy Million, Consulting Planner/Gina Eleccion, Management Analyst
Re: Update to Downtown Historic Conservation Plan

The Downtown Historic Conservation Plan (DHCP) was originally adopted in November 1990. Since its adoption, the Plan has been amended by the following City Council resolutions:

Resolution No. 92-201 (Previously incorporated into DHCP in 1992)
Resolution No. 05-91
Resolution No. 08-62
Resolution No. 09-26

These amendments include text changes, design review approval processes, changes in eligibility for listing as a resource and adoption of the new Downtown Historic District resource inventory and boundary. In an effort to clarify these amendments, staff has incorporated the language of these resolutions into the DHCP. No additional text changes are proposed at this time, nor is a major update to the DHCP included in the 2009-2011 adopted City budget. This item is being presented to provide the most accurate document to the commissioners and the public. All public copies of the Plan will be updated to reflect the amendments, including on the City's website. Copies of the document will be provided at the April 29th meeting.

The following summary of changes documents all amendments made to this Plan under the direction of City Council through the adoption of the above referenced Resolutions. This list can also be found on the second page of the updated DHCP.

Summary of Changes:

Cover Page – Additional Notes

Second Page – Summary of Changes

Table of Contents – Appendices

Page 6 – Text changes, reference to the District Boundary Map figures

Page 7 – New Downtown Historic District Boundary Map

Page 8 – Omitted, New Downtown Historic District Boundary Map includes the Eastern Residential Area exclave

Page 9 – Text changes, reference to the Appendix

Page 11 – Note added for new Downtown Historic District Boundary (no changes to Open Spaces, View Corridors and Vista Points)

Page 12 – Text changes, reference to the Appendix

Page 13 – Text changes, reference to the Appendix

Page 24 – Text changes, design review procedures

Page 25 – Text changes, design review procedures

Page 28 – New Table 1

Page 29 – New Table 2

Page 34 – Note added for new Downtown Historic District Boundary (no changes to Site Specific Design Guideline Subareas)

Appendix A: Designation of Historic Properties within in the Downtown Historic H Overlay District

Appendix B: Glossary of Terms

Appendix C: Historic Conservation Plan Resource Survey Form

Appendix D: City Council Resolution No. 92-201, December 15, 1992

Appendix E: City Council Resolution No. 05-91, June 7, 2005

Appendix F: City Council Resolution No. 08-62, June 17, 2008

Appendix G: City Council Resolution No. 09-26, March 17, 2009



**“OLD IS THE
NEW GREEN”**

National Preservation Month - May 2010

You are Invited...

Join the City of Benicia, in partnership with the Benicia Historical Society, to celebrate historic preservation as it relates to our community.

CALENDAR OF EVENTS

Tuesday, May 4th - 7:00 p.m.
City Council Proclamation
City Hall, Council Chambers

Join us as the City Council recognizes and honors our commitment to historic preservation.

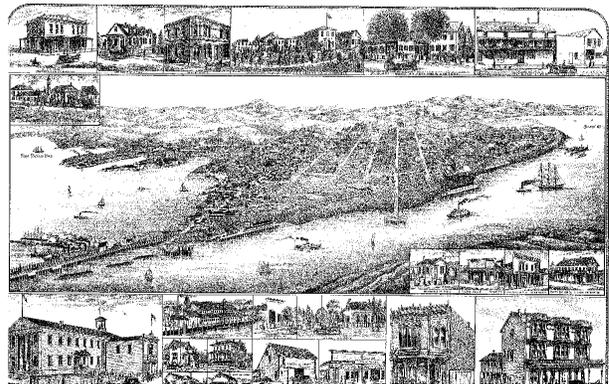
We welcome your attendance and support!

Thursday, May 6th
Farmers' Market – 4:00 – 7:00 p.m.

Come visit our booth, introduce yourself, and discuss historic preservation with us. We look forward to seeing you there!

Thursday, May 27th - 6:30 p.m.
Historic Preservation “Meet & Greet”
Commanding Officer’s Quarters

Come meet City staff, Historic Preservation Review Commissioners, and Historical Society members. We’ll have lots of information and will be available to discuss preservation issues and answer questions.



Become a Member

Benicia Historical Society

- Contact beniciahistoricalsociety.org or 745-3551

Benicia Historical Museum at the Camel Barn

- Contact beniciahistoricalmuseum.org or 745-5435

Questions

For additional information about Historic Preservation, contact Gina Eleccion in the Public Works & Community Development Department at geleccion@ci.benicia.ca.us or 746-4278.