

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
MAY 2, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, May 2, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Human Services Fund Board:
 - One unexpired term to June 30, 2008
 - One unexpired term to June 30, 2009
 - Three full terms to June 30, 2010
- Benicia Housing Authority Board of Commissioners:
 - Two full terms to June 30, 2010
- Economic Development Board:
 - Three full terms to June 30, 2010
- Library Board of Trustees:
 - One full term to June 30, 2009
- Parks, Recreation and Cemetery Commission:
 - One full term to July 30, 2010
- Open Government Commission:
 - One unexpired term to December 6, 2006

Mayor Messina stated that anyone interested in applying for these or other Boards or Commissions could apply on-line via the City's website or in person at the City Clerk's office. He plans on making some appointments at the next Council meeting.

APPOINTMENTS:

None

PRESENTATIONS:

Solano Transportation Authority – Safe Routes to School/Transit Program

Mr. Sam Shelton and Mr. Daryl Halls, Solano Transportation Authority, reviewed a PowerPoint presentation titled ‘Solano County – Safe Routes to School Study’ (hard copy on file). He stated that the STA was looking to receive Council’s support on this program. The STA is looking to put together a community task force to look into this program. The STA would like Council to make an appointment to the task force.

Mayor Messina stated that Benicia has been working on Safe Routes for Schools for some time now. He asked Staff what projects on Council’s list of priorities would move up sooner rather than later, if Measure H were to pass.

Mr. Schiada stated that Staff has a head start on funding approval for the traffic calming corridor bike lanes on East Fifth Street between H Street and Hillcrest. The City also has funding set aside for a bike lane on Military East between East Fifth Street and Adams Street. The City will be getting ready this summer for starting construction of a bike lane along Park Road between from Adams Street up to the connection of the Benicia Bridge. Those are just some examples of the City moving forward with a lot of local projects that are using money that has already been available. Measure H just opens up the possibilities of getting additional work done. The one that he was thinking of is the traffic signal, or rather the access improvements in front of the High School. This may free up some money to allow the City to focus its efforts there. There is also the State Park Road Bridge over the I-780 freeway. The City needs to get that widened to allow bicycles and pedestrians to go over the freeway.

Council Member Whitney asked Mr. Halls about the annual rate of pedestrian and bicycle accidents. He would have thought that the rates of accidents would be similar. The rates appear to be different.

Mr. Shelton discussed slide #9. The statistics don’t track bike and pedestrian accidents as closely as they would like them to. This study focuses on intersections. The study will map out specific areas in the school districts. The current stats show it is a problem. The numbers in the current study are more linked to the commute mode of bikes and pedestrians, not so much to schools. This study will plot the information more accurately. With regards to funding, the STA does have some bike and pedestrian fund sources. Some of the funds from this measure could be specifically targeted towards safety improvements of bicycle and pedestrian nature. The STA wants to identify the core issues that need to be addressed. They want to fund those improvements and need to identify different funding sources that will allow them to do it.

Council Member Hughes stated that he was interested in how the STA would measure progress and success of the plan. Are there any statistics? Mr. Halls stated that the STA

wants to come up with some quantifiable data. This is the STA's first effort into this process. They would like to have the involvement of the public in order to shape that.

Council Member Patterson complimented STA and Staff on the program. She asked to what extent the STA would be working with the County Health Officer on the program. Mr. Halls stated that the STA is open to suggestions on that issue, especially if one of the goals is improving education and health. Council Member Patterson stated that they had access to funds because through the CDC program, it is a federal program. She asked what the percentage of the expenditure plan for Measure H goes towards the school. Mr. Halls stated that 10% would go towards safety. However, it will not be 100% of that 10% will go to the Safe Routes to Schools. The idea was to create a local revenue stream so there would be a dedicated source for funding. The 10% amounts to about \$150 million. So, if one half or one third was dedicated, that amounts to approximately \$60 million, which would be \$2 million per year. Council Member Patterson stated that the return to source funds could be used to supplement the 10%. She stated this was an extension of the traffic-calming program. As part of its Traffic Calming Program, the City recently had Dan Burden come, hold a workshop, and do a rideabout to address possible traffic calming issues. Mr. Burden recommended narrowing the road on Military West by the High School in order to slow down the traffic and make it safer for the schools. She asked how the issue would be balanced. They are two different approaches for the same problem.

Mr. Halls stated that is why there needs to be community task forces. There are local decisions that need to be made. There needs to be a balance on how to get traffic through the community and having safe crossings for kids getting to school. Once the City has identified the improvements that need to happen that are consistent with goals of the STA's Safe Routes to Schools, then the STA's goal is to identify it is a priority and make it a reality. This will not replace the local process.

PROCLAMATIONS:

- National Safe Boating Week – May 20-26, 2006 – Representatives of the National Coast Guard accepted the proclamation.

ADOPTION OF AGENDA:

Jim Erickson, City Manager, introduced Charlie Knox, the City's new Community Development Director.

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

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

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

None

PUBLIC COMMENT:

1. Galen Lawton – Mr. Lawton is the President of Solano Patients Group. Isn't it Council's duty to protect its citizens from unlawful arrests? He stated that Mr. Frock was arrested for possession of marijuana. He is a medical marijuana patient. His case was dismissed due to his medical marijuana defense. He challenged Council and Mayor to be the first city in Solano County to enact a medical marijuana guideline that will protect patients from unlawful arrests. He would like to contact all Council Members to discuss this issue.
2. Al Bertellotti – Mr. Bertellotti asked what the status of the bocce ball courts being built was. This was started a long time ago.

Mr. Erickson stated that this was a funded project. He could not give a date when the project would be started. He would look into this and get back to Mr. Bertellotti.

Council Member Patterson requested Staff provide a status report for the next Council agenda. She requested Staff give Mr. Bertellotti the information prior to the meeting so he could be prepared.

3. Ann Hansen – Ms. Hansen and Ms. Moriarty presented Council with the new booklet titled 'Walking Tour of Painted Tiles and Historic Landmarks on Benicia's First Street'.

Council Member Whitney thanked Ms. Moriarty for her efforts with regards to the booklet. The Museum Board is doing amazing things out there. The entire Board spent a whole day working on a new mission statement, goals, etc. The museum is a phenomenal asset to the City.

Council Member Patterson stated that the Benicia history book is on display in Sacramento. She suggested displaying copies of this booklet in Sacramento. She works in Sacramento and would be willing to assist in the process.

4. Bonnie Silveria – Ms. Silveria spoke on behalf of the Benicia Historical Society. She invited Council to attend the dedication of the clock that they donated to the City, in conjunction with the Dominican's, on Friday 5/5/06. On 5/13/06, they will host the annual Vintage Home Tour. It will be a walkable tour. On 5/29/06, they will have the annual Memorial Day ceremony at the Benicia Arsenal Cemetery.

Council Member Whitney stated that the cemetery is a really nice place. It is a tranquil area. If anyone has the chance, they should visit the cemetery. He suggested a map to the cemetery be placed in the local paper so citizens could find the cemetery.

5. Linda Jimenez – Ms. Jimenez works for the Solano Patients Group. She handed out an article titled 'Emeryville pays spinal injury patient \$15,000 for marijuana.' She discussed the need for the City to adopt an ordinance addressing unlawful arrests of medical marijuana patients.

- Council Member Patterson asked Ms. Jimenez if she had contact with residents in Benicia who are medical marijuana patients. Ms. Jimenez stated that she did. Council Member Patterson stated that to the extent they are willing; it may be helpful to have them speak to Council. Ms. Jimenez stated that Mr. Frock might be willing to work with the City to have the ordinance passed. Council Member Patterson asked where the nearest dispensary for medical marijuana was. Ms. Jimenez stated that there was one in Berkeley and San Francisco.
6. Mary Frances Kelly Poe – Ms. Kelly Poe discussed Willow Creek. The creek goes behind Taco Bell. She managed, with the help of two people to get into the creek and see the waterfall. She was amazed at the wonderful gem in Benicia. On the other side of L Street, Willow Creek has been put in a culvert. Willow Creek empties out at Sam’s Harbor. There is a proposal to build four houses at Sam’s Harbor. Building on an area where a creek is supposed to be will cause flooding issues, issues with vegetation, etc. The city should sunshine the creeks instead of putting them into culverts. She believes the developer can find a way to develop the homes and save the creek as well.
 7. J.B. Davis – Mr. Davis discussed the dog park. Today the grass section of the park was closed off. The Vallejo dog park will open on 5/16. He suggested the park be kept open until 5/15. The Parks and Community Services department could have done a better job in communicating with the park users. That is probably the single most used park in the City. He hopes Council supports Measure H.
 8. Kitty Griffin – Ms. Griffin discussed the sidewalk on West 7th Street. Since the sidewalk is going to be dug up, it would be a loss of an ideal opportunity to put in landscape strips. The General Plan talks about retrofitting the City with wide landscape strips. She urged Council to rethink the other projects and address this issue.

Council Member Whitney stated that he brought this issue up during the budget sessions. He agrees that this might be an opportunity to look at some other enhancements that could be in there. He asked Staff if the City would be tearing up the streets.

Mr. Erickson stated that this is a project Council has already directed Staff to move forward on. The Public Works department is almost finished with the design. The project has not been designed with a landscape buffer. The issue of creek bed restoration was discussed when the project was being designed. The question is do we want to hold off on fixing the hazardous issue or wait to look into the landscaping issue. Mr. Schiada stated that the initial project, which will be brought back to Council, is not ripping up the entire sidewalk. They would be ripping up four or five sidewalk lengths. We need to move quickly. The solution is putting in some sheet piles at the spot location. Staff has to work with the California Fish and Game to address the safety issue. Staff would work with the property owner on future development with regards to the creek.

Council Member Patterson stated that Council authorized the emergency repairs of the collapsed sidewalk. Is that different from what was just described? Mr. Schiada stated that no, the intent was to address the collapse of the sidewalk sections and protect sections of the sidewalk that are in imminent danger of collapsing. Council Member Patterson stated that Council had previously said that Staff should at least get advice from a fluvio-geomorphologist stream bank restoration expert who would be able to give the City a general approach about what the feasibility was for restoring the functions of the creek with all of the constraints. It was meant to address the stage of the repair, not the emergency stopgap measure.

Mr. Erickson stated that Staff did not intend to bring this project back for approval. However, Staff wants Council to understand the project. If it needs to come back for information, Staff could do that.

Mayor Messina suggested agendizing this for a future meeting (maybe next one if it's not too full). Council Member Patterson strongly encouraged scheduling a special meeting to address this issue. Mayor Messina stated that he thought Council Member Patterson was overreacting. Council wants to get it right. Council cares about the issue.

Ms. McLaughlin suggested holding future comments for a future meeting, since the issue is not agendized. The discussion is getting a little too involved at this point.

CONSENT CALENDAR:

Council pulled items VII-A, VII-B, and VII-D.

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

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

RESOLUTION 06-55 - A RESOLUTION ACCEPTING AS COMPLETE THE I/I WET WEATHER IMPROVEMENTS–WASTEWATER TREATMENT PLANT PROJECT, INCLUDING FINAL CHANGE ORDERS, AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

RESOLUTION 06-56 - A RESOLUTION APPROVING THE REVISED SOLANO COUNTY EXPENDITURE PLAN TITLED "TRAFFIC RELIEF AND SAFETY PLAN FOR SOLANO COUNTY"

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of Minutes of April 18, 2006:

Council Member Patterson requested the minutes be pulled so she could abstain, since she was absent from the 4/18/06 Council meeting.

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, the minutes of April 18, 2006 were approved, on roll call by the following vote:

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

Noes: None

Abstain: Council Member Patterson

Second reading of a new ordinance, pursuant to State law and a court decision, for maintenance and repair of sidewalks by amending the Municipal Code to incorporate State procedures and to require property owners to keep their sidewalks in good repair:

Council Member Whitney wanted this pulled so Staff could look into the issue further and more in depth. Staff may need to develop some policies that were flushed out at the prior Council meeting. For the benefit of the community as well as Council, the policies should be looked into.

Vice Mayor Schwartzman confirmed that the reason for bringing this forward was to bring the City into compliance with state law. He asked if there was an issue with holding off on this. Ms. McLaughlin stated that ABAG wanted the City to address the compliance with state laws. Waiting for a few meetings should not be a problem. Vice Mayor Schwartzman stated that he witnessed a trip and fall incident on First Street that dealt with a City tree. Maybe it needs to be looked into some more. Ms. McLaughlin discussed how trip and falls issues on First Street were currently being handled. Vice Mayor Schwartzman asked if curbs and gutters included. He asked who was responsible for the liability of curbs and gutters. Ms. McLaughlin stated that if someone trips and falls on a curb or gutter, the City is liable unless there is something the adjoining property did something to make the curb unsafe. She discussed the Joint Sidewalk Repair Program. It is just a policy, not an ordinance. The issue is really, who caused the condition. Vice Mayor Schwartzman stated that he was hearing that ultimately, the property owner is responsible for the curbs and gutters. Ms. McLaughlin stated that yes, but Council could change that if it wants.

Mayor Messina stated that the Streets and Highway Code only discusses sidewalks; curbs and gutters are not mentioned. Ms. McLaughlin stated that all chapters have to be looked at in order to get the definitions of what is included.

Council Member Patterson stated that the 'sidewalk area' is the language in San Jose's ordinance that gives it 'wiggle room.' She asked if there were case law on the issue. Ms. McLaughlin stated that she was not sure.

Mr. Schiada stated that one of the challenges the City has is that, like in Southampton, the sidewalk, curb, and gutter are all one piece. That is why he thinks ABAG put the language 'it includes, but is no limited to the curb and gutter.' The City could make it clear that although the ordinance may include that, the City's policy typically is responsible for curb and gutter repairs.

Mayor Messina asked if the City has an idea of all the sidewalks, etc. in Benicia are listed as far as which ones need repair. The City does periodic inspections of the high profile areas once per year. The typical residential streets may only be inspected every two to three years. It is like our handicap ramp access program. The City does not have handicap ramps at every corner in the City. The City is in a program to do that. It is a good faith effort.

Council Member Patterson stated that she received a lot of email and phone calls on this issue. A presentation from counsel on this would be helpful. She discussed the ongoing update of the tree ordinance. There appears to be a lack of appropriate staff support for the tree ordinance. The tree ordinance has been underway for three years. She would like to see some energy put towards the tree ordinance. She works in a city that is younger than Benicia, but has many older trees still standing. She would like to know what Sacramento does regarding its sidewalks. The city of Carmel has trees in the middle of the streets. What do they do? How do they protect walkers? Before we start taking trees down, it would be helpful to have a list of what other cities do. She would like to have this basic research come back to Council for review.

Ms. McLaughlin stated that the City has to place value judgments on if it wants to protect the trees and how it will value that against public safety.

Council Member Hughes stated that the obvious goal is to educate and clarify for the citizens what they are accountable for. This document does not do this. When he looked at the liability section, it only mentions the liability of the property owner. It basically says that failure to maintain the area equates to liability. That is not completely accurate. There may be some cases where the City investigates and finds it is the City's liability. The whole issue needs to be clarified.

Ms. McLaughlin stated that if Council can think of ways to make it better without unduly making it really long and unclear through its length, she would be happy to do it. However, Council needs to be clear that it is not a black and white thing. It involves multiple parties. Council Member Hughes clarified that he was not asking to loosen up the language, just make it clearer.

Mayor Messina suggested holding off on this issue until Council could look at the policies, ordinance, etc.

Council Member Whitney stated that this is a step in the right direction. He suggested making copies of the proposed Sidewalk Liability Ordinance available at the counter in the City Manager's office so citizens could review it. He had a question on the

landscaped portion of the sidewalk. Is the resident responsible for curbs and gutters in front of their property? Ms. McLaughlin discussed the gutter line. Council Member Whitney asked about liability and repair costs. The resident has the responsibility to notify the City of the need for repair. Council Member Whitney stated that he thinks the City has taken steps in the right direction, however, there needs to be some clarification on some things.

Council Member Patterson suggested adding a section of definitions to the ordinance, such as maintenance, repair, reasonable manner, public convenience use, safe and dangerous use, etc. This would provide the clarification to the ordinance. Staff could do this. It is important we get this ordinance in place because of the liability issue. It is important to help the public become clear on the details.

Vice Mayor Schwartzman asked where the gutter line was. Ms. McLaughlin described the location of the gutter line. It seems to him it would be a City responsibility.

Public Comment:

1. Larry Fullington – Mr. Fullington stated that it was difficult to hear Council tonight. Could the volume be adjusted? The microphone volume was raised.

Mr. Erickson stated that he heard that Council has some interest in the ordinance. It is important the general taxpayer is not paying for the trip/falls.

Vice Mayor Schwartzman stated that there seems to be support, but information needs to be clarified.

Mayor Messina stated that it would be helpful if we were more inclusive of the issues raised at tonights and last week's meeting. Maybe definitions should be added. Maybe policies should be added. Staff should look at it to see what the right approach is. We should get some sense of how big the problem is out there. If there is going to be major costs to citizens, they should be made aware of that.

Council Member Patterson suggested Council give direction to Staff to get the tree ordinance in place. Mayor Messina suggested the City Manager go back and take a look at it.

This ordinance will be brought back for an introduction and first reading after some tweaking is done.

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

Expression of support for Measure I on the June 2006 ballot:

Public Comment:

1. Bob Craft – Mr. Craft urged Council to unanimously support Measure I. He detailed the objectives of the measure. He discussed the recent state that the Benicia schools are in.

Council Member Whitney has a daughter in high school. This measure is not about the teachers, etc. It is about the kids. It is a moral and ethical obligation for the citizenry to support the youth. Not supporting this would be a huge travesty and mistake.

Vice Mayor Schwartzman stated that his children are all out of school. He and his wife have commented that they were fortunate their children have not had to go through the schools during this trying time. He cannot see why this should not be supported. He encouraged everyone to support this issue.

Council Member Patterson stated that this is a quality of life issue for Benicia, the students, and the next generation.

RESOLUTION 06-57 - A RESOLUTION EXPRESSING SUPPORT FOR A FIVE-YEAR, \$254 PER YEAR PARCEL TAX THAT WILL PROVIDE FUNDING TO THE BENICIA UNIFIED SCHOOL DISTRICT

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

PUBLIC HEARINGS:

None

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

Council Member Patterson requested the issue of the Association of Refinery Cities be put on the next available agenda.

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 8:55 p.m.

Lisa Wolfe, City Clerk