

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
MAY 16, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, May 16, 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, and Mayor Messina

Absent: Council Member Whitney (arrived at 6:02 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Government Code Section 54957) – Continued from May 9, 2006 Special City  
Council Meeting**

**Titles: City Manager  
City Attorney**

ADJOURNMENT:

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

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
MAY 16, 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 16, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: Council Member Patterson (arrived after roll call)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Heather McLaughlin, City Attorney, stated that Council met in Closed Session for the performance evaluations for the City Manager and the City Attorney.

Openings on Boards and Commissions:

- Human Services Fund Board:
  - One unexpired term to June 30, 2008
  - Two full terms to June 30, 2010
- Benicia Housing Authority Board of Commissioners:
  - One full term to June 30, 2010
- Economic Development Board:
  - One full term to June 30, 2010

AmericanStyle Magazine has named Benicia as a 2006 Top 25 Arts Destinations.

APPOINTMENTS:

RESOLUTION 06-58 - A RESOLUTION CONFIRMING THE MAYOR'S  
APPOINTMENT OF BOB SURRATT TO THE HUMAN SERVICES FUND BOARD  
TO AN UNEXPIRED TERM ENDING JUNE 30, 2009

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-59 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF TEDDIE BIDOU TO THE HUMAN SERVICES FUND BOARD TO AN UNEXPIRED TERM ENDING JUNE 30, 2010

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-60 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF SHARON ANDERSON TO THE BENICIA HOUSING AUTHORITY BOARD OF COMMISSIONERS TO A FULL TERM ENDING JUNE 30, 2009

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-61 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ALAN BRADFORD MACLANE JR. TO THE LIBRARY BOARD OF TRUSTEES TO A FULL TERM ENDING JUNE 30, 2009

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-62 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JOHN MCGUIRE. TO THE PARKS, RECREATION AND CEMETERY COMMISSION TO A FULL TERM ENDING JUNE 30, 2010

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-63 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF J.B. DAVIS TO THE ECONOMIC DEVELOPMENT BOARD TO A FULL TERM ENDING JUNE 30, 2010

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-64 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CHRISTINA STRAWBRIDGE TO THE ECONOMIC DEVELOPMENT BOARD TO A FULL TERM ENDING JUNE 30, 2010

The above Resolution was adopted, on roll call by the following vote:  
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

RESOLUTION 06-65 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DEAN O'HAIR TO THE OPEN GOVERNMENT COMMISSION TO AN UNEXPIRED TERM ENDING DECEMBER 6, 2006

The above Resolution was adopted, on roll call by the following vote:  
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina  
Noes: Council Member Patterson

PRESENTATIONS:

Proposed Human Services Fund Board (HSFB) Monitoring of Cultural Arts Grants:

Mr. Andy Odell, HSFB, discussed the issue of the HSFB taking on the responsibility of monitoring the Cultural Arts Grants. The City currently has \$75,000 in Arts Grants and approximately \$150,000 in Human Services Grants. The HSFB usually starts to budget and prepare a year in advance. Mr. Odell reviewed the recommendations of the HSFB that were provided in Council's agenda packet.

Mayor Messina stated that one of the issues Council identified during the budget workshops was the way the HSFB follows its processes. The HSFB has the ability to expand its role and take on the monitoring of the Cultural Arts Grants. He thanked the HSFB for its efforts.

Council Member Patterson asked what the next step was. Mayor Messina stated that the next step is for Staff to make the necessary changes and present them to Council at the next meeting. Council Member Patterson thanked Mr. Odell and Ms. Kazemi for their efforts. At one of the HSFB meetings, the Board talked about some models that were around for these types of funds. Also discussed private/public partnership, corporations, etc. Having a merit-based program was also talked about. She would like the HSFB to consider those things. The size of the HSFB is less of an important consideration to her than the make up of the Board itself. Don't forget the skateboarders. They are identified as one of the cultural activities in the General Plan.

Vice Mayor Schwartzman asked if the name of the Board would be changed to reflect the additional duties. Mayor Messina confirmed that was correct.

PROCLAMATIONS:

- National Public Works Week - May 21-27, 2006
- Water Awareness Month – May 2006
- Affordable Housing Week - May 15-21, 2006

ADOPTION OF AGENDA:

Mr. Erickson stated that Mr. Charlie Knox, Community Development Director, had a conversation with Council Member Patterson regarding item VII-G. Council Member

Patterson requested some changes. He suggested rather than amending the motion, Council entertain those ideas by entering them into the record.

Mayor Messina stated that he was approached by several citizens who requested item IX-C be moved up in the Agenda.

Council Member Patterson requested the item X-A be moved up in the Agenda.

Mayor Messina suggested having item IX-C be the first item in Action Items to be discussed, Item X-A will follow that, and then the remaining agenda items will follow.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, the Agenda was adopted as amended, 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:

None

CONSENT CALENDAR:

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

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

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

Noes: None

RESOLUTION 06-66 - A RESOLUTION REJECTING ALL BIDS FOR THE EAST "H" STREET OVERLAY PROJECT, EAST 2<sup>ND</sup> STREET OVERLAY PROJECT, MILLS ELEMENTARY ROUTE IMPROVEMENTS PROJECT, AND EAST 5<sup>TH</sup> STREET OVERLAY PROJECT

Council authorized a contract amendment for the Update of the Downtown Historic District Survey.

RESOLUTION 06-67 - A RESOLUTION AWARDED A CONTRACT TO XYBIX SYSTEMS, INC., IN THE AMOUNT OF \$53,078.33 TO REPLACE AND UPGRADE ALL 9-1-1 FURNITURE CONSOLES AND OTHER SPECIFICALLY DESIGNED SUPPORT EQUIPMENT AND AUTHORIZE THE EXPENDITURE OF UP TO \$50,000 IN EXISTING BUDGETED FUNDS TO COVER EXPENSES ABOVE THE STATE ALLOTTED AMOUNT

RESOLUTION 06-68 - A RESOLUTION AUTHORIZING THE PURCHASE OF A GRIT CLASSIFIER FOR THE WASTEWATER TREATMENT PLANT AT A COST OF \$30,878 FROM WESTECH ENGINEERING INC. C/O JBI WATER & WASTEWATER EQUIPMENT, INC. OF LINCOLN, CALIFORNIA

RESOLUTION 06-69 - A RESOLUTION TO PARTICIPATE IN THE DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE PLAN TO REDUCE THE USE OF ALCOHOL, TOBACCO, AND OTHER DRUGS AMONG CHILDREN, YOUTH AND ADULTS IN 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 26, 2006 and May 2, 2006:

Council Member Patterson requested the minutes be continued to the next Council meeting so she could have time to review the content and information. She did not have adequate time to review them prior to the meeting.

Initiation of proceedings for establishing the 2006-07 assessment for the City of Benicia Landscaping and Lighting District:

Council Member Patterson stated that this issue was discussed last year. She asked why the reevaluation was being put off until 2007-2008.

Rob Sousa, Finance Director, stated that in examining the budget results from last year, the City had turned in a lot more than staff had anticipated. As far as savings, there was some staff turnover, expenditures for groundcover and irrigation, etc. What that did, especially for the residential district, is that the City had enough to carry it for one more year. Staff had approached the Council about including that in the revenue options. The Council authorized the Audit and Finance Committee to examine the Landscape and Lighting Districts. The Committee has done so on two occasions and will do it again on 5/16/06.

Council Member Patterson stated that she hoped it was not for the want of water that the median strips are looking scrappy. The hot weather came on quickly and may have caught the watering off guard. She hoped it was not the reason - that the City is using reserve funds to pay for the landscaping, according to the report. Mr. Alvarez stated that Council Member Patterson would need to be more specific with regards to which median strips were looking scrappy. He assured Council that the City is not cutting off water to save money. The City has issues with plant replacement and irrigation that they would like to approach if the fund balance were at a different level. The City is focusing on clean, maintained landscape strips at this point. Council Member Patterson stated that they are clean and tidy; however, they are not as green as they could be.

RESOLUTION 06-70 - A RESOLUTION DESCRIBING IMPROVEMENTS AND DIRECTING PREPARATION OF THE ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2006-2007

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

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

Noes: None

RESOLUTION 06-71 - A RESOLUTION PRELIMINARILY APPROVING THE ENGINEER'S REPORT FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2006-07.

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

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

Noes: None

RESOLUTION 06-72 - A RESOLUTION OF INTENTION TO ORDER THE LEVY AND COLLECTION OF ASSESSMENTS PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972 AND THEREFORE SETTING A PUBLIC HEARING ON JUNE 20, 2006 FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2006-07

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

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

Noes: None

Mayor Messina commended Mr. Alvarez for the work his department has been able to do in the Landscaping and Lighting District. When Council tasked him to do the work, he took it on without any additional staffing and has done a good job.

Acceptance of amended report on City implementation of the ordinances combining the previous Design Review Commission with the Historic Preservation Commission (Ordinances No. 05-01 and 05-02):

Jim Erickson, City Manager stated that there was a conversation between Council Member Patterson and Mr. Knox (Community Development Director). Council Member Patterson had issues with the Staff report and whether some things could have been stated more accurately. Mr. Knox reviewed the statements and comments. Mr. Erickson suggested, rather than amending the Staff report, that the concepts be included in the record if Council feels they are appropriate.

Council Member Patterson stated that she wanted to finish a comment the Mayor made about the landscaping. She has compared Benicia's landscaping to the landscaping in many other communities. It is the poorest of the ones she has looked at. She knows it has

nothing to do with the City's staffing. She has gone around with staff and spent a day with staff. It is something in terms of a lack of funds.

Mayor Messina stated that it would be more productive for Council not to get into a tit-for-tat. He makes a comment, then she makes a comment, and that's okay. It is okay if they disagree. He did not know how productive it was for Council for either of them to make a comment and the other disagrees, so they have to comment again. It is okay that they disagree. It would be more productive for Council.

Council Member Patterson stated that (back to the agenda item) when she read the Staff report, Staff did a good job preparing the report. However, there were a couple of areas where Council could clarify some of the benefits it has had from combining the commissions. One of the benefits is qualifying for CLG status. What she did was talk to Staff and worked on some language. She hoped it would have been simple and would have been distributed. The comments are just clarification. She has no concerns about the intent of the Staff report or other elements. The primary purpose is to show there is a link and what the City did with the ordinance and the merger for the City to qualify for the CLG standing.

Mr. Erickson clarified that the City submitted a preliminary application for CLG to the State last fall. The City has received comments back on this and has some things to do to meet the requirements and qualifications. He stated that Staff did not have any issues with the comments, however, it would be better not to change the Staff report, but to include the comments (if Council agrees with the comments) in the record (from the Council meeting) tonight.

Council Member Hughes asked about the term 'qualified commissioners' listed on page two. Is the City at the point where the citizen applying would have to meet certain qualifications to apply? Council Member Patterson discussed the Zucker Report and how it applied to the issue of qualifications. The Report discusses how the City's commissioners could have a higher level of planning, law, etc. That was one of the areas Council spent a lot of time on when the commissions were merged. That is one of the key elements for qualifying for CLG.

Mayor Messina stated that he and Council Member Patterson have always been on separate sides on this issue. He does not want to limit who can and cannot apply for the commissions and boards. The Office of Historic Preservation told him it is desired to have certain qualifications met, but it is not a deal breaker.

Council Member Patterson confirmed that there is a direct link, but it is not a deal breaker.

Vice Mayor Schwartzman asked Ms. McLaughlin to review the specific language in the ordinance that relates to the qualifications. Ms. McLaughlin read the section 2.56.030 of the BMC that relates to qualifications.

Council Member Hughes stated that he was concerned, after hearing what the City Manager had to say, that the Staff report should not be amended.

Council Member Patterson made a motion to accept the amended Staff report with her suggested changes added. The motion died for a lack of a second.

On motion of Council Member Hughes, seconded by Council Member Whitney, Council accepted the Staff report on City implementation of the ordinances combining the previous Design Review Commission with the Historic Preservation Commission (Ordinances No. 05-01 and 05-02), with the direction to attach Council Member Patterson's comments as information for the record, on roll call by the following vote:  
Ayes: Council Members Hughes, Schwartzman, and Whitney  
Noes: Council Member Patterson and Mayor Messina

PUBLIC HEARINGS:

None

ACTION ITEMS:

Consideration of options for accommodating Scouts' need for a meeting facility and options for use of City-owned property located at East 4<sup>th</sup> and L Street:

Mike Alvarez, Parks and Community Services Director, reviewed the Staff report.

Amalia Lorentz, Economic Development Manager, stated that the site of the old Scout house is suitable for 6-8 dwelling units. It could be either market or affordable housing. It would take 8 weeks for Staff to prepare a RFP draft document that could come back to Council for consideration. There is no obligation to pursue development opportunities.

Ms. McLaughlin stated that there was some question whether the property was dedicated to affordable housing purposes. She has not been able to find any documentation to that effect. It was designated in the housing element as a project in process. The City has more than achieved its low numbers for affordable housing, and is very close to achieving the very low numbers. In talking to the staff of the HCD, they are not too concerned about it. There are other sites the City could use to build affordable housing on. There is nothing in the City's records that states that the site has to be used for affordable housing. It can be, but it does not have to be used for affordable housing.

Mayor Messina stated that his memory is consistent with Ms. McLaughlin's comments.

Public Comment:

1. Robert Moore – Mr. Moore reviewed the prepared statement (hard copy on file) that he presented to Council.

Since the 4/18/06 Council meeting, AHA contacted HCD regarding the Housing Element designation of the site, and has received advice from HCD staff. HCD staff has expressed concerns about the City's intentions for this site. A formal

response letter from HCD is forthcoming, and that letter will be shared with the City.

Additionally, AHA has investigated a suggestion made by Council Member Whitney that the site might accommodate both groups – teachers and the Scouts. Mr. Moore approached Bill Vandervoort from the Scout's with an offer to consider modifying AHA's plans to include a facility for the Scout's. However, Mr. Moore's attempt to initiate discussions was rejected. AHA believes that the site in question is only one of many options available to the City and the Scouts for placement of their new facility. AHA encourages the City and the Scouts to continue exploring these options in good faith.

The City Attorney has responded to Mr. Moore's letter justifying AHA's request under the Housing Element by essentially stating that the City has done its part to meet the needs of affordable housing and stating that no more needs to be done. Despite the fact that this specific site is identified in the Housing Element for an affordable housing development, and rezoned to accommodate it, the City Attorney claims the City should not feel compelled to actually offer the site for its intended purpose.

Mayor Messina stated that the comment 'no more needs to be done' could not be further from the truth. Ms. McLaughlin clarified that her report states that 'The City can assume the numbers will continue for the next housing element cycle. If past experience is any indicator, it is going to be very hard to achieve the very low numbers.' She stated the reports states that the City has done a very good job achieving its affordable housing numbers. It is a few short in the 'very low'. She was sorry her report was interpreted that way. Mayor Messina stated that he does not think there is ever going to be a point when 'no more needs to be done.' There is always going to be needs and the City will work towards addressing those needs.

Council Member Patterson stated that she was concerned about Mr. Moore being interrupted. It wrecks the flow of a presentation. She suggested waiting until the end of his presentation.

Mayor Messina confirmed that he stopped the clock and Mr. Moore could have the time he needed to finish his comments.

(Mr. Moore's comments continued.) The City Attorney also lays out a strategy for circumventing the intent of the Housing Element, and even suggests a process for escaping state law regarding 'down-zoning' – the process of reducing the current zoning of the property to functionally eliminate the ability to build affordable housing on the site. Part of the City Attorney's justification for down-zoning would include the City's list of other so-called housing sites – a list consisting primarily of street right-of-ways, reek beds, and other functionally unusable slivers of land. Apparently, this list technically satisfies the requirement for an

inventory of prospective sites, while offering no feasible opportunities to build affordable housing for Benicia residents. This is unacceptable.

At the Council meeting last month, AHA stated that the City had effectively begun to swing away from supporting affordable housing, and Mr. Moore called for a reversal of that swing. In response, the Mayor stated his opinion that this was not the case, by citing construction projects completed in past years. The City Attorney's report likewise appears to justify a withdrawal of the site by focusing only on past accomplishments. In response to AHA's request for the ability to purchase a site that has been identified in the Housing Element as available for affordable housing, AHA was accused of attempting to 'railroad' the City into following the guidance of the Housing Element. Additionally, the City has ignored requests by AHA to create an Affordable Housing Fund out of the existing Revolving Loan Fund – another AHA proposal that would cost the City nothing. So far, the City has not effectively refuted Mr. Moore's claim of a backswing.

Let tonight be an indication of the City's true commitment to creating affordable housing for Benicia's teachers and other deserving lower-income residents. Let's see whether the Mayor and Council Members do in fact want to create a community in which families of all income levels are able to live here – or whether the City will use legal technicalities in an attempt to avoid the clearly stated intent of the Housing Element. AHA still stands ready to assist the City in creating affordable housing for its residents. AHA is entirely willing to discuss constructive ideas regarding how this task may be undertaken.

2. Judith Peterson – Ms. Peterson thanked Council and Staff for being willing to help the Scout's find a home. She wanted to let Council know that they would have a big impact on the community and the Scout's if they continued to work on this. The Scout's need a place to meet. She is currently unwilling to expand her Troop because her current meeting space is not big enough. The Scout Leaders have to bring storage bins with all of their supplies back and forth to meetings. They would much rather prefer to have a space for storage. They need an outside meeting place as well. She encouraged Council to strongly consider what the Scout Working Group has suggested.

Council Member Patterson asked Ms. Peterson if she had discussed her concerns with Mr. Moore. Ms. Peterson confirmed she had not. Council Member Patterson suggested the two parties meet. She does not want the two parties to compete against each other. Ms. Peterson stated that the Scout Working Group would be more appropriate to meet with Mr. Moore.

Council Member Whitney asked Mr. Alvarez if the space that is being considered was the far wing at Mills. Mr. Alvarez stated that the area being looked at would be the two wings on the south portion of the building on K Street. A wall would go by the teacher's lounge area. Council Member Whitney asked what would be left if the 7-11 Committee voted to allow the City to use the remaining space for

Community Center needs. Would the space left be sufficient? Mr. Alvarez confirmed it would be sufficient. Council Member Whitney asked what type of lease Staff wanted to sign. Mr. Alvarez stated the City would like to see a 20-year lease. Council Member Whitney asked Mr. Erickson about Mr. Moore's comment regarding the City's commitment to affordable housing. Is there property in the City that comes to mind that could be used for affordable housing? Mr. Erickson confirmed there were additional properties available. Staff is currently looking into that. Staff is not prepared to indicate specific sites, although there are a number of sites that could be used.

Mr. Schiada stated that many of the sites have challenges, but they are still very feasible.

Council Member Patterson clarified that the 7-11 Committee has found that the lease can be up to 40 years. She is troubled about the additional properties that have been identified. The memo by Staff (4/22/06) lists 18 sites. They are portions of street right of ways. That runs counter to what the City wants to do in protecting the small blocks and walkable community. She listed specific areas that she was concerned about (East E Street, East Second Street at Hillcrest, City owned lot, East Second Street at Sulfer Springs, etc. Almost half of the sites listed are street right-of-ways. She has less confidence that the City has a large number of lots to choose from. The sites may be good for aggressive rate housing, but not affordable housing. It may make sense to work with AHA on this. She would like to be able to make the Scout's happy and continue providing affordable housing in Benicia.

3. Elizabeth Eubanks – Ms. Eubanks discussed the absence of space. She is not sure how scouting is working in Benicia when there is no space for them. The Scout leaders currently have to store and transport all their supplies. It is a hassle. She has tried to recruit leaders and they find that lack of space is a barrier and can't take on the commitment. Your home is often your back up meeting space. She asked Council to add Scouts to Benicia's map, because it is currently not visible.
4. Janet Grothe – Ms. Grothe stated that this issue has been ongoing for many years. There has been hundreds of thousands of dollars donated for the Scout house. She suggested splitting the site and using half for affordable housing and half for a Scout house. She urged Council to make a decision. The City needs to do something for the youth of the community. The longer this goes on, the more expensive building a house will be.
5. Bill Vandervoort – Mr. Vandervoort thanked the City for the momentum it is building on this issue. He addressed Mr. Moore's comment that the Scouts rejected his offer to modify the plan for the East Fourth Street property. After reviewing the proposal, the Scouts decided that it was insufficient space in the parcel to accommodate the needs of the Girl and Boy Scouts. The Scout Working Group is willing to meet with Mr. Moore to discuss the issues. If there are other parcels available, they are willing to consider them.

Mayor Messina stated that after reading Mr. Vandervoort's letters, he understood that the Scout's ultimate preference would to build on the original lot.

6. Kitty Griffin – Ms. Griffin stated that regarding the numbers, it looks like we are fourteen short. To characterize that as a couple or a few is not right. We are fourteen short. The Scout's first choice would be to build on the lot on East Fourth Street. Their second choice would be the Mills site. The first choice for AHA is a necessity. The second choice will be a headache. There will be ownership and right of way issues. It is physical issue, community resistance to affordable housing issues, etc. She understands that the School Board voted unanimously not to sell the school. It sounds to her that the Scouts would be okay waiting until the summer to make a decision. The Mills site would satisfy their needs. She urged Council to hold its breath a little longer and not make a decision tonight.

Mayor Messina asked if she was on the Board for AHA. Ms. Griffin stated that she was a founding member, but has not been on it for three years. He asked if the Board was looking at any non-City owned property. Ms. Griffin stated that the Board has held the site as a promise of the City for many years. It has focused on that site for a long time. The Board has just hired a new executive director who might be able to bring some ideas to fruition.

7. Mariana Moore – Ms. Moore thanked the Council for its commitment to affordable housing. The tone of tonight's meeting is better than the tone at the last Council meeting. Regarding the site list mentioned by Council Member Patterson. Those sites have significant issues for appropriateness for affordable housing. It might be interesting for the Scout's to look at the list for a site for the Scout house. Some of the sites may be more appropriate for developing a Scout house rather than affordable housing.

Council Member Whitney asked Mr. Vandervoort if Council was able to create the Mills site on a short term basis, would the Scout's be open to using the sites and in the interim look for a site off of the list that would be more appropriate. Mr. Vandervoort stated that they would be willing to consider that. He asked if there was a possibility in making arrangements with the School Board for the Mills site in the interim. Council Member Whitney stated it was a possibility. He suggested getting Council and the Scout's together to tour the possible sites from the list (of possible affordable housing sites – city owned property).

8. Robert Moore – Mr. Moore clarified information asked of Ms. Griffin. AHA has been pursuing a privately owned site for affordable housing. Mayor Messina asked what the problem has been with developers not wanting to sell to affordable housing developers. Mr. Moore stated that various things cause the lack of interest in selling to affordable housing development.

Council Member Patterson discussed AHA's criteria for choosing sites. Mr. Moore stated that the lower the income that they are supporting, the more resources need to be accessible to those people. Council Member Patterson asked about neighborhoods. She discussed some of the sites on the list. What has been

AHA's experience with developing in Southampton? Mr. Moore stated that in the past, it has been contentious with the other developers who do not support affordable housing.

Mayor Messina asked what AHA's next step would be if the site would go back to the Scout's. Mr. Moore stated AHA would continue to pursue other sites in Benicia. There are no known opportunities in Benicia. This site (East Fourth and East L Streets) would be number one on AHA's list.

Mr. Erickson stated that Staff learned that the BUSD was going to pursue the lease option at the next Board meeting. If that were approved, there would be a 60-day eligible period for the City to use the property. Staff will bring this back to Council so they could consider giving Staff the authority to submit some sort of proposal for use of the site. Staff feels the Mills site would meet its needs, and could meet the Scout's needs. Waiting is not as long a prospect as originally thought.

Mayor Messina stated that Council gave Staff direction at a previous meeting to proceed as it sees fit to bring proposals back to Council. He asked if the Scout's decided not to pursue Mills, would Staff recommend the City walk away from the prospect of using the site. Mr. Alvarez stated that no, that was not at all correct. There is a need for space for the community needs, recreation, etc.

Council Member Hughes stated that he appreciates Mr. Moore's passion for affordable housing. Council's challenge is to make the decision that is best for the community. The City has made commitments to affordable housing and the Scouts. The City has made significant progress with affordable housing. The City still has room to go. But, the City has made great progress. The City has failed miserably with its commitment to the Scouts. The City needs to move on a fast track on this. The City needs to make a decision that allows for some flexibility. He was leaning towards option #2. Council needs to come through with its commitment to the Scout's. He hoped Council would join him in supporting option #2. His preference is for the City to explore the Mills site. He wants to make the best decision for the community.

Vice Mayor Schwartzman thanked the Scouts for their patience. As a former Scout, he knows how valuable scouting is to the community. He had a discussion today with the Superintendent of Schools. Coming up Thursday night, there is a decision to make the Mills site a surplus. He discussed the 60-day window that would open up at that point. It seems to him Council would be doing the citizens a disservice in not waiting a little longer to see what will happen with the Mills site. He did not want to go with option # 2 because if the City gives the Scout's the option; it is basically taking the East Fourth Street property off of the table. He advocated that he would like to go with #2, providing Mills becomes available, but he is not prepared to give an option to anybody right now because Council does not have enough information.

Council Member Patterson stated that she and her daughters were Girl Scouts. She learned about nature and the nurturing of friends. Affordable housing is also important.

The community can work together to meet both groups' needs. She suggested a substitute process – because of the 60-day surplus notice, it seems to her that it is premature to get a commitment in any direction. It seems appropriate to indicate interest to BUSD in leasing the Mills site. She would like to see the Scout Working Group, Staff, and AHA look at the other sites. Staff needs to clarify what the CEQA requirements would be on the Fourth Street site. That could be an unbearable delay. Council needs further clarification that Mr. Alvarez has about the Mills site. She suggested substituting the four choices with a process.

Council Member Whitney stated that it might be a good idea if some or all of Council participated in the process of looking at the other lots. It is important for Council to have a feel for what the other parcels look like.

Mayor Messina stated that the Scouts' preferences are very clear. They would prefer the East Fourth Street site. Regardless of what happens with the Scout's, the City will pursue the Mills site for use. The City will continue working with AHA on affordable housing. However, regarding the options listed and the Scout's, it sounds like the majority of Council wants to wait until it gets more information. He suggested putting this off until Council gets clarification from BUSD.

Council Member Whitney asked Mr. Vandervoort if the Scouts were open to the suggestion of touring the other parcels that would be suitable for a Scout house. Mr. Vandervoort confirmed the Scout's were willing to tour the other parcels. Council Member Whitney suggested Staff and the Scout's come up with a meeting time and place for the tour.

Council Member Patterson asked that Council be notified of the date/time/place of the tour.

Council Member Hughes asked Ms. McLaughlin about the term 'option.' Is that a legal term? If the City explores Mills, and the Scout's rate Mills and the East Fourth Street sight and the latter rates higher, do the Scout's still have the 'option' to take the East Fourth Street site? Ms. McLaughlin suggested Council do a little more investigating before a decision is made. The City would not enter into a formal option to purchase or right to refusal at this time.

Vice Mayor Schwartzman stated that he does not want to put this off forever. The September 15<sup>th</sup> date looks pretty good for him. Council should have something together by then.

Mayor Messina suggested this come back for discussion at the second meeting in September. There will be no action on the Fourth Street property, no commitments, etc. until after this item comes back for discussion.

Mayor Messina called for a 5-minute break at 9:16 p.m.  
The meeting resumed at 9:21 p.m.

INFORMATIONAL ITEMS:

Reports from the City Manager:

Status of the Utility User Tax Agreement with Valero Refining Company:

Rob Sousa, Finance Director, reviewed the Staff report. He stated that he was optimistic that there will be an agreement in June 2006.

Mayor Messina asked if it was correct that if the discussions did not continue with Valero, in terms of reaching an agreement on numbers, the City would go back, look at the numbers, do the calculations, and collect what is due to the City? Mr. Sousa stated that was correct. The advantage goes to the City. If the City does not enter into an agreement, it relies on the implementation of the tax. There will be a small amount that the City receives. It could be as much as \$1.4 million (total amount) per year, which is an increase of approximately \$200,000. The advantage then goes to Valero for entering into an agreement. The City would have a more predictable income from the Utility User's Tax. Valero would get an assured rate they would pay. The City is willing to take a small discount in order to have a stable amount that the City can predict. The City expects Valero to come forward. The City does not have any of Valero's invoices from PG&E or an actual consumption estimate from them. The City does not have the information needed to make an estimate. Once the agreement expires, Valero is required to apply the Utility User's Tax to their consumption. The City is willing to take a small discount in order to have a steady income. There has been quite a bit of discussion regarding how the City would apply the tax. At this time, the City doesn't have an actual consumption estimate from PG&E. Once the agreement expires, they are required to apply the utility user's tax to their consumption.

Vice Mayor Schwartzman confirmed that the City has no idea of what the consumption is, so the City has no way to estimate what 4% comes up to. Mr. Sousa stated that after speaking with Mr. Howe, it was estimated to be approximately \$1.4 million. However, Valero has invested in quite a bit in energy saving devices. Therefore, the number may come down in the future.

Council Member Patterson asked if there is a sense of urgency on Valero's part. June is not that far away. Mr. Sousa stated that yes; there is a sense of urgency at this time. They have a \$105 million dollar project with at least five hundred people involved. That is Valero's number one priority at this point in time. Council Member Patterson asked what happened to the point of purchase agreement. Mr. Sousa stated that Staff had a conference call with Valero – San Antonio. They are in the final phase of developing applications for their contractors and application for a direct payment use tax permit for Valero. Council Member Patterson asked what that does to the City's budget planning. Mr. Sousa stated that Staff would be coming to Council on 6/20 with a budget update for this year and a revised estimate for the next year. It does not help to have the Utility User's Tax open. Staff thinks it will have a better understanding of what it will be by 6/20. Council Member Patterson stated that she does not understand the reason why the City has not seen the energy consumption by PG&E. Mr. Sousa stated that the energy consumption of refineries is an industry safe guarded secret. Council Member Patterson

asked if Staff has asked Richmond what they do about that. Mr. Sousa has attempted to contact Richmond, but has not heard back from them. Council Member Patterson suggested Staff show some alternative ways of setting up the Utility User's Tax. Mr. Sousa stated that Staff is hoping to have an agreement for Council to consider at the meeting in June.

Vice Mayor Schwartzman asked if he understood correctly that the energy consumption of refineries is 'secret.' Mr. Sousa stated that the energy consumption data is one of their specific rating criteria on the efficiency of that refinery. The engineering methods they utilize to achieve that energy efficiency is safe guarded. When the Utility User's Tax is agreed upon, the City will begin to have an idea of what the numbers are from PG&E.

ACTION ITEMS:

Consideration of entering a Lease Agreement and Site Lease for \$2.2 million to fund portions of the Police Building Seismic Upgrade and Marina Area Storm Drain Project: Rob Sousa, Finance Director, reviewed the Staff report.

Vice Mayor Schwartzman asked for clarification on the \$2.2 million, where it will be moved, etc. Mr. Sousa stated that the City could take the money out of the reserves, or finance it as is being suggested. Vice Mayor Schwartzman was concerned that the \$2.2 million would be spent elsewhere on other projects. The money should be earning the 5.2% to pay for the debt service. Mr. Sousa stated that the money in the reserves meets the 20% reserve requirement. The money can be used for emergencies. Vice Mayor Schwartzman stated that the whole point is not to spend the money out of pocket. Where will the City put the dollars so it generates the income to pay for the debt service? If it is spent on other projects, it won't be generating the funds to pay for the debt service. That money should not be spent unless it is an emergency or unless the City decides to pre-pay down the West America lease. Mr. Sousa stated that the goal is to preserve the 20% reserves and to pay down the debt at any point in time, or to draw the funds down if necessary, in which case a plan would be needed for replenishing those funds. Mr. Erickson stated that it (spending the money in reserves) would not happen if Council says that the 20% reserves must be maintained. Vice Mayor Schwartzman asked for clarification on page IX-A-16 regarding insurance. Mr. Sousa discussed the issue of rental interruption insurance in a lease agreement. This particular lease does not allow 'pledging'. On page IX-A-20, Vice Mayor Schwartzman wanted to make sure the City is not transferring ownership. Mr. Sousa explained that would not happen.

Council Member Whitney asked about the 4.5% interest, is that fixed? Mr. Sousa confirmed it was. Council Member Whitney asked about the 5.2% - what is the downside risk on that? Mr. Sousa stated that ten years is a long time; there is a possibility the City's earning capability will drop below that. Basically, the City has to be sharp on its accounting and square away for a shortage. One of the terms of the lease is that the City has to budget for that. There are no prepayment penalties, regardless of the amount prepaid.

Council Member Patterson asked about page IX-A-17, regarding events of defaults and remedies, how standard are those? Mr. Sousa stated that the financing laws in the State of California require the lease to be similar to a lease you would see in a standard corporate lease. Many of the covenants in the lease allow the corporation who the City assigns the property to, when they lease the property back to us; it can amount to ownership of the property. They have the ability, if the City doesn't pay our lease payment, to sublease the property. There has to be some protection as the leasing party. The penalties listed are standard. Council Member Patterson stated on page IX-A-24, the Marina Areas Storm Drain Project component states 'attachment to come.' Mr. Sousa explained that there were several eleventh hour meetings figuring out how the City could accommodate the fitting that had just come in on the project. The broker the City is using drafted this. That item was overlooked; it is on its way. There will be no surprises. Council Member Patterson asked Ms. McLaughlin if the staff report discusses the project in enough detail that the City is okay. Ms. McLaughlin confirmed it did.

RESOLUTION 06-73 - A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AND SITE LEASE AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

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

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

Noes: None

Award of construction and construction management contracts for the Marina Area Storm Drain Project:

Dan Schiada, Public Works Director, reviewed the Staff report.

Council Member Hughes stated that he was going to vote for this, but he has a concern. On page IX-B-2, regarding cost – shouldn't the issues listed have been factored in under the original estimate? Mr. Schiada confirmed that was correct. This was negotiated a few years ago. Once the bids were opened, the three firms that submitted the bids were specialists. There was a lot more involved than originally thought. He takes responsibility for this; it was underestimated.

Council Member Whitney asked how this would alleviate the flooding. Mr. Schiada stated that the project is designed so that storm water flows occurring during most of the year will be bypassed. When there is heavy rain and high tides, it will overflow into the basin. The project addresses the concerns with the storm water going into the marina basin most of the time. The design of this project may not totally eliminate flooding, but will significantly minimize flooding.

Vice Mayor Schwartzman wanted to know what is being done to minimize dust, noise, etc. such as the problems that occurred with the Harborwalk Project and the I & I Project. Mr. Schiada stated that the City has a very determined construction management firm. The City needs to enforce the existing rules of the contract to minimize the dust, noise,

and impacts to the neighbors. The project is limited to a spot location. Vice Mayor Schwartzman asked what the mechanism would be for complaints. Mr. Schiada stated that typically the construction management firm would be the first line of contact; the City would meet with the citizen, etc. The construction management team would be on site every day throughout the entire project. That is part of the reason the cost is what it is. The proposed hours of construction are typically limited from 7:00 a.m. to 5:00 p.m., Monday through Friday, sometimes Saturday with prior approval.

Council Member Patterson stated that she recently read an article on what could go wrong with engineering. She asked if Staff has sat down and brainstormed about what could go wrong? Mr. Schiada confirmed that the main concern is noise. Staff will have to work with the contractor to keep an eye on that.

Council Member Whitney asked Mr. Schiada what type of storm the 12/31/05 storm was. Mr. Schiada stated that there was an indication from Vacaville that it might be a 20-year storm, but City has no way of verifying that. Based upon his experience, it was a significant storm. With this project in place, there would have still been some minor flooding.

RESOLUTION 06-74 - A RESOLUTION APPROVING THE CONSTRUCTION PLANS AND SPECIFICATIONS, ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT FOR THE MARINA AREA STORM DRAIN PROJECT TO ANDERSON PACIFIC ENGINEERING CONSTRUCTION, INC. IN THE AMOUNT OF \$1,186,900, APPROPRIATING \$619,585 FROM THE GENERAL FUND RESERVES, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

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

RESOLUTION 06-75 - A RESOLUTION AWARDING A CONSTRUCTION MANAGEMENT SERVICES CONTRACT FOR THE MARINA AREA STORM DRAIN PROJECT TO PAKPOUR CONSULTING GROUP IN THE AMOUNT OF \$193,600 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

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

INFORMATIONAL ITEMS:

Council Member Committee Reports:

1. Mayors' Committee Meeting – Mayor Messina: Next meeting date: May 17, 2006
2. Association of Bay Area Governments (ABAG) – Mayor Messina: Next meeting date: October 26, 2006
3. Audit & Finance Committee – Vice Mayor Schwartzman and Council Member Hughes: Next meeting date: June 16, 2006
4. League of California Cities – Mayor Messina: Next meeting date: May 17-18, 2006
5. School District Liaison – Council Members Whitney and Hughes: Next meeting date: August 10, 2006
6. Sky Valley Area Open Space – Council Members Patterson and Whitney: Next meeting date: June 7, 2006
7. Solano EDC Board of Directors – Mayor Messina: Next meeting date: May 25, 2006
8. Solano Transportation Authority (STA) – Mayor Messina: Next meeting date: June 14, 2006
9. Solano Water Authority/Solano County Water Agency – Mayor Messina: Next meeting date: June 8, 2006
10. Traffic, Pedestrian and Bicycle Safety Committee – Council Members Patterson and Hughes: Next meeting date: July 20, 2006
11. Tri-City and County Regional Parks and Open Space – Council Member Whitney: Next meeting dates: June 19, 2006
12. Valero Community Advisory Panel (CAP) – Council Member Hughes: Next meeting date: June 22, 2006
13. Youth Action Task Force – Vice Mayor Schwartzman and Council Member Whitney: Next meeting date: May 24, 2006

ABAG/CAL FED Task Force/Bay Area Water Forum – Council Member Patterson: Next meeting date: May 22, 2006

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 10:09 p.m.

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Lisa Wolfe, City Clerk