

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
JUNE 6, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:30 p.m. on Tuesday, June 6, 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).

ANNOUNCEMENT OF CLOSED SESSION:

Jayne York, Administrative Secretary, read the announcement of Closed Session.

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

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

Number of potential cases: 1

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

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

**Employee organizations: Benicia Dispatchers Association, Benicia Police
Officers Association, Benicia Public Service Employees Association,
Professional & Confidential / Supervisory (Local 1)**

**Unrepresented employees: Police Managers, Middle Management, and
Senior Management**

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:32 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JUNE 6, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:10 p.m. on Tuesday, June 6, 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:

Action taken at Closed Session:

Ms. McLaughlin reported the following actions taken in Closed Session:

- Item A – Council gave direction to Staff to settle the case.
- Item B – Council received an update from Staff.

Openings on Boards and Commissions:

- Human Services Fund Board:
 - One unexpired term to June 30, 2008
 - One full term to June 30, 2010

APPOINTMENTS:

RESOLUTION 06-76 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF BECKY BILLING TO THE HUMAN SERVICES FUND 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 06-77 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF PHYLLIS MCKEEVER TO THE BENICIA HOUSING

AUTHORITY BOARD OF COMMISSIONERS 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 06-78 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MICHAEL RADESKY TO THE LIBRARY BOARD OF TRUSTEES TO AN UNEXPIRED TERM ENDING JUNE 1, 2007

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 06-79 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DUANE OLIVEIRA 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

PRESENTATIONS:

Solano County Senior Coalition (SCSC) – Overview of new advisory board:

Ms. Juliana Acker, SCSC, reviewed a PowerPoint presentation (hard copy in agenda packet).

PROCLAMATIONS:

• Hunger Awareness Day - June 6, 2006:

Ms. Mary Frances Kelly Poe accepted the proclamation. She stated that there are approximately 28,000 people in Solano County who receive food from food banks. The number of hungry people in Solano County is almost equal to the population of Benicia. The food bank gives out about 20 'brown bags' to seniors at the Vet's Hall. They assist approximately 75 families through the CAC to combat hunger. She discussed a recent evaluation of hunger that was conducted in Solano and Contra Costa Counties. Hunger is a moral issue that can be corrected. There is a hunger initiative to correct hunger within ten years.

Council Member Patterson asked Ms. Kelly Poe to announce the webpage for the public to access more information - www.foodbankccs.org or via phone at (925) 676-7543.

ADOPTION OF AGENDA:

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

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

OPPORTUNITY FOR PUBLIC COMMENT:
WRITTEN:

PUBLIC COMMENT:

1. Al Bertellotti – Mr. Bertellotti thanked Council and Staff for their efforts on the Bocce Ball Court issue. A lot of work has been done. He hopes it gets off the ground soon.
2. Jon Van Landschoot – Mr. Van Landschoot stated that he sent in a card to see if he could pull an item from the Consent Calendar.

Mayor Messina stated that he had Mr. Van Landschoot's card, but it was for the next item on the agenda.

Mr. Van Landschoot stated that he wanted to discuss things that deal with respect for people and processes. He has seen quite a few meetings where AHA and the Scouts have asked Council to resolve the issue of the Scout house. It is either beyond Council's capacity, or he just doesn't understand it. He read a recent article that made him angry. Regarding respect, when issues are being discussed, especially when there are kids in the room, respect should be an important consideration. Being disrespectful to the process, to people, to people on the dais, cutting folks off, not letting them speak, it is a bad precedent. He hopes when this problem is resolved; it is done in a respectful way. People should be allowed to express their opinions clearly without being cut off.

CONSENT CALENDAR:

Council pulled items VII-D and VII-L.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, 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

The Minutes of April 26, 2006, May 2, 2006, and May 16, 2006 were approved.

RESOLUTION 06-80 - A RESOLUTION ADOPTING THE LEAGUE OF CALIFORNIA CITIES' POLICY FRAMEWORK FOR TELECOMMUNICATIONS REFORM

RESOLUTION 06-81 - A RESOLUTION ACCEPTING THE PUBLIC IMPROVEMENTS FOR THE HARBOR WALK SUBDIVISION

RESOLUTION 06-82 - A RESOLUTION APPROVING A PARCEL MAP FOR THE "FORMER WEST 7TH STREET RIGHT-OF-WAY BETWEEN WEST J AND WEST K

STREETS” PROJECT, ACCEPTING UTILITY EASEMENTS AND PUBLIC RIGHT-OF-WAY FOR ALLEY PURPOSES, AND AUTHORIZING THE CITY CLERK TO EXECUTE THE CITY COUNCIL CERTIFICATE ON BEHALF OF THE CITY

RESOLUTION 06-83 - A RESOLUTION ACCEPTING THE FIRST STREET PENINSULA IMPROVEMENTS PROJECT, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER AND APPROPRIATING FUNDS FROM THE WEST 9TH STREET LAUNCH RAMP IMPROVEMENTS PROJECT

RESOLUTION 06-84 - A RESOLUTION ACCEPTING THE CIVIC CENTER TENNIS COURT LIGHTING PROJECT, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

RESOLUTION 06-85 –A RESOLUTION AMENDING THE APPROVED PROJECTS FUNDED UNDER THE CALIFORNIA CLEAN WATER, CLEAN AIR, SAFE NEIGHBORHOOD PARKS, AND COASTAL PROTECTION ACT OF 2002

RESOLUTION 06-86 - A RESOLUTION ACCEPTING BIDS, AWARDING THE CONSTRUCTION CONTRACT FOR THE BOCCE BALL COURTS AT CIVIC CENTER PARK IN THE AMOUNT OF \$73,103 TO MAXISTONE INC. OF FAIRFIELD, CA, DESIGNATING \$25,000 RECEIVED FROM THE INFLOW AND INFILTRATION RELIEF SEWER PIPELINE PROJECT FOR THE BOCCE BALL PROJECT, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

RESOLUTION 06-87 - A RESOLUTION APPROVING A CONSULTANT AGREEMENT WITH MARKER LOVELL FOR ON-CALL INSPECTION SERVICES AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

RESOLUTION 06-88 - A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR ALLOCATION OF TRANSPORTATION DEVELOPMENT ACT FUNDS FOR FISCAL YEAR 2006-07

Council approved the agreement for downtown asset management services with Benicia Main Street.

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 Joint Sidewalk Repair Agreement for 733-739 First Street:

Mayor Messina stated that he and Vice Mayor Schwartzman both had conflicts of interest on this item. Ms. McLaughlin confirmed that both the Mayor and Vice Mayor had properties that were located too close to the properties in question. They could be present, but could not participate.

Council Member Whitney confirmed that there were no citizens who wanted to speak publicly on this item.

Council Member Hughes asked how consistent or inconsistent this item was with the policy that will be discussed later in the agenda.

Mr. Erickson stated that there were some extenuating circumstances in this particular instance. There was a long passage of time. There were concerns about communications at various times. Staff felt the best way to handle this issue was with a compromise. The City will pay for a portion in its right of way (in the ground). He does not think this is inconsistent with the Joint Sidewalk Repair Program because of the extenuating circumstances.

Mr. Schiada stated that there were extenuating circumstances that went over a period of one year. What is being presented tonight is consistent with the spirit of the Joint Sidewalk Repair Program. While the property owner is covering a little over 50%, the City is still consistent with the policy.

Council Member Patterson asked on page VII-D-6, it refers to a basement access hatch, where and what is that?

Mr. Schiada stated that there was a basement hatch access both off of First Street and H Street. The City will be closing both of those off, in cooperation with the property owner, because they will have access from the interior of the building. It was just an access to the basement, not a 'secret access.'

Council Member Hughes asked if the ordinance that will be presented later tonight were in effect today, would the City still be willing to entertain this partnership agreement. Mr. Schiada confirmed the City would.

On motion of Council Member Patterson, seconded by Council Member Whitney, Council approved the Joint Sidewalk Repair Agreement for 733-739 First Street, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

Approval of an agreement with Hanson Bridgett for legal services related to the lawsuit filed by Bill Royal:

Vice Mayor Schwartzman stated that he had to abstain from this item due to a conflict of interest. Mayor Messina stated that he too had a conflict of interest with this item.

Heather McLaughlin, City Attorney, reviewed the Staff report.

Council Member Hughes asked Ms. McLaughlin why ABAG did not cover this item. Ms. McLaughlin stated that ABAG basically covers general liability things. They don't cover things related to personnel issues.

Public Comment:

1. Jon Van Landschoot – Mr. Van Landschoot stated that he had some rhetorical questions. The newspaper stated the initial amount of money for hiring the law firm was \$124,000. Are we going down a road of spending this much money to defend a \$70,000 claim? Has all diligent care being taken with regards to negotiations with Mr. Royal? Mr. Royal feels very wronged. As an observer, it seems like he has a leg or two to stand on. He would hate to spend a lot of money tracking down a little bit of money.

Ms. McLaughlin stated that the City does not want to spend more money defending the case than what the person is asking for. It is not Staff's expectation that would happen. In looking at the case, the City has some valid defenses that will work in its favor. Sometimes it is easier to pay off the lawsuits. However, then you can get the reputation that if anyone files a claim, the City will settle. The City could become a cash cow for such targets. Staff will use reasonable judgment in defending the City.

Council Member Hughes stated that he appreciated Mr. Van Landschoot's comments. He deals with this type of issue every day at work. However, sending the message out that the City will go to the extra effort to defend what is right. This is a tough issue. He hopes that if Council agrees to this, it only agrees for the amount up to \$124,000. If the City gets to the point where it realizes the plaintiff has a leg or two to stand on, it will take a short cut to end this.

On motion of Council Member Hughes, seconded by Council Member Patterson, Council approved the agreement with Hanson Bridgett for legal services related to the lawsuit filed by Bill Royal, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

PUBLIC HEARINGS:

None

ACTION ITEMS:

Consideration of a new ordinance for maintenance and repair of sidewalks:

Heather McLaughlin, City Attorney, reviewed the Staff report.

Council Member Whitney asked if there should be a definition of 'City-owned tree.' Ms. McLaughlin stated that the definition is on page IX-A-14 (First Street trees and the trees in City Parks).

Mayor Messina stated that the City has installed trees in other locations, but they are no longer City-owned trees. Ms. McLaughlin confirmed that was correct. Mayor Messina stated that ownership of such trees would be turned over to the citizens when this is adopted. However, that part of the policy was in existence before.

Council Member Hughes had a question on page IX-A-2, section 2 (g). If a City-owned tree caused the damage, why would the property owner be required to pay any portion of the costs? Isn't that inconsistent with the addition that was just discussed?

Mr. Schiada stated that since 1993, the City has followed section (g) in that policy. It has worked fairly well. He discussed the issue with the sidewalk in front of Hagan's Clocks. In that case, the City did replace the sidewalk at its cost. Section (g) is intended to provide the City with a negotiation tool. With Hagan's, it was clear the entire damage was due to the trees.

Council Member Hughes asked why the property owner had to pay 100% the time the first time. Mr. Schiada stated that doing the joint sidewalk repairs makes it easier to get the repairs done. The added complications with First Street are that the City requires the decorative sidewalks. That typically gets into a cost twice that of concrete. The City had been finding that a lot of the locations with the issues did not have the decorative sidewalks. This was an opportunity to upgrade the sidewalks and share the costs.

Council Member Patterson asked about the reference in the staff report to the City budget of \$10,000 per year. Council just approved an agreement that was in excess of \$25,000. How will the City reconcile the current budget allotment (that wipes out two years worth of budgets)? Mr. Schiada stated that for that item, Staff is using some gas tax funds that were available for sidewalk repairs. The agreement that was approved tonight is not an additional out-of-pocket expense for the City. Council Member Patterson stated that it was an excellent agreement, but she wondered if the \$10,000 budget was a realistic amount. She would like it marked for future consideration when the budget is discussed later this year. She then pointed out that on page IX-A-7, paragraph (c) which listed details of what 'maintenance and repair of sidewalks shall include; this should be highlighted because Council heard testimony that it was a problem. She appreciates that it was included in the ordinance. She had also sent an email noting a typo on paragraph (d). She is concerned about the timing of the ordinance, with regards to what was presented tonight regarding senior citizens. She was concerned about what happens with folks on fixed or limited incomes. That is a reality. She does not see anything in the ordinance that

gives room for negotiating. She discussed how the tree ordinance took this issue into consideration.

Ms. McLaughlin stated that the cost for this would come to Council for approval and consideration. At that point, the property owner could say that the costs were excessive and complain. Council could then decide the property owner would not have to pay the full amount. Mr. Erickson suggested Council could entertain a loan program that would address this issue. Council Member Patterson stated that she would entertain Council asking Staff to do that. She stated she thought there were such programs that were available. If Council were willing to give direction to Staff on this issue, that would be excellent.

Vice Mayor Schwartzman stated that on page IX-A-2 – regarding tree maintenance, there seems to be a disconnect between sections (f) and (g). If it is a city-owned tree, it seems to him that the City should be responsible for damage that the trees do to the sidewalks. It does not make sense to him. When it comes to section (g), he does not agree with it. He would like to see that ‘if damage to sidewalk is caused by City-owned tree, the City should pay.’ If the damage is caused by other reasons, the cost should be bore by the property owner. He discussed the palm trees on J Street. He asked who maintained the trees. Mayor Messina confirmed the property owners maintain the trees. Vice Mayor Schwartzman asked for clarification on page IX-A-3, fourth paragraph. Is the requirement for a permit for the tree removal of a tree more than 12 inches in diameter specifically for a tree more than 12 inches in diameter, 24 inches above the base? Ms. McLaughlin confirmed that was correct. However, the information provided was a short summary. Vice Mayor Schwartzman clarified a statement a few sentences later in that paragraph where the ‘homeowner’ is referenced. He asked if that should be changed to the ‘property owner.’ Ms. McLaughlin confirmed that was correct.

Council Member Whitney stated one thing that seemed a little weak was the inspection program. It is in the best interest of the City and the property owners as well to have a strong program. One of the things that everyone is happy with is the database for maintaining streets. Can this information (sidewalk inspections) be plugged into that database? He would like to see better reporting on this. It would tie in the notification issue. We could document that a property owner was notified on a specific issue.

Mr. Schiada stated that the street database program is a very specialized program that the City works with through the MTC. There are opportunities for the City to look at other programs that would track and organize the sidewalk issues. The City has been very good about focusing on the annual inspections in the high traffic areas. He feels very good about the follow-up in those areas. The standard residential areas are only looked at every 3-5 years that could be followed up on better as part of a priority setting process.

Council Member Whitney asked if the City had a formalized down process for tracking the sidewalk issues. Mr. Schiada stated that it was part of the computerized system. It lists the location of the damage/hazard. They are categorized as minor or major. Staff usually focuses on the major issues. It is a matter of Staff following through with the

funding and time constraints to address the highest priority locations completed first. Not all the locations are completed each year. It is a large database. Council Member Whitney asked if the program had a mail-merge capability. Mr. Schiada stated that it did not. Staff is looking at a new system, but currently the program does not have the capability. Council Member Whitney asked about grinding. Does Staff have the ability to do the grinding 5 days per week, 52 weeks per year? Mr. Schiada confirmed that was correct.

Council Member Hughes inquired about page IX-A-2 section (g). Something does not seem right here. If the damage is caused by the City, the property owners are responsible? If the additional language is approved regarding injury liability, the language is inconsistent. Ms. McLaughlin stated they are two different things. The trees are an amenity the businesses receive. However, Council could change the language if it finds it is necessary.

Mayor Messina stated that the 'exception' areas give him pause. There are trees on H Street that spill over into the street. They are 'heritage' trees that need to be maintained. There will be times that the trees win and the preservation of the tree is more important. When that type of decision is made, that becomes an exception. It is unfair to place that burden on the property owner. The other issue of fairness issue is that of the senior citizens. If the property owner cannot afford to maintain the sidewalk, there may be cases where it needs to be an exception. His general thought is to go forward with the ordinance. However, a few fundamental problems need to be addressed. He would like those problems addressed before the ordinance goes for the second reading and adoption.

Council Member Patterson stated that the trees are beginning to be viewed as valuable within the community. That is particularly telling. The trees are an economic asset to First Street. The City has some policy issues that have not been reconciled or coordinated. Council does not have a tree ordinance in front of it, so it does not see the thinking and the kinds of things that would give it direction. We are trying to give the City some protection against liability. Rather than delaying this, which means we have more exposure, would the City Attorney recommend Council adopt future policies that deal with the economics of this rather than the policies of liability? These future policies would address the economic issues: 1) economic development investment on First Street regarding trees, and 2) the senior's limited income category.

Mayor Messina asked how those two issues could be dealt with when there are two different documents we are dealing with. Ms. McLaughlin stated that on the trees, we could add the language specifically calling out the policies. For example, the heritage trees that were discussed could be referred to in the ordinance as an exception. Mayor Messina asked if there was a count of heritage trees within the City.

Mr. Alvarez stated that the Tree Committee has been meeting every two weeks to try and move the Tree Ordinance along. They do not have an inventory on the trees just yet.

Mayor Messina asked how this issue could be addressed so that not just 'City-owned' trees, but all 'designated trees' could be exceptions for future Council's to consider. Ms.

McLaughlin stated that Council could incorporate the language ‘property owner would not be liable for damage caused by trees designated in City Council resolutions’. Any trees Council sees fit could be incorporated, and the list could be changed. Mayor Messina stated that he would like the issue of citizen’s having financial difficulty addressed. Mr. Erickson stated that Council could give direction to Staff to craft some language that addressed that. Mayor Messina stated that he was comfortable moving forward with that hole to be filled at the second reading.

Council Member Patterson stated that she was comfortable moving forward with the direction to Staff that a policy be developed and returned to Council for action within 3-6 months, so that a good comprehensive policy could be developed.

Vice Mayor Schwartzman stated that he thought that was what the Joint Sidewalk Repair Program was all about – sharing cost. Now it sounds like Council is trying to find ways that a property owner could get the sidewalk repaired and not have to pay for it.

Council Member Patterson stated that the intent was for the issue of maintenance, there is a possibility that a property owner could simply not afford it. That is a reality. Council needs to acknowledge that. It is not common, but when you have the aging population that Benicia has, Council has to consider that. Council cannot make it so that the aging population cannot afford to live here.

Vice Mayor Schwartzman stated that he understands that could be an issue. He is willing to look at the issues. With regards to the Mayor’s comments, it sounds like with the ‘exceptions’ the City would be responsible for the maintenance of the trees and the damage caused by the trees. That goes along with his original sentiment with the City-owned trees along First Street.

Council Member Whitney stated that he was supportive of the issue of the exceptions for senior citizens. He would not be supportive of dragging them down to Council meetings to tell Council why they can’t afford to maintain the sidewalks. There needs to be a mechanism in place for dealing with such issues. Regarding the trees on First Street, there needs to be a policy statement about that. Currently, there seems to be a disconnect with that.

Council Member Hughes stated that the more exceptions we make, the more the ordinance is watered down. He does not want anyone to have to come down and explain why he or she can’t afford the maintenance costs. He believes the City looks at issues on a case-by-case basis. On page IX-A-7 paragraph 020 – liabilities and injuries to public – it could read ‘the property owner shall not be liable for damages resulting from trees owned and maintained by the City in locations set forth by resolution.’ He would also like similar language inserted on IX-A-2 in section 2(g) of the ordinance.

Council Member Patterson stated that the intent was to pass the ordinance with the stipulation that Council would give direction to Staff to develop the policy so that the

resolution would include the direction to Staff. It is not part of the ordinance, but it would be a City policy.

Ms. McLaughlin stated that regarding the language suggested by Council Member Hughes, there was discussion earlier about inserting language for not just City-owned trees, but also heritage trees. She asked if that was still the case. Council Member Hughes stated that he would not like to do that. There is flexibility into the language to look at issues on a case-by-case basis. Council Member Patterson stated that she liked the language suggested by the Mayor 'City-owned or designated trees.' Council Member Hughes stated that he could support that language.

Ms. McLaughlin clarified that the language on page IX-A-7 section 020 would read 'the property owner shall not be liable for damages resulting from trees that are owned and maintained by the City or designated by Council resolution'. Some clean up on (g) will be done for consistency. She suggested Council introduce the ordinance and bring back the policy at the next reading.

Council Member Patterson suggested Council introduce the ordinance, include the changes, have the policy come back to Council for further action on developing a policy for senior citizens on fixed income and other situations of limited income. She also wanted to add that Council give direction to Staff to seriously consider a computer based inspection program so that the sidewalks have equal footing with streets, as they are just as important.

Mayor Messina stated that the last two pieces should be by direction to Staff. He would rather see the issues of limited income dealt with in a policy.

Council Member Hughes stated that he was comfortable with the language changes.

Mayor Messina stated that regarding the computer program; Staff should come back with a way to better address tracking of sidewalk maintenance. Or, at least come back with a timeline on when this could be addressed.

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

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Introduction and First Reading of an ordinance was approved as amended, on roll call by the following vote:

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

Noes: None

On motion of Council Member Patterson, seconded by Council Member Hughes, Council approved the amended changes to the Sidewalk Repair Policy as outlined in the Council report, on roll call by the following vote:

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

Authorization of award of contract to MV Public Transportation to operate Benicia Breeze from July 1, 2006 through June 30, 2011:

Rob Sousa, Finance Director, reviewed the Staff report. John Andoh, Transportation Manager, reviewed a PowerPoint presentation (hard copy on file).

Council Member Hughes inquired about the monthly fixed cost and the variable costs. The monthly fixed costs for 2007 are \$43,000 per month. How does that compare to the money we are spending now? Mr. Andoh stated that it was an increase. The City is currently spending approximately \$27,000. We expect to recover some of that increase through fare increases and potential increased ridership. It is important to note that the variable costs will decrease. Council Member Hughes asked if the decreasing variable costs, increase in ridership, and fare increase close the gap between the \$27,000 and the \$43,000. Mr. Andoh stated that the analysis showed that it should close the gap.

Council Member Patterson inquired about the policy dealing with the change in the flex ride up to 25%. Benicia is a small city. That could be a significant amount. Would Mr. Andoh come back to Council and recommend the changes? Mr. Andoh stated that per the FTA, anytime we make a service reduction or increase of 25% or more, we have to seek public comment and hold a public hearing. That requirement would always be complied with. Council Member Patterson inquired about page IX-B-7. Under the paragraph titled 'agreements', the title of the department should be corrected to read 'Secretary of California Department of Business, Transportation, and Housing.'

Vice Mayor Schwartzman inquired about page IX-B-16, item #2. What does it mean to take affirmative action to ensure the applicants are employed? Ms. McLaughlin stated that it is a parenthetical. It means that they are employed without regard to their race, religion, or national origin. Vice Mayor Schwartzman inquired about IX-B-71, exhibit (j). Later in the packet, in MV's proposal they want to discuss changes in the requirement to require subcontractors to provide insurance on their own. What is the final decision on that? Who is responsible for the insurance? Mr. Sousa stated that this is one of the areas of change in this year's contract. The City has asked MV to cover that cost in this contract. That will give them incentive to lower the accident rate. That is one reason the cameras were installed. The cameras will reduce the amount they pay for their insurance. We will have the benefit of lower accident rates, etc. General liability is covered in the contract. Ms. McLaughlin stated that, in response to Vice Mayor Schwartzman's initial question, the City did not agree to MV's request requiring subcontractors providing their own insurance.

Council Member Whitney asked Mr. Andoh to describe how Para-Transit would work once the new contract is in place. Mr. Andoh stated that Dial-A-Ride would be going away. With Para-Transit, a person would have to fill out an application. Once they are certified as eligible, they would call one day in advance up to fourteen days in advance to reserve a trip from anywhere in Benicia to Pleasant Hill or Vallejo. It would only go in a

¾ mile boundary of route 75. To go on medical trips, they will have to do a transfer. They are currently working on a 2-hour grouping system that will allow medical appointments and the rider would not have to make that transfer for medical trips. For other out of the route trips (such as shopping, etc.) they would still have to make the transfer. Most of the details are finalized and that should be available by July 1st. We have a current list of 150 registered Para-Transit riders. The registration is not a closed process; anyone could apply. The new flex-route will incorporate a stop at the Benicia Historical Museum. Mr. Andoh discussed various marketing scenarios that they will use to increase ridership. The new routes will be published on the shopping carts at Safeway, online, on the bus-routes, on Vallejo Transit busses, newspapers, etc.

Mayor Messina stated that it would be worthwhile to have someone available to the Casa Villarrasa folks and the Senior Citizens Center to help them become aware of the new changes.

Vice Mayor Schwartzman commended Mr. Andoh and Mr. Sousa on a job well done on this project.

RESOLUTION 06-89 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MV PUBLIC TRANSPORTATION, INC FOR THE OPERATION OF THE BENICIA BREEZE GENERAL PUBLIC FIXED ROUTE AND PARATRANSIT TRANSIT SERVICES

On motion of Vice Mayor Schwartzman, 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:
Reports from City Manager:

Status report on air quality equipment installation – Valero Improvement Project Environmental Impact Report Settlement Agreement.
Jim Erickson, City Manager, reviewed the Staff report.

West 7th Street Sidewalk:

Mr. Erickson stated that last year; Council directed the safety repair of the sidewalk between Military and approaching I-780. The Public Works department is ready to go out to bid and bring back a contract at the July meeting for Council approval. The total focus of this repair is the safety provision. There is another issue of traffic calming. There needs to be a prioritization of that. The issue of traffic calming request is important and worthwhile, however it should be submitted to the Traffic, Pedestrian and Bicycle Safety Committee for review and prioritization as a separate. To take that on right now would slow the safety repairs down. The other issue is the streambed or creek bed approach to the work that is being done along the creek bed. Council has already approved using that approach for long term. This particular project would not prejudice the long-term

approach. However, there is another time for Staff to undertake that project. All of the streambed area is private property. Based on the conversations with the property owner, the way to get cooperation is through development. Staff will report back to Council on this issue on the 7/18 meeting.

Council Member Patterson asked Mr. Erickson about the status of the streambed alteration agreement. Mr. Erickson stated that he did not think there was an agreement. There was an understanding with the property owner. Council Member Patterson stated that the agreement is really a permit. Is the permit underway, is it covered by the contract, etc? Mr. Schiada stated that the City has received a streambed alteration permit approval to proceed with the urgent work. As part of the approval, the City had to wait until after 4/18 to begin the work. The work should be underway this summer. The long-term issues of the enhancement of the creek will be something that will require a streambed alteration permit at the time the City works with the property owner on a solution. Staff will require the contractor comply with the City's Stormwater Management Program.

Council Member Hughes stated that he fully supports this approach. The traffic calming issues should go back to the Traffic, Pedestrian and Bicycle Safety Committee.

COMMENTS FROM COUNCIL MEMBERS:

Consideration of Bay Area Water Forum Memorandum of Understanding:

Council Member Patterson reviewed the Staff report.

Mayor Messina stated that the SWA had some discussion on this issue at its last meeting. The SWA looked at what was being accomplished. The story that was reported back to the SWA was a little different than what Council Member Patterson has reported. There was no tie in to the funding. The forum was presented as an informational exchange. The SWA looked at it as an interesting group. There was information to be gained. The SWA determined the information was also available through other sources directly to the SWA. Participation in this was not really going to provide additional benefits with regards to cost and time. The SWA voted unanimously on this issue. Mayor Messina asked if there were any other representatives from any cities that attended on a technical level or any other level. Mr. Schiada stated that might be a more appropriate question for Council Member Patterson.

Council Member Patterson stated that there are two processes going on. The Bay Area Water Forum is more of a policy approach. Integrated Regional Water Management Process (IRWMP) is specifically geared towards specific pots of money. The Bay Area Water Forum is a gathering of both technical and policy people. It is also charged with outreach. The direct connection that the Bay Area Water Forum has is that it shows a regional approach. It makes applications for separate funding vehicles that are included in Proposition 50. There are other funding mechanisms available for a recycled project such as theirs. It is just an attitude. Solano County chose to sit out this process. They are not in line for any funds from the IRWMP program. She would like Benicia to be in the best position possible. She hopes Solano Water Agency comes along.

Council Member Hughes clarified that what Council Member was asking was that this item be placed on the 6/20 agenda. He stated that he would not feel comfortable taking action on this tonight. He asked that when it is placed on a future agenda that more details on the cost be provided.

Mayor Messina stated that the reason this was put on the agenda the way it was because Staff had to spend time working on the item.

Vice Mayor Schwartzman asked what 'recycle' was referring to. Did it mean 'reuse'? Council Member Patterson stated that it was referring to recycling the wastewater. Vice Mayor Schwartzman stated that he was a little confused about how things were placed on the agenda. Mayor Messina clarified the reason for placing in on the agenda the way it was. Staff sometimes puts the decision to Council when an item will take more than 15 minutes of Staff's time. Mr. Erickson stated that Staff did not have time to look into this issue fully before it went on the agenda.

Council majority agreed that this item be placed on a future agenda.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:30 p.m.

Lisa Wolfe, City Clerk