

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
JUNE 20, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:02 p.m. on Tuesday, June 20, 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, Whitney, and Mayor Messina

Absent: Vice Mayor Schwartzman

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

INFORMATIONAL ITEMS:

Update on Priority Projects:

Jim Erickson, City Manager, stated that the purpose of this report is to review Council's highest priorities. Staff wanted to update Council on the status of the priority projects and hopefully share some successes.

Commandant's – Restore for Public Use:

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

Council Member Whitney asked if there were still funds available in the Mayor's restoration fund that was established. Mr. Alvarez stated that there was approximately \$50,000 still available, which is part of the match funds that would be used. The fund is still open and people can still donate towards the restoration.

Clocktower – Restore For Public Use:

Jim Erickson, City Manager, reviewed the Staff report.

Mayor Messina asked what the cost and utilization of resources would be if we were trying to put this into a 'shelf-ready' type project. Mr. Erickson stated that the problem with that would be the demand on resources and Staff that would be dedicated otherwise to the Commandant's project. These projects are in addition to regular work. It would take six figures to develop plans.

Council Member Patterson stated that she supports the direction the Mayor is suggesting. She values Mr. Erickson's sense of caution in protecting Staff's time. To the extent we can accomplish both goals; the City would be penny-wise and pound-foolish if we are not prepared. The so-called Ceaves park bond initiative, which is basically a re-do on the past 2004 parks bond has qualified and will be on the ballot. The public tends to support those. In the event it is approved, there is a category that we would qualify for. We should be on the ready. If there is a way to do that without distracting staff's attention to the Commandant's, we should proceed.

Mr. Erickson stated that if that were the Council's direction, he would ask if Staff could come back with a projection on what the minimum project we could do so we could be ready for grant application submission. He does not know what that is; it could be a little or a lot. Mr. Alvarez stated that if he heard correctly that the direction was to look at some construction drawings, he would urge Council to reconsider at this point because we don't know what those grants will fund. What we can do, at a minimal cost, is that if the initiative is successful and Staff gets direction from Council, we would then submit a grant application request, which we would probably be looking at a cost of no more than \$6,000 or \$7,000. The proposal Staff submitted to the State included meeting rooms downstairs that would serve as somewhat of a community center/facility. There was very little restoration in our grant application. If we are successful with Mills, we may want to take another look at what we want to do with the Clocktower.

Council Member Hughes stated that he is in support of the suggestions made by the City Manager and Mr. Alvarez. He would rather see more attention given to the Commandant's project. He would suggest tabling the Clocktower project. We need to do minimum work on the Clocktower right now.

Council Member Patterson stated that the consideration of construction level drawings was not in her mind when she expressed support of the direction the Mayor was suggesting. She agreed with Council Member Hughes and Mr. Alvarez that it would be too much of an effort and expense. If we could have the categories of things that could be broken down such as foundation work, interior work, elevator, etc. so that if we saw an opportunity to apply for a grant, we would be tailored to that particular effort. It sounds like Staff is suggesting it could get to that point. She asked if the City has received confirmation that the funds from Prop 40 have been committed. Mr. Alvarez stated it was something Staff would keep an eye on. Council Member Patterson suggested asking Staff to come back with a game plan.

Council Member Hughes stated that part of the scope of the Clocktower work involved some safety issues. Mr. Alvarez stated that the emergency exits on the back were one of the issues. Another was to improve the elevator and ADA accessibility, and improvements to public access to the restrooms.

Mayor Messina stated that this should not be taken off the list, but to proceed slowly and cautiously in the event funds become available. It is clear that the emphasis is on the Commandant's project. We want to be mindful that monies may become available.

911 Center/Jail Upgrade – Complete Emergency Improvements:
Jim Trimble, Police Chief, reviewed the Staff report.

Community Center – Including Space for Boys & Girl Scouts:
Mr. Erickson suggested passing on this item, as it will be discussed later in the regular meeting agenda.

Planning for Commercial Area and General Plan Implementation:
Shawna Brecker-Reed, Consultant Planner, reviewed the staff report.

Mayor Messina asked Ms. McLaughlin to put into writing something to confirm that all Council Members could participate through this process. He realizes that she is not the FPPC, but just something to validating that specifically that he and Vice Mayor Schwartzman, as well as the others, have no conflicts of interest. Ms. McLaughlin stated that Staff could request a letter from the FPPC.

Fire Rescue Boat:
Ken Hanley, Fire Chief, reviewed the Staff report.

Council Member Whitney asked if Staff has had preliminary discussions with the firefighters about what duties would be associated with this so that they are prepared when the boat is received. Chief Hanley stated that he recommends that discussions take place early on in the process. Council Member Whitney asked if the lease option was still viable. Chief Hanley stated that it was still an option. It is unfounded at this time. All options are still on the table and Staff is working on figuring out the best option.

Council Member Patterson stated that public safety and fiscal responsibility are both number one. She was concerned about the kind of financial commitment we are making in this regard. She went on a tour that was provided by the Maritime Administration for the Suisun Ready-Reserve Fleet. She learned something that she has shared with the Fire Chief and City Manager. They have two high-speed safety boats that are called security boats. The boats are really fast and have all kinds of attributes. The boats don't fight fires; however they have ships in the Suisun fleet that are what is called 5-day readiness (for blue water sailing readiness). In an emergency, they could sail to Benicia for assistance. She talked to Bill Cahill, who is most interested in working at the local level on emergency response planning and participation. She would like to get more information to see if there is a possibility of a partnership that would meet our public safety needs and our fiscal responsibilities as well.

Mayor Messina stated that it sounds like an excellent solution. Chief Hanley now has another option to look at. There are now three options available to look at as opposed to two. He asked that she pass the information that she has on to staff so they can look into it. Mr. Erickson stated that Council Member Patterson has already passed the information onto Staff. Chief Hanley will be talking with Mr. Cahill. This might be a viable third option. He did not know that we are currently working with the National Maritime Administration. Chief Hanley actually has good contact with them.

Joint Use Agreement (BUSD) – Completion and Implementation:

Mr. Erickson stated that this project has been completed. He suggested moving it to the 'completed' list. There are some issues that need to be worked out, but the overall project is completed.

Mayor Messina asked for a review on the status of the fields. Mr. Alvarez stated that we are now in the summer mode. Staff is doing some work on safety issues such as rodent control, weed abatement, etc. Staff will be removing some backstops on the baseball field at BHS. The water will be shut off during that time. When the work is completed, the water will be turned back on and the fields will be aerated. Staff has met with BHS regarding the improvements they would like to see regarding capital improvements. Because of concerns about disruption to their activities, Staff will be doing the capital improvements such as irrigation and turf renovation in the summer of 2007. Everyone will be able to see a dramatic change in the maintenance at this point. The principals have been easy to work with. It has been a successful start and transition. Staff is preparing for a JUA management meeting.

Marina Fund Financial Imbalance:

Mr. Erickson suggested discussion on this be moved to closed session.

Benicia Business Park Development – Monitoring and Guidance:

Charlie Knox, Community Development Director, reviewed the Staff report.

Council Member Patterson stated that she understood that Anne Riley, San Francisco Regional Water Quality Control Board, recommended that Staff do a team visit on this site with all the responsible agencies, federal and state, included. Mr. Knox stated that he hoped to do it sometime this fall. It is probably better to do it in spring when water is more present on the property, but we will probably do it sometime in the fall. Council Member Patterson asked if they would be more useful earlier in the process since you are dealing with design. Mr. Knox stated that their EIR is going to need an environmentally superior alternative. CEQA works best when the project becomes an environmentally superior alternative. These are issues that the development team and Staff are aware of. We set forth an ambitious schedule to get the EIR done. Waiting until spring would postpone that for about six months. They are willing to work with them on this.

Council Member Whitney asked that Staff keep Council updated on all upcoming field trips. Some or all Council Members may be interested in going along on the field trips.

State Park Road Bike/Pedestrian Bridge Project:

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

Council Member Whitney congratulated Staff on their efforts on this project.

X-Park Construction:

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

Mr. Erickson stated that some of the shortfalls might be characterized as a 'squeeze.' Staff is doing everything possible to accommodate the additional funding requirements. It will be difficult to fill some of the gaps without other outside help.

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

CLOSED SESSION:

A. CONFERENCE WITH LEGAL COUNSEL – INITIATION OF LITIGATION

Initiation of litigation pursuant to subdivision (c) of Section 54956.9

Number of potential cases: 1

B. CONFERENCE WITH LEGAL COUNSEL – PENDING LITIGATION

Initiation of litigation pursuant to subdivision (a) of Section 54956.9

Number of potential cases: 1

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:42 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JUNE 20, 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 20, 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, Whitney, and Mayor Messina

Absent: Vice Mayor Schwartzman

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 announced the following actions taken in Closed Session:

- Item A – Council authorized Staff to initiate litigation.
- Item B – Council continued the discussion until the end of tonight’s meeting.

Openings on Boards and Commissions:

- Human Services Fund Board:
 - One unexpired term to June 30, 2008
 - One full term to June 30, 2010
- Civil Service Commission:
 - Three full terms to August 30, 2009
- Sky Valley Open Space Committee
 - One full term to August 30, 2010
 - One full term to September 30, 2010

Release of Draft Traffic Calming Report:

Mayor Messina reviewed the announcement on the Traffic Calming Report.

APPOINTMENTS:

None

PRESENTATIONS:

Building Livable Communities:

Council Member Patterson reviewed a presentation (hard copy on file).

Status Report on Alcohol, Tobacco & Other Drugs (ATOD) Program:

Cecile Kazemi, Youth Action Task Force, introduced a PowerPoint presentation (hard copy on file). The presentation was a visual presentation only.

Council Member Whitney stated that people who work on this task force do so tirelessly. It takes total awareness and commitment. These issues are not going to go away without action on the community's part.

Council Member Patterson thanked Ms. Kazemi for providing such rich information. She asked what more could be done regarding integrating some of the more proactive programs. Ms. Kazemi stated that they have been focusing on prevention. That would be more long term. There were 44 students involved in 'Every 15 Minutes'. Engaging people in those types of programs is very proactive.

Council Member Hughes stated that the efforts of the YATF have been amazing. He thanked Ms. Kazemi for her efforts.

Curtis Hunt, Consultant for Solano County in charge of the Master Settlement Agreement for Community Mobilization, thanked the City for its partnership in this countywide endeavor.

PROCLAMATIONS:

Parks & Recreation Month - July 2006

ADOPTION OF AGENDA:

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

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

Noes: None

Absent: Vice Mayor Schwartzman

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Bonnie Silveria – Ms. Silveria invited Council to come meet the Tula folks on the 4th of July. Our gateways and medians look terrible. There was a garage sale sign on the welcome to Benicia sign. We need to look at these issues. There has been a couch marked 'free' on Sixth Street for two weeks now. We need to start enforcing the program.
2. Jeanine Seeds – Ms. Seeds stated that she wanted to debunk the myth that no one knows where their contributions are coming from in their campaign. Citizens are

tired of being treated like they are stupid. When someone donates money one month and more the next quarter, they have to report the money separately. Candidates have to reconcile their bank accounts on a monthly basis. People have to update their Form 460 every six months. There are so many things that need to be done in Benicia. It infuriates here that we have to focus on this issue. She stated this was not an equal opportunity council. There was an article in the paper recently on this issue. One Council Member is continually interrupted and dismissed. She talked with the City Attorney about what could be done about that. She was told there were three choices: 1) we could address the person that is being rude, 2) we could come during public comment to discuss this – but what if the discussion is already over? and 3) we could call a point of order. Going forward, if a person is cut off, we have a right to call a point of order and say that we would like to hear what the person has to say, especially if it is the person that is representing our opinions, which means the person interrupting or cutting them off is not interested in that person or the people they represent.

CONSENT CALENDAR:

Council pulled items VII-A and VII-C.

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

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

Noes: None

Absent: Vice Mayor Schwartzman

Council approved the denial of the claims against the City by Denise Margolis and Laurie-Ellen Flanagan and referral to insurance carrier.

RESOLUTION 06-90 - A RESOLUTION ACCEPTING BIDS AND AWARDING CONTRACTS TO THE LOWEST RESPONSIBLE BIDDERS TO FURNISH CHEMICALS TO THE CITY OF BENICIA FOR THE TREATMENT OF WATER AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS ON BEHALF OF THE CITY

RESOLUTION 06-91 - A RESOLUTION AUTHORIZING THE SUBMITTAL OF GRANT APPLICATIONS FOR WASTE REDUCTION AND REUSE/RECYCLING FUNDS FROM THE CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

RESOLUTION 06-92 - A RESOLUTION AUTHORIZING THE PURCHASE OF 12 AIR RELIEF VALVES FOR TWO SEWER FORCE MAINS AT A COST OF \$25,654.04 FROM T&T VALVE AND INSTRUMENT, INC. OF PLEASANTON, CALIFORNIA

RESOLUTION 06-93 - A RESOLUTION AWARDING A CONTRACT TO SMARTLINK RADIO NETWORKS, INC. (SMARTLINK), IN THE AMOUNT OF

\$84,191.81 TO REPLACE AND UPGRADE THREE POLICE AND FIRE RADIO CONSOLES AND AUTHORIZE THE EXPENDITURE OF \$32,460.14 FROM THE CITY'S CAPITAL PROJECT FUND TO COVER EXPENSES ABOVE THE STATE ALLOTTED AMOUNT OF \$51,737.87

RESOLUTION 06-94 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH SOLANO COUNTY TO CONTINUE FUNDING THE FAMILY RESOURCE CENTER (FRC) AS PART OF THE BENICIA POLICE DEPARTMENT'S FAMILY AND CHILDREN RESOURCE SERVICES UNIT

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 June 6, 2006:

Council Member Patterson stated that there was a technological breakdown and asked that the minutes be continued to the next Council meeting.

Second reading of a new ordinance for maintenance and repair of sidewalks and adoption of the sidewalk repair policy:

Council Member Hughes had issues with the inconsistencies regarding liability. The way it is rewritten is different than he thought Council agreed to.

Council wanted to discuss specifics on sidewalk repair liability.

There was a discussion by Ms. McLaughlin regarding potential conflict issues and Mayor Messina excused himself due to a conflict of interest. Council Member Whitney chaired this portion of the meeting.

Council Member Hughes stated that he wanted to make sure it is consistent when we are talking about liability and maintenance and repair. If it is damage related to a City tree, the property owner should not have to pay the first, second, or third time.

Council Member Patterson stated that according to Ms. McLaughlin, we have to be consistent with both the court opinion and also with the ordinance. To what degree does what Council Member Hughes is suggesting affect that consistency so that we can survive other litigation that would otherwise cost us dearly? Ms. McLaughlin stated that it would probably be consistent if you wanted to change the current practice for the First Street property owners and require the City to take over payment if a tree damages a sidewalk on First Street, recognizing that is not the current practice. Council Member Patterson clarified that if a tree on a regular residential sidewalk (other than First Street) damages the sidewalk, the property owner would be responsible for the cost of repairing the sidewalk, as well as the liability for someone tripping over that sidewalk. However, on First Street, the change that we are making, if it happens a second time, the City does not do that. The City takes on the responsibility. Is Council Member Hughes' question is

that the ordinance does not read that way? That the liability is not connected with the sidewalk replacement on the second go-around? Ms. McLaughlin stated that it is true to an extent that liability and maintenance are two separate things. You are going to be liable for your sidewalk, but it is a question of who replaces and maintains the sidewalk when it gets damaged. The other thing to consider is that typically on First Street when we have a new project we require those developers to put in street trees just like we require residential properties to put in street trees or residential landscaping where appropriate.

Council Member Hughes clarified that he is very pleased with the language change on the liability section and the ordinance itself. He is just looking for that to be consistent with the policy when it talks about maintenance and repair. The way it reads in the liability section on page VII-C-5, the property owner shall not be liable for damages from trees that are owned and maintained by the City or designated by Council resolution. But, in the policy, we say that if there is damage that needs to be repaired, the property owner is responsible and accountable on the first go-around. Ms. McLaughlin stated that perhaps the confusion is that she needs to use different words. In the ordinance, we are talking about damages to a person due to a slip and fall as a result of a broken sidewalk due to a tree. In here, in the policy, what we are talking about is damage to the sidewalk itself. It is sort of a thing vs. people. Council Member Hughes stated that he understands that but what he does not understand is why the property owner would be responsible, held accountable on one area and not the other.

Council Member Whitney stated that he thought that was Council's agreement as well. He understood that Council had clarified that regarding City owned trees; they were one and the same liability of the individual as well as the sidewalk.

Mr. Schiada stated that on page VII-C-11, under section (g) - this is where we discuss the issue of the first repair being the property owner's responsibility. This is where the language regarding sidewalks that are damaged by City owned and maintained trees; the City would be responsible for the portion of the sidewalk that was damaged by the City-owned tree. We added in the language change to read 'or designated by City resolution'. The change that Council could look at is that we have worded section (g) so that we are saying the property owner is still responsible for that first time repair and the second time the City is responsible. That was intended to mirror what we already do on First Street. If Council wishes to say that we mirror the ordinance so that the City would be responsible for the portion of the damages caused by a City owned tree, we could change the language in section (g).

Council Member Hughes asked why, on the liability side, the property owner is not responsible the first time. He would be much more pleased to see language stating that if it is a City owned tree, and there is damage or personal injury, the City is responsible for that. He likes the fact that if there is damage, maybe there is a shared responsibility the first time, but not the second. The way it is written now, the first time the property owner is responsible for the entire repair.

Council Member Patterson stated that we have a situation that on First Street; the sidewalks are wider than the rest of the City. It sounds like Council Member Hughes wants to put the entire weight of all repairs, regardless of the circumstances, on the City. Unless he can craft language that makes that more clear, she does not want to have the City take on responsibility that is clearly outside the effects of the tree.

Council Member Hughes clarified that it was only if the damage was related to a City owned tree. He is fine with the liability language. It is the policy language on the maintenance and repair that he has a problem with. The language should be consistent with the language in the ordinance.

Mr. Schiada suggested amending (g) so that the language ‘and replaced once by the adjacent property owner’ be deleted. Council Member Hughes stated that he would be very happy with that change.

Mr. Erickson stated that in many places, benefit assessment districts are set up to maintain sidewalks, street trees, etc. Some of our rationale had to do with the special benefit that results certain commercial properties by having certain immunities that are above and beyond the normal situations on First Street. Some of the consistency issues are hard to argue against. It may be fair to ask more of someone in the commercial areas where they have the special benefit than in areas that are not commercial and not getting the special benefit.

Council Member Whitney stated that there seemed to be an issue among the Council regarding fairness.

Council Member Patterson stated that the solution Mr. Schiada offered allows the City to collect on the other part of the sidewalk that is not affected by the tree damage. We are fair on that. The larger issue that the City manager raised was a good issue. There should be a study session on that. The EDB raised that issue at their last meeting. They feel that money is not being spent in the right areas to do the Economic Development that is necessary for First Street. She suggested moving forward with Mr. Schiada’s recommended change and schedule a future study session.

Council Member Patterson stated that it has been brought to her attention that our streets are not particularly well lit. With this codified sidewalk responsibility, we should make sure the streetlights are on and identify areas though the normal street routine that are dark and not safe. She would like that on the record as something that Council should be addressing.

ORDINANCE 06-6 - 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 Ordinance was adopted, on roll call by the following vote:

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

On motion of Council Member Patterson, seconded by Council Member Hughes, Council approved the changes to the Side Repair Policy, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, and Whitney
Noes: None
Abstain: Mayor Messina
Absent: Vice Mayor Schwartzman

PUBLIC HEARINGS:

City of Benicia Landscaping and Lighting District Fiscal Year 2006-07:

Rob Sousa, Finance Director, reviewed the Staff report.

Public Hearing Opened.
Public Hearing Closed.

Council Member Patterson stated that she was very disturbed by the condition of the City's medians. She was disappointed this was put off for another year. She knows Staff works hard. We are not competitive with other communities and the appearance of our medians. Our medians look scrappy. We have Charlie Brown medians. She is disappointed we don't have a more aggressive plan going. She does not know why the promises made last year did not happen. She would like to see a strategic approach on how we are going to address our medians.

Mr. Sousa stated that the Audit and Finance Committee was recently assigned the revenue options detail. For the past three months, it has been looking at several of the funds that have been in jeopardy. The landscape and lighting districts have been the topic of the last two meetings. There has been some discussion about the timing of approaching the community. When last year's budget of expenditures came in lower than we had anticipated, it gave us some relief. At this point, the committee has been planning out the budgeting for the following year 2006-2007. In doing so it has become apparent, that we have to go to the community and ask them what service level they require from us, and make adjustments according to communications from the public.

Council Member Whitney stated that he agrees with Council Member Patterson on the issues with the medians. Council should have a study session on how that could be improved. That should be included in the priorities.

RESOLUTION 06-95 - A RESOLUTION ORDERING THE MAINTENANCE OF EXISTING IMPROVEMENTS IN ALL FIVE ZONES OF THE DISTRICT, CONFIRMING THE ASSESSMENT DIAGRAM, APPROVING THE ENGINEER'S REPORT AND ORDERING THE LEVY AND COLLECTION OF CERTAIN

ASSESSMENTS FOR THE CITY OF BENICIA LANDSCAPING AND LIGHTING DISTRICT, FISCAL YEAR 2006-07

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

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

Noes: None

Absent: Vice Mayor Schwartzman

ACTION ITEMS:

Authorization of a second six month extension of the letter agreement with the Valero Refining Company pertaining to the Utility Users Tax:

Rob Sousa, Finance Director, reviewed the Staff report.

Mayor Messina asked about the \$1.4 million fee. Mr. Sousa stated that the \$1.4 million was very close estimate. Mr. Erickson stated that Valero shared with him personally, information about their actual consumption and cost of energy purchases. The \$1.4 million is a very reasonable amount. When we reach an ultimate agreement, that number will be adjusted up or down.

Council Member Patterson asked Mr. Erickson what methodology was used to provide the number to him and could he share that information with Council. Mr. Erickson stated that he couldn't aptly describe the methodology. The number applies to all the energy consumed that would be required to be taxed per the Utility Users Tax ordinance. Council Member Patterson asked if this agreement fell through, and if we would resort to the requirement for the Utility Users Tax at 4%, what would we base that on? Mr. Erickson stated that Valero stated that they recognize any final agreement will be based on actual use, consumption, and payments made to the energy company. Although the information is protected and is confidential by law, Staff will be privy to enough information to know that the tax that will be paid is the correct amount.

Council Member Hughes stated that he understands the reason for the confidentiality. However, they shared the info with Staff. Mr. Erickson stated that the numbers supplied to him reflect an appropriate and fair amount. Council Member Hughes asked if Valero agreed to share that information with the City Manager on an ongoing basis. Mr. Erickson confirmed that was correct.

Council Member Patterson asked Mr. Sousa if the consumer price index included oil and food. Mr. Sousa confirmed it did. It is the inflation index that does not show it. Council Member Patterson asked, on page IX-A-2, regarding (4), while Staff continues to negotiate that, she would like it to include public health, safety, and welfare. Currently, it allows Valero to come back because of business changes. It should be equal. Mayor Messina asked how plant expansion or contraction affected public health and safety. Council member Patterson stated that we have an agreement through the resolution that we cannot just get out of. If we had a situation where because the tax serves public purposes and uses, and that based on our analysis, there would be a need for increased

payments because of changed public health, safety, and welfare, we could open this resolution up in order to gain the greater advantage. She does not want to give away the City's right to reopen something. Mayor Messina stated that he was not 100% comfortable with that change. Mr. Erickson stated it was his understanding that in the event Valero had to reopen this, it was understood by Valero that the City would retain the same rights and privileges. There would be evenness to this agreement. Council Member Patterson stated that would be perfect. She asked about the 'nature of fluctuations'. What are those? Mr. Sousa stated that one of the things we have seen over the past year are situations like Hurricane Katrina. Situations like that can cause huge fluctuations in natural gas pricing. That would immediately impact the refinery expenditures. They could see a 50% increase in their natural gas and energy costs at the end of the year. Instead of using an annual inflator, we would use a rolling average. It would help mitigate those spikes. Over time, we would get the full return of the money. Mr. Erickson discussed a graph that shows fluctuations. Council Member Patterson stated that she would like to see the graph some time. Mr. Erickson was not sure if/when he could get the graph.

Council Member Whitney inquired about the issue of backfill from the \$1.2 million to the \$1.4 million. Mr. Sousa stated that it would be retroactive to January 1. Council Member Whitney asked about the City's exposure to loss. Mr. Sousa stated the loss would only be around \$10,000.

Council Member Patterson suggested the following changes to page IX-A-5

- Insert into the first whereas so that it reads 'whereas the City of Benicia seeks to secure a stable and predictable long term revenue stream'
- Insert into the second whereas after 'the letter agreement' 'establishing a discounted fixed payment that was extended to 6/30/2006 that was established by resolution 05-197'. It is a fixed payment and she wants to make it clear that is what this agreement is all about. It is a fixed payment rather than a pegged 4%.
- At the 'Now therefore be it resolved' paragraph, after the second to the last line, add a comma and the language 'including methodologies for calculating actual payments based on 4%'.

RESOLUTION 06-96 - A RESOLUTION AUTHORIZING A SECOND SIX MONTH EXTENSION OF THE LETTER AGREEMENT PERTAINING TO THE UTILITY USERS TAX WITH THE VALERO REFINING COMPANY

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

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

Noes: None

Absent: Vice Mayor Schwartzman

Consideration of mid-cycle budget adjustments for fiscal years 2005-2007:

Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Hughes stated that he was concerned what the budget would look like if we did not have the \$950,000 windfall in the various areas. Mr. Sousa stated that there was a 20% reserve policy. If it went below that, Staff would have to ask Council to approve adjustments.

Council Member Whitney stated that prior council's have done an excellent job looking over the city's money. This council continues to do that. He would like us to discuss 'set-asides'. We are carrying 20+% reserve that could go into the under funded 'set-aside'. We would get a more accurate reflection of what our reserves are. Mayor Messina stated that an appropriate time to do that would be next year when the budget is discussed.

RESOLUTION 06-97 - A RESOLUTION APPROVING ADJUSTMENTS TO THE MUNICIPAL BUDGETS FOR FISCAL YEARS 2005-2006 AND 2006-2007

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

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: Mayor Messina

Absent: Vice Mayor Schwartzman

Mayor Messina called for a 5-minute break at 9:07 p.m.

The meeting resumed at 9:12 p.m.

Award of contract for Park Road and Industrial Way Bus Stop:

Jim Erickson, City Manager, reviewed the Staff report. Mr. Schiada stated that Benicia received confirmation from the City of Fairfield that they would commence with service once this is finished.

RESOLUTION 06-98 - A RESOLUTION APPROVING THE CONTRACT DOCUMENTS INCLUDING ALL ADDENDA, ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT FOR THE PARK ROAD AND INDUSTRIAL WAY BUS STOP PROJECT IN THE AMOUNT OF \$141,283 TO BRUCE CARONE GRADING AND PAVING CO AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

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

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

Noes: None

Absent: Vice Mayor Schwartzman

RESOLUTION 06-99 - A RESOLUTION DIRECTING STAFF TO WORK WITH THE METROPOLITAN TRANSPORTATION AUTHORITY ON FINALIZING THE AGREEMENT FOR REGIONAL MEASURE 2 FUNDING ON PHASE II OF THE PARK INDUSTRIAL INTERSECTION IMPROVEMENT AND PARK-AND-RIDE FACILITY PROJECT

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, Whitney, and Mayor Messina

Noes: None

Absent: Vice Mayor Schwartzman

Approval of the City becoming a signatory to the Bay Area Water Forum Memorandum of Understanding:

Jim Erickson, City Manager, reviewed the Staff report.

Council Member Patterson stated that she was uncomfortable with Staff's introduction because Mr. Erickson made three statements that were incorrect. She wanted to make some clarifications. She reviewed the history the Bay Area Water Forum and how it came about. It was an outgrowth of what was established through ABAG/Cal Fed Program. It was started because the Bay Area's interests were not being dealt with in a manner that was satisfactory to the Bay Area water folks. Unfortunately, ABAG ran out of money and did not get funded to continue convening and funding these meetings of elected officials from a variety of cities. It is now integrated with the Regional Water Management Program. The situation that is happening in California is that the direction toward funding programs for water supply and water management is through an integrated regional approach. The Bay Area Water Forum is not running the Integrated Regional Water Management Planning Process. What they are doing is providing the stakeholder format for the IRWMP. Solano County Water Agency (SCWA) has been asked to participate in the Bay Area Water Forum. They have not been present at the meetings. Possibly because of that, when SCWA decided to go it alone and apply separately for grants under their IRWMP, they did not make the cut. It is clear that is what the agencies that are dispersing these funds are looking for; a regional approach, not an isolated county approach. The sterling examples of this are Alameda, Santa Clara County, and Sonoma Counties. The purpose of the MOU is to get recognition that we are working as a regional group. For fiscal reasons, she did not ask for money from the City of Benicia because we are a small city. We provided \$1,000 a year and a half ago that funded what was then the ABAG/CAL FED effort. She just wants the City to sign the MOU, not contribute money. The staffing level is minimal. In her book, this is a no brainier. This does not take away from anything that the SCWA is doing.

Council Member Hughes clarified there was no financial or staff commitment from City Staff. Mr. Erickson stated that was his understanding at this point. When we become members of something, which means that we have to have some sort of involvement. How much involvement he does not know. Council member Hughes asked why the SCWA was not signing on.

Mayor Messina stated that SCWA is comprised of the mayors in the cities in Solano County, the entire Board of Supervisors, and three representatives of water districts. It involved all of our water supplies. SCWA was concerned about having another group that could control some of the money. SCWA voted not to participate or fund this. It was not a unanimous vote.

Council Member Whitney asked Mr. Schiada how much he knew about this. Mr. Schiada stated that the group is comprised of a lot of key individuals in the community. He felt this was a decision that should be made at the Council level. He thinks Benicia is the small fish in a big pond. We rely on Mr. Okita at the SCWA to deal with the bigger picture issues. The Bay Area Water Forum is a good source of information, however, with the normal situations Staff deals with, they feel more comfortable going to SCWA for answers. Council Member Whitney asked how long the group has been in play. Council Member Patterson said she thought it was about 2 years. He asked her if Council decided not support the MOU, would she continue to serve on the committee. She confirmed she would. Council Member Whitney stated that there seems to be value in this, but he is not sure how much. He asked Staff what the value for signing the MOU was. Mr. Erickson stated that there might be information that is more direct. He does not think it is a critical effort that the City has to belong to.

RESOLUTION 06- - A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN THE BAY AREA WATER FORUM MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE CITY OF BENICIA

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Resolution was not adopted, on roll call by the following vote:

Ayes: Council Members Hughes and Patterson

Noes: Council Member Whitney and Mayor Messina

Absent: Vice Mayor Schwartzman

INFORMATIONAL ITEMS:

Reports from City Manager.

Status report on re-use of Mills School as a City Community Center:

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

Mayor Messina stated that he supported the reuse of Mills. He asked if the District office was included in this. Mr. Alvarez stated that the field south of K Street is excluded. The small field north of K Street is included. There was an indication that the maximum term of lease seemed to be five years. Mayor Messina asked how the City would justify spending dollars on renovation, upkeep, etc. when it is a short-term lease. Mr. Alvarez stated that the City could walk in tomorrow and make minimal changes to the site in order to begin using it for a community center. Five years at this point is minimal risk for the City. Mayor Messina asked that when Mr. Alvarez comes back to Council to report on this the next time, that he include some sort of a 5-year budget so Council could have an idea of what it looks like. Mayor Messina asked if there was an expectation that we will have competition with other Tier 1 groups for this site.

Council Member Patterson stated that Tier 1 was for a County childcare facility and the second would be an educational facility for children with special needs. This would not be centrally located for the County. To date, there has been no expressed interest in the site by the County. She does not see that as a real live possibility at this time. Mr. Alvarez

read the resolution adopted by the School Board on this issue. Council Member Patterson stated that the reason it is a 5-year lease is because of requirements of the Education Code. The five-year increments are the life of those bonds. Some of the solutions would be to look at the kinds of lease agreements that would contain clauses that give the City the first right to refuse to renew the lease and some other aspects. She thinks there are some solutions available. Looking at that language and having staff come up with some solutions would be helpful.

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina)
Next Meeting Date: June 21, 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: July 7, 2006
4. League of California Cities (Mayor Messina)
Next Meeting Date: September 6-9, 2006 – Annual Conference
5. School District Liaison (Council Members Whitney and Hughes)
Next Meeting Date: September 14, 2006
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) Next Meeting Date: July 5, 2006
7. Solano EDC Board of Directors (Mayor Messina)
Next Meeting Date: July 27, 2006
8. Solano Transportation Authority (STA) (Mayor Messina)
Next Meeting Date: July 12, 2006
9. Solano Water Authority/Solano County Water Agency (Mayor Messina)
Next Meeting Date: July 13, 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 Date: To be determined. – Council Member Whitney stated that at the last meeting, it was asked that the City of Benicia support the proposed budget allocation at the County level for funding to open up accessibility to Lynch Canyon. It was too late to get it into this agenda. He asked the Mayor if he would be open to signing that. Council Member Whitney signed the document as the Chair for the Board and we signed it and sent it up to the County. He wanted to let his colleagues know that occurred. He will make sure that the other Council Members receive copies of the letter. Council Member Whitney stated that he forwarded to Mr. Erickson a request for monies to help support a position at Lynch Canyon (in the area of \$5,000). That will go to the Council for discussion at a meeting towards the end of July.
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: June 28, 2006
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson)
Next Meeting Date: To be determined.

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:56 p.m. and returned to Closed Session.

Lisa Wolfe, City Clerk