

July 6, 2004

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
JULY 6, 2004**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, July 6, 2004, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

None

APPOINTMENTS:

RESOLUTION 04-90 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MARY EIGHBAUER TO THE LIBRARY BOARD OF TRUSTEES TO A FULL TERM ENDING JUNE 1, 2007

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

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

Noes: None

Mayor Messina stated that Mr. Robert Plew withdrew his application for the Human Services Fund Board. There are still two openings on this Board.

RESOLUTION 04-91 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF LARRY FULLINGTON TO THE ECONOMIC DEVELOPMENT BOARD TO A FULL TERM ENDING JULY 1, 2008

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

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

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

Mayor Messina presented the following proclamation to the League of Women Voters of Benicia:
Welcoming the Establishment of a League of Women Voters Benicia

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

City Manager Jim Erickson clarified that there is not a resolution accompanying Agenda item VIII-A. This will only require approval by minute action. Mr. Erickson stated that Council Member Smith had requested some changes to the 6/22/04 special meeting minutes. He directed Council to the specific change requests. Mr. Erickson stated that Staff appreciates receiving change requests prior to the meeting time.

Council Member Campbell suggested moving agenda items VII-C and VIII-B to immediately follow the Consent Calendar.

On Motion of Council Member Whitney, seconded by Council Member Smith, and unanimously approved, the Agenda was adopted as amended on roll call by the following vote:

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

Noes: None

COMMUNICATIONS:

WRITTEN:

A letter from Mr. John Ash was distributed to all Council Members. A copy of the letter is on file with the agenda packet.

PUBLIC COMMENT:

1. Kitty Griffin - Ms. Griffin stated that she is against the City putting Protect Our Waterfront's (POW's) initiative on the November ballot. It takes the public by surprise and asks them to make a false choice between almost no development and intensive development without any alternatives to consider or time to think it over. Ms. Griffin suggested various alternatives to resolve the issue. Her position on the trees in front of the Olson Project is that they should all be saved.
2. Sean Smith, Blue Water Network - Mr. Smith asked Council to deny or revoke the permit for the jet ski races at the upcoming Waterfront Festival. He discussed the negative health aspects and environmental impacts that such jet ski races have on the waterways. He discussed the extensive toxic substances that are dumped into the water during such races. Mr. Smith stated that he realizes it may be too late to revoke the permits for the upcoming races. He stated that if the permits cannot be revoked, the City should at least conduct water quality testing when the races during the races. This information will assist Blue Water Network in their efforts to address this important issue in the future. Vice Mayor Patterson had questions

regarding possible consistency issues with other agencies on this matter. She asked Mr. Smith to give a quick rundown on what other jurisdictions were doing regarding this issue. Mr. Smith stated that the city of Tiburon has prohibited jet skis from all of their City waters. Belvedere is considering this as well. The National Park Service has prohibited jet skis from their waterways. Jet ski's are all but banned in Monterey. Marin County has passed an ordinance which allows city's to prohibit jet ski's from their water ways if they choose, which is what Tiburon has done.

3. **Mark Boehme - Mr. Boehme stated that he has experienced poor customer service from the City's building department (with specific reference to building inspection services). The inspectors he has dealt with have been rude and condescending. Lack of communication from the department caused him missed time from his job waiting for the building inspectors to show up. Mayor Messina asked Mr. Boehme to provide a name and phone number where the City Manager can contact him to follow up on these issues.**
4. **John Ash - Mr. Ash referred to the written letter (on file) he submitted to Council regarding the eminent domain proceedings for the Marina Area Storm Drain Project. He would like it read during that portion of the meeting.**
5. **Jeanine Seeds - Ms. Seeds stated that she felt an article that one Council Member wrote in the local paper regarding 'new goals' was not appropriate. Council Member Smith stated that the goals that he listed were the same ten goals he has been working on since he came into office. He was simply providing an update to those goals.**
6. **Council Member Smith announced the following upcoming events:**
 - **On 7/9/04, the movie 'Miracle' will be playing in the City Park.**
 - **On 7/16/04, Family Fun Night will be held at the James Lemos Pool.**
 - **Arts Benicia will be having a print show and sale for the next few weekends.**
 - **There will be a 'Praise in the Park' event at the City Park on 7/11/04.**
 - **The Solano County Fair will be coming up from 7/16 to 7/25 in Vallejo. Benicia Day will be on 7/21.**
 - **There will be two upcoming concerts. Peppino D'Agostino will be playing on 7/18 at the Jefferson Street Mansion. On 7/23, there will be a 'Concert in the Park' at the City Park.**
 - **The 97th Annual Holy Ghost Celebration will be held on 7/25.**
 - **The Waterfront Festival will be held on July 31st.**

CONSENT CALENDAR:

Mayor Messina asked if there were any items to be pulled.

Vice Mayor Patterson requested item V-A be pulled. Mayor Messina requested items V-D and V-E be pulled. He has a conflict of interest with these items.

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

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

Noes: None

Council approved the denial of the following claims and referred them to the insurance carrier:

- 1. Baumgartner**
- 2. Haderman**
- 3. Ross**

ORDINANCE 04-9 - AN ORDINANCE APPROVING A ZONE CHANGE FROM SINGLE FAMILY RESIDENTIAL (RS) TO PLANNED DEVELOPMENT (PD) FOR APN: 0088-133-020 IN THE 600 BLOCK OF EAST N STREET

RESOLUTION 04-92 - A RESOLUTION ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT IN THE AMOUNT OF \$457,488.80 TO BAY CITIES PAVING AND GRADING OF CONCORD, CA FOR THE 2004 STREET OVERLAY PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

RESOLUTION 04-93 - A RESOLUTION ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT IN THE AMOUNT OF \$56,850.40 TO BAY CITIES PAVING AND GRADING OF CONCORD, CA FOR THE WEST I STREET IMPROVEMENT PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

RESOLUTION 04-94 - A RESOLUTION ACCEPTING THE 2003 MISCELLANEOUS CITYWIDE STREET REPAIRS INCLUDING CHANGE ORDERS NO. 1 AND 2, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

RESOLUTION 04-95 - A RESOLUTION OF THE CITY OF BENICIA DECLARING ITS INTENTION TO VACATE THE EASTERLY END OF EAST K STREET AND A SEGMENT OF EAST SEVENTH STREET SOUTH OF EAST K STREET, AND SETTING THE PUBLIC HEARING FOR AUGUST 3, 2004

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Vice Mayor Patterson stated that she had some corrections to the 6/15 and 6/22 minutes. Council continued the minutes until the 7/20 meeting so that the changes could be reviewed.

RESOLUTION 04-96 - A RESOLUTION APPROVING THE FINAL MAP FOR THE WATERFRONT VILLAGE

SUBDIVISION, AUTHORIZING THE CITY CLERK TO SIGN THE FINAL MAP AND THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT

Mayor Messina excused himself due to a conflict of interest. Vice Mayor Patterson chaired this portion of the meeting.

On motion of Council Member Smith, seconded by Council Member Whitney and unanimously approved, the above Resolution was adopted on role call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Whitney

Noes: None

Abstain: Mayor Messina

RESOLUTION 04-97 - A RESOLUTION APPROVING THE FINAL MAP FOR THE HARBOR WALK SUBDIVISION AND AUTHORIZING THE CITY CLERK TO SIGN THE FINAL MAP AND THE CITY MANAGER TO EXECUTE THE SUBDIVISION IMPROVEMENT AGREEMENT

Public Comment:

1. **Gay Roche - Ms. Roche stated that she feels that the 25-foot roadway approved in this project is not wide enough. She stated various issues and problems she feels would arise due to the narrow road. Ms. Roche feels it could create public safety issues. Staff responded to Ms. Roche's concerns.**
2. **Vice Mayor Patterson stated that she had received a number of phone calls and email messages regarding the trees lining First Street in front of the Olson project. She stated that citizens had stated that they had made phone calls to the Olson Company, and their phone calls had not been returned. Vice Mayor Patterson stated that there should be a readily available 'hotline' for citizens to call during construction in this project. She also asked that the Olson Company return phone calls in the future.**
3. **David Ernst - Mr. Ernst stated that the roadway in question should be 14-feet into lot #1 and 14-feet into lot #2 according to legal documents he has. Mr. Joe Bradford, the Olson Company stated that the area Mr. Ernst was referring to was an easment, not the road in question.**
4. **Council Member Smith asked Mr. Bradford if a larger space could be considered for the road. Mr. Bradford stated that the 25-foot road was sufficient.**
5. **Joe Bradford, Olson Company - Mr. Bradford stated that the reason they did not return the citizen's phone calls were because they were calling about the tree issue. The Olson Company felt the best way to address the trees was at the Council Meeting. Since it was on the prior agenda, they felt it would be discussed at that time. Vice Mayor Patterson stated that they should still return phone calls to the citizens.**
6. **Vice Mayor Patterson stated she knows of some very large and very old camphor trees in Sacramento and Concord. She has received calls from citizens who are aware of such trees in other cities as well. There are some small sidewalk problems, but the cities have figured out a way to live with the trees. She thought it was an unfortunate condition (of the Olson project)**

that was approved and she was sorry she missed the meeting, as she would have discussed it. On the arborist report, there are five trees that were declared to be in good health. She believes the citizen's request was a request to look at the possibility of saving the five trees. On the conditions of approval, it states that the City has discretion for minor alterations. She is curious to find out if saving the trees is a minor alteration. It is a requirement that was imposed on the developer by the City. The City has information that five of the trees are of good quality and stature. On the other hand, if this had to come back for approval it would just be the one item. It would not open up the developer to challenge other conditions or issues. This was the discussion that Council did not have at the last meeting. City Manager Jim Erickson stated that it is a strong recommendation by Staff that all of the camphor trees be removed. He recommends Council stick with the current plan. Vice Mayor Patterson stated that the reason a tree sub-committee is being formed is for Staff and citizens have a better understanding of tree management and care. It should be better stated that we have room for improvement at both the staff and public level. That is what the tree program will address.

On motion of Council Member Council Member Whitney, seconded by Council Member Smith and unanimously approved, the above Resolution was adopted on role call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, and Whitney

Noes: None

Abstain: Mayor Messina

UNFINISHED BUSINESS:

(This item in Unfinished Business was moved up in the Agenda per Council's request.)

Economic Development Board (EDB) Recommendation for revision to the City's Business License Tax:

Assistant City Manager Karen Majors reviewed the staff report on this item. Ms. Majors gave a power point presentation detailing the EDB's recommendation.

Mr. Mike Ioakimedes, EDB Chairman, gave a history of how the EDB got to where they are with the Business License Tax recommendations. He discussed how the Utility User's Tax came into play. The business community was initially very skeptical. After some discussion, the business community stepped up to the plate and is now on board with the EDB's recommendations. Mr. Ioakimedes stated that the EDB had discussed the requests and recommendations brought up at the 6/15 Council meeting. They (EDB) have incorporated Council's 'marching orders' into their current recommendations. He commended the business community for their willingness to support the Business License Tax increase. He stated that the current recommendations of the EDB are 'as good as it gets' with a 30-year old tax.

Mayor Messina asked Ms. Majors to estimate how much Staff time would be required to administer the program. Ms. Majors stated that they are not tracking Staff time spent on the Business License Tax. They do not anticipate there will be a need to increase Staff time once the Business License Tax is increased.

Council Member Campbell stated that part of the whole strategy was to reduce expenditures first. He

asked Mr. Erickson to explain what has been done to reduce expenditures in the last two years. Mr. Erickson explained in detail the expenditure reductions that have taken place over the past two years.

Vice Mayor Patterson and Mr. Erickson briefly explained the history that got us to this point. Vice Mayor Patterson had questions on how enforcement would be dealt with. The City Attorney stated that the issue of enforcement could be written into the ordinance.

Council Member Campbell asked Ms. Majors what the penalty would be if a business failed to obtain a business license. Ms. Majors stated that the penalty would be a 10% per month, up to a maximum 50% fee for the time without a business license, plus the cost of the business license for the current year, plus a \$500 fine for violating the ordinance.

Public Comment:

1. Gary Kalia, President of Benicia Industrial Park Association (BIPA) - Mr. Kalia stated that the tripling of fees would be hard, but he supports it. He owns a local business. He appreciates the opportunity to be involved in the process. He stated that he supports the EDB's recommendations for increasing the Business License Tax. The EDB has done a great job with this issue.
2. J.B. Davis - Mr. Davis stated that he is a member of the EDB. A lot of time and effort was put into coming up with the current recommendations. He urged Council to approve the EDB's recommendations.
3. Vinnie Morretti - Mr. Morretti spoke on behalf of the Benicia Chamber of Commerce. He appreciates the opportunity to be involved in the process. Mr. Morretti stated that the Chamber of Commerce, the BIPA, and the EDB endorse option #4. He thanked Council Member Campbell for supporting this issue over the past few years.
4. Tony Shannon - Mr. Shannon owns a local business. He stated that he supports option #4. However, he is concerned about the classification of employees and 1099's. It could create a double taxation. Ms. Majors addressed the issue. She stated that the language and definitions need to be tweaked. It is not the City's intention to have 'double taxation'.
5. Council Member Whitney stated using the worker's comp classification could be a way to distinguish or identify the classification of employees.
6. Sue Kleiman - Ms. Kleinman is a member of the EDB. She said that if the cost of living increase had been put in the original ordinance, we would not be here today. It would be generating twice as much revenue as we are asking for. If the increased Business License Tax generates too much revenue, the excess should go back to the business community.
7. Larry Fullington - Mr. Fullington stated that the most significant thing he has heard tonight was Gary Kalia's statement "Lets help the City of Benicia." Since the business community has bought into this, Council should move forward with it.
8. Council Member Smith stated the Business License Tax is 32 years old. He commented on how the current increase proposal came about. He thanked everyone involved for their efforts.

9. Council Member Whitney stated that the model this community uses, the workshops, reaching out, etc works. He commended everyone involved in the process for their efforts.
10. Vice Mayor Patterson stated that sense of fairness in this issue was evident. She appreciates the comparisons from other communities that Staff provided. She stressed the need to have a CPI.
11. Council Member Campbell thanked everyone involved in this process for their efforts.

On motion of Council Member Smith, seconded by Council Member Whitney, and unanimously approved, Council accepted the EDB's recommendation for revision to the City's Business License Tax on roll call by the following vote:

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

Noes: None

NEW BUSINESS:

(This item in New Business was moved up in the Agenda per Council's request.)

Mayor Messina excused himself from this section of the meeting due to a conflict of interest. Vice Mayor Patterson chaired this portion of the meeting.

Update on the status of the Waterfront Park Ballot Measure and possible direction to Staff:

Follow up on the EDB recommendation regarding a community consensus process to determine the development potential for City-owned property from the Marina to the First Street Spit:

City Attorney Heather McLaughlin reviewed her department's staff report on this item. Immediately following, Assistant City Manager Karen Majors reviewed her department's staff report on the same item.

Vice Mayor Patterson presented a draft conceptual resolution (on file) as an alternative to the two options listed in the Agenda packet. She summarized the conceptual resolution.

Public Comment:

1. Mike Ioakimedes - Mr. Ioakimedes stated that he was not representing the EDB; he was representing his individual concerns on this issue. He stated that he was concerned about the way POW's petition was represented to him and his wife. He stated that the information was not represented accurately. He wanted Council to encourage public participation in this process. He clarified that the idea of a hotel in this area was just that, 'an idea'.
2. Susan Street - Ms. Street encouraged Council to put the Waterfront Park Ballot initiative on the November ballot. She stated that it was clear to petition signers that they were unaware that the Council could, at any time, approve any kind of development on that property south of B Street, from First Street to the Harbormaster's office. She stated that the approximately 2,967 signatures were gathered with ease. Council should recognize the citizen's wishes and

put the initiative on the November ballot. The timing could work out. Council could ask the State for an 'accelerated review'.

3. Tony Shannon - Mr. Shannon stated that he noticed at the last Council meeting that the public did not want to see money spent on a consultant. He was offended by someone's comment that \$40,000-\$60,000 was a 'pittance'. There are alternatives to hiring a consultant. One possible alternative would be to use an Internet poll to find out what the public wants.
4. Bob Mutch - Mr. Mutch stated that a community consensus process should be considered. He discussed why the EDB wanted to hire a consultant to facilitate a community consensus process. Benicia needs a mixed use anchor at the foot of First Street. He urged Council to reconsider their position on this item.
5. Ed Salzman - Mr. Salzman stated that he is concerned about the role of the EDB Chairman in the discussion of this issue in his official capacity as Chairman. He stated he thinks Mr. Ioakimedes should excuse himself from this portion of the meeting. Council Member Smith clarified that Mr. Ioakimedes is not a public official.
6. David Ernst - Mr. Ernst stated that in the EDB meeting, when this process was initially discussed, the word 'development' or 'develop' was used 20 times, and the word 'open space' was only used once, and that was just to clarify where open space fit in the General Plan. He then discussed the General Plan. Mr. Ernst stated that Susan Street has been maligned as someone who is out for his or her own interests. This is not correct.
7. J.B. Davis - Mr. Davis stated that he supports a community consensus in this process.
8. Jeanine Seeds - Ms. Seeds responded to Mr. Mutch and Mr. Davis' comments.
9. Bob Craft - Mr. Craft stated that the best way to gauge the community's feelings is with a ballot measure. Commercial development should not be considered. Nothing higher than a park should be put in this area.
10. Ruth Pierce - Ms. Pierce implored Council to put this item on the November ballot.
11. Tony Shannon - Mr. Shannon stated that the comment by Mr. Mutch that the 'First Street Green' would not attract people from out of town is not correct.

Vice Mayor Patterson asked Collette Meunier, Community Development Director, to explain the expedited process of obtaining a mitigated negative declaration. She then asked Ms. McLaughlin how comfortable she was with expediting a mitigated negative declaration process. Ms. McLaughlin stated that she is not comfortable with expediting this process. Staff's best work cannot be done in such a short time. She advised Council against expediting the mitigated negative declaration process.

Council Member Smith agrees with the information in the Vice Mayor's proposed draft resolution. He would support a facilitated public workshop that could assist in developing a community consensus. He would support Internet polling. The truest indicator is the ballot box. Council should put an advisory measure on the ballot that mirrors POW's initiative, and also an advisory measure that is an alternative to POW's initiative.

Council Member Whitney stated that he is hesitant to go against the advice of the City Attorney. He would like to see a workshop process. Council and the community need ample time to fully understand the issues.

Council Member Campbell stated that he does not support the expedition of the mitigated negative declaration process.

Vice Mayor Patterson stated that it was Council's consensus to give direction to Staff that they will not put this item on the November ballot. She stated that Council should look at developing a community understanding of the issues that POW has pointed out, and also parts of the General Plan that pertain to this issue. There needs to be an informed vote. If we don't have the public's support, we won't get the funding. She would like Council to consider the alternative resolution she has provided.

Council gave direction to Staff to come up with a resolution concept and two conceptual alternative ballot measures (1) one that mimics POW's initiative, and one that is an alternative to POW's initiative. They are to be mindful of the suggestions discussed at this meeting such as the Internet polling, etc.

Council Member Campbell stated that the City needs to find out if POW is interested in a dialogue. If they are not, Staff's time and efforts in this issue may be useless.

Vice Mayor Patterson called for a 7-minute break at 10:40 p.m.
The meeting resumed at 10:48 p.m.

PUBLIC HEARINGS:

City of Benicia Landscaping and Lighting District:

RESOLUTION 04-98 - 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 2004-05

Mayor Messina reviewed the background on this item.

Dan Schiada, Public Works Director reviewed the staff report on this item.

Council Member Smith stated that the assessments will not go up this year, however, Staff is anticipating a raise next year.

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

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

Noes: None

UNFINISHED BUSINESS:

Update on Valero's Third Party Consultant Mechanical Reliability Evaluation:

Ken Hanley, Fire Chief, reviewed the staff report on this item.

The City's Third Party Consultant, MRS, provided a power point presentation updating their progress to date on the project.

Dana Dean discussed the importance of 4th party oversight. This entire project has been a fantastic process. She is very pleased with the progress MRS has made with this project. She thanked everyone involved for investing time and money in this project.

Council Member Whitney stated that we needed to have impeccable integrity from the start. That is exactly what we have at this time. MRS has done exactly what the City needed them to do. The Valero Community Advisory Panel (CAP) meeting in July has been cancelled. Becht (Valero's consultant) is still in the process of gearing up. The meeting in August will be packed full of details.

Council Member Smith stated that the work plan is a good document. He had some questions for MRS in the data information sheets and the availability of data from Valero.

Vice Mayor Patterson stated that one of the issues discussed early on in this process was the 'intensity of operation' at Valero. She stated that she did not see this addressed in the initial document. She said that this should show up somewhere under the operational management section under the seed questions. MRS responded that this would most likely be covered under the 'operating envelopes'.

Acceptance of Zucker Action Plan and initiation of revisions to the appeal process and the consultant contracting procedures:

City Manager Jim Erickson suggested addressing the other items on the Agenda before this item, due to the late hour. There are citizens in the audience waiting to hear Council address the other items on the Agenda.

Council Member Campbell suggested continuing this item until the next Council Meeting.

On motion of Council Member Campbell, seconded by Council Member Smith and unanimously approved, Council voted to continue the meeting past 11:30 p.m. on roll call by the following vote:

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

Noes: None

On motion of Vice Mayor Patterson, seconded by Council Member Campbell, Council voted to introduce new items past 11:30 p.m. on roll call by the following vote:

Ayes: Council Members Campbell, Patterson and Smith

Noes: Council Member Whitney and Mayor Messina

NEW BUSINESS:

Authorization and appropriation of funds for the city attorney to obtain legal services related to title work for the Jefferson Street Area as well as possible work related to various city streets:

City Attorney Heather McLaughlin reviewed the staff report on this item.

Mayor Messina stated that he does not believe it would be a good use of funds to chase the title analysis for Jefferson Street. Worse case would be that the City would end up in a horrific lawsuit. He believes investigating the title insurance with relation to the City streets.

Council Member Whitney concurs with Mayor Messina. He stated the \$10,000 for the title insurance to underwrite the City streets would be money well spent.

Council Member Campbell wants Council to look at a document in the land exchange agreement that states the City gave the street away.

Vice Mayor Patterson suggested giving direction to the City Attorney to determine if the prescriptive right has potential. The second question would be to research the title.

Ms. McLaughlin stated that it was her opinion that the City does not have title to the property. However, they may have a prescriptive easement. This needs more research to see if there has been regular use of the property for public access. Ms. McLaughlin estimated the cost for such an investigation would be in the area of \$20,000. If the cost is more than \$20,000, she will come back to Council for direction.

On motion of Mayor Messina, seconded by Vice Mayor Patterson, Council approved to expend monies to determine if the City has rights for the prescriptive easements for the Jefferson Street area on roll call by the following vote:

Ayes: Council Members Campbell, Patterson and Smith

Noes: Council Member Whitney and Mayor Messina

Public Comment:

- 1. Richard Bortolazzo - Mr. Bortolazzo stated that if the property owners allow the City to take an easement on the property, it would considerably diminish their ability to obtain development there. This would be a tremendous loss for the property owners. This is 7 acres of privately owned, commercial zoned property. They (the property owners) can justify an extensive amount of funds to litigate this matter if they have to. The road in question was barricaded when they closed escrow. Someone removed the barricade during escrow. They have witnesses who will testify that the road was barricaded at the time. They have consulted their attorneys and they have title policy. There is no prescriptive easement out there. The City can spend the money looking into this if they want to.**

2. **Bob Whitehead - Mr. Whitehead agrees with everything Mr. Bortolazzo said. He finds it amusing that the City would try to get a prescriptive easement for a certain click of people. The street was barricade when they bought the property. He supports Mr. Bortolazzo 100%. He said that 2000 people signed the initial petition for development on this property. He said that at that time, the issues were not being presented honestly.**

Council Member Whitney stated that this is a classic can of worms. He urged Council to think about this some more. It will be a very costly process.

Council Member Campbell stated that figuring out the title issue might extinguish some of the fireworks with this issue.

On motion of Mayor Messina, seconded by Council Member Whitney, Council approved Staff looking in to finding a major title insurer who will underwrite the title to the City streets, on roll call by the following vote:

Ayes: Council Members Smith, Whitney, and Mayor Messina

Noes: Council Members Campbell and Patterson

Marine Area Storm Drain: Eminent domain proceedings for easements:

RESOLUTION 04-99 - A RESOLUTION DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION OF CERTAIN PROPERTY AND DIRECTING THE CITY ATTORNEY TO FILE EMINENT DOMAIN PROCEEDINGS FOR THE MARINA AREA STORM DRAIN PROJECT

Ms. McLaughlin stated that there was a court reporter at the meeting to record discussion on this item. Ms. McLaughlin reviewed the staff report on this item.

Mayor Messina asked if the City has asked Benicia Harbor Corporation if we could put this pipe in. Ms. McLaughlin stated that the City has not specifically asked Benicia Harbor Corporation, however, the City has been indirectly working with them and it is clear that they are not willing to give us a storm drain easement.

Vice Mayor Patterson stated that any action the City takes cannot interfere with the public trust lands. Ms. McLaughlin suggested inserting this into the resolution on page VIII-C-7 after the first 'be it further resolved' stating 'the storm drain easements will not interfere with the public trust land'. Vice Mayor Patterson added that 'specifically that the action of the eminent domain will not change the status of the public trust land'.

Council Member Campbell and Mayor Messina are somewhat uncomfortable with the fact that the City has not specifically asked Benicia Harbor Corporation if the pipe could be installed in the area. Ms. McLaughlin stated that the City is not required to ask them for permission.

Michael Throne, Assistant City Engineer, provided an expedited version of the staff report on this item.

Council Member Smith asked for Staff's position on a statement in Mr. Ash's letter regarding realignment of the storm drain. Mr. Throne and Mr. Schiada stated that the suggestion by Mr. Ash is not a feasible alternative from a hydraulic standpoint. It would not solve the drainage problem.

Public Comment:

1. City Attorney Heather McLaughlin read a letter from Mr. John Ash, Benicia Harbor Corporation, so that it would be on the record. (The letter is on file with the original Agenda packet.)

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

Ayes: Council Members Campbell, Patterson, Smith, and Whitney

Noes: Mayor Messina

REPORTS FROM CITY MANAGER:

Update Transportation of Livable Communities Grant:

Dan Schiada, Public Works Director, reviewed the staff report on this item.

Council Member Smith asked if Staff had determined if this was the appropriate project for these funds. Mr. Schiada stated that there were some other projects they are looking into at this time.

Vice Mayor Patterson asked Staff for clarification on how they will proceed on addressing the water quality control issues with the jet ski and power boat races. Mayor Messina asked Staff to make contact with the Regional Water Quality Control Board and report back to Council at the next meeting.

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:25 a.m. on July 7, 2004.

Lisa Wolfe, City Clerk