

July 14, 2011

BENICIA PLANNING COMMISSION

CITY HALL COUNCIL CHAMBERS

AGENDA

Thursday, July 14, 2011

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

III. OPPORTUNITY FOR PUBLIC COMMENT

This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN

B. PUBLIC COMMENT

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

A. [Approval of Minutes of June 9, 2011](#)

V. REGULAR AGENDA ITEMS

A. METAL OBJECT IN WINDOW AT 724 FIRST STREET -- TO BE CONTINUED

PROPOSAL:

At its May 12 meeting, the Planning Commission directed staff to return within two months for discussion of a sign permit and/or variance for the metal object in the window of the Rellik Tavern. Staff is continuing to review the application of the Municipal Code to this item.

Recommendation:

This item will be continued to a date determined by staff working in conjunction with the business owner.

B. USE PERMIT TO OPERATE A TATTOO BODY ART STUDIO AS AN ANCILLARY USE TO AN ART GALLERY

PROPOSAL:

The applicant requests approval of a use permit to operate a tattoo body art studio as an ancillary use to a new art gallery located at 814 First Street. The art gallery will have regular business hours from 11 a.m. to 7 p.m. everyday of the week, and the business owner will be available to provide body art during these hours by appointment only.

Recommendation:

Approve Use Permit 11PLN-00025 to allow the operation of a tattoo body art studio as an ancillary use to an art gallery located at 814 First Street, based on the findings and subject to the conditions of approval set forth in the proposed resolution.

VI. COMMUNICATIONS FROM STAFF

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agenda and non-agenda matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action the Commission may take.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items, which remain on the agenda, may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions that are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Public Works & Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Public Works & Community Development Department during regular working hours. The Public Works & Community Development Department is open Monday through Friday (except legal holidays), 8:30 a.m. to 5 p.m. (closed from noon to 1 p.m.). Technical staff is available from 8:30 - 9:30 a.m. and 1:00 - 2:00 p.m. only. If you have questions/comments outside of those hours, please call 746-4280 to make an appointment. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Public Works & Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Kathy Trinque, Administrative Secretary, as soon as possible so that it may be distributed to the Planning Commission.

 [Staff Report for 814 First Street](#)

 [June 9 2011 Minutes](#)

**AGENDA ITEM
PLANNING COMMISSION MEETING: JULY 14, 2011
REGULAR AGENDA ITEMS**

DATE : June 28, 2011

TO : Planning Commission

FROM : Doug Vu, Associate Planner

SUBJECT : **USE PERMIT TO OPERATE A TATTOO BODY ART STUDIO AS AN ANCILLARY USE TO AN ART GALLERY**

RECOMMENDATION:

Approve Use Permit 11PLN-00025 to allow the operation of a tattoo body art studio as an ancillary use to an art gallery located at 814 First Street, based on the findings and subject to the conditions of approval set forth in the proposed resolution.

EXECUTIVE SUMMARY:

The applicant requests approval of a use permit to operate a tattoo body art studio as an ancillary use to a new art gallery located at 814 First Street. The art gallery will have regular business hours from 11 a.m. to 7 p.m. everyday of the week, and the business owner will be available to provide body art during these hours by appointment only.

BUDGET INFORMATION:

No budget impact has been identified.

ENVIRONMENTAL ANALYSIS:

The proposed project is Categorically Exempt per California Environmental Quality Act (CEQA) Guidelines, Section 15301(a) Existing Facilities – Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances. The subject property may undergo tenant improvements that will only include interior alterations including the installation of interior partitions and electrical conveyances.

BACKGROUND:

The subject property is located on the east side of the 800 block of First Street, between West H and West I Streets. The General Plan designation for the property is Downtown and the Zoning classification is Town Core (TC) within the Downtown Mixed Use Master Plan. All adjacent land uses are also Town Core and include Aroma Indian Restaurant to the north, Buddhaful Nail Salon to the east, Tommye Hansen's Nail Salon to the south and Mai Thai Restaurant across First Street to the west (see Figure A). The primary intent of this zone is to enhance the vibrant, pedestrian-oriented character of First Street, and the uses are regulated to reflect the urban character of the historic shopfront buildings.



Figure A: 814 First Street

SUMMARY:

Project Description

The applicant and business owner, Mr. Landon Mau, currently owns and operates a tattoo body art studio named Creations and Illustrations, located at 949 Grant Street in Benicia. The applicant has been working as a tattoo artist for nine years and the City has not received any complaints regarding his business. He proposes to re-locate to 814 First Street and operate an art gallery with an ancillary tattoo body art studio using the same name. The proposed art gallery and tattoo body art studio will occupy an approximately 400 square foot unit in a multi-tenant commercial building. Approximately 220 square feet of floor area will be used as gallery and reception space, 60 square feet as an office, and 120 square feet for the tattoo body art studio that will have space for up to two workstations (see Figure B).

The gallery will feature the applicant's original artwork that includes oil paintings, watercolors, pen and ink drawings, and mixed media artwork. He has indicated he may also feature other local artists through special exhibitions and displays. The art gallery will have regular business hours from 11 a.m. to 7 p.m. on Monday and Wednesday through Saturday, and Mr. Mau will be available to provide tattoos during these hours by appointment only. As with his current studio, he anticipates between one and five appointments per day. In the future, the business owner would like the option to add one additional workstation within the 120 square foot room, for a total of two workstations that will offer tattoos and body piercing. The owner also requests the option to operate his business every day of the week in the future. As a condition of approval, the business will be required to verify that all body art customers are at least 18 years of age through valid identification.

The California Health and Safety Code addresses the permitting and sanitation needs for tattooing, body piercing and non-medical permanent cosmetics. The Code requires that the

California Conference of Local Health officers (CCLHO) establish sterilization, sanitation, and safety standards for the persons who perform tattooing, body-piercing or non-medical permanent cosmetics. Once these standards are adopted, facilities in Solano County where tattooing, body piercing, or permanent cosmetics is performed will be inspected by the Solano County Department of Environmental Management, Environmental Health program. Currently, persons engaged in the business of tattooing are only required to register with Solano County Department of Environmental Health and are encouraged to follow guidelines for sanitation, sterilization and safety. The applicant complied with this regulation prior to operating his current tattoo studio.

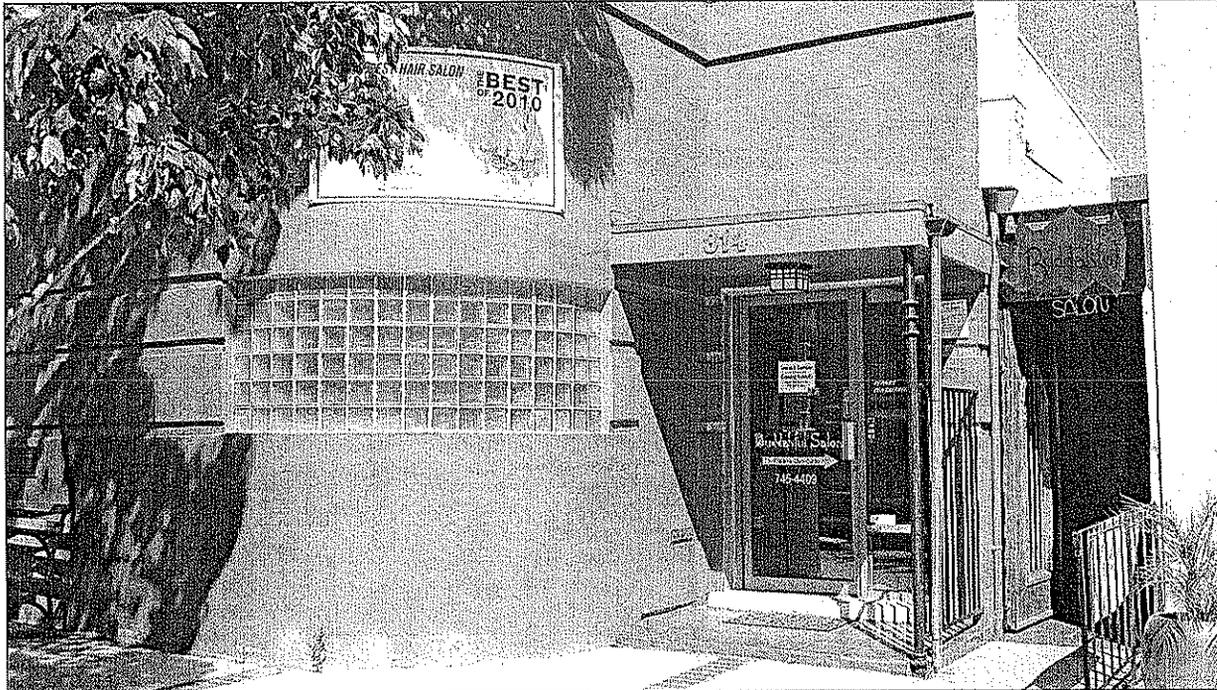


Figure B: Tenant space for art gallery and tattoo body art studio

Pursuant to Benicia Municipal Code Section 17.104.060, in order to approve the use permit, the Planning Commission must make the following findings:

- 1) *The proposed location of the use is in accord with the objectives of Title 17 and the purposes of the district in which the site is located. This finding can be made. The Downtown Mixed Use Master Plan allows body art and piercing as an ancillary use upon approval of a use permit in the Town Core zoning designation. The approximately 120 square feet of floor area that will be used as the body art studio is ancillary to the 220 square feet of area that will be used as art gallery space. An additional 60 square feet will be used as an office.*

- 2) *The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city. This finding can be made. The proposed art gallery and body art studio is consistent with General Plan*

Policy 2.12.1, which emphasizes retail sales and commercial businesses along First Street. The use is also consistent with General Plan policy 2.13.1 that encourages the City to direct new commercial ventures towards Downtown prior to other existing economic centers. The body art studio will be required to verify that all customers are at least 18 years of age, and the tattoo artist has registered with the Solano County Department of Environmental Health and will observe safe and sanitary practices. The location of the single workstation, and upto one additional workstation once the business expands, cannot be viewed from the street and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood.

- 3) *The proposed conditional use will comply with the provisions of this Title 17, including any specific condition required for the proposed conditional use in the district in which it would be located.* This finding can be made. The ancillary body art studio is compatible with surrounding commercial businesses and provides a community need that complies with all applicable conditions required for this use classification in the Downtown Mixed Use Master Plan's Town Core zoning district.

Conclusion

The proposed Use Permit 11PLN-00025 to establish a tattoo body art studio as an ancillary use to an art gallery is compatible with the General Plan and consistent with the intent and purposes of the City's zoning ordinance and Downtown Mixed Use Master Plan. Staff recommends the Planning Commission approve the use permit based on the findings and subject to the conditions of approval set forth in the proposed resolution.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten calendar days.

Attachments:

- Draft Resolution
- Applicant's Statement and Floor Plan

DRAFT RESOLUTION

RESOLUTION NO. 11-XX (PC)

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BENICIA APPROVING A USE PERMIT (11PLN-00025) TO
OPERATE A TATTOO BODY ART STUDIO AS AN ANCILLARY USE TO AN ART
GALLERY LOCATED AT 814 FIRST STREET**

WHEREAS, the applicant, Mr. Landon Mau, has submitted an application for a use permit to operate a tattoo body art studio as an ancillary use to an art gallery located at 814 First Street; and

WHEREAS, the Planning Commission at their regular meeting on July 14, 2011 conducted a public hearing and reviewed this proposed project; and

WHEREAS, the Planning Commission made the following findings relative to the Use Permit approval:

1. The proposed location of the use is in accord with the objectives of Title 17 and the purposes of the district in which the site is located. The Downtown Mixed Use Master Plan allows body art and piercing as an ancillary use upon approval of a use permit in the Town Core zoning designation. The approximately 120 square feet of floor area that will be used as the body art studio is ancillary to the 220 square feet of area that will be used as art gallery space. An additional 60 square feet will be used as an office.
2. The proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the general plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of such use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city. The proposed art gallery and body art studio is consistent with General Plan Policy 2.12.1, which emphasizes retail sales and commercial businesses along First Street. The use is also consistent with General Plan policy 2.13.1 that encourages the City to direct new commercial ventures towards Downtown prior to other existing economic centers. The body art studio will be required to verify that all customers are at least 18 years of age, and the the tattoo artist has registered with the Solano County Department of environmental Health and will observe safe and sanitary practices. The location of the single workstation, and upto one additional workstation once the business expands, cannot be viewed from the street and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood.
3. The proposed conditional use will comply with the provisions of this title, including any specific condition required for the proposed conditional use in the district in which it would be located. The ancillary body art studio is compatible with surrounding commercial businesses and provides a community need that complies

with all applicable conditions required for this use classification in the Downtown Mixed Use Master Plan's Town Core zoning district.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia finds that no further environmental review is required for the proposed project as provided by Section 15301 of the California Environmental Quality Act Guidelines because:

1. Pursuant to CEQA Guidelines, Section 15301(a) Existing Facilities, the subject property may undergo tenant improvements that will only include interior alterations including the installation of interior partitions and electrical conveyances.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Benicia hereby approves Use Permit 11PLN-00025 subject to the following conditions:

1. This approval shall expire two years from the date of approval, unless the business has been established in accordance with these conditions of approval or unless an extension is approved. Any modification to this permit shall require review and approval by the Planning Commission. All conditions shall be met prior to occupancy of the tenant space and prior to the issuance of a business license.
2. The location of the tattoo body art studio, which shall have a total maximum of two tattoo and/or body piercing workstations, shall be in substantial compliance with the floor plan submitted by the applicant, date stamped received May 3, 2011 and on file with the Public Works & Community Development Department. Any change from the approved floor plan shall be requested in writing and approved by the Public Works & Community Development Director.
3. The tattoo body art studio shall observe appropriate sanitary practices including the proper disposal of materials used in the tattooing process, as recommended by the Solano County Department of Environmental Health. All individuals offering tattoos shall maintain registration as a tattoo artist with the Solano County Department of Environmental Health and present evidence thereof if requested by the City of Benicia.
4. The applicant shall post a sign immediately outside the entrance to the tattoo body art studio that states, "No Persons Under Age 18 Years Permitted."
5. The applicant shall post in the tattoo body art studio California Penal Code 653 that states, "Every person who tattoos or offers to tattoo a person under the age of 18 years is guilty of a misdemeanor. As used in this section, to "tattoo" means to insert pigment under the surface of the skin of a human being, by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin. This section is not intended to apply to any act of a licensed practitioner of the healing arts performed in the course of his practice in unobstructed view to customers."

6. The applicant shall post the business license and California Department of Health Certificate in clear unobstructed view to the public.
7. The project shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
8. The tattoo body art studio shall be permitted to operate between 11 a.m. and 7 p.m. everyday of the week.
9. Violation of these conditions of approval is cause for revocation of the use permit after a public hearing before the duly authorized review body.
10. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Public Works & Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

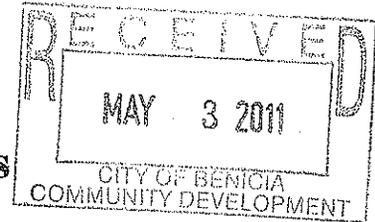
On a motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 14 day of July 2011, and adopted by the following vote:

Ayes
 Noes:
 Absent:

 Brad Thomas
 Planning Commission Chair

Landon Mau
Creations and Illustrations

949 Grant Street, Suite A
Benicia, CA. 94510 707-747-5470



May 2, 2011

RE: Application for a use permit for 814 First St. and description of business.

To whom it may concern:

I am submitting an application for a use permit for the building located at 814 First Street, Benicia. My intention is to relocate my existing and ongoing business, Creations and Illustrations from its present site at 949 Grant Street to this new location.

Creations and Illustrations are an art gallery, custom illustration, body modification and tattoo studio. I am the sole owner and operator and conduct my business on site and by appointment.

My current hours of operation are 11 AM to 7 PM on Mondays and Wednesdays through Saturdays.

The previous use of this new location will work well for my business as water and bathroom is in place. I do not anticipate any need for additional improvements. (See floor plan).

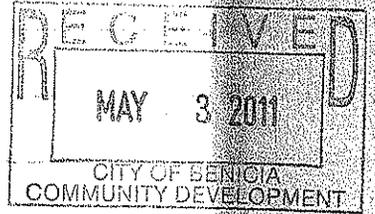
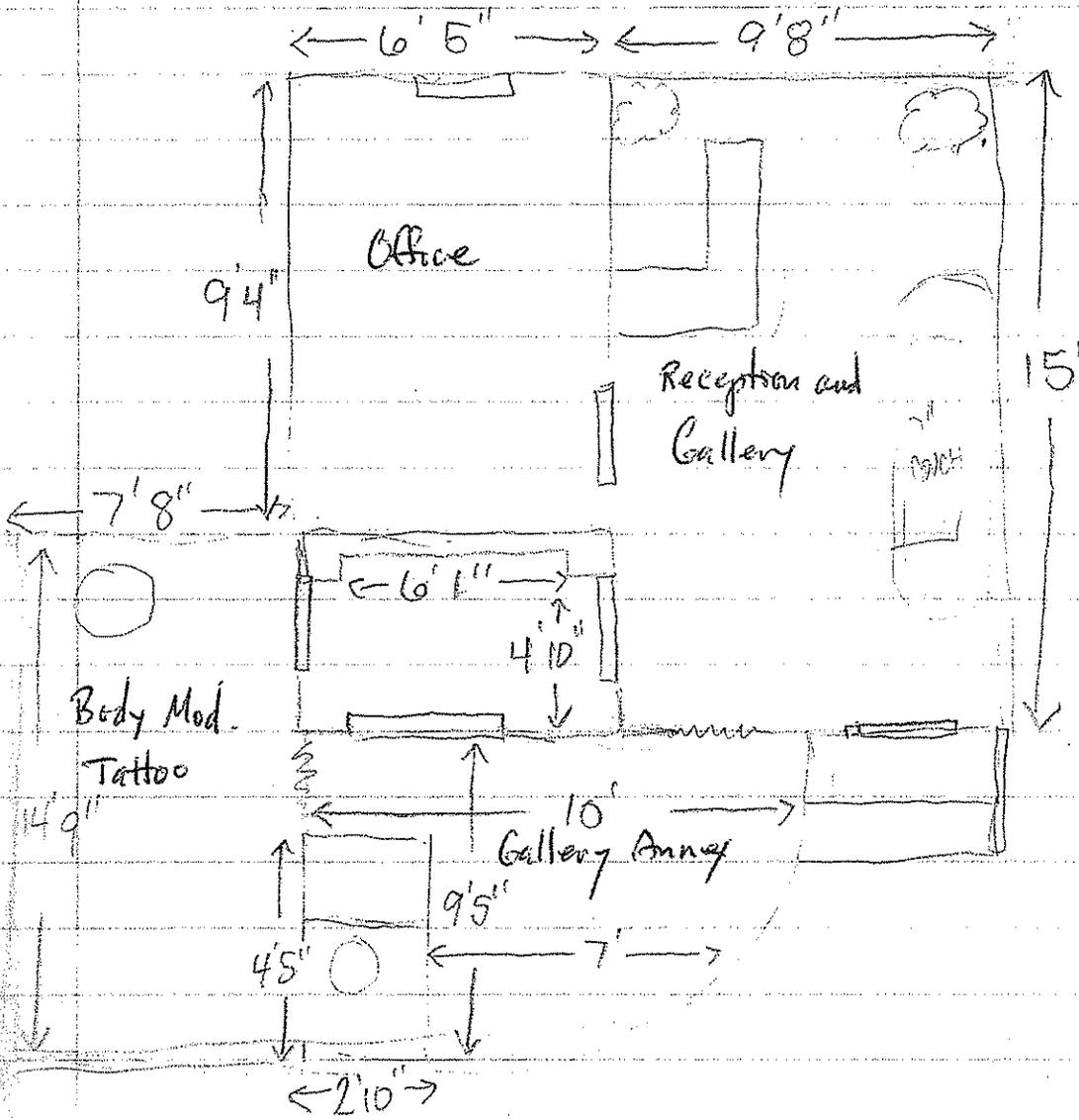
My business does not pose any noise issues as my air compressors used for tattooing are enclosed. All equipment, chemicals, etc. are normal and incidental to an art gallery (paints, thinner, etc.) and tattooing (green soap, sharps container, and madicide).

Thank you for your consideration of my request for use permit. Please feel free to call me with any additional questions you may have about my proposal and my business.

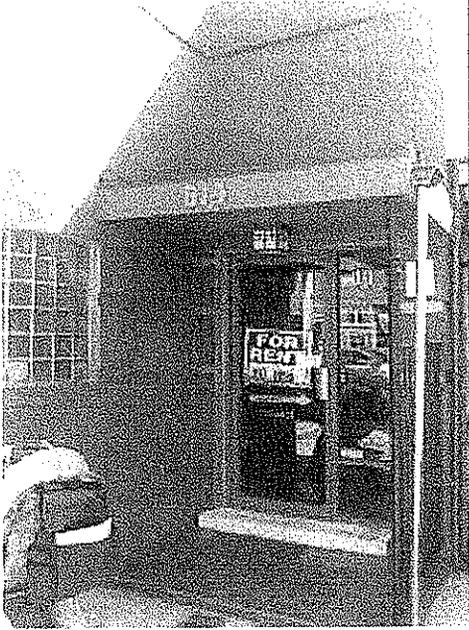
Regards,

Landon Mau

814 1ST CREATIONS & ILLUSTRATIONS



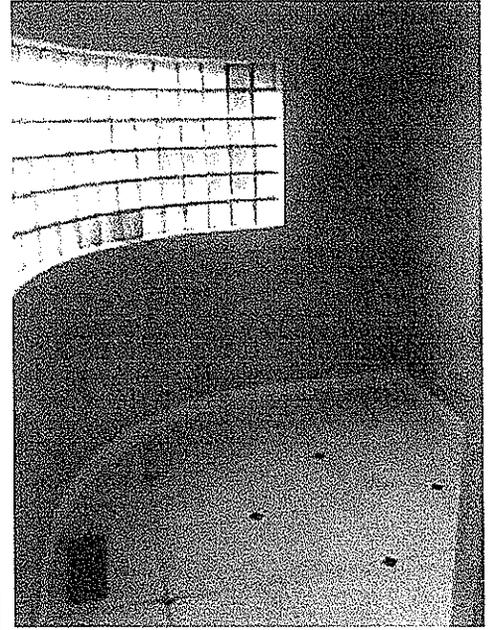
814 | ST CREATIONS & ILLUSTRATIONS @ LW



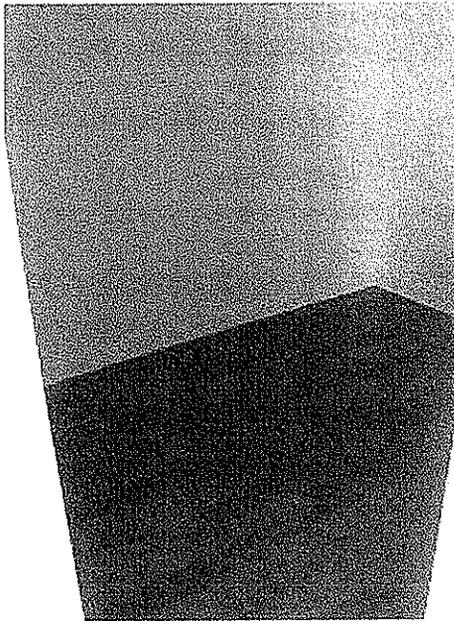
FRONT



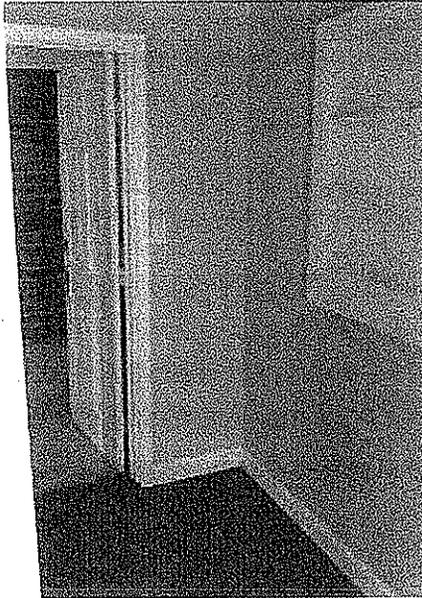
RECEPTION & GALLERY



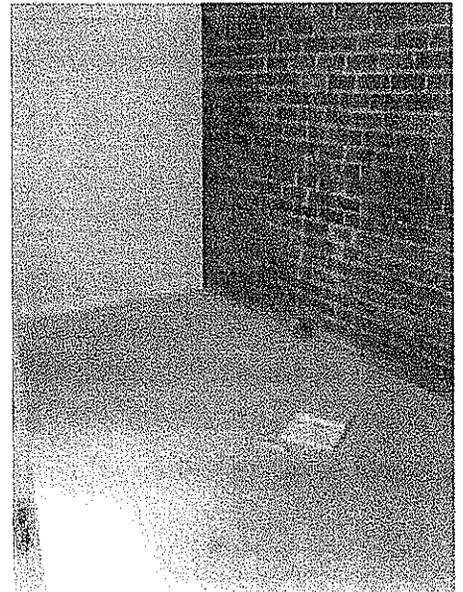
GALLERY ANNEX



OFFICE



HALLWAY



BODY MOD / TATTOO

RECEIVED
MAY 3 2011
CITY OF BETHLEHEM
COMMUNITY DEVELOPMENT



DRAFT

**BENICIA PLANNING COMMISSION
CITY HALL COUNCIL CHAMBERS
MEETING MINUTES**

**Thursday, June 9, 2011
7:00 p.m.**

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

Present: Commissioners Don Dean, Rick Ernst, George Oakes, Rod Sherry, Belinda Smith and Chair Brad Thomas

Absent: Lee Syracuse (excused)

Staff Present: Heather McLaughlin, City Attorney
Charlie Knox, Public Works & Community Development Director
Doug Vu, Associate Planner
Kathy Trinique, Administrative Secretary

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. ADOPTION OF AGENDA

The Commission and staff discussed changing the order of items VI B and C so that Item C is heard first, and then Item B.

Commissioner Ernst asked if the Commission would like to move the Open Government Training to after VI D. Commissioner Ernst made a motion to move the training. There was no second.

On motion of Commissioner Sherry, seconded by Commissioner Dean, the agenda was adopted, as amended, reversing the order of Items VIB and C, by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry, Smith, and Chair Thomas

Noes: None

Absent: Commissioner Syracuse

Abstain: None

III. OPPORTUNITY FOR PUBLIC COMMENT

A. **WRITTEN**
None.

B. **PUBLIC COMMENT**
None.

IV. PRESENTATION

A. COMPLETION OF OPEN GOVERNMENT AWARENESS TRAINING

Heather McLaughlin, City Attorney, presented the Commission with an overview of this item. She described Title 4, the Open Government Ordinance. Its goal is to make it easier for the public to access City government, that they may be more informed about what their City is doing; and that the public may be involved in a more meaningful and knowledgeable way.

The four Open Government Ordinance chapters that Ms. McLaughlin reviewed included:

1. Public Access to Meetings (Brown Act).
2. Public Information (Public Records)
3. Ethics (Code of Conduct)
4. Open Government Commission.

Ms. McLaughlin passed out a copy of the applicable Municipal Code pertaining to City Council or Mayor candidates in case any Commissioners were planning to run for office in November.

V. CONSENT CALENDAR

A. Approval of Minutes of May 12, 2011

On motion of Commissioner Ernst, seconded by Commissioner Dean, the Consent Calendar was adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Oakes, Sherry, and Smith.
Noes: None
Absent: Commissioner Syracuse
Abstain: Chair Thomas

VI. REGULAR AGENDA ITEMS

A. GENERAL PLAN CONFORMANCE ASSOCIATED WITH VACATION OF RIGHT OF WAY EASEMENT ALONG WEST G STREET

PROPOSAL:

This action is necessary to allow the property owner of 270 West H Street to purchase obsolete historic public access easements along West G Street located on their property approximately 25 feet north of the southerly property boundary.

Recommendation:

Approve General Plan Conformance to vacate the portion of the right of way easements along the south side of the property at 270 West “H” Street consistent with the goals, objectives and policies of the General Plan and based on the findings set forth in the resolution.

Charlie Knox, Public Works & Community Development Director, presented a brief overview and history of this item. This item was continued from the May 2011 meeting for further staff analysis. Vacating the right of way easements conforms with the General Plan.

Documents distributed at the meeting included a letter dated June 8, 2011 from Mr. Jack Maccoun, a copy of a webpage “Berkeley Path Wanderers Association” from Mr. Maccoun, and a plat map and a highlighted version of the easement map. Mr. Maccoun also shared a historical photograph of the Crooks Mansion from the 1880’s. (After the meeting, the photograph was returned to Mr. Maccoun.)

Three of six Planning Commissioners present had conflicts of interest. In order to maintain a quorum, the three conflicted Commissioners (Dean, Oakes and Sherry) drew cards to determine which Commissioner would remain for this item. Commissioner Oakes drew the highest card and therefore he was not recused.

The Commission and Staff discussed the following: the name of applicant (there is none, the application is a result of a mediated process); clarified that the action for this item is only to determine if the easement vacation conforms with the General Plan; reviewed the process (the next step is staff to forward the Planning Commission’s decision for City Council’s consideration to determine the vacation); asked if a public hearing occurs when the item comes before the City Council (yes); Planning Commissioners asked to see the staff report to the City Council before the meeting (City Council agenda and staff reports are posted one week prior to the meeting).

Commissioner Ernst referred to an email he sent staff expressing his concern that Planning Commission decisions are sometimes ignored by staff and staff’s recommendations to City Council are sometimes different from the Commission’s decision.

Ms. McLaughlin responded that staff’s role is to use their professional judgement, which is sometimes a different opinion from the Planning Commission’s. Usually both the Planning Commission and staff have the same opinion. The Planning Commission’s decision is presented to City Council along with staff’s recommendation. If further discussion of this topic is necessary, staff will agendize it for a future meeting.

Chair Thomas stated that the role of the Planning Commission is to provide a sounding board for the City Council, which makes the final decision.

PUBLIC COMMENT

Jack Maccoun, 251 West G Street spoke against staff's recommendation. He referred to his June 8 letter with his findings that the proposed vacation does not conform with the General Plan. Mr. Maccoun provided a history of the easement. He pointed out that there is 8 feet of easement on the Crooks Mansion (Ruiz) property. If the easement is vacated, the portion on the Crooks Mansion property is stranded. The City provides no maintenance. The easement was paved by the adjacent property owners. Offsets for loss of the easement should be provided.

Leann Taagapera, 270 West H Street (271 West G Street), spoke in support of staff's recommendation. She explained that she did not request this action but does support it. On March 1, the City Council directed staff to address this issue. The driveway is for ingress and egress purposes. Historically, the easement was used by pedestrians and horse and buggies. It was never paved and is currently part of her front yard. The easement was never used as a pedestrian trail or vista point. There is a fence between her property and Mr. Ruiz's property. She supports staff findings that this action is consistent with the General Plan.

Kathleen Olson, 820 First Street, spoke against staff's recommendation. She does not support staff's conclusions. She asked about the public noticing for this action and asked if there will be noticing for the City Council's action. The City's policies support public access and the bluff is very valuable real estate. Public access is important to the City and the General Plan.

Steve Bovarnick, Attorney for the Taagapera's, 199 Fremont Street, San Francisco, spoke in support of staff's recommendation. He provided additional history of the easements and its original purpose, which was ingress/egress for Mr. Crooks in 1889, before West 3rd Street was constructed. He agreed with staff's conclusion that the easement is obsolete. Access to the Crooks property is now from West 3rd Street.

PUBLIC COMMENT CLOSED

Commissioners and staff held a discussion that included the following:

Commissioner Smith commented that this was a better staff report. The easement conformance is a circulation issue. She asked if this applies to circulation?

Mr. Knox responded that staff focused on public access and the waterfront view. The original easement area was a driveway to the Crooks mansion. The mansion has street access now.

Commissioner Ernst stated that since the Taagapera's have access from West H Street, the easement is not needed. Regarding the Ruiz (Crooks) property, has the owner been asked what his opinion is of this action?

Mr. Knox explained that staff contacted Mr. Ruiz who stated he has no objection or interest in these proceedings.

Commissioner Oakes asked if this action was directed by the City Council. He asked what happened and why are we considering this action and will the City be compensated for the easement vacation?

Ms. McLaughlin answered that this action is a result of a mediation agreement the City entered into with the property owners. The City Council has not directed this action.

Mr. Knox added that the City Council did direct staff to participate in the mediation. What happened in the mediation process is not relevant to the action before the Planning Commission. The details of the mediation agreement are confidential. Yes, there will be compensation for the easement.

Commissioner Ernst stated that he was convinced by Mr. Maccoun and Ms. Olson's comments. He will vote against this action because there is no reason to vacate the easement at this point in time.

Chair Thomas stated that the proposed right-of-way easement vacation determination is clear and consistent with the General Plan. The original intent of this easement was for a set period of time, until West G Street was continued. The City may have an obligation to vacate all of the easement. This easement is not treated as public right-of-way, but private use. To eliminate the liability of the City, the easement should be vacated. The staff report was excellent and the facts support General Plan conformance.

On motion of Commissioner Smith, seconded by Commissioner Oakes, the resolution finding the vacation of right-of-way easements along West G Street in conformance with the goals, policies and programs of the General Plan and adopted by the following vote:

Ayes: Commissioner Oakes, Smith and Chair Thomas.
Noes: Commissioner Ernst
Absent: Commissioner Syracuse
Abstain (recused): Commissioners Dean and Sherry

B. **(This item was formerly listed on the agenda as Item C.) AMENDMENT TO USE PERMIT AND VARIANCE FOR LANDSCAPING REQUIREMENTS TO EXPAND BENICIA HEALTH AND FITNESS CLUB**

PROPOSAL:

The owner of Benicia Health and Fitness Club requested an amendment to Use Permit 03PLN-00065 to expand the existing facility by constructing a two-story, 4,800 square foot addition, and change the hours of operation to 5 a.m. to 10 p.m. Monday through

Friday, 7 a.m. to 7 p.m. on Saturday and 7 a.m. to 5 p.m. on Sunday, and also requested a variance that would permit the property owner to utilize and maintain either 3,690 or 5,134 square feet of City right of way to satisfy the minimum site landscaping requirement pursuant to Title 17, depending on whether the sought area continues to be owned by the City or is exchanged to the club owner (which may be the subject of future City Council consideration).

Recommendation:

Approve an amendment to Use Permit 03PLN-00065 to allow a building addition, modified hours of operation, and approve a variance for minimum site landscaping for the Benicia Health and Fitness Club located at 1150 West Seventh Street, based on the findings and subject to the conditions of approval set forth in the proposed resolution.

Commissioners Oakes and Sherry recused themselves due to conflict of interest.

Doug Vu, Associate Planner, provided the background and overview of the proposed project.

Staff distributed to the Commission, staff and members of the public a letter received via email from Mr. Roger Lipman, property owner at 2 Ridge Circle.

Mr. Knox commented on item number 2 in Mr. Lipman's letter concerning a 1994 agreement for the applicant to underground utilities from West 7th to West 6th Streets, including Ridge Circle. The agreement was to participate in a future underground district. Also, the 20% landscaping requirement may be accomplished through a maintenance agreement or a maintenance agreement and land swap. There will be a cost to the applicant if the City Council vacates the right of way.

PUBLIC COMMENT:

Applicant, Norm Koerner, 1150 West 7th Street, stated that it has taken him over a year to get to this point with his project. The health club has 2500 members and needs to expand. He asked for the Commission's support of the project.

Commissioner Dean asked Mr. Koerner about the noise issue raised in Mr. Lipman's letter. What hours are the classes held?

Mr. Koerner responded that Mr. Lipman doesn't reside here and his tenants have not complained about noise. The classes are held from 8 am to 7:30 pm.

Roger Lipman, 2 Ridge Circle commented that he does live on Ridge Circle, but he is gone a lot. He does not object to the project, his goal is to address the noise issue and landscaping on West 6th Street that has not been installed. The City should require

landscaping to make this area look better. The music from classes is too loud, it can be heard outside of the building. He stated that he would like to see the sound mitigated, otherwise it is a good project.

Barbara Sorrentino, Manager of Benicia Health and Fitness Club, responded to the questions about class hours which are from 5 am to 8 pm, Monday through Friday. On Saturdays the Club opens at 7 am and there are no classes on the weekends that begin before 8:30 am. The Club is very conscious of noise, making sure the windows are closed during aerobic classes. Their staff has talked to residents on Ridge Circle and they are not bothered by the club's music or activities.

PUBLIC COMMENT CLOSED

Commissioners and staff discussed the following items: noise level limits (65 dB for day; 60 dB for night); the project traffic engineer is retained by the applicant; how does the number of parking spaces comply with the Climate Action Plan and Green building standards (applicant chose to use the high number of parking spaces and best management practices for storm water; green building standards are not mandatory for commercial uses); more bike racks required (there are existing bike racks on site); any change to the bus shelter or driveway (no); placement of new landscaping, signage, sidewalk responsibility; use of resilient channel for sound mitigation (new building technology available, will be up to the applicant to choose which type is used); is the roof top HVAC enclosed (it is not new and is screened).

A motion to approve staff's recommended resolution was made by Commissioner Ernst.

Commissioner Smith commented that she would rather see the applicant use the minimum parking spaces with additional trees for shade.

Mr. Vu responded that when the applicant submits his application for building permits, the City will require one new tree for each six parking spaces.

Commissioner Ernst made a motion and seconded by Commissioner Smith to amend the motion to include HPRC's recommendation to modify condition #20 for the applicant to incorporate the use of new sound baffling technology (resilient channel) during construction.

On motion made by Commissioner Ernst, as amended, and seconded by Commissioner Dean to approve an amended use permit (10PLN-00017) and a variance for minimum site landscaping (11PLN-00018) for Benicia Health and Fitness Club located at 1150 West 7th Street and adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Smith and Chair Thomas
Noes: None
Absent: Commissioner Syracuse
Abstain (recused): Commissioners Oakes and Sherry

C. **(This Item was formerly listed on the agenda as Item B.) GENERAL PLAN CONFORMANCE FOR THE VACATION OF RIGHT OF WAY ALONG WEST MILITARY**

PROPOSAL:

The property owner of Benicia Health and Fitness Club at 1150 West Seventh Street requested the vacation of approximately 3,572 square feet of existing City right of way along West Military between West Sixth and West Seventh Streets for the purpose of adjusting the lot size to match the apparent boundaries of the parcel property consistent with Title 17 of the Benicia Municipal Code. The applicant also proposed to deed to the City 2,038 square feet of private property along the eastern boundary of West Seventh Street between Military West and K Street that includes the public sidewalk and a portion of the roadway.

Recommendation:

Approve a General Plan Conformance to vacate right of way along West Military and acquire property along the eastern boundary of West Seventh Street between Military West and K Street consistent with the goals, objectives and policies of the General Plan and based on the findings set forth in the attached resolution.

Commissioners Oakes and Sherry recused themselves.

Charlie Knox gave a brief description of this project.

Commissioner Smith asked if the applicant will buy the land from the City.

Mr. Knox responded that in addition to the City vacating this right of way, the applicant will deed a strip of land along West 7th Street to the City. The difference in value will be agreed upon and paid by the applicant to the City, should the City Council approve the land exchange.

PUBLIC COMMENT

None.

On motion of Commissioner Dean and seconded by Commissioner Smith, to approve a resolution finding the vacation of right of way easement along Military West in conformance with the goals, policies and programs of the General Plan and adopted by the following vote:

Ayes: Commissioners Dean, Ernst, Smith and Chair Thomas
Noes: None
Absent: Commissioner Syracuse
Abstain (recused): Commissioners Oakes and Sherry

D. CONFORMANCE OF 2011-2031 CAPITAL IMPROVEMENT PROGRAM WITH THE GENERAL PLAN

PROPOSAL:

The Capital Improvement Program (CIP) has been updated as part of the FY 2011-13 budget process. The program includes capital improvement projects (building remodels, street overlays, waterline replacements, park playground installations), comprehensive studies (master plans, impact fee studies), special programs (stormwater program), and major vehicle and equipment replacement. Planning Commission review of the CIP is needed to ensure the program is consistent with the General Plan.

Recommendation:

Review the draft City of Benicia 2011-2031 Capital Improvement Program and make a determination that it is consistent with the General Plan.

Charlie Knox presented this item. He pointed out that there are no projects on the CIP that impact the General Fund, with the exception of \$20,000/year for Park playground upgrades and maintenance. He also reviewed a few other modifications to the program.

PUBLIC COMMENT:

None.

PUBLIC COMMENT CLOSED.

Commissioner Smith commented that the Industrial Park needs some infrastructure projects completed to attract new businesses to the City.

Commissioner Ernst commented that there was a source of funds that was designated for the Industrial Park, that should be used.

Commissioner Sherry asked about the \$75,000 for Master Plan Fee Study listed on both the Water Operations and the Water Capital Fund.

Mr. Knox explained that the cost of the study is shared by both funds, and budgeted to cost \$150,000.

On motion of Commissioner Oakes and seconded by Commissioner Sherry determining that the City of Benicia draft 2011-31 Capital Improvement Program is consistent with the Benicia General Plan and adopted by the following vote:

Ayes: Commissioners Dean, Oakes, Sherry, Smith and Chair Thomas
Noes: Commissioner Ernst
Absent: Commissioner Syracuse
Abstain: None

VII. COMMUNICATION FROM STAFF

Charlie Knox informed the Commission that staff has been working hard to finalize and balance the FY 11/13 budget. On June 21, 2011 City Council will hold a budget session. The Public Works and Community Development Department has reduced its General Fund expenses by 1/3 over the past 2 years.

VIII. COMMUNICATION FROM COMMISSIONERS

Commissioner Dean asked for an update on the Rellik Tavern window sign.

Mr. Knox responded that the item is scheduled for the Planning Commission meeting in July.

Mr. Vu informed the Commission that the Rellik owner has submitted a sign permit application and a variance.

Commissioner Dean asked about organizational changes in the Department and asked staff to provide an organizational chart.

Charlie explained that we have 3 divisions at City Hall: Planning, Building, Engineering, plus Administration. The satellite locations include, Water Treatment, Wastewater Treatment, Water Quality and Maintenance Division. Staff will email the latest organizational chart to Commissioners.

IX. ADJOURNMENT

Meeting was adjourned at 9:10 pm.