

July 21, 1998

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.

#### SPECIAL MEETING - CITY COUNCIL

July 21, 1998

A special meeting of the City Council of the City of Benicia was called by Mayor Jerry Hayes at 7:00 p.m. Tuesday, July 21, 1998.

#### CITY CLERK ANNOUNCEMENT OF CLOSED SESSION

Linda S. Purdy, City Clerk, stated the Benicia City Council meeting is called to order and announced that the Council will immediately convene in Closed Session to discuss the following:

#### CLOSED SESSION

Conference With Labor Negotiator

Agency Negotiator: Personnel Services Manager

Employee Organizations: Communication Workers of America (CWA) - Benicia City Employees Association (BCEA)

Unrepresented Employees: Senior Management Group, Police Management Group, Middle Management Group, Supervisory Group, Professional & Confidential Group

Notice was duly given twenty-four hours prior to the meeting by the City Clerk.

#### MINUTES OF THE REGULAR MEETING - CITY COUNCIL JULY 21, 1998

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Jerry Hayes at 7:30 p.m. Tuesday, July 21, 1998, in the Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

#### ROLL CALL

Present: Councilmembers Corbaley, Cox-Golovich, Gizzi, Messina and Mayor Hayes

Absent: None

#### PLEDGE OF ALLEGIANCE:

Mayor Hayes led the pledge to the flag.

#### ANNOUNCEMENTS

Mayor Hayes announced action taken in Closed Session, as follows:

Conference With Labor Negotiator re: Employee Organizations and Unrepresented Employees - direction given to Labor Negotiator.

#### APPOINTMENTS:

Mayor Hayes announced a number of openings on various City Boards and Commissions. Applications are available at City Clerk's office.

Mayor Hayes announced the appointment of Gayla Reiter to the Human Services Fund Board for a full term.

RESOLUTION NO. 98-105 - A RESOLUTION CONFIRMING MAYOR'S APPOINTMENT OF GAYLA REITER TO THE HUMAN SERVICES FUND BOARD FOR A FULL TERM

The above resolution confirming the Mayor's appointment was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Cox-Golovich, Gizzi, Messina and Mayor Hayes

Noes: None

PROCLAMATION - "NATIONAL NIGHT OUT" 1998

Mayor Hayes read the Proclamation.

ADOPTION OF AGENDA:

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

On motion of Councilmember Gizzi, seconded by Councilmember Corbaley, and unanimously carried, Agenda was adopted as presented.

CONSENT CALENDAR:

Councilmember Corbaley requested Items A and K be pulled.

Councilmembers Gizzi and Messina requested Items E and K be pulled.

On motion of Councilmember Corbaley, seconded by Councilmember Cox-Golovich, and unanimously carried, the following items were approved under the Consent Calendar:

Check Registers for June 1998.

RESOLUTION NO. 98-106 - A RESOLUTION SUPPORTING PARTICIPATION IN THE "1998 SPARE THE AIR CITY AND COUNTY" CAMPAIGN

RESOLUTION NO. 98-107 - A RESOLUTION APPROVING CONTRACT CHANGE ORDER NO. 1 IN THE AMOUNT OF \$40,900 CREDIT WITH DRS MARINE, INC., WASTEWATER TREATMENT PLANT OUTFALL DIFFUSER PIPELINE PROJECT

RESOLUTION NO. 98-108 - A RESOLUTION APPROVING RENEWAL OF LICENSE AGREEMENT BETWEEN CITY AND I.T. CORPORATION

RESOLUTION NO. 98-109 - A RESOLUTION APPROVING THIRD AMENDMENT TO RESTATED AND AMENDED MARINA LEASE AGREEMENT (MARINA PARCEL)

RESOLUTION NO. 98-110 - A RESOLUTION APPROVING FIXED FEE RATES ON ALL CHANGE ORDERS FOR WASTEWATER TREATMENT PLANT IMPROVEMENT PROJECT

APPROVAL OF PROPERTY EXCHANGE AND SETTLEMENT AGREEMENTS TO ACCOMMODATE THE SONTAG HOUSE RELOCATION (Joe Jacobson and family, 489 East F

Street, had asked this item to be pulled from the Consent Calendar, but due to the request being overlooked, this item passed under Consent Calendar)

RESOLUTION NO. 98-111 - A RESOLUTION DIRECTING CITY STAFF TO INITIATE PROCEDURES ON THE STREETS RIGHTS-OF-WAY VACATION, WAIVER OF PARCEL MAP APPLICATION, AND GENERAL PLAN AMENDMENT/REZONING APPLICATION TO ACCOMMODATE THE RELOCATION OF THE SONTAG HOUSE TO THE NORTHWEST CORNER OF EAST G STREET AND EAST 5TH STREET

RESOLUTION NO. 98-112 - A RESOLUTION APPROVING PROPERTY EXCHANGE AGREEMENT WITH DOROTHY JEAN GOLDSTONE REGARDING THE CREATION OF A NEW PARCEL LOCATED AT THE NORTHWEST CORNER OF EAST G STREET AND EAST 5TH STREET TO ACCOMMODATE THE RELOCATION OF THE SONTAG HOUSE

RESOLUTION NO. 98-113 - A RESOLUTION APPROVING SETTLEMENT AGREEMENT WITH CHARLES K. SONTAG AND DIANE SONTAG REGARDING THE ACQUISITION OF PROPERTY AT 540 EAST G STREET

Waive the reading of all ordinances introduced and adopted pursuant to this Agenda.

(END OF CONSENT CALENDAR)

APPROVAL OF MINUTES OF JULY 7, 1998

Councilmember Corbaley requested this item be pulled from the Consent Calendar; on page 7 of Minutes, 2nd line of "Oppose Reduction In The Vehicle In Lieu Fees", add the word adversely affect the City".

On motion of Councilmember Gizzi, seconded by Councilmember Corbaley, and unanimously carried, Minutes of July 7, 1998 were approved as amended.

CONTRACT WITH GEOLOGIST REGARDING I.T.

Councilmembers Gizzi and Messina requested this item be pulled from the Consent Calendar.

Councilmember Messina spoke on reducing total amount of dollars that City would spend on this item.

Councilmember Gizzi stated he was surprised at the total Contract amount and the fact that the Contract did not go out to bid; going out to bid is the only way to find out if cost is proper; questioned how much of Contract will be going for transportation cost for Consultants from Irvine, CA to Benicia.

Councilmember Corbaley explained that with the complex remediation issues, it was important to have expert representation for the City.

Council took the following action:

RESOLUTION NO. 98-114 - A RESOLUTION APPROVING CONTRACT WITH GEOLOGIST REGARDING I.T.

On motion of Councilmember Corbaley, seconded by Councilmember Cox-Golovich, the above resolution was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Cox-Golovich and Mayor Hayes  
Noes: Councilmembers Gizzi and Messina

#### APPROVAL OF PROPERTY EXCHANGE AND SETTLEMENT AGREEMENTS TO ACCOMMODATE THE SONTAG HOUSE RELOCATION

Mayor Hayes acknowledged that Joe Jacobson had requested Item J be pulled from the Consent Calendar and due to an oversight he did not call on Mr. Jacobson; although the item was passed under Consent Calendar, Mayor Hayes invited Mr. Jacobson to speak at this time.

Joe Jacobson, 489 East F Street, requested concurrence from Council for the environment of his home during the proposed abandonment of excess 'F' Street right-of-way. He referred to a letter received from Virgil Mustain, Public Works Director, with certain assurances.

Otto Giuliani, City Manager, assured Mr. Jacobson of good faith on the part of the City and that the City will follow through with those items stated in Mr. Mustain's letter.

#### AMENDING RULES OF PROCEDURES FOR CITY COUNCIL MEETINGS

James O. Milburn, 280 East J Street, and Councilmembers Corbaley, Gizzi and Messina requested this item be pulled from the Consent Calendar.

Heather McLaughlin, City Attorney, explained Step 3 of the Rules of Procedures, which allows the staff to come back with an interim report and Step 4 - a final report.

James O. Milburn, 280 East J Street, referred to the continuation of an extra agenda packet being made for public review, available at the Library.

Councilmember Cox-Golovich made a motion to adopt Item K with the following changes: Under B.1., second paragraph, at the end of that paragraph, add the wording "The City Manager will inform the Council and public of the tentative, upcoming issues on the next Council Agenda on the afternoon of the 7th working day preceding the regular meeting", and eliminating Step 2, Step 3, Step 4, Step 5, with an additional paragraph "if the majority of the Council chooses to dedicate staff time and resources to review current policy for possible modifications, they will direct City staff to investigate the matter and bring it back to Council at a later date".

Otto Giuliani, City Manager, suggested simplifying the wording to read "they will provide staff with the appropriate direction".

Motion made by Councilmember Cox-Golovich was seconded by Councilmember Messina.

Councilmember Gizzi expressed his concern regarding the posting of the draft Agenda by noon on the prior 7th working day, and felt the 5th working day prior to the meeting, which would be a Wednesday, would seem appropriate; asked Councilmember Cox-Golovich if that could be part of her motion.

Councilmember Cox-Golovich stated she would amend her motion to making the draft Agenda available on the 5th working day prior to the meeting.

Heather McLaughlin, City Attorney, requested that the word "post" be changed to the words make available or prepare. Posting under the Brown Act has different implications; also referred

to adding Section 3 to the Resolution "The City Council shall review Section I.B.2. within thirty days of the seating of the newly elected Council members in 1999.

Councilmember Cox-Golovich amended her motion and Councilmember Messina amended his second.

Council took the following action:

RESOLUTION NO. 98-115 - A RESOLUTION AMENDING RULES OF PROCEDURES FOR CITY COUNCIL MEETINGS (Supersedes Resolution No. 98-97)

On motion of Councilmember Cox-Golovich, seconded by Councilmember Messina, the above resolution was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Cox-Golovich, Gizzi, Messina and Mayor Hayes

Noes: None

PUBLIC HEARING:

ORDINANCE ADDING CHAPTER 8.06 NEIGHBORHOOD NUISANCE ORDINANCE TO THE MUNICIPAL CODE

Otto Giuliani, City Manager, stated that the intent of the Ordinance is to set a standard for the community; this Ordinance will be of particular assistance in abating some forms of drug sales.

Mayor Hayes opened the Public Hearing. No written protests received.

The following persons spoke IN FAVOR:

Kitty Griffin, 236 Baker Street.

Bonnie Silveria, 641 West I Street.

Cathy Hewitt, 266 East B Street.

Mayor Hayes closed the Public Hearing.

Council took the following action:

INTRODUCTION OF ORDINANCE NO. 98- N.S. - AN ORDINANCE ADDING CHAPTER 8.06 NEIGHBORHOOD NUISANCE ORDINANCE TO THE BENICIA MUNICIPAL CODE

On motion of Councilmember Messina, seconded by Councilmember Cox-Golovich, the above Ordinance was introduced by title only by the following vote:

Ayes: Councilmembers Corbaley, Cox-Golovich, Gizzi, Messina and Mayor Hayes

Noes: None

(Further consideration of the above Ordinance will be held at the next regular Council meeting)

UNFINISHED BUSINESS:

ADOPTION OF ORDINANCE AMENDING MUNICIPAL CODE DELETING CHAPTER 9.28 "CURFEW" OF TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, AND ADDING CHAPTER 9.28 "NIGHTTIME CURFEW ORDINANCE" TO TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, TO BENICIA MUNICIPAL CODE

Otto Giuliani, City Manager, reviewed the changes that had been made since Ordinance was introduced in April; recommended adoption.

Councilmember Cox-Golovich questioned the constitutionality of the Ordinance; referred to a ruling on a similar Ordinance in Washington, D.C.

Seven concerned citizens spoke.

Otto Giuliani, City Manager, stated that City already has this Ordinance and this is an attempt to bring the Code up to constitutional compliance; the law does treat juveniles differently; if juveniles are picked up, they are referred back to their parents; write essays and do community service.

Councilmember Corbaley voiced concern about the vagueness of the word "loiter".

Council took the following action:

ADOPTION OF ORDINANCE NO. 98-4 N.S. - AN ORDINANCE AMENDING MUNICIPAL CODE DELETING CHAPTER 9.28 "CURFEW" OF TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, AND ADDING CHAPTER 9.28 "NIGHTTIME CURFEW ORDINANCE" TO TITLE 9, PUBLIC PEACE, MORALS AND WELFARE, TO BENICIA MUNICIPAL CODE

On motion of Councilmember Messina, seconded by Councilmember Gizzi, the above Ordinance was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Gizzi, Messina and Mayor Hayes

Noes: Councilmember Cox-Golovich

Mayor Hayes called for a break at 10:01 p.m.

Mayor Hayes reconvened the meeting at 10:09 p.m.

BALLOT ARGUMENT IN FAVOR OF MEASURE D (SHALL CITY CLERK BE ELECTED OR APPOINTED)

BALLOT ARGUMENT IN FAVOR OF MEASURE E (SHALL CITY TREASURER BE ELECTED OR APPOINTED)

Otto Giuliani, City Manager, clarified that the City Clerk position was not being eliminated, but it would be the consolidation of the City Clerk and Deputy City Clerk positions; powers of the City Treasurer were given to the Finance Director in 1976.

Mayor Hayes reminded the Council that a Resolution has already been passed to place this item on the November ballot. Arguments that are presented have had input from appointed Sub-Committee (Mayor Hayes and Councilmember Corbaley).

Mayor Hayes suggested taking Measure D first.

Councilmembers Cox-Golovich and Messina suggested that Council take a neutral stance.

Heather McLaughlin, City Attorney, advised that the Council take a vote authorizing the three members of the Council in favor of the Ballot Argument to sign it, which would give it priority on the list when ballot arguments are selected.

Council took the following action:

RESOLUTION NO. 98-116 - A RESOLUTION APPROVING BALLOT ARGUMENT IN FAVOR OF MEASURE D (SHALL CITY CLERK BE ELECTED OR APPOINTED)

On motion of Councilmember Gizzi, seconded by Councilmember Corbaley, the above resolution was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

Otto Giuliani, City Manager, clarified the timing and dates required for submittal of arguments in opposition and rebuttal and the possible formation of a Sub-Committee to write a rebuttal argument.

On motion of Councilmember Corbaley, seconded by Councilmember Gizzi, for the Mayor to establish a Sub-Committee to write a Rebuttal for Measure D in the event that an opposition argument is presented PASSED by the following vote:

Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

Mayor and Council members discussed that if a rebuttal is drafted, a Special Meeting would be needed.

Direction was given to Otto Giuliani, City Manager, to call a meeting when necessary.

Mayor Hayes and Councilmember Corbaley will be on the Sub-Committee to prepare a rebuttal.

**BALLOT ARGUMENT IN FAVOR OF MEASURE E (SHALL CITY TREASURER BE ELECTED OR APPOINTED)**

Virginia Souza, City Treasurer, spoke on a portion of the Ballot Argument being insulting.

Councilmember Corbaley recommended deleting the sentence "We do not need an elected City Treasurer with nothing to do"; in favor of the Measure for business reasons.

Council took the following actions:

**RESOLUTION NO. 98-117 - A RESOLUTION APPROVING BALLOT ARGUMENT IN FAVOR OF MEASURE E, AS AMENDED, (SHALL CITY TREASURER BE ELECTED OR APPOINTED)**

On motion of Councilmember Corbaley, seconded by Councilmember Gizzi, the above resolution was adopted on roll call by the following vote:

Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

On motion of Councilmember Gizzi, seconded by Councilmember Corbaley, that the Sub-Committee for Measure D also be prepared to write a Rebuttal brought about as a result of any opposition on Measure E PASSED by the following vote:

Ayes: Councilmembers Corbaley, Gizzi and Mayor Hayes

Noes: Councilmembers Cox-Golovich and Messina

**NEW BUSINESS:**

**REQUEST BY COUNCILMEMBER COX-GOLOVICH THAT THE COUNCIL RECONSIDER ITS POSITION REGARDING STINGRAY SWIM TEAM FEES FOR USE OF JAMES LEMOS SWIMMING POOL, AND SPECIAL EVENT FEES FOR NON-PROFITS TO UTILIZE CITY FACILITIES AND STAFF**

Councilmember Cox-Golovich explained reasons for requesting this item be put on the Agenda.

Councilmember Corbaley questioned if staff had formulated a plan by which this item can be handled.

Otto Giuliani, City Manager, stated that original fees were implemented to offset a deficit that was anticipated. Staff had met with Stingray's to allow them to defer their payment.

Michael Clark, Stingray Swim Team, informed Council they have been holding fund raisers and they can pay July and August, but May and June may be a problem.

Councilmember Messina spoke on fairness to all swim teams and swimmers.

Councilmember Cox-Golovich made a motion to move effective date for the fees for the Stingrays and Blue Dolphins to July 1.

Motion DIED for lack of a second.

Four concerned citizens expressed their views.

Councilmember Cox-Golovich requested that the City Attorney review the Stingrays Contract.

Motion made by Councilmember Corbaley, seconded by Councilmember Gizzi, that City allow Stingrays to enter into a deferred payment plan up to 18 months to pay the fees for May and June 1998 PASSED by the following vote:

Ayes: Councilmember Corbaley, Gizzi, Messina and Mayor Hayes

Noes: Councilmember Cox-Golovich

Councilmember Cox-Golovich spoke on why the City should reconsider \$50 special event fees; whether or not public would be heard tonight.

Councilmember Gizzi spoke on whether or not it was proper to decide this issue without having all the information.

One concerned citizen expressed his views.

Motion made by Councilmember Messina, seconded by Councilmember Cox-Golovich, and unanimously carried, to direct staff to RELOOK Special Events fee and bring a report back to Council, was approved.

#### WRITTEN COMMUNICATION:

Mayor Hayes read letter from former Mayor Marilyn C. O'Rourke expressing appreciation to the Mayor and City Council for the naming of the Benicia Public Library's Art Gallery in her name.

#### PUBLIC COMMENT:

James O. Milburn, 280 East J Street, spoke on common sense at City Hall.

#### ADJOURNMENT:

Mayor Hayes adjourned the meeting at 11:38 p.m.