



**BENICIA CITY COUNCIL
REGULAR MEETING AGENDA**

**City Council Chambers
August 17, 2010
7:00 PM**

*Times set forth for the agenda items are estimates.
Items may be heard before or after the times designated.*

I. CALL TO ORDER (7:00 PM):

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO THE 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.

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

2. Openings on Boards and Commissions:

Finance, Audit and Budget Committee:
One unexpired term to January 31, 2013

CAP (Community Advisory Panel to Valero):
One unexpired term to April 30, 2011

3. Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

B. APPOINTMENTS

- 1. Reappointment of Sharon Petrellese to the Human Services Board for a full term to July 31, 2014.**
- 2. Reappointment of Michael Caplin to the Human Services Board for a full term to July 31, 2014.**
- 3. Reappointment of Charles Edward Hendricks to the Human Services Board for a full term to July 31, 2014.**
- 4. Appointment of Claire M. McFadden to the Economic Development Board for a full term to July 31, 2014.**

C. PRESENTATIONS

D. PROCLAMATIONS

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council 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 COMMENT

B. PUBLIC COMMENT

VII. CONSENT CALENDAR (7:20 PM):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. Approval of Minutes of July 20, 2010 Special Meeting, July 20, 2010 Regular Meeting and August 3, 2010 Special Meeting. (City Clerk)

B. SECOND READING AND ADOPTION OF ORDINANCE AMENDING CHAPTER 13.50 PRETREATMENT AND SOURCE CONTROL OF WASTE DISPOSAL OR DISCHARGE. (Public Works and Community Development Director)

On July 20, 2010, City Council introduced and conducted the first reading of an ordinance to amend Chapter 13.50, Pretreatment and Source Control of Waste Disposal or Discharge, of the Benicia Municipal Code. The proposed action is the second reading and adoption of the ordinance. Revisions to the ordinance are required to comply with federal regulations. The City's Pretreatment Ordinance regulates nonresidential discharges to the wastewater treatment plant. The ordinance affects industrial, commercial, and institutional customers that use water in any process of their business that results in a wastewater discharge. If a business uses water only in bathrooms, employee kitchens, or landscaping, this ordinance does not apply.

Recommendation: Adopt the ordinance amending Chapter 13.50, Pretreatment and Source Control of Waste Disposal or Discharge, of Title 13, Public Services, of the Benicia Municipal Code.

C. APPROVE THE PURCHASE OF A COMMAND VEHICLE FOR THE POLICE DEPARTMENT WITH SLESF FUNDS. (Police Chief)

The Police Department is in need of a command vehicle specifically designed for the patrol supervisor, suitable for critical incidents, emergencies and special events. This vehicle will support the department's watch commanders who, during critical incidents, are tasked with overall incident command and control functions. Funds are available for this purchase through the California Supplemental Law Enforcement Services Fund (SLESF), which must be used for front line police services and must supplement, not supplant, existing funding.

Recommendation: Adopt a resolution authorizing the purchase of a command vehicle for the Police Department from Maita Chevrolet of Elk Grove in the amount of \$30,098.87 utilizing SLESF Funds (California Supplemental Law Enforcement Services Fund) and authorizing the City Manager to sign the purchase order on behalf of the City.

D. INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEAL CASE. (City Attorney)

A recent court case requires an amendment to the city's inclusionary housing ordinance in regard to its application to rental developments.

Recommendation: Introduce the ordinance to modify and update the existing city inclusionary housing ordinance.

E. AWARD OF CONTRACTS FOR THE WASTEWATER TREATMENT PLANT EFFLUENT PIPELINE IMPROVEMENT PROJECT. (Public Works and Community Development Director)

This action approves contracts for construction and construction management/engineering support services for the Wastewater Treatment Plant Effluent Pipeline Improvement Project. The project is necessary to replace an existing malfunctioning junction manhole in the effluent pipeline at the City's Wastewater Treatment Plant and to install an effluent flow meter. Total cost of the project is \$699,348. Sufficient funds are available in the Wastewater Enterprise Fund to cover the cost.

Recommendation: Adopt a resolution:

- 1) Accepting the bids for the Wastewater Treatment Plant Effluent Pipeline Improvement Project and awarding the construction contract to Tidelands Construction Company of Brentwood in the amount of \$545,000;**
- 2) Approving a contract for construction management/engineering support services for the Wastewater Treatment Plant Effluent Pipeline Improvement Project with Camp Dresser & McKee, Inc. for a not-to-exceed cost of \$99,848; and**
- 3) Authorizing the City Manager to sign the contracts on behalf of the City.**

F. REDUCTION IN CITY COUNCIL COMPENSATION. (City Attorney)

At the last Council meeting, the City Council requested an analysis of the tax implications if the council members volunteer to reduce their salary. This reduction was contemplated similar to the action taken for the City Manager and City Attorney. After consultation with an attorney familiar with the tax issues, the form to request a reduction in salary has been modified to clarify that the reduction is irrevocable.

Recommendation: Adopt the attached resolution which:

- 1) Encourages the City Council to voluntarily agree to a 3.0% reduction in base salary effective September 1, 2010, and**
- 2) Directs the City Manager to return to Council with recommendations on how the 3% base salary reduction listed in one above can be converted to an ongoing permanent reduction in pension or medical reform no later than January 15, 2011.**

G. PURCHASE OF CRUSHED AGGREGATE ROCK FOR FISCAL YEAR 2010-2011. (Public Works and Community Development Director)

This action authorizes the purchase of crushed aggregate rock for repair and maintenance of City streets and utility pipelines. Sufficient funds are available in Account Nos. 090-8215-8809 (Street Repairs) and 090-8215-9856 (Service Line Replacement) to cover this purchase.

Recommendation: Adopt a resolution authorizing the purchase of crushed aggregate rock for Fiscal Year 2010-2011 from Syar Industries Inc. of Vallejo, California, for a not-to-exceed cost of \$25,000.

H. PURCHASE OF FITTINGS AND HARDWARE FOR FISCAL YEAR 2010-2011. (Public Works and Community Development Director)

This action authorizes the purchase of fittings and hardware for repair and maintenance of water distribution pipelines. Sufficient funds are available in Account Nos. 090-8215-8792 (Fittings and Hardware) and 090-8215-9856 (Service Line Replacement) to cover the purchase.

Recommendation: Adopt a resolution authorizing the purchase of water distribution pipeline fittings and hardware for Fiscal Year 2010-2011 from Roberts & Brune Co. of Oakley, California, for a not-to-exceed cost of \$75,000.

I. RECOMMENDATION FOR CITY COUNCIL TO AUTHORIZE \$16,000 FOR AMERICORPS VOLUNTEER PROGRAM AND AUTHORIZE THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING. (Public Works and Community Development Director)

The Bay Area Climate and Energy Corps (BAYAC) has AmeriCorps members available for placement with local governments, public agencies and other nonprofits to work on energy and climate projects. This 11-month program provides volunteers to work with communities to reduce their greenhouse gas emissions by directly working on projects that realize measurable energy savings, clean energy and GHG reductions. To participate in this program, the City must commit \$16,000 in matching funds for each AmeriCorps volunteer and provide supervision for their work. The program timeframe is from late August 2010 through August 2011.

Recommendation: Adopt a resolution authorizing \$16,000 in matching funds from the Valero Improvement Project (VIP) Settlement Agreement funds for an AmeriCorps volunteer to support citywide greenhouse gas (GHG) reduction and climate action efforts, and authorizing the Public Works & Community Development Director to execute the Memorandum of Understanding on behalf of the City.

J. APPOINTMENT OF THE INTERIM CITY MANAGER. (City Attorney)

At the previous city council meeting the City Council appointed Jim Erickson as interim city manager. There was some confusion as to whether he was appointed as an employee or as an independent contractor. The intent was to appoint him as an employee. This action corrects that mistake.

Recommendation: Adopt the resolution approving an agreement with Jim Erickson for interim city manager services.

K. RECOMMENDATION TO APPROVE A CONTRACT AMENDMENT WITH CATERPILLAR PUPPETS FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM. (Public Works and Community Development Director)

On August 10, 2009, the City contracted with Caterpillar Puppets for a program that teaches elementary school students about using water wisely. The proposed contract amendment will allow Caterpillar Puppets to continue training students through August 2011.

Recommendation: Adopt a resolution approving a contract amendment with Caterpillar Puppets for the Early Water Conservation Education Program and authorizing the City Manager to execute the contract amendment on behalf of the City.

L. DESIGNATING THE CITY OF BENICIA FIRE STATIONS AS SAFE SURRENDER SITES. (Fire Chief)

Current State law allows a parent or legal guardian to confidentially surrender an infant, three days old or younger, to any hospital emergency room or other site designated by the County Board of Supervisors. As long as the baby has not been abused or neglected, the person may surrender the baby to the designated site without fear of arrest or prosecution. At their April 6, 2010 meeting, the Solano County Board of Supervisors requested each Solano County city to designate safe surrender sites in their city. Once the Solano County cities have identified safe surrender sites in their cities, the Board of Supervisors will formally designate the sites as safe surrender sites.

Recommendation: adopt the resolution requesting Solano County Board of Supervisors to designate the City of Benicia Fire Stations as safe surrender sites for newborns.

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

VIII. PUBLIC HEARINGS (7:30 PM):

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

A. INTRODUCTION OF AN ORDINANCE TO AMEND THE DEVELOPMENT AGREEMENT ORDINANCE. (City Attorney)

Mayor Patterson requested that the City Council consider revising the development agreement ordinance to require that complex projects and projects of more than 40 acres be subject to a development agreement with the City. The City Council concurred with the request on November 18, 2008. On November 12, 2009, and again on July 8, 2010, the Planning Commission reviewed proposed revisions to the City's Development Agreement Ordinance that would allow the City to require any applicant for a vesting tentative map, master plan and/or rezoning for property of 40 acres or more to enter into a development agreement under certain circumstances. The revisions also included changes to the information required in a development agreement application. The Planning Commission made some comments and

suggestions which staff has incorporated in the attached revisions.

Recommendation: Introduce the proposed revisions to the development agreement ordinance.

IX. ACTION ITEMS (8:00 PM):

A. REQUEST COUNCIL SUPPORT AND GIVE DIRECTION TO BEGIN FORMAL DISCUSSIONS WITH THE CITY OF VALLEJO TO PREPARE A PROPOSAL AND CONTRACT FOR 24/7 MUNICIPAL FIRE DISPATCHING SERVICES. (Police Chief)

The Benicia Emergency Communication Center answers calls for service for Benicia Police and Fire Departments. Like many municipalities, the City of Vallejo is facing serious budget shortfalls and seeking alternative ways to provide services to the community. The City of Vallejo has expressed desire to contract out for fire dispatching and is interested in a proposal from other agencies, including Benicia. A preliminary analysis of their request has determined that the Benicia Emergency Communications Center has the ability to absorb fire dispatching for the City of Vallejo within Benicia's dispatch center, without impact to the community and Police/Fire protocols and response times. A credible proposal could be prepared which provides a cost savings and operational/service benefits for both cities. If an agreement can be made and developed by October 1, 2010, we could begin the contract by January 1, 2011.

Recommendation: Request City Council support and give direction to begin formal discussions with the City of Vallejo to submit a proposal to provide, under a contract, municipal fire dispatching services 24/7 to the Vallejo Fire Department.

B. SB 435 (PAVELY) MOTORCYCLE EXHAUST SYSTEM FEDERAL NOISE LABEL. (Police Chief)

SB 435 would declare the Legislature's intent to enact legislation to label motorcycle exhaust systems on motorcycles manufactured on or after January 1, 2011 which is already set forth in Federal law. This bill would establish an enforcement section for motorcycles without a federal exhaust label and is classified as a secondary violation. Secondary violations are ones that peace officers are prohibited to stop someone for solely on a suspicion of such violation. While the bill is endorsed by the California Highway Patrol (CHP), it is opposed by the American Motorcycle Association (AMA) due to a number of issues associated with enforcement.

Recommendation: Staff does not currently recommend endorsement of the bill based on the information available at this time. At the July 20,

2010 meeting, this item was continued to the August 17, 2010 meeting and the Mayor requested that it be placed as an Action Item to allow for action, if needed.

X. INFORMATIONAL ITEMS (9:00 PM):

A. City Manager Reports

1. BUDGET STUDY SESSION – AUGUST 24, 2010. (City Manager)

The City Council has scheduled a budget study session for August 24, 2010 at 6:30 p.m. At this study session, the Council will be considering recommendations and giving direction to staff regarding balancing the 2010-11 budget, which currently has a projected shortfall of approximately \$1.1 million. Further, the City's long term forecast projects an average deficit of approximately \$1.2 million over the next five years.

Recommendation: This is an informational report. There is no action necessary at this time.

B. Council Member Committee Reports

(Council Member serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by the Council Members are made only by exception.)

1. Mayor's Committee Meeting.

(Mayor Patterson)

Next meeting date: August 18, 2010

2. Association of Bay Area Governments (ABAG).

(Mayor Patterson and Council Member Ioakimedes)

Next meeting date: Fall General Assembly is Thursday, October 21, 2010.

3. Finance, Audit and Budget Committee.

(Vice Mayor Schwartzman and Council Member Campbell)

Next meeting date: August 27, 2010.

4. League of California Cities.

(Mayor Patterson and Vice Mayor Schwartzman)

**Next meeting date: Annual Conference and Expo
September 15-17 2010**

5. **School Liaison Committee.**
(Council Members Ioakimedes and Hughes)
Next meeting date: TBD
6. **Sky Valley Open Space Committee.**
(Council Members Campbell and Hughes)
Next meeting date: November 3, 2010
7. **Solano EDC Board of Directors.**
(Mayor Patterson and Council Member Campbell)
Next meeting date: September 23, 2010
8. **Solano Transportation Authority (STA).**
(Mayor Patterson and Council Member Ioakimedes)
Next meeting date: September 8, 2010,
9. **Solano Water Authority-Solano County Water Agency and Delta Committee.**
(Mayor Patterson and Vice Mayor Schwartzman)
Next meeting date: September 9, 2010
10. **Traffic, Pedestrian and Bicycle Safety Committee.**
(Council Members Hughes and Ioakimedes)
Next meeting date: October 21, 2010
11. **Tri-City and County Regional Parks and Open Space.**
(Council Members Campbell and Hughes)
Next meeting date: TBD
12. **Valero Community Advisory Panel (CAP).**
(Council Member Hughes)
Next meeting date: TBD
13. **Youth Action Coalition.**
(Vice Mayor Schwartzman and Council Member Campbell)
Next meeting date: August 25, 2010
14. **ABAG-CAL FED Task Force-Bay Area Water Forum.**
(Mayor Patterson)
Next meeting date: September 27, 2010

XI. COUNCIL MEMBER REPORTS

A. Request to agendize the discussion of Port Fees.

Council Member Campbell is requesting that the City Council consider agendizing a discussion of Port Fees.

Recommendation: Consider Council Member Campbell's request to agendize this topic for future City Council meeting.

XII. ADJOURNMENT (9:45 PM):

Public Participation

The Benicia City Council 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 City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five 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 City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, 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 Council 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 may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council 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 City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. 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 City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerks Office.

RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE
MAYOR'S REAPPOINTMENT OF SHARON PETRELLESE TO THE HUMAN SERVICES
BOARD FOR A FULL TERM ENDING JULY 31, 2014**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the reappointment of Sharon Petrellese to the Human Services Board by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

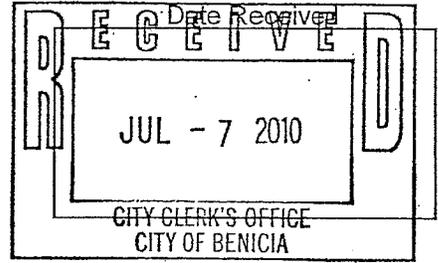
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name: Sharon Petrellese

Address: [REDACTED] BENICIA

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) _____ Fax: _____

Email: BENICIA@AUSTINTRAVEL.COM Years as Benicia resident: 16

Occupation/Employer: TRAVEL AGENT - SELF EMPLOYED

Please note your most recent community or civic volunteer experience: _____

~~none~~ CURRENTLY CHAIRPERSON OF HUMAN SERVICES BOARD

Please describe any applicable experience/training: APPOINTED 10/06

CURRENT ON ALL REQUIRED CITY TRAINING

All applications are considered public records and will be retained in an active file for at least one year from date of receipt.

Signature: Sharon Petrellese Date: 6/9/10



Human Services Board Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about this Board? Have you attended a Human Services Board meeting? If so, when?
I AM CURRENTLY CHAIRPERSON AND WISH TO SERVE A ADDITIONAL TERM.
2. Participation on this Board involves annual visits to an assigned grantee and attending outreach events, as well as review of grantee quarterly reports. Do you feel you have the time and commitment to be a viable member of this Board?
Yes
3. Is there a particular segment of human services and/or ~~parts~~ that interests you more than others?
No
4. Why do you think human services needs to play a lead role in fortifying the quality of life in Benicia? Do you see an area of human services that needs to be expanded at this point?

Everyone always looks to help the less fortunate around the world and most people seem to forget about our neighbors, we need to keep the awareness up for our local need right here in Benicia. With the current economy the way it is, our need for Human Services Grant Money Request will grow, but for now we need to at least maintain the level of support to our agencies.

RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE
MAYOR'S REAPPOINTMENT OF MICHAEL CAPLIN TO THE HUMAN SERVICES BOARD
FOR A FULL TERM ENDING JULY 31, 2014**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the reappointment of Michael Caplin to the Human Services Board by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

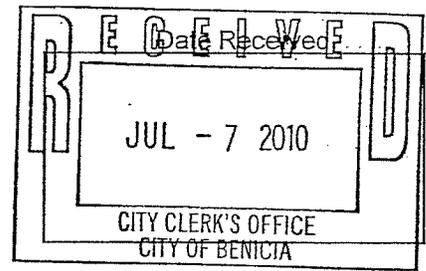
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name: MICHAEL CAPLIN

Address: [REDACTED], BENICIA 94510

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) [REDACTED] Fax: [REDACTED]

Email: mike@itgroupnetwork.com Years as Benicia resident: 28

Occupation/Employer: IT GROUP, LLC (TRAVEL INDUSTRY CONSORTIUM)

Please note your most recent community or civic volunteer experience: 6-7 YEARS ON

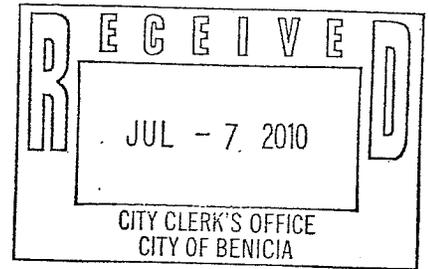
PRESENT & PREVIOUS HUMAN SERVICES BOARD ; 4 YEARS ON FAMILIES IN TRANSITION BOARD ; 4-5 YEARS VOLUNTEER DIRECTOR - BENICIA STATE CAPITOL

Please describe any applicable experience/training: _____

SENIOR MANAGEMENT - TRAVEL INDUSTRY, HOSPITALITY & MEETING/CONVENTION PLANNING

All applications are considered public records and will be retained in an active file for at least one year from date of receipt.

Signature: Michael Caplin Date: 7-06-10



Human Services Board Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about this Board? Have you attended a Human Services Board meeting? If so, when?

PRESENTLY SERVING OUT MY SECOND TERM ON THE HUMAN SERVICES BOARD

2. Participation on this Board involves annual visits to an assigned grantee and attending outreach events, as well as review of grantee quarterly reports. Do you feel you have the time and commitment to be a viable member of this Board?

YES.

3. Is there a particular segment of human services and/or arts that interests you more than others?

HIGH LEVEL OF INTEREST IN ALL OF THE HSB AGENCIES. HAVE DONE SOME ADDITIONAL VOLUNTEER WORK FOR BENICIA SAC.

4. Why do you think human services needs to play a lead role in fortifying the quality of life in Benicia? Do you see an area of human services that needs to be expanded at this point?

THE BOARD PROVIDES AN IMPORTANT UNBIASED FILTER, ASSESSING HUMAN SERVICE NEEDS IN THE COMMUNITY. PARTICULARLY, IN DIFFICULT ECONOMIC TIMES SUCH AS THE PRESENT, THE BOARD SERVES A VITAL NEED IN THE COMMUNITY.

RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE
MAYOR'S REAPPOINTMENT OF CHARLES EDWARD HENDRICKS TO THE HUMAN
SERVICES BOARD FOR A FULL TERM ENDING JULY 31, 2014**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the reappointment of Charles Edward Hendricks to the Human Services Board by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

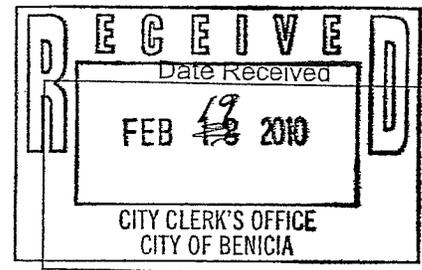
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Arts and Culture Commission
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Civil Service Commission
- Economic Development Board
- Finance, Audit & Budget Committee
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sustainability Commission
- Sky Valley Open Space Committee
- Uniform Code Board of Appeals

Name: CHARLES EDWARD HENDRICKS

Address: [REDACTED]

Phone: (Work) _____ (Home) [REDACTED]

(Cell) [REDACTED] Fax: _____

Email: CHENDRICKS@CSUM.EDU Years as Benicia resident: FIVE

Occupation/Employer: STUDENT / CALIFORNIA MARITIME ACADEMY

Please note your most recent community or civic volunteer experience: Organized

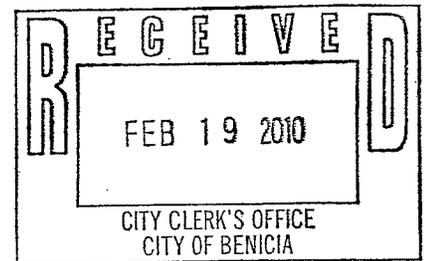
Campus holiday food drive 12/09

Please describe any applicable experience/training: Active Volunteer, Campus

organization, Campus newspaper financial officer.

All applications are considered public records and will be retained in an active file for at least one year from date of receipt.

Signature: [Handwritten Signature] Date: 2/19/10



Human Services & Arts Board Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about this Board? Have you attended a Human Services & Arts Board meeting? If so, when?

I am interested in providing service to Benicia residents in need of assistance. I'm also interested in giving back to my Community.

I briefly attended some meetings a few years ago.
2. Participation on this Board involves annual visits to an assigned grantee and attending outreach events, as well as review of grantee quarterly reports. Do you feel you have the time and commitment to be a viable member of this Board?

I do have the time and willing commitment to contribute to this board, the City of Benicia, and its residents.
3. Is there a particular segment of human services and/or arts that interests you more than others?

I am strongly interested in assisting non-profit agencies and citizens in need.
4. Why do you think human services and/or arts needs to play a lead role in fortifying the quality of life in Benicia? Do you see an area of human services and/or arts that needs to be expanded at this point?

"Every society is judged by how it treats the least fortunate amongst them" - Thomas Douglas

I strongly believe this and feel that I can contribute valuable input.

RESOLUTION NO. 10-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE
MAYOR'S APPOINTMENT OF CLAIRE M. MCFADDEN TO THE ECONOMIC
DEVELOPMENT BOARD FOR A FULL TERM ENDING JULY 31, 2014**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of Clair M. McFadden to the Economic Development Board by Mayor Patterson is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

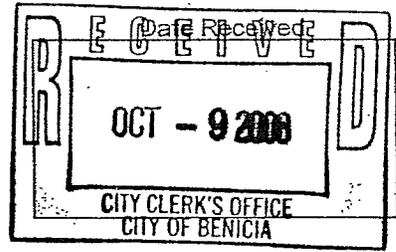
Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



City of Benicia Board/Commission/Committee Application

It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest.

Please check the board, commission, or committee you wish to apply for:

- Audit & Finance Committee
- Benicia Housing Authority Board of Commissioners
- Board of Library Trustees
- Building Board of Appeals
- Civil Service Commission
- Economic Development Board
- Historic Preservation Review Commission
- Human Services & Arts Board
- Open Government Commission
- Parks, Recreation & Cemetery Commission
- Planning Commission
- Sky Valley Open Space Committee

Name: Claire M. McFadden

Address: [REDACTED], Benicia, CA 94510

Phone: (Work) [REDACTED] (Home) [REDACTED]

(Cell) [REDACTED] Fax: [REDACTED]

Email: vpclairemc@aol.com Years as Benicia resident: 10+; moved in 1002

Occupation/Employer: Best Western Heritage Inn,

Please note your most recent community or civic volunteer experience: _____

member Chamber of Commerce, president 1996, Board member 1993-1999

tourism committee chair 1992-1994/6, Community Advisory Group: (CAG) 1998-2001
Please describe any applicable experience/training: _____
Hotel/Lodging Industry 17 years, chamber activity 17 years

All applications are considered public records and will be retained in an active file for at least one year from date of receipt.

Signature: Claire M. McFadden Date: 10.7.08



Economic Development Board Application

In addition to completing the City of Benicia Board/Commission/Committee Application form, please respond to the following questions:

1. What interests you about this Board? Have you attended a meeting within the last six months?

As I have returned to work with the Heritage Hotel Group again, I would like to become involved again with the city as I so enjoyed doing so in the past.

2. Participation on the Board involves monthly meetings on the 4th Wednesday at 5:30 at City Hall, as well as reading the packet distributed in advance. Do you have any concerns with this commitment?

I have no concerns with this commitment, or time involved.

3. Are you the employee or owner of a Benicia business? If so, please describe the business and your role?

I have worked with the Heritage Hotel Group since the opening of the property here in Benicia in May 1988. I have held various roles from Sales Manager, G.M., VP of operations, director of sales, and vice president of sales/mktg for entire hotel group.

4. Given the adopted economic development goals in the City's General Plan (available online at the Community Development Department webpage on www.ci.benicia.ca.us), and Economic Development Strategy (available online at www.BeniciaBusiness.com) which do you feel the EDB should focus on, and why?

As our national economy as well as global economy faces extraordinary challenges on a daily basis, it is imperative for the city to assess the current fiscal crisis through addressing two components: Expenses and Revenue.

Page 2 of 2

IV.B.4.4

The revenue component is pivotal to the city of Benicia. As the 10 year goals state: retention, expansion and attraction of →

Business to the city of Benicia. I would recommend reviewing month to date and year to date revenues. Further, it should be the Board's focus to not only attract and retain business; but also facilitate the business community's ability to flourish here. While I fully understand a focus should be placed with our downtown and first street; our Industrial park should be recognized in these discussions. As 70% of the city 2006 sales tax revenues are generated through BIP, their presence should be not only understood but built upon. Many types of mixed use can be utilized throughout the park as well as the port. However, we must include the current businesses located there for feedback and input.

My experience, to say the least, is extensive as it relates to tourism. I commend the city for approaching this program and industry in a proactive manner. Benicia ~~now~~ has all of the components and attributes to become a true premier day trip destination for the 50+ target market as enumerated within the placemaking group plan.

With that said, I believe my experience, energy and positive approach would be a welcome addition to your economic development Board.

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
July 20, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 6:00 p.m.

II. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Mayor Patterson led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

III. CLOSED SESSION:

Heather McLaughlin read the announcement of Closed Session.

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Subdivision (b) of Government Code Section 54957)
Titles: City Manager**

**B. APPOINTMENT OF INTERIM CITY MANAGER
(Subdivision (b) of Government Code Section 54957)**

IV. ADOPTION OF AGENDA:

V. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

B. PUBLIC COMMENT

None

VI. ADJOURNMENT:

Mayor Patterson adjourned the meeting to Closed Session at 6:01 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
July 20, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 7:06 p.m.

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Chris Tomasik led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS

1. Announcement of action taken at Closed Session, if any.

Heather McLaughlin, City Attorney, reported that Council did not take any actions during Closed Session.

2. Openings on Boards and Commissions:

Finance Audit and Budget Committee
1 unexpired term

3. Mayor's Office Hours:

Presentation of Resolution recognizing the service of City Manager
Jim Erickson

Tom Barteo, representing Senator Pat Wiggins, Assemblymember Mariko Yamada, and Congressman George Miller, presented a framed proclamation signed by Senator Wiggins and Assemblymember Yamada recognizing Jim Erickson's service to the City of Benicia and Solano County. He also presented him with a pin from Congressman Miller.

Mayor Patterson read a letter from Supervisor Linda Seifert recognizing Mr. Erickson's service.

All Council Members thanked Mr. Erickson for his efforts and service to the City.

Mr. Erickson thanked the Mayor and Council, Staff, and the community for their support.

B. APPOINTMENTS

1. Appointment of Ronna Leon as the New Poet Laureate.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-85 - A RESOLUTION AFFIRMING THE POET LAUREATE COMMITTEE'S RECOMMENDED APPOINTMENT OF RONNA LEON AS THE NEW POET LAUREATE

Robert Shelby, outgoing Poet Laureate, read two poems.

Mayor Patterson read a poem written by Ronna Leon.

Ms. Leon thanked Council for the appointment. She read a poem titled 'Wild Life.' She talked about what she hoped to do during her term as Benicia's Poet Laureate.

2. Reappointment of Mike Radesky to the Library Board for a full term to July 31, 2013.

RESOLUTION 10-86 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MIKE RADESKY TO THE LIBRARY BOARD OF TRUSTEES FOR A FULL TERM ENDING JULY 31, 2013

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

3. Reappointment of Mary Eichbauer to the Library Board of Trustees for a full term to July 31, 2013.

RESOLUTION 10-87 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MARY EICHBAUER TO THE LIBRARY BOARD OF TRUSTEES FOR A FULL TERM ENDING JULY 31, 2013

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

4. Reappointment of Sharon Anderson to the Benicia Housing Authority Board of Commissioners for a full term ending July 31, 2014.

RESOLUTION 10-88 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF SHARON ANDERSON TO THE BENICIA HOUSING AUTHORITY BOARD OF COMMISSIONERS FOR A FULL TERM ENDING JULY 31, 2014

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

5. Reappointment of Phyllis McKeever to the Benicia Housing Authority Board of Commissioners for a full term to July 31, 2014.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-89- A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF PHYLLIS MCKEEVER TO THE BENICIA HOUSING AUTHORITY BOARD OF COMMISSIONERS FOR A FULL TERM ENDING JULY 31, 2014

6. Appointment of Larry Fullington to the Open Government Commission for a full term to January 31, 2014.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-90 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF LARRY FULLINGTON TO THE OPEN GOVERNMENT COMMISSION FOR A FULL TERM ENDING JANUARY 31, 2014

7. Reappointment of John McGuire to the Parks, Recreation and Cemetery Commission for a full term to July 31, 2014.

RESOLUTION 10-91- A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF JOHN MCGUIRE TO THE PARKS, RECREATION AND CEMETERY COMMISSION FOR A FULL TERM ENDING JULY 31, 2014

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

8. Reappointment of Christina Strawbridge to the Economic Development Board for a full term to July 31, 2014.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-92 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF CHRISTINA STRAWBRIDGE TO THE ECONOMIC DEVELOPMENT BOARD FOR A FULL TERM ENDING JULY 31, 2014

9. Reappointment of Duane Oliveira to the Economic Development Board for a full term to July 31, 2014.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-93 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF DUANE OLIVEIRA TO THE ECONOMIC DEVELOPMENT BOARD FOR A FULL TERM ENDING JULY 31, 2014

10. Appointment of Nancy Lund to the Solano Transportation Authority-Bicycle Advisory Committee for a full term to July 30, 2013.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

RESOLUTION 10- 94- A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF NANCY LUND TO THE SOLANO TRANSPORTATION AUTHORITY BICYCLE ADVISORY COMMITTEE FOR A FULL TERM ENDING JULY 31, 2014

11. Appointment of Vice Mayor Alan Schwartzman to the City Council Appointment Sub Committee for a one-year term ending June 30, 2011.

RESOLUTION 10-95 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF VICE MAYOR SCHWARTZMAN TO A CITY COUNCIL APPOINTMENT SUBCOMMITTEE FOR A ONE-YEAR TERM ENDING JUNE 30, 2011

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

12. Appointment of Mike loakimedes to the Youth Action Coalition.

On motion of Mayor Patterson, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

RESOLUTION 10-96 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENTS OF MEMBERS OF THE CITY COUNCIL TO STANDING, AD HOC, AND OUTSIDE AGENCY COMMITTEES

C. PRESENTATIONS

1. Update on the removal of ships from the Suisun Bay Recovery Fleet - Henry Ryan - Ship Operation and Maintenance Officer

Mr. Ryan reviewed a PowerPoint presentation (copy on file).

Council Member Hughes and Mr. Ryan discussed the cost of transporting one of the ships (approximately \$750-\$800K per tow, plus \$200K for work prior to tow, and additional costs for dismantling).

Council Member loakimedes and Mr. Ryan discussed whether the speed of the project would improve if a California company were used, and the time it takes to

tow a ship from Benicia to Texas (approximately 45 days).

Vice Mayor Schwartzman and Mr. Ryan discussed the time it takes to dismantle a ship (approximately 3-4 months per ship).

Mayor Patterson commended Mr. Ryan on the responsiveness of MARAD (U.S. Maritime Administration). She encouraged him to invite other Council Members to go and see the processes they are going through with the fleet.

Mr. Ryan noted there would be a visitor's day on 8/24/10 (date subject to change).

2. BERT Hukilau in September - 09/11/2010

Dr. Constance Beutel reviewed a PowerPoint presentation regarding the Hukilau (copy on file).

Mr. Dean Lewis reviewed the maps used by BERT. They currently have 384 trained BERT members, however, they would like to have 680 trained members (10 people per quadrant).

Vice Mayor Schwartzman and Dr. Beutel discussed active vs. inactive membership.

D. PROCLAMATIONS

1. In Recognition of Jay Garibaldi for more than 30 years of Fire Department Volunteer Service

Mayor Patterson noted she wanted to present the proclamation prior to the two presentations.

Mayor Patterson presented Mr. Garibaldi with a proclamation.

Chief Vucurevich presented Mr. Garibaldi with a framed antique replica of a 'certificate of exemption.'

V. ADOPTION OF AGENDA:

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Agenda, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

Mr. Erickson requested item VII-B be removed from the agenda and no action

should be taken

Ms. McLaughlin requested item VII-D be removed from the agenda so Staff could do additional research.

Staff requested item VII-I be continued so Staff could prepare a report and answer additional questions.

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

B. PUBLIC COMMENT

Council Member Campbell discussed the issue of hanging plants on the light posts along First Street, and the issue of the handicapped ramp at the depot building. He asked Staff to prepare a report updating the status of each issue.

Mr. Erickson stated that Staff has had some conversations regarding the hanging plants with Benicia Main Street in the past few days. There is currently no money in the City's budget for this. There may be other outside areas of funding available. Regarding the depot ramp, there is currently no budgeted funds for this issue.

Council Member Campbell would like this item researched for the next agenda. Staff noted additional time might be required to research the two issues.

VII. CONSENT CALENDAR:

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

Council pulled items VII-E, VII-F, VII-H, and VII-I for discussion.

A. Approval of Minutes May 25, 2010, June 7, 2010, June 22, 2010, June 29, 2010, July 6, 2010

B. INTRODUCTION OF AN ORDINANCE INTO THE BENICIA MUNICIPAL CODE PROHIBITING THE SALE OF SALVIA DIVINORUM TO INDIVIDUALS OVER 18 YEARS OF AGE

Item removed from agenda.

C. SETTING 2010-11 SECURED TAX RATES FOR BONDED INDEBTEDNESS FOR THE 1997 GENERAL OBLIGATION SEWER BONDS

RESOLUTION 10-97 - A RESOLUTION SETTING THE 2010-11 SECURED TAX RATES FOR THE 1997 SEWER BONDS

D. SECOND READING OF AN ORDINANCE ADDING NEW SECTIONS 1.24.020 (CITY SEAL) AND 1.24.030 (OFFICIAL FLAG) TO CHAPTER 1.24 (MISCELLANEOUS PROVISIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

Item removed from the agenda.

E. PRESERVATION OF PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAMS

Mayor Patterson wanted to alert the public to the situation. She discussed the PACE Programs. She asked that the City write a letter in support of the State and Federal legislators requiring the Federal Housing Finance Agency to restore the practice of allowing property assessed clean energy PACE loans to acquire a priority over existing mortgages.

Vice Mayor Schwartzman discussed the PACE program. He hoped congress could figure out a way to make this work.

Mayor Patterson discussed a city in New York that was using the PACE Program. She also discussed how the City of Sonoma was financing their solar program.

Vice Mayor Schwartzman discussed the issue of loan qualifications.

Mayor Patterson directed Staff to prepare a letter for her signature requesting State and Federal legislators require the State and Federal Housing Finance Agency to restore the practice of allowing property assessed clean energy loans to acquire a priority lien over existing mortgages, as well as any letters in support of legislation.

F. STORM WATER INSPECTION FEE

Council Member Hughes and Staff discussed what the staff training consisted of, how much money the City could have collected if that had been done (\$70,000 per year), and concern that the recommended fee structure did not meeting the City's costs.

Staff discussed the point of the inspections, and what projects would need to be

inspected.

Council Member Campbell and Staff discussed whether the City would be in violation if it did not do the inspections (it would), and concerns regarding the fee scale.

Vice Mayor Schwartzman discussed concern regarding the negative aspect of this, concern regarding balancing the City's budget, concern regarding staff's time, and trying to somehow close the gap.

Mayor Patterson would like Staff to find out how much of the 120K was for the inspections, and how much the City would need to increase that amount in order to pay for Staff's time. The fee should reflect education, enforcement, and the day-to-day operations of doing the inspections and the permitting process.

Mr. Erickson stated Staff did not have the cost information. Council could either make a determination or continue this item to the next meeting so Staff could gather the information.

Mayor Patterson raised concern regarding delaying this item and losing out on more funds.

Council Member Ioakimedes and Staff discussed filters that could drop into storm drains that capture what is going down the drains. The City currently does not have any that are permanently installed in the storm drains. Staff was looking into where it would be appropriate to install such filters.

Council Member Hughes discussed concern regarding continuing the issue. Staff confirmed the inspections were not currently being done. Council Member Hughes discussed concern regarding the proposed subsidies.

Mayor Patterson and Staff discussed what actions the Regional Water Board could take if the inspections were not being done (up to \$10K per day or \$25 per gallon of discharge). Staff confirmed the fines are significant. Mayor Patterson raised concern regarding Staff time that could be required to address complaints by the Regional Water Board.

Vice Mayor Schwartzman discussed the importance of following through with this. He would like Staff to report back in 60 days on program costs, and a breakdown of the costs. He made a motion to adopt the fee, modifying the existing (but as yet collected) \$100 fee, for stormwater inspection service to a graduated \$25-\$100, depending on the type of land use activity, as presented to Council by the most recent Master Fee Schedule, with the direction to Staff to come back in 60 days with the actual program costs, specifically what this cost was as part of the overall program.

Mayor Patterson requested, in addition to the report, noting that it may be necessary to adjust the fee in six months, or on an annual basis. Vice Mayor Schwartzman agreed to the change.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Storm Water Inspection Fee, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

G. APPOINTMENT OF AN INTERIM CITY MANAGER

RESOLUTION 10-98 - A RESOLUTION HIRING JIM ERICKSON AS THE INTERIM CITY MANAGER

H. REVISING THE PROCESS FOR APPOINTMENT TO THE CITY COUNCIL APPOINTMENT SUB-COMMITTEE

RESOLUTION 10-99 - A RESOLUTION REVISING THE PROCEDURE FOR APPOINTMENT TO BOARDS, COMMISSIONS AND COMMITTEES TO INCORPORATE RECOMMENDATIONS TO THE MAYOR FROM A CITY COUNCIL APPOINTMENT SUBCOMMITTEE

Ms. McLaughlin discussed the revised resolution she handed out tonight (copy on file).

Council Member Hughes and Staff discussed the language changes, concern regarding the language in the 4th whereas, the need to be consistent in the language in the 'whereas' sections.

Mayor Patterson suggested language for the 5th whereas. Staff recommended changing the language from 'recommendation' to 'evaluate.'

Vice Mayor Schwartzman discussed concern as to why the language changes were being made (other than the language regarding the term), and why 'to the extent possible' was being added.

Council Member loakimedes and Staff discussed the process for an outgoing commissioner if an opening was not filled.

Mayor Patterson and Staff discussed whether this process was consistent with State statute. Staff confirmed this would make the terms more clear, and suggested removing 'to the extent possible' and add 'if a Council Member was unable or unwilling to serve', and change 'recommendation' to 'evaluate' (however legally, Council would be fine either way).

Council Member Campbell did not see a difference between evaluation and recommendation. He made a motion to approve the resolution with one change to whereas #3 'if a council member is unable or unwilling to serve.'

On motion of Council Member Campbell, seconded by Vice Mayor Schwartzman, Council adopted the Resolution, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

I. INFORMATIONAL REPORT ON VALERO INCIDENTS OCCURRING ON JUNE 17, 2010

Chief Vucurevich reviewed the staff report.

Mayor Patterson and Staff discussed the problem with the 'all clear', the process of coming up with recommendations to Council on where improvement is needed, public outreach for the processes, and possibly purchasing a call system that would be able to call large numbers of the community at a time.

Mr. Wayne Kino, BAAQMD, stated he was available for questions, although they are in the middle of the investigation, so his answers would be limited.

Council Member Hughes and Staff discussed whether channel 27 was available through Comcast yet (it was not).

Mayor Patterson and Mr. Kino discussed the issue of fence line monitoring, having fallout up to 2.5 miles away after the incident, sensitive receptors, coordinating the fallout from the impact with California Fish and Game, whether birds could have been affected by the incident, when BAAQMD's report would be available (recommendations and carbon footprint availability), and fees that are associated with such incidents.

Council Member Ioakimedes and Staff discussed information on the alarm system and instructions on what to do in the event of an emergency being sent in the water bills being printed on heavier card stock, or on a magnet, etc. (something more noticeable).

Council Member Campbell discussed the promenade at the end of First Street being the product of a violation and fines from a previous incident. He and Staff discussed the issue of doing a dry-run practice to ensure all of the identified problems were working as they should be.

Mayor Patterson and Staff discussed the possibility of doing a drill that actually engaged the public.

Public Comment:

None

Mayor Patterson gave direction to Staff to consider a subcommittee from BERT to work with BFD to do a community drill, and institutionalize it so it is ongoing, and Staff to report back to Council on the improvements and recommendations. She would like Staff to pursue the possibilities of fees/fines.

Mayor Patterson and Staff discussed the various problems Valero had with communications.

Staff confirmed they had not yet heard back from California Fish and Game regarding the issue of fish kill.

Council Member Campbell requested Staff look into whether additional sirens were needed, so the City could talk to Valero about the cost.

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

K. Break

Mayor Patterson called for a 5-minute break at 9:20 p.m. The meeting resumed at 9:28 p.m.

VIII. PUBLIC HEARINGS:

A. INTRODUCTION AND FIRST READING OF ORDINANCE AMENDING CHAPTER 13.50 PRETREATMENT AND SOURCE CONTROL OF WASTE DISPOSAL OR DISCHARGE AND ADOPTION OF THE REVISED ENFORCEMENT RESPONSE PLAN

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved the Introduction and First Reading of an Ordinance as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes

Noes: (None)

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Hughes

Noes: (None)

ORDINANCE 10- - AN ORDINANCE AMENDING CHAPTER 13.5
PRETREATMENT AND SOURCE CONTROL OF WASTE DISPOSAL OR

DISCHARGE

RESOLUTION 10-100 - A RESOLUTION AMENDING THE PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN

Chris Tomasik, Assistant Director & Utility Manager, reviewed the staff report.

Council Member Hughes and Staff discussed the public workshops that were held and how many people attended (approximately 11 people total).

Council Member loakimedes asked if his business was regulated by this, and if so, whether he needed to recuse himself. Ms. McLaughlin confirmed he should recuse himself from the discussion. 'She confirmed Council Member Campbell should recuse himself as well.

Mayor Patterson requested a report that highlights how this affects the businesses in Benicia. She and Staff discussed concerns regarding the changes on page 59 and whether that needed to be in an ordinance, what a general permit was (as it was referenced to on page 66), access to reports referenced to on page 79, how the public could get access to the discharge release reports, and the issue of enforcement as referenced on page 81.

Public Hearing Opened

Public Comment:

Dana Dean - Ms. Dean spoke on behalf of Amports regarding concerns on some proposed language. She discussed language regarding enforcement and violations as listed on VIII-A-36. She suggested the appeal go to the superintendent's supervisor or someone higher. She discussed concerns regarding the order to show the cause hearing. She discussed concern regarding the appeal process.

Public Hearing Closed

Mayor Patterson and Staff discussed the notification of violation process and the appeal process.

Council Member Hughes and Staff discussed the grey areas with notices of violation. The proposed ordinance could use some wordsmithing that could address some concerns regarding acknowledging some sort of disagreement without putting a full-blown plan together.

Vice Mayor Schwartzman suggested language regarding the notice of violation. He suggested adding a sentence referencing the citizen submitting an objection to the notice - 'require specific required action and a protest', and add 'notice of

violation and compliance orders' inserted into the list that is in parenthesis (page 36).

Council Member Hughes suggested referencing section .295 in the front.

Staff confirmed the suggested language was close enough so that the introduction and first reading could be approved tonight.

Mayor Patterson directed Staff to make sure .295 was connected to .250.

Council Member Hughes and Staff discussed scenarios where notices of violations could be issued.

Ms. McLaughlin clarified there were two amendments to the ordinance: 1) changes to 13.50.250 - adding language that references section 13.50.295, and 2) in section 13.50.295 add into the parenthesis clause 'limited to permit revocations and cease and desist orders, notices of violations and compliance orders.'

B. CONDUCT A NOTICED PUBLIC HEARING TO CONSIDER APPROVING THE SECOND AMENDMENT TO THE COUNTYWIDE NON-DISPOSAL FACILITY ELEMENT OF THE COUNTYWIDE INTEGRATED WASTE MANAGEMENT PLAN

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council adopted the Resolution, on roll call by the following vote:
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes
Noes: (None)

RESOLUTION 10-101 - A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE COUNTWIDE NON-DISPOSAL FACILITY ELEMENT OF THE COUNTWIDE INTEGRATED WASTE MANAGEMENT PLAN

Narcissa Antel reviewed the staff report and a PowerPoint presentation (copy on file).

Public Comment:

None

Vice Mayor Schwartzman and Staff clarified that the date listed in the report should be 2/28.

Council Member Hughes and Ms. Antel discussed the remaining cities that needed to consider the amendments. They are scheduled to present to those cities in the next two weeks. There have been no objections raised thus far.

IX. ACTION ITEMS:

A. REDUCTION IN COMPENSATION PACKAGE FOR THE CITY COUNCIL

Mayor Patterson and Staff discussed the need to make this issue a two-part process, translating the reduction into a more permanent benefits reduction, and this being a leadership opportunity. The City Manager and City Attorney would come back in January to let Council know how the salary reduction could be made into a more permanent health benefit reduction. Taking action on retirement and health insurance requires more involvement to take action. Staff thinks this is the right direction to go. There are rules and regulations that pertain to Council's salaries that don't apply to Staff. Council has a number of options it could take.

Mayor Patterson noted that she hoped Council could take action on the salary portion, but not the benefit portion.

Vice Mayor Schwartzman and Staff discussed possible tax issues with the voluntary reductions.

This item was continued to the 8/17/10 (or possibly later) meeting so Staff could look into the tax issues.

X. INFORMATIONAL ITEMS:

A. City Manager Reports

1. SB 435 (PAVELY) CLEAR AIR QUALITY ACT

At 11:01 Mayor Patterson asked if this could be continued to a future meeting as an action item, although there may be no actual 'action' to take. This item was continued to 8/17 as an action item.

B. Council Member Committee Reports

1. Mayor's Committee Meeting. (Mayor Patterson)

Next Meeting Date: July 21, 2010

2. Association of Bay Area Governments (ABAG). (Mayor Patterson and Council Member Ioakimedes)

Next Meeting Date: Fall General Assembly - October 21, 2010

3. Finance, Audit and Budget Committee. (Vice Mayor Schwartzman and Council Member Campbell)

Next Meeting Date: July 23, 2010

4. **League of California Cities. (Mayor Patterson and Vice Mayor Schwartzman)**
Next Meeting Date: July 29, 2010
5. **School Liaison Committee. (Council Members Ioakimedes and Hughes)**
Next Meeting Date: TBD
6. **Sky Valley Open Space Committee. (Council Members Campbell and Hughes)**
Next Meeting Date: August 4, 2010
7. **Solano EDC Board of Directors. (Mayor Patterson and Council Member Campbell)**
Next Meeting Date: July 22, 2010
8. **Solano Transportation Authority (STA). (Mayor Patterson and Council Member Ioakimedes)**
Next Meeting Date: September 8, 2010
9. **Solano Water Authority-Solano County Water Agency and Delta Committee. (Mayor Patterson and Vice Mayor Schwartzman)**
Next Meeting Date: August 12, 2010
10. **Traffic, Pedestrian and Bicycle Safety Committee. (Council Members Hughes and Ioakimedes)**
Next Meeting Date: October 21, 2010
11. **Tri-City and County Regional Parks and Open Space. (Council Members Campbell and Hughes)**
Next Meeting Date: TBD
12. **Valero Community Advisory Panel (CAP). (Council Member Hughes)**
Next Meeting Date: TBD
13. **Youth Action Coalition. (Vice Mayor Schwartzman and Council Member Campbell)**
Next Meeting Date: August 25, 2010
14. **ABAG-CAL FED Task Force-Bay Area Water Forum. (Mayor Patterson)**
Next Meeting Date: September 27, 2010

XI. Council Member Reports:

A. Request to agendaize review of Comcast service and franchise agreement. (Mayor Patterson)

Continued

XII. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:03 p.m.

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
August 03, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

I. CALL TO ORDER:

Mayor Patterson called the meeting to order at 6:00 p.m.

II. CONVENE OPEN SESSION:

A. ROLL CALL

Council Members Campbell and Hughes arrived immediately after roll was taken.

B. PLEDGE OF ALLEGIANCE

Patrick Fedigan led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:

III. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

B. PUBLIC COMMENT

Nancy Martinez - Ms. Martinez addressed concerns raised at the 7/6/10 Council meeting regarding litter along First Street following the 7/3 and 7/4 festivities. She discussed the efforts taken by Benicia Main Street and Adobe to remove trash after the festivities.

Mayor Patterson and Mr. Erickson discussed the efforts of Benicia Main Street to remove the trash. Staff was asked to provide a summary of actions taken regarding the issue.

IV. ADOPTION OF AGENDA:

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved the Agenda as presented, on roll call by the following vote:
Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes
Noes: (None)

V. ACTION ITEMS:

A. AWARD OF CONSTRUCTION CONTRACT FOR BENICIA COMMUNITY CENTER PROJECT

Jim Erickson, City Manager, introduced the item.

Mike Alvarez, Parks & Community Services Director, reviewed the staff report.

Council Member Hughes and Staff discussed the funds spent to date (\$390,000 design and engineering + \$700,000 remedial work, and \$410,000 lease payments).

Council Member Campbell complimented Staff on their efforts. He and Staff discussed the funds from the Boy Scouts (already used).

Vice Mayor Schwartzman and Staff discussed the proposed costs, the excellent work done by Staff, moving administration and Parks to the building.

Mayor Patterson and Staff discussed the possibility of moving the City Attorney's office to the soon-to-be vacated offices in City Hall. The move is not currently in the budget. Mayor Patterson would like Staff to look into the issue and report back to Council.

Public Comment:

Betsey Radke - Ms. Radke discussed the long journey of finding a home for the Girl Scouts. They are excited and are looking forward to the move. She thanked Staff and Council for their efforts.

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council adopted the Resolution, on roll call by the following vote:
Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes
Noes: (None)

VI. CLOSED SESSION:

Heather McLaughlin read the announcement of Closed Session.

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
(Subdivision (a) of Government Code Section 54956.9)

Name of cases: Brian Lewis v. City of Benicia
Robert Amatrone v. City of Benicia

B. CONFERENCE WITH LABOR NEGOTIATOR

(Government Code Section 54957.6 (a))

Agency negotiators: City Manager, Administrative Services Director

Employee organizations: Benicia Senior Management Group, Benicia Middle Management Group, Local 1, Benicia Public Service Employees' Association (BPSEA), Police Officers Association (BPOA), Benicia Firefighters Association (BFA), Benicia Dispatchers Association (BDA), Police Management, Unrepresented.

C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Subdivision (b) of Government Code Section 54957)

Title: City Manager

D. APPOINTMENT OF INTERIM CITY MANAGER

(Subdivision (b) of Government Code Section 54957)

VII. ADJOURNMENT:

Mayor Patterson adjourned the meeting to Closed Session at 6:26 p.m.

**AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR**

DATE : July 27, 2010

TO : City Manager

FROM : Public Works and Community Development Director

SUBJECT : **SECOND READING AND ADOPTION OF ORDINANCE
AMENDING CHAPTER 13.50 PRETREATMENT AND SOURCE
CONTROL OF WASTE DISPOSAL OR DISCHARGE**

RECOMMENDATION:

Adopt the ordinance amending Chapter 13.50, Pretreatment and Source Control of Waste Disposal or Discharge, of Title 13, Public Services, of the Benicia Municipal Code.

EXECUTIVE SUMMARY:

On July 20, 2010, City Council introduced and conducted the first reading of an ordinance to amend Chapter 13.50, Pretreatment and Source Control of Waste Disposal or Discharge, of the Benicia Municipal Code. The proposed action is the second reading and adoption of the ordinance. Revisions to the ordinance are required to comply with federal regulations. The City's Pretreatment Ordinance regulates nonresidential discharges to the wastewater treatment plant. The ordinance affects industrial, commercial, and institutional customers that use water in any process of their business that results in a wastewater discharge. If a business uses water only in bathrooms, employee kitchens, or landscaping, this ordinance does not apply.

BUDGET INFORMATION:

There are no budget impacts from the proposed action.

GENERAL PLAN:

Relevant General Plan Goals:

- Goal 2.28: Improve and maintain public facilities and services.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protecting and Enhancing the Environment
The pretreatment program reduces pollutant load to the wastewater plant thereby protecting the environment by reducing the potential for discharge permit violations.
- Strategic Issue #4: Preserving and Enhancing Infrastructure
The pretreatment program reduces pollutant load to the wastewater collection (sewer) system, thereby reducing the potential for sewer overflows, and protects plant processes, thereby reducing the potential for permit violations.

BACKGROUND:

The City of Benicia is required by the U.S. Environmental Protection Agency (EPA), under the provisions of the Clean Water Act, to conduct a pretreatment program as part of the National Pollutant Discharge Elimination System (NPDES) permit for the wastewater treatment plant. All agencies with pretreatment programs, including the City, are required to maintain their pretreatment ordinances in compliance with the federal regulations outlined in 40 CFR 403 – General Pretreatment Regulations for Existing and New Sources of Pollution. To comply with revisions to those regulations, the City drafted an update to its current ordinance using language from a model pretreatment ordinance written and provided by the EPA.

The pretreatment ordinance regulates discharges to the City's wastewater system that have the potential to cause harm to the City's facilities, staff, the public, and/or the environment, such as byproducts of manufacturing operations. The ordinance provisions affect industrial, commercial, and institutional customers that use water in any process of their business that results in a wastewater discharge based on "tiers" established by EPA.

The City has no permitted Tier 1 and 2 users and there are less than ten permitted Tier 3 users. Tier 1 users are users subject to federal categorical pretreatment standards, such as pesticide manufacturers. Tier 2 users generally have a process waste stream greater than 25,000 gallons per day, such as food manufacturers. Tier 3 users discharge non-domestic wastes that do not fall within the definition of either Tier 1 or 2, such as detergent packagers. If a business uses water only in bathrooms, employee kitchens, or landscaping, the ordinance does not apply.

As directed by the City Council during the public hearing held on July 20, 2010 for the introduction and first reading of the ordinance, a minor wording change was made to Section 13.50.295, Enforcement – Appeal Process, to clarify its

application to the menu of enforcement actions, including a Notification of Violation.

Attachment:

- Proposed Ordinance

Chapter 13.50

PRETREATMENT AND SOURCE CONTROL
OF WASTEWATER DISPOSAL OR DISCHARGE*

Sections:

- 13.50.010 Purpose and policy.
- 13.50.020 Definitions.
- 13.50.030 Abbreviations.
- 13.50.040 Prohibited discharge--Certain waters or wastes.
- 13.50.041 Hazardous waste notification.
- 13.50.042 Unlawful disposal of wastes.
- 13.50.043 Prohibited discharge locations.
- 13.50.044 Treatment of wastes required.
- 13.50.046 Unlawful disposal facilities.
- 13.50.050 Federal categorical pretreatment standards.
- 13.50.075 Best Management Practices (BMPs).
- 13.50.070 Pollutant limitations and local limits.
- 13.50.080 Prohibition of dilution as treatment.
- 13.50.085 Deny/Condition New or Increased Contributions.
- 13.50.089 Reports of Changed Conditions.
- 13.50.090 Accidental and Slug Discharges.
- 13.50.095 Slug Discharge Control Plans.
- 13.50.100 Charges and fees.
- 13.50.105 Permit required.
- 13.50.115 Special Discharge Permit.
- 13.50.120 Permit—Application.
- 13.50.125 General Permits.
- 13.50.130 Permit— Revocation.
- 13.50.140 Permit--Modifications.
- 13.50.150 Permit conditions.
- 13.50.160 Permit duration.
- 13.50.165 Permit reissuance.
- 13.50.170 Permit transfer.
- 13.50.175 Analytical requirements.
- 13.50.180 Reporting and sampling requirements for permittee.
- 13.50.183 Sample collection.
- 13.50.185 Recordkeeping requirements.
- 13.50.190 Monitoring requirements.
- 13.50.200 Inspection and sampling.
- 13.50.210 Pretreatment.

* Prior ordinance history: Ords. 88-13 N.S., and 90-11 N.S., and 92-1 N.S.

- 13.50.215 POTW requirements.
- 13.50.220 Confidential information.
- 13.50.230 Emergency suspensions.
- 13.50.240 Permit--Enforcement--Termination of permit.
- 13.50.250 Notification of Violation.
- 13.50.251 Notification of Violation and Repeat Sampling.
- 13.50.252 Enforcement—Administrative Orders.
- 13.50.255 Enforcement--Cease and desist orders.
- 13.50.260 Enforcement--Show cause hearing.
- 13.50.265 Enforcement--Consent orders.
- 13.50.266 Enforcement--Compliance orders--Discontinuance of sewer service.
- 13.50.270 Enforcement--Legal action.
- 13.50.275 Enforcement--Injunctive relief.
- 13.50.280 Violations--Public nuisance.
- 13.50.285 Applicable Civil and Criminal Penalties.
- 13.50.290 Repealed.
- 13.50.295 Enforcement-- Appeal Process.
- 13.50.300 Violations--Misdemeanor.
- 13.50.305 Publication of IUs in Significant Non-Compliance.
- 13.50.310 Penalties--Cumulations.
- 13.50.315 Enforcement--Liability insurance.
- 13.50.320 Severability.
- 13.50.325 Enforcement.
- 13.50.330 Conflict.
- 13.50.340 Exceptions--Special agreements.
- 13.50.360 Publication of IUs.

13.50.010 Purpose and policy. A. This chapter sets forth uniform requirements for direct and indirect discharges into the wastewater collection and treatment system pursuant to authority conferred by law including, but not limited to, the California Health and Safety Code, § 5400 - 5474, the California Government Code, § 54725 – 54740.6, and 66000 - 66003, the California Code of Regulations, Title 22, the Porter Cologne Water Quality Control Act (California Water Code Division 7), the Federal Clean Water Act, 33 U.S.C. 1251, *et seq.*, the Code of Federal Regulations, 40 CFR Parts 400 - 699, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901, *et seq.* and the National Pollutant Discharge Elimination System permits issued by the Regional Water Quality Control Board, San Francisco Bay Region to the City of Benicia.

B. The objectives of this chapter are:

1. To prevent the introduction of pollutants into the municipality wastewater system, which may interfere with the operation of the system or contaminate the resulting sludge;
2. To prevent the introduction of pollutants into the municipal wastewater system which may pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the municipal wastewater system;

3. To improve the opportunity to recycle and reclaim wastewaters and sludges from the system;
4. To provide for equitable distribution of the cost of the municipal wastewater system; and
5. To protect both municipal wastewater personnel who may be affected by wastewater and sludge in the course of their employment and the general public.

C. This chapter provides for the regulation of all Users of the municipal wastewater system or Publicly Owned Treatment Works (POTW). The chapter authorizes the issuance of individual or general wastewater discharge permits; provides for monitoring, compliance and enforcement activities; establishes administrative review procedures; requires user reporting, assumes that existing customer's capacity will not be preempted, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

D. This chapter shall apply to the city and to persons outside the city who are, by contract or agreement with the city, users of the city POTW. Except as otherwise provided herein, the Superintendent of the city POTW shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or duties imposed upon the Superintendent may be delegated by the Superintendent to a duly authorized City employee.

13.50.020 Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter shall have the meanings hereafter designated:

"Act" or "the Act" means the Federal Clean Water Act formerly known as the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq.

"Approval authority" means the director of the California State Water Resources Control Board (SWRCB) Division of Water Quality NPDES Unit which conducts an approved state pretreatment program.

"Authorized or Duly Authorized representative of industrial or other user" means:

1. If the user is a corporation:
 - a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit or general permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
2. If the user is a partnership or sole proprietorship: a general partner

or proprietor, respectively.

3. If the user is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

4. The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the facility, and the written authorization is submitted to the City.

"Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the general and specific prohibitions listed in BMC Section 13.50.040 A and B [CFR 403.5(a)(1) and (b)]. BMPs include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. "Biochemical oxygen demand (BOD)" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at twenty degrees centigrade, usually expressed as a concentration (e.g., milligrams per liter) but may be converted to organic loading, expressed as pounds per day.

"Building sewer" means a sewer conveying wastewater from the premises of a user to the POTW.

"Bypass" means the intentional diversion of wastestreams from any portion of a user's treatment facility.

"Categorical Standard or Categorical Pretreatment Standard" means any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307 (b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405 – 471.

"Chemical Oxygen Demand (COD)" is a measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

"City" means the city of Benicia or the city council of Benicia.

"Cooling water" means the water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

"Categorical Industrial User" (CIU) means any industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N.

"Control authority" means the city of Benicia or the Superintendent given that the city has an approved pretreatment program under the provisions of 40 CFR 403.11.

"Daily Maximum Limit" means the maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of a day. Where Daily Maximum Limits are expressed in terms of concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

"Direct discharge" means the discharge of treated or untreated wastewater directly to the waters of the state of California.

"Domestic user" means a user that discharges wastewater from a single or multi-family residence.

"Environmental Protection Agency" or "EPA" means the U.S. Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

"Existing Source" means any source of discharge that is not a "New Source."

"Grab sample" means a sample which is taken from a wastestream on a one-time basis with no regard to the flow volume of the wastestream and over a period of time not to exceed 15 minutes.

"Holding tank waste" means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

"Indirect discharge" means the introduction of pollutants into the POTW from any nondomestic source. "Industrial user or IU" means a source of indirect discharge.

"Instantaneous Limit" means the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

"Interference" means a discharge that, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the typical operation of the POTW, its treatment processes or operations or its sludge processes, use or disposal; and therefore, may cause a violation of any requirement of the city's NPDES permit. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clean Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.

"Local Limit" means specific discharge limits developed and enforced by the city upon industrial or commercial user facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

"Medical Waste" means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, and potentially contaminated laboratory wastes, and dialysis wastes.

"Monthly Average" means the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

"Monthly Average Limit" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

"New Source" means:

1. Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section provided that:

- a. The building, structure, facility or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility, or installation completely replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

2. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

3. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:

- a. Begun, or caused to begin, as part of a continuous onsite construction program
 - i. any placement, assembly, or installation of facilities or equipment; or
 - ii. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

"National pollution discharge elimination system permit" or "NPDES permit" means a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).

"Noncontact Cooling Water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

"Pass-Through" means a discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit, including an increase in the magnitude or duration of a violation.

"Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

"pH" means a measure of the acidity or alkalinity of a solution, expressed in standard units.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, certain medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor.)

"Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to or in lieu of discharging or otherwise introducing such pollutants into the POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or by other means, except; by diluting the concentration of the pollutants unless allowed by an applicable Pretreatment Standard.

"Pretreatment requirements" means any substantive or procedural requirement related to pretreatment imposed on a User, other than a pretreatment standard.

"Pretreatment Standards or Standards" means prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

"Publicly Owned Treatment Works (POTW)" means a treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned by the city. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, users of the city's POTW.

"POTW treatment plant" means that portion of the POTW designed to provide treatment to wastewater.

"Shall" is mandatory; "may" is permissive.

"Significant Industrial User (SIU)."

Except as provided in paragraphs (3) and (4) of this Section, a Significant Industrial User is:

1. An Industrial User subject to Categorical Pretreatment Standards;
- or
2. An Industrial User that:
 - a. Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
 - b. Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
 - c. Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement.
 3. The City may determine that an Industrial User subject to categorical Pretreatment Standards is a Non-Significant Categorical Industrial User rather than a SIU on a finding that the IU never discharges more than 100 gallons per calendar day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the

Pretreatment Standard) and the following conditions are met:

- a. The IU, prior to the City's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- b. The IU annually submits the certification statement required in 40 CFR 403.12(q) or BMC Section 13.50.180(E)(2), together with any additional information necessary to support the certification statement; and
- c. The IU never discharges any untreated concentrated wastewater.

4. Upon a finding that a User meeting the criteria in BMC Section 13.50.040 of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a SIU. "Significant noncompliance" (SNC) means the federal regulations establish criteria for publishing that significant noncompliance is one or more of the following:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 13.50.040 of this chapter;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33%) or more of wastewater measurements taken for each pollutant parameter taken during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined by Section 13.50.040 of this chapter multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined in this chapter (daily maximum, monthly average, Instantaneous Limit, or narrative standard) that the Superintendent determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or general permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; and

(h) Any other violation(s), which may include a violation of Best Management Practices, which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

"Slug load" or "slug discharge" means any pollutant release (of a non-routine, episodic nature including, but not limited to, an accidental spill or a non-customary batch discharge) in a discharge at a flow rate and/or pollutant concentration which has a reasonable potential to cause Interference or Upset of the sewerage system operations, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.

"State" means the state of California.

"Standard industrial classification (SIC)" means a classification pursuant to the 1987 SIC Manual and North American Industry Classification System (NAICS) means classification pursuant to the 2007 NAICS Manual, both issued by the Executive Office of the President, Office of Management and Budget.

"Storm water" means any flow occurring during or following any form of natural precipitation and resulting from such precipitation.

"Suspended solids" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering. This term also refers to the Total Filterable Residue test.

"Superintendent" means the person designated by the city to supervise the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities by this article, or his Duly Authorized Representative.

"Toxic pollutant" means any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under the provision of CWA 307(a) or other Acts.

"User" means any person who contributes, causes or permits the contribution of wastewater in the city's POTW.

"Wastewater" means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together which may be present, whether treated or untreated, which is contributed into or permitted to enter the POTW.

"Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

13.50.030 Abbreviations. The following abbreviations shall have the designated meanings:

Act	-	Clean Water Act
BOD	-	Biochemical Oxygen Demand
BMC	-	Benicia Municipal Code
BMP	-	Best Management Practices
BMR	-	Baseline Monitoring Report
CFR	-	<i>Code of Federal Regulations</i>
CIU	-	Categorical Industrial User

COD	–	Chemical Oxygen Demand
CWA	-	Clean Water Act
EPA	–	Environmental Protection Agency
gpd	-	gallons per day
IU		Industrial User
l	–	Liter
ug/l	-	Micrograms per liter (parts per billion)
mg/l	–	Milligrams per liter (parts per million)
NPDES	–	National Pollutant Discharge Elimination System
NSCIU	-	Non-Significant Categorical Industrial User
NAICS	-	North American Industrial Classification System (1997)
POTW	–	Publicly Owned Treatment Works
RCRA	-	Resource Conservation and Recovery Act
SIC	–	Standard Industrial Classification (replaced by NAICS)
SIU	-	Significant Industrial User
SNC		Significant Noncompliance
SWDA	–	Solid Waste Disposal Act, 42 U.S.C. 6901, et seq.
TSS	–	Total Suspended Solids
U.S.C.	–	United States Code

13.50.040 Prohibited discharge--Certain waters or wastes. A. No User shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which interferes with the operation or performance of the POTW. These general prohibitions apply to all such Users of a POTW whether or not the User is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. A User shall not contribute the following substances to any POTW.

1. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 26.1.21. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent nor any single reading over ten percent of the lower explosive limit (LEL) of the meter.

2. Solid or viscous substances which may cause obstruction to the flow in the POTW or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides, fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining, or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes;

3. Any wastewater having a pH less than 5.0, nor more than 11.0 or other wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW;

4. Any wastewater containing toxic pollutants in sufficient quality, either singly or by interaction with other pollutants, to injure or interfere with any

wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act;

5. Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for life maintenance and repair;

6. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged into the POTW cause the POTW to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under Section 405 of the Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the sludge management method being used;

7. Any substance which will cause the POTW to violate its NPDES Permit requirements or the receiving water quality standards;

8. Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions;

9. Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds 40 degrees C (104 degrees F);

10. Any pollutants, including oxygen demanding pollutants (BOD, COD, etc.) released at a flow rate and/or pollutant concentration which may cause interference, pass through, or process upset to the POTW. The user shall notify the POTW immediately, upon discovery, of any slug loading. If subject pollutants are released, the user must prove it lacked any knowledge that such a discharge would cause interference. In no case shall a slug load have a flow rate or contain concentration or qualities of pollutants that cause Interference within the POTW;

11. Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations;

12. Surface water, storm water or seepage, and cooling water or unpolluted process water unless specifically approved by the Superintendent;

13. Discharge of wastewater causing alone, or in conjunction with other sources, the POTW's effluent to fail toxicity tests;

14. Any wastewater which has any corrosive or detrimental characteristics that may cause damage to the City's sewer system or causes a hazard to service personnel, maintenance personnel or human life or creates a public nuisance;

15. Discharges which create a fire or explosion hazard including wastestreams with a closed cup flashpoint of less than one hundred forty degrees Fahrenheit (sixty degrees Celsius);

16. Any amounts of petroleum oil, nonbiodegradable cutting oil, or products of mineral origin in amounts that cause interference or pass through, or form persistent water emulsions;

17. Fats, oils, or greases of animal or vegetable origin in concentrations that would cause, or contribute to cause, obstruction to the flow in the POTW or other interference with the operation of the wastewater treatment facilities; or

18. Discharges that result in toxic gases, fumes, or vapors in a quantity capable of causing worker health and safety problems.

B. When the Superintendent determines that a User(s) is contributing to the POTW, any of the above enumerated substances in such amounts as to interfere with the operation of the POTW, the Superintendent shall: (a) advise the User(s) of the impact of the contribution on the POTW; and (b) develop effluent limitation(s) for such user to correct the interference with the POTW.

13.50.041 Hazardous waste notification. All Industrial users are required to notify the EPA, the state and the city within one hundred eighty days of commencing discharge of listed and characteristic hazardous wastes, the constituents of these wastes, and anticipated discharges of such wastes over a calendar month and over one year. The federal regulations do not apply to discharges of less than fifteen kilograms per month of hazardous wastes unless the wastes are acute hazardous wastes. Additionally, notification is not necessary if pollutants are already reported in periodic self-monitoring reports. Any notification under this section need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 13.50.089 of this ordinance. In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the Superintendent, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations. In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

13.50.042 Unlawful disposal of wastes. It is unlawful for a person to place or deposit in an unsanitary manner upon public or private property within the city any human or animal excrement, garbage or other objectionable waste.

13.50.043 Prohibited discharge locations. It is unlawful for a User, except City personnel involved in maintenance functions of the sewerage system, to discharge any wastewater directly into a manhole or other opening in a sewer other than through an approved building sewer, unless approved by the Superintendent upon written application by the User and payment of any applicable fees and charges established herein. No User shall circumvent or obviate the intent or purpose of this Chapter by

discharging, or causing to be discharged, into any storm drain, storm water channel, storm water drainage system facility, or natural watercourse, whether currently carrying water or not, or into any pipe, public street, or waterway leading to such drain, channel, facility, or natural watercourse, any material, waste, or wastewater, not including unpolluted water, which is prohibited or restricted as to its discharge into the public sewer system.

13.50.044 Treatment of wastes required. It is unlawful to discharge on land or to any stream or watercourse any sewage, industrial waste, or other polluted water, except where suitable treatment is provided in accordance with this chapter.

13.50.046 Unlawful disposal facilities. It is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, seepage pit or other facilities intended or used for the disposal of sewage, except as provided in this chapter. It is unlawful to discharge trucked or hauled wastes to the sanitary sewers except at points designated by the city.

13.50.050 Federal categorical pretreatment standards. Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this chapter for sources in that subcategory, shall immediately supersede the limitations imposed under this chapter. Users must comply with the categorical Pretreatment Standards found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

A. Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the city may impose equivalent concentration or mass limits in accordance with Section 13.50.050E and 13.50.050F.

B. When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the Superintendent may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentrations for purposes of calculating effluent limitations applicable to individual Industrial Users.

C. When wastewater subject to a categorical Pretreatment Standard is mixed with wastewater not regulated by the same Standard, the city shall impose an alternate limit in accordance with 40 CFR 403.6(e).

D. A CIU may obtain a net/gross adjustment to a categorical Pretreatment Standard in accordance with the following paragraphs of this Section.

1. Categorical Pretreatment Standards may be adjusted to reflect the presence of pollutants in the Industrial User's intake water in accordance with this Section. Any Industrial User wishing to obtain credit for intake pollutants must make application to the City. Upon request of the Industrial User, the applicable Standard will be calculated on a "net" basis (i.e., adjusted to reflect credit for pollutants in the intake water) if the requirements of paragraph (2) of this Section are met.

2. Criteria.

a. Either (i) the applicable categorical Pretreatment Standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a

net basis; or (ii) the Industrial User demonstrates that the control system it proposes or uses to meet applicable categorical Pretreatment Standards would, if properly installed and operated, meet the Standards in the absence of pollutants in the intake waters.

b. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease should not be granted unless the Industrial User demonstrates that the constituents of the generic measure in the User's effluent are substantially similar to the constituents of generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

c. Credit shall be granted only to the extent necessary to meet the applicable categorical Pretreatment Standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with Standard(s) adjusted under this Section.

d. Credit shall be granted only if the User demonstrates that the intake water is drawn from the same body of water as that into which the POTW discharges. The City may waive this requirement if it finds that no environmental degradation will result.

E. When a categorical Pretreatment Standard is expressed only in terms of pollutant concentrations, an Industrial User may request that the City convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the City. The City may establish equivalent mass limits only if the Industrial User meets all the conditions set forth in Sections 13.50.050E(1)(a) through 13.50.050E(1)(e) below.

1. To be eligible for equivalent mass limits, the Industrial User must:

a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its individual wastewater discharge permit;

b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical Pretreatment Standard, and not have used dilution as a substitute for treatment;

c. Provide sufficient information to establish the facility's actual average daily flow rate for all wastestreams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the Discharge; and,

e. Have consistently complied with all applicable categorical Pretreatment Standards during the period prior to the Industrial User's request for equivalent mass limits.

2. An Industrial User subject to equivalent mass limits must:

a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;

b. Continue to record the facility's flow rates through the use of a continuous effluent flow monitoring device;

c. Continue to record the facility's production rates and notify the Superintendent whenever production rates are expected to vary by more than 20 percent from its baseline production rates determined in paragraph 13.50.050E(1)(c) of this Section. Upon notification of a revised production rate, the City will reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility; and,

d. Continue to employ the same or comparable water conservation methods and technologies as those implemented pursuant to paragraph 13.50.050E(1)(a) of this Section so long as it discharges under an equivalent mass limit.

3. When developing equivalent mass limits, the City:

a. Will calculate the equivalent mass limit by multiplying the actual average daily flow rate of the regulated process(es) of the Industrial User by the concentration-based Daily Maximum and Monthly Average Standard for the applicable categorical Pretreatment Standard and the appropriate unit conversion factor;

b. Upon notification of a revised production rate, will reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility; and,

c. May retain the same equivalent mass limit in subsequent individual wastewater discharger permit terms if the Industrial User's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as for treatment pursuant to Section 13.50.080. The Industrial User must also be in compliance with the regulations regarding the prohibition of bypass.

F. The Superintendent may convert the mass limits of the categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Superintendent. In addition, the Superintendent will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available (see 40 CFR 403.6(c)(7)).

G. Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section (13.50.050) in lieu of the promulgated categorical Pretreatment Standard from which the equivalent limitations were derived.

H. Many categorical Pretreatment Standards specify one limit for calculating Daily Maximum discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both average and the maximum equivalent limitations.

I. Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the Superintendent within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the Superintendent of such anticipated change will be

required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

13.50.070 Pollutant limitations and Local Limits. No person shall discharge wastewater containing toxic or poisonous substances in sufficient quantity to injure or interfere with the POTW, constitute a hazard to human or animal, degrade water quality, cause a violation in discharge requirements, or create a hazard in the receiving waters of the POTW. The city may from time to time by resolution set Local Limits on other pollutants or on users to control mass emissions. These Local Limits will be reviewed by the city as deemed necessary by the Superintendent. State requirements and limitations of discharges shall apply in any case where they are more stringent than federal requirements and limitations or those set forth or promulgated pursuant to these regulations. When IUs discharge in excess of a Local Limit, they are subject to enforcement actions. The Superintendent may develop BMPs, by ordinance or in wastewater discharge permits or general permits, in order to achieve compliance with Local Limits and the requirements of Section 13.50.040 of this chapter.

13.50.075 Best Management Practices (BMPs). The Superintendent may develop Best Management Practices (BMPs), by ordinance or in wastewater discharge permits or general permits, to achieve compliance with Local Limits and the requirements of Section 13.50.040.

13.50.080 Prohibition against dilution as treatment. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or in any other pollutant-specific limitation developed by the city or state.

13.50.085 Deny/Condition New or Increased Contributions. The City may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable Pretreatment standards and requirements or where such contributions would cause the POTW to violate its NPDES permit.

13.50.089 Reports of Changed Condition. Each user must notify the Superintendent of any changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least 14 days before the change.

A. The Superintendent may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Sections 13.50.105, 13.50.120 and 13.50.125 of this chapter.

B. The Superintendent may issue a wastewater discharge permit or general permit under Section 13.50.165 of this chapter or modify an existing wastewater discharge permit or general permit under Section 13.50.140 of this chapter in response to changed conditions or anticipated changed conditions.

13.50.090 Accidental and Slug Discharges. Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by this chapter. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the owner or user's own cost and expense.

A. In the case of any discharge including, but not limited to, accidental discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems to the POTW, it is the responsibility of the User to immediately telephone and notify the Superintendent of the incident. The notification shall include location and time of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.

B. Written Notice. Within five days following an accidental or slug discharge, the user shall submit to the Superintendent a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this regulation or other applicable law.

C. Notice to Employees. A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of an accidental or slug discharge. Employers shall insure that all employees who may cause or suffer any such a discharge to occur are advised of the emergency notification procedure.

D. Significant Industrial Users shall notify the Superintendent immediately of any changes at its facility affecting the potential for a Slug Discharge.

13.50.095 Slug Discharge Control Plans. The Superintendent will evaluate whether each SIU or IU is required to develop and implement a slug discharge plan within one year of becoming an SIU. If the City decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

A. Description of discharge practices, including non-routine batch discharges.

B. Description of stored chemicals.

C. Procedures for immediately notifying the City of slug discharges, including any discharge that would violate a prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days.

D. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

13.50.100 Charges and fees. It is the purpose of this section to provide for the recovery of costs from users of the city's POTW for the implementation of the program

established herein. The applicable charges or fees shall be set forth in the city's schedule of charges and fees.

- A. The city may adopt charges and fees which may include:
1. Fees for reimbursement of costs of setting up and operating the city's pretreatment program;
 2. Fees for monitoring, inspections and surveillance procedures;
 3. Fees for reviewing accidental discharge procedures and construction;
 4. Fees for permit applications;
 5. Fees for filing appeals;
 6. Other fees as the city may deem necessary to carry out the requirements contained herein.
- B. These fees relate solely to the matters covered by this chapter and are separate from all other fees chargeable by the city.

13.50.105 Permit required. To provide for the maximum public benefit for the use of the City POTW, written authorization to use said facilities is required. This written authorization shall be in the form of a individual or general wastewater discharge permit. No vested right shall be given by issuance of permits provided for in this Section.

- A. Wastewater Discharge Permit Types. Wastewater discharge permits will be issued in one of four forms dependent on the type of discharger, volume, and discharge characteristics. The four discharge permits types are:
1. Tier 1: Wastewater Discharge Permits are issued to:
 - (a) Any user subject to Federal Categorical Pretreatment Standards.
 2. Tier 2: Wastewater Discharge Permits are issued to:
 - (a) Any user having a process wastestream greater than 25,000 gallons per day;
 - (b) Any user that has a reasonable potential for adversely affecting the operation of the POTW or for violating any pretreatment standard or requirement.
 3. Tier 3: Wastewater Discharge Permits are issued to:
 - (a) Any user subject to Categorical Pretreatment Standards, that does not discharge industrial waste, and only discharges domestic waste into the sewerage system;
 - (b) Any user discharging wastewater other than domestic waste only;
 - (c) Any user that implements Best Managements Practices as an alternative means (i.e., management plans) of complying with, or in place of, certain established categorical Pretreatment Standards and effluent limits;
 - (d) Any group of users discharging non-domestic waste (General Permits).
 4. Temporary Wastewater Discharge Permits are issued to:
 - (a) Any user discharging wastewater temporarily from industrial or other operations;

(b) Any User who has a discharge of unpolluted water whereby no alternative method of disposal is available.

B. No user requiring a permit shall discharge wastewater without obtaining a wastewater discharge permit.

C. All users proposing to discharge directly or indirectly into the PTOW shall obtain a Wastewater Discharge Permit by filing an application pursuant to Section 13.50.120 and paying the applicable fees pursuant to BMC Chapter 13.52.

D. All permits shall be expressly subject to all provisions of this Chapter and all other regulations, charges for use, and fees established by the City. Wastewater Discharge Permit conditions shall be enforced by the City in accordance with this Chapter and applicable State and Federal Regulations.

13.50.110 Special Discharge Permit. A Special Discharge Permit (SDP) is required for a one-time disposal of wastewater to the POTW. The wastewater must comply with local pretreatment standards and be conveyed or transported to the POTW for disposal. A SDP application must be completed for approval along with appropriate fees before permission is granted. A pretreatment charge and volume charge will be assessed to the final bill after the discharge is completed.

13.50.120 Permit--Application.

A. Users seeking to obtain a Wastewater Discharge Permit or General Permit shall complete and file with the City, prior to commencing discharge, an application and survey on the forms prescribed by the City. The applicant may be required to submit, in units and terms appropriate for evaluation and in sufficient time to allow proper and thorough evaluation, the following information:

1. Name and address of the facility, SIC number(s) and/or NAICS number (s), and a description of the manufacturing process or service activity.
2. Contact information, including the name of the operator and principals/owners (whichever is applicable) of the company; City of Benicia Business License.
3. Description of Operations
 - a. A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production), and standard industrial classifications of the operation(s) carried out by such User. This description should include a schematic process diagram, which indicates points of discharge to the POTW from the regulated processes.
 - b. Types of wastes generated, and a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
 - c. Number and type of employees, hours of operation, and proposed or actual hours of operation;
 - d. Type and amount of raw materials processed (average and maximum per day);
 - e. Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge;

4. Time and duration of discharges;
5. The location for monitoring all wastes covered by the permit;
6. Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in Section 2.2C (40 CFR 403.6(e)).
7. Measurement of Pollutants.
 - a. The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the Superintendent, of regulated pollutants in the discharge from each regulated process.
 - c. Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.
 - d. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 13.50.175 of this ordinance. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the Superintendent or the applicable Standards to determine compliance with the Standard.
 - e. Sampling shall be performed in accordance with procedures set out in Section 13.50.180 of this chapter.
8. Any requests for a monitoring waiver (or a renewal of an approved monitoring waiver) for a pollutant neither present nor expected to be present in the discharge based on 13.50.180 C4.
9. Any request to be covered by a general permit based on Section 13.50.125.
10. EPA Hazardous Waste Generator Number, if applicable.
11. Any other information as specified.
12. Applicants may be required to submit site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, spill containment, clarifiers, pretreatment equipment, and appurtenances by size, location, and elevation for evaluation.
13. Applicants may also be required to submit information related to the applicant's business operations, processes, and potential discharge as may be requested by the City to properly evaluate the permit application. B. The application shall be signed by an Authorized Representative of the user and contain the certification statement in 13.50.180 E. The city will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the city may issue a wastewater contribution permit subject to terms and conditions provided herein. The permit application may be denied if the applicant fails to establish to the City's satisfaction, that adequate pretreatment equipment is included within the applicant's plans to ensure that the discharge limits will be met or if the applicant has, in the past, demonstrated an inability to comply with applicable discharge limits.

13.50.125 General Permit.

A. At the discretion of the Superintendent, the Superintendent may use general permits to control SIU discharges to the POTW if the following conditions are met. All facilities to be covered by a general permit must:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or Best Management

Practices;

4. Require the same or similar monitoring; and
5. In the opinion of the Superintendent, be more appropriately controlled under a general permit than under individual wastewater discharge permits.

B. To be covered by the general permit, the SIU must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general permit, any requests in accordance with 13.50.180C.4 for a monitoring waiver for a pollutant neither present nor expected to be present in the Discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general permit until after the Superintendent has provided written notice to the SIU that such a waiver request has been granted in accordance with 13.50.180C.4.

C. The Superintendent will retain a copy of the general permit, documentation to support the POTW's determination that a specific SIU meets the criteria in Section 13.50.125A(1) to (5) and applicable State regulations, and a copy of the User's written request for coverage for three (3) years after the expiration of the general permit.

D. The Superintendent may not control an SIU through a general permit where the facility is subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day or for IUs whose limits are based on the Combined Wastestream Formula (Section 13.50.050C) or Net/Gross calculations (Section 13.50.050D).

13.50.130 Permit Revocation. The Superintendent may revoke an individual wastewater discharge permit or general permit for good cause including, but not limited to, the following reasons:

A. Failure to notify the city of significant changes to the wastewater prior to the changed discharge;

B. Failure to provide prior notification to the city of changed conditions pursuant to Section 13.50.140 ("Permit—Modifications") of this ordinance;

C. Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application;

D. Falsifying self-monitoring reports and certification statements;

E. Tampering with monitoring equipment;

F. Refusing to allow the city timely access to the facility premises and records;

G. Failure to meet effluent limitations or comply with Best Management

Practices;

H. Failure to pay fines;

- I. Failure to pay sewer charges;
- J. Failure to meet compliance schedule;
- K. Failure to complete a wastewater survey or the wastewater discharge permit application;
- L. Failure to provide advance notice of the transfer of business ownership of a permitted facility: or
- M. Violation of any Pretreatment Standard or Requirement, or any terms of the wastewater discharge permit or general permit or any provisions of this ordinance.

Wastewater discharge permits or general permits shall be voidable upon cessation of operations or transfer of business ownership. All individual or general wastewater discharge permits issued to a user are void upon the issuance of a new individual or general wastewater discharge permit to that User.

13.50.140 Permit--Modifications. The city or Superintendent may modify an individual wastewater discharge permit or general permit for good cause, including, but not limited to, the following reasons:

- A. To incorporate any new or revised Federal, State, or local Pretreatment Standards or Requirements or Best Management Practices;
- B. To address significant alterations or additions to the User's operation, processes, or wastewater volume or character since the time of the individual or general wastewater discharge permit issuance;
- C. A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D. Information indicating that the permitted discharge poses a threat to the city's POTW, city personnel, or the receiving waters;
- E. Violation of any terms or conditions of the individual wastewater discharge permit or general permit;
- F. Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting;
- G. Revision of or a grant of variance from categorical Pretreatment Standards pursuant to 40 CFR 403.13;
- H. To correct typographical or other errors in the individual wastewater discharge permit or general permit; or
- I. To reflect a transfer of the facility ownership or operation to a new owner or operator where requested in accordance with section 13.50.170 ("Permit Transfer") of this chapter.

13.50.150 Permit conditions. Users issued a wastewater discharge permit or general permit shall be expressly subject to all provisions of this chapter and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:

- A. The baseline Equivalent Dwelling Unit assigned the user, unit charge or schedule of user charges and fees for the wastewater to be discharged to a community sewer;

- B. Limits on the average and maximum wastewater constituents and characteristics;
- C. Limits on average and maximum flow rate and time of discharge or requirements for flow regulations and equalization;
- D. Requirements for installation and maintenance of inspection and sampling facilities, pH control, and/or flow monitoring systems;
- E. Self monitoring, sampling, reporting, notification, and record-keeping requirements. These requirements shall include an identification of pollutants (or BMP) to be monitored, sampling location, sampling frequency, and sample type based on Federal, State, and local law;
- F. Requirements for submission of technical reports, production data, waste manifests, or discharge reports (see Section 13.50.180);
- G. Requirements for maintaining and retaining plant records relating to wastewater discharge for a minimum period of three years unless a longer time period is specified by the city, and affording city access thereto;
- H. Requirements for advance notification to the city of any new introduction of wastewater constituents, including hazardous wastes, or any substantial change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system. It shall be unlawful to introduce new wastewater constituents or to substantially change the volume or character of wastewater constituents released into the wastewater treatment system without prior approval by the city;
- I. Requirements for notification of accidental or slug discharges;
- J. Installation and maintenance by the user at his own expense of pretreatment facilities necessary to meet the quality limits set forth in this or as the city may require;
- K. The installation and maintenance by the user at his own expense of a suitable control manhole in the portion of the side sewer located on private property to facilitate observation, sampling and measurement of the waste. When required, the manhole must be accessible and safely located and shall be constructed as approved by the city;
- L. The installation and maintenance by the user at his own expense of grease, oil and sand interceptors or traps necessary for the proper handling of liquid wastes, containing grease and excessive amounts of any inflammable waste, and other harmful ingredients. All interceptors or traps shall be of an approved type and capacity and must be so located as to be readily and easily accessible for cleaning and inspection;
- M. The submission to and approval by the city of plans for any of the facilities or equipment required to be installed and maintained by the user. The city approval does not relieve the applicant from demonstrating the successful performance of the facilities or complying with the terms of this part;
- N. After commencement of operation of pretreatment facilities, the duty of the user to make periodic reports at his expense setting forth adequate data upon which the acceptability of the sewage, industrial waste or other waste, after treatment, may be determined;

O. Submission to and approval by the city of plans, facilities and operating procedures to prevent accidental discharge of prohibited materials;

P. Other conditions as deemed appropriate by the city to ensure compliance with this chapter;

Q. A statement of permit duration and nontransferability, applicable effluent limits, applicable monitoring and reporting requirements, and a statement of applicable penalties;

R. Effluent limits, including BMPs, based on applicable Pretreatment Standards;

S. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards and Requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State or local law;

T. Requirements to control accidental or slug discharges, if determined by the Superintendent to be necessary;

U. The process for seeking a waiver from monitoring for a pollutant neither present nor expected to be present in the Discharge in accordance with Section 13.50.180.C.4.

13.50.160 Permit duration. Permits shall be issued for a specified time period, not to exceed five years. A permit may be issued for a period less than five years or may be stated to expire on a specific date. The terms and conditions of the permit shall be subject to modification by the city during the term of the permit as limitations or requirements as identified in Section 13.50.150 are modified or other just cause exists. The user shall be informed of any proposed changes in his permit at least thirty days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

13.50.165 Permit reissuance. A user with an expiring individual wastewater discharge permit or general permit shall apply for individual wastewater discharge permit or general permit reissuance by submitting a complete permit application, in accordance with Sections 13.50.105 and 13.50.120 of this chapter, a minimum of 180 days prior to the expiration of the user's existing individual wastewater discharge permit or general permit.

13.50.170 Permit transfer. Wastewater discharge permits and general permits are issued to a specific user for a specific operation. A wastewater discharge permit or general permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation without the approval of the city. Any succeeding owner or user shall also comply with the terms and conditions of the existing permit.

13.50.175 Analytical requirements. All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 using a State or national certified lab and amendments thereto, unless otherwise

specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other parties approved by EPA.

13.50.180 Reporting and sampling requirements for permittee.

A. Compliance Date Report. Within ninety days following the date for final compliance with applicable pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to pretreatment standards and requirements shall submit to the Superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards and requirements and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements as described in Section 13.50.180D.5 and 13.50.120A.3 and 6. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. The compliance reports must be signed by an authorized representative of the Industrial user, and certified in accordance with Section 13.50.180E.

B. Compliance Schedule Progress Reports. The following conditions shall apply to the compliance schedule required by Section 13.50.180D.7 or 13.50.150F:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation).

2. No increment referred to above shall exceed nine months.

3. The user shall submit a progress report to the Superintendent no later than fourteen days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule.

4. In no event shall more than nine months elapse between such progress reports to the Superintendent.

C. Periodic Compliance Reports.

1. All SIUs (except a Non-Significant Categorical User), and any IUs designated by the Superintendent, at a frequency determined by the city, shall submit

no less than twice per year, reports indicating the nature and concentration of pollutants in the effluent discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. Each report is due to the Superintendent within 30 days of the last day of the reporting period, one reporting period representing January through June and the other July through December. In cases where the Pretreatment Standard requires compliance with a BMP or pollution prevention alternative, the user must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the user. At the discretion of the Superintendent and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Superintendent may agree to alter the months during which the above reports are to be submitted.

2. The Superintendent may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subdivision 1 of this subsection C shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Superintendent, of pollutants contained therein which are limited by the applicable pretreatment standard. All analysis must be performed by a state-certified laboratory using methods approved in 40 CFR, Part 136 and amendments thereto or with any other test procedures approved by the Superintendent or approval authority. Sampling shall be performed in accordance with the techniques approved by the Superintendent or designee.

3. If a user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the Superintendent, using the procedures prescribed in Section 13.50.175 the results of this monitoring shall be included in the report.

4. The City may authorize an Industrial user subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. This authorization is subject to the following conditions:

a. The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.

b. The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit or general permit, but in no case longer than 5 years. The user must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit or general permit. See Section 13.50.120A.8.

c. In making a demonstration that a pollutant is not present, the

Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.

d. The request for a monitoring waiver must be signed in accordance with Section 13.50.020C, and include the certification statement in 13.50.180E.1.

e. Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.

f. Any grant of the monitoring waiver by the Superintendent must be included as a condition in the user's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the Superintendent for 3 years after expiration of the waiver.

g. Upon approval of the monitoring waiver and revision of the User's permit by the Superintendent, the Industrial User must certify on each report with the statement in Section 13.50.180F below, that there has been no increase in the pollutant in its wastestream due to activities of the Industrial User.

h. In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately comply with the monitoring requirements of Section 13.50.180C.1, or other more frequent monitoring requirements imposed by the Superintendent, and notify the Superintendent.

i. This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

5. The city may reduce the requirement for periodic compliance reports to report no less frequently than once a year, unless required more frequently in the Pretreatment Standard or by the State, where the Industrial User's total categorical wastewater flow does not exceed any of the following:

a. The POTW's value for 0.01 percent of the design dry-weather hydraulic capacity of the POTW, or five thousand (5,000) gallons per day, whichever is smaller, as measured by a continuous effluent flow monitoring device unless the Industrial User discharges in batches;

b. The POTW's value for 0.01 percent of the design dry-weather organic treatment capacity of the POTW; and

c. The POTW's value for 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by the applicable categorical Pretreatment Standard for which approved Local Limits were developed in accordance with Section 13.50.075 of this chapter.

Reduced reporting is not available to Industrial users that have in the last two (2) years been in Significant Noncompliance, as defined in Section 13.50.020. In addition, reduced reporting is not available to an Industrial user with daily flow rates, production levels, or pollutant levels that vary so significantly that, in the opinion of the Superintendent, decreasing the reporting requirement for this Industrial user would result in data that are not representative of conditions occurring during the reporting

period.

D. Baseline Reports. Within one hundred eighty days after the effective date of a categorical pretreatment standard, or one hundred eighty days after the final administrative decision made upon a category determination under 40 CFR 403.6(a)(4), whichever is later, existing Industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the POTW shall be required to submit to the Superintendent a baseline report (BMR) which contains the information required in 40 CFR, Section 403.12(b) including, but not limited to the following.

1. Identifying information including name, address of the facility, operator and owners.
2. A list of any environmental control permits held by or for the facility.
3. A brief description of the nature, average rate of production, and SIC/NAICS codes of the operation(s) carried out by the Industrial user. The description should include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.
4. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams as necessary to allow use of the combined wastestream formula in 40 CFR 403.6(e). The Superintendent may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.
5. Measurement of pollutants.
 - a. The user shall identify the Pretreatment Standards applicable to each regulated process.
 - b. The user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the Superintendent) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations. In cases where the Standard requires compliance with a BMP the user shall submit documentation as required by the Superintendent or applicable standards to determine compliance with the standard.
 - c. The user shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.
 - d. Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentration necessary to allow use of the combined wastestream formula in 40CFR403.6(e) in order to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40CFR403.6(e) this adjusted limit along with supporting data shall be submitted to the Superintendent.
 - d. Sampling and analysis shall be performed in accordance with Section 13.50.175.

e. The Superintendent may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

f. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

6. Compliance Certification. A statement, reviewed by the user's Authorized Representative as defined in Section 13.50.020 and certified to by a qualified professional, indicating whether Pretreatment Standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

7. Compliance Schedule. If additional pretreatment and/or operation and maintenance will be required to meet the Pretreatment Standards, the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance must be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable Pretreatment Standard. A compliance schedule must meet the requirements in 40 CFR 403.12(b)(7).

8. All baseline monitoring reports must be certified in accordance with Section 13.50.180D and signed by an Authorized Representative as defined in 13.50.020.

E. Statement Required/Data Accuracy Certification.

1. Each report requires a statement, reviewed by an authorized representative of the Industrial user, as defined in Section 13.50.020, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the Industrial user to meet the pretreatment standards and requirements.

The following certification shall be included in reports to the city:

"I have personally examined and am familiar with the information submitted in the attached document, and I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. A facility determined to be a Non-Significant Categorical Industrial user by the Superintendent pursuant to 13.50.020 must annually submit the signed certification statement as follows:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

(a) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial user as described in 13.50.020; (b) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.”

This compliance certification is based on the following information.

F. Certification of Pollutants Not Present. users that have an approved monitoring waiver based on 13.50.180C.4 must certify on each report with the following statement that there has been no increase in the pollutant in its wastestream due to activities of the user.

“Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR _____ [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of _____ [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under Section 13.50.180C.”

G. Sampling Requirements. All significant and non-categorical Industrial users are required to sample their effluent at least twice a year and submit the results to the city.

H. All wastewater samples must be representative of the users discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge

13.50.183 Sample Collection. Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

A. Except as indicated in Section B and C below, the user must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW. Where time-proportional composite sampling or grab sampling is authorized by the POTW, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the POTW, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

B. Samples for oil and grease, temperature, pH, cyanide, total phenols,

sulfides, and volatile organic compounds must be obtained using grab collection techniques.

C. For sampling required in support of baseline monitoring and 90-day compliance reports required in 13.50.180A and D, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the POTW may authorize a lower minimum. For the reports required by paragraphs 13.50.180C, the user is required to collect the number of grab samples necessary to assess and assure compliance by with applicable Pretreatment Standards and Requirements.

13.50.185 Record keeping requirements. Users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements, and documentation associated with Best Management Practices established by the city in its chapter, in general permits or in individual wastewater discharge permits, to implement Local Limits and the requirements of Section 13.50.040 of this chapter. Record keeping requirements are as follows:

A. Industrial users shall maintain records of all information resulting from any monitoring activities required. Such records shall include for all samples:

1. The date, exact place, method, and time of sampling and the names of the person or persons taking the samples or chain of custody;
2. The dates analyses were performed;
3. Who performed the analyses;
4. The analytical techniques/methods use; and
5. The results of such analyses.

B. Industrial users are required to retain for a minimum of three years any records of monitoring activities and results (whether or not such monitoring activities are required) and shall make such records available for inspection and copying by the city. This period shall be automatically extended for the duration of any unresolved litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the city.

13.50.190 Monitoring requirements. The city shall require to be provided and operated at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable local construction standards and specifications. Construction shall be completed within ninety days following written notification by the city.

13.50.200 Right of Entry: Inspection and sampling. The Superintendent shall have the right to enter the premises of any user to determine whether the ser is complying with all requirements of this chapter and any individual wastewater discharge permit or general permit or order issued hereunder. Users shall allow the Superintendent ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

A. Where a user has security measures in force that require proper identification and clearance before entry into its premises, the ser shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, the city shall be permitted to enter without delay for the purposes of performing specific responsibilities.

B. The Superintendent shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

C. The Superintendent may require the ser to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated according to manufacturer's specification to ensure accuracy.

D. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing such access shall be born by the user.

E. Unreasonable delays in allowing the Superintendent access to the ser's premises shall be a violation of this chapter.

13.50.210 Pretreatment. Users shall provide necessary wastewater treatment as required to comply with this chapter and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the city shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review, and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

All records relating to compliance with pretreatment standards shall be made available to officials of the EPA or approval authority upon request.

13.50.215 POTW requirements. A. The city will notify users of applicable pretreatment standards and requirements.

B. The city will inspect and sample the effluent from each SIU at least once per year. The city will evaluate, at least once every two years, whether each SIU needs a plan to control slug discharges.

C. The city will develop and implement an enforcement response plan. The plan must describe how the control authority will investigate noncompliance, the types of escalating enforcement responses, time periods for responses, and the responsible personnel.

D. The city will maintain a list of Industrial users that meet the definition of "significant," or "nonsignificant" identifying the criteria that placed the user on the list, and submit the list periodically to the approval authority indicating which industrial users should not be considered significant.

13.50.220 Confidential information. Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user.

When requested by the person furnishing a report, in accordance with 40 CFR Part 2 the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available upon written request to governmental agencies for uses related to this chapter, the national pollutant discharge elimination system (NPDES) permit, state disposal system permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the state or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined in 40 CFR 403.14(b) shall not be recognized as confidential information and shall be available to the public without restriction.

13.50.230 Emergency suspensions. A. The Superintendent may suspend the water service, wastewater treatment service, and/or wastewater discharge permit or general permit of a user whenever such suspension is necessary in order to stop an actual or threatened discharge presenting or causing an imminent or substantial endangerment or significant violation to the health or welfare of persons, the POTW, or the environment.

B. Any user notified of a suspension of the water service, wastewater treatment service, and/or the wastewater discharge permit or general permit shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the Superintendent shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Superintendent shall allow the user to

recommence its discharge when the endangerment has passed, unless the termination proceedings set forth in Section 13.50.240 are initiated against the user.

C. An user that is responsible in whole or in part for imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent prior to the date of the hearing described in subsection (B) above.

13.50.240 Permit--Enforcement--Termination of permit. Any user who violates the following conditions, is subject to water service suspension or permit termination:

- A. Violation of permit conditions;
 - B. Failure to accurately report the wastewater constituents and characteristics of its discharge;
 - C. Failure to report significant changes in operations or wastewater constituents and characteristics;
 - D. Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;
 - E. Violation of the Pretreatment Standards and applicable state and federal law.
- Noncompliant Industrial users will be notified of the proposed termination of their wastewater discharge permit or general permit and be offered an opportunity to show cause or appeal under Section 13.50.260 why the proposed action should not be taken. Exercise of this option by the city shall not be a bar to, or a prerequisite for, taking any other action against the IU.

13.50.250 Notification of Violation. Whenever the Superintendent finds that any user has violated or is violating this chapter, or a wastewater discharge permit or general permit or order issued hereunder, the Superintendent or his duly authorized representative may serve upon said user written Notice of Violation. Within ten days of the receipt date of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Superintendent. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation.

13.50.251 Notice of Violation and Repeat Sampling. If sampling performed by a wastewater discharge permittee indicates a violation, the user must notify the Superintendent within twenty-four hours of becoming aware of the violation. The user shall also repeat the sampling and analysis within five days of becoming aware of the violation and submit the results of the repeat analysis to the Superintendent within thirty days after becoming aware of the violation. Resampling by the user is not required if the city performs sampling at the user's facility at least once per month, or if the city performs sampling at the user's facility between the time when the initial sampling was conducted and the time when the user receives the results of this sampling, or if the city has performed the sampling and analysis in lieu of the IU.

13.50.252 Enforcement—Administrative Orders. The Superintendent is hereby empowered to issue administrative orders or other similar documents establishing an agreement with the user responsible for the noncompliance. Such orders will include

specific action to be taken by the user including, but not limited to, installation of pretreatment equipment, or adoption of BMPs, or need for additional operation and maintenance personnel to correct the noncompliance within a time period also specified by the order. Administrative orders shall have the same force and effect as consent orders issued.

13.50.255 Enforcement--Cease and Desist Orders. When the Superintendent finds that an Industrial user has violated or continues to violate this chapter or any permit or order issued hereunder, the Superintendent may issue an order to cease and desist all such violations and direct those persons in noncompliance to:

- A. Comply forthwith;
- B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

13.50.260 Enforcement--Show Cause Hearing.

A. The Superintendent may order any Industrial user which causes or contributes to a violation of this chapter or wastewater discharge permit or general permit or order issued hereunder, to show cause why a proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action and the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten days prior to the hearing. Such notice may be served on any principal executive, general partner or corporate officer. Whether or not a duly notified Industrial user appears as noticed, immediate enforcement action may be pursued.

B. The city Council may itself conduct the hearing and take the evidence, or may designate any of its members or any officer or employee to:

1. Issue in the name of the city Council notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings;
2. Take the evidence;
3. Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the city Council for action thereon.

C. At any hearing held pursuant to this chapter, testimony taken must be under oath and recorded stenographically. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges thereof.

D. After the city Council has reviewed the evidence, it may issue an order to the user responsible for the discharge. This order may direct that, following a specified time period, the sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Further orders and directives as are necessary and appropriate may be issued.

13.50.265 Enforcement--Consent orders. The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the Industrial user responsible for the noncompliance. Such orders will include specific action to be taken by the Industrial user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as administrative orders issued.

13.50.266 Enforcement--Compliance orders--Discontinuance of sewer service. When the Superintendent finds that an Industrial user has violated or continues to violate this chapter or a permit or order issued thereunder, he may issue an order to the Industrial user responsible for the discharge directing that, following a specified time period, sewer service shall be discontinued unless adequate treatment facilities, devices, or other related appurtenances have been installed and are properly operated. Orders may also contain such other requirements as might be reasonably necessary and appropriate to address the noncompliance, including the installation of pretreatment technology, additional self-monitoring and management practices.

13.50.270 Enforcement--Legal action. If any user discharges sewage, industrial wastes or other wastes into the wastewater disposal system contrary to the provisions of this chapter or any order or permit issued hereunder, the Superintendent, through the city attorney may commence an action for appropriate legal and/or equitable relief in the Solano County superior court or the municipal court for Solano County.

13.50.275 Enforcement--Injunctive relief. Whenever an Industrial user has violated or continues to violate the provisions of this chapter or permit or order issued hereunder, the Superintendent, through counsel may petition the court for the issuance of a preliminary or permanent injunction or both (as may be appropriate) which restrains or compels the activities on the part of the Industrial user. The Superintendent shall have such remedies to collect these fees as it has to collect other sewer service charges.

13.50.280 Violations--Public nuisance. It is prohibited and a public nuisance for any user to violate an order of the city Council or willfully or negligently fail to comply with any provision of these regulations, and the orders, rules, regulations and permits issued hereunder. The nuisance shall be abated as provided by this code or state law. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. The city may recover reasonable attorney's fees, witness fees, court costs, court reporters' fees and other expenses of litigation by appropriate suit at law against the person found to have violated these regulations or the orders, rules, regulations, and permits issued hereunder.

13.50.285 Enforcement—Civil/Criminal remedies--Administrative fines. Notwithstanding any other section of this chapter, any person who discharges any wastes or pollutants, as defined in California Water Code Section 13050, except as permitted by waste discharge requirements, or who is found to have violated any provision of this chapter, or permits and orders issued hereunder, or who refuses to

comply with the requirements adopted pursuant to Section 13385 or 13387 of the Water Code, shall be subject to a civil/criminal penalty at least in the amount of two hundred and fifty dollars (\$250), but not to exceed twenty-five thousand dollars (\$25,000) for each day in which such discharge, violation, or refusal occurs. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation. In addition to the penalties provided herein, the city may recover reasonable attorney's fees, witness fees, court costs, court reporter fees, sample collection costs, and all other expenses of litigation incurred by the city and resulting from any action brought against a person found to have violated this part, or the orders, rules, regulations, and permits issued hereunder.. In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires. A lien against the user's property shall be sought for any unpaid charges, fees, or penalties.

13.50.295 Enforcement—Appeal Process. Industrial users desiring to dispute such fines, or enforcement actions (limited to permit revocation, cease and desist orders, and compliance orders) must file a request for the Superintendent to reconsider the fine or the applicable enforcement action within ten days of being notified of the fine. The Superintendent shall convene a hearing on the matter within fifteen days of receiving the request from the Industrial User. If the user is still aggrieved by the Superintendent's decision after reconsideration of the matter, the user shall have the right to appeal to the city Council at a regularly scheduled meeting of the Council, to show cause why a proposed enforcement action should not be taken.

13.50.300 Violations--Misdemeanor. A. Any person who knowingly makes any false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to these regulations, or wastewater discharge permit or general permit, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under these regulations, is guilty of a misdemeanor.

B. Any user who violates an order of the city Council or who willfully or negligently fails to comply with any provision of these regulations and the orders, rules, regulations and permits issued hereunder is guilty of a misdemeanor.

C. Each person is guilty of a misdemeanor for each and every day during any portion the violation(s) set forth in subsection A or B of this section is committed, continued or permitted by that person.

13.50.310 Penalties--Cumulations. The penalties set forth above are not exclusive and are cumulative to each other as well as to other penalties under other federal, state and local laws and regulations.

13.50.315 Enforcement--Liability insurance. The Superintendent may decline to reissue a permit to any user which has failed to comply with the provisions of this

chapter or any order or previous permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair POTW damage caused by its discharge.

13.50.320 Severability. If any provision, paragraph, word, section or article of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words and sections shall not be affected and shall continue in full force and effect.

13.50.325 Enforcement. The remedies provided for in this chapter are not exclusive. The city may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the city may take other action against any User when the circumstances warrant. Further, the city is empowered to take more than one enforcement action against any noncompliant User.

13.50.330 Conflict. All other chapters and parts of other chapters inconsistent or conflicting with any part of this chapter are hereby repealed to the extent of such inconsistency or conflict. Should there be any conflict between this chapter and the general pretreatment regulations (40 CFR Part 403), the general pretreatment regulations shall control.

13.50.340 Exceptions--Special agreements. The city may enter into a special agreement with a person or establishment whereby an industrial waste of unusual strength or character may be accepted by the city for treatment subject to payment and to such terms and conditions as the city may fix. Under no circumstances shall the agreement include any waiver of national categorical pretreatment standards.

13.50.360 Publication of Industrial Users in Significant Noncompliance. The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the IUs which, at any time during the previous twelve (12) months, were in Significant Noncompliance (SNC) with applicable Pretreatment Standards and Requirements. The term SNC shall be applicable to all SIUs (or any other IU that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

A. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six-(6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 13.50.040 of this chapter;

B. Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33%) or more of wastewater measurements taken for each pollutant parameter taken during a six-(6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined by Section 13.50.040 of this ordinance multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);

C. Any other violation of a Pretreatment Standard or Requirement as defined in this ordinance (Daily Maximum, Monthly Average, Instantaneous Limit, or narrative standard) that the POTW determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public.

D. Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the Superintendent's exercise of its emergency authority to halt or prevent such a discharge.

E. Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or general permit or enforcement order for starting construction, completing construction, or attaining final compliance;

F. Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

G. Failure to accurately report noncompliance; or

H. Any other violation(s), which may include a violation of Best Management Practices, which the Superintendent determines will adversely affect the operation or implementation of the local pretreatment program.

On motion of Council member _____, seconded by Council member _____, the foregoing ordinance was introduced at a regular meeting of the City Council on the 20th day of July 2010, and adopted at a regular meeting of the Council held on the 17th day of August, 2010 by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : July 13, 2010

TO : City Manager

FROM : Police Chief

SUBJECT : **APPROVE THE PURCHASE OF A COMMAND VEHICLE FOR THE POLICE DEPARTMENT WITH SLESF FUNDS**

RECOMMENDATION:

Adopt a resolution authorizing the purchase of a command vehicle for the Police Department from Maita Chevrolet of Elk Grove in the amount of \$30,098.87 utilizing SLESF Funds (California Supplemental Law Enforcement Services Fund) and authorizing the City Manager to sign the purchase order on behalf of the City.

EXECUTIVE SUMMARY:

The Police Department is in need of a command vehicle specifically designed for the patrol supervisor, suitable for critical incidents, emergencies and special events. This vehicle will support the department's watch commanders who, during critical incidents, are tasked with overall incident command and control functions. Funds are available for this purchase through the California Supplemental Law Enforcement Services Fund (SLESF), which must be used for front line police services and must supplement, not supplant, existing funding.

BUDGET INFORMATION:

The total cost to purchase this replacement vehicle is \$30,098.87. Funding for the purchase of this vehicle will be from the Supplemental Law Enforcement Special Fund (SLESF). There is no general fund budget impact associated with this action.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protecting Community Health and Safety
 - Strategy #3: Provide a high state of preparedness for disasters/emergencies

- Strategic Issue #4: Preserving and Enhancing Infrastructure.
 - Strategy #4: Provide adequate funding for ongoing infrastructure needs.

This action authorizes the purchase of a new watch commander vehicle.

BACKGROUND:

The current patrol supervisor vehicle operated by the Police Department is inadequate to support the overall command and control functions of the department's watch commanders. The department is in need of a specifically designed patrol supervisor vehicle which would be utilized on a daily basis and specifically designed to support incident command during emergencies such as critical incidents, major crimes scenes, disasters, missing persons and special events, to name a few. Patrol supervisors are one of the first officers at an incident and are tasked with overall supervision and incident management. These events are complex ventures that require additional equipment, and often other communication tools. The current police sedan (Ford Crown Victoria) does not provide enough interior space to provide for storage of this critical equipment including items used in incident command such as a table top/ workspace, ballistic shield/ blanket, entry equipment, city maps and additional communications equipment. Command vehicles are also designed for an extended time deployment and provide the capability to manage a critical incident beyond the initial response.

Many public safety agencies have utilized Sport Utility Vehicles (SUV's) for patrol supervisors because the larger vehicles have the ability to carry specialty equipment readily available for use in the field. Presently, specialty equipment (for Benicia PD) is stored at the police station. In an emergency, the delay and expenditure of personnel resources to retrieve the equipment is not an efficient use of resources and also not considered a best practice in public safety.

Chevrolet is the only vehicle manufacturer that produces a pursuit certified/rated police SUV which is the 2 wheel drive, 4-door Chevy Tahoe Police. This vehicle has similar driving characteristics to the Ford Crown Victoria, similar gas mileage ratings, and meets specifications for a police vehicle. It will be marked, fully equipped, and capable of performing all routine and emergency operations. The Tahoe's cargo capacity and police package options make it well suited to function as a patrol supervisor vehicle. Currently, similar vehicles are utilized by the Benicia Fire Department command personnel and outfitted to specifically address their needs.

Purchasing this vehicle from Maita Chevrolet of Elk Grove in the amount of \$30,098.87 proposed using the bid received by another agency. In accordance

with the City's purchasing guidelines and Benicia Municipal Code Section 3.08.110.I, the City may purchase equipment from vendors awarded a contract by another governmental agency. A quote for this vehicle was received from Maita Chevrolet of Elk Grove, who is a qualified supplier and was selected in a competitive bidding process through the Solano County Sheriff's Office under IFB Number 23-525-10 dated June 8, 2010. Staff recommends, therefore, the purchase of this vehicle for the Police Department from Maita Chevrolet in the amount of \$30,098.87.

Attachment:

- Proposed Resolution

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE PURCHASE OF A WATCH COMMANDER VEHICLE FOR THE POLICE DEPARTMENT FROM MAITA CHEVROLET OF ELK GROVE IN THE AMOUNT OF \$30,098.87, AND AUTHORIZING THE CITY MANAGER TO SIGN THE PURCHASE ORDER ON BEHALF OF THE CITY

WHEREAS, the Police Department is in need of a specifically designed incident command/ patrol supervisor vehicle suitable for critical incidents, emergencies and special events; and

WHEREAS, in accordance with the City's purchasing guidelines and Benicia Municipal Code Section 3.08.110.I, a quote for the vehicle was received from Maita Chevrolet of Elk Grove, who was selected by the Solano County Sheriffs Office as a governmental supplier by a competitive bidding process.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the purchase of a watch commander vehicle for the Police Department, from Maita Chevrolet of Elk Grove in the amount of \$30,098.87, and authorizing the City Manager to sign the purchase order on behalf of the City.

BE IT FURTHER RESOLVED THAT funds sufficient to cover the cost of the vehicle will be charged to the California Supplemental Law Enforcement Services Fund Account.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : July 22, 2010

TO : City Council

FROM : City Attorney

SUBJECT : **INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEAL CASE**

RECOMMENDATION:

Introduce the ordinance to modify and update the existing city inclusionary housing ordinance.

EXECUTIVE SUMMARY:

A recent court case requires an amendment to the city's inclusionary housing ordinance in regard to its application to rental developments.

BUDGET INFORMATION:

There is no budget impact.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- Goal #1: Improve the institutional framework and remove governmental constraints for providing affordable housing, to the extent feasible and with the city's control.
 - Policy 1.03: Continue to review and revise, as necessary, regulatory standards applicable to compliance with State housing law to remove significant governmental constraints.
- Goal #2: Promote the development of an adequate supply and mix of housing to meet existing and future housing needs.
 - Policy 2.01: Require affordable housing in residential developments under an "inclusionary" housing program and disperse affordable housing throughout the City to avoid concentration in any one part of the City.

- Policy 2.03: Seek appropriate private, local, state, and federal funding to implement housing programs for very low-, low- and moderate-income households.
- Goal #5: Ensure equal housing opportunities for all persons in Benicia regardless of race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source income.
 - Policy 5.02: Administer zoning and land use policies to facilitate the provision of housing without regard to race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source of income.

STRATEGIC PLAN:

Relevant Strategic Plan Issues include:

- Strategic Issue #5: Maintain and Enhance High Quality of Life by facilitating construction of affordable housing.

BACKGROUND:

The City of Benicia, in order to provide affordable housing in the community, adopted an Inclusionary Housing Ordinance in 2000 requiring that any new residential development of ten (10) or more units include 10% of the total number of market rate dwelling units in the development as units affordable to very low and low income households. This ordinance applied to development of for sale and rental housing units. The California Court of Appeal in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (“Palmer”) held that inclusionary requirements applied to rental housing violate the Costa-Hawkins Act, the state law governing rent control. The case only applies to rental housing. The key impacts of *Palmer* include:

- A requirement for affordable rental housing in newly created rental developments receiving no assistance from the local government is no longer permitted;
- Rents may be limited if the developer/builder receives either a financing contribution or a type of assistance specified in density bonus law (i.e., including regulatory relief) and agrees by contract to restrict the rents; and
- Affordable housing requirements imposed on for-sale housing are not affected by *Palmer*.

Communities cannot, therefore, impose affordable housing requirements on rental housing in the wake of *Palmer*. More specifically communities cannot impose such requirements on a developer/builder who does not receive any financial assistance or regulatory incentive of the type included in density bonus

law. Developers/builders receiving financial assistance can still be required to provide affordable rental housing.

The existing Benicia inclusionary housing ordinance needs to be updated to reflect the *Palmer* case. The ordinance has been modified to reflect the provisions of *Palmer* as it pertains to rental and for sale units. The Planning Commission reviewed this ordinance at their July 8, 2010 meeting and recommends its adoption.

Attachments:

- Proposed Ordinance
- Ordinance Redline Version

CITY OF BENICIA

ORDINANCE NO. 10-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Subsections C. (Definitions) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add a new definition to read as follows:

17.70.320 Inclusionary housing.

C. Definitions.

 “For-sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

Section 2.

Subsections D.1. and D 2. (General requirements for new residential developments) and E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code are amended to amend the application of the requirements to certain projects to read as follows:

D. General requirements for new residential development.

 1. Any residential development of for-sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low or low-income households. When the number of

inclusionary units to be provided is an odd number (i.e., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all of part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for-sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu) fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units at appropriate price or rent levels, the term of affordability, provision for the city's income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for-sale unit development and/or phases of a development shall be constructed concurrently with or prior to the construction of market rate units, unless the city council determines an alternative phasing schedule to facilitate affordable housing development and the developer enters into a written agreement setting forth terms for satisfaction of the inclusionary housing requirements. Each phase of a development shall include the same or greater proportion of inclusionary units as are required for the total development.

Section 3.

Subsection E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding E.4. to amend the application of the requirements to certain projects to read as follows:

E. Inclusionary unit requirements for rental developments.

4. For residential development of for-rental units where there is no financial assistance from the city or a type of assistance specified in the city's density bonus law, the provisions cited in sections D.1-7 and E.1-3 shall not apply.

For residential development of for-rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory relief and or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, sections D. and E. shall apply.

Section 4.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

* * * * *

On motion of Council Member _____,
seconded by Council Member _____, the
foregoing Ordinance was introduced at a regular meeting of the City Council on
the ____ day of _____, 2010, and adopted at a regular meeting of the Council held
on the ____ day of _____ 2010, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

CITY OF BENICIA

ORDINANCE NO. 10-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

Subsections C. (Definitions) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add a new definition to read as follows:

17.70.320 Inclusionary housing.

C. Definitions.

“For-sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

Section 2.

Subsections D.1. and D 2. (General requirements for new residential developments) and E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code are amended to amend the application of the requirements to certain projects to read as follows:

D. General requirements for new residential development.

1. Any residential development of for-sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low or low-income households. When the number of

inclusionary units to be provided is an odd number (i.e., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all of part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for-sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu) fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units at appropriate price or rent levels, the term of affordability, provision for the city's income certification and screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for-sale unit development and/or phases of a development shall be constructed concurrently with or prior to the construction of market rate units, unless the city council determines an alternative phasing schedule to facilitate affordable housing development and the developer enters into a written agreement setting forth terms for satisfaction of the inclusionary housing requirements. Each phase of a development shall include the same or greater proportion of inclusionary units as are required for the total development.

Section 3.

Subsection E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding E.4. to amend the application of the requirements to certain projects to read as follows:

E. Inclusionary unit requirements for rental developments.

4. For residential development of for-rental units where there is no financial assistance from the city or a type of assistance specified in the city's density bonus law, the provisions cited in sections D.1-7 and E.1-3 shall not apply.

For residential development of for-rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory relief and or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, sections D. and E. shall apply.

Section 4.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

* * * * *

On motion of Council Member _____,
seconded by Council Member _____, the
foregoing Ordinance was introduced at a regular meeting of the City Council on
the ____ day of _____, 2010, and adopted at a regular meeting of the Council held
on the ____ day of _____ 2010, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : July 26, 2010

TO : City Manager

FROM : Public Works and Community Development Director

SUBJECT : **AWARD OF CONTRACTS FOR THE WASTEWATER TREATMENT PLANT EFFLUENT PIPELINE IMPROVEMENT PROJECT**

RECOMMENDATION:

Adopt a resolution:

- 1) Accepting the bids for the Wastewater Treatment Plant Effluent Pipeline Improvement Project and awarding the construction contract to Tidelands Construction Company of Brentwood in the amount of \$545,000;
- 2) Approving a contract for construction management/engineering support services for the Wastewater Treatment Plant Effluent Pipeline Improvement Project with Camp Dresser & McKee, Inc. for a not-to-exceed cost of \$99,848; and
- 3) Authorizing the City Manager to sign the contracts on behalf of the City.

EXECUTIVE SUMMARY:

This action approves contracts for construction and construction management/engineering support services for the Wastewater Treatment Plant Effluent Pipeline Improvement Project. The project is necessary to replace an existing malfunctioning junction manhole in the effluent pipeline at the City's Wastewater Treatment Plant and to install an effluent flow meter. Total cost of the project is \$699,348. Sufficient funds are available in the Wastewater Enterprise Fund to cover the cost.

BUDGET INFORMATION:

The total cost of the project is \$699,348, which includes construction, contingency, and construction management/engineering support services. Sufficient funds are available in the Wastewater Enterprise Fund to cover the cost. Authorization to transfer funds from the undesignated balance of Fund 014 to account number 518-8357-9960 is requested.

GENERAL PLAN:

Relevant General Plan Goals:

- Goal 2.28: Improve and maintain public facilities and services.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #1: Protecting Community Health and Safety
 - ▶ Strategy #5: Promote community and personal health
- Strategic Issue #2: Protecting and Enhancing the Environment
 - ▶ Strategy: N/A

BACKGROUND:

Treated wastewater (effluent) is discharged through the Wastewater Treatment Plant's effluent pipeline to the Carquinez Strait. One of the two junction manholes in the pipeline is malfunctioning and needs to be replaced. The existing effluent flow meter also has failed and its replacement will be installed in a new meter vault within the new effluent pipeline section as part of the project.

The proposed project involves:

- demolition and disposal of the existing effluent pipeline and manhole;
- construction of temporary provisions for maintaining the wastewater treatment plant in service during construction;
- installation of a new cast-in-place effluent meter vault equipped with two aluminum ladders, aluminum hatch, effluent meter, and sump pump with level detection;
- a new effluent pipeline section with connections to the existing pipeline.

On June 3, 2010 three bids were properly received and publicly opened. Tidelands Construction of Brentwood was determined to be the lowest responsible bidder submitting a responsive bid. The bid results are summarized below.

RANK	BIDDER NAME AND CITY	BID
1	Tidelands Construction Company, Brentwood	\$545,000
2	W.R. Forde Associates, Richmond	\$866,000
3	Pacific Mechanical Corp., Concord	\$905,000
	Engineer's Estimate	\$380,000

All three bids exceeded the engineer's estimate. Discussions with contractors that both submitted and did not submit bids revealed that challenging project conditions, including high groundwater, Bay mud, and bypass pumping, are appropriately reflected in the cost of the project.

It is recommended, therefore, award of the construction contract to Tideland Construction of Brentwood in the amount of \$545,000.

Staff also recommends approval of a contract for construction management/engineering support services for the Wastewater Treatment Plant Effluent Pipeline Improvement Project with Camp Dresser & McKee, Inc. (CDM) for a not-to-exceed cost of \$99,848. CDM completed the preliminary and final design efforts for the project. Due to work with the City on both its water and wastewater systems, the firm possesses extensive knowledge of the City's facilities.

CDM has participated in several consultant selection processes for a variety of City projects and has consistently been selected as the best qualified to assist the City with needed improvements to its water or wastewater system. CDM's multidisciplinary staff includes engineers, scientists, planners, constructors, and operations specialists, which provides the breadth of experience needed to meet the City's needs. CDM has demonstrated responsiveness throughout previous work for the City and their hourly rate is competitive with those of similarly qualified firms.

CDM will provide up to 40 hours per week in construction management, inspection, and engineering support services during the four-month project. Having all construction-related activities managed by a single point of contact will ensure maximum efficiency in the control of cost, schedule, and communication.

cc: City Attorney
Assistant Director of Public Works

Attachments:

- Proposed Resolution
- Consultant Contract

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BIDS FOR THE EFFLUENT PIPELINE IMPROVEMENT PROJECT; AWARDING THE CONSTRUCTION CONTRACT FOR THE EFFLUENT PIPELINE IMPROVEMENT PROJECT TO TIDELANDS CONSTRUCTION COMPANY OF BRENTWOOD IN THE AMOUNT OF \$545,000; APPROVING A CONTRACT FOR CONSTRUCTION MANAGEMENT/ENGINEERING SUPPORT SERVICES FOR THE EFFLUENT PIPELINE IMPROVEMENT PROJECT WITH CAMP DRESSER & MCKEE, INC. FOR A NOT-TO-EXCEED COST OF \$99,848; AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACTS ON BEHALF OF THE CITY

WHEREAS, the Effluent Pipeline Improvement Project was advertised for construction bids and three bids were properly received and publicly opened on June 3, 2010; and

WHEREAS, Tidelands Construction Company of Brentwood has been determined to be a bidder submitting the lowest responsive, responsible bid; and

WHEREAS, construction management, inspection, and engineering support services during construction of the Effluent Pipeline Improvement Project are essential to control cost, schedule, and communication; and

WHEREAS, Camp Dresser & McKee, Inc., as a leading provider of consulting, engineering, construction, and operations services worldwide, is the most capable in all material aspects to perform full contract requirements and is highly qualified to perform the construction management and engineering support services for the Effluent Pipeline Improvement Project; and

WHEREAS, the Effluent Pipeline Improvement Project is categorically exempt under CEQA pursuant to Section 15301 (a) (existing facilities – interior or exterior) of the CEQA guidelines.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the plans and specifications for the Effluent Pipeline Improvement Project and accepts the bids for the Project.

BE IT FURTHER RESOLVED THAT the City Council awards the construction contract for the Effluent Pipeline Improvement Project to Tidelands Construction Company of Brentwood in the amount of \$545,000.

BE IT FURTHER RESOLVED THAT the City Council awards a consultant agreement for construction management/engineering support services for the

Effluent Pipeline Improvement Project to Camp Dresser & McKee, Inc. for a not-to-exceed cost of \$99,848.

BE IT FURTHER RESOLVED THAT the City Council authorizes the City Manager to sign the contracts on behalf of the City, subject to approval by the City Attorney.

BE IT FURTHER RESOLVED THAT funds sufficient to cover project costs, including construction, contingency, and construction management/engineering support services, totaling \$699,348 will be transferred from the undesignated balance of Fund 014 to account number 518-8357-9960.

On motion of Council member _____, seconded by Council member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

CONSULTANT AGREEMENT

This agreement ("Agreement") entered into _____, 2010, is between the City of Benicia, a municipal corporation (hereinafter "CITY"); and Camp Dresser & McKee, Inc., a Massachusetts corporation with its primary office located at 100 Pringle Avenue, Suite 300, Walnut Creek, CA 94596 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain professional engineering services for construction management and engineering support during construction of the Wastewater Treatment Plant Effluent Pipeline Improvements Project. The scope of work for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through its staff may determine from time to time, CONSULTANT shall perform the services set forth in the Scope of Work labeled Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Schedule for Performance. CONSULTANT shall perform the services identified in Exhibit A according to the completion schedule included in Exhibit A and as expeditiously as is consistent with generally accepted standards of professional skill and care, and the orderly progress of work.

(i) CONSULTANT and CITY agree that the completion schedule in Exhibit A

represents the best estimate of the schedule.

(ii) CONSULTANT shall not be responsible for performance delays caused by others, or delays beyond CONSULTANT'S control, and such delays shall extend the times for performance of the work by CONSULTANT.

(c) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the full satisfaction and approval of the City's project manager.

(d) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. COMPENSATION.

(a) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall be on a time and materials basis based upon the estimated level of effort cost outlined in Exhibit B.

(b) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Manager can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(c) Invoicing and Payment. CONSULTANT shall submit monthly invoices for the services performed under this Agreement during the preceding period. Invoices or billings must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item in accordance with Exhibit B. CITY shall approve or disapprove said invoice or billing within thirty (30) days following receipt thereof and shall pay all approved invoices and billings within thirty (30) days. Interest at the rate of one and one-half (1.5) percent per month will be charged on all past due amounts starting thirty (30) days after the invoice date, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will be credited first to interest, and then to principal.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) copies of each product described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT at the address indicated in Section 11.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostating, photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to CITY for damages suffered as a result of CONSULTANT'S failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit B. However, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services which are of benefit to CITY.

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this

Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine shall be followed by notice deposited in the U.S. mail as discussed above.

If to CITY: Chris Tomasik
Assistant Director of Public Works
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT: Jon Toyoda
Vice President
Camp Dresser & McKee, Inc.
One Walnut Creek Center
100 Pringle Avenue, Suite 300
Walnut Creek, CA 94596

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be

employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT shall, to the fullest extent permitted by law, hold harmless, defend (with counsel approved by the City) and indemnify City and its officers, officials, employees and volunteers from and against all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant and its employees, agents and subconsultants, except where caused by the sole negligence or willful misconduct of the City. The provisions of this section survive completion of the services or the termination of this Agreement. The provisions of this section are limited by the provisions of Section 18 relating to insurance.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of errors and omissions/professional liability, workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

<u>Policy</u>	<u>Minimum Limits of Coverage</u>
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage \$1,000,000 each accident
(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001)	\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv) Errors and Omissions/ Professionals' Liability, errors and omissions liability insurance appropriate to the CONSULTANT'S profession.	Generally \$1,000,000 per claim

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- (i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials,

employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this

Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

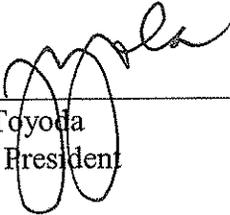
25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

Executed by CITY and CONSULTANT on the date shown next to their respective signatures.
The effective date of this Agreement shall be the date of execution by the CITY as shown below.

CAMP DRESSER & MCKEE, INC.

CITY OF BENICIA

BY: 

Jon Toyoda
Vice President

BY: _____
James R. Erickson
City Manager

DATED: July 27 2010

DATED: _____

RECOMMENDED FOR APPROVAL

Department Head

APPROVED AS TO FORM

City Attorney

06/30/03

EXHIBIT A

Scope of Work to the Agreement Between City of Benicia and Camp Dresser & McKee Inc. for Construction Management and Engineering Support During Construction of the Wastewater Treatment Plant Effluent Pipeline Improvements

The purpose of these services is to provide construction management, inspection services, and engineering support services during construction of the WWTP Effluent Pipeline Improvements.

The scope and budget for these services is based on the following assumptions:

- The construction of the WWTP Effluent Pipeline Improvements will last a total 4 months, beginning in August 2010 and ending in November 2010.
- CDM will provide a part-time (varying from 0 to 40 hours per week, depending on the construction activities) resident project representative during construction of the project.

Task 1 – Construction Management and Construction Observation

Purpose:

CDM will provide one part-time on-site resident project representative for the WWTP Effluent Pipeline Improvements.

Approach:

A resident project representative will periodically visit the construction site during the construction project. Time at the site for the resident project representative will vary from 0 to 40 hours per week, depending on the construction activities.

The resident project representative will:

- Organize the on-site construction meetings with the contractor, City personnel and design team engineers.
- Receive and log submittals, requests for information and potential change orders.
- Document observed construction activities by taking notes in a log book and digital photos.
- Make note of changes in design or construction for the preparation of record drawings.
- Coordinate shut-downs between the plant staff and contractor for tie-in of new equipment/facilities.

- Assist the general contractor and City with the planning and implementation of the testing and startup of the new equipment.
- Review contractor progress schedules and payment requests.
- Prepare punch lists and determine substantial and final completion.

The resident project representative will manage a specialty testing subcontractor responsible for the following:

- *Geotechnical Testing.* Observation of major excavations and fill areas to confirm that material encountered is consistent with assumptions developed during the design. Perform compaction testing as required.
- *Concrete Testing.* On days where concrete is poured, test concrete on site for slump. Prepare samples for compression testing.

Assumptions:

- On average, the resident project representative will be on-site approximately half-time for the construction duration. However, the actual time spent at the site by the resident project representative each week will vary, depending on the construction activities.
- Additional time required of the resident project representative can be provided if authorized under Task 6 – Additional Services.
- The total estimated duration of construction is 4 months. Additional time extensions beyond 4 months will be completed under Task 6 – Additional Services.
- An allowance of \$8,000 is provided for the specialty testing (geotechnical and concrete) subcontractor. If additional testing services become necessary, they can be provided under Task 6 – Additional Services.

Deliverables:

- Daily activities log (for those days resident project representative is at the site); construction photos on CD-ROM or DVD; test data where appropriate; review and approval of contractor's pay requests, change order requests.

Task 2 - Submittal Review

Purpose:

The purpose of this task is to complete the review of technical submittals provided by the general contractor.

Approach:

Technical submittals will be reviewed and returned to the Contractor with review status category (e.g., no exceptions noted, amend and resubmit, etc.) from the categories listed in the specifications. A submittal spreadsheet log will be maintained for use in tracking and documenting submittal review.

Assumptions:

- The task budget is based on a total of 30 submittals, which take an estimated average of 3 hours each and 10 resubmittals which take 1 hour each. Review of submittals and resubmittals beyond 40 will be completed under Task 6 – Additional Services.
- Write a summary memorandum of comments rather than annotate all copies of the submittal wherever possible.
- Any potential material/equipment substitutions will be noted so that they may be brought to the City’s attention for possible further consideration.

Submittal review will determine if the items covered by the submittals will, after installation or incorporation in the work, conform to the requirements of the construction contract documents and be compatible with the design concept of the completed project as a functioning whole as indicated in the construction contract documents. Submittal review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the construction contract documents) or to safety precautions or programs incident thereto.

Deliverables:

One set of submittals and review comments.

Task 3 - Requests for Information and Clarifications

Purpose:

During the construction period, the general contractor will ask questions on details of the contract, substitutions, and alternative approaches. The purpose of this subtask is to review general contractor questions, and provide written clarifications.

Approach:

Clarification shall consist of answering questions raised by the general contractor, vendors, City staff, regulators, and others. Questions can be in the form of emails, letters, faxes, Requests for Information (RFIs), or telephone calls. Activities will typically include receiving the request, researching the question(s), preparing a written or verbal response, documenting a response, and coordinating. RFIs will be listed in a log, in an Excel file.

Substitutions of equipment, materials, or methods; and minor design changes proposed by the general contractor shall also be reviewed under this task.

Assumptions:

- The task budget is based on a total of 15 RFIs, letters, faxes, and telephone requests, which take approximately 3 hours each to respond to. Additional RFI review work will be completed under Task 6 – Additional Services.
- RFIs related to the general contractor’s means and methods will be returned with the comment that the general contractor is responsible for means and methods.
- Goal is to respond to RFIs within 4 calendar days.

Deliverables:

Written responses for technical questions presented in writing or email; verbal responses with telephone memo to file for verbal questions. The City will be advised in writing or email when RFIs will result in cost changes. A hardcopy of all the RFIs and responses will be provided to the City.

Task 4 Construction Change Order Assistance

Purpose:

During the construction period, construction change orders may be required to address unforeseen conditions, new information and resolve inconsistencies within the contract documents. The City may also wish to add work to this project for a variety of reasons. The purpose of this task is to provide support in construction change order and related activities.

Approach:

Design, write or review change order documentation. Anticipated assignments may include: assistance in preparing requests to the general contractor for proposals for extra or changed work; assistance in research of contract documents to determine if work proposed by general contractor for inclusion in a change order should be considered extra work for which a change order is appropriate; review of design calculations and intent; review of cost estimates. Prepare small drawings, sketches or specifications for extra or changed work items.

Assumptions:

- Change order documentation will not be drawn in computer generated form if hand drawn sketches or markups will adequately describe the work to the construction general contractor.
- The task budget is based on the assumption that no more than 10 individual construction changes will be prepared, at approximately 4 hours each. Individual construction changes will be combined into Change Orders, whenever practical, for review and approval by the City and to issue to the Contractor. Additional design and review of construction change work requests will be completed under Task 6 – Additional Services.

Deliverables:

- Change order documentation – drawings, sketches, specifications.
- Supporting documentation of reasons to accept or refuse to issue change order.

Task 5 – Project Management

Purpose:

The purpose of this task is to develop a project management plan, to coordinate the engineering services to be provided by CDM and its subconsultant, to prepare monthly project invoices, and to communicate and correspond as necessary with the City on project administrative issues.

CDM

Approach:

A Project Management Plan will be prepared and distributed to all CDM Project personnel. The Management Plan will include the Scope of Work, tasks budget, and project schedule. The project manager will periodically review the status of the construction project for progress, coordination issues, change order avoidance, and documentation procedures by the office and resident engineering staff.

Monthly invoices will be submitted. Each invoice will include a summary of labor expenditures, direct costs, and billed subconsultant charges. A general summary of activities occurring during the invoice period will be submitted. The CDM project manager will communicate and correspond with the City.

Assumptions:

- Four invoices and progress reports will be prepared.

Deliverables:

- Progress reports and invoices.

Task 6 – Additional Services

The purpose of this task is to provide for unforeseen needs for additional construction management and engineering support services during the construction period. CDM shall not perform nor be compensated for any work associated with this task without the written authorization of the City. Such authorization may be given subsequent to a determination during the course of the project of the need for any additional service, the scope of such service, and its cost. Additional services may include, but not be limited to, the items listed below:

- Additional construction support as requested by the City (e.g., additional submittal review, inspection, startup assistance, additional change order preparation, and additional request for information reviews).
- Claims support.
- Development of record drawings.
- Other additional work as requested by the City.

The City may at its sole discretion decline to authorize the work described in this task, and no such work shall be undertaken without written authorization by the City.

EXHIBIT B
 City of Benicia
 Construction Management and Engineering Support During Construction of the
 Wastewater Treatment Plant Effluent Pipeline Improvements
 Budget

PROJECT TASKS & SUBTASKS	LABOR: CATEGORY, RATE, HOURS & COST														TOTAL
	Project Manager		Resident Engineer		Design Engineer		Clerical		Labor Totals		Other Direct Costs		Outside Prof.		
	hours	\$	hours	\$	hours	\$	hours	\$	hours	\$	hours	\$	hours	\$	
TASK 1 - Const. Management and Observation	0	\$0	300	\$43,800	0	\$0	0	\$0	0	\$0	300	\$43,800	1,400	\$8,000	\$53,200
TASK 2 - Submittal Review (40 total)	100	\$16,218	0	\$0	0	\$0	0	\$0	0	\$0	100	\$16,218	100	\$0	\$16,318
TASK 3 - Requests for Information (15)	0	\$0	0	\$0	40	\$8,800	0	\$0	0	\$0	40	\$8,800	100	\$0	\$8,900
TASK 4 - Const. Change Order Assistance (10)	8	\$1,297	0	\$0	24	\$5,280	8	\$560	0	\$0	40	\$7,137	100	\$0	\$7,237
TASK 5 - Project Management	52	8,433	0	0	0	0	8	560	0	0	60	8,993	200	0	9,193
1 Prepare project management plan	4	\$649	0	\$0	0	\$0	0	\$0	0	\$0	4	\$649	0	\$0	\$649
2 Invoices	8	\$1,297	0	\$0	0	\$0	8	\$560	0	\$0	16	\$1,857	100	\$0	\$1,957
3 Communication and Correspondence	40	\$6,487	0	\$0	0	\$0	0	\$0	0	\$0	40	\$6,487	100	\$0	\$6,587
TASK 6 - Additional Services												\$5,000	0	0	\$5,000
TOTALS	160	\$ 25,948	300	\$43,800	64	\$14,080	16	\$ 1,120	540	\$89,948	1,900	\$8,000	\$99,848		

**AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR**

DATE : July 28, 2010
TO : City Council
FROM : City Attorney
SUBJECT : **REDUCTION IN CITY COUNCIL COMPENSATION**

RECOMMENDATION:

Adopt the attached resolution which:

- 1) Encourages the City Council to voluntarily agree to a 3.0% reduction in base salary effective September 1, 2010, and
- 2) Directs the City Manager to return to Council with recommendations on how the 3% base salary reduction listed in one above can be converted to an ongoing permanent reduction in pension or medical reform no later than January 15, 2011.

EXECUTIVE SUMMARY:

At the last Council meeting, the City Council requested an analysis of the tax implications if the council members volunteer to reduce their salary. This reduction was contemplated similar to the action taken for the City Manager and City Attorney. After consultation with an attorney familiar with the tax issues, the form to request a reduction in salary has been modified to clarify that the reduction is irrevocable.

BUDGET INFORMATION:

It is anticipated that the annualized savings from this action will be approximately \$2,000.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

BACKGROUND:

At the July 20, 2010 City Council meeting, the Council considered reducing their salaries. I asked for more time to evaluate any possible tax implications. The issue is whether a council member would be subject to tax on the salary he or she does not accept.

To answer this question, I have consulted with attorney Marcus Wu of the Hansen Bridgett law firm. Mr. Wu works in the area of employee benefits and tax law. He has suggested adding the following language to the voluntary reduction form: "I understand that this 3% reduction will apply to salary for services performed during the first full pay period after the date I sign this form. I further understand that the election cannot be changed except on a going forward basis before the start of a pay period. This means that once I make this election, I cannot later direct the City to pay me the reduced amounts retroactively."

In order to avoid being taxed on the reduced amount, a council member must be able to show that he or she has renounced all rights to the money. A council member cannot direct how the money is used i.e. to offset the budget deficit or fund some particular program. The added language above will make it clear that the reduction cannot be reversed once the pay period begins. Any change would have to be done prior to the start of a new pay period.

As mentioned in the July 17th Council report, not unlike most jurisdictions in California, the City of Benicia has identified a structural deficit due to the unprecedented economic downturn of the economy. The City has identified a structural deficit that is anticipated to continue for the next five years. At the last Council meeting, the direction was given to staff to return with a resolution decreasing the City Council's salaries, similar to the action taken for the City Manager and City Attorney. Given constraints in state law regarding decreasing council salaries, adoption of the attached resolution would encourage the City Council to voluntarily agree to a 3.0% reduction in their salaries due to the immediate financial challenges facing the City.

Since the adoption of the budget the City's General Fund revenues has declined \$1,651,085 in the current year, primarily due to reduction in property taxes, sales taxes, utility users taxes and franchise fees. The City has determined that reductions are necessary given the loss of revenues due to the financial crisis in the national and local economy. Currently, the City is conducting a smart sizing effort to identify program areas that can be reduced and/or eliminated towards bridging the current budget gap. The recommendations from this process will be provided to the Council later this summer for

consideration. At this time, the City is also beginning contract negotiations with the majority of its employees groups and is requesting assistance with reductions in order to address the budget deficit and minimize program reductions and layoffs. Therefore, in recognition of the current fiscal situation, the City Council directed staff to agendize this reduction in compensation for the City Council in accordance with state and local requirements.

It should be noted that the California Attorney General has opined that the city council of a general law city, such as Benicia, may not reduce the salaries of the council members during their current terms of office. (80 Cal. Op. Att'y Gen. 119)

Given the Council's direction to implement a salary decrease commensurate with the concessions being asked of City employees, a resolution is attached that encourages each the City Council to voluntarily agree to an immediate 3% reduction in their salaries due to the financial challenges facing the City.

As discussed at the July 6th Council meeting, the City is currently reviewing its various pension and medical programs currently being offered to determine fiscal sustainability into the future. CalPERS has notified the City that starting in July 2011 its miscellaneous rate will increase by approximately 2% and its safety rates will increase by 2.5% as a result of the lower than expected investment earnings as a result of the downturn in the economy. This will only add to the \$1.2 million dollar deficit estimated for fiscal year 2011 – 2012. Additionally, increases in medical premiums for fiscal year 2010 – 2011 were an average of 11.25%, and are anticipated to increase again in 2011 – 2012. Given the urgency of the City's fiscal condition, staff recommends Council approve the recommended actions to obtain the necessary savings immediately, and staff will return prior to January 15, 2011 with recommendations on how the 3% base salary reduction can be converted to an ongoing permanent reduction in pension or medical reform.

Attachments:

- Resolution
- Council Salary Reduction Form
- July 20, 2010 Staff Report

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A REDUCTION IN THE COMPENSATION PACKAGE FOR THE CITY COUNCIL

WHEREAS, the City of Benicia has identified a structural deficit due to the unprecedented economic downturn of the economy and it is anticipated to continue for the next five years; and

WHEREAS, the City has determined that reductions are necessary given the loss of revenues due to the financial crisis in the national and local economy; and

WHEREAS, the City is conducting a smart sizing effort to identify program areas that can be reduced and/or eliminated towards bridging the current budget gap; and

WHEREAS, the City is also currently reviewing its various pension and medical programs currently being offered to determine fiscal sustainability into the future; and

WHEREAS, the City Council wishes to take this action to assist the City's efforts in making ongoing structural reductions in order to address the City's structural deficit.

NOW, THEREFORE, BE IT RESOLVED THAT a reduction in compensation of the City Council will be achieved as follows:

- 1) Council will be encouraged to voluntarily agree to reduce base salary by 3% for the first full pay period after the member agrees to the voluntary reduction.
- 2) Direct the City Manager to return to Council with recommendations on how the 3% base salary reduction listed in one above can be converted to an ongoing permanent reduction in pension or medical reform no later than January 15, 2011.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

CITY COUNCIL – REDUCTION IN SALARY

On August 17, 2010, the City Council adopted a resolution *voluntarily* asking that the City Council to agree to reduce their salaries by 3% given the immediate financial challenges facing the City. The 3% figure was based on the concessions being discussed with employees.

Please indicate below whether you agree to have your salary reduced by 3% and then return this form to the City Manager’s Office. Again, as stated in the Council resolution, this is a voluntary action.



I, _____, AGREE TO VOLUNTARILY REDUCE MY BASE SALARY BY 3%.

I hereby direct the City Finance Director to reduce my base salary by 3% effective the first pay period after the date I sign this form. I further understand that the election cannot be changed except on a going forward basis before the start of a pay period. This means that once I make this election, I cannot later direct the City to pay me the reduced amounts retroactively.

Executed on _____, 2010, at _____, California.

(Signature)

Please return to the City Manager’s Office

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : July 15, 2010
TO : City Manager
FROM : Public Works and Community Development Director
SUBJECT : **PURCHASE OF CRUSHED AGGREGATE ROCK FOR FISCAL YEAR 2010-2011**

RECOMMENDATION:

Adopt a resolution authorizing the purchase of crushed aggregate rock for Fiscal Year 2010-2011 from Syar Industries Inc. of Vallejo, California, for a not-to-exceed cost of \$25,000.

EXECUTIVE SUMMARY:

This action authorizes the purchase of crushed aggregate rock for repair and maintenance of City streets and utility pipelines. Sufficient funds are available in Account Nos. 090-8215-8809 (Street Repairs) and 090-8215-9856 (Service Line Replacement) to cover this purchase.

BUDGET INFORMATION:

The total cost of purchasing crushed aggregate rock for Fiscal Year 2010-2011 will not exceed \$25,000. Sufficient funds are budgeted and \$10,000 will be charged to Account No. 090-8215-8809 (Street Repairs) and \$15,000 will be charged to Account No. 090-8215-9856 (Service Line Replacement.)

GENERAL PLAN:

Relevant General Plan Goals:

- ❑ Goal 2.28: Improve and maintain public facilities and services.
- ❑ Goal 2.36: Ensure an adequate water supply for current and future residents and businesses.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- ❑ Strategic Issue #1: Protecting Community Health and Safety
 - Strategy #4: Promote community preservation and prevent nuisances through increased code enforcement, environmental strategies and community education
- ❑ Strategic Issue #4: Preserving and Enhancing Infrastructure

- Strategy #4: Provide adequate funding for ongoing infrastructure needs

This action authorizes the purchase of crushed aggregate rock for repair and maintenance of City streets and utility pipelines.

BACKGROUND:

The Public Works Maintenance Division repairs and maintains City streets and water, sewer and storm drain pipelines. Crushed aggregate rock is used to backfill excavations after work has been completed. City staff purchases the rock from Syar Industries Inc. to maintain inventory levels and on an as-needed basis.

Syar Industries Inc. on Lake Herman Road in Vallejo is the only manufacturer of crushed aggregate rock within a reasonable distance from Benicia; therefore, this is a sole source purchase. The next closest rock supplier is in Esparto in Yolo County; however, only smooth river rock can be supplied that does not meet City specifications for compaction. Further, the City receives reasonable delivery prices due to the close proximity of Syar and saves wear and tear on City dump trucks when staff must pick up the rock. In accordance with Benicia Municipal Code Section 3.08.090C, bid procedures are waived when the commodity can only be obtained via sole source procurement. Based on the total amount spent on this product last fiscal year, staff recommends purchasing crushed aggregate rock for Fiscal Year 2010-2011 from Syar Industries Inc. for a not-to-exceed cost of \$25,000.

cc: City Attorney
Assistant Director of Public Works

Attachment:

- Proposed Resolution

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE PURCHASE OF CRUSHED AGGREGATE ROCK FOR FISCAL YEAR 2010-2011 FROM SYAR INDUSTRIES INC. OF VALLEJO, CALIFORNIA, FOR A NOT-TO-EXCEED COST OF \$25,000

WHEREAS, crushed aggregate rock is needed for staff to repair and maintain City streets and utility pipelines; and

WHEREAS, Syar Industries Inc. is the only manufacturer within a reasonable distance from Benicia of crushed aggregate rock; therefore, this purchase must be sole-sourced; and

WHEREAS, in accordance with Benicia Municipal Code Section 3.08.090C, bid procedures are waived when the commodity can only be obtained via sole source procurement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves the sole source purchase of crushed aggregate rock for Fiscal Year 2010-2011 from Syar Industries Inc. of Vallejo, California, for a not-to-exceed cost of \$25,000.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : July 20, 2010
TO : City Manager
FROM : Public Works and Community Development Director
SUBJECT : **PURCHASE OF FITTINGS AND HARDWARE FOR FISCAL YEAR 2010-2011**

RECOMMENDATION:

Adopt a resolution authorizing the purchase of water distribution pipeline fittings and hardware for Fiscal Year 2010-2011 from Roberts & Brune Co. of Oakley, California, for a not-to-exceed cost of \$75,000.

EXECUTIVE SUMMARY:

This action authorizes the purchase of fittings and hardware for repair and maintenance of water distribution pipelines. Sufficient funds are available in Account Nos. 090-8215-8792 (Fittings and Hardware) and 090-8215-9856 (Service Line Replacement) to cover the purchase.

BUDGET INFORMATION:

The total cost of purchasing water distribution pipeline fittings and hardware for Fiscal Year 2010-2011 will not exceed \$75,000. Sufficient funds are budgeted and \$30,000 will be charged to Account No. 090-8215-8792 (Fittings and Hardware) and \$45,000 will be charged to Account No. 090-8215-9856 (Service Line Replacement).

GENERAL PLAN:

Relevant General Plan Goals:

- Goal 2.28: Improve and maintain public facilities and services.
- Goal 2.36: Ensure an adequate water supply for current and future residents and businesses.

STRATEGIC PLAN:

Relevant Strategic Plan Issue and Strategy:

- Strategic Issue #1: Protecting Community Health and Safety
 - Strategy #5: Promote community and personal health

This action authorizes the purchase of fittings and hardware for repair and maintenance of water distribution pipelines that deliver drinking water to customers.

BACKGROUND:

The distribution system consists of 160 miles of pipelines that deliver drinking water from the water treatment plant to customers. The Public Works Maintenance Division repairs and maintains the water distribution pipelines. Products such as fittings, couplings, valves, clamps, nuts and bolts are needed for this work.

A Request for Quotation (RFQ) for fittings and hardware was sent to three qualified vendors in accordance with City policy. Two of the three responded. Roberts & Brune Co. was determined to be the vendor submitting the lowest responsive quote. The City has purchased fittings and hardware from Roberts & Brune Co. for the past five years and staff has been pleased with the service. The quotes below represent the total cost for one of each type of fitting and hardware product since it is impossible for staff to determine exactly how many of each item they will need during a fiscal year.

RANK	VENDOR'S NAME AND ADDRESS	QUOTE
1	Roberts & Brune Co. 1315 Main Street, Oakley, CA	\$213.50
2	Groeniger & Co. 27750 Industrial Blvd., Hayward, CA	\$308.30
-	Ferguson Water Works (No response) 2112 Loveridge Rd., Pittsburg, CA	N/A

Based on the total amount spent on these products last fiscal year, staff recommends purchasing water distribution pipeline fittings and hardware for Fiscal Year 2010-2011 from Roberts & Brune Co. for a not-to-exceed cost of \$75,000.

cc: City Attorney
Assistant Director of Public Works

Attachment:
 Proposed Resolution

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE PURCHASE OF WATER DISTRIBUTION PIPELINE FITTINGS AND HARDWARE FOR FISCAL YEAR 2010-2011 FROM ROBERTS & BRUNE CO. OF OAKLEY, CALIFORNIA, FOR A NOT-TO-EXCEED COST OF \$75,000

WHEREAS, fittings and hardware are needed for City staff to repair and maintain water distribution pipelines; and

WHEREAS, a Request for Quotation (RFQ) for fittings and hardware was sent to three qualified vendors in accordance with City policy; and

WHEREAS, Roberts & Brune Co. of Oakley, California, was determined to be the vendor submitting the lowest responsive quote.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves the purchase of water distribution pipeline fittings and hardware for Fiscal Year 2010-2011 from Roberts & Brune Co. of Oakley, California, for a not-to-exceed cost of \$75,000.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : August 4, 2010

TO : City Manager

FROM : Public Works and Community Development Director

SUBJECT : **RECOMMENDATION FOR CITY COUNCIL TO AUTHORIZE \$16,000 FOR AMERICORPS VOLUNTEER PROGRAM AND AUTHORIZE THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING**

RECOMMENDATION:

Adopt a resolution authorizing \$16,000 in matching funds from the Valero Improvement Project (VIP) Settlement Agreement funds for an AmeriCorps volunteer to support citywide greenhouse gas (GHG) reduction and climate action efforts, and authorizing the Public Works & Community Development Director to execute the Memorandum of Understanding on behalf of the City.

EXECUTIVE SUMMARY:

The Bay Area Climate and Energy Corps (BAYAC) has AmeriCorps members available for placement with local governments, public agencies and other nonprofits to work on energy and climate projects. This 11-month program provides volunteers to work with communities to reduce their greenhouse gas emissions by directly working on projects that realize measurable energy savings, clean energy and GHG reductions. To participate in this program, the City must commit \$16,000 in matching funds for each AmeriCorps volunteer and provide supervision for their work. The program timeframe is from late August 2010 through August 2011.

BUDGET INFORMATION:

This expenditure does not impact the General Fund. The \$16,000 would be provided from the VIP Settlement Agreement funds.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #2: Protecting and Enhancing the Environment
 - Strategy #1: Reduce greenhouse gas emissions and energy consumption
 - Strategy #3: Pursue and adopt sustainable practices

GENERAL PLAN:

The overarching goal of the General Plan is Sustainability. The proposed work plan addresses a number of General Plan Goals and Policies including:

- Goal 2.42: Enhance the recycling of solid waste
- Goal 3.27: Improve energy efficiency
- Goal 4.9: Ensure clean air for Benicia residents

CLIMATE ACTION PLAN:

This project complies with the following Climate Action Plan Objectives and Strategies:

- Objective EO-1: Increase Public Awareness and Education About Climate Change
- Objective E-2: Increase Amount of Renewable Energy in Benicia

BACKGROUND:

The AmeriCorps intern will work with staff to implement Community Sustainability Commission priorities (though policy development is not allowed). The intern will spend approximately 3/4 of their time on program implementation and 1/4 of their time on volunteer coordination.

- Program Implementation:
 - Directly implements one or more GHG emissions reduction programs
 - Energy/water audits
 - Grant applications
 - Project design
 - Builds awareness of GHG emissions reductions program through outreach and publicity efforts
 - Website development

- Enrollment for audits
 - Other educational materials, outreach
- Attends community events and presents information as necessary
- Tracks outcomes to document emissions reductions as a result of the program
- Volunteer Coordination
 - Supports efforts to build volunteer engagement with emissions reductions programs
 - Maintains training materials and assists with providing hands-on training and support for all volunteers
 - Monitors and tracks progress of volunteers engaged in emission reductions programs

The Community Sustainability Commission reviewed and recommended approval of this item on July 19, 2010.

Attachments:

- Proposed Resolution
- Memorandum of Understanding
- Community Sustainability Commission Resolution No. 10-2
- BAYAC Climate Energy Corps Program Summary

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING \$16,000 IN MATCHING FUNDS FROM THE VALERO IMPROVEMENT PROJECT (VIP) SETTLEMENT AGREEMENT FUND FOR AN AMERICORPS VOLUNTEER TO SUPPORT CITYWIDE GREENHOUSE GAS (GHG) REDUCTION AND CLIMATE ACTION EFFORTS AND AUTHORIZING THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE CITY

WHEREAS, the Bay Area Climate and Energy Corps (BAYAC) has volunteers available to work on energy and climate projects; and

WHEREAS, these volunteers work directly to help communities reduce their greenhouse gas emissions by working on projects that realize measurable energy saving, clean energy and GHG reduction opportunities; and

WHEREAS, the program requires a local match of \$16,000 and funds are available from the VIP Settlement Agreement funds; and

WHEREAS, at its regular meeting of July 19, 2010, the Community Sustainability Commission recommended City Council authorization of \$16,000 in matching funds from the Valero Improvement Project (VIP) settlement agreement fund for an Americorps volunteer to support citywide greenhouse gas (GHG) reduction and climate action efforts; and

WHEREAS, the City's General Plan, Strategic Plan and Climate Action Plan include goals that support citywide GHG reduction and climate action efforts.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes \$16,000 in matching funds from the VIP Settlement Agreement Fund for an AmeriCorps volunteer program to support citywide GHG reduction and climate action efforts, and directs the Public Works & Community Development Director to execute the Memorandum of Understanding on behalf of the City.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Memorandum of Understanding between Bay Area Community Resources and the City of Benicia

SUBJECT: BAYAC Energy Corps

This MEMORANDUM OF UNDERSTANDING is hereby made and entered into by and between Bay Area Community Resources, hereinafter referred to as "BACR" and the City of Benicia, hereinafter referred to as "City." Collectively, BACR and the City are hereinafter referred to as the "Parties."

ARTICLE I – BACKGROUND AND OBJECTIVES

BACR is collaborating with public and nonprofit organizations in the San Francisco Bay Area to recruit, train, and place AmeriCorps interns at public and nonprofit organizations, where they will assist in implementing greenhouse gas reduction programs. The intern's term of service is from August 24, 2010 to August 23, 2011. While working for the Host Agency, Members will complete 1700 hours to receive an education award of \$5,350 from BACR. During the term of service, the intern will implement programs that save energy, reduce greenhouse gas (GHG) emissions, and raise community engagement with these activities. The intern will devote an average of 24 hours per week to directly working on emissions reduction and an average of 8 hours per week to recruiting and supporting volunteers. BACR and City agree that if the intern is unable to complete 1700 hours by July 15, 2011, the intern may complete the required hours at the City by August 23, 2011.

The objectives of the program are as follows:

- City will be able to achieve measurable GHG reductions at the end of the placement.
- Intern will be able to develop a practical skill set and expertise in the realm of climate change management at the community level.
- City will be able to increase community participation towards further GHG reductions through volunteer opportunities that are created and/or increased through the participation of the intern.

ARTICLE II – STATEMENT OF PROJECT ACTIVITIES

BACR agrees to:

- Recruit and select an AmeriCorps member for a commitment of 1700 hours over a period of 11-12 months.
- Train and support intern with a comprehensive training program that includes a training manual, a three-week orientation led by an array of experts, monthly trainings, a mid-year two-day retreat, and semi-annual performance reviews.

- Work with City to develop a work plan for intern that aligns with City GHG reduction initiatives.
- Define and develop metrics for the intern to measure and track the progress of GHG reduction throughout the placement.
- Provide weekly follow-ups to review progress with BACR Program Coordinator.
- Define and implement any corrections to intern's work plan determined to be necessary based on feedback collected from intern and City.

City agrees to:

- Provide up to three specific GHG reduction initiatives that intern can work on during term of service. Initiatives must be well-defined, approved for implementation and include specific GHG reduction targets, or have the capacity to define specific reduction targets. City will work with BACR to finalize a mutually agreed-upon work plan no sooner than one week after intern begins work.
- Ensure that intern does not work directly on policy development or policy advocacy efforts.
- Assign a supervisor who will be available to devote no fewer than ten hours per month of one-on-one time with intern.
- Report regularly to BACR indicating whether progress is being made on GHG initiatives.
- Submit three periodic evaluations to provide feedback on intern activities and offer data on specific GHG reduction metrics.
- Send a representative to BACR Partner Orientation.
- Hire intern only to work part-time in program or service area unrelated to BACR community service programs; City may not hire the AmeriCorps member full-time until and unless member completes entire program year of service.
- Allow BACR to share results from this program through grant reporting and other means as BACR deems appropriate.
- Support and encourage the promotion of National Service through the following :
 - Posting AmeriCorps and National Service information at intern service sites
 - Ensuring intern wears appropriate uniform as required by BACR
 - Allowing intern to leave program site to participate in prearranged AmeriCorps activities.
 - Participating in an advisory committee once a month for at least an hour for eight months

ARTICLE III – TERM OF AGREEMENT

This MOU will become effective on the date of final signature and shall continue in full force and effect through August 23, 2011.

ARTICLE IV – KEY OFFICIALS

The individuals listed below are identified as key personnel considered essential to the project being performed under this Memorandum of Understanding:

For BACR

Job Title: Director of National Service
Name: Adolfo Rivera
Address: 3219 Pierce St., Richmond, CA 94804
Phone Contact: 510-525-9980
Email Contact: arivera@bayac.org

For City:

Job Title Land Use and Engineering Manager
Name Melissa Morton
Address 250 East L Street, Benicia, CA 94510
Phone Number 707-746-4240
Email Contact mmorton@ci.benicia.ca.us

No change in key officials will be made by BACR or City without written notification 30 days in advance. The notification will include evaluation of the impact of such a change on the intern scope of work.

ARTICLE V –PAYMENT

City will provide payment to BACR as follows:

- Payment 1:
 - Due: October 1, 2010
 - Amount: \$8,000
- Payment 2:
 - Due: February 1, 2011
 - Amount: \$8,000

ARTICLE VI - TERMS

BACR and City agree that:

- If either Party no longer approves implementation of any of the provisions of this MOU, the Parties will promptly confer to determine what, if any, modifications to this MOU should be made to address the issue(s) of concern.
- In the event that a Party no longer desires to be a part of this MOU or any modification(s), then the individual Party in their sole discretion may terminate this MOU with 30 days written notice.

ARTICLE VII- NONDISCRIMINATION, INSURANCE AND INDEMNIFICATION

A. NONDISCRIMINATION.

(a) BACR shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, BACR agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by BACR or BACR'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. BACR agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

B. INDEMNITY. BACR specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of or in any way connected with the performance of this Agreement, however caused, regardless of any negligence of the CITY, whether active or passive, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of the CITY. The BACR shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

C. INSURANCE.

(a) Required Coverage. BACR, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only BACR, but also, with the exception of workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

<u>Policy</u>	<u>Minimum Limits of Coverage</u>
(i) Workers' Compensation	Statutory
(ii) Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage \$1,000,000 each accident

(iii) General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001)

\$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit

(iv) Errors and Omissions/ Professional's Liability, errors and omissions liability insurance appropriate to the BACR's profession.

Generally \$1,000,000 per occurrence

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the BACR'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the BACR'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The BACR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except

after giving CITY 30 days' prior written notice by certified mail, return receipt requested.

(d) Acceptability of Insurers. BACR shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless BACR requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. BACR must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by BACR'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

D. WORKERS' COMPENSATION.

RESOLUTION NO. 10-2

A RESOLUTION OF THE COMMUNITY SUSTAINABILITY COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL AUTHORIZE \$16,000 IN MATCHING FUNDS FROM THE VALERO IMPROVEMENT PROJECT (VIP) SETTLEMENT AGREEMENT FUND FOR AN AMERICORPS VOLUNTEER TO SUPPORT CITYWIDE GREENHOUSE GAS (GHG) REDUCTION AND CLIMATE ACTION EFFORTS

WHEREAS, the Bay Area Climate and Energy Corps (BAYAC) has volunteers available to work on energy and climate project; and

WHEREAS, these volunteers work directly to help communities reduce their greenhouse gas emissions by working on projects that realize measurable energy saving, clean energy and GHG reduction opportunities; and

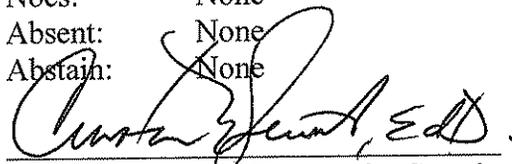
WHEREAS, the program requires a local match of \$16,000 and funds are available from the VIP Settlement Agreement funds; and

WHEREAS, the City's General Plan, Strategic Plan and Climate Action Plan include goals that support citywide GHG reduction and climate action efforts.

NOW, THEREFORE, BE IT RESOLVED THAT the Community Sustainability Commission of the City of Benicia hereby recommends that the City Council authorize \$16,000 in matching funds from the VIP Settlement Agreement Fund for an AmeriCorps volunteer program to support citywide GHG reduction and climate action efforts.

On motion of Commissioner Silva, seconded by Commissioner Kerridge, the above Resolution was introduced and passed by the Community Sustainability Commission of the City of Benicia at a regular meeting of said Commission held on the 19th day of July, 2010 and adopted by the following vote:

Ayes: Commissioners Doherty, Fiscalini, Kerridge, Lamoreux, Silva, Tringali and Chair
Beutel
Noes: None
Absent: None
Abstain: None



Constance Beutel, Community Sustainability Commission Chair



BAYAC CLIMATE & ENERGY CORPS

Dear Potential Partner,

Thank you for your interest in BAYAC Climate and Energy Corps, your organization participated in the program proposal we submitted in December of 2009. The purpose of this letter is to provide an overview of the BAYAC Climate and Energy Corps Program and to confirm the interest in having AmeriCorps members placed with your organization for the 2010-11 year.

Program Summary

BAYAC Climate and Energy Corps was recently awarded funding to place 30 fulltime AmeriCorps members with local governments, public agencies and other nonprofits to work on energy and climate projects. BAYAC Climate and Energy Corps is an 11-month AmeriCorps program through which members will directly help communities to reduce their greenhouse gas emissions. The goal for this program is for participating members to provide direct service to communities by working on projects that;

- Realize measurable energy saving, clean energy and GHG reduction opportunities.
- Engage community members in activities that yield measurable energy and GHG benefits.
- Increase civic participation in community energy and climate efforts.

Key Program Details

- Placements are scheduled to start in late August of 2010.
- Members will serve a total of 1700 hours during the term of their service.
- Site Placement partners will provide a match of \$16,000 / member and direct supervision for the member.

Participation

We are currently assessing site placement commitments, and request that you confirm your interest. If you are interested, as soon as possible can you provide the following information?

- The number of AmeriCorps Members you would like to place with your organization
- Whether you are planning to use federal funds to pay the match amount, and if so from which source
- A brief description of the energy or climate related job you have in mind.
- Contact information for intended Site Supervisor.

Please see the back of this letter for further details on, partner commitments, and member activities / benefits. If you do confirm interest we will be in touch shortly with further information and formal application procedures. We look forward to your participation.

Sincerely,

Kif Scheuer
Program Manager
415-507-1433
kif@seiinc.org

Additional Information

Partner Commitments

If you participate in BAYAC Climate and Energy Corps, you will provide match funds and supervisory support for your member. The following outlines partner commitments

- \$16,000 Cash Match per AmeriCorps Member
- Approximately 80% of the Member's time will be spent on direct service activities of which 75% is dedicated to program activities, and 25% to volunteer engagement. Member's should be spending limited time doing administrative support, or program coordination.
- Each agency must provide regular, consistent supervision to the Members at their site.
- Partner agencies agree to provide support for overall program development through either an advisory committee or sponsorship of a program wide training.

Member activities and benefits

A Members time is broken down with most of their time spent providing direct service for energy / climate change management related projects at their service site and a portion of their time dedicated to their own training and development. Members cannot work directly on policy development or policy advocacy efforts. In order to provide the greatest value to participating organizations, selected members will have a baseline understanding of energy and environmental issues, and core competencies in math, English and science sufficient to provide support for their community placements. Throughout the placement period, members will receive additional training in energy and climate related topics. In exchange for their service, each member receives the following benefits

- Living Allowance of Approximately \$1200 per month (before taxes)
- Kaiser Medical Coverage
- Child Care Assistance (if eligible)
- Educational stipend or student loan waiver of approximately \$5,000 at the completion of service.
- Extensive Professional and Personal Development Training

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : August 4, 2010
TO : City Council
FROM : City Attorney
SUBJECT : **APPOINTMENT OF THE INTERIM CITY MANAGER**

RECOMMENDATION:

Adopt the resolution approving an agreement with Jim Erickson for interim city manager services.

EXECUTIVE SUMMARY:

At the previous city council meeting the City Council appointed Jim Erickson as interim city manager. There was some confusion as to whether he was appointed as an employee or as an independent contractor. The intent was to appoint him as an employee. This action corrects that mistake.

BUDGET INFORMATION:

There is some small savings from this agreement. The agreement continues the 3% reduction to salary the City Manager previously agreed to. Although this position is an employee position, there is no cost for health and retirement benefits typical of an employee position per the agreement.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

Effective July 15, 2010, Jim Erickson retired as City Manager. He has agreed to continue to provide city manager services on an interim basis until September

15, 2010. It is hoped that a new city manager will be on board by then. The agreement may be extended if both parties agree. The attached agreement provides for the same salary compensation as previously provided to the City Manager, including the 3% reduction. Rather than call out specific office hours, the agreement specifies the Interim City Manager will work an average of 40 hours per week. Necessary and reasonable expenses will be reimbursed. No health care coverage or retirement benefits are provided.

Attachments:

- Resolution
- Agreement

RESOLUTION NO. 10-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
HIRING JIM ERICKSON AS THE INTERIM CITY MANAGER**

WHEREAS, Jim Erickson currently serves as the City Manager for the City and has performed his duties in a praiseworthy and diligent manner; and

WHEREAS, Mr. Erickson has given notice of his intent to retire effective July 15, 2010;

WHEREAS, the City Council desires to have Mr. Erickson continue to serve the City as Interim City Manager on an interim basis until a recruitment can be done and a new City Manager is hired; and

WHEREAS, Mr. Erickson is willing to serve until September 15, 2010 or until a mutually agreed upon date.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENICIA that the agreement hiring Jim Erickson as Interim City Manager, in an employee capacity, is hereby approved.

BE IT FURTHER RESOLVED THAT Resolution No. 10-98 is hereby superseded.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGREEMENT FOR INTERIM CITY MANAGER SERVICES

This Employment Agreement for Interim City Manager Services is entered into effective July 16, 2010 between the City of Benicia ("City") and Jim Erickson.

WHEREAS, the City desires to hire Jim Erickson as its Interim City Manager;
and

WHEREAS, Jim Erickson is qualified and willing to serve as the Interim City Manager.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Scope of Services. The City hereby hired Jim Erickson as its Interim City Manager to perform the duties of the City Manager as set forth in Sections 2.08.070 and 2.08.080 2.08 of the Benicia Municipal Code and such other duties as may be required of the City Manager by the City Council.

2. Time of Performance. The services of Jim Erickson ("Interim City Manager") shall commence on July 16, 2010 and shall continue until September 15, 2010 unless extended by mutual agreement. It is agreed that the Interim City Manager shall hold regular office hours and shall attend day and night meetings, including City Council meetings, as necessary and proper for the scope of services. It is anticipated that the Interim City Manager will work an average of 40 hours per week but shall be entitled to take, without deduction from his compensation, regular city holidays off as well as 14 hours per month in lieu of vacation. An additional time off which reduced the Interim City Manager's hours below the 40 hour average shall be without pay.

3. Compensation. The Interim City Manager shall receive compensation in the amount of \$16,310.55 per month (\$16,815 less 3%). Any necessary and reasonable expenses shall be reimbursed according to City policy. Training and education expenses shall not be considered necessary or reasonable except that expenses for Mayor's Conference Meetings, Division Meetings of the League of California Cities and similar local meetings where the Interim City Manager is representing the City are reimbursable.

4. Retired Employee. It is understood that the Interim City Manager, in the performance of the work and services agreed to be performed, shall act as and be an employee of the City. The Interim City Manager shall, however, obtain no rights to retirement benefits or other benefits which accrue to City's employees except as those benefits are specified in this agreement, and the Interim City Manager hereby expressly waives any claim he may have to any such rights.

5. Termination. The City Council may terminate this Agreement at any time without cause upon a three-fifth's (3/5) vote of the City Council. Upon termination, the Interim City Manager shall be entitled to compensation for services performed up to the effective

date of termination. The Interim City Manager may terminate this Agreement at any time without cause upon providing 30 days' written notice to the City Council.

6. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

7. Amendments. This Agreement may be modified or amended only by a written document executed by both the Interim City Manager and the City and approved as to form by the City Attorney.

8. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF BENICIA

INTERIM CITY MANAGER

Elizabeth Patterson, Mayor

Jim Erickson

APPROVED AS TO FORM:

ATTEST:

Heather C. Mc Laughlin
City Attorney

Lisa Wolfe
City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : August 4, 2010

TO : City Manager

FROM : Public Works and Community Development Director

SUBJECT : **RECOMMENDATION TO APPROVE A CONTRACT AMENDMENT WITH CATERPILLAR PUPPETS FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM**

RECOMMENDATION:

Adopt a resolution approving a contract amendment with Caterpillar Puppets for the Early Water Conservation Education Program and authorizing the City Manager to execute the contract amendment on behalf of the City.

EXECUTIVE SUMMARY:

On August 10, 2009, the City contracted with Caterpillar Puppets for a program that teaches elementary school students about using water wisely. The proposed contract amendment will allow Caterpillar Puppets to continue training students through August 2011.

BUDGET INFORMATION:

Agreement #1 was in the amount of \$10,000, which will be fully expended by August 2010. This amendment provides for up to an additional \$12,000 for the Early Water Conservation Education Program using Valero Improvement Project (VIP) Professional Services Account No. 217-4105-8106. The Agreement with amendment provides for a not-to-exceed amount of \$22,000.00.

GENERAL PLAN:

Relevant General Plan Goals and Policies:

- Overall Goal of the General Plan: Sustainability
- Goal 2.36: Ensure an adequate water supply for current and future residents and businesses.

STRATEGIC PLAN:

Relevant Strategic Plan Goals:

- Strategic Issue #2: Protecting and Enhancing the Environment
 - Strategy #2: Implement new water conservation projects/programs

CLIMATE ACTION PLAN:

Relevant Climate Action Plan Objectives and Strategies:

- Objective EO-1: Increase Public Awareness and Education about Climate Change
 - Strategy EO-1.13: Encourage BUSD to educate K-12 Students on climate change and ways to reduce GHG Emissions

BACKGROUND:

Caterpillar Puppets has been providing professional services since August 10, 2009. The work performed by Caterpillar Puppets to date has demonstrated expertise necessary to provide the required professional services and has been well received by students, educators and parents. On July 19, 2010, the Community Sustainability Commission recommended City Council approval for an additional \$12,000 to extend the program for another school year.

Attachments:

- Proposed Resolution
- Community Sustainability Commission Resolution No. 10-3
- Contract Amendment
- Original Contract dated August 10, 2009
- June 2010 Summary Report, Work Samples, Teacher Evaluations

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA TO APPROVE A CONTRACT AMENDMENT WITH JOE & RONNA LEON OF CATERPILLAR PUPPETS FOR ADDITIONAL PROFESSIONAL SERVICES FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT ON BEHALF OF THE CITY

WHEREAS, a professional consulting firm is needed to continue to provide Early Water Conservation Education Program as assigned by the Public Works & Community Development Director; and

WHEREAS, Caterpillar Puppets has been providing professional services for the Early Water Conservation Education Program since August 10, 2009. The work performed by Caterpillar Puppets to date has demonstrated the expertise necessary to provide the required professional services; and

WHEREAS, at their regular meeting on July 19, 2010 the Community Sustainability Commission recommended City Council authorization to approve a contract amendment in the amount of \$12,000, bringing the not-to-exceed amount to \$22,000, with Caterpillar Puppets for Early Water Conservation Education Program services.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the contract amendment in the amount of \$12,000, bringing the not-to-exceed amount to \$22,000, with Caterpillar Puppets for professional services for the Public Works & Community Development Department, and directs the City Manager to execute the agreement on behalf of the City.

* * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

RESOLUTION NO. 10-3

ADOPT A RESOLUTION RECOMMENDING CITY COUNCIL APPROVE A CONTRACT AMENDMENT WITH JOE & RONNA LEON, CATERPILLAR PUPPETS, FOR PROFESSIONAL SERVICES FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT ON BEHALF OF THE CITY

WHEREAS a professional consulting firm is needed to continue to provide Early Water Conservation Education Program as assigned by the Public Works & Community Development Director; and

WHEREAS Caterpillar Puppets has been providing professional services since August 10, 2009. The work performed by Caterpillar Puppets to date has demonstrated expertise necessary to provide the required professional services.

NOW, THEREFORE, BE IT RESOLVED THAT the Community Sustainability Commission recommends the City Council of the City of Benicia approve the contract amendment in the amount of \$12,000, bringing the not-to-exceed amount to \$22,000 with Caterpillar Puppets for professional services for the Public Works & Community Development Department and authorizes the City Manager to execute the agreement on behalf of the City, subject to approval by the City Attorney.

* * * * *

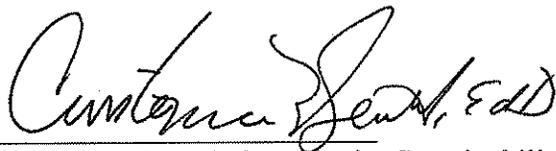
On motion of Commissioner Lamoreux, seconded by Commissioner Kerridge, the above Resolution was adopted by the Community Sustainability Commission of the City of Benicia at a regular meeting of said Commission held on the 19th day of July, 2010 by the following vote:

Ayes: Commissioners Doherty, Fiscalini, Kerridge, Lamoreux, Silva, Tringali and Chair Beutel

Noes: None

Absent: None

Abstain: None



Constance Beutel, Community Sustainability Commission Chair

AMENDMENT TO AGREEMENT

This Amendment of the Agreement, entered into this _____ day of August, 2010, by and between the City of Benicia, a municipal corporation ("CITY") and Joe & Ronna Leon of Caterpillar Puppets, a sole proprietor, with its primary office located at 2060 Casa Grande, Benicia, CA 94510 (herein "CONSULTANT"), is made with reference to the following:

RECITALS:

- A. On August 10, 2009, an agreement was entered into by and between CITY and Caterpillar Puppets. ("Agreement").
- B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

- 1. Paragraph 2 of the Agreement is modified to read as follows: CITY agrees to pay CONSULTANT as full compensation for all services and duties performed, except as otherwise provided herein, a sum not-to-exceed \$22,000 based on the rate schedule in Exhibit "A".
- 2. Exhibit "B": Early Education Clean Water and Conservation Program 2010-2011 Proposal and Goals is incorporated as attached.
- 3. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

Caterpillar Puppets

City of Benicia,
A Municipal Corporation

By _____
Joe Leon

By _____ Date: _____
Jim Erickson, City Manager

RECOMMENDED FOR APPROVAL:

Charlie Knox,
Public Works & Community Development Director

APPROVED AS TO FORM:

Heather McLaughlin, City Attorney

Exhibit "A"

**2010-2011 SCOPE OF WORK Joe Leon, Caterpillar Puppets 707 334-1380
BENICIA VIP FUNDED EARLY EDUCATION CLEAN WATER CONSERVATION
PROGRAM:**

VIP Funded for the City of Benicia August 2010 - August 2011

PERFORMANCES

Between 10 and 20 Performances for K-3rd Graders at Benicia Public and Private Schools in Classroom and Assembly situations (assembly up to 100 students) of FROGGY REPORT, a Water Use and Water Health program which introduces students to the concepts of the Water Cycle, Watershed, Storm Drains and the effects of people-generated Pollution in our Creeks, Marshes and Bay, as well as water conservation tips.

Between 2 to 7 Performances for Nursery Schools and Pre-School venues of a the Water Education Puppet Show

Between 2 to 7 Public Performances at Fairs, Public Gatherings, The Library, Earth Day Event etc of Education Puppet shows.

Performances \$300

COST ESTIMATE: \$6,000

GRAPHIC ARTS WORK

Develop Brochure, Evaluation Form, Pre-Show Activity Sheet, Follow-Up Coloring Page, Letterhead, Business Card for Program. Clean-Up Club Card

Graphic Art Work, Printing, Distribution.

Cost Estimate: \$2,500

CHARACTER DEVELOPMENT

Design a water program mascot connected to Clean-Up Club concept. Build figure. Design special fliers and hand-outs for use with character at events and shows.

Train students to use the figure at public events for water conservation education efforts.

COST ESTIMATE: \$2,000

ADMINISTRATIVE TASKS

Set up Calendar and Booking Procedure. Book shows, confirm.

Update and Mail Calendar to City appointed liaison, currently Terry Baldwin.

Meetings with School officials, committee members, City Liaisons, Other Water Program Educators as needed

Invoice monthly activity. Set up payment procedure and contract with City of Benicia

Make brief Reports as requested, including summary of evaluations and letters from children

COST ESTIMATE: \$1,500

TOTAL FUNDS REQUESTED: \$12,000

Exhibit B

BENICIA EARLY EDUCATION CLEAN WATER AND CONSERVATION PROGRAM (VIP FUNDED)

2010-2011 Proposal and Goals:

- Provide an effectiveness assessment component to the evaluation process. Puppeteer will conduct a survey about the students' pre-show awareness of clean water issues and conservation issues prior to the beginning of the programs. A follow-up to these questions will be added as one section of the evaluation form given to teachers as they leave. Results of the survey and questions will be summarized in the final report on the program due in August 2011.
- Continue to provide Early Education by performing programs in Public and Private School classrooms, grades K-3rd. Also continue to bring the puppet program to nursery and tiny tot schools using the new to Benicia program, *The Froggy Report*, a half-hour puppet assembly with audience participation covering the following topics:
 1. What is the water cycle?
 2. Why is clean water important?
 3. What is a storm drain?
 4. How can we keep the watershed clean?
 5. How can we conserve water?"
- Develop a character for the City connected to the Clean-Up Club concept. Build skits around this character. Explore training high school students with this character for use as a walk around at Farmers Market, sporting events, etc. Character with a basket of information to hand out on water Conservation at home. Also use this character as the MC for puppet shows. Design all brochures and shows to feature this character.
- Reinforce relationships with teachers and schools, meeting with principals, and following up on contacts made in 2009-2010.
- Develop a new brochure, evaluation form, pre-classroom materials, and follow-up coloring page.
- Establish the *Clean Up Club* idea. Design and print Club cards for students.
- Follow-up with letters to classes from characters after performances.
- Continue to present related programs like *Froggy Talk Radio* and *Froggy to the Rescue* at public venues and events: The Library, Arts in the Park, Fine Arts and Jazz Festival, Viva Benicia, Adventure Day Camp, and Earth Day Celebration.
- Increase awareness of program with newspaper articles, fliers, and word of mouth. Encourage community participation through sponsoring or recognizing Clean Up club efforts. Contact community groups, sports groups, Native Plant Society, Community Garden and others with child education connections.

Other Ideas (possible with additional funding):

- Develop website for kids, parents and teachers with downloadable activities, work sheets, games and audio stories from Froggy. Calendar of local environmental activities and events that kids can be part of for Clean Up Club rewards.

AGREEMENT FOR CONSULTING SERVICES

This agreement is entered into by and between the City of Benicia, a municipal corporation of the State of California, (hereinafter "CITY") and Joe & Ronna Leon, Caterpillar Puppets, a sole proprietor, with its primary office located at 2060 Casa Grande, Benicia, California, 94510 (hereinafter "CONSULTANT").

RECITALS

WHEREAS, CITY and CONSULTANT each desire to enter into an Agreement whereby CONSULTANT will perform consulting services for CITY.

NOW, THEREFORE, BE IT RESOLVED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. CONSULTANT shall perform Professional Services for the Early Water Conservation Education Program as assigned by the Public Works and Community Development Director or designee.
2. CITY agrees to pay CONSULTANT as full compensation for all services and duties performed, except as otherwise provided herein, a sum not-to-exceed \$10,000 based on the rate schedule in Exhibit "A".
3. CITY agrees to reimburse CONSULTANT for pre-approved expenses.
4. CONSULTANT shall render an itemized invoice to CITY every four (4) weeks for services performed during the prior four-week period which shall be paid upon its approval by CITY.
5. CITY agrees to provide office space, supplies, equipment, and support services required to maintain all records and correspondence connected with the planning services. No personal use of CITY equipment, supplies or services is allowed and CONSULTANT shall comply with all CITY policies regarding use of CITY resources.
6. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

07/28/05

7. This Agreement shall be effective immediately upon the signature of both Parties and shall remain in effect until completed, amended or terminated. This Agreement may be terminated by giving written notice to the other party of that party's intention to so terminate. This Agreement shall be terminated two (2) days from and after the date of delivery or mailing of the notice, unless the notice specifies otherwise.
8. Except as otherwise stated herein, any and all obligations of CITY and CONSULTANT are fully set forth and described in this Agreement. Any changes in this Agreement, including any increase or decrease in the amount of compensation or any change in the term, which shall be mutually agreed upon by and between CITY and CONSULTANT, shall be set forth in written amendments to this Agreement.
9. NONDISCRIMINATION.
 - (a) CONSULTANT shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.
 - (b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.
10. CONSULTANT shall defend, indemnify, and hold harmless, the CITY, its officers, employees and agents from and against any and all claims, lawsuits, damage, injury and liability for damages arising in the performance of CONSULTANT'S services under this Agreement. The CITY shall not be responsible for claims, losses, damage, injury or liability for damages resulting from CONSULTANT.
11.
 - (a) CONSULTANT shall take out and maintain at all times, during the life of this contract, automobile liability insurance in an amount satisfactory to the City Attorney.
 - (b) CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT acknowledges that it is exempt from the above and must provide liability for workers' compensation if or when it obtains employees for the Project. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

07/28/05

12. Written communications and invoices under this agreement shall be addressed as follows:

If to CITY: Charlie Knox
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT: Joe & Ronna Leon
2060 Casa Grande
Benicia, CA 94510
(707) 746-5597
ronmaleon@aol.com

13. This Agreement shall be deemed to have been executed and entered into in the City of Benicia, County of Solano, State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set opposite their respective names.

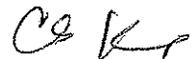
CITY OF BENICIA
A municipal corporation
of the State of California

CONSULTANT

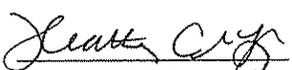
By  08/10/09
Jim Erickson Date
City Manager

Joe Leon Aug 6 2009
Joe Leon Date
Caterpillar Puppets

RECOMMENDED FOR APPROVAL:

 7.30.09
Charlie Knox Date
Director, Public Works & Community Development Departments

APPROVED AS TO FORM:

 7/29/09
Heather McLaughlin Date
City Attorney

07/28/05

EXHIBIT A

2009-2010 SCOPE OF WORK Joe Leon, Caterpillar Puppets
EDUCATIONAL PUPPET SHOW: FROGGY TALK RADIO
VIP Funded for the City of Benicia
August 2009 - August 2010

GRAPHIC ARTS WORK

Develop Brochure, Evaluation Form, Pre-Show Activity Sheet, Follow-Up Coloring Page, Letterhead, Business Card for Program. Graphic Art Work, Printing, Distribution.

Cost Estimate: \$2,500

ADMINISTRATIVE TASKS

Set up Calendar and Booking Procedure

Update and Mail Calendar to City Sustainability Committee on monthly basis

Separate Meetings with School officials, committee members, City Liaisons, Other Water Program Educators as needed

Invoice monthly activity. Set up payment procedure and contract with City of Benicia

Make brief Reports as requested, including summary of evaluations and letters from children

COST ESTIMATE: \$1,500

PERFORMANCES, CLASS ROOM VISITS

Between 10 and 20 FROGGY TALK RADIO Performances for K-3rd Graders at Benicia Public and Private Schools in Classroom and Assembly situations (assembly up to 100 students) of FROGGY TALK RADIO, a Water Use and Water Health program which introduces students to the concepts of the Water Cycle, Watershed, Storm Drains and the effects of people-generated Pollution in our Creeks, Marshes and Bay.

Follow up visits of Puppets and performer to individual classrooms (10 to 50 visits) to reinforce performance lessons and answer questions from students about the water issues. Interactive skits by students on key concepts. Presenting supplemental materials.

Between 2 to 7 Performances for Nursery Schools and Pre-School venues of a the Water Education Puppet Show

Between 2 to 7 Public Performances at Fairs, Public Gatherings, The Library etc of Education Puppet shows.

School Assemblies \$300
Follow-Up Classroom Visits, 45 minutes instruction \$100
Public Performances \$350

COST ESTIMATE: \$6,000

TOTAL \$10,000

Additional Funds Request

To begin work on an on-going program for the CITY OF BENICA additional funds are sought in the 2009-2010 budget. This would allow development of a program of water conservation puppet shows specifically tailored to the needs of the City of Benicia. This work would include:

DEVELOPMENT COSTS FOR INDIVIDUALIZED PROGRAM: To Begin use in Summer 2010 and continue use for 2010-2011 school year.

CHARACTER DEVELOPMENT: Mascot character for program. Design and construction.

SCRIPT DEVELOPMENT: Research of Teachers needs (curriculum education goals). Script writing.

GRAPHIC ARTS: New Brochure, Evaluation, Pre and Post materials for new program.

COST ESTIMATE: \$5,000

Terry Baldwin
City of Benicia
Public Works Dept.

June 25, 2010

Dear Terry:

Attached you'll find our proposal asking for continuing funding for the EARLY EDUCATION CLEAN WATER AND CONSERVATION puppet program. I've also included a brief report on this year's program on a separate page hoping to give the sustainability committee a bit more understanding of what the VIP grant for 2009-2010 is bringing to our community.

I broke the proposal down into two parts. A page outlining the Goals we hope to achieve in 2010-2011 with the program, followed by a page breaking down the estimated costs as a SCOPE OF WORK.

We look forward to meeting with the Sustainability Committee on July 19th. Please let us know where this meeting will be held and how much time the committee might have for our presentation. Of course, we'll also need to know the time that they'd like to see us.

Let me know if you need anything else.

Thank you for your help.



Joe and Ronna Leon, Caterpillar Puppets
2060 Casa Grande, Benicia, CA 94510
caterpillarpuppets@mac.com
707 334-1380

June 25, 2010 SUMMARY REPORT

VIP FUNDED EARLY EDUCATION CLEAN WATER AND CONSERVATION PUPPET PROGRAM: Joe Leon, Caterpillar Puppets

This year's grant activity is winding down. The first year has been a success introducing about 2,000 students and their teachers and families to the concepts of clean water and conservation.

A total of 24 presentations have been given in Benicia of FROGGY TALK RADIO, a 30 minute educational puppet show that teaches WHAT IS A WATER CYCLE, WHY IS CLEAN WATER IMPORTANT, WHAT IS A STORM DRAIN, HOW CAN WE KEEP THE WATERSHED CLEAN, HOW CAN WE CONSERVE WATER?

A sample of recent evaluations from teacher's are attached. Others are on file with the City of Benicia, VIP liaison, Terry Baldwin. The reactions to the program were very positive with 100% saying they would participate in the program again. A sample comment:

" Excellent introduction to vocab. "repetition to reinforce concepts. Very engaging & entertaining for the students to watch. My students LOVED it." Amy Parker, Joe Henderson Elementary.

13 Performance were given in public schools

4 Performance were provided for Nursery Schools and Tiny Tot Programs

2 Performance were given at public events. Another three presentations will be given in July and two more left to schedule in August. Please come see for yourself!

Samples of the brochure, coloring pages, activity sheets, letterhead etc are attached to this summary report. These were developed and used for this program in 2009-2010.

Invoices totaling \$18,262 have been submitted and paid thus far. The remaining funds are committed for use in July and August. The original \$10,000 grant will be exhausted by mid-August.

CATERPILLAR PUPPETS: JOE AND RONNA LEON

2060 Casa Grande, Benicia CA 94510 707 746-5597 707 334-1380 (cell)
CaterpillarPuppets.com CaterpillarPuppets@me.com

Delighting audiences for twenty-five years. Guaranteed to generate giggles.

We Educate and Entertain.

Our hand puppet productions are known for their contemporary humor and wit.

Assembly Programs. Classroom Demonstrations.

Programs designed to convey your educational message in a memorable manner.

Audience participation is part of every performance.

Experience:

- Artists in Schools
- Artists in Community
- Young Audiences Performers
- School Assemblies
- Bilingual Programs
- Environmental Scripts
- Educational Videos
- Teacher Workshops
- Company Training Skits

High Points of Our Career:

- Alameda Countywide Clean Water Education Grant Recipients 2002 - 2010
- Education Programs for City of Alameda Dept. of Public Works, 2000 -2010
- City of Benicia VIP Grant for Water Conservation Education 2009-2010
- Created Puppets and Performed with SF Symphony Deck the Halls celebration, 2000-2008
- Created Shows for the Don Edward's Wildlife Refuge Education Department 1999, 2006
- Show Designed for the Teachers at the Youth Science Institute, San Jose, 2000
- Shows Written, Built and Performed for Marin County Stormwater Pollution Prevention, Marin County Sanitation District 2000-9
- Young Audience Performers 1997 -1998 School Assembly Programs
- "Officer Friendly Puppet Show" Commissioned by Concord Police Dept. 1980-2005
- Co-Chairman for the 1993 Puppeteers of America Conference in San Francisco, California
- Resident Puppeteer, 1986- 1990 Marine World/Africa U.S.A.; 1,200 education performances
- California Arts Council Grant, Artists in Community, Benicia, CA 1986
- Arts Alaska, Artists in Residence, 1978, 1980
- Represented America's puppeteers at UNIMA Conference, Moscow Russia, 1976

Skills

• **Performing • Teaching • Construction • Writing • Music • Voices • Art**

Education

University of California at S.B., College of Creative Studies, BA 1973, Art and Literature
Goodman Theatre, Art Institute of Chicago, Chicago, Illinois 1964-65

References gladly supplied for all aspects of our work. Word of mouth is our BEST advertisement.

The Presenters

Caterpillar Puppets of Benicia was created in 1976 by husband and wife team, Joe and Ronna Leon.

Over the years they have created environmental education programs for:

- > The California Academy of Sciences of San Francisco
- > The Alameda Countywide Clean Water Program
- > The Central Marin Sanitation District
- > Marin County Stormwater Pollution Prevention Program (McStopp)
- > The Don Edwards Wildlife Preserve
- > The Youth Science Institute of San Jose
- > The City of Alameda
- > The City of Fremont
- > The City of Vallejo

They have been recipients of grants from:

- California Arts Council
- San Francisco Education Foundation
- Artists in Schools (associated with the National Endowment for the Arts)
- California Integrated Waste Management Board
- And now ... the City of Benicia



For more information about the presenters please visit: CaterpillarPuppets.com and phone 707 334 1380.

Funded by a partnership between the City of Benicia and Valero Refinery



For Benicia's Early Grades

Part of the City of Benicia
Water Education Program

2009-2010



Froggy
Talk

Classroom Presentations
by Caterpillar Puppets

Free PUPPET SHOW!

Call to arrange a Froggy visit:
707 334 1380
 or email us at:
CaterpillarPuppets@me.com



To Start

A 30 minute puppet show that comes to your classroom!

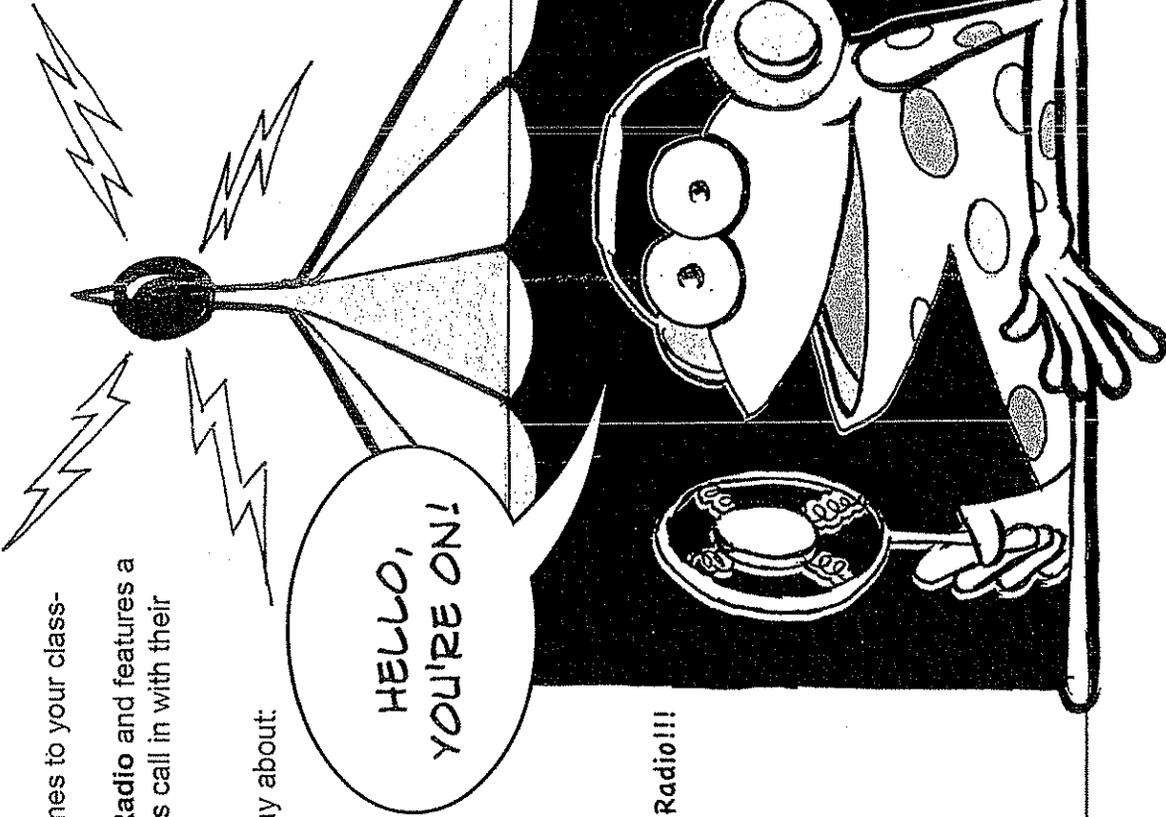
The show is called **Froggy Talk Radio** and features a "live" radio program where animals call in with their water pollution concerns.

This show talks to kids in a fun way about:

- Storm Drains
- The Watershed
- Keeping our waterways clean and free from litter

Stuck in goo!

What to do? Call Froggy Talk Radios!!!

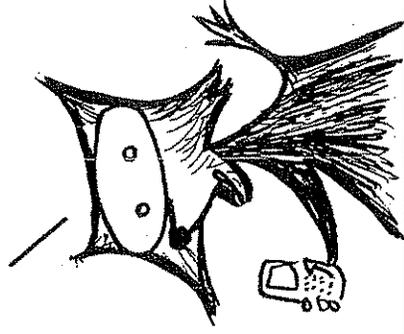


To Follow Up

These 30-45 minute after-the-show follow up visits are designed to re-enforce performance lessons and answer questions from the students. Your students will learn a simple skit or finger play which they can then perform for each other and, if they wish, for other classrooms!

Supplemental materials will be provided.

Trash in creek! Motor-oil leak!
Call Froggy Talk Radios!!!



o Schedule

Contact: Joe and Ronna Leon

by email: CaterpillarPuppets@me.com ...

or by phone:

707 334 1380

Free Puppet Show for Grades K-3

This show is called **Froggy Talk Radio** and is done in talk-show style where animals calling in with their pollution concerns.

All K-3rd grades in Benicia are invited to have this free 30 minute puppet show about water pollution come to their classroom or assembly hall.

Hello and Welcome to

Froggy Talk Radio!
coming to you live from **Benicia, California!**

New
for Benicia's
2009-2010
school year

These shows are paid for by the **City of Benicia** in partnership with **Vallero Refinery.**



You can also email your request to Joe and Ronna: CaterpillarPuppets@me.com

Call: (707) 334-1380
to arrange for Mr. Froggy to visit your students!

Joe Leon of Caterpillar Puppets is the performer. **Caterpillar Puppets** is the creation of Benicia residents Joe and Ronna Leon.



Here is what **Benicia teachers** are saying about this **fun and educational** program:

- * "It was wonderful! It kept the children's attention and got the message across." -- 2nd, **Simple**
- * "Thank you! We loved it!" -- Kindergarten, **Turner**
- * "Excellent Show! The kids loved it!" -- 1st, **Turner**
- * "Great presentation! :) My students really enjoyed it. Thank you." -- 2nd, **Simple**
- * "The students in my class really enjoyed the puppet show!" -- 1st, **Farmar**

Puppet Show Evaluation: FROGGY TALK RADIO! -- Watershed Education

1. Was the show developmentally appropriate? Yes No **'ABSOLUTELY!!'**

If no, what parts of the show could be improved to better meet your curriculum needs? _____

2. Was the presentation too long? Yes _____ No **- Perfect Timing**

3. Did the show convey the following basic environmental messages? (check those that apply)

- What is the Watershed
- What is a Storm Drain
- Why is it important to keep the Watershed Clean
- What can pollute the Watershed
- What can be done to keep the Watershed clean
- Only Rain Down the Storm Drain

If a message was not well delivered, or missing from the presentation, please provide suggestions on how to better get the message(s) across: _____

4. Would you participate in this program again? Yes No **For Sure!**
If you answered no, please explain: _____

5. Do you have any plans for future environmental projects?

Yes _____ No _____
If so, what are they? **Our class just finished a short unit on water pollution / land pollution. It was a perfect review and introduction to a new vocabulary word - Watershed. My class still sings, "Watershed, Watershed, Clean up the Watershed!!"**

6. Name **Melinda Cole**

School/Grade **K - Joe Henderson Elementary**

Your Class Can Write to Mr. Froggy:

Attn.: Mr. Froggy
Caterpillar Puppets
2060 Casa Grande St., Benicia, CA 94510



If you have any other comments please attach them on an additional sheet of paper. Thank You!

Puppet Show Evaluation: FROGGY TALK RADIO! -- Watershed Education

1. Was the show developmentally appropriate? Yes No

If no, what parts of the show could be improved to better meet your curriculum needs? _____

2. Was the presentation too long? Yes No

3. Did the show convey the following basic environmental messages? (check those that apply)

- What is the Watershed
- What is a Storm Drain
- Why is it important to keep the Watershed Clean
- What can pollute the Watershed
- What can be done to keep the Watershed clean
- Only Rain Down the Storm Drain

If a message was not well delivered, or missing from the presentation, please provide suggestions on how to better get the message(s) across: _____

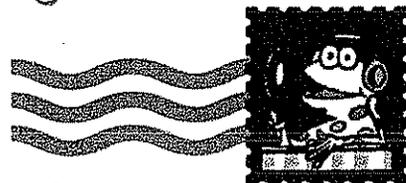
4. Would you participate in this program again? Yes No
If you answered no, please explain: _____

5. Do you have any plans for future environmental projects?

Yes No
If so, what are they? We usually do a unit around
Earth Day.

6. Name Gayle Costanza
School/Grade Henderson Kindergarten

Your Class Can Write to Mr. Froggy:
Attn.: Mr. Froggy
Caterpillar Puppets
2060 Casa Grande St., Benicia, CA 94510



If you have any other comments please attach them on an additional sheet of paper. Thank You!

Thank you Joe! The kids + I really enjoyed
and learned.

Puppet Show Evaluation: FROGGY TALK RADIO! -- Watershed Education

1. Was the show developmentally appropriate? Yes No

If no, what parts of the show could be improved to better meet your curriculum needs? _____

2. Was the presentation too long? Yes No

3. Did the show convey the following basic environmental messages? (check those that apply)

- What is the Watershed
- What is a Storm Drain
- Why is it important to keep the Watershed Clean
- What can pollute the Watershed
- What can be done to keep the Watershed clean
- Only Rain Down the Storm Drain

If a message was not well delivered, or missing from the presentation, please provide suggestions on how to better get the message(s) across: _____

It was perfect!

4. Would you participate in this program again? Yes No

If you answered no, please explain: _____

5. Do you have any plans for future environmental projects?

Yes No

If so, what are they? _____

6. Name Denise Maher

School/Grade A Garden of Children preschool

Your Class Can Write to Mr. Froggy:

Attn.: Mr. Froggy
Caterpillar Puppets
2060 Casa Grande St., Benicia, CA 94510



If you have any other comments please attach them on an additional sheet of paper. Thank You!

Puppet Show Evaluation: FROGGY TALK RADIO! -- Watershed Education

1. Was the show developmentally appropriate? Yes No

If no, what parts of the show could be improved to better meet your curriculum needs? _____

Excellent introduction to vocab. ~~repetition~~ repetition "to reinforce concepts. Very engaging & entertaining for the students to watch.

2. Was the presentation too long? Yes _____ No

3. Did the show convey the following basic environmental messages? (check those that apply)

- What is the Watershed
- What is a Storm Drain
- Why is it important to keep the Watershed Clean
- What can pollute the Watershed
- What can be done to keep the Watershed clean
- Only Rain Down the Storm Drain

All!

If a message was not well delivered, or missing from the presentation, please provide suggestions on how to better get the message(s) across: _____

4. Would you participate in this program again? Yes No

If you answered no, please explain: _____

Yes

The show was excellent!
My students loved it!

5. Do you have any plans for future environmental projects?

Yes No

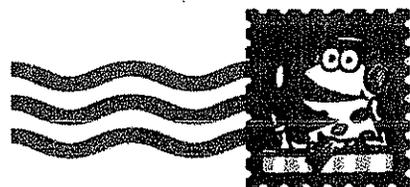
If so, what are they? Talk about recycling, pick up trash walk, plant & grow seeds

6. Name Amy Parker

School/Grade Henderson Elem. - K

Your Class Can Write to Mr. Froggy:

Attn.: Mr. Froggy
Caterpillar Puppets
2060 Casa Grande St., Benicia, CA 94510



If you have any other comments please attach them on an additional sheet of paper. Thank You!

Puppet Show Evaluation: **FROGGY TALK RADIO!** -- Watershed Education

1. Was the show developmentally appropriate? Yes No

If no, what parts of the show could be improved to better meet your curriculum needs? _____

2. Was the presentation too long? Yes No

3. Did the show convey the following basic environmental messages? (check those that apply)

- What is the Watershed
- What is a Storm Drain
- Why is it important to keep the Watershed Clean
- What can pollute the Watershed
- What can be done to keep the Watershed clean
- Only Rain Down the Storm Drain

If a message was not well delivered, or missing from the presentation, please provide suggestions on how to better get the message(s) across: _____

4. Would you participate in this program again? Yes No

If you answered no, please explain: _____

5. Do you have any plans for future environmental projects?

Yes No

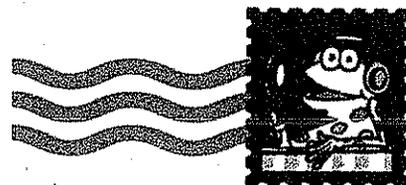
If so, what are they? _____

6. Name Laura Sivota

School/Grade North Oak Preschool

Your Class Can Write to Mr. Froggy:

Attn.: Mr. Froggy
Caterpillar Puppets
2060 Casa Grande St., Benicia, CA 94510



If you have any other comments please attach them on an additional sheet of paper. Thank You!

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
CONSENT CALENDAR

DATE : August 9, 2010

TO : City Manager

FROM : Fire Chief

SUBJECT : **DESIGNATING THE CITY OF BENICIA FIRE STATIONS AS SAFE SURRENDER SITES**

RECOMMENDATION:

Adopt the resolution requesting Solano County Board of Supervisors to designate the City of Benicia Fire Stations as safe surrender sites for newborns.

EXECUTIVE SUMMARY:

Current State law allows a parent or legal guardian to confidentially surrender an infant, three days old or younger, to any hospital emergency room or other site designated by the County Board of Supervisors. As long as the baby has not been abused or neglected, the person may surrender the baby to the designated site without fear of arrest or prosecution. At their April 6, 2010 meeting, the Solano County Board of Supervisors requested each Solano County city to designate safe surrender sites in their city. Once the Solano County cities have identified safe surrender sites in their cities, the Board of Supervisors will formally designate the sites as safe surrender sites.

BUDGET INFORMATION:

Expenses attributed to the Safe Surrender Site program should be minimal, and easily absorbed within the Fire Department's budget.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

Since 1999, over forty states have passed legislation designating safe surrender conditions for parents to relinquish infants they are unable to care for. The California Safely Surrendered Baby Law (also known as the Safe Haven Law or Newborn Abandonment Law, California Health and Safety Code 1255.7) was

signed into law by Governor Davis in September 2000, and went into effect on January 1, 2001. The purpose of the law is to protect babies from being hurt or killed when they are abandoned in unsafe areas, such as trash bins or dumpsters. As long as the baby has not been abused or neglected, a parent or legal guardian may confidentially surrender, without fear of arrest or prosecution, an infant, three days old or younger, to any hospital emergency room or other site designated by the County Board of Supervisors.

To date, the Solano County Board of Supervisors has designated all four Solano County local hospital emergency rooms and the Rio Vista Police Department. The Solano County Fire Chiefs Association has worked for several years to designate selected fire stations within each Solano County city and/or fire district as safe surrender sites. The Solano County Board of Supervisors provided preliminary approval for this program at their April 6, 2010 meeting (copy of resolution attached).

Additional safe surrender sites will provide more options for parents or legal custodian facing the decision of surrendering their child. The resolution, if approved, will identify a suitable location for a Safe Surrender site in the Benicia community, and must be submitted to Solano County Health & Social Services. The City must commit to working with Child Welfare Services as the lead agency for the County, provide the necessary resources, and abide by all State regulations and protocols related to the Safely Surrendered Baby Law. Once Health & Social Services has received and reviewed all formal requests for Safe Surrender Site designations, they will return to the Solano County Board of Supervisors for formal designation of the specific sites.

Staff has reviewed the requirements and recommends the two fire stations be designated as safe surrender sites in Benicia. If the Council adopts this recommendation and if the Board of Supervisors officially designates the sites, then staff will produce and post signs identifying the fire stations as Safe Surrender Sites, provide training and instructions to staff, and purchase identification wrist/ankle bands for the mother and child.

Attachments:

- Resolution
- Board of Supervisors Resolution

RESOLUTION NO. 10-

RESOLUTION REQUESTING SOLANO COUNTY BOARD OF SUPERVISORS TO DESIGNATE THE CITY OF BENICIA FIRE STATIONS AS SAFE SURRENDER SITES

WHEREAS, on January 1, 2001, SB 1368 (Statutes, 2000) took effect, enacting a law that provides for the health and safety of unwanted newborn children, also known as California's "Safely Surrendered Baby law"; and

WHEREAS, as part of the Safely Surrendered Baby law, Penal Code 271.5 allows an individual to confidentially surrender an unharmed newborn three days old or younger at any hospital emergency room or other designated safe haven site without fear of criminal prosecution; and

WHEREAS, the State of California has legislated all public and private emergency rooms as safe haven sites and designated the Board of Supervisors of a county to designate other safe surrender sites within their jurisdiction; and

WHEREAS, on April 6, 2010, the County of Solano passed Resolution No. 2010-76, requesting Solano County Cities or other public agencies to submit a resolution seeking designation of specific public facilities as Safe Surrender sites; and

WHEREAS, it is in the best interests of the City of Benicia, its residents and others to designate the Benicia Fire Stations as an additional Safe Surrender sites.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Benicia as follows:

1. That Council agrees to designate the Benicia Fire Stations as Safe Surrender sites; and
2. That Council requests the Solano County Board of Supervisors to designate the City of Benicia Fire Stations as a suitable, additional Safe Surrender sites for the surrender of newborns 72 hours or younger, pursuant to Penal Code Section 271.5.

* * * * *

On motion of _____, seconded by _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August, 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

APPROVED

APR 06 2010



BY *Maria Chinda deputy*
CLERK OF THE BOARD

AGENDA SUBMITTAL TO SOLANO COUNTY BOARD OF SUPERVISORS

ITEM TITLE Adopt a resolution inviting cities and other public agencies in Solano County to submit a resolution stating their interest in establishing a designated Safe Surrender site in their community		BOARD MEETING DATE April 6, 2010	AGENDA NUMBER 11
Dept: Contact: Phone:	Health & Social Services Linda Orrante, Deputy Director Child Welfare Services 784-8331	Supervisory District Number All	
Published Notice Required?		Yes: _____	No: <u> X </u>
Public Hearing Required?		Yes: _____	No: <u> X </u>

DEPARTMENTAL RECOMMENDATION:

The Department of Health and Social Services (H&SS) recommends the Board adopt a resolution inviting cities and other public agencies in Solano County to submit a resolution stating their interest in establishing a designated Safe Surrender site in their community.

SUMMARY/DISCUSSION:

California's Safely Surrendered Baby Law allows parents or other persons with lawful custody to surrender an infant 72-hours old or younger to a designated Safe Surrender site without facing prosecution for child abandonment. Under provisions of the Act, which became effective on January 1, 2001, all public and private emergency rooms are designated as Safe Surrender sites. Health and Safety Code Section 1255.7(a) (1)(A) authorizes the Board of Supervisors to designate additional safe surrendered sites in their County. The designated Safe Surrender sites are all four Solano County local hospital emergency rooms and the Rio Vista Police Department.

The Solano County Fire Chiefs Association has expressed a strong interest in designating selected fire stations within each Solano County city and/or fire district as Safe Surrender sites. Additional safe surrender sites will provide more options for parents or legal custodian facing the decision of surrendering their child. The resolution, if approved, will invite local agencies to identify suitable locations for Safe Surrender sites in their communities. Interested agencies will be required to submit a formal resolution from their governing board, commit to working with Child Welfare Services as the lead agency for the County, provide the necessary resources, and abide by all State regulations and protocols related to the Safely Surrendered Baby Law. Upon receipt and review of the formal requests, H&SS will return to the Board and request designation of specific sites.

Resolution No. 2010 - 76

RESOLUTION OF THE BOARD OF SUPERVISORS REQUESTING SOLANO COUNTY CITIES OR OTHER PUBLIC AGENCIES TO SUBMIT A RESOLUTION SEEKING DESIGNATION OF SPECIFIC PUBLIC FACILITIES AS SAFE SURRENDER SITES

WHEREAS, on January 1, 2001, SB 1368 (Statutes, 2000) took effect, enacting a law that provides for the health and safety of unwanted newborn children, also known as California's "Safely Surrendered Baby law"; and

WHEREAS, as part of the Safely Surrendered Baby law, Penal Code 271.5 allows an individual to confidentially surrender an unharmed newborn three days old or younger at any hospital emergency room or other designated safe haven site without fear of criminal prosecution; and

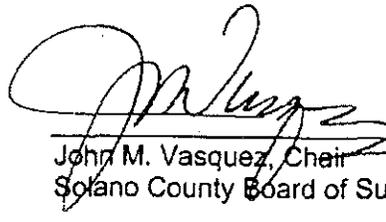
WHEREAS, the State of California has legislated all public and private emergency rooms as safe haven sites and designated the Board of Supervisors of a county to designate other safe haven sites within their jurisdiction; and

WHEREAS, it is in the best interests of the County of Solano, its residents and others to designate additional Safe Surrender sites; and

NOW, THEREFORE, BE IT RESOLVED that the Solano County Board of Supervisors hereby invites the cities of Solano County, and all other interested public agencies, to identify suitable locations for the Board of Supervisors to designate as additional Safe Haven sites for the surrender of newborns 72 hours of younger pursuant to Penal Code Section 271.5.

BE IT FURTHER RESOLVED that a signed resolution from the governing board, seeking to have specific locations designated and a commitment to provide necessary resources and comply with State law must be submitted to the Department of Health and Social Services on or before July 31, 2010.

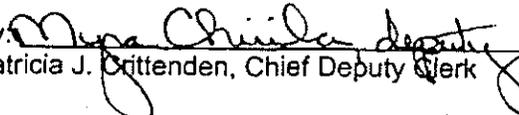
Dated this 6th day of April, 2010



John M. Vasquez, Chair
Solano County Board of Supervisors

ATTEST:

MICHAEL D. JOHNSON, Clerk
Solano County Board of Supervisors

By: 
Patricia J. Crittenden, Chief Deputy Clerk

FINANCING:

There is no fiscal impact associated with this item. Cities and/or fire districts will bear the costs for signage, information and outreach, policy development, training and any other administrative costs. There is no impact to the County General Fund.

ALTERNATIVES:

The Board may choose to not adopt the resolution. This is not recommended as this is an opportunity to seek out additional sites for the Safe Surrender program.

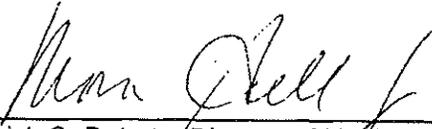
OTHER AGENCY INVOLVEMENT:

The Department has collaborated with the Solano County Fire Chiefs Association and County Counsel on this resolution. City Managers within the County have been advised regarding the resolution and its pending presentation to the Board.

CAO RECOMMENDATION:

APPROVE DEPARTMENT
RECOMMENDATION

DEPARTMENT HEAD SIGNATURE:



Patrick O. Duterte, Director of Health and Social Services

3/31/10

Date

Attachment A: Resolution, page 3

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
PUBLIC HEARING**

DATE : August 17, 2010
TO : Council
FROM : City Attorney
SUBJECT : **INTRODUCTION OF AN ORDINANCE TO AMEND THE
DEVELOPMENT AGREEMENT ORDINANCE**

RECOMMENDATION:

Introduce the proposed revisions to the development agreement ordinance.

EXECUTIVE SUMMARY:

Mayor Patterson requested that the City Council consider revising the development agreement ordinance to require that complex projects and projects of more than 40 acres be subject to a development agreement with the City. The City Council concurred with the request on November 18, 2008. On November 12, 2009, and again on July 8, 2010, the Planning Commission reviewed proposed revisions to the City's Development Agreement Ordinance that would allow the City to require any applicant for a vesting tentative map, master plan and/or rezoning for property of 40 acres or more to enter into a development agreement under certain circumstances. The revisions also included changes to the information required in a development agreement application. The Planning Commission made some comments and suggestions which staff has incorporated in the attached revisions.

ENVIRONMENTAL REVIEW:

The proposed zoning amendments are Categorically Exempt under California Environmental Quality Act Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies) because they do not result in changes in land use.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- Goal 2.1: Preserve Benicia as a small-sized city.

- Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above).
- Program 2.1.A: Adopt development guidelines that retain the scale and character of the city, preserve public view corridors, and reflect the subdivision and development patterns within existing neighborhoods.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- ❑ Strategic Issue #2: Protect and enhance the environment
 - Strategy #3: Pursue and adopt sustainable practices
- ❑ Strategic Issue #3: Strengthen economic and fiscal conditions
 - Strategy #5: Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources
- ❑ Strategic Issue #4: Preserving and enhancing infrastructure
- ❑ Strategic Issue #5: Maintain and enhance a high quality of life

BUDGET INFORMATION:

There is no budget impact.

BACKGROUND:

The legislature enacted Government Code Sections 65864 – 65869.5, which allow cities and developers, or persons with an equitable interest in real property, to enter into development agreements, to encourage comprehensive planning and provide assurances to both parties. Development agreements provide developers with security that they will be able to build large/long term projects once they get the necessary approvals; they provide assurance to cities that agreed upon public benefits will be implemented. The legislature felt that such agreements provide the “maximum efficient utilization of resources at the least economic cost to the public.” (See Government Code Section 65864(a)).

However, in order to enter into such agreements, cities were required to establish procedures and requirements “for the consideration of development agreements upon application....” (See Government Code Section 65865(c)).

Benicia Municipal Code Chapter 17.116 (Development Agreements) was adopted to comply with this statutory requirement.

When the City Council approves a development agreement, it must be done through an ordinance and is considered a legislative act. Development agreements are therefore subject to initiative and referendum

In November, 2009, and again in July, 2010, the Planning Commission reviewed selected sections from the development agreement ordinances of other cities, which are attached again for the Council's convenience. Only the City of Livermore requires a development agreement for certain projects such as residential or industrial planned developments when a public benefit must be provided by the developer to "justify" the City's approval of "deviations" from the City's conventional regulations. The mandatory development agreements are used by the City of Livermore to insure that the agreed to public benefit is implemented.

The legality of a "mandatory" development agreement is highly questionable when the developer is submitting an application where there is no request for a deviation from the City's codes. Government Code Section 65865(a) specifically states that [a]ny city ...**may** enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property. Although there is no statutory or case law authority that either allows or prohibits a city from requiring a mandatory agreement, it is clear that the intent of the legislature was that such agreements would be voluntarily entered into by both the developer and the public entity. The City of Livermore is the only city that was found to have a mandatory requirement of a development agreement. However, the mandatory agreement that is used is a form that has been developed for such projects, and is not the type of very complex, individualized development agreements that are usually negotiated between developers and cities.

Although development agreements are an excellent tool to provide for complex or multi-phase planning, where both sides want assurances, the City should not be requiring them for a project that would meet all of the City's code requirements without any deviations. Most large and complex developments, however, require other legislative approvals from the city, such as special zoning approval, general plan revisions, or adoption of specific plans, which would justify the requirement of a development agreement to implement the public benefits and infrastructure required as part of the project.

The initial proposed development agreement ordinance reviewed by the Planning Commission made such agreements only applicable to projects of forty (40) acres or more. Since there are potentially only two property owners in

the City who own such large acreage, the initial proposal was too narrowly focused. Consequently, the Planning Commission's recommendation is that the City *may* require a development agreement for projects of ten (10) acres or more, where the applicant is requesting a deviation from the City's existing code requirements.

The proposed revisions that were reviewed by the Planning Commission also require additional information in the application for a development agreement. However, it is not clear how an applicant could possibly meet some of the City's existing requirements during the application stage of the process. It is important to note that the City's Development Agreement Ordinance has not been revised since 1987. Consequently, the City Council may wish to review the application requirements and determine whether some of the criteria are better placed in a new section that would pertain to what must be included in the Agreement itself.

Attachments:

- ❑ Proposed Development Agreement Ordinance (Redline version)
- ❑ Proposed Development Agreement Ordinance Clean Copy
- ❑ Minutes from Planning Commission meeting on November 12, 2009
- ❑ Selections from Other Cities

CITY OF BENICIA

ORDINANCE NO. 10-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.116.020 (APPLICATION REQUIREMENTS) OF CHAPTER 17.116 (DEVELOPMENT AGREEMENTS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO REQUIRE CERTAIN PROJECTS OF 10 ACRES OR MORE IN SIZE TO BE SUBJECT TO A DEVELOPMENT AGREEMENT

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1:

Section 17.116.020 (Application requirements) of Chapter 17.116 (Development agreements) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding Subsection B. to read as follows:

A. An applicant may propose that the city consider entering into a development agreement pursuant to Article 2.5, Chapter 4, Title 7 of the California Government Code commencing with Section 65864, by filing an application with the planning Public Works and Community Development Department.

B. The City may require an applicant for a vesting tentative map, master plan and/or rezoning for all, or any part of, contiguously owned property of (ten) 10 acres or more in size, to enter into a development agreement with the City to provide for comprehensive planning for complex projects, for projects that require special zoning approval, or to assure the implementation of special design features that benefit the public.

C. The application shall be accompanied by the following:

1. A proposed agreement, which shall contain the following:
 - a. A legal description of the property sought to be covered by the agreement,
 - b. A complete list of legal property owners.
 - c. A statement of concurrence in the application by the owner if the applicant is not the fee owner,
 - d. A complete list of proposed parties to the agreement,
 - e. A description of the proposed development project including a description of the proposed uses, height and size of building(s), density or intensity of use, phasing of the development, provision for reservation or dedication of land for public purposes, and such other information as is relevant to any other project approvals required for the development such as site and building plans, elevations, relationships to adjacent properties, and operational

data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary.

f. Identification of all other city planning, zoning or other approvals and of any required approvals from other governmental agencies.

g. All proposed conditions, terms, restrictions, and requirements for subsequent city discretionary actions,

h. Any proposed public facilities financing plan,

i. The proposed time when construction would be commenced and completed for the entire project and any proposed phases, and

j. The termination date for the agreement.

2. A completed initial study form;

3. A statement documenting that the project is consistent with the general plan and all applicable specific plans;

4. Such other information as the planning department or city attorney may require by policy or to satisfy other requirements of law; and

5. The required fee.

Section 2.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

* * * * *

On motion of Council Member _____,
seconded by Council Member _____, the
foregoing Ordinance was introduced at a regular meeting of the City Council on
the ____ day of _____, 2010, and adopted at a regular meeting of the Council held
on the ____ day of _____ 2010, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

CITY OF BENICIA

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B. The City may require an applicant for a vesting tentative map, master plan and/or rezoning for all, or any part of, contiguously owned property of ten (10) acres or more in size, to enter into a development agreement with the City to provide for comprehensive planning for complex projects, for projects that require special zoning approval, or to assure the implementation of special design features that benefit the public.

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 - c. A statement of concurrence in the application by the owner if the applicant is not the fee owner,
 - d. A complete list of proposed parties to the agreement,
 - e. A description of the proposed development project including a description of the proposed uses, height and size of building(s), density or intensity of use, phasing of the development, provision for reservation or dedication of land for public purposes, and such other information as is relevant to any other project approvals required for the development such as site and building plans, elevations, relationships to adjacent properties, and operational

data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary,

- f. Identification of all other city planning, zoning or other approvals and of any required approvals from other governmental agencies.
 - g. All proposed conditions, terms, restrictions, and requirements for subsequent city discretionary actions,
 - h. Any proposed public facilities financing plan,
 - i. The proposed time when construction would be commenced and completed for the entire project and any proposed phases, and
 - j. The termination date for the agreement.
2. A completed initial study form;
 3. A statement documenting that the project is consistent with the general plan and all applicable specific plans;
 4. Such other information as the planning department or city attorney may require by policy or to satisfy other requirements of law; and
 5. The required fee.

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Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clauses thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

* * * * *

On motion of Council Member _____,
seconded by Council Member _____, the
foregoing Ordinance was introduced at a regular meeting of the City Council on
the ____ day of _____, 2010, and adopted at a regular meeting of the Council held
on the ____ day of _____ 2010, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING MINUTES

Thursday, November 12, 2009

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. AGENDA CHANGES AND DISCUSSION

Damon Golubics advised that there will be a change to the Agenda item V(B). Chevron, or the permittee has requested a continuance of the matter.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.

B. PUBLIC COMMENT

George Whitney- 540 Military East: States that he lives two doors down from 7-11 and has similar issues as neighbors living near the Chevron Gas Station. He advised that trash from the business blows down the street. He feels that the property is not maintained well by the business owner. He states that he has worked with City of Benicia Community Preservation Officer Roger Core on this issue and it has improved with trash currently being picked up. He states, however, that 7-11 has been an ongoing problem. He requests an ordinance be adopted addressing the issue of trash generating businesses that sell items that produce debris from paper wrappers, receipts, etc that end up flying around the neighborhood. He stated that not all of the trash is from 7-11 as a business and may be trash that blows out of patron's vehicles while opening and closing their doors in the

parking lot. Feels it is a community wide problem for residents that live near all convenience stores and gas stations within the city.

IV. CONSENT CALENDAR

On motion of Commissioner Thomas, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote with the minutes of October 22, 2009 being pulled due to correspondence being received correcting several pages of the minutes to be amended by the Commission Secretary. Minutes will be continued to the next meeting.

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas and Chair Healy

Noes: None

Absent: None

Abstain: None

A. Approval of Agenda

B. Approval of Minutes of October 8, 2009

C. Approval of Minutes of October 22, 2009 Joint Meeting with the Historic Preservation Review Commission

V. REGULAR AGENDA ITEMS

A. USE PERMIT - 1100 SOUTHAMPTON ROAD (APN: 086-151-190), VERIZON WIRELESS COMMUNICATION FACILITY (Continued Public Hearing Item from October 8, 2009)

09PLN-37 Use Permit

1100 Southampton Road, APN: 086-151-190

PROPOSAL:

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

Recommendation: Approve a Use Permit to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

Sharon Williams gave a presentation on the Verizon Wireless Communication Facility.

Al Fink- Applicant- Stated that Sharon Williams did a great job on this project. He advised the Commission that this project is just an upgrade for 4G coverage.

Commissioner Ernst had questions regarding the use of microwave or radiowave technology, radio megahertz frequency, proximity to the Benicia Middle School playground and concerns about children being so close to the antennas.

The applicant responded that Verizon has purchased a different system that is 700 megahertz, which complies with FCC standards. He advised that most of the antennas are 100 watts, similar to a radio with an amplifier under 200 watts. Regarding health concerns for children playing in the area, the EMF report shows compliance with safety standards.

Damon Golubics advised that it is not in the Commission's purview to discuss this.

Chair Healy asked if the issues have been resolved that warranted a continuance of the item from last month's meeting. Damon Golubics stated that the issue of the possible increase in the lease payment has been resolved. It was determined by the City Parks and Community Services Department that due to language in the original lease agreement, the payment amount could not be increased.

Commissioner Dean requested that the language in the resolution be more specific as it pertains to CEQA section 15301 as 15301(B) under categorical exemptions.

Commissioner Syracuse asked the applicant if there would be landscaping and what would be seen from the freeway. The applicant stated that the view would be grass and a ball field. Damon Golubics advised landscaping was not proposed per the Parks Department.

Commissioner Ernst feels that 4G technology will be a good thing due to his frustration with dropped cellular phone calls. He suggested gray or beige walls for the exterior and galvanized poles for the antennas. He requested several changes made to the resolution, which were noted by staff. Referring to page 3, Commissioner Ernst asked how we are to be sure the antennas are not a nuisance or are detrimental to the health and safety of citizens of the community. Damon Golubics advised commissioners that the issue of health affects have already been addressed and have been found to under the acceptable level allowed by the FCC guidelines He expressed concern that we may be "grandfathering" this in because the poles are already in place and fears setting a precedence. Kat Wellman stated that The Telecommunications Act of 1996 preempts this and sets standards for what can and cannot be reviewed when an application is submitted for approval. Concerns about health standards set by the FCC cannot be used as a reason to deny an application. An application could be turned down due to aesthetics or the number of poles. Each application is looked at individually and is not precedent setting. It also meets the goals of the General Plan.

Commissioner Thomas asked who would tear down the poles when the time comes. Kat Wellman stated that the lease agreement covers that issue.

RESOLUTION NO. 09-03 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (09PLN-37) FOR INSTALLATION OF THREE ANTENNAS AND ASSOCIATED EQUIPMENT AT 1100 SOUTHAMPTON ROAD

On a motion of Commissioner Sherry, seconded by Commissioner Thomas, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 12th day of November, 2009, and adopted by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas, and Chair Healy
Noes: None
Absent: None
Abstain: None

B. REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT (CONDITIONS OF APPROVAL) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE

PLN 2000-1 Use Permit

10 Solano Square, APN: 087-200-100

PROPOSAL:

The Planning Commission will review and consider previously imposed conditions of approval for Use Permit PLN 2000-1, Chevron Gas Station and Convenience Market. Based on Benicia Municipal Code Section 17.128, the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting one condition of approval is not being followed or implemented by the permittee.

Recommendation: The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 20 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violation.

Damon Golubics gave a presentation as a discussion item only not presented for a vote by Commissioners at this meeting to be continued to the meeting of December 10, 2009. He suggested encouraging the property owner to enter into a property maintenance agreement prior to approval. Stated that there is a need to find a solution to the matter involving all parties.

Commissioner Sherry asked why a landscaping agreement might be necessary. Damon Golubics advised that this has been an issue since 2003. The volume of complaints has been a continuing issue. He offered this as an option to consider as a possible solution.

Public comment:

George Whitney- 540 Military East-Feels that dealing with Chevron alone will not resolve a citywide issue. Even if the issues at Chevron are resolved, complaints will continue regarding other businesses. Believes a solid ordinance would establish guidelines to be able to monitor trash from convenience stores. Mr. Whitney asked for an

ordinance to be adopted to require such businesses to police the surrounding block near their stores.

Chair Healy made a suggestion to Mr. Whitney to attend sustainability meetings to address these issues.

Mr. Whitney asked for an ordinance to be adopted to police the surrounding block near convenience stores.

Jon Van Landschoot- Stated that the small town feeling of Benicia has two components. Citizens will feel good about the town if they have a good feeling about their neighborhoods. He remembers the deal that was made when the businesses opened, to keep things cleaned up and maintained and that has not happened. He stated "it's the law" and W Second Street needs to be cleaned up. He remembers at least 25-30 complaints over the last few years and feels the issue should be resolved by the Planning Commission.

Commissioner Ernst asked Damon Golubics if there actually have been 25-30 complaints. Damon Golubics advised that there have. Commissioner Ernst asked if there is a need to negotiate and come up with a solution. Damon Golubics said yes that is what is needed. Commissioner Ernst asked if litter laws could be enforced through a City Council ordinance. Damon Golubics stated the larger problem needs to be looked into.

Commissioner Bortolazzo had questions about whether or not all convenience stores and gas stations operate under Use Permit Conditions of approval. Damon Golubics said that we need to research conditions of approval for each station and that conditions of approval may be different for each gas station or convenience market. Commissioner Bortolazzo stated that 7-11 is a mess and that the landscaping is consistently not watered. He suggested that before we address just one station, we need to address each business in a uniform manner.

Chair Healy expressed a preference to work things out with staff as an alternative.

Damon Golubics advised he will take a personal interest in this citywide issue. He stated that the only real issue with Chevron is on the W Second Street side of the site and in general, is well maintained.

On a motion of Commissioner Ernst, seconded by Commissioner Thomas the item was continued to the meeting of December 10, 2009 by the following vote:

Ayes:	Commissioners Bortolazzo, Dean, Ernst, Sherry, Syracuse, Thomas and Chair Healy
Noes:	None
Absent:	None
Abstain:	None

C. **AMENDMENT OF THE DEVELOPMENT AGREEMENT ORDINANCE**

Zoning Text Amendment

City Wide

PROPOSAL:

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new application requirements for any development agreement the City may enter into with a developer, applicant or permittee.

Recommendation: Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

Damon Golubics gave a presentation.

Commissioner Dean asked if the agreement applies to parcels that are 40 acres or more and asked how many parcels in town are that large. Damon Golubics stated that it basically applies to the Discovery Builders Benicia Business Park proposal.

Commissioner Sherry asked if we looked at any other properties or is this just directed toward the Benicia Business Park. Damon Golubics advised that there are not many properties that are 40 acres or larger.

Commissioner Bortolazzo stated that Amports is larger than 40 acres and wanted to know what would happen if they divided the property into smaller parcels. Damon Golubics clarified that if they do that it could possibly be a 5 phase project. Commissioner Bortolazzo suggested if the property is more than 40 acres, if they divide it into piece meal projects we should address it.

Commissioner Ernst asked if samples from other cities were considered when writing other city ordinances. Damon Golubics said that everything was considered and the best of all were incorporated the City's Draft Ordinance. The Commission may address these issues if they so choose. He stated that other cities have conducted pre-application workshops or meetings to get a developers vision. He suggested community involvement be part of the process. He asked if this should be included in the Development Agreement. In reference to Item 17.16.040 MC, feels the language (upon receipt of complete application) is unclear.

Commissioner Dean asked if there are advantages to applicants to have a development agreement with the city. Damon Golubics stated that the City Council wants to see a better development agreement ordinance. Commissioner Dean asked if a development agreement would provide another level of certainty for enforcement.

Kat Wellman advised the Commission that the agreement allows for more negotiation for infrastructure and compliance that would provide assurances on both sides.

Commissioner Thomas expressed the feeling that we are walking a fine line regarding things being mandatory or not mandatory. He feels legal research of the ordinance should be done. Damon Golubics advised Commissioners that Benicia is trying to do something different by making it mandatory. He stated that City/County Government can merge parcels. If parcels are required to be merged, if they are smaller than 40 acres, it may be one way to trigger the agreement to apply to smaller areas. He agrees that language in section B is too loose.

Commissioners suggested changes to some of the wording in the agreement. Damon Golubics advised that the changes would be incorporated and forwarded to Council.

Damon Golubics advised that this issue may be breaking new legal ground.

Commissioners had questions about whether or not a development agreement would not be necessary if two smaller parcels exist side by side. Suggestions were made to investigate and discuss the matter further. Questions were raised about whether or not the city could require property owners to enter into a development agreement if parcels are divided into smaller parcels that add up to a total of 40 acres.

Public Comment opened.

Dana Dean- 835 First Street- Asked what the intention of the agreement is and is an ordinance going to be crafted. She suggested that it leans toward being really hard to interpret. In regard to 17.116, feels some of the "loose" language needs to be examined and gave a number of examples of language she feels should be changed. 17.116.020 (C)1e the words "where appropriate" are too open. She requests specificity on any proposed agreement between the city and a developer. Could it possibly be available at the application level?

Jon Van Landschoot- Agrees with Commissioner Bortolazzo's statements. His reason for showing up at the meeting is concern for segmented projects. He asked if this would have an affect on the current Seeno project. Damon Golubics stated that the existing Benicia Business Park application is still valid and has been continued due to economic reasons and will not apply to Seeno. They will determine if they are going to go through with the project in January of 2010. Jon Van Landschoot stated that he doesn't like making a condition mandatory but asking for an agreement doesn't always work either. He asked if there are 2 years left on the Seeno application. He was advised by Damon Golubics that there is a 2 year limit from the time of project approval. The conditions are crafted for each particular phase. Five phases could be spread over 10 years.

Chair Healy asked if the Planning Commission is still free to ask for an agreement of certain conditions. He stated that as the political tide changes, it could affect developers. He feels the agreement provides certainty and enforceability. He feels the City of

Vallejo's example is very broad and may be an effective ordinance and is an interesting alternative way to deal with the issue. He suggested some changes to the language. He states that the process not be so burdensome that it would discourage developers. Suggested it may be addressed in phases. Regarding section C, this may need to include a timetable for mediation or binding arbitration. He feels that the language regarding periodic review in the Rohnert Park example is good. He stated that passing an ordinance with language stating the City can think about it doesn't help. Prevents game playing. He doesn't believe that there needs to be a limit of 40 acres.

Commissioner Dean felt that provisions allowing for more creativity may be incorporated in section 3. He feels that additional entities may need to enter into the process other than just the Planning Department and the City Attorney's Office. He stated that the Rohnert Park example contains nice language in paragraph B.

Commissioner Ernst questioned if the acreage limit is lowered from 20-40 acres, would City Council have the option to waive the requirement. He doesn't want to deter developers from coming to town. He stated there are 50 acres near W Channel Road and is concerned about development of separate smaller parcels.

Commissioner Sherry asked what the process would be for Development Agreements? How it would begin? Would an applicant meet with staff to discuss and negotiate issues? Damon Golubics advised that he believes that would be the procedure. Commissioner Sherry asked if each division would weigh in on specific conditions. Kat Wellman stated that by the time the agreement gets to the Planning Commission, the details would already be ironed out. She doesn't see why it would be a bad thing as it is not making the process difficult or costing the developer money.

Damon Golubics stated that the ordinance needs to be re-crafted and staff will make revisions per the Planning Commissions's suggestions. The item will then be presented to the City Council.

VI. COMMUNICATIONS FROM STAFF

A. MODEL WATER EFFICIENT LANDSCAPE ORDINANCE – Commission Discussion

Staff will briefly discuss the Water Conservation Act of 2006 (Assembly Bill 1881) that requires cities and counties to adopt landscape water conservation ordinances by January 1, 2010. Local jurisdictions have a choice to either adopt their own modified version of the Department of Water Resources (DWR) landscape water conservation ordinance or a local agency (cities, counties, cities and counties, charter cities and charter counties) can administer the state-prepared Model Water Efficient Landscape Ordinance (MWELo) which will automatically apply within the jurisdiction of that local agency as of January 1, 2010.

Damon Golubics gave a presentation to Commissioners.

Commissioner Bortolazzo stated that it seems like a massive project and questioned how we, the City of Benicia, will deal with this on such a large scale. Damon Golubics advised that it is necessary to comply with the ordinance.

Commissioner Sherry asked if there are any City staff members that are certified to put the plan together. Damon Golubics stated that he is unaware of anyone on staff that is certified but we will be able to consult outside experts and find someone who is certified to help City Staff out. Commissioner Sherry also asked who will cover the costs. Damon Golubics said that the City will absorb the fees in the short run for a certified expert to review landscape plans.

Commissioner Dean asked if recycled water would be used in connection with the Wastewater Treatment Plant. Damon Golubics advised that the Climate Action Plan may address those issues.

Chair Healy asked if it is possible to adopt a form-based code to opt out if conditions are met. Damon Golubics felt that it is a great idea.

Commissioner Ernst asked what the timing of this would be to simplify the ordinance. Damon Golubics stated that the ordinance goes into affect on January 1, 2010. City Staff will be using the standard model ordinance recommended by the State.

VII. COMMUNICATIONS FROM COMMISSIONERS

None.

Kat Wellman advised that she will not be at the next meeting because she and her husband will be on a trip to India.

VIII. ADJOURNMENT

Meeting adjourned at 8:55 pm.

The commission shall recommend to the city council either approval, conditional approval or disapproval of the application.

E. City Council Hearing and Decision. The city council shall hold a noticed public hearing to consider the application and the commission's recommendation. The council shall by ordinance approve, approve subject to conditions or deny the application. The zoning administrator shall notify the applicant in writing of the council's decision.

F. Amendments. The property owner may submit an application for an amendment to the PD ordinance, or the city may initiate a zoning amendment. The procedures for amending a PD ordinance are the same as those set forth in this section.

If a PD ordinance is later amended, the amending ordinance shall restate all the standards and requirements for the district, including the amendment, and shall then supersede any prior PD ordinances for that district. (Ord. 1543 § 3, Exh. A § 19.06, 1999)

2-76-080 Requirements for residential PD zones.

The planning commission may recommend and the city council may approve a PD ordinance for residential uses only when all of the following requirements are met:

- A. Consistency with General Plan. The proposed PD-R district is consistent with the Livermore general plan, including its uses and residential density.
- B. Development Standards. The PD ordinance includes clear development standards, including:
 - 1. Uses permitted;
 - 2. Conditional uses, if any;
 - 3. Site requirements: lot sizes, yards, site coverage, height of structures, off-street parking, open space requirement;
 - 4. Other district regulations.

Development standards shall not include exceptions to other, nonzoning requirements in the municipal code (such as street, storm drain or other utility standards), unless the other, nonzoning code section authorizes such an exception.

C. Site Plan and Design Review. The PD ordinance includes the following requirement:

Site plan approval and design review.
Before a building permit is issued for any new structure, or a grading permit for grad-

ing, the property owner shall obtain site plan approval under Chapter 4-10 LPZC and design review under LPZC 5-05-110. In addition to any requirements under Chapter 4-10 LPZC, the site plan approval for property within this PD-R district may include development conditions not limited to building design and arrangement, circulation, access, lighting, fencing, landscaping and screening, and maintenance of common areas.

D. Additional Design Features To Justify Variation from Conventional Zoning. The proposed PD-R district reflects additional design features and common open areas, related to the proposed development, sufficient to justify the variation from more conventional zoning regulations.

For each variation from the conventional regulations, the applicant shall describe a design feature which is in proportion to the degree of variation, and shall explain why the variation is appropriate. The city shall consider only those design features which exceed what is otherwise legally required by the city or by the California Environmental Quality Act.

Any design feature approved under this subsection shall be assured and implemented through a development agreement or tentative map condition of approval, or both. Any development agreement shall be approved concurrently with the PD ordinance.

Following are examples of the types of additional design features which may be considered:

- 1. Reservation of open space;
- 2. Parks, trails, bicycle paths or playgrounds beyond those required under the parkland dedication ordinance;
- 3. Clustering of homes (in order to provide greater open space, or more parks, trails, neighborhood amenities, etc.);
- 4. Inclusion of more affordable (low- and very-low-income) housing, above what is required by the general plan and state law;
- 5. Provision of public, neighborhood amenities;
- 6. Diversification of building sizes and types; or
- 7. Other public features not generally available in the neighborhood of a standard zoning district.

E. Environmental Design. If there are any geologic, topographical and environmental factors and constraints on the site, the proposed design addresses these in a manner that could not be achieved in a more conventional zoning district. (Ord. 1543 § 3, Exh. A § 19.08, 1999)

2-76-100 Requirements for commercial and industrial PD zones.

The planning commission may recommend and the city council may approve a PD ordinance for commercial or industrial uses, or both, only when all of the following requirements are met:

A. All Commercial and Industrial Zones (PD-C and PD-I).

1. Consistency with General Plan. The proposed PD-C or PD-I district is consistent with the Livermore general plan, including uses and density.

2. Development Standards. The ordinance includes clear development standards, including:

- a. Uses permitted;
- b. Conditional uses, if any;
- c. Accessory uses;
- d. Site and development standards: lot sizes, setbacks, street frontage, yards, site coverage, height of structures, off-street parking, open space requirement, sign standards;
- e. Other district regulations, including, but not limited to: required landscaping, fencing or lighting; architectural standards (if applicable); proposed hours of operation; regulation of noise, vibration and odors; exterior storage and screening.

Development standards shall not include exceptions to other, nonzoning requirements in the municipal code (such as street, storm drain or other utility standards), unless the other, nonzoning code section authorizes such an exception.

3. Site Plan Approval and Design Review. The PD ordinance includes the following requirement:

Site plan approval and design review.

Before a building permit is issued for any new structure, or a grading permit for grading, the property owner shall obtain site plan approval under Chapter 4-10 LPZC and design review under LPZC 5-05-110. In addition to any requirements under Chapter 4-10 LPZC, the site plan approval for property within this PD district may in-

clude development conditions not limited to building design and arrangement; architectural standards; storage facilities; phasing of improvements; circulation; access; lighting; fencing; landscaping and screening; buffers; hours of operation; regulations of noise, vibration and odors; and property maintenance.

4. Additional Design Features to Justify Variation from Conventional Zoning. The proposed PD-C or PD-I district contains additional design features, related to the proposed development, sufficient to justify the variation from more conventional zoning regulations.

For each variation from the conventional regulations, the applicant shall describe a design feature which is in proportion to the degree of variation, and shall explain why the variation is appropriate. The city shall consider only those design features which exceed what is otherwise legally required by the city or by the California Environmental Quality Act.

Any design feature approved under this subsection shall be assured and implemented through a development agreement or tentative map condition of approval, or both. Any development agreement shall be approved concurrently with the PD ordinance.

Following are examples of the types of additional design features which may be considered:

- a. Increased landscaping;
- b. Increased landscape setbacks;
- c. Provision of open space in excess of what is otherwise required;
- d. Pedestrian areas, outdoor benches, fountains, trails, or other outdoor recreation areas;
- e. Extraordinary architecture;
- f. Employee facilities, such as on-site day care, showers and locker rooms.

The requirements of this subsection do not apply to property which is designated BCP and CSGC in the general plan by city-initiated action rather than by application of the property owner.

5. No Significant Adverse Impact. The proposed PD district will not have a significant adverse impact on surrounding development.

B. Property Designated Community Serving General Commercial (CSGC). If the property is designated in the general plan as CSGC, the following requirements apply:

Sample Selections of Development Agreement Ordinances

Rohnert Park

Chapter 17.21 DEVELOPMENT AGREEMENT PROCEDURE

Sections:

17.21.010 Authority and purpose.

17.21.020 Application.

17.21.030 Procedure.

17.21.040 Factors for consideration.

17.21.050 Periodic reviews.

17.21.060 Adherence to development agreement, and amendment or cancellation by mutual consent.

17.21.070 Recording.

17.21.010 Authority and purpose.

This chapter is enacted pursuant to the authority contained in Section 65864 et. seq. of the California Government Code. The purposes of these provisions are to prescribe the procedure for consideration of development agreements, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(Ord. 695 § 3, 2003)

17.21.020 Application.

Application for a development agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property. Application shall be made on a form prescribed by the planning and community development director and shall be filed with such department. The application shall be accompanied by a fee prescribed by the city council, and a project description, which shall include the following:

- A. A legal description of the affected property, a listing of property owners, and the proposed parties to the agreement;
- B. A description of the development project, indicating the permitted uses of the property, floor-area ratio or density, building height and size, phasing of development, provisions for the reservation and dedication of land for public purposes and such additional information as may be required to allow the applicable criterion and factors to be applied to the proposal. Such information may include, but is not limited to, site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary;
- C. An identification of any planned unit development permit or other special zoning approval that has already been obtained for the development project;
- D. The special conditions, if any, to be imposed;
- E. The timing of the development project;
- F. Public facilities financing plan;
- G. A statement of the relationship to the specific plan and to the general plan; and
- H. Other items specific to the project proposal, as determined by the city attorney or planning and community development director.

(Ord. 695 § 3, 2003)

17.21.030 Procedure.

A. An application for a development agreement shall be considered by the planning commission, which shall hold a public hearing on the application. Notice of the hearing shall be given as provided in Sections 65090 and 65091 of the California Government Code in addition to any other notice required by law for other actions to be considered concurrently with the development agreement. The planning commission shall determine whether the proposal is consistent with the city's general plan and any applicable specific plan, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 17.21.040.

B. After a recommendation has been rendered by the planning commission, the city council shall hold a public hearing on the application. Notice of the hearing and the intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 of the California Government Code in addition to any other notice required by law for other actions to be considered concurrently with the development agreement. The council shall review the recommendation of the commission and determine whether the proposal is consistent with the city's general plan and any applicable specific plan, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.21.040. If the council approves the development agreement or approves it subject to changes or conditions, it shall do so by ordinance.

(Ord. 695 § 3, 2003)

17.21.040 Factors for consideration.

In reviewing an application for a development agreement, the planning commission and city council shall give consideration to other pending applications and approved projects; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; ability of the applicant to fulfill public facilities financing plan obligations; the relationship of the project to the city's growth management program; the provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessible to the public; the type and magnitude of the project's economic effects to the city of Rohnert Park, and of its contribution if any toward meeting the city's housing needs; and to any other comparable, relevant factor.

(Ord. 695 § 3, 2003)

17.21.050 Periodic reviews.

A. Periodic review. Each development agreement shall be reviewed at least once every twelve months, and the review period shall be specified in the agreement. Application for periodic review shall be made on a form prescribed by the planning and community development director and shall be filed with such department. A fee prescribed by the city council shall accompany the application. Failure to file for such review within thirty days of a written notice sent by the planning and community development director of the requirement to file within the time limits specified in the agreement shall render the agreement null and void. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the

agreement. If the planning and community development director finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the city council for consideration in accordance with subsection B of this section.

B. Termination. At any time the city council may, at a public hearing, consider whether there are grounds for termination of any development agreement. Notice of the hearing shall be given by posting notices thereof within three hundred feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the development agreement, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If as a result of such review, the council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the agreement, the council may terminate or modify the agreement in whole or in part.

(Ord. 695 § 3, 2003)

17.21.060 Adherence to development agreement, and amendment or cancellation by mutual consent.

A development agreement shall not be transferred or assigned to a new person without the written consent of the city. A successor in interest shall provide proof of ability to fulfill the applicant's obligations pursuant to the development agreement. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A development agreement may be amended, or canceled in whole or in part, by the mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements.

(Ord. 695 § 3, 2003)

17.21.070 Recording.

No later than ten calendar days after the city enters into a development agreement, the city clerk shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. If the agreement is amended, canceled, or revoked pursuant to Sections 17.21.070 and 17.21.080, the city clerk shall record notice of such action with the recorder.

(Ord. 695 § 3, 2003)

West Hollywood

Chapter 19.66 Development Agreements

19.66.010 Purpose.

This chapter establishes procedures and requirements for the review and approval of development agreements consistent with the provisions of state law.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.020 Application.

A. *Owner's Request.* An owner of real property may request and apply through the department to enter into a development agreement provided that:

1. The status of the applicant as property owner or bona fide representative of the owner is established to the satisfaction of the Director;

2. The application is accompanied by all documents, information, and materials required by the department.

B. *Director Review.* The Director shall receive, review, process, and prepare recommendations for Commission and Council consideration on all applications for development agreements.

C. *Concurrent Processing and Public Hearings.* All development-related applications shall be processed and scheduled for public hearing concurrently with the application for a development agreement. The Council shall be the review authority for the development agreement and all associated applications.

D. *Fees.* The application for approval of a development agreement shall include the processing fee established by the city's Fee Resolution. Additionally, appropriate fees shall be established and collected for periodic reviews conducted by the Director in compliance with Section 19.66.070(A), below.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.030 Public Hearings.

A. *Commission Hearing.* The Director, upon finding the application for a development agreement complete, shall set the date for a public hearing before the Commission in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of a public hearing, the Commission shall adopt a resolution and make a written recommendation to the Council that it approve, conditionally approve, or deny the application.

B. *Council Hearing.* Upon receipt of the Commission's recommendation, the City Clerk shall set a date for a public hearing before the Council in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of the public hearing, the Council shall approve, conditionally approve, or deny the application with appropriate findings in compliance with subsection (E) (Required Findings), below.

If the Council proposes to adopt a substantial modification to the development agreement not previously considered by the Commission during its hearings, the proposed modification shall be first referred back to the Commission for its recommendation, in compliance with state law (Government Code Section 65857). Failure of the Commission to report back to the Council within forty days after the referral, or within a longer time set by the Council, shall be deemed a recommendation for approval of the proposed modification.

C. *Notice of the Hearings.* Notice of the hearings outlined in subsections (A) and (B), above, shall be given in the form of a notice of intention to consider approval of a development agreement in compliance with state law (Government Code Section 65867).

D. *Adopting Ordinance.* Should the Council approve or conditionally approve the application, it shall, as a part of the action of approval, direct the preparation of a development agreement embodying the conditions and terms of the application as approved or conditionally approved by it, as well as an ordinance authorizing execution of the development agreement by the Council, in compliance with state law (Government Code Section 65867.5).

E. *Required Findings.* The ordinance shall contain the following findings and the facts supporting them. It is the responsibility of the applicant to establish the evidence in support of the required findings.

1. The development agreement is in the best interests of the city, promoting the public interest and welfare;

2. The development agreement is consistent with all applicable provisions of the General Plan, any applicable specific plan, and this Zoning Ordinance;

3. The development agreement does not:

a. Adversely affect the comfort, health, peace, or welfare, or valuation of property, of persons residing or working in the vicinity of the proposed development; or

b. Endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or general welfare.

4. The development agreement is in compliance with the conditions, requirements, restrictions, and terms of Sections 19.66.040.A (Mandatory contents) and 19.66.040.B (Permissive contents), below.

F. *Referendum.* The ordinance is subject to referendum in compliance with state law (Government Code Section 65867.5).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.040 Content of Development Agreement.

A. *Mandatory Contents.* A development agreement entered into in compliance with this chapter shall contain the mandatory provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]).

B. *Permissive Contents.* A development agreement entered into in compliance with this chapter may contain the permissive provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]), and

any other terms determined to be appropriate and necessary by the Council, including provisions for the payment to the city of monetary consideration.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.050 Execution and Recordation.

A. *Effective Date.* The city shall not execute any development agreement until on or after the date on which the ordinance approving the agreement becomes effective, and until it has been executed by the applicant.

B. *Agreement Deemed Withdrawn.* If the applicant has not executed the development agreement and returned the executed agreement to the City Clerk within thirty days of the effective date of the entitlement, the development agreement application shall be deemed withdrawn. If this occurs, the Mayor shall not execute the agreement. The Council may extend the thirty-day period if a written request is filed before the expiration.

C. *Other Permits or Entitlements.* The provisions of this chapter shall not be construed to prohibit the Director, Commission or Council from conditioning approval of a discretionary permit or entitlement on the execution of a development agreement where the condition is otherwise authorized by law.

D. *Recordation.* A development agreement shall be recorded with the County Recorder no later than ten days after it is executed, in compliance with state law (Government Code Section 65868.5).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.060 Environmental Review.

The approval or conditional approval of a development agreement in compliance with this chapter shall be deemed a discretionary act for purposes of the California Environmental Quality Act (CEQA).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.070 Periodic Review.

A. *Periodic Review.* Every development agreement approved and executed in compliance with this chapter shall be subject to periodic review by the Director during the full term of the agreement. Appropriate fees to cover the city's costs to conduct the periodic reviews shall be collected from the contracting party in compliance with Section 19.66.020(D) (Application), above.

B. *Purpose of Periodic Review.* The purpose of the periodic review shall be to determine whether the contracting party or the successor-in-interest has complied in good faith with the

terms and conditions of the development agreement. The burden of proof shall be on the applicant or contracting party or the successor to demonstrate compliance to the full satisfaction of, and in a manner prescribed by, the city.

C. *Result of Periodic Review.* If, as a result of a periodic review in compliance with this section, the Director finds and determines, on the basis of substantial evidence, that the contracting party or the successor-in-interest has not complied in good faith with the terms or conditions of the agreement, the Director shall notify the Commission which may recommend to the Council that the agreement be terminated or modified.

The procedures for the termination or modification hearing shall comply with Section 19.66.030 (Public Hearings and Notice), above.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.080 Amendment or Cancellation of Development Agreement.

A development agreement may be amended or canceled, in whole or in part, by mutual consent of all parties to the agreement, or their successor-in-interest, in compliance with state law (Government Code Section 65868), or as set forth in the agreement. The requested amendment or cancellation shall be processed in the same manner specified by this chapter for the adoption of a development agreement.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.090 Effect of Development Agreement.

Unless otherwise provided by the development agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement and construction standards and specifications, and Building Code provisions applicable to development of the property subject to a development agreement, are the rules, regulations, and official policies in force at the time of execution of the agreement.

Unless specifically provided for in the development agreement, the agreement does not prevent the city, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property under the development agreement. Further, a development agreement does not prevent the city from conditionally approving or denying any subsequent development project application on the basis of existing or new rules, regulations, and policies.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.100 Approved Development Agreements.

Development agreements approved by the Council shall be on file with the City Clerk.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

Indian Wells

16.40.010(b) Discretionary Use of Development Agreements. It is not mandatory that a development agreement be executed for every development. The discretion to submit a development agreement for consideration hereunder may be exercised by the applicant, the Planning Commission or City Council.

Lancaster

16.08.230 Tentative maps subject to adopted development agreements.

The expiration and extension of tentative maps which are subject to an adopted development agreement pursuant to Section 65864 et seq. of the California Government Code shall be processed in accordance with the following regulations:

A. Concurrent Applications. When a tentative map and a development agreement are being considered concurrently, the development agreement shall be written to require the first periodic review of the agreement to occur within twelve (12) months after adoption, with subsequent periodic reviews to coincide with the dates of action on the request for the extension of the tentative map provided that the subsequent periodic reviews occur within twelve (12) months after the most recent review of the agreement.

B. Tentative map that is approved prior to the adoption of the development agreement. When the development agreement is adopted subsequent to the approval of the tentative map, the development agreement shall be written to require that at the earliest opportunity the expiration of the tentative map shall coincide with the date of the annual review of the development agreement.

C. Tentative maps approved after the adoption of the development agreement. When the tentative map is to be approved after the adoption of the development agreement subsequent time extensions on the tentative map shall be adjusted such that future dates will coincide with the date of the annual review of the development agreement.

D. Extension Procedures. The following extension procedures shall apply to tentative maps subject to adopted development agreements:

1. The applicant shall submit a written request for extension of the map in accordance with Section 16.08.150.

2. The city council shall hold a noticed public hearing on the request for extension, pursuant to Section 16.08.160 concurrent with the annual review of the development agreement. The city council shall approve, approve with conditions, or deny the extension based on the evidence submitted and the findings contained in Section 16.08.170.

3. A tentative map on property covered by a development agreement may continue to receive extensions for the period of time provided for in the agreement, but not beyond the duration of the agreement.

(Ord. 661 § 1 (220.300), 1994)

Vallejo

17.10.020

A. The purpose of Chapters 17.10 to 17.22 inclusive, is to strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development by providing an option to both the city and development by providing an option to both the city and developers to enter into development agreements. Such agreements shall only be used for projects such as large multiphase subdivision developments, low and moderate income housing developments, and developments involving public service and facilities installations which may require several years to complete.

B. To accomplish this purpose the procedures, requirements and other provisions of these chapters are determined to be necessary to promote orderly growth and development, the community's economic welfare, and to ensure provisions for adequate circulation, utilities and services.

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
ACTION ITEMS

DATE : July 14, 2010

TO : City Council

FROM : City Manager

SUBJECT : **REQUEST COUNCIL SUPPORT AND GIVE DIRECTION TO BEGIN FORMAL DISCUSSIONS WITH THE CITY OF VALLEJO TO PREPARE A PROPOSAL AND CONTRACT FOR 24/7 MUNICIPAL FIRE DISPATCHING SERVICES**

RECOMMENDATION:

Request City Council support and give direction to begin formal discussions with the City of Vallejo to submit a proposal to provide, under a contract, municipal fire dispatching services 24/7 to the Vallejo Fire Department.

EXECUTIVE SUMMARY:

The Benicia Emergency Communication Center answers calls for service for Benicia Police and Fire Departments. Like many municipalities, the City of Vallejo is facing serious budget shortfalls and seeking alternative ways to provide services to the community. The City of Vallejo has expressed desire to contract out for fire dispatching and is interested in a proposal from other agencies, including Benicia. A preliminary analysis of their request has determined that the Benicia Emergency Communications Center has the ability to absorb fire dispatching for the City of Vallejo within Benicia's dispatch center, without impact to the community and Police/Fire protocols and response times. A credible proposal could be prepared which provides a cost savings and operational/service benefits for both cities. If an agreement can be made and developed by October 1, 2010, we could begin the contract by January 1, 2011.

BUDGET INFORMATION:

This agreement would provide revenue for the City of Benicia on an annual basis. The specific details of this revenue need a formal financial analysis based on the agreement between the two cities. One time transition costs for equipment and technology that allow for this consolidation of fire dispatch services will be approximately \$42,000.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Goal 1.00: Protect Community Health and Safety
 - Strategy 1.30: Protect neighborhoods from risks to health and safety

BACKGROUND:

There is a recent trend in public safety to explore resource sharing, consolidation and contracting services. Since late 2009, a focus group consisting of staff from the cities of Benicia and Vallejo have met on a regular basis to determine the feasibility of the Benicia Dispatch Center absorbing fire dispatching for the City of Vallejo. The focus group consists of IT staff, dispatchers, police command staff, fire command staff and union representation. Staffing structure, technology and service models were reviewed from both cities. The preliminary assessment is that the City of Benicia could provide fire dispatching services at a reduced cost to the City of Vallejo while producing a cost savings and/or generating revenue for the City of Benicia. Pursuing these dispatching models of combining or regionalized services is aligned with the City's strategic goals of effective municipal operations and consistent with recommendations from the Grand Jury Report 2008-2009 stating:

The City of Benicia should explore the possibility of contracting Police, Fire, and Medical dispatch services as a potential cost savings. It should be noted this has been successfully done in Solano County previously by utilization of the County Sheriff's Office. Adequate safeguards can be negotiated within the confines of the contract to ensure the current level of service is maintained.

The Solano County Grand Jury has made similar recommendations to other cities and the county dating back to 2002, suggesting that agencies should seek "cooperative opportunities to standardize and consolidate communications."

The City of Benicia is a highly desirable selection for Vallejo fire dispatching because of the existing shared fire resources between the two cities. The Benicia dispatch center is well equipped to provide these services and apply the same service model to the City of Vallejo. In addition, the Vallejo and Benicia police and fire departments have demonstrated successful partnerships in resource sharing, setting a solid foundation for consolidating fire dispatching.

Full staffing for the Vallejo police and fire dispatch center has diminished from 27 full time public safety dispatchers to a current staff of 11. The Benicia dispatch center is staffed with ten (10) FTE (full-time equivalent) dispatchers, which includes a dispatch supervisor. Vallejo is faced with overtime budget reductions

that make their center almost incapable of handling all police and fire calls they receive. The City of Vallejo has researched other potential dispatching alternatives but, at this time, they have no other options. The Vallejo and Benicia Firefighters local 1186 provided a letter of support for this project.

Benicia is well equipped and staffed to take on the call load volume for Vallejo's fire services. Updated communication equipment and three separate dispatching workstations have positioned Benicia to accommodate a consolidated fire dispatching agreement. Incoming telephone call volume, dispatching calls for service, and other factors have determined that Benicia has the capacity to absorb the Vallejo Fire Department dispatching with ten (10) FTE's (full-time equivalent) dispatchers.

Based on the research to date, providing a contract with the City of Vallejo for fire dispatching will:

1. Provide improvements in priority emergency fire dispatching services between the two cities while maintaining adequate resources for quality police/fire dispatching services in Benicia.
2. Maintain current levels of responsiveness to an emergency in Benicia.
3. Generate revenue for the City of Benicia (in-turn reduce costs to the City of Vallejo) which could be used to improve unfunded technology needs.
4. Create movement in Solano County for sharing resources and/or regionalizing services.
5. Provide accessibility to Vallejo's Mobile Command Vehicle for off-sight dispatching.
6. Improve and strengthen the back-up capabilities between Benicia and Vallejo dispatch center. Vallejo is currently the emergency back up emergency communications center for Benicia in the event of an overflow, failure or evacuation.

The next steps would be to submit a proposal to the City of Vallejo and if accepted, prepare a contract for City Council approval.

Attachments:

- Resolution
- Letter of support-fire Fighters Local 1186

RESOLUTION NO. 10-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING CITY STAFF TO BEGIN FORMAL DISCUSSIONS WITH THE CITY OF VALLEJO TO SUBMIT A PROPOSAL AND PREPARE A CONTRACT TO PROVIDE 24/7 MUNICIPAL FIRE DISPATCHING SERVICES

WHEREAS, the City of Vallejo has expressed desire to contract out for fire dispatching and is interested in a proposal from other agencies, including Benicia; and

WHEREAS, a preliminary analysis of their request has determined that the Benicia Emergency Communications Center has the ability to absorb fire dispatching for the City of Vallejo within Benicia's Dispatch Center, without impact to the community, Benicia Police and Fire Department.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby authorizes the Police Department to submit a proposal to the City of Vallejo to provide 24/7 fire dispatching services.

BE IT FURTHER RESOLVED that the City Council authorizes the police department to prepare a contract to provide fire dispatching services to the City of Vallejo and bring back the contract to the City Council for review.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 17th day of August 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk



Fire Fighters Local 1186

International Association of Fire Fighters - California Professional Fire Fighters
Napa-Solano Counties Central Labor Council, C.O.P.E.



445 Nebraska Street • Vallejo, California 94590 • Phone: (707) 648-1186 • Fax: (707) 648-1187

Chief Spagnoli
250 East L Street
Benicia, Ca 94510



Dear Chief Spagnoli,

Please accept this letter in support of the City of Benicia taking over the municipal fire dispatching services for the City of Vallejo. We believe that there will be many positive results with combing these two fire dispatches including having the ability for the dispatch center and all fire crews to be able to communicate readily with one another. Not only will this reduce response times for automatic aid between these two cities, common communications will dramatically improve crew safety and the overall service delivery for communities that we serve. We will be more than happy to assist you any way possible to achieve this goal.

Sincerely,

Robert Stoffel
President, Firefighters Local 1186

Kyle Long
Vice President, Firefighters Local 1186

Todd Matthews
Vice President, Firefighters Local 1186

Representing: American Canyon - Benicia - Fairfield - Vallejo

IX.A.7

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 17, 2010
ACTION ITEMS

DATE : August 9, 2010
TO : City Council
FROM : City Manager
SUBJECT : **SB 435 (PAVELY) MOTORCYCLE EXHAUST SYSTEM FEDERAL NOISE LABEL**

RECOMMENDATION:

Staff does not currently recommend endorsement of the bill based on the information available at this time. At the July 20, 2010 meeting, this item was continued to the August 17, 2010 meeting and the Mayor requested that it be placed as an Action Item to allow for action, if needed.

EXECUTIVE SUMMARY:

SB 435 would declare the Legislature's intent to enact legislation to label motorcycle exhaust systems on motorcycles manufactured on or after January 1, 2011 which is already set forth in Federal law. This bill would establish an enforcement section for motorcycles without a federal exhaust label and is classified as a secondary violation. Secondary violations are ones that peace officers are prohibited to stop someone for solely on a suspicion of such violation. While the bill is endorsed by the California Highway Patrol (CHP), it is opposed by the American Motorcycle Association (AMA) due to a number of issues associated with enforcement.

BUDGET INFORMATION:

N/A

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

BACKGROUND:

Due to a loophole in California's smog check program that exempts motorcycles, California car owners must have their vehicles regularly smog tested, but motorcycles are not currently required to do so. Over the past decade, there have been improvements in pollution control equipment for motorcycles, and most now come equipped with catalytic converters.

However, many motorcycle enthusiasts remove the factory installed emissions control equipment and replace it with “custom” parts that are more polluting. This practice violates state law, but the California Air Resources Board (CARB) lacks an effective means of enforcement.

Existing legislation prohibits any person from disconnecting, modifying, or altering a motor vehicle pollution control device, such as a catalytic converter on a motorcycle. SB 435 would declare the Legislature’s intent to enact legislation to increase enforcement including, but not limited to, increasing penalties for tampering with pollution control devices on motorcycles with regard to all relevant anti-tampering laws that apply to motorcycles. It would require motorcycles manufactured in the 2011 model year and later to display a federal sticker containing the Motorcycle Exhaust System Noise Emission Control Information. The bill would apply to the most common type of motorcycles on the road, Class III motorcycles.

In terms of implementation, there are a number of issues. For example, the bill is designed to be enforced as a secondary violation (i.e., the driver must have another violation, such as speeding, excessively loud pipes, etc.) and would be considered a “fix it ticket.” Officers cannot pull over a motorcycle because the Federal Motorcycle Exhaust System Noise Emission Control Information sticker is not visible. It is typical that owners of modified vehicles who are issued “fix-it tickets”, will fix the violation in order to clear the ticket, then revert the vehicle back to the modified version.

Further, this bill supports existing Federal Law - Section 205.166, Title 40 Code of Federal Regulations established in 1986. It is not proposed to go back to 1986 with this bill, since there is an issue with proving compliance with many after-market systems. So there will be some significant “catch up” necessary, because law enforcement cannot cite for this violation with bikes older than 2011.

Finally, under the proposed law, a motorcyclist can still remove the catalytic converter, have the federal sticker on the pipes and appear to be in compliance. In addition, absent the federal labeling on new motorcycles, a fix-it ticket can be issued, and the burden of proof is on the motorcycle owner to prove exhaust is in compliance. Using today’s vehicle code, the burden of proof is on the officer to prove there is a violation of modified exhaust, which is difficult to prove since the officers have to prove that the internal components of the exhaust are altered (27151a CVC). Motorcycles louder than 95dbA due to modified exhaust do not violate 27151b California Vehicle Code (loud vehicles) since this law applies to vehicles only. In addition, whenever there is a violation of a loud vehicle due to modified exhaust in excess of 95dbA, the violation is difficult to prove since there is no standard method to obtain a noise test.

The objective of this new law is to reduce motorcycle noise and emissions. While the overall goal is clearly a desirable one, implementation of this bill still appears to have some issues that will need to be addressed in order to achieve the objective. SB 435 is supported and sponsored by the California Highway Patrol, American Lung Association and the National Parks Conservation Association. The bill is opposed by the American Motorcycle Association. The League of California Cities has not taken a position.

Attachments:

- Bill Analysis
- Related Email Correspondence
- Ultimate Motorcycling Open Letter

BILL ANALYSIS

SB 435
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Date of Hearing: June 28, 2010

ASSEMBLY COMMITTEE ON TRANSPORTATION
Bonnie Lowenthal, Chair
SB 435 (Pavley) - As Amended: June 30, 2010SENATE VOTE : Not relevantSUBJECT : Motorcycle exhaust system federal noise labels.SUMMARY : Makes it a crime for a person to park, use, or operate a motorcycle, registered in the state that is manufactured on and after January 1, 2011, that does not have a federal U.S. Environmental Protection Agency (EPA) noise emission control label. Specifically, this bill :

- 1) Requires that a registered motorcycle manufactured on and after January 1, 2011, and operating within the state, have a federal U.S. EPA noise emission label.
- 2) Establishes that a violation of the labeling requirement is a mechanical violation and a peace officer is prohibited from stopping a motorcycle solely on a suspicion of a violation of this labeling requirement. Requires a peace officer to cite a violation of this law as a secondary infraction.
- 3) Requires that a person issued a notice to appear or to whom a complaint is filed, to produce a proof of correction.
- 4) Authorizes the court to dismiss the penalty imposed on a first violation upon correction of the violation.
- 5) Establishes a violation of this law as punishable by the same fine that is currently established pursuant to the equipment anti-tampering law.

EXISTING LAW :

- 1) Known as California's anti-tampering law, prohibits the installation, sale, offer for sale, or advertisement of any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system that alters or modifies the original design or performance of the motor vehicle pollution control device or system.

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- 2) Subsequent to the purchase of a motor vehicle (including a motorcycle), establishes an exemption by the California Air Resources Board (ARB) if an alteration, modification, or modifying device, apparatus, or mechanism does either of the following:
 - a) Not to reduce the effectiveness of the required motor vehicle pollution control device; or,
 - b) To result in emissions from the modified or altered vehicle that are at levels that comply with existing state or federal standards for that model year.
- 3) Requires a motorcycle to have equipped at all times an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise. Prohibits a person from modifying the exhaust system of a motor vehicle in a manner which will amplify or increase the noise emitted by the motor of the vehicle that exceeds the noise limits or otherwise makes the motorcycle noncompliant.
- 4) Existing federal regulations require a motorcycle manufactured on and after January 1, 1983, and exhaust emission systems for those motorcycles, to meet specified noise emissions standards and require that a label be affixed onto the motorcycle or exhaust emission system indicating that the motorcycle or exhaust emission system meets the noise emissions standards.

FISCAL EFFECT : UnknownCOMMENTS : According to this bill's author, "federal regulations promulgated under the Noise Pollution Control Act have required, since 1983, that all motorcycles in the United States (original equipment and aftermarket replacement exhaust systems) must maintain two permanent, readily visible EPA stamps, one on the chassis of the motorcycle and one on the muffler, certifying

that the equipment meets or exceeds the maximum noise levels prescribed by the federal government. Failure to comply is currently punishable under the Act, but since there is no "Federal Noise Police," enforcement of these regulations has been lax. This bill, by requiring in the California Vehicle Code that these stamps be maintained on all motorcycles in California going forward from 2011, gives state and local law enforcement the ability to write citations for violations of the

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SB 435

Page 3

federal regulation? This is needed because current noise control statutes are rarely and unevenly applied throughout the state, and this will give law enforcement a uniform tool by which they can cite motorcycles for illegally tampering with their emissions equipment in order to increase noise. Any such citation will have a base fine of \$50-\$100 that can be dismissed upon proof of correction, and will be citable as a secondary infraction. Additionally, since enforcement of federal regulations against after market manufacturers has been lax over the last 25 years, this bill will be proscriptive, starting in January 2011 so as not to unfairly penalize riders who may have, through no fault of their own, purchased technically illegal equipment since 1983."

U.S. EPA regulation enforcement : In the past, the EPA coordinated all federal noise control activities through its Office of Noise Abatement and Control. However, in 1981, the Administration at that time concluded that noise issues were best handled at the state or local government level. As a result, the EPA phased out the office's funding in 1982 as part of a shift in federal noise control policy to transfer the primary responsibility of regulating noise to state and local governments. However, the Noise Control Act of 1972 and the Quiet Communities Act of 1978 were not rescinded by Congress and remain in effect today, although essentially unfunded. Accordingly, leaving enforcement up to the states and local governments without any federal financial assistance resulted in sporadic enforcement of these laws nationwide.

Availability of parts and effective date : The availability of aftermarket replacement exhaust mufflers from 1990 to 2000 and newer was difficult to determine with any amount of reliability. For the most part, it appeared that replacement equipment that is compliant with the federal noise labeling regulations, likely due to the lack of federal oversight and enforcement, was not consistently available upon questioning of workers at motorcycle part stores. Accordingly, it was determined that it would be unfair and impracticable upon owners of older year motorcycles to require older year models to operate with federally noise compliant exhaust systems. Taking a reasonable, modest, and proscriptive approach, this bill's requirements will be imposed upon motorcycles beginning with 2011 and thereafter.

Support : Writing in support of this bill and as its sponsor, the American Lung Association in California indicates that the

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SB 435

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bill "would increase enforcement of current anti-tampering and noise-level statutes for motorcycles, and ensure that motorcycles on California roads operate with approved emission control systems. Failure to properly display a label indicating compliance with federal regulations would require the operator to take the necessary action to obtain the appropriate exhaust system and label?While this bill is focused on federal noise requirements, tampering with exhaust systems has serious air quality and public health implications. The ARB has reported that the average motorcycle with a tampered exhaust system emits several times more smog-forming emissions than a non-tampered motorcycle and up to 10 times more for certain types of motorcycles and modifications."

Opposition : Writing in opposition to the bill (Note: Letter received prior to June 22, 2010 amendment), ABATE contends that the bill "is a nuisance issue, having no impact on motorcyclist or non-rider safety. It is a nuisance caused by a small minority of motorcycle riders and there are existing laws, some on the books for over 40 years, to cite and sanction operators of excessively loud motorcycles, whether from worn out or damaged exhaust systems or modified parts. Here are our opposition points:

1)Existing California Vehicle Code Sections 27150 and 27151 are

already routinely used to cite motorcyclists with excessively loud mufflers.

- 2) Enacting the federal label matching requirements adds nothing to those laws that are already in effect. This will be a redundant, overlapping statute that does little or nothing to solve the problem.
- 3) The U.S. EPA noise labels on motorcycle mufflers are nothing more than a manufacturer's self-certification warranty that the mufflers will be noise compliant for a period of one year or 3,730 miles, whichever comes first. After that, from wear or tear or damage, they may no longer be noise compliant, so that doesn't solve the excessive noise problem. Think of them as the function that a mattress tag serves - certification that the mattress meets federal standards at point of sale. There are no restrictions against an end user, or any one else, removing them at some later date. In fact, many new motorcycles' muffler stampings are there, but legally obscured by heat shields, covers and accessories. How can they be

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Page 5

cited, when these labels were never primarily designed to be an enforcement tool?

- 4) Noise laws from all sources, like autos with noisy boom boxes or mufflers, loud house parties and construction equipment need to be enforced, not just targeting motorcycles for subjective and discriminatory prosecution.
- 5) Some motorcycle riders buy replacement mufflers that may, or may not, comply with the EPA noise standard because stock parts may no longer be available from the manufacturers after several years. It will be unfair to subject them to a label-matching requirement especially if they have bought their motorcycle, used, from another party that installed those parts.
- 6) What option does an owner have if their muffler wears out or is damaged if stock parts are no longer available from their dealer or manufacturer? This is especially critical for aftermarket catalytic converter motorcycle mufflers. There are currently few, if any, aftermarket mufflers available because ARB only passed a regulation for their certification less than a year ago.

Also writing in opposition to the bill, the Imperial Valley Cycle Center indicates that "Grandfather all existing bikes in, at the very least so that all future motorcycles will be on notice of what using uncertified mufflers will cost them."

REGISTERED SUPPORT / OPPOSITION :

Support

American Lung Association in California (sponsor)
Bay Area Air Quality Management District
Boston City Councilor Sal Lamattina
Breathe California
California Air Pollution Control Officers Association
Los Angeles City Councilmember Bill Rosendahl
Los Angeles County
Los Angeles County Sheriff Lee Baca
NoiseOff.org
Noise Pollution Clearinghouse
Sacramento Metropolitan Air Quality Management District
San Joaquin Valley Air Pollution Control District

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Town of Windsor
West Hollywood
Letters from two individuals

Opposition

ABATE - American Brotherhood Aimed Towards Education - A Union of Motorcyclists
ABATE Local 1
American Motorcyclist Association
B & B Cycles
Barger Harley-Davidson
Bellflower Motorsports Employees

Beaumont Motorcycles & Watercraft
California Motorcycle Dealers Association
Cucamonga Yamaha
Harley-Davidson San Jose
Imperial Valley Cycle Center
LeBard & Underwood, Inc.
Livermore Harley-Davidson
Michael's Harley-Davidson, Inc.
Mountain Motorsports
Northern California Harley-Davidson Dealer's Association
Skip Fordyce Harley Davidson
Southern California Harley-Davidson Motorcycle Dealers
Association
Petition signatures of individuals 36,661 (received prior to
June 22, 2010 amendments)
Numerous letters (over 90 individuals received prior to June 22,
2010 amendments)

Analysis Prepared by : Ed Imai / TRANS. / (916) 319-2093

Anne Cardwell - Fwd: California Senate Bill 435

From: Anne Cardwell
Subject: Fwd: California Senate Bill 435

>>> Nicholas Haris <nharis@ama-cycle.org> 7/13/2010 2:21:53 PM >>>

Mayor Patterson, I have been informed that the Benicia City Council has decided to consider endorsing Senate Bill 435 again. While the bill is purported in the media to be targeting excessive motorcycle sound, in reality it will only create a difficult situation for both riders as well as law enforcement officials charged with its enforcement. Numerous other cities have in fact considered similar ordinances but all have either decided against adoption (New York for example) or simply not enforced it after adoption (Denver and Boston). This is due to a number of factors, however the bottom line is the EPA label is simply not proof of sound compliance, nor it a lack of one proof of a violation of federal law.

A very compelling presentation on the troubles law enforcement would have in regards to the EPA label location was put together by a group of riders in New York, it can be downloaded in .pdf format here:
<http://www.abate.org/LinkClick.aspx?fileticket=g89Mz6h33JA%3d&tabid=73>

Also the police chief in North Hampton, NH was quoted as saying he felt a similar ordinance under consideration there was basically unenforceable in the field: <http://www.seacoastonline.com/articles/20100622-NEWS-6220307>

In addition the following links may be useful for the debate. The AMA has long been on the record in opposition to excessive sound: <http://www.amadirectlink.com/legisltn/positions/sound.asp>

In addition we authored a document a number of years ago on the subject:
http://www.amadirectlink.com/legisltn/Sound_Advice.asp

And lastly we have model legislation based on adoption of the J2825 test procedure:
http://www.amadirectlink.com/legisltn/Model_On_Highway_Sound_Ordinance.pdf

If you are available I would like to meet with you prior to the City Council meeting next Tuesday to discuss the current version of SB 435 and consider the alternatives. I can be in Benicia in a few hours (I live in Placerville, CA) and would welcome to opportunity for a face to face discussion on this issue. At the end of the day I think we will have a lot of common ground and be able to craft an ordinance that is consistent, fair and legally defensible.

Sincerely,

Nick

Nicholas Haris
Western States Representative
American Motorcyclist Association
(530) 626 4250

The information contained in this message may be confidential. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any reliance upon, dissemination, distribution or copying of this communication, or the information contained in it, is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message and deleting it from your computer. Thank you. American Motorcyclist Association, Inc.

Anne,

Please share this with council members (electronically and hard copy) and appropriate staff. Reader, scroll down the end of email for concluding remarks.

Elizabeth



ABATE: SB-435 Motorcycle Smog Check

Anthony Jaime
06/30/2010

Open Letter

As Executive Director of ABATE of California, I am pleased to announce that hundreds of thousands of California motorcyclists can sleep easier secure in the knowledge that the impending threat of SB-435 as a motorcycle smog check bill has been neutralized at this point.

After two years of staunch opposition from ABATE of California, Senator Pavley realized that she did not have the necessary support to implement another unwarranted and costly bureaucracy in a state 24 billion dollars in debt for such a minimal gain. Senator Pavley's own comments to the committee were that "ABATE and their lobbyist killed my smog bill on the Senate floor!"

After all of the months of wrangling and backdoor attempts to sidestep and circumvent the legislative process by seeking resolutions from individual cities which were met and defeated by dedicated ABATE members, Senator Pavley changed her tactics and sought to implement a 27 year old EPA regulation requiring matching noise label tags in yet another bid to restrict our rights to ride in California.

Since she could not pass SB-435 out of committee as a smog bill, Senator Pavley changed SB-435 to an EPA noise label match-up bill which presented a different dynamic with regard to the amount of support she could garner from committee members.

I am also pleased to announce that with barely three weeks notice, ABATE of California was able to mobilize and meet this new threat in an extremely efficient and pre-emptive manner. While the voting dynamic among committee members was radically changed by Senator Pavley's new amendment, ABATE of California was nevertheless able to effectively gut SB-435 by forcing Pavley and co-author Assemblywoman Bonnie Lowenthal to remove the most motorcycle unfriendly and potentially harmful language from the bill.

It should be noted that Assemblywoman Lowenthal is Chairperson of the Assembly Transportation Committee and for ABATE to force the concessions we received from the Transportation Committee is an unqualified success and nothing short of miraculous given the growing public outcry for noise enforcement and the targeting of motorcyclists on this issue.

While there are many out there who challenge ABATE of California's action in this matter and have gone so far as to say or imply that ABATE of California rolled over or caved in to the opposition, I have only one thing to say. That is a crock of crap and nothing could be further from the truth. Even though the bill was put on call Monday to allow absent committee members time to get back to the hearing room and vote, this was not even a close vote and we lost by a 2 to 1 margin.

For those of you who are disgruntled over the negotiated settlement, examine the vote and tell me you wanted ABATE of California to play Russian Roulette with SB-435 just because you wanted to take a stand on principle and ignore the political realities we faced in committee. I would remind you that twice before in ABATE's history, we have had a chance to rid ourselves of the helmet law with conditional exclusions such as "over 21" but the hard-line element insisted ABATE take a stand on principle and here we are 18 years later with lids still on our heads.

Going into the final three weeks of this fight, ABATE leadership was made aware of this overwhelming shift due to the bill's new form. Realizing the very real possibility that we could not kill SB-435 outright, we nevertheless forced concessions through hard negotiations that will benefit every rider in this state, especially those who have aftermarket exhaust systems installed.

As it stands now, all riders and motorcycle owners in the State of California are in extremely good shape since we will NOT have to contend with smog checks, roadside sound tests, cannot be stopped for label inspections as a primary reason, will receive correctable fix-it tickets, and will now have legal defense should some be unfortunate enough to be cited.

I would like to note here that the official positions of the Motorcycle Industry Council and the AMA to the Transportation Committee on SB-435 were to adopt SAE J2825, which would have made roadside sound checks a reality, and we have escaped that. Most importantly, all motorcycles currently on the road will be grand-fathered in. Folks, I can't tell you what a huge win that is for our side.

I for one am personally proud of the way the membership of ABATE rallied to gather signatures, write letters of opposition, send faxes, and make calls to Transportation Committee members and to organize others in opposition. Kudos are in order for Brad Davis and Yve Mulholland of RideRag who together are responsible for gathering several thousand signatures in opposition to SB-435. I would also like to thank Jeff Rabe of the MMA, Nick Haris of the AMA, and especially John Paliwoda of the CMDA, whose testimony absolutely rocked the house and forced committee members to concede yet another year before implementation of label match-ups is enacted by this bill. Several other organizations I would also like to thank for their support are the Defenders Program, the UBNC, the MMA, the COC, the Mendocino HOG Chapter, Vacaville Harley-Davidson, and ALL of the riders who made the long trek to Sacramento to oppose SB-435 in the hearing room. You folks rock!

And lastly, let me remind all of you that this fight is far from over and we have much unfinished work to do here. SB-435 is far from a done deal, it has simply passed out of committee and in a greatly watered down form thanks to ABATE. It still has to pass Appropriations where it will be heard in August and then go back to the Senate. For those of you who say you are quitting ABATE or walking away from us, just remember: Winners never quit and quitters never win.

The battle lines have been re-drawn and we are not retreating one inch, we simply must attack in a different direction. To that end, we must make sure that Senator Pavley and Assemblywoman Lowenthal pay a heavy price for their attacks on our way of life. We need to make sure that they DO NOT get re-elected and send them to the showers. And lastly, we also need to make sure the American Lung Association and Noiseoff pay a heavy price for their involvement in this issue. Quit if you feel you must but speaking for myself, and those other ABATE members who are ready to fight on, LET'S ROLL!

If you haven't already signed up for Action Alerts on our website and want to help continue this fight, go to ABATE.org. We can only do so much without your help.

Sincerely, Anthony Jaime - Executive Director - ABATE of California

Elizabeth Patterson
Mayor
707.746.5668
ELOPATO@ELIZABETHPATTERSON.COM
www.elizabethpatterson.blogspot.com

"We are called to be architects of the future, not its victims".--Buckminster Fuller

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
INFORMATION ITEM**

DATE : August 9, 2010
TO : Mayor & City Council
FROM : City Manager
SUBJECT : **BUDGET STUDY SESSION – AUGUST 24, 2010**

RECOMMENDATION:

This is an informational report. There is no action necessary at this time.

EXECUTIVE SUMMARY:

The City Council has scheduled a budget study session for August 24, 2010 at 6:30 p.m. At this study session, the Council will be considering recommendations and giving direction to staff regarding balancing the 2010-11 budget, which currently has a projected shortfall of approximately \$1.1 million. Further, the City's long term forecast projects an average deficit of approximately \$1.2 million over the next five years.

During the past several months, the City has provided a number of outreach opportunities to gather input from the community regarding balancing the City's budget, including an online survey about program and service priorities and two community workshops. The community input gained from these various outreach efforts has been a primary resource for staff in developing recommendations for addressing the City's deficit.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010
TO : Mayor Patterson
FROM : City Manager
SUBJECT : **MAYORS' COMMITTEE MEETING**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

The Mayors' Committee meetings are held on the third Wednesday of each month at 6:30 pm. The agenda for the meeting held on July 21 is attached, and the minutes from the May 19, 2010 meeting are attached. The next Mayors' Committee meeting is on August 18, 2010. The agenda for that meeting is not yet available.

SOLANO COUNTY MAYORS' COMMITTEE MEETING

NOTE: LOCATION Change

Main Street Bar and Grill
627 Main Street
Suisun City, California

Wednesday
July 21, 2010
6:30 PM

AGENDA

1. Roll Call/Call to Order
2. Introductions by Mayor Pete Sanchez
3. Public Comment
(Members of the public may address the Committee on matters not listed on the agenda, but within the jurisdiction of the Committee.)
4. Business:
 - A. Approval of Minutes for the May 19, 2010, meeting.
 - B. Roundtable Discussion of City Issues of Mutual Interest.
 - C. Information, as requested, on Various Strategies to Deal with City Budget Shortfalls.
 - D. Carryover Discussion of Pension Reform – (Mayor Patterson / Mayor Davis).
Request to provide materials from the Legislative Analyst's Office
 - LAO – 2009 Initiative Analysis: Public Employee Pension Limitation Law
 - LAO – Public Employee Pension and Retiree Health Costs in California, November 2009
 - LAO – CalPERS – Pension Contributions, FY2008-09
 - LAO – Public Employee Retirement Benefits: Background and Policy Principles, April 2007
 - LAO – Addressing Public Pension Benefits and Cost Concerns, February 2005
5. Adjournment

**SOLANO COUNTY
MAYORS' COMMITTEE MEETING**

**Hampton Inn and Suites
Suisun City Waterfront
2 Harbor Center
Suisun City, California**

**Wednesday
May 19, 2010
6:30 PM**

MINUTES

1. Roll Call/Call to Order:

Chairperson/Mayor Pete Sanchez called the meeting to order at 6:30 p.m.

Mayors Present:

Mayor Elizabeth Patterson	City of Benicia
Mayor Jack Batchelor	City of Dixon
Mayor Harry T. Price	City of Fairfield
Mayor Jan Vick	City of Rio Vista
Mayor Pete Sanchez	City of Suisun City
Mayor Len Augustine	City of Vacaville

Mayors Absent:

Mayor Osby Davis	City of Vallejo
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Others Present:

Suzanne Bragdon	City of Suisun City
Mark Green	ABAG President and Mayor of Union City

A quorum was present.

2. Introductions by Mayor Pete Sanchez:

All attendees were acknowledged and welcomed by Mayor Sanchez.

3. Public Comment:

There were no speakers under public comment.

4. **Business:**

E. **Approval of Minutes for the March 17, 2010, meeting:**

The March 17, 2010 minutes were approved on a motion by Mayor Jack Batchelor and a second by Mayor Harry Price.

F. **Update ABAG: Building a Stronger Region – (Mark Green, ABAG President and Mayor of Union City):**

Mayor Mark Green provided an update to the group on the various programs and services provided by ABAG to all member agencies. As the original COG (2011 will mark ABAG's 50th anniversary) ABAG's mission is to build a stronger region. Membership includes 9 counties and 101 cities.

G. **Roundtable discussion of mutual City issues:**

The Mayors each discussed issues and accomplishments that are occurring in their respective communities with an emphasis on budget concerns for FY2010-11.

Through this discussion, a request was made to the City Managers to compile and share organizational and operational strategies that have been used to address budget "gaps". Similarly, information on labor negotiation strategies and executive salary levels was likewise requested.

H. **Report on AB155 - Local Government: Bankruptcy Proceedings - (Mayor Davis):**

Mayor Osby Davis was absent. Consensus of the group was to drop this from the agenda barring any new information on this measure.

I. **Mayors' Conference, June 16th, Hosted by Vallejo:**

Confirmation that June 16th is set for the Mayors' Conference in Vallejo.

J. **Discussion of Pension Reform (Mayor Patterson/Mayor Davis):**

Materials from the Legislative Analyst's Office

- **LAO – 2009 Initiative Analysis: Public Employee Pension Limitation Law**
- **LAO – Public Employee Pension and Retiree Health Costs in California, November 2009**
- **LAO – CalPERS – Pension Contributions, FY2008-09**
- **LAO – Public Employee Retirement Benefits: Background and Policy Principles, April 2007**

- **LAO – Addressing Public Pension Benefits and Cost Concerns, February 2005**

Item was carried forward.

5. Adjournment:

The meeting was adjourned at 8:20 p.m. The next meeting of the Mayors' Committee is scheduled for June 16, 2010, hosted by the City of Vallejo.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 4, 2010

TO : Mayor Patterson
Vice Mayor Campbell

FROM : City Attorney

SUBJECT : **ABAG COMMITTEE MEETING**

The following information is provided for your committee report at the August 17, 2010 council meeting:

- The date for the Fall General Assembly is Thursday, October 21, 2010.
- The conference will be held in San Jose. The exact location and topics have not been determined.
- Minutes from previous meeting and agenda for next meeting are not available.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Vice Mayor Schwartzman
Council Member Campbell

FROM : Finance Director

SUBJECT : **FINANCE, AUDIT AND BUDGET COMMITTEE**

The following information is provided for your committee report at the Council meeting.

The FAB committee held a meeting on July 23, 2010 and I have attached a copy of the *Draft* minutes for your review. The next meeting will be held on August 27, 2010.

On July 23, 2010, the citizen members of the FAB authorized the Chairperson to send a letter to the Mayor and City Council requesting modifications to the Mission, Duties and Structure of the committee. A copy of the letter is attached to this report for your reference.

The members of the FAB have been invited to the Council Meeting on September 7, 2010 to present their recommendations and receive Council direction.

Attachment:

- ❑ *Draft* Minutes from July 23, 2010
- ❑ Letter from FAB Chairperson, Dennis Lowry
- ❑ Mission, Duties and Structure Policy

FINANCE, AUDIT AND BUDGET COMMITTEE
***DRAFT* REGULAR MEETING MINUTES**
COMMISSION ROOM
July 23, 2010 - 8:00 AM

1. Call to Order at 8:05

Attended by Committee Chair Dennis Lowry, Board Members, Larry Grossman, Lee Wines; Council Members Tom Campbell. Staff present - Finance Director Robert Sousa and Assistant Finance Director Abigail Urrutia. Members of the public present – Dan Miceli, Rick Ernst. Excused absent – Council Member Alan Schwartzman and City Treasurer Teddie Bidou.

2. Notice to the Public

3. Approval of Agenda

Approved by consensus.

4. Election of Chair and Vice-Chair

Nomination for Chair and Vice-Chair was open. Lee Wines nominated Dennis Lowry as Chair, seconded by Council Member Tom Campbell. Approved by consensus. Larry Grossman nominated Lee Wines as Vice-Chair, seconded by Council Member Tom Campbell. Approved by consensus.

5. Approval of Minutes from the meeting held on June 25, 2010.

Approved by consensus.

6. Review Long Range Calendar

There is no meeting scheduled for August 2010. Member Grossman suggested a meeting between the FAB members and Council Members to discuss FAB members roles and duties.

Member Grossman requested to move Review of FAB Mission, Duty and Structure policy right after the Long Range Calendar. Approved.

7. Review the FAB Mission, Duty and Structure Policy

The Finance, Audit and Budget committee was established as an advisory body reviewing and updating the Long Range Model as well as financial disbursements; selecting and reporting of the independent City Auditor; and reviewing projects assigned by the Council. The City Council on November 2008 did not want the committee to have an active role in the preparation and update of the budget.

With the current budget situation and recent Council's budget workshops with the community, FAB members want to meet and discuss with Council members their role as well as utilizing the members talents and skills in advising Council on financial matters, and their wanting a greater role in the budget process.

It was agreed that the committee will draft a letter to the Council for the August 17, 2010 Council meeting asking for a meeting and discuss committee's roles, duties and ideas and how to serve the community better.

A suggestion by Chair Lowry to defer the Warrant Register Review at the end of the meeting was approved by members.

8. Review of Monthly Financial Report for May 2010

Discussion was held on why some departments are over their budget for the month, and why there are constant changes in the budget. Members still need clarification on why the budget is a moving target; they are used to having an adopted budget unchanged for the entire year, and having accrual basis. The City's ledger system will only show the amended budget, with adjustments and not the original adopted budget. Suggestions were offered as to having a report showing only the adopted budget without any budget adjustments. Finance Director Sousa will find a solution that will satisfy the committee as well as not create extra hardship on staff in preparing such a report since the City's system report is very limited.

Chair Lowry also questioned how department heads are being accountable for their budgets when there are adjustments in the budget. Member Grossman felt that as a committee, it would be most helpful for everyone if the focus of the group is on processes and not political issues.

A request by Council Member Campbell to discuss the Liability Program before he leaves was approved.

9. Review of the City's Liability Assurance Program

Finance Director Sousa explained that the City for its Liability Insurance is under the ABAG program with other cities. The City's losses have decreased, but the proposed deposit (funding) for the City has increased by \$66,000 due to the total ratio of salaries. Currently the City has a \$5 million retention, but is heading to a \$10 million retention, part of the reason why deposits need to be increased.

The City's losses include Water and Wastewater claims and lately there have been lots of claims for both due to infrastructure getting older.

The City holds quarterly meetings with the City Attorney and key department heads to discuss and limit potential losses.

10. Previous Month Warrant Register Review for June 2010.

Chair Lowry suggested to the members that if there were any questions on the warrant registers, they must be submitted to Finance Director Sousa in writing and Director Sousa in turn will respond to members in writing also.

Member Grossman requested a copy of the City's unfunded liability actuarial reports. Finance Director Sousa will email to the committee the PERS and OPEB (Other Post-Employment Benefits) reports.

11. Public Comment

Dan Miceli asked how other cities report their budget. Is it different from how we report it? No, other cities report exactly how we report the budget. Chair Lowry explained that he wanted us to think outside the box and budget accordingly so we won't follow suit on other cities mistakes and fall under bankruptcy.

12. Adjournment – 10:07 a.m.

August 5, 2010

Mayor Elizabeth Patterson
250 East L Street
Benicia, CA 94510

Dennis Lowry
Chairman – Finance Audit Budget Committee
828 Rose Drive
Benicia, CA 94510

Re: Proposal to Modify Title & Duties of Finance Audit and Budget Committee

Madam Mayor,

The Appointed Citizen members of the Benicia FAB committee are in unanimous agreement that the role/scope of our committee is in need of review and/or revision. The City of Benicia is confronted with daunting issues impacting the General Budget, Short and Long Term Financial Budgeting and Investment Strategies and the long-term financial sustainability of this great city. It is noteworthy and commendable that public input has been solicited several times this year by the City Council and City Staff regarding the short and long-term budget issues.

The matter we bring to your attention is that not once in the past or present fiscal year has the FAB been asked by the City Council to provide input, advice or opinions on these critical budget issues. We believe a major contributor to the failure of the City Council to use the FAB resources is the present description of our task and duties. As Mayor, you have appointed a very experienced committee membership with significant knowledge in the areas of Financial and Investment Planning, Banking and Investment Strategies, Budget Management, and Operations. These skills coupled with a willingness to provide an outsider's view of how to address public issues is a powerful combination. We strongly believe the committee has much to contribute, if only asked.

Our present charter has two assigned Council members. We have raised numerous issues¹ over the past fiscal year but due to either the nature of the Council agenda scheduling committee reports to the last of Council meetings or due to the fact that time has not allowed committee reports to be heard, we have not observed any report from either Council member regarding FAB issues. As a Committee, we do not have a forum by which to report our issues or concerns directly to the Council so we are somewhat frustrated and do not feel we are fulfilling our commitment and desire to serve Benicia.

Therefore, we propose to change the definition of our committee beginning with our committee name and ending with clarity on the broadest scope of what we believe our

¹ Creation and monthly review of Accrual Budgets, Decentralized Management of Budget, annotating pass through expenses on the Warrant Register, Elimination of Contract Labor where it makes sense, Holding Department Heads accountable for meeting or under-running original budgets, Cutting overtime, travel, meals and training, before reducing staff, Centralized Purchasing in accordance with existing Ordinances, Not adjusting budgets monthly to mask issues but requiring department heads to manage a reduced budget, Focus on under-running budgets instead of spending all within the budget by the end of the fiscal year, etc.

committee can and should do. Attachment A states our existing role on the left side of the document and on the right side are our recommendations thereby allowing a side-by-side comparison. These changes are not presented lightly and we clearly understand that our overall role is that of advice and counsel regarding financial issues. Here are a couple of examples of why we believe we need these changes.

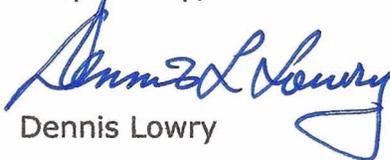
1. We really do not know what to call ourselves when we meet as a committee or with the general public. Our existing charter lists committee and board yet we do not know if either title should be used. Many citizens are familiar with the title of Commissioner therefore we wish to change the name of our committee to Benicia Finance Commission.
2. We wish to be looked upon as a resource for the City Council especially when the Council is wrestling with financial matters that impact City Staff. Today, the Council refers financial matters to City Staff for a recommendation that may or could impact that very staff. We believe that, at the very least, the council should also seek to receive input from a body that is not impacted by the recommendation as a way of balancing the facts leading to a final decision.

In addition to our name change we are proposing a more robust list of duties. There are three changes that warrant further explanation.

1. Recommendation 4g: We recommend moving from a consensus based Commission to a majority vote. The nature of the material we work on rarely results in unanimous support. Therefore, we agreed that majority vote would allow us to make timely recommendations to the Council.
2. Recommendation 4a: Because of the above, we recommend adding one additional member to our Commission. Because 75% of the general budget is compensation and benefits, it may be desirable to have a member of the Civil Service Commission to be a member of the Finance Commission.
3. Recommendation 4e: We reviewed a few finance commissions in and outside of California and observed that none of the assigned elected liaisons had voting rights. Upon inquiry as to why, we were told that since they cast the final vote regarding any recommendation as a council member it was unnecessary for them to vote on the initial recommendation. We support this rationale.

It may be beneficial for the Council to meet with our committee to discuss these proposed changes. We chose to waive the tradition of not meeting in the month of August and have set aside August 27th from 8am to 10 am for that very purpose. It would be our distinct pleasure to host this meeting if you so desire. In any event, please advise us of the next step to be taken regarding this request.

Respectfully,



Dennis Lowry

Cc: Councilmen Campbell, Hughes, Ioakimedes, and Vice-Mayor Schwartzman, City Manager, Director of Finance

PRESENT STRUCTURE	PROPOSED STRUCTURE
<p>Name: Benicia Finance Audit Budget Committee (FAB)</p> <p>I. Purpose</p> <p>The FAB Committee hereby establishes an administrative policy to be followed by committee members in the accomplishment of City Council directives.</p> <p>II. Mission Statement</p> <p>The Finance Audit & Budget Committee shall act as the advisory body on the selection and reporting of the independent auditor shall review the financial disbursements of the City to gauge compliance with established policies and procedures, shall advise the City Council on issues pertaining to the auditing of financial records, and shall research other issues assigned by the City Council.</p> <p>III. Duties</p> <ol style="list-style-type: none"> 1. To advise the City Council on the selection of the independent City Auditor and the review of the Comprehensive Annual Financial Report. 2. To review a sampling of financial disbursements of the City to reasonably gauge compliance with established policies and procedures. 3. To review other projects as assigned by the City Council, such as: <ol style="list-style-type: none"> a. Review effectiveness of financial policies, such as the Reserve Policy and Balanced Budget Policy. b. Review financing alternatives for major projects. c. Review financial plans to promote sustainability. d. Review updates to the Long-Range 	<p>Name: Benicia Finance Commission (BFC)</p> <p>1. Purpose</p> <p>The purpose of the Benicia Finance Commission shall be advisory to the City Council and shall review financial issues that can be reasonably addressed by the City of Benicia. BFC shall meet with the City Council annually to prepare and approve a work program for the following year. Urgent issues may be authorized for study by the City Council at any regular Council meeting.</p> <p>2. Mission Statement</p> <p>The role of the Benicia Finance Commission is to provide citizen input to Council and staff regarding financial policy or process issues including Audits, Financial Budgets (short and long term), and monthly review of the Warrant Register. In addition, the BFC's role is to help promote citizen's participation and understanding regarding the financial condition of the City.</p> <p>3. Duties</p> <ol style="list-style-type: none"> a. Annual review of independent auditor selection process with recommendation on which firm to use; b. Annual review of the Comprehensive Annual Financial Report with recommendations as appropriate; c. Annual review of the investment policy with recommendations as appropriate; d. Annual review of independent financial audit with recommendation as appropriate; e. Review of short-range financial projections and assumptions; make recommendations as appropriate on subjects such as: <ul style="list-style-type: none"> • Effectiveness of Reserve Policy • Effectiveness of Balanced Budget Policy • Financing alternatives for major projects • Financial plans to promote sustainability • Review of revenue projections • Review of unfunded liabilities

Budget Forecasting Model.

e. Review updates to the Capital Improvement Program Model.

IV. Structure

1. The Committee shall be comprised of 4 members of the public, 2 Council Members and the City Treasurer.
2. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
3. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
4. Board members shall elect the Chairperson, who will serve a one-year term, generally January through December.
5. Elected liaisons shall be allowed full discussion and voting privileges.
6. Staff reports shall accompany agenda items when appropriate.
7. Decisions on agenda items shall be by consensus unless otherwise directed by the Chairperson.
8. Minutes shall be recorded, approved and forwarded to the City Council.
9. The Board shall meet the 4th Friday of each month unless otherwise necessary.

The Finance Audit & Budget Committee shall advise the City Council on matters of financial importance to ensure the accurate reporting and long range fiscal stability of the City.

Meetings: 4th Friday of each month at 8:00 am in the Commission Room.

Council Members: Alan Schwartzman and Tom Campbell.

Staff Contact: Finance Department - (707) 746-4225

- f. Review of long-range financial projections and assumptions to determine long-term financial sustainability; make recommendations as appropriate.
- g. Review updates to the Long-Range Budget Forecasting Budget Model; make recommendations as appropriate
- h. Quarterly review of the City's Investments; make recommendations as appropriate.
- i. Monthly review of financial disbursements (Warrant Register Review Process) of the City to reasonably gauge compliance with established policies and procedures. Make recommendations as appropriate;
- j. Monthly review of the City's General Ledger to monitor the City's performance against a stated budget and make recommendations as appropriate;
- k. Special projects as directed by the City Council, City Manager or Finance Director.
- l. Submit an annual work program to the Council for review and approval.
- m. Policy or budget recommendations shall be provided to the Council in either written or verbal format depending on the nature of the subject thereby allowing an opportunity to question or clarify the recommendation.

4. Structure

- a. The Committee shall be comprised of 5 members of the public, 2 Council Members and the City Treasurer.
- b. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
- c. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
- d. Board members shall elect the Chairperson, who will serve a one-year term, generally July through June to coincide with the fiscal budget year.
- e. Elected liaisons shall be allowed full discussion privileges but shall not have voting privileges.
- f. Staff reports shall accompany agenda items when appropriate.
- g. Decisions shall be by majority vote.
- h. Minutes shall be recorded, approved and forwarded to the City Council.
- i. The Commission shall meet the

	<p>4th Friday of each month unless otherwise necessary.</p> <p>Meetings: 4th Friday of each month at 8:00 am in the Commission Room</p> <p>Council Members: Alan Schwartzman and Tom Campbell serve as Elected Liaisons.</p> <p>Staff Contact: Finance Department 707-746-4225</p>
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FINANCE, AUDIT & BUDGET COMMITTEE
MISSION, DUTIES AND STRUCTURE POLICY
Amended November 7, 2008

I. Purpose

The AFC hereby establishes an administrative policy to be followed by committee members in the accomplishment of City Council directives.

II. Mission Statement

The Finance, Audit and Budget Committee shall act as the advisory body on the selection and reporting of the independent City Auditor, shall review the financial disbursements of the City to gauge compliance with established policies and procedures, shall advise the City Council on issues pertaining to the auditing of financial records, and shall research other issues assigned by the City Council.

III. Duties

1. To advise the City Council on the selection of the independent City Auditor and the review of the Comprehensive Annual Financial Report.
2. To review a sampling of financial disbursements of the City to reasonably gauge compliance with established policies and procedures.
3. To review other projects as assigned by the City Council, such as:
 - a. Review effectiveness of financial policies, such as the Reserve Policy and Balanced Budget Policy.
 - b. Review financing alternatives for major projects.
 - c. Review financial plans to promote sustainability.
 - d. Review updates to the Long-Range Budget Forecasting Model.
 - e. Review updates to the Capital Improvement Program Model.

IV. Structure

1. The Committee shall be comprised of 4 members of the public, 2 Council Members and the City Treasurer.
2. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
3. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
4. Committee members shall elect the Chairperson, who will serve a one-year term, generally January through December.
5. Elected liaisons shall be allowed full discussion and voting privileges.
6. Staff reports shall accompany agenda items when appropriate.
7. Decisions on agenda items shall be by consensus unless otherwise directed by the Chairperson.
8. Minutes shall be recorded, approved and forwarded to the City Council.
9. The Committee shall meet the Friday following the first City Council meeting unless otherwise necessary.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010

TO : Mayor Patterson
Vice Mayor Schwartzman

FROM : City Manager

SUBJECT : **LEAGUE OF CALIFORNIA CITIES**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

The League of California Cities Annual Conference and Expo will be held on September 15-17 at the San Diego Convention Center. Highlights of the conference can be accessed at <http://www.cacities.org/ac>.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Council Member Ioakimedes
Council Member Hughes

FROM : City Manager

SUBJECT : **CITY COUNCIL/SCHOOL BOARD LIAISON COMMITTEE**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

This committee meets quarterly in the Benicia Unified School District meeting room.

The next meeting has not been scheduled.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Mayor Patterson
Vice Mayor Campbell

FROM : City Manager

SUBJECT : **SKY VALLEY OPEN SPACE COMMITTEE**

The following information is provided for your committee report at the August 17, 2010 Council meeting.

The Sky Valley Open Space Committee met on Wednesday, August 4, 2010. Agenda topics included an update from Tina Batt with the California Rangeland Trust. The City has retained the services of the Rangeland Trust to assist with the City's open space preservation efforts in the Sky Valley region. Ms. Batt will work with the City and the Solano Land Trust in coordinating efforts for outreach to property owners and ranchers to gauge local interest in conservation easements. Also discussed at this meeting, Commission members requested staff to look into grant opportunities from the Land and Water Conservation Fund.

The next meeting of the Sky Valley Committee is scheduled for Wednesday, November 3, 2010. The meeting will take place in the Commission Room, located at Benicia City Hall, 250 East "L" Street.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010

TO : Mayor Patterson
Council Member Campbell

FROM : City Manager

SUBJECT : **SOLANO EDC BOARD OF DIRECTORS**

The following information is provided for your committee report at the August 17, 2010 Council meeting.

The last Board of Directors meeting was held on Thursday, July 22, 2010. The agenda is attached. The minutes for that meeting are not yet available. In addition, minutes of the May 27, 2010 meeting are attached. The agenda was previously issued.

The next Board of Directors meeting will be held on Thursday, September 23, 2010 at 9:00 am at Jelly Belly Candy Company. The agenda for that meeting is not yet available.

**Solano EDC
Board of Directors Meeting
Thursday, July 22, 2010
Jelly Belly Candy Company (Corporate Offices)**

AGENDA

- | | | |
|--------------------|---|-----------------------|
| 9:00 am | 1. Call to Order | Scott Reynolds, Chair |
| Action Item | 2. Approval of 5/27/10 Meeting Minutes | |
| Action Item | 3. Treasurer's Report – June 2010 | John Onsum |
| Action Item | 4. Bay Area Air Quality Regulations (SB 375) | Mike Ammann |
| | 5. <u>Committee Reports</u> | |
| | ➤ Marketing Task Force | Curt Johnston |
| | ➤ Transportation | Daryl Halls |
| | ➤ Membership Committee | Norm Hattich |
| | 6. President's Report /Capital Campaign Update | Mike Ammann |
| | * Countywide Strategic Plan | |
| | * Revolving Loan Fund | |
| | * Food Chain Cluster Report | |
| | * Capital Campaign | |
| | * Prospect Activity | |
| | 7. Items from Directors | |
| 10:00 am | 8. Adjourn Meeting | |

Calendar of Events

- ◆ ~~July 29, 2010~~ ~~Solano EDC Membership Breakfast at Hilton Garden Inn~~
~~—Keynote: David Hosley, The Great Valley (<http://www.greatvalley.org>)~~
- ◆ August 9, 2010 21st Annual Golf Classic – Green Valley Country Club
- ◆ August 26, 2010 Solano EDC Membership Breakfast
- ◆ Sept 23, 2010 Board of Director's Meeting (9:00 am) Jelly Belly
- ◆ Nov 18, 2010 Board of Director's Meeting (9:00 am) Jelly Belly

**SOLANO EDC BOARD OF DIRECTORS MEETING
MAY 27, 2010, 9:00 AM**

CALL TO ORDER

Chairman Reynolds called the meeting to order at 9:04 am at the Jelly Belly Candy Company.

Attending were:

Dee Alarcon	Mike Ammann	Jack Batchelor	Robert Bloom	Barry Cavanna
Elaine Crombie	Kevin English	Daryl Halls	Natalie Hicks	Nancy Huston
Curt Johnston	Jack Krebs	Jowel Laguerre	Albert Lavezzo	Amalia Lorentz
John Onsum	Sandy Person	John Ray	Mike Reagan	Tom Recknagel
Scott Reynolds	Chuck Rieger	Michael Segala	Michael Wilson	

Absent were:

Len Augustine	Rebecca Brandt	Kay Draisin	Jim Dunbar	Bill Eisenhardt
Joanie Erickson	Kevin Finger	Bruce Gondry	Norm Hattich	Steve Huddleston
Bill James	Curt Johansen	Steve Lessler	Catherine Moy	Elizabeth Patterson
Brooks Pedder	Debra Russo	Bob Simpson	Talyon Sortor	Sue Vaccaro
Patsy Van Ouwerkerk				

APPROVAL OF MINUTES

Chairman Reynolds called for approval of minutes of the March 25, 2010 meeting.

Upon motion duly made (Alarcon) and seconded (Segala) it was

RESOLVED, that the minutes of the March 2010 meeting of the Solano EDC Board of Directors be accepted as submitted.

TREASURERS REPORT

Treasurer Onsum presented the financial report for the month of April 2010.

Upon motion duly made (Wilson) and seconded (Cavanna) it was

RESOLVED, that the Treasurer's Report be accepted.

GUEST SPEAKER

Chuck Rieger with RG-Innovative Solutions provided information on developing a Solano Center for Business Innovation (SCBI). The center would create a knowledge hub of skills, services and funding or opportunity sources that can be readily leveraged by high growth start-ups and small businesses. The goal would be to help accelerate the growth of these high growth businesses in terms of revenue and jobs.

MARKETING TASK FORCE

Committee Chair Johnston noted the group is exploring partnering with TeamCalifornia to have a presence at trade shows. The group also discussed the recent City County Coordinating Council meeting.

Curt suggested the Solano EDC look into the pros and cons of collaborating with Napa since they no longer have an EDC.

TRANSPORTATION UPDATE

Director Halls provided updates on: Highway 12 improvement and safety projects from Suisun City to Rio Vista; Rio Vista bridge study; I-80 resurfacing; Jepson Parkway project and transportation funding options.

MEMBERSHIP COMMITTEE

Vice-President Person noted member reinvestments are at 98%. The Fairfield Hotel Association joined since the last meeting.

PRESIDENT'S UPDATE

President Ammann provided an update on lead activity since the last meeting. He also asked for director's assistance with the Capital Campaign.

Calendar items were discussed. The meeting was adjourned at 10:15 am.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Mayor Patterson
Council Member Ioakimedes

FROM : Director of Public Works and Community Development

SUBJECT : **SOLANO TRANSPORTATION AUTHORITY**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

A STA Board Special Meeting was held at 4:00 p.m., Thursday, August 5, 2010 at Suisun City Hall Council Chambers. The agenda from that meeting is attached. The minutes from the July 14, 2010 meeting is not currently available, but will be provided with the next Committee Report.

The next regular meeting of the STA Board is scheduled for Wednesday, September 8, 2010, 6:00 p.m., Suisun City Hall Council Chambers.



**SOLANO TRANSPORTATION AUTHORITY
BOARD MEETING AGENDA**

SPECIAL MEETING

**4:00 p.m., Thursday, August 5, 2010
Suisun City Hall Council Chambers
701 Civic Center Drive
Suisun City, CA 94585**

Mission Statement: To improve the quality of life in Solano County by delivering transportation system projects to ensure mobility, travel safety, and economic vitality.

Public Comment: Pursuant to the Brown Act, the public has an opportunity to speak on any matter on the agenda or, for matters not on the agenda, issues within the subject matter jurisdiction of the agency. Comments are limited to no more than 3 minutes per speaker unless modified by the Board Chair, Gov't Code § 54954.3(a). By law, no action may be taken on any item raised during the public comment period (Agenda Item IV) although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the agency.

Speaker cards are helpful but not required in order to provide public comment. Speaker cards are on the table at the entry in the meeting room and should be handed to the STA Clerk of the Board.

Americans with Disabilities Act (ADA): This agenda is available upon request in alternative formats to persons with a disability, as required by the ADA of 1990 (42 U.S.C. §12132) and the Ralph M. Brown Act (Cal. Govt. Code §54954.2). Persons requesting a disability related modification or accommodation should contact Johanna Masiclat, Clerk of the Board, at (707) 424-6008 during regular business hours at least 24 hours prior to the time of the meeting.

Staff Reports: Staff reports are available for inspection at the STA Offices, One Harbor Center, Suite 130, Suisun City during regular business hours, 8:00 a.m. to 5:00 p.m., Monday-Friday. You may also contact the Clerk of the Board via email at jmasiclat@sta-snci.com. **Supplemental Reports:** Any reports or other materials that are issued after the agenda has been distributed may be reviewed by contacting the STA Clerk of the Board and copies of any such supplemental materials will be available on the table at the entry to the meeting room.

Agenda Times: Times set forth on the agenda are estimates. Items may be heard before or after the times shown.

ITEM	BOARD/STAFF PERSON
I. CALL TO ORDER/PLEDGE OF ALLEGIANCE (4:00 – 4:05 p.m.)	Chair Sanchez
II. CONFIRM QUORUM/ STATEMENT OF CONFLICT <i>An official who has a conflict must, prior to consideration of the decision; (1) publicly identify in detail the financial interest that causes the conflict; (2) recuse himself/herself from discussing and voting on the matter; (3) leave the room until after the decision has been made. Cal. Gov't Code § 87200.</i>	Chair Sanchez

STA BOARD MEMBERS

Pete Sanchez Chair City of Suisun City	Harry Price Vice-Chair City of Fairfield	Elizabeth Patterson City of Benicia	Jack Batchelor, Jr. City of Dixon	Jan Vick City of Rio Vista	Len Augustine City of Vacaville	Osby Davis City of Vallejo	Jim Spering County of Solano
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STA BOARD ALTERNATES

Mike Hudson	Chuck Timm	Mike Ioakimedes	Rick Fuller	Ron Jones	Curtis Hunt	Erin Hannigan	Mike Reagan
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III. APPROVAL OF AGENDA

(4:05 – 4:10 p.m.)

IV. OPPORTUNITY FOR PUBLIC COMMENT

(4:10 – 4:15 p.m.)

V. CONSENT CALENDAR

Recommendation:

Approve the following consent items in one motion.

(Note: Items under consent calendar may be removed for separate discussion.)

(4:15 – 4:20 p.m.)

A. STA Board Meeting Minutes of July 14, 2010

Johanna Masielat

Recommendation:

Approve STA Board Meeting Minutes of July 14, 2010.

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VI. ACTION FINANCIAL ITEMS

A. Adoption of Vehicle Registration Fee (VRF) Expenditure Plan – Transportation Improvement Plan

Daryl K. Halls

Recommendation:

Approve the Solano Transportation Authority Vehicle Registration Fee Expenditure Plan as specified in Attachment D.

(4:20 – 4:40 p.m.)

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B. Public Hearing to Consider Adoption of Resolution Submitting the Solano county Transportation Improvement Measure and the Required Findings of Fact

Bernadette Curry

Recommendation:

Conduct a public hearing to consider:

- 1. Approval of the Solano County Transportation Improvement Measure and the Required Findings demonstrating the relationship of benefit to fee payers and consistency with Regional and Local Transportation Plans.*

Then:

- 2. Approve Resolution No. 2010-14 calling for a Special Election on November 2, 2010 to submit the Solano County Transportation Improvement Measure to the voters of Solano County.*

(4:40 – 4:50 p.m.)

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VII. BOARD MEMBERS COMMENTS

VIII. ADJOURNMENT

The next regular meeting of the STA Board is scheduled for **Wednesday, September 8, 2010, 6:00 p.m., Suisun City Hall Council Chambers.**

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010

TO : Mayor Patterson
Vice Mayor Schwartzman

FROM : Director of Public Works and Community Development

SUBJECT : **SOLANO WATER AUTHORITY**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

The Solano Water Authority (SWA) Board of Directors held a meeting on August 12, 2010, the agenda from that meeting and the minutes from the June 10, 2010 meeting are attached. The next meeting is scheduled for Thursday, September 9, 2010.

The SWA also has a Delta Committee that typically meets each month directly before the regular SWA meeting.

SOLANO COUNTY WATER AGENCY



BOARD OF DIRECTORS MEETING

DATE: Thursday, August 12, 2010

TIME: 7:00 p.m.

PLACE: Solano Irrigation District
508 Elmira Road
Vacaville

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA
4. PUBLIC COMMENT

Limited to 5 minutes for any one item not scheduled on the Agenda.

5. CONSENT ITEMS

- (A) Minutes: Approval of the Minutes of the Board of Directors meeting of June 10, 2010 is recommended.
- (B) Expenditure Approvals: Approval of the June and July checking account register and list of checks \$500 and over to be paid is recommended.
- (C) Amendment to Agreement with ARCADIS: Authorization for Chairman to execute Amendment No. 1 with ARCADIS for Water Quality Monitoring in the Cache Slough Watershed is recommended. Cost of amendment is \$50,000.
- (D) Amendment to Agreement with Hydro Science: Authorization for Chairman to execute Amendment No. 1 with Hydro Science for Putah South Canal Water Quality Best Management Practices is recommended. Cost is \$5,000.

P.O. Box 349 • 6040 Vaca Station Road, Building 84
Elmira, California 95625-0349
Phone (707) 451-6090 • FAX (707) 451-6099
www.scwa2.com



X.B.9.3

- (E) North Bay Aqueduct Alternate Intake Grant: Approval of Resolution 2010-04 authorizing General Manager to submit an application to the Department of Water Resources for grant funding for development of the North Bay Aqueduct Alternate Intake Project is recommended. Grant amount is \$4,334,210 to be shared with Napa County.
- (F) Revised Financial Management Procedures: Approval of revised financial management and petty cash procedures is recommended.
- (G) PERS Medical Benefit Resolution: Approval of Resolution 2010-03 fixing the existing Employers' Contribution for medical benefits is recommended.
- (H) Labor Compliance Program Policy: Adopt policy for construction projects requiring a Labor Compliance Program.

6. BOARD MEMBER REPORTS

RECOMMENDATION: For information only.

7. GENERAL MANAGER'S REPORT

RECOMMENDATION: For information only.

8. DELTA ISSUES WORKSHOP (note: this item is scheduled for 1 to 1.5 hours)

RECOMMENDATION: Hear reports from staff and others on current Delta issues with a focus on Delta levee issues. Melinda Terry the Executive Director of the California Central Valley Flood Control Association and Mike Hardesty, General Manager of Reclamation District No. 2068 will be assisting in the presentation. Provide direction to staff.

9. TIME AND PLACE OF NEXT MEETING

Thursday, September 9, 2010 at 7:00 pm at the Solano Irrigation District offices.

The Full Board of Directors packet with background materials for each agenda item can be viewed on the Agency's website at www.scwa2.com.

SOLANO COUNTY WATER AGENCY
BOARD OF DIRECTORS MEETING MINUTES

MEETING DATE: June 10, 2010

The Solano County Water Agency Board of Directors met this evening at the Solano Irrigation District. Present were:

Mayor Len Augustine, City of Vacaville
Mayor Pete Sanchez, City of Suisun City
Mayor Elizabeth Patterson, City of Benicia
Mayor Jan Vick, City of Rio Vista
Mayor Jack Batchelor, City of Dixon
Mayor Harry Price, City of Fairfield
Supervisor Barbara Kondylis, Solano County District 1
Supervisor Linda Seifert, Solano County District 2
Supervisor John Vasquez, Solano County District 4
Supervisor Mike Reagan, Solano County District 5
Director Everett Whiting, Reclamation District 2068
Director Bob Bishop, Solano Irrigation District
Manager Don Holdener, Maine Prairie Water District

CALL TO ORDER

The meeting was called to order at 7:00 P.M. by Chairman Mike Reagan.

APPROVAL OF AGENDA

On a motion by Mayor Batchelor and a second by Supervisor Kondylis, the Board unanimously approved the agenda.

PUBLIC COMMENT

There were no public comments.

CONSENT ITEMS

On a motion by Supervisor Vasquez and a second by Supervisor Seifert the Board unanimously approved the following consent items, including the addendum to agenda item (B), Additional Expenditure Approvals:

- (A) Minutes
- (B) Expenditure Approvals
- (C) Pre-Approval of Fiscal Year 2010-2011 Payments
- (D) Statement of Investment Policy
- (E) Appropriations Limit
- (F) General Manager's Employment Agreement

BOARD MEMBER REPORTS

No reports were given.

GENERAL MANAGERS REPORT

There were no additions to the Manager's Report.

CONSULTING CONTRACTS

On a motion to by Mayor Price and a second Mayor Sanchez the Board unanimously approved to authorize the Chairman to execute the following agreements and amendments for consultant services through fiscal year 2010-2011:

1. AD Consultants, Modeling/Optimization and Data Management, amendment for extension of term, amended Scope of Work and increase of \$31,500 from \$148,100 to \$179,600;
2. Agrichem, Nuisance Vegetation Management, new contract – contract limit of \$36,112.
3. All Covered, On-call Computer Services, amendment for extension of term, amended Scope of Work and increase of \$27,000 from \$49,790 to \$76,790;
4. Arcadis, Cache Slough Watershed Group, amendment for extension of term only;
5. Arcadis, McCoy Basin Management Plan, amendment for extension of term, amended Scope of Work and increase of \$16,200 from \$155,475 to \$171,675;
6. Blankinship and Associates, Compliance Monitoring for Aquatic Pesticides Usage, amendment for extension of term, amended Scope of Work and increase of \$44,500 from \$217,850 to \$262,350;
7. BSK, LPCCC River Parkway 3 – Channel Realignment, amendment for extension of term only;
8. Camp, Dresser & McKee, North Bay Aqueduct Planning and Engineering Support, extension of term only;
9. CH2MHill, Solano HCP EIR/EIS, amendment for extension of term, amended Scope of Work and increase of \$124,968 from \$431,618.49 to \$556,586.49;
10. ConserVision, Outdoor Water Survey Program, amendment for extension of term only;
11. Creativemark, Water Conservation/Water Education component to the Water Agency website, amendment for extension of term and increase of \$10,000 from \$25,000 to \$35,000;
12. Dennis Bowker, Riparian Landowner Facilitation, amendment for extension of term only;
13. Dennis Grunstad, Landscape Maintenance, amendment for extension of term and increase of \$10,000 from \$56,122 to \$66,122;
14. EGIA, Solano County High-Efficiency Washer Program, amendment for extension of term and increase of \$100,000 from \$160,000 to \$260,000;
15. Eyasco Inc., Data and Website Management, new contract - contract limit of \$187,430;
16. KC Engineering Company, Construction Materials Testing and Geotechnical Consulting, amendment for extension of term and updated Scope of Work;
17. Laugenour and Meikle Civil Engineers, Land Surveying & Engineering Design, amendment for extension of term only;
18. LSA Associates, Inc., Habitat Conservation Plan, new contract - contract limit of \$317,207;
19. Luhdorff & Scalmanini, Northern Solano Groundwater Monitoring Program, amendment for extension of term only;
20. Mike Bobbitt and Associates, Geographical Information System Services, amendment for extension of term and amended Scope of Work;
21. Northwest Hydraulic Consultants, Putah South Canal Sediment & Vegetation Study, amendment for extension of term only;

22. Philip Williams & Associates, Wetland Organic Carbon Research, amendment for extension of term only;
23. RMC, IR WMP Assistance, amendment for extension of term only;
24. Solano Resource Conservation District, field support contract, amendment for extension of term only;
25. Solano Resource Conservation District, Watershed and Flood Control Programs, amendment for extension of term and increase of \$86,070 from \$251,202 to 337,272;
26. Somach, Simmons and Dunn, Putah Creek and HCP Legal Services, amendment for extension of term and amended Scope of Work;
27. Southwest Environmental, CII High Efficiency Toilet Replacement Program, amendment for extension of term and increase of \$125,000 from \$251,000 to \$376,000;
28. Streamwise, Geomorphic Assessment and Design, amendment for extension of term only;
29. Summers Engineering, Solano Project R&B Planning and Implementation, amendment for extension of term, amended Scope of Work and increase of \$71,000 from \$100,000 to \$171,000;
30. The Regents of the University of California, LPCCC - Geomorphic Consultation, amendment for extension of term, amended Scope of Work and increase of \$65,000 from \$30,591.02 to \$95,591.02;
31. Thomas Bouffard Architect, PDO Compound Renovation Project, amendment for extension of term and increase of \$20,000 from \$30,000 to \$50,000;
32. Thomas R. Payne and Associates, Fishery Monitoring, amendment for extension of term and updated Scope of Work;
33. Trenham, Upland Habitat Preferences of California Tiger Salamander, amendment for extension of term and updated Scope of Work;
34. The Regents of the University of California, Microhabitat Variables Affecting California Tiger Salamander Localities Habitat Use, amendment for extension of term and updated Scope of Work;
35. The Regents of the University of California, Niche Modeling and Identification of New California Tiger Salamander Localities in Solano County, amendment for extension of term and updated Scope of Work;
36. WaterWorks Consulting, State Water Project Statement of Charge Analysis, amendment for extension of term only;
37. West Yost Associates, Flood Mgmt Tech Support, amendment for extension of term only
38. Western Hydrologic Systems, Flow Rating Services, amendment for extension of term and increase of \$6,964 from \$16,460 to \$23,424;
39. Wildlife Survey and Photo, Solano Project/LPCCC Biomonitoring for Effects of New Zealand Mud Snails, new contract – contract limit of \$145,570;
40. Winzler & Kelly, Solano County CII Water Conservation Program, amendment for extension of term and and increase of \$60,000 from \$308,000 to \$368,000;
41. WR Davis Collaborative, HCP Steering Committee Facilitation, amendment for extension of term and amended Scope of Work;

STATE WATER PROJECT TAX RATE

On a motion by Mayor Augustine and a second by Supervisor Kondylis the Board unanimously approved to establish a tax rate of \$0.02 per \$100.00 of assessed valuation for State Water Project Property Tax for fiscal year 2010-2011.

SCWA BUDGET FOR FISCAL YEAR 2010-2011

General Manager Okita summarized the proposed FY 2010-2011 budget, as recommended by the Executive Committee, for the Board to consider. He discussed that the operating expenditures in the 2010-2011 budget continue to be met by property tax revenues. A motion was made by Mayor Augustine with a second by Mayor Price for adoption of the Water Agency's fiscal year 2010-2011 budget.

CLOSED SESSION

There were no reportable conditions from the closed session.

TIME AND PLACE OF NEXT MEETING

The next regularly scheduled meeting will be Thursday, August 12, 2010 at 7:00 p.m. at the Solano Irrigation District offices.

ADJOURNMENT

This meeting of the Solano County Water Agency Board of Directors was adjourned at 8:00 P.M.

David B. Okita, General Manager
and Secretary to the Board of Directors of the
Solano County Water Agency

June.2010.BOD.min

A-16

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Council Member Hughes
Council Member Ioakimedes

FROM : Director of Public Works and Community Development

SUBJECT : **TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE**

The following is provided for your committee report at the August 17, 2010 Council meeting.

The Traffic, Pedestrian and Bicycle Safety (TPBS) Committee meets quarterly at 7:00 p.m. in the Commission Room at City Hall.

The regular meeting scheduled for July 15, 2010 was cancelled. The next scheduled meeting is October 21, 2010 at 7:00 pm.

A special meeting was held on May 20, 2010, 7:00 pm, in the Commission Room. That meeting agenda is attached for your information.

The meeting minutes of the April 23 and May 6, 2009 special meetings were recently approved and are attached. The meeting minutes from the May 20, 2010 meeting are being reviewed.

Attachments:

- TPBS Committee minutes from April 23 and May 6, 2009 meetings
- TPBS Committee agenda from May 20, 2010 meeting

Approved May 20, 2010
MINUTES
CITY OF BENICIA
TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE
Special Meeting
Thursday, April 23, 2009
7:00 pm

I. CALL TO ORDER -- Meeting called to order at 7:00 pm

1. Roll Call -- Committee Members Present:
Council Member Mark Hughes (Chair), Vice-Mayor Tom Campbell, Director of Public Works Dan Schiada, City Engineer Michael Throne, Sgt. Frank Hartig, Police Department Traffic Division
Staff Present: Senior Civil Engineer Mike Roberts, Administrative Secretary Kathy Trinque.
2. Pledge of Allegiance
3. Fundamental Rights Statement

II. APPROVAL OF MINUTES

Minutes for the November 6, 2008 special meeting were approved by a 5-0 vote of the Committee.

Chairman, Mark Hughes, due to the number of interested parties in the audience, changed the order of the agenda to move Item VI. 1. and 3. to after public comment.

III. PUBLIC COMMENT

1. Request to permit unrestricted use (i.e. 24 hr/day) of the East E Street Parking Lot and to keep the Kuhland Alley gate open at all times (Patrick M. Donaghue – Citizen).

Pat Donoghue stated his request to have the parking lot open because it benefits his business and tenants, helps take parking off of First Street. Wants the gate to be open 24/hours per day. Several other residents want the gate open. Requests that this item be placed on the agenda for the next meeting, but does not want to wait 3 months for the next scheduled meeting.

Mark H: Asked why this item was placed under public comment?

Dan S: I agreed to place it under public comment for the committee to hear, discuss and decide on this issue. We did not want to go through a formal public notification process if we are going to re-open this issue since it was already decided by this Committee a few years ago to close the gate. If there's a desire by this Committee to re-consider opening the gate, we need to re-schedule this under "action items" and notice the neighbors. Another issue was to allow parking 24/hours per day.

Mark H: I feel uncomfortable making a decision without neighborhood notice. We should put it on a future agenda to make a decision.

Frank H: I'm not in favor of the gate being open 24 hours/day because it creates problems with reckless driving and other enforcement issues.

Tom C: I wanted the gates closed at both ends, open during the day and closed at night. Would like to see ropes or barriers that divide the lot into smaller lots to discourage reckless driving.

Dan S: My opinion is that the E Street parking lot has 2 entrances, the main one from East E Street and one from Kuhland Alley. The lot is usable 24 hours/day. The alley allows another use. Staff has tried to compromise by closing the Kuhland Alley gate except for special events. Am strongly against changing the parking restrictions unless we decide to post it closed from 2:00 to 6:00 am to keep cars and recreational vehicles from camping there overnight. We can set a special meeting to hear this item.

Mark H: Let's schedule it before the next quarterly meeting.

Tom C: Asked Pat to come back with solutions/ideas to address reckless driving and other problems that come up with the gate being open.

Tom Campbell made the motion to place this item on a future TPBS Committee agenda for action. Seconded by Frank Hartig. Adopted by a 5-0 vote.

2. Other Public Comments:

Gretchen Burgess of Buena Vista St: At a recent public workshop, parking for the downtown came in #2 as a priority. Citizens want to re-claim this parking lot and open the gate. There are lots of potholes, but these are wonderful traffic calming measures.

Reiko McDonald of 1601 Bayview Cir: The handicap ramp on Military at East 2nd Street is not easy for handicapped people to push the pedestrian button (by Baskin Robbins).

Mike R: Offered to meet her at the site in the near future to look at this problem.

VI. ACTION ITEMS

1. East 2nd Street/Riverhill Drive Crosswalk (M. Roberts/F. Hartig)

Mike Roberts summarized the written report.

Frank Hartig reported on his investigation of the accident that occurred in February 2009. Regarding this accident, the pedestrian was intoxicated and did not use the crossing guard to cross the street, instead he stepped into the path of the vehicle that hit him. There were no injuries. The car was not speeding (determined after the investigation). The PD has worked additional enforcement at this location. No citations were issued as a result of the accident. Both pedestrians and vehicle drivers have to use due caution.

Mike Roberts: We made an effort to inform concerned residents and to look at the flashing warning lights currently in place. All were properly functioning. We need to recognize that 16,000 cars per day use this street. Staff is recommending that we upgrade this crosswalk to a high visibility crosswalk and pursue grant funds to install radar speed signs.

Mark H: It does appear that in this case the pedestrian was at fault.

Resident of Bayview Circle stated that she has observed near misses with crossing guards. Cars don't stop for pedestrians and kids are afraid to cross there. Need blinking lights at the crosswalk.

Judy Arrants of Riverview Terrace stated that she was worried when the new development was built, specifically about increased pedestrians crossing East 2nd Street. Need to do something there to make the crosswalk safer.

Larry Bennett of Riverview Terrace stated that he sees E 2nd Street as a dangerous entrance to town. Often has to turn right instead of left because the street is a race course. Wants the entire corridor addressed with speed bumps or something to slow the cars down. Photo traffic enforcement would help and change the truck route.

Pam Schutz of St. Augustine stated that she doesn't cross there because cars do not stop. There's too much traffic to turn left on East 2nd Street. The entire street needs to be looked at because commuters cut through town when the freeway traffic is stopped. No recommendation but this needs to be addressed.

Gretchen Burgess of Buena Vista stated that she loves ladder crosswalks and the yield to pedestrian signs like they have in Vallejo.

Mark H: Questions from the Committee?

Frank H: We have done some pedestrian stings at this intersection, which is a planned event. We were successful at this intersection. Red light cameras are expensive and we don't have quite enough traffic volume to justify the cost. PD has increased speed enforcement on this street and the vehicle speeds seemed to be OK.

Dan S: I like the ladder type crosswalk because it's helps to increase visibility for the pedestrian. Radar speed signs will also help with vehicle speed. Maybe we need to move the flashing signs closer to the crosswalk.

Michael T: The next step in the works is to add the radar speed signs, then we will make the crosswalks more visible. As the entrance to town it is designed to funnel traffic into the City. We have good site distance here. A ladder crosswalk should be a good improvement and moving the flashing signs with the addition of radar speed signs. We could look into relocating the lighted crosswalk from the high school. We will be salvaging the lights and could move them to this location, as funding allows. A longer

term solution is for a capital improvement project to improve this street, as a gateway entrance to the City.

Motion made by Dan Schiada to install a ladder-type crosswalk here, have staff report back at the next meeting on the grant application, move the BHS lighted crosswalk here and look at the funding and timing of this work.

Seconded by Michael Throne. Tom Campbell recused himself. Adopted by a 4-0 vote.

VI. 3. On-street Parking on East 4th Street between East I and East J Street (Mike Roberts). Mike summarized the written report and passed out exhibits to the committee and members of the public.

Michael Throne recused himself, due to a conflict of interest. Mike Roberts summarized the written report.

Elizabeth Lundberg of 926 East 4th Street passed out pictures of the area and reviewed them with the committee and the public.

Dan S asked what are the solutions you offer the committee?

Elizabeth Lundberg responded that she supports a parking permit program that excludes residents with parking lots; change the curb to emergency drop-off only; no parking on East I Street to East 5th Street. No parking on East J Street to St. Dominic's. Make East I and East J Streets one-way and add a stop sign on East I at East J Street.

Mark H: How many houses are there on East 4th Street in the 900 block?

Mike R: 2 houses.

Julie Peterson, Benicia Housing Authority Director stated that the 20 to 30% rationale is low. Casa de Villarasa tenants choose to park on the street, though the Housing Authority recommends that they use the lots. Residents still want the same right as other residents to park on the street. Submitted a petition from the senior housing complex.

Casa de Villarasa resident stated that he often prefers to park on the street because it's easier for him when he leaves for work and when it's dark. Mrs. Lundberg blocks the sidewalk with her car, then pedestrians have to walk in the street.

Two Casa de Villarasa residents stated that they want to be able to park on the street. Trucks option take up parking on both sides of the street. Wants cars parked where it's easier to see.

Priscilla Bernal stated that a loading zone from 9 to 5, Monday – Saturday would not help during church for the church congestion.

Comments from Tom & Mildred Donahue of 300 East I Street, read by Elizabeth Lund: stated that they are housebound and their visitors cannot find parking. Were assured that Casa de Villerasa residents would be required to park in the parking lot.

Julie Peterson stated that the Housing Authority is not aware of safety concerns on East 4th Street. The management has been in place for 23 years, enforcing the same rules. Some newer residents prefer to park on East 4th Street.

Mike R: I checked with the City Attorney's office and she confirmed that all residents are entitled to use street parking. Staff looked for a parking lot agreement with Casa de Villerasa and did not find one.

Dan S: Regarding the issue with the staircase off the southwest entry, the City looks at it from the standpoint that it met the code at the time it was built. Regarding inadequate handicap access, the Casa de Villerasa complex does have handicap access on site. These two streets are very narrow and in light of traffic calming, narrow streets actually help to keep vehicle speeds down. While parking can be inconvenient, it does help with this traffic calming concept. About the existing 15-minute zone, the intent is for loading and unloading. Maybe we can expand that zone.

Tom C: This is a neighborhood problem. If you expand zones and add no parking, it will reduce available parking spots.

Frank H: The Police Dept. met with the principal of St. Dominic's school to improve student drop-off safety next year. We will continue to work with them. We are trying to find a happy medium for everyone.

Dan: On J Street, on the St. Dominic church side, there were some signs put up, such as no parking, loading during school hours, which left parking open at other times for residents to park. We will continue to work with the schools in this area.

Mark H. We can't make everyone happy on this issue. I appreciate your issues and I understand the Casa de Villerasa residents' concerns also. We can explore some ideas tonight.

Tom C. I know that permit parking doesn't work because everyone here are residents.

Dan: I will offer a motion (we can't address request #1 on the petition) that the Police Dept. and Engineering staff work with St. Dominic's school to review their drop off and pick up activity and report back to the committee at the next meeting with a verbal status and offer some solutions. In addition, we ask the Casa de Villerasa management to encourage residents to use the parking lots and ask vendors to use the parking lots during their deliveries.

Seconded by Frank H and adopted by a 4-0 vote.

Elizabeth Lundberg requested that the Casa de Villerasa ask residents not to park in front of residents' homes.

VI. 2. Safe Routes to School Radar Speed Sign Grant Program (M. Throne)

Michael Throne summarized the written report.

Tom C. How much do these signs cost?

Michael: \$8,000 each and crosswalks cost \$3,000 to \$5,000 each. According to the grant, we can only have two locations. We also need to buy a computer so we can re-program the signs as needed.

Tom C. Can we get more signs added to this grant?

Dan S: The criteria is 2 locations maximum. We can add a landing zone or bulb out on Southampton Road on the church side of the street.

Committee discussion.

Gretchen Burgess: Likes the idea of two locations, but wants signs on both sides of the street.

Motion made by Dan: To confirm the selection of the East 2nd Street corridor and Southampton Road corridor as appropriate Safe Routes to School sections for the placement of radar speed signs and direct staff to maximize the use of grant funds. Seconded by Michael Throne. Adopted by a 5-0 vote.

IV. VERBAL UPDATES

1. Safety enhancements on Drolette Drive near Mary Farmar Elementary School (M. Roberts).

Mike Roberts reviewed the requests we received from the Mary Farmar Elementary School staff. He distributed pictures to the committee.

The following improvements have been made since the last meeting:

- ✓ Bus pull-outs were converted back to employee parking.
- ✓ Old bus pull-outs became a new loading zone.
- ✓ No U-turn signs were installed on Drolette
- ✓ Extended the intersection lines at the nearby intersection.

Read e-mail received from Susan Sullivan, Principal, expressing her thanks to staff for their cooperation and installing the improvements to improve student safety on Drolette Way.

V. INFORMATION ITEMS

1. Benicia High School Signal and Entrance Circulation Improvement Project – Progress Report (Michael Throne)

Michael Throne summarized his written report. We are in process of finishing the final project design and plan to be out to bid next month. Award of contract could occur in June 09. We are on schedule for construction summer.

Mark H: If the road diet doesn't work, is it flexible enough that we could change it?

Michael T: It is not flexible, it's actually done with concrete.

Mike R: It might be interesting to have a mock-up done (with paint) to make sure it works, before school is out.

Mark H: Would ask staff to look into these options.

Committee discussion with Ron Wheat, Vice-principal at Benicia High School. Ron asked if the City would also help them with traffic pattern flows both on and off campus.

2. Regional Signal Timing Program Grant (M. Throne)

Michael summarized the written report. We received a grant from MTC to interconnect/synchronize 2 sets of traffic signals -- one on the East 2nd Street corridor and the other on the Southampton Road/West 7th Street corridor. Does not include all the necessary funding, but will provide a technical consultant to do the work. The idea is that a car could leave the First/Military intersection and travel up East 2nd Street to the freeway without stopping. Will require working with CALTRANS because they own several of the signals.

VII. COMMUNICATION FROM STAFF

Michael Throne announced that Dan is retiring in July, before the next regularly scheduled meeting.

Dan S: This committee has to consider the challenge of working without a registered traffic engineer along with possible committee member changes. We'll include this item on the agenda of the next TPBS Committee meeting.

Adjourned at 9:25 pm.

Respectfully submitted,

Kathy Trinque
Administrative Secretary
Public Works Department

Approved May 20, 2010
MINUTES
CITY OF BENICIA
TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY (TPBS) COMMITTEE
Special Meeting
Wednesday, May 6, 2009
5:30 pm

I. CALL TO ORDER -- Meeting called to order at 5:30 pm

1. Roll Call -- Committee Members Present:
Council Member Mark Hughes (Chair), Vice-Mayor Tom Campbell, Director of Public Works Dan Schiada, City Engineer Michael Throne, Sgt. Frank Hartig, Police Department Traffic Division
Staff Present: Senior Civil Engineer Mike Roberts, Administrative Secretary Kathy Trinque.
2. Pledge of Allegiance
3. Fundamental Rights Statement

II. ACTION ITEM

1. East E Street Parking Lot – Request to keep Kuhland Alley Gate Open at all times and to allow Unrestricted Parking (24 hrs/day)

Dan S. summarized the staff report.

We received a request from Pat Donaghue to eliminate the parking restriction on the East E Street parking lot and keep the gate open 24 hours/day. The TPBS committee heard this request at its April 23, 2009 meeting and considered how/when to schedule it so we could invite neighborhood residents to comment.

To provide some history, this gate was installed about 5 years ago in response to complaints from the neighbors about excessive dust, through traffic and reckless driving. Various options were discussed by this committee at that time and due to budget constraints after consideration by the City Council, staff was directed to install a gate (that would be closed) across the alley access except for special events. This lot is used to capacity as a lot for parking, except during special events. The Committee is open to hear feedback from local residents regarding the gate being open or closed.

Regarding the request to change the parking restrictions, staff considers a need to keep this restriction in place, which is similar to other parks. It resolves problems with minimal lighting and overnight recreational vehicle parking.

Committee discussion/questions:

Tom C: How much would it cost to pave the lot?

Dan: Significantly over \$100k. Keep in mind that this lot is currently being evaluated by the Economic Development Manager for future development – mixed use.

Frank H: Did the Council ever consider adding lights?

Dan: City code requires that all amenities be included, if developed, such as landscaping and lighting. The City has to look at permanent uses also.

Public Comment:

Dave Delgado of 185 East D Street stated that he lived there for 20 years. Supports keeping the gate closed. It's a safety issue with lots of kids on bikes. It's a speed race when the gate is left open. Saw trucks going through the lot to the alley. Wants speed bumps in alley.

Pam Dixon of 161 East D Street stated that she wants a permanent parking lot. Does not want condos built here, but instead wants the lot paved with lights. Not here to discuss gate issue.

Resident from the west side of town spoke in favor of keeping the gate open. This lot serves all residents. Without the gate open, traffic doubles on East E Street.

Charles Allen from 133 East E Street stated that he supports having the gate open. There used to be a barrier at the end of East E Street, but it was removed when an emergency vehicle couldn't get access. Customers want to park at the lot. In favor of having it paved.

Carol de Maintenon of 126 East E Street is in favor of gate being kept open. Business decreased when gate was installed. If there's a problem with spin outs, add berms to the lot. Doesn't want to be boxed in as a cul-de-sac. About overnight parking, she has guests that want to park there. Resident permit parking would take care of the problem.

Kirk Arneson of 110 East E Street is opposed to the gate being open. The lot is unsafe as it currently is.

Tom of East E Street lives across from the lot for 7 years. Supports the current gate closure. Has seen donuts and dust from the parking lot. The gate is not open and closed for events and reduces liability for the City. 24 hr/day parking for events is OK but not for normal daily use.

Craig Arneson is opposed to the gate being open because it's not safe.

Vallejo resident doesn't see lots of traffic there, but has seen spinners. If First Street is closed there's no way into the E Street lot.

Gretchen Burgess of Buena Vista stated that the parking lot needs renovation because parking is needed. Its been discussed before and nothing is done. What are we going to do with the lot? There are potholes at the entrance. It's important to increase parking for economic development. The gate needs to be open and 24 hour parking is OK.

Mr. Shea of 110 E D Street stated that Kuhland Alley is not designed for 2-way traffic. It has potential for accidents. It's more liability for the gate to be open. For safety and residents, keep the gate closed.

Sandra Shannonhouse of 110 East E Street submitted a letter in support of keeping the gate closed. Wants to see the City take care of this parking lot. Mentioned court case from 1985.

Pat Donaghue of 126 East E Street stated that we need to do something about this lot. General Plan addresses this lot as a parking lot. Wants the gate open for business. A majority of residents want the gate open. It will create a danger because we need to develop the lot. I will require my employees and tenants to park in the lot.

Committee discussion:

Tom C. What if we leave the gate open and put in a barrier to create a smaller lot, restrict donuts and leave a larger lot on the other side.

Dan: There are 2 issues, 1 is the gate the other is overnight parking. We will have to get approval for funding before we can improve the lot. Staff will have to look into costs, impacts, lighting, and liability and bring it back as part of the budget process. My concern about overnight parking is safety related. Paving is very expensive...\$240k. Staff may need to work closer with Main Street to make sure gate gets opened and closed during events.

Frank H: We chase the motor homes all over town. Overnight parking is a problem. Restricted parking helps the PD to maintain the safety of the lot. The PD likes it as is.

Michael T: There's not a simple solution. We would need a drainage system, paving, lighting and an environmental study because there's no lighting there now. We can't use gas tax funds or traffic impact funds. The general fund is fairly stressed now and this project would have to compete with other projects for funding. What we have now works. It took care of the prior issues. I recommend that we bring it to the City Council for the budget priority setting session. Economic Development is already looking into this – it may be beyond the TPBS committee's authority.

Dan: In addition to paving, we have drainage issues that may require a full environmental review.

Mark H: I know there's a parking shortage downtown. I have used this lot and it was a congested spot. It is slated for development. If you're passionate that we need a lot, be there at the next meeting. We're not here to decide the future development tonight. It's highly unlikely that the Council will approve a lot of money be spent here. Dust happens with the gate open or closed, not a huge issue. It's an underutilized property. I support the 24 hr parking restriction and support opening the gate for better access to the community. Are there ways to slow down traffic?

Dan S: We can install berms or power poles to create obstacles, but that creates higher liability. We've considered trees, but that's costly because of the maintenance and water. If we open the gate as a trial, then review and see how it is going? The access from Kuhland Alley is narrow—the gate has a narrow opening.

Tom C: showed the committee a sketch of his idea of a sectioned parking lot with a nautical theme – posts with ropes and add reflectors.

Frank: If we put objects in the lot are we responsible?

Mark: What if we do a trial period, say 6 months. We need to develop some ideas about slowing down traffic?

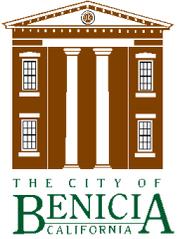
Frank: I'll support opening the gate, but leave parking restrictions in place. I'll do some statistical analysis to track the # of calls for service here.

Dan made a motion: Direct staff to open the gate for a 5-month trial period and come back in October with a report including a plan for safe, inexpensive, temporary barriers to prevent through traffic and keep the current 24 hour parking restrictions in place. Seconded by Michael Throne. Adopted by a 5-0 vote in favor of the motion.

Adjourned at 6:35 pm.

Respectfully submitted,

Kathy Trinqué
Administrative Secretary
Public Works Department



City of Benicia
**TRAFFIC PEDESTRIAN &
BICYCLE SAFETY (TPBS) COMMITTEE**

SPECIAL MEETING

City Hall – Commission Room
Thursday, May 20, 2010
7:00 pm

AGENDA

I. CALL TO ORDER

1. Pledge of Allegiance
2. Roll Call
3. Fundamental Rights Statement

II. APPROVAL OF MINUTES

- April 23, 2009 Special Meeting
- May 6, 2008 Special Meeting

III. PUBLIC COMMENT

IV. PRESENTATIONS:

1. Facilitating Public Participation (Open Government Commissioner, Claire McFadden).
2. Open Government. (City Attorney, Heather McLaughlin)
3. Solano Transportation Authority, Safe Routes to School Program (Sam Shelton, STA).

V. INFORMATIONAL ITEMS:

1. Public Works & Community Development Dept Staffing Update– Mike Roberts, Acting City Engineer
2. St. Dominic School Pick-up/Drop off Activity Report – Sgt. Hartig

VI. ACTION ITEMS

1. Meeting Calendar for 2010.
Recommendation: The Committee review and approve the calendar for regularly scheduled TPBS meetings for the remainder of 2010.

VII. COMMUNICATION FROM STAFF

VIII. ADJOURNMENT

Public Participation

The Traffic Pedestrian and Bicycle Safety (TPBS) Committee 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 TPBS Committee 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 TPBS Committee.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton 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 the TPBS Committee 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 may be taken by the TPBS Committee.

Public Records

The agenda packet for this meeting is available at the Public Works Department, City Clerk's Office and the Benicia Public Library during regular work hours. 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." If you wish to submit written information on an agenda item, please submit to the Public Works Director as soon as possible so that it may be distributed to the Committee.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 10, 2010

TO : Mayor Patterson
Vice Mayor Campbell

FROM : Director of Public Works and Community Development

SUBJECT : **TRI-CITY AND COUNTY COOPERATIVE PLANNING GROUP**

The following information is provided for your committee report at the August 17, 2010 Council meeting.

TRI-CITY AND COUNTY COOPERATIVE PLANNING GROUP

The Tri-City and County Cooperative Planning Group (TCCCPG) will held a joint meeting between the Governing Board (GB) members and the Citizens Advisory Committee (CAC) members on Monday, June 14, 2010.

No activity has occurred since then. Minutes from the Joint Meeting of June 14, 2010 are in draft form and will be presented in September for adoption.

The next scheduled meeting will occur as a Joint Meeting between the CAC and GB and will be held in September this year. The date and location has yet to be determined.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010
TO : Council Member Hughes
FROM : City Manager
SUBJECT : **VALERO COMMUNITY ADVISORY PANEL (CAP)**

The following information is provided for your committee report at the August 17, 2010 Council meeting.

The CAP meets quarterly at 6:30 p.m. at the refinery at 610 Industrial Way. The next meeting date has not been scheduled.

A draft agenda for the meeting held on July 15, 2010 and the minutes from April 29, 2010 meeting are attached.



**Valero Benicia Refinery
Community Advisory Panel (CAP)
Valero East Conference Center
610 Industrial Way, Benicia, CA**

**Thursday, July 15, 2010
6:30 PM – 8:30 PM**

DRAFT AGENDA

Call to Order 5 minutes

- Introductions of CAP and guests
- Approval of Agenda
- Minutes from April 29, 2010

General Refinery Updates – Doug Comeau 10 minutes

- Refining Economics Update
- Turnaround Update
- Coker Update

Community Air Monitoring Station Update – Sue Fisher Jones 10 minutes

- Equipment installation
- Website development

Community Alert Notification System 60 minutes

***City of Benicia Fire Chief Steve Vucurevich &
City of Benicia Fire Marshal Ray Iverson***

- Overview of Report to City Council (July 6 Council Packet; slated for presentation at July 20 City Council meeting)

Next CAP meeting is scheduled for _____ (field trip date)

X.B.12.3

- CAN Community Awareness Plans/Discussion

CAP member terms

20 minutes

- Resignation letter from JB Davis – Community at Large
- Proposed items for realignment of CAP terms
- Process for filling CAP vacancy

Other

10 minutes

- Bylaws items under review
- Set refinery and air quality monitoring trailer tour date
- Public meeting date

Adjourn

Next CAP meeting is scheduled for _____ (field trip date)

Valero Community Advisory Panel (CAP)
DRAFT Summary Meeting Minutes
April 29, 2010

Valero East, Conference Room A

CALL TO ORDER

The meeting was called to order at 6:40 p.m.

The following attended:

CAP Members

Marilyn Bardet	Good Neighbor Steering Committee
JB Davis	Community at Large
Tom Gavin	Community at Large
Mark Hughes	Benicia City Council
Steve McClure	Benicia Chamber of Commerce
Brian Tulloch	BIPA

Absent: Andre Stewart, BUSD

Valero Representatives

Doug Comeau	Vice President & General Manager Benicia Refinery
Chris Howe	Health, Safety, Environment & Public Affairs Director
Todd Lopez	Environmental Manager
Sue Fisher Jones	Public Affairs Manager

Others in Attendance

Steve Vucurevich	Chief, Benicia Fire Department
Tim Winfield	Division Chief, Benicia Fire Department
Don Gamiles	Argos Scientific
Axel Abellard	Argos Scientific
Christie Emmert	Argos Scientific

Approval of Agenda

Agenda for tonight's meeting was approved with requested additions – 1. Adoption of VIP Amendment of Agreement; 2. California Jobs Initiative; 3. BP oil spill in the gulf

Approval of Minutes

Summary minutes from the February 18, 2010 CAP meeting were approved with one correction: removal of Eldon's Peterson's names from list of attendees.

General Refinery Updates – Doug Comeau

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Cal/OSHA VPP STAR recertification week – Mr. Comeau described the rigorous process required for recertification as a VPP STAR site. The refinery first earned the designation in 2006. A Cal/OSHA team has been at the refinery all week auditing the refinery's safety practices and procedures, and the recertification process is going well. It appears the refinery will be recommended for recertification.

- Refining Economics Update -- As previously reported by Mr. Comeau in January, the recession has impacted the refinery industry in many ways, particularly in regards to the demand for gasoline, diesel and jet fuel. Product demand increased slightly nationally last year, but not in California. The first quarter of the year refinery was not profitable, but April looks favorable and it appears the corporation will be profitable in 2010, a change for the positive from previous forecasts.
- Projects Update – Mr. Comeau reported that substantial progress has been made in the construction of the Flue Gas Scrubber (FGS) which is 43% complete. Currently, the refinery is employing 820 contract employees on the FGS, 660 on days, 160 on nights. All materials are on site, though we did experience late deliveries of some materials and the winter rains played a role in slowing the construction. The FGS will reduce about 6,000 tons of sulfur dioxide (SO₂). We will get the CAP scheduled for a tour.
- Turnaround Planning – A company called AP Networks assessed the refinery’s readiness for turnarounds (maintenance projects) and found that, overall, the refinery was rated above average. A mid-cycle turnaround will be held in October for several refinery units and then the refinery-wide turnaround has been moved from the fourth quarter of 2010 to the first quarter of 2011.
- 2010 Amendment to 2008 VIP Settlement Agreement – On Tuesday, May 4, the City Council will adopt the Amendment to the 2008 VIP Settlement Agreement. Projects supported by this amendment include the Benicia Community Center (LEED Design), an enhancement of the Liberty High School campus, the refinery’s Condensate Recovery Projects, and more. Mr. Comeau indicated that the agreement and the amendment have allowed the refinery to proceed with its construction projects at a time when other Bay Area refineries have seen projects halted. Chair Bardet, a member of the Good Neighbor Steering Committee, complimented the management of the Benicia refinery for their cooperative spirit and said that the efforts to save water and energy is remarkable.
- California Jobs Initiative – Chair Bardet indicated that the initiative delays the implementation of AB32 until unemployment rates are favorable; it does not does not scrap the legislation. At the time the bill was signed, the unemployment rate in California was 4.8%; California’s unemployment rate is now higher than 12%. The initiative proposes a delay in the implementation of the AB32 until unemployment averages 5.5% or less over four consecutive quarters. Signatures have been collected in order to qualify this initiative for the November 2010 ballot. Valero Energy Corporation is one of the sponsors of the initiative. The website for more information is www.jobs2010ca.com.

- Gulf Oil Spill – Mr. Comeau responded to a query about the impact of the gulf oil spill on Valero. From an industry perspective, one would expect additional safety issues and requirements in the future. Valero does not have oil exploration, but increased costs for the purchase of crude will likely occur.

Community Air Monitoring Station

- Don Gamiles, president of Argos Scientific, gave a presentation on community air monitoring. His company has previously worked with the refinery in conjunction with the Bay Area Air Quality District temporary air monitoring station in 2007-2008 on refinery property near Tennys Drive, site of the new community-owned station. Argos Scientific manages community air monitoring systems that focus on local air quality. The Benicia station will analyze mobile sources as well as stationary sources. He discussed equipment that will be part of the Benicia station:

1. Entech Canister Sampling
2. OdaLogger Portable H₂S Monitor
3. RM Young Meteorological Station
4. Met One PM 2.5 Sampling System
5. Ozone Monitor
6. Black Carbon Monitor
7. Open –Path UV Fenceline Monitor (not sited/installed pending review of possible locations)
8. Automated GC Analysis System Model
9. UV Hound (purchased and installed previously during BAAQMD Air Monitoring ; reinstalled now)

The equipment specified for the Benicia station is primarily portable; he demonstrated the canister-sampling device as an example.

Mr. Gamiles reported that after running an air monitoring station for months, air quality trends begin to appear in the data based on wind directions. This can assist in determining the source of the chemicals, some which emit odors.

A beta test of a website for Benicia was also demonstrated, displaying data from a real-time (updated every five minutes) monitoring station in Rodeo that has been operational for several years. Mr. Lopez expressed that the data on the website needs to be presented in context with reference to thresholds standards. Mr. Gamiles noted that information on the website should not be used as a basis for a community alert as it is raw data and is not verified.

The air monitoring station has operational funding for two years.

Other

- Valero Benicia Refinery received statewide recognition and an award from the California Peace Officer Association thanks to a nomination by the Benicia Police Department. The award will be presented in Los Angeles on May 25.
- The CAP Bylaws are being reviewed to addresses a number of housekeeping issues. Mr. Tulloch suggested we extend the CAP chair tenure which Bylaws show as six months.

Next meetings

The next meeting date will be set later to allow for summer calendar schedules to be reviewed.

Adjourn

There being no further business, the meeting adjourned at 8:25 p.m.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORT

DATE : August 10, 2010

TO : Mayor Elizabeth Patterson
Council Member Tom Campbell
Council Member Schwartzman

FROM : Youth Action Coalition

SUBJECT : **YOUTH ACTION COALITION**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

The Benicia Youth Action Coalition did not meet in July. The next BYAC meeting will be held on Wednesday, August 25, 2010, 3:30 p.m. in the Commission Room at City Hall. The agenda is not yet available.

Chief here's info for your report.

**YOUTH ACTION TASK FORCE
STRATEGIC PLANNING SESSIONS (June 13, 2008 and July 30, 2008)
REPORT**

The Benicia City Council directed City staff to coordinate a strategic planning process earlier this year to open discussion with stakeholders regarding the mission, vision, goals, activities and operating plan of the Benicia Youth Action Task Force (YATF). Following identification and coordination with a number of identified stakeholders, including regular YATF participants and City and School District representative, this Strategic Planning Session was scheduled on June 13, 2008. The City coordinated this effort with Sharon O'Hara, the Director of the Center for Community Action & Training (CCAT), which is funded in part by a technical assistance and training subcontract from the California Department of Alcohol and Drug Programs. Ms. O'Hara served as the facilitator for the first Strategic Planning Session.

At the June 13, 2008 Planning Session the following were in attendance:

City Manager Jim Erickson
Council Member Alan Schwartzman
Council Member Mike Ioakimedes
Janice Adams, Superintendent BUSD
Spence Rundberg, Psychologist, BUSD
Curtis Hunt, ATOD All City Teams Coordinator
Karen LaRiviere, Parent/Benicia High School Site Council
Allison Angell, Benicia Public Library
Mary Frances Kelly Poh, Community Action Council
Rosie Switzer, BUSD trustee
Chief Sandra Spagnoli, Benicia Police Department
Patti Baron, Benicia Police Department
Jerry Pollard, BPD Chaplaincy Corps, Faith Community, BERT
Annie Lloyd, Parks and Cemetary Commission, BUSD (retired)
Jim Trimble, MSA Advisory Board, Rotary Club
Jane Aberle, Principal Liberty High School
Gary Wing, Crisis Response Team, Youth Pastor

The group discussed the following:

What members wanted to get from the day?

Clarity and consensus on:

- Vision-A subcommittee appointed to develop statement.
- Mission- Current mission statement approved as is
- Name Change needed

- **Structure-Establish group leadership with a Chair and Vice Chair**
- **Membership-discussed membership sectors as required by ATOD grants**
- **Decision Makers-who gets to actually vote, establish rules/procedures**
- **Definition of Coordination-new coordinator role and Chair**
- **Communication Plan-expectation of members**

The group also reviewed past successes and challenges. CHIEF IF YOU NEED ME TO ITEMIZE THESE FROM THE PLANNING NOTES THAT I ALREADY DID LET ME KNOW.

At the end of the day, the group agreed that a second Planning Session was needed to finalize the action items. The second Planning Session was held on July 30, 2008 in the Commission Room at City Hall and was facilitated by newly hired YATF Coordinator Patti Baron.

The following members attended the July 30, 2008 Strategic follow planning session:

Council Member Alan Schwartzman

Council Member Mike Ioakimedes

Janice Adams

Jim Trimble

Gary Wing

Karen LaRiviere

Spence Rundberg

Jerry Pollard

Mary Frances Kelly Poh

Rosie Switzer

Allison Angell

Sandra Spagnoli

Patti Baron

The following action items were discussed and finalized.

- 1) The Youth Action Task Force name has been changed to Benicia Youth Action Coalition.**
- 2) A Vision Statement was established – “Benicia Supporting Youth for a Successful Future”.**
- 3) A sub committee will meet on August 13, 2008 to develop rules and procedures policy and present to the coalition at the August meeting.**
- 4) Nominations for a Chair and Vice Chair are being accepted from the group, deadline for nominations is August 13th. The newly elected Chair will preside over the August 27th Coalition meeting.**

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 17, 2010
COUNCIL MEMBER COMMITTEE REPORTS**

DATE : August 10, 2010
TO : City Council
FROM : Mayor Patterson
SUBJECT : **ABAG/CAL FED TASK FORCE/BAY AREA WATER FORUM**

The following information is provided for your committee report at the August 17, 2010 City Council meeting.

The Bay Area Water Forum has moved to a quarterly meeting format for the 2010 year.

The next meeting will be held on Monday, September 27, 2010. Meetings are from 10:00 a.m. to 12:30 p.m. at the State Coastal Conservancy, 11th floor conference room, 1330 Broadway at 13th Street, Oakland.

The topic for the next meeting is:

- Aging Water, Wastewater and Flood infrastructure and Climate Change
- Federal Stimulus Projects

REQUEST FOR ITEM ON COUNCIL AGENDA

Requested by:

Council Member Campbell

Requested Council Meeting Date:

August 17, 2010

Agenda Item Name:

Request to agendize a discussion of Port Fees

Since 2007 Benicia has reduced it's expenditures by \$3.5 million but is still facing structural deficits of \$1.2 million annually for the next several years if the economy doesn't improve. These annual deficits are in large part do to property tax revenue decreases that won't be quick to rebound. Future annual deficits may be less depending on the present labor contract negotiations and expenditure cuts but these strategies alone won't solve the budget deficits.

Benicia leases to Amports, a subsidiary of AIG's Highstar Capital, the port wharf and 235 acres commonly referred to as the Tidland leases that comprise most of the land accessing the Carquinez Strait south and east of Bayshore Road. Over the past 46 years Benicia has received a very small amount of money directly from the operation of the port even though it owns the land next to the water. This was in part due to the original 1964 Port Master Lease that gave 99½ % of all revenues generated in the Arsenal/Port to Benicia Industries, the previous port lessee, who Amports bought; and also in part from the 1975 Port Land Exchange Agreement. Given that Benicia will not rebound for many years from the severe loss in property tax revenues it's time to explore all potential sources of revenue for the City including Port Fees. For example, in the past up to 150,000 cars have annually passed through Benicia's Port and disproportionately used some of Benicia's Port/Arsenal streets. If the City were to charge only \$6 /car for the Port use, it would generate \$900,000 per year. While the present global economic recession has reduced Port activity, it is very likely Port activity will increase long before City Property tax revenues return to pre 2007 levels. Port Fees are extremely common among California port cities and after charging nothing for 46 years it may be time for Benicia to exam Port fees.

