

August 19, 2008 Regular Meeting
BENICIA CITY COUNCIL MEETING
REGULAR AGENDA

City Council Chambers

August 19, 2008

7:00 P.M.

I. CALL TO ORDER:

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO FUNDAMENTAL RIGHTS OF THE PUBLIC

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/ PROCLAMATIONS:

A. ANNOUNCEMENTS:

1. Announcement of Closed Session, if any.

2. Openings on Boards and Commissions:

Sky Valley Open Space Committee:

One unexpired term to September 30, 2010

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 746-4210 or by email acardwell@ci.benicia.ca.us.

B. APPOINTMENTS:

C. PRESENTATIONS:

[Solano County Status Report on Seniors](#)

-Senior Coalition of Solano County

D. PROCLAMATIONS:

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN

B. PUBLIC COMMENT

VII. CONSENT CALENDAR:

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 15, 2008](#). (City Clerk)

B. [Second reading and adoption of an ordinance establishing permitting and regulatory requirements for massage therapists and related fees](#). (Police Chief)

Currently, the Benicia Municipal Code requires massage therapy businesses to obtain a business license. This ordinance provides professional guidelines for regulating and licensing massage therapists working in these businesses. A recommended fee schedule has been established to cover the cost of permitting. It is also recommended to waive the permit fees

(one-time only) for current businesses that will be grandfathered into this ordinance to be brought into compliance.

Recommendation: Adopt the ordinance establishing massage regulations and the resolution amending the Master Fee Schedule.

C. [Authorization of repair of the In-Line Roller Hockey Rink surface.](#) (Parks & Community Services Director)

The In-line Roller Hockey Rink surface has been evaluated by staff and is showing signs of lifting and surface separation. In an effort to avoid any potentially unsafe conditions, staff is recommending removing and repairing the affected areas. To remedy the situation and maintain a safe surface staff is requesting authorization to issue a contract for repair. The cost to repair the surface is \$48,680. There is currently \$20,000 budgeted in Park Dedication (047-9047-9610) for the In-Line Hockey facility. It is proposed \$28,680 be transferred from the Bridgeview Park Improvements (047-9047-9625) to cover the balance.

Recommendation: Adopt the resolution authorizing repair of the In-Line Roller Hockey surface in the amount of \$48,680.

D. [Authorize consulting services agreement with Darrell Dearborn for Interim Economic Development Manager.](#) (City Manager)

The City of Benicia's Economic Development Manager will be on leave for approximately five months between October 2008 and March 2009. Darrell Dearborn, a former senior deputy city manager in San Jose, will act as interim Economic Development Manager during the term of the proposed agreement for a cost not to exceed \$61,000.

Recommendation: Authorize entering into a Consulting Services Agreement with Darrell Dearborn to serve as Interim Economic Development Manager for October 2008-March 2009.

E. [Approval of an agreement with Meyers Nave for legal services related to the Amatrone law suit.](#) (City Attorney)

The City has been served with a lawsuit related to the adult entertainment moratorium. This requires the assistance of specialized legal counsel. The actual cost of this agreement cannot yet be determined since the amount of work will depend on how long and how complex the litigation is.

Recommendation: Authorize the City Attorney to execute the agreement with Meyers Nave for legal services related to the Amatrone lawsuit.

F. [Support of preserving Proposition 10 and opposing any efforts to divert or reprogram Proposition 10 funds.](#) (City Manager)

The local impact of diversion or reprogramming of Proposition 10 funding to address the state budget crisis would result in substantial local harm to community-based organizations, school districts and public agencies funded by First 5 Solano, which has long-term commitments of over \$4 million annually. The proposed resolution supports the preservation of Proposition 10 structure and funding and opposes any efforts to divert or reprogram such funds. There is no budget impact associated with this action. Although, should the state elect to divert or reprogram Proposition 10 funds, the City's Family Resource Center could lose up to half of its funding, or approximately \$20,000 over the next two fiscal years.

Recommendation: Adopt the resolution supporting preservation of Proposition 10 and opposing any efforts to divert to reprogram Proposition 10 funds.

G. [Designation of League of California Cities voting delegates and alternates.](#) (City Manager)

The League of California Cities' 2008 Conference will be held September 24-27, 2008 in Long Beach. The Annual Business Meeting at the conference will be September 27th and, in order to vote at that meeting, the City Council must designate a voting delegate. The City may appoint up to two alternate voting delegates in the event that the designee is unable to serve in that capacity. The voting delegate must be present at the meeting in order to cast a vote. The League membership considers and acts on resolutions that establish League policy at the meeting. The City's current League appointed representatives are Mayor Patterson and Council Member Schwartzman (alternate). There is no budget impact associated with this action.

Recommendation: Approve, by motion, the designation of one voting delegate and up to two alternates to represent the City of Benicia at the League of California Cities Annual Business Meeting.

H. [Approval of modifications to the allocation of positions in the Benicia Fire Department and approving the job description and salary range for Fire Division Chief.](#) (City Manager)

The proposed reorganization in the Benicia Fire Department would replace one existing Deputy Chief position and one Administrative Captain position with two Fire Division Chief positions. The recommended action approves the job description and salary range for the new Fire Division Chief position. It also modifies the allocation of positions presently authorized in the 2007-09 Budget by replacing one Deputy Chief position and the Administrative Captain position with two new Fire Division Chief positions. This change is cost neutral, as it does not result in any additional positions and the salary adjustments will not increase overall personnel costs for the department.

Recommendation: Adopt the resolutions modifying the allocation of positions in the Benicia Fire Department and establishing approving the Fire Division Chief job description and salary range.

I. [Support of the Solano County Water Agency Delta Policy and the Solano County Guiding Principles for use in Delta and statewide water policy development.](#) (Public Works Director)

To strengthen Solano County's position in present state negotiations and processes for developing a "solution" to Sacramento-San Joaquin River Delta problems, the Board of Supervisors has requested City support of the County's April 1, 2008 "Guiding Principles for use in Delta and Statewide Water Policy Development." Solano County Water Agency has produced a similar document, which is recommended for City support as well. There is no budget impact associated with this action.

Recommendation: Adopt the resolution supporting the Solano County Water Agency Delta Policy and the Solano County Guiding Principles for use in Delta and statewide policy development.

J. [Introduction of ordinances amending the Benicia Municipal Code to incorporate building and other "uniform" code revisions and to adjust related fees.](#) (Community Development Director & Fire Chief)

The State of California promulgates uniform construction related codes for statewide use. This ensures quality building construction and greater public safety by standardizing building laws and promoting consistency in construction costs for every jurisdiction within the state. These codes are reviewed and updated on a 3-year cycle and published by the International Code Council, the International Association of Plumbing and Mechanical Officials and the

National Fire Protection Association. Since 1998, the State used the 1997 edition of the Uniform Building Code as the basis for the California Building Code. Effective January 1, 2008, the state began using the International Building Code as the basis for the California Building Code. Cities have the discretion to adopt other uniform codes published by these organizations and specific local amendments due to local climatic, geological or topographical reasons. Individual jurisdictions must use the codes as adopted by the state. Many of the changes in the city codes were necessary to adjust language to reflect wording in the new state code and to adjust chapter numbering. Proposed inspection fee increases are based on a 2003 study to reflect true inspection costs.

Recommendation: Introduce the ordinances amending, deleting and/or adopting changes to the Benicia Municipal Code including Chapter 8.28 (Fire Prevention and Life Safety Code) of Title 8 (Health and Safety) and various chapters of Title 15 (Buildings and Construction) to address local conditions as required by State law:

- 1) Chapter 8.28 Fire Prevention/Life Safety Code
- 2) Chapter 15.04 California Building Code
- 3) Chapter 15.08 California Mechanical Code
- 4) Chapter 15.12 California Plumbing Code
- 5) Chapter 15.16 California Electrical Code
- 6) Chapter 15.18 Uniform Housing Code
- 7) Chapter 15.20 Uniform Code for the Abatement of Dangerous Buildings
- 8) Chapter 15.22 Uniform Administrative Code
- 9) Chapter 15.24 Work/Live Occupancy Code
- 10) Chapter 15.26 Building Permit Fees and Other Fees

This may be done as one motion if no changes to the drafts are desired.

K. [Approval of a building inspection services agreement with Marker Lovell.](#) (Community Development Director)

Marker Lovell has been providing on-call building inspection services to the City for over twelve years when workload demands. Mr. Lovell's hourly rate is substantially lower than utilizing staff from other outside agencies. The agreement shall not exceed \$50,000 and the term of the agreement is July 1, 2008 – December 30, 2009.

Recommendation: Adopt a Resolution approving a consultant agreement with Marker Lovell for Building Inspection Services and authorizing the City Manager to execute the agreement on behalf of the City.

L. [Award of consultant contract and payment agreement for plan check and inspection of the Valero Improvement Project.](#) (Community Development Director)

The Valero Improvement Project includes a number of major construction projects within the refinery that are designed to increase efficiency of the plant and reduce emissions. The Building Inspection Division is required to review plans and perform inspections to insure compliance with State and local regulations. Due to the specialized nature of the proposed construction, an outside consultant will be needed to assist with plan review and inspections. Valero will pay the cost of outside consultant services in accordance with the attached payment agreement between the City and Valero. This agreement will impose a 15% fee to pay for City overhead costs. Valero will be required to reimburse the City for the actual cost

of plan check and construction inspection services, plus a 15% fee for overhead costs. The estimated cost to perform this work over a 5-year period is \$600,000.

Recommendation: Approve a resolution authorizing the City Manager to execute a contract for consulting services with Bureau Veritas North America, Inc., and to approve a payment agreement between the City of Benicia and Valero Refining Company – California for plan check and construction inspection for the Valero Improvement Project.

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

VIII. PUBLIC HEARINGS:

NONE

IX. ACTION ITEMS:

A. Introduction of an ordinance adding a new Chapter 12.52 (Newspaper Racks and Stands) to Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code. (City Attorney)

On July 1, 2008 the City Council reviewed a draft ordinance regulating newspaper racks be drafted. The ordinance was designed to regulate the placement, appearance, number, size and servicing of news racks on the public right-of-way. An encroachment permit would be required for the placement of a rack on the public right-of-way. For the Downtown Mixed Use Master Plan area, news racks would be subject to additional locational requirements. The City Council requested regulations to standardize the racks that contain the newspapers and to reduce the overall number of new racks. The draft ordinance has been revised to reflect those changes.

Recommendation: Introduce the ordinance regulating newspaper racks and stands.

B. Opposition of state budget decisions that would borrow local government, redevelopment and transportation funds. (City Manager)

The proposed resolution conveys the City's opposition to the state taking local government, redevelopment or vital transportation revenues to fund the state budget. The voters resoundingly agreed that local government should not continue to serve as the source of funding the meet the state's financial obligations when they passed Proposition 1A in 2004. They also voted in 2006 to protect Proposition 42 revenues for critical transportation infrastructure improvements. The state needs to find a way to resolve its budget problems without "borrowing" or seizing funds meant for local government. There is no immediate budget impact associated with this action, although there would be impacts to the City's budget should the state rely on local government to balance its budget.

Recommendation: Adopt the resolution opposing fiscally irresponsible state budget decisions that would "borrow" local government, redevelopment and transportation funds.

C. Consideration of mid-cycle budget adjustments for Fiscal Years 2007-2009. (Finance Director)

During the April 15, 2008 review of the Municipal Budgets, staff requested additional time to assess the impacts of an expected State Budget, develop year-end financial projections for FY 2007-08 and update budget estimates for FY 2008-09. Unfortunately, the State has not approved a budget yet, which may lead to budget-balancing in the near future. In the meantime, staff is recommending that budget adjustments be considered for FY 2008-09 to recognize changes in expected revenues and expenditures to allow for the uninterrupted continuation of current service levels in all departments and the completion of prioritized

capital projects. The "status quo" recommendations include discretionary and non-discretionary budget adjustments in all City funds based upon preliminary year-end closing numbers. The General Fund Undesignated Fund Balance is estimated to be \$7,057,725 or 22.3% at the end of FY 2007-08 and \$6,598,720 or 20.0% at the end of FY 2008-09.

Recommendation: Adopt the resolution approving budget adjustments for FY 2007-2009.

D. [Introduction of an ordinance amending Title 2 \(Administration and Personnel\) and Section 4.20.010 \(Open Government Commission\) of the Benicia Municipal Code to Standardize the general rules for boards and commissions.](#) (City Attorney)

On July 1, 2008, the City Council discussed term limits and lengths for City boards and commissions. The Council directed staff to make changes to the applicable ordinances so that all the boards or commissions established by ordinance have similar rules. The ordinance provides for standardized terms of office; appointment, reappointment and vacancy procedures; attendance requirements; quorum; rules of procedure requirements; use of support staff; compensation; statement of economic interest; and removal. Optional language is provided for the Council's consideration on removal. There will be no effect on the budget.

Recommendation: Introduce the ordinance to standardize the rules applicable to boards and commissions. The ordinance also reorganizes Title 2 into two divisions to group similar chapters together. Amendment of Section 4.20.010 is needed to remove the term and term limit provisions for the Open Government Commission.

X. INFORMATIONAL ITEMS:

A. Reports from City Manager:

1. [Valero Improvement Project Settlement.](#) (City Manager)

On July 10, 2008, the Planning Commission approved amendments to the 2003 Use Permit for the Valero Improvement Project. A condition of that approval requires Valero to provide \$14 million in funding for community environmental protection programs, as formally agreed to by Valero and the Good Neighbor Steering Committee (a group of local concerned citizens). Appropriate uses for these funds have been preliminarily identified.

Recommendation: Direct staff to prepare a complete list of programs for allocating funds from the 2008 Valero Improvement Project settlement, including for water conservation and greenhouse gas reduction demonstration projects at City facilities such as the Community Center and Library, and for conservation projects involving City operations, such as planting street trees, shifting to low-water-demand landscaping and improving water metering capabilities.

2. [Update on strategic planning process for the Youth Action Task Force \(YATF\).](#) (Police Chief)

On June 13, 2008 members of the Youth Action Task Force participated in a Strategic Planning session facilitated by Sharon O'Hara, a professional facilitator. The purpose of the meeting was to review committee operations, goals and objectives. A second planning session was held on July 30, 2008 in the Commission Room at City Hall and was facilitated by YATF Coordinator Patti Baron.

Recommendation: This is an informational report, no action is necessary.

3. [Update from the Police Chief regarding public safety statistics and comparisons.](#) (Police Chief)

The Police Chief will present a summary of the 2007 and 2008 (year-to-date) Uniform Crime Reports for Benicia. An overview of Benicia's policing philosophy will also be provided by the Chief, along with a summary of important crime prevention strategies.

Recommendation: This is an informational report, no action is necessary.

B. [Council Member Committee Reports:](#)

(Council Members 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 Council Members are made only by exception.)

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

Next Meeting Date: August 20, 2008

2. Association of Bay Area Governments (ABAG). (Mayor Patterson & Vice Mayor Campbell)

Next Meeting Date: October 24, 2008

3. Audit & Finance Committee. (Vice Mayor Campbell & Council Member Schwartzman)

Next Meeting Date: September 5, 2008

4. League of California Cities. (Mayor Patterson & Council Member Schwartzman)

Next Meeting Date: Annual Conference – September 24-27, 2008

5. School Liaison Committee. (Council Members Ioakimedes & Hughes)

Next Meeting Date: August 28, 2008

6. Sky Valley Open Space Committee. (Vice Mayor Campbell & Council Member Ioakimedes)

Next Meeting Date: October 1, 2008

7. Solano EDC Board of Directors (Mayor Patterson & Council Member Ioakimedes)

Next Meeting Date: September 25, 2008

8. Solano Transportation Authority (STA) (Mayor Patterson & Council Member Schwartzman)

Next Meeting Date: September 10, 2008

9. Solano Water Authority/Solano County Water Agency (Mayor Patterson & Vice Mayor Campbell)

Next Meeting Date: September 11, 2008

10. Traffic, Pedestrian and Bicycle Safety Committee (Vice Mayor Campbell & Council Member Hughes)

Next Meeting Date: October 16, 2008

11. Tri-City and County Regional Parks and Open Space (Vice Mayor Campbell & Council Member Hughes)

Next Meeting Date: CAC: August 20, 2008; Governing Board: September 8, 2008

12. Valero Community Advisory Panel (CAP) (Council Member Hughes)

Next Meeting Date: To be determined.

13. Youth Action Task Force (Council Members Ioakimedes & Schwartzman)

Next Meeting Date: August 27, 2008

14. ABAG/CAL FED Task Force/Bay Area Water Forum (Mayor Patterson)

Next Meeting Date: August 25, 2008

XI. COUNCIL MEMBER REPORTS:

A. [Request to agendaize an update of the graffiti ordinance.](#) (Mayor Patterson)

Mayor Patterson is requesting that the Council consider agendaizing an update to the graffiti ordinance.

Recommendation: Consider agendaing for a future City Council meeting.

XII. ADJOURNMENT:

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-agenda items under public comment, and on agenda 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 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 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.

-  [IV-C Presentation.pdf](#)
-  [VII-A Minutes.pdf](#)
-  [VII-B Massage Ordinance.pdf](#)
-  [VII-C Roller Hockey Surface.pdf](#)
-  [VII-D Interim EDM.pdf](#)
-  [VII-E Meyers Nave Agreement.pdf](#)
-  [VII-F Prop 10 Funds.pdf](#)
-  [VII-G LoCC Voting.pdf](#)
-  [VII-H BFD.pdf](#)
-  [VII-I SWA.pdf](#)
-  [VII-J Building Code.pdf](#)
-  [VII-K Bldg Inspection Contract.pdf](#)
-  [VII-L VIP Contract.pdf](#)
-  [IX-A Newsracks Ordinance.pdf](#)
-  [IX-B Opposition to State Borrowing.pdf](#)
-  [IX-C MidCycle Budget Adjust.pdf](#)
-  [IX-D Boards & Commissions.pdf](#)
-  [X-A-1 VIP Settlement.pdf](#)
-  [X-A-2 YATF.pdf](#)
-  [X-A-3 Public Safety Update.pdf](#)
-  [X-B-1 Committee Reports.pdf](#)
-  [XI-A Council Member Request.pdf](#)

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
PRESENTATION**

DATE : August 6, 2008
TO : Mayor & City Council
FROM : City Manager
SUBJECT : **SOLANO COUNTY STATUS REPORT ON SENIORS**

RECOMMENDATION:

None, this is a presentation, no action is necessary.

EXECUTIVE SUMMARY:

The Senior Coalition of Solano County, at the suggestion and direction of the Senior Issues Committee of the County Board of Supervisors consisting of Supervisor Reagan and Supervisor Vasquez, conducted a study on the social, economic, health and well-being of the senior population in Solano County. The Status Report on Seniors is the culmination of that project. The Senior Coalition requested the opportunity to make a presentation to the City Council which will highlight some of the key findings pertaining to seniors in Solano County.

Attachment:

- Executive Summary of Solano County Status Report on Seniors

Executive Summary

The Senior Coalition of Solano County, at the direction of the County Board of Supervisors, conducted a study on the social, economic, health, and well-being of the senior population in Solano County. The findings of the study are summarized in this report and provide a high level, point-in-time, view of older adults living in Solano County. For the purposes of this report, the definition of “older adult”, “senior”, or “elder”, unless otherwise indicated, refers to persons aged 65 years and older.



Beatrice of Vallejo



John of Fairfield



Suzanne of Benicia



Alice of Suisun



Kazuko, Reihs, Eduardo,
and Chicko of Dixon

The Changing Population: Issues and Opportunities

As forecasted, the population is aging and changing at an unprecedented rate. Never before in history has the number of older adults outnumbered the number of children under the age of five years old.¹ By 2050, the number of older adults is projected to increase to 400% of the year 2000 levels, with those aged 85 years old and older increasing by 600%. The racial, ethnic, and linguistic composition is likewise changing. By 2030, Caucasians will no longer be the majority in Solano County.

These demographic changes have broad and profound implications for the economic, health care, and social systems. The first of the baby boomers began drawing social security benefits in January 2008. An estimated 77 million more are to follow over the next 20 years, shifting the

ratio of working adults to retirees considerably. Potential labor shortages as well as, a financial toll on the Social Security and Medicare systems, will result.

Projections suggest that by the year 2030, social security expenditures will exceed income from taxes resulting in either a tax rate increase or a reduction in retirement benefits.² A majority of Americans are not saving enough for their retirement years and there are segments of the population who do not earn enough income to save adequately for their older years.³ Delaying retirement, or returning to work, will become a necessity for many.

In Solano County it is estimated that 19% of older adults in 2006 did not have an income sufficient to meet their basic needs without assistance. Housing costs present one of the biggest financial burdens and the supply of subsidized housing is scarce.

Multiple factors interact to affect the overall economic, health and well-being outcomes for older adults. Health and well-being are contingent upon having adequate resources to meet basic needs, lower stress, and provide for sustained independence. Individuals who have financial resources are able to afford appropriate and safe housing, pay for transportation services if needed, hire someone to help with household chores or personal care, and pay for any medications or medical procedures needed to combat illness and disease. Economic security is correlated with better health and increased longevity.^{4,5} Conversely, good health permits individuals to work longer, have fuller lives, and reduce out-of-pocket health care expenses.



Exercise programs and facilities offer older adults opportunities to stay physically active and socially engaged. The YMCA in Suisun offers a wide range of exercise classes to build strength, flexibility and balance, including therapeutic programs for individuals with arthritis and disabilities. Over 550 older adults throughout Solano County use the YMCA for the tailored programs and affordability. Due to economic conditions the YMCA is scheduled to close potentially leaving many older adults and other County residents, children and adults alike, without an affordable alternative.

Many, but not all, of the challenges individuals face as they age can be remedied through proactive, preventative measures. It has been widely documented that lifestyle habits such as balanced nutrition and physical exercise prevent or postpone chronic diseases (e.g., heart disease, cerebral-vascular disease) that are the leading cause of disability and death in this country.

Quality of life, physical functioning, and therefore independence are vastly improved through nutrition and physical activity. Older adults in Solano County scored favorably when compared to national health objectives as set forth in Healthy People 2010, in proper nutrition, no smoking behavior, and health screenings. Considerable improvement needs to be made in physical activity levels and immunizations.

The aging population brings with it many challenges, but it also brings opportunities. Not all older adults face financial insecurity or significant health impairments. Many contribute to society through volunteer work, caregiving, and charitable donations. Up to 30% of older adults in Solano County reported that they volunteer. Studies on volunteerism in older adults document significant economic and social benefits to community as well as health benefits to the volunteer. Efforts are needed to support and encourage volunteering and tap into the wealth of social resources that exist in older adults.

Recommendations

Recommendations in this report fall into two categories: those for individuals, and those for communities and government. In general, individuals are advised to prepare for their retirement years and engage in healthy behaviors throughout their lives. Communities are advised to prepare for a shift in needed services, and to provide opportunities for older adults to be fully engaged and active.



Pastor Harrel L. Wiley III. Husband, father, grandfather, pastor, accomplished musician, business owner, community member and resident of Vacaville. Pastor Wiley has dedicated his life to service of others. He and his wife, Judi, have been pastoring New Life Christian Center for 26 years. Pastor Wiley, in service to his community and Solano County, produced a Christian CD featuring local Christian artists and is donating the proceeds to Mission Solano.

¹ *Why Population Aging Matters: A Global Perspective*, (March 2007). National Institutes of Aging, National Institutes of Health, U.S. Department of Health and Human Services, http://www.nia.nih.gov/NR/rdonlyres/9E91407E-CFE8-4903-9875-D5AA75BD1D50/0/WPAM_finalpdfrose3_9.pdf

² *Capitalizing on the Economic Value of Older Adults' Work: An Urban Institute Roundtable*, (2008). The Retirement Policy Program, Urban Institute, http://www.urban.org/UploadedPDF/411658_older_adults_work.pdf

³ VanDerhei, J., & Copeland, C. (2003). *Can America Afford Tomorrow's Retirees?: Results from the EBRI-ERF Retirement Security Projection Model*, Employee Benefit Research Institute Research Brief Number 263, http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=182

⁴ *Growing Older in America: The Health and Retirement Study*, (2007). National Institutes of Aging, National Institutes of Health, U.S. Department of Health and Human Services, <http://www.nia.nih.gov/ResearchInformation/ExtramuralPrograms/BehavioralAndSocialResearch/HRS.htm>

⁵ Ezzati, M., Friedman, A. B., Kulkarni, S. C., & Murray, C. J. L. (2008). *The Reversal of Fortunes: Trends in County Mortality and Cross-County Mortality Disparities in the United States*, Harvard School of Public Health, PLoS Medicine, Vol. 5, Issue 4, www.plosmedicine.org

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
JULY 15, 2008

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:15 p.m. on Tuesday, July 15, 2008, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Absent: Council Member Schwartzman

PLEDGE OF ALLEGIANCE:

Rob Sousa led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

One item received from Mr. Richard Bortolazzo.

PUBLIC COMMENT:

1. Richard Bortolazzo – Mr. Bortolazzo read a prepared statement (hard copy on file) regarding his concerns with the Lower Arsenal Mixed Use Specific Plan's proposal to rezone the property outside the building footprint as open space.

Council, Staff, and Mr. Bortolazzo discussed the date of the next Planning Commission meeting (8/14/08), the fact that this item would be a topic of discussion at that meeting, clarification on location of property Mr. Bortolazzo was concerned about, Mr. Bortolazzo's not being allowed to attend the previous charrette because he was on the Planning Commission, and the suggestion that Opticos talk with the stakeholders. Mr. Erickson stated that Staff would treat this as it would any other public communication and take the comments into consideration. Staff will get back to Council and Mr. Bortolazzo to let them know what the appropriate thing to do is.

ANNOUNCEMENT OF CLOSED SESSION:

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

CLOSED SESSION:

- A. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

(Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9)

1 Claim: Gard

ADJOURNED TO CLOSED SESSION:

Mayor Patterson adjourned the meeting to Closed Session at 6:23 p.m.

RECONVENE OPEN SESSION:

Mayor Patterson reconvened Open Session at 6:29 p.m.

ANNOUNCEMENT:

Action taken in Closed Session:

Ms. McLaughlin reported that Council received information and directed Staff to settle the matter.

INFORMATIONAL ITEMS:

Update on Priority Projects and Policy Issues:

Jim Erickson, City Manager, reviewed the staff report.

Staff reviewed a PowerPoint presentation on the update of Priority Projects and Policy Issues.

Commandant's Residence and Restoration:

Council and Staff discussed the budget numbers, contingency fund, modifications to the work to trade off for potential change orders, dispute on a piece of the work, issues with the footing in the porch area and flooring in the kitchen area, and the possible need for a budget adjustment next month or so.

Benicia Business Park:

Council and Staff discussed BUSD's involvement in the traffic study, and BUSD's desire to have the traffic study be a joint effort.

First Street Pedestrian Friendly Improvements:

Council and Staff discussed the possibility of a short-term project to utilize some of the Regional Measure II monies that are out there to get something going in the next year or so to address a regional park and ride bus transit facility near the intersection of First Street and Military, requests from various First Street merchants to have the sidewalks washed down, encouraging merchants to sweep sidewalks, merchants concerns regarding people skateboarding on the sidewalks on First Street, the need for an ordinance that addresses the temporary signs people place (such as garage sale signs, concert signs, etc.) on poles on First Street, Staff's priority level regarding addressing temporary signs, and the need for a policy addressing A-frame signs on First Street.

State Park Road Bike/Pedestrian Bridge Project:

No comments.

Police Building Improvements:

No comments.

Community Center:

No comments.

Climate Change Prevention:

Council and Staff discussed compliance with AB32.

Comprehensive Tourism Plan:

No comments.

Arsenal Specific Plan and EIR:

Council and Staff discussed the need for a cost estimate for the soil clean up.

Regional Transit/Ferry Service to Downtown:

Council asked Staff when the issue of parking around the City Park would be discussed at the Traffic, Pedestrian and Bicycle Safety Committee meeting, CEQA status, establishing a more prominent connection to the Downtown area, and how and what the funds (\$3 million) could be used for.

BHS Traffic Signal Project:

No comments.

Library Basement Project:

Council and Staff discussed the date for future discussion on this item, the possibility of having a study session on the fourth Tuesday of August (8/26/08) to discuss this and other budget issues, the need for Council to discuss the budget early along in the Council meetings, the need for ample notification of the additional meeting, Council's availability for a study session on 8/26/08, and the projected effects the current economy is having on property taxes.

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 7:12 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
JULY 15, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:12 p.m. on Tuesday, July 15, 2008, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Absent: Council Member Schwartzman

PLEDGE OF ALLEGIANCE:

Council Member Ioakimedes led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin reported that Council received information and directed Staff to settle the matter.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
One unexpired term to September 30, 2010
- Economic Development Board:
Two full terms to June 30, 2012
- Civil Service Commission:
One full term to August 31, 2011
- Planning Commission:
Two full terms to September 30, 2012

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 746-4210 or by email acardwell@ci.benicia.ca.us.

APPOINTMENTS:

RESOLUTION 08-73 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF JERRY POLLARD TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2012

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Noes: None
Absent: Council Member Schwartzman

RESOLUTION 08-74 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF ROY SALAZAR TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2012

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Noes: None
Absent: Council Member Schwartzman

RESOLUTION 08- 75- A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF LESLIE LESSENGER TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2012

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Noes: None
Absent: Council Member Schwartzman

RESOLUTION 08-76 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CANDACE SNYDER TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2009

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Noes: None
Absent: Council Member Schwartzman

RESOLUTION 08-77 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MICHAEL CAPLIN TO THE HUMAN SERVICES AND ARTS BOARD TO A FULL TERM ENDING JULY 31, 2010

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson
Noes: None
Absent: Council Member Schwartzman

RESOLUTION 08-78 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JANICE AMENTA TO THE HOUSING AUTHORITY BOARD OF COMMISSIONERS TO A FULL TERM ENDING JULY 31, 2009

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

RESOLUTION 08-79 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF RAQUEL WALSH TO THE HOUSING AUTHORITY BOARD OF COMMISSIONERS TO A FULL TERM ENDING JULY 31, 2012

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

RESOLUTION 08-80 - A RESOLUTION AFFIRMING THE POET LAUREATE COMMITTEE'S RECOMMENDED APPOINTMENT OF ROBERT SHELBY AS THE NEW POET LAUREATE

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

Mayor Patterson read one of Mr. Shelby's poems.

Mr. Shelby read a prepared statement and a poem (hard copy on file).

Mayor Patterson publicly thanked Mr. Joel Fallon for being Benicia's first Poet Laureate.

Mr. Fallon read a poem.

PRESENTATIONS:

None

PROCLAMATIONS:

- Recognition of National Night Out – August 5, 2008

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file)

PUBLIC COMMENT:

1. Ann Hansen, Benicia Historical Museum – Ms. Hansen discussed the status of the museum’s garden, upcoming exhibits, and upcoming reports that will be received from sandstone experts.
2. John Furtado – Mr. Furtado discussed and thanked Staff for its attention to the graffiti problem, concerns regarding the proposed skateboard park, skateboarders, current status and disrepair of the skate park at Willow Glen Park, the need for more options for skateboarders, kids skateboarding around the grocery stores and on First Street.
3. Nancy Martinez, Benicia Main Street – Ms. Martinez discussed the recent purchase of six new trash cans for First Street and the future purchase of more trash cans and benches for First Street.
4. Bonnie Silveria – Ms. Silveria invited everyone to attend the Fine Art and Jazz Festival on 8/26-8/27, the need for additional volunteers for the festival, and the volunteer hours spent working on the Fourth of July festivities (126). Council and Staff discussed the success of the Fourth of July festivities and requested that Benicia Main Street consider placing flowers on First Street. Ms. Martinez confirmed it was on the list, but there were a few things in front of it.
5. Patrick Ward – Mr. Ward read a prepared statement regarding his suggestion that the City implement a renewable energy incentive plan (hard copy on file).

Council and Mr. Ward discussed the issue of cost, timing for putting something like this on an upcoming ballot, bundling discussion on this when the climate action plan is given, if feasible – integrating this issue into the climate action plan, and where the money for such a plan would come from.

CONSENT CALENDAR:

Council pulled item VII-C.

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

The Minutes of June 30, 2008 and July 1, 2008 were approved.

RESOLUTION 08-81- A RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION FOR A CALIFORNIA LIBRARY LITERACY SERVICE MATCHING FUNDS GRANT FOR FISCAL YEAR 2008/2009 AND AUTHORIZING THE LIBRARY DIRECTOR TO SIGN DOCUMENTS

RESOLUTION 08-82 - A RESOLUTION AUTHORIZING THE PURCHASE OF NEW PLAYGROUND EQUIPMENT FOR 9TH STREET PARK IN THE AMOUNT OF \$49,214, ALLOCATED FROM THE PARK DEDICATION FUND

RESOLUTION 08-83 - A RESOLUTION AUTHORIZING THE PURCHASE OF VIDEO AND FILM EQUIPMENT FOR THE CITY COUNCIL CHAMBERS IN THE AMOUNT OF \$54,948.63, ALLOCATED FROM THE CABLE TV P.E.G. GRANT FUND

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of a consultant agreement for engineering services for the Wastewater System Master Plan Update:

Council and Staff discussed alternative energy sources for the Wastewater Treatment Plant, the intent of the plan is to compliment work done by the City in defining and reducing its carbon footprint and implementing a climate action plan, the wind and solar energy feasibility analysis that is underway for the Water and Wastewater Treatment Plants and six sewer lift and water pump stations, and a pilot test program that the City is participating in for the blowers at the Wastewater Treatment Plant.

Council and Staff discussed Staff's clear explanation of why this work needs to be done by a consultant, and reallocation of the funds that were not spent last year.

RESOLUTION 08-84 - A RESOLUTION APPROVING THE CONSULTANT AGREEMENT FOR ENGINEERING SERVICES FOR THE WASTEWATER SYSTEM MASTER PLAN UPDATE WITH CAMP DRESSER & MCKEE, INC. FOR A NOT-TO-EXCEED COST OF \$150,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE AGREEMENT ON BEHALF OF THE CITY

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

PUBLIC HEARINGS:

None

ACTION ITEMS:

Approval of professional services agreement for Housing Element Update:

Lisa Porras, Senior Planner, reviewed the staff report.

Council and Staff discussed how HCD and ABAG establish coverage, the consequences for cities not meeting their targets, how Benicia will ensure it achieves a balance in the upcoming charrette process, property on the east side of Benicia that could have been utilized for affordable housing last year, funding sources, making a good faith effort to move forward with this, and the need to be affirmative in promoting affordable housing.

On motion of Council Member Hughes, seconded by Vice Mayor Campbell, Council authorized the City Manager to execute an agreement for professional services for \$52,920 with Lisa Wise Consulting to prepare a Housing Element update, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

Consideration of changes to the Benicia Breeze Transit System:

Rob Sousa, Finance Director, reviewed the staff report.

Council and Staff discussed the current cost situation, current annual deficit of \$169,000 for transit costs, the need to encourage more ridership, the need to consolidate inner-city routes, looking at the overall needs for transit changing trends with rising fuel costs, the need to come up with a matrix that lists the pros and cons of the proposed changes, and clarification on the advantage of using a feeder service.

Public Comment:

1. Citizen – The citizen expressed concern regarding the proposed limited service to the City of Concord, California and Diablo Valley College.

Council and Staff discussed the price increase on the student and senior monthly passes, the need to soften the blow of those costs to students and seniors, the need to make the service convenient, affordable, and accessible, the need to get out of the Monday through Friday mentality (by including weekend service), possibly incorporating bus service to the schools, the need to look forward – not just at the present needs, how to look at more comprehensive alternative ways to get around, the need for more conversations with STA, the need for a roadmap to figure out how to address the problems citizens will face in the future, the need to have consistency with the fees (both monthly and daily fees), the City possibly subsidizing a portion of the costs to students and seniors, and the need to use private and public funds to get a more robust transit system.

Mayor Patterson stated that the direction to staff was to continue the process, present a comparative table, restructure the fees (particularly the monthly fees) to see if they could be subsidized, look at the refinements that come about as the result of the public meetings, and provide plenty of advertisement and noticing on the issue.

Mayor Patterson called for a 5-minute break at approximately 9:15 p.m.
The meeting resumed at approximately 9:20 p.m.

Introduction and first reading of an ordinance for establishing permitting and regulatory requirements for massage therapists:

Sandra Spagnoli, Police Chief, reviewed the staff report.

Public Comment:

1. Terri Vacek, Earth Touch Wellness Center – Ms. Vacek discussed the proposed fees for massage therapists, the need for regulating the massage therapy profession, and how grateful she was that Council and Staff listened to the massage therapists' concerns at the last meeting.

Council and Staff discussed future State regulation on massage therapy, and the procedures for the proposed practical exam.

ORDINANCE 08- - AN ORDINANCE ADDING A NEW CHAPTER 5.52 (MASSAGE) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

On motion of Vice Mayor Campbell, seconded by Council Member Hughes, the Introduction and First Reading of the above Ordinance was approved, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Absent: Council Member Schwartzman

INFORMATIONAL ITEMS:

Reports from City Manager:

Jim Erickson, City Manager, reminded Council and the public that Council previously approved the cancellation of the August 5, 2008 Council meeting. He provided an update on the significant settlement on the VIP amendments that occurred last week. Staff will brief Council on that at the next meeting. Mayor Patterson requested that Staff notify Ms. Dean, who represented the Good Neighbor Steering Committee.

Council Member Committee Reports:

1. Mayor's Committee Meeting - (Mayor Patterson) - Next Meeting Date: July 16, 2008
2. Association of Bay Area Governments (ABAG) - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: October 24, 2008
3. Audit & Finance Committee - (Vice Mayor Campbell & Council Member Schwartzman) - Next Meeting Date: August 8, 2008
4. League of California Cities - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: July 31, 2008
5. School Liaison Committee - (Council Members Ioakimedes & Hughes) - Next Meeting Date: August 7, 2008
6. Sky Valley Open Space Committee - (Vice Mayor Campbell & Council Member Ioakimedes) - Next Meeting Date: July 16, 2008

DRAFT

7. Solano EDC Board of Directors - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: July 24, 2008
8. Solano Transportation Authority (STA) - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: August 13, 2008
9. Solano Water Authority/Solano County Water Agency - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: August 14, 2008
10. Traffic, Pedestrian and Bicycle Safety Committee - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: July 17, 2008
11. Tri-City and County Regional Parks and Open Space - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: August 20, 2008 (CAC) and September 8, 2008 (Governing Board)
12. Valero Community Advisory Panel (CAP) - (Council Member Hughes) - Next Meeting Date: July 23, 2008
13. Youth Action Task Force - (Council Members Ioakimedes & Schwartzman) - Next Meeting Date: To be determined.
14. ABAG/CAL FED Task Force/Bay Area Water Forum - (Mayor Patterson) - Next Meeting Date: July 28, 2008

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 9:46 p.m.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : July 31, 2008

TO : City Manager

FROM : Chief of Police

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE
ESTABLISHING PERMITTING AND REGULATORY
REQUIREMENTS FOR MASSAGE THERAPISTS AND RELATED
FEES**

RECOMMENDATION:

Adopt the ordinance establishing massage regulations and the resolution amending the Master Fee Schedule.

EXECUTIVE SUMMARY:

Currently, the Benicia Municipal Code requires massage therapy businesses to obtain a business license. This ordinance provides professional guidelines for regulating and licensing massage therapists working in these businesses.

BUDGET IMPACT:

A recommended fee schedule has been established to cover the cost of permitting. It is also recommended to waive the permit fees (one-time only) for current businesses that will be grandfathered into this ordinance to be brought into compliance.

BACKGROUND

The proposed ordinance was introduced at the July 15, 2008 City Council meeting. Staff has developed the ordinance to specifically address permitting and regulating conditions that will differentiate a legitimate massage business from an illegal business that uses a massage business as a front for unlawful activity. This ordinance was developed with the assistance and guidance of current massage business owners and professional massage therapists who own and operate businesses in the City of Benicia.

Attachments:

- Ordinance
- Resolution

ORDINANCE

CITY OF BENICIA

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 5.52 (MASSAGE) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended by adding a new Chapter 5.52 (Massage) to read as follows:

Chapter 5.52

MASSAGE

Sections:

- 5.52.010 Purpose.
- 5.52.020 Definitions.
- 5.52.030 Permit required—Massage establishment—Home visit massage service—Massage therapist.
- 5.52.040 Business registration tax requirement.
- 5.52.050 Permit not required.
- 5.52.060 Massage establishment, home visit massage service permit application.
- 5.52.070 Massage establishment and home visit operating requirements.
- 5.52.080 Massage establishment facilities regulations.
- 5.52.090 Permits nonassignable.
- 5.52.100 Change of location or name.
- 5.52.110 Massage therapist—Permit required.
- 5.52.120 Massage therapist permit application.
- 5.52.130 Renewal of permits—Massage establishment, home visit massage service, massage therapist.
- 5.52.140 Application of regulations to existing massage establishments, home visit services, and massage therapists.
- 5.52.150 Prohibited conduct.
- 5.52.160 Suspension or revocation hearing.
- 5.52.170 Appeal procedures.
- 5.52.180 Burden of proof.
- 5.52.190 Public nuisance.

5.52.010 Purpose. It is the purpose and intent of the city council that the operation of massage establishments, home visit massage services, and persons

offering massage and bodywork be regulated in the interests of public health, safety and welfare by providing minimum building sanitation and health standards and to insure that persons offering massage shall possess the minimum qualifications necessary to operate such businesses and to perform such services offered. Further, it is the intent of this chapter to insure that such businesses and persons operate in a manner that prevents criminal behavior.

5.52.020 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

“Applicant” means the permit applicant and each of the following persons: the managing responsible officer/employee, a general partner, a limited partner who owns or controls twenty percent or more of the business, a shareholder of a corporation who owns or controls twenty percent or more of the shares of the corporation which owns the business.

“Bodywork” means the skillful application of touch to enhance health and well-being. “Bodywork” includes a variety of philosophical approaches, theoretical frameworks, and techniques such as massage, movement and education. The term “bodywork” shall be deemed a form of massage and be subject to requirements of this chapter.

“Employee” means any and all persons, other than a massage therapist and independent contractors, employed by the massage establishment who may render any service to the permittee, and who receives compensation from the establishment and who has no physical contact with the customers or clients. The term “employee” shall include independent contractors who are regularly employed by the establishment and who work at the massage establishment.

“Home visit massage service” means any business where a function of such business is to engage in or carry on massage, not at a fixed location but at a location designated by the customer, massage therapist, or other person.

“Massage” means any method of treating the external parts of the body for remedial, health, or hygienic purposes for any form of consideration (whether for the massage, as part of a membership, as part of other services or a product, or otherwise) by means of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances; or with or without supplementary aids, such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice; or by baths, including but not limited to Turkish, Russian, Swedish, Japanese, vapor, shower, electric tub, sponge, mineral, fomentation, or any other type of bath.

“Massage establishment” means any establishment having a fixed place of business where any person, firm, associations, partnership, or corporation engages in, conducts, or carries on, or permits to be engaged in, conducted or carried on, any massage.

“Massage therapist”, “massage trainee”, “massage/bodywork practitioner” mean a nonmedical health care professional who offers services to the public using a massage or bodywork specialty and health enhancement approach in caring for clients

for any form of consideration (whether for the massage, as part of other services or a product, or otherwise) and has obtained a permit as required by this chapter.

"Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession, or work of massage and/or bodywork, which has been approved pursuant to the California Education Code. Schools offering a correspondence course not requiring attendance shall not be deemed a recognized school. The city shall have the right to confirm that the applicant has actually attended class in a recognized school.

5.52.030 Permit required—Massage establishment—Home visit service—Massage therapist. It is unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, or permit to be engaged in, conducted or carried on in or upon any premises within the city, the operation of a massage establishment or home visit massage service or the function of a massage therapist without first having obtained a permit issued by the city pursuant to the provisions set forth in this chapter. A permit shall be valid for twenty-four months from the date of issuance unless revoked or suspended.

5.52.040 Business registration tax requirement. A massage establishment and home visit massage service shall pay any required business registration tax for such business and occupation including the business license tax.

5.52.050 Permit not required. The provisions of this chapter shall not apply to the following classes of individuals or businesses while engaged in the performance of their duties provided sufficient documentation verifying exempt status is furnished to the chief of police.

A. Physicians, surgeons, chiropractors, osteopaths, nurses or any physical therapists who are duly licensed to practice their respective professions in the State of California.

B. Barbers, beauticians and aestheticians who are duly licensed under the laws of the State of California while engaging in practices within the scope of their licenses, except that this provision shall apply solely to the massaging of the neck, face and/or scalp of the customers.

C. Hospitals, nursing homes, sanatoriums or any other health facilities duly licensed by the State of California.

D. Accredited high schools, junior colleges, and colleges or universities whose coaches and trainers are acting within the scope of their employment.

E. Trainers of amateur, semiprofessional or professional athletes or athletic teams while engaging in their training responsibilities for and with athletes.

5.52.060 Massage establishment, home visit massage service permit application.

A. Any person, corporation, or partnership desiring to obtain a permit to operate a massage establishment or home visit massage service shall make application to the chief of police or authorized representative. Prior to submitting such application,

a nonrefundable fee set forth in the city fee schedule, shall be paid. A copy of the receipt shall accompany the application.

B. The application and fee required under this section shall be in addition to any license, permit, fee or tax required under any other chapter of this code.

C. The application for permit does not authorize a massage establishment or home visit service to operate until such permit has been granted.

D. Each applicant for a permit shall submit the following information under penalty of perjury:

1. The full true name under which the business will be conducted.
2. The present or proposed address where the business is to be conducted.
3. The applicant's full, true name, and other names used, date of birth, California driver's license number or California identification number, social security number, present residence address and telephone number. The sex, height, weight, color of hair, and color of eyes. Such other identification and information shall be provided as required by the chief of police or his/her representative, necessary to discover the truth of the matters specified and required in the application.
4. The applicant's residences inclusive of dates at each address, for the last five years.
5. The applicant's business, occupation, and employment history for five years preceding the date of application, and the inclusive dates of same.
6. The permit history of the applicant, whether such person has ever had any permit or license issued by any agency, board, city, county, territory, or state; the date of issuance of such a permit or license, whether the permit or license was revoked or suspended; or if a vocational or professional license or permit was issued, revoked, or suspended and the reason thereof.
7. All convictions for any crime involving conduct which requires registration under California Penal Code Section 290, or convictions of California Penal Code Sections 314, 315, 316, 318, 647(b), (as now written or as amended), or convictions of crimes designated in Government Code Section 51032(b), or any crime involving dishonesty, fraud, deceit, violence or moral turpitude. Convictions under the laws of other states or countries which proscribe the same conduct or similar conduct as the afore-designated California crimes shall be provided. Convictions that have been expunged must be reported.
8. A complete definition of all services to be provided.
9. The name, address, and date of birth of each massage therapist or employee who is or will be employed in the massage establishment or home visit service.
10. The name and address of any massage business or other like establishment owned or operated by any person whose name is required to be given pursuant to this section.
11. Acceptable written proof that the applicant is at least eighteen years of age.
12. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter together with the state and date of incorporation and the names and residence addresses of each of its

current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation.

13. If the applicant is a partnership, the application shall set forth the names and residence address of each of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership as filed with the county clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporate applicants shall apply to the corporate partner.

14. The applicant, corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer/employee. Such person shall complete and sign all application forms required of an individual applicant under this chapter. The corporation's or partnership's responsible managing officer must, at all times, meet all of the requirements set for permittees by this chapter or the corporation or partnership permit shall be suspended until a responsible managing officer who meets such requirements is designated. If no such person is found within ninety days, the corporation or partnership permit is deemed cancelled and a new application for permit must be filed.

15. The chief of police or his/her authorized representative may require the applicant to furnish fingerprints when needed for the purpose of establishing identification. Fingerprinting will be taken at a place designated by the chief of police. Any required fingerprinting fee will be the responsibility of the applicant.

16. Two photographs of the applicant and managing responsible officer are to be taken by the police department.

17. A description of any other business to be operated on the same premises, or on adjoining premises, owned or controlled by the applicant.

18. The name and address of the owner and lessor of the real property upon or in which the business is to be conducted. In the event the applicant is not the legal owner of the property, the application must be accompanied by a copy of the lease and/or an acknowledgement from the owner of the property that a massage establishment will be located on his/her property.

19. Authorization for the city, its agents and employees, to seek information and conduct an investigation into the truth of the statements set forth in the application and into the background of the applicant and the responsible managing officer.

20. Proof of massage malpractice or professional liability insurance in the sum of not less than five hundred thousand dollars per massage technician licensed, or to be licensed, at the massage establishment.

21. The applicant shall submit any change of address or fact which may occur during the procedure of applying for a massage establishment permit.

E. The chief of police or authorized representative shall have up to sixty days, after submission of all required information, including the required certificates of compliance, to investigate the application and the background of the applicant. Upon the completion of the investigation, the chief of police, or authorized representative, shall grant the permit, with or without conditions, if the chief finds in the exercise of discretion all of the following:

1. The required fee has been paid.
2. The application conforms in all respects to the provisions of this chapter.
3. The applicant has not made a material misrepresentation in the application.
4. The applicant, if an individual, or any of the stockholders of the corporation, or any officers or director, if the applicant is a corporation; or a partner if the applicant is a partnership, or the managing responsible officer has not been convicted within five years preceding application in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of conduct which is a violation of the provisions of California Penal Code Sections 314, 315, 316, 318, 647(b) (as now written or as amended), or of crimes that are designated in Government Code Section 51032(b), or any other crime involving dishonesty, fraud, deceit, violence or moral turpitude. Convictions under the laws of other states or countries which proscribe the same or similar conduct as the afore-designated California crimes shall be considered.
5. Within five years preceding application, the applicant or managing responsible officer/employee has not had a massage establishment, home visit service massage therapist, or other similar permit or license revoked, or suspended by the city, or any other State or local agency prior to the date of approval or engaged in conduct that would be a grounds for revocation of a permit under this chapter.
6. The applicant is at least eighteen years of age.
7. The massage establishment as proposed by the applicant would comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements and standards.

F. If the chief of police or authorized representative, following investigation of the applicant, in the exercise of discretion, fails to make the findings stated in subsection E of this section, the chief shall deny said application by written notice to the applicant.

G. A massage establishment comprised entirely of persons exempt under 5.52.050 (Permit not required) shall not be required to obtain a massage permit. However, proper documentation shall be furnished to the chief of police to verify the exempt status.

H. In the event an applicant has a valid permit for massage with another city, then when able to do so, the chief of police may use the background investigation from that city to determine the extent necessary for the background investigation for the city.

5.52.070 Massage establishment and home visit operating requirements. No person shall engage in, conduct, carry on, or permit to be engaged in, conducted, or carried on, any massage establishment or home visit service, unless each and all of the following requirements are met:

A. Each person employed or acting as a massage therapist shall have a valid permit issued by the chief of police which shall be clearly posted on premises or visible on the massage therapist's person during home visits. It is unlawful for any owner, manager, operator, responsible managing officer/ employee, or permittee to employ or permit a person to act as a massage therapist who is not in possession of a valid,

unrevoked massage therapist permit issued pursuant to this chapter. A trainee (person currently in the process of receiving certification and enrolled in a certification training program) may operate and provide massage therapy services under the direct supervision and guidance of the licensed operator/therapist. Trainees may not be paid or bill for their services.

B. The possession of a valid massage establishment permit does not authorize the possessor or any other person to perform work for which a massage therapist permit is required unless the owner/operator is a certified licensed therapist. Only one permit fee is required. (Owner/operator permit) C. Massage shall be provided or given only between the hours of seven a.m. and ten p.m. No massage establishment shall be open and no customer shall be in the establishment between ten p.m. and seven a.m. No home visit massage shall be provided or given before seven a.m. or after ten p.m.

D. A list of services available and the cost of such services shall be posted in an open public place within the premises, and shall be described in readily understandable language. No owner, manager, operator, responsible managing employee, or permittee shall permit, and no massage therapist shall offer or perform any service other than those posted.

E. The massage establishment permit shall be displayed in an open and conspicuous place on the premises. The massage therapist working will also have their permit displayed in an open place on the premises.

F. Every massage establishment and home visit massage service shall keep a written client appointment and event record of the date and hour of each service provided; the name and address or business location or site of each patron and the service received; and the name of the massage therapist administering the service. Such records shall be open to inspection only by officials, including the police department and the city attorney, charged with enforcement of this chapter and for no other purpose, including a prohibition of use of the file by owners and employees of the establishment. Such records shall be retained on the premises of the massage establishment and at the home visit business office for a period of two years.

G. Massage establishments shall at all times be equipped with an adequate supply of clean sanitary towels, coverings and linens. Clean towels, coverings and linens shall be stored in enclosed cabinets. Towels and linens shall not be used on more than one patron, unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one patron. Soiled linens and paper towels shall be deposited in separate, approved receptacles.

H. If male and female patrons are to be treated simultaneously at the same massage establishment, a separate massage room or rooms and separate dressing facilities shall be provided for male and female patrons. A male patron and a female patron may both receive a massage in the same room if they both consent. A single toilet facility will be provided with a locking door. Nothing herein shall be construed to authorize the treatment of only one sex if that is in violation of any civil rights or other laws requiring service to both genders.

I. Wet and dry heat rooms, steam or vapor rooms or cabinets, toilet rooms, shower and bath rooms, tanning booths, whirlpool baths and pools shall be thoroughly cleaned and disinfected as needed, and at least once each day the premises are open,

with a disinfectant approved by the county health department. Bathtubs shall be thoroughly cleaned with a disinfectant approved by the health department after each use. All walls, ceilings, floors, and other physical facilities for the establishment must be in good repair, and maintained in a clean and sanitary condition.

J. Instruments utilized in performing massage shall not be used on more than one patron unless they have been sanitized using approved methods.

K. All employees, including massage therapists, shall wear clean, professional attire.

L. No person shall enter, be or remain in any part of a massage establishment while in possession of an open container of alcohol, or consuming or using any alcoholic beverage or drugs except (1) pursuant to a prescription for such drugs or (2) if the establishment is closed for massages at that time. The owner, operator, responsible managing employee, manager, or permittee shall not permit any such person to enter or remain upon such premises.

M. No massage establishment or home visit massage service shall operate as a school of massage, or use the same facilities as that of a school of massage.

N. No massage establishment or home visit massage service granted a permit under the provisions of this chapter shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective customers that any service is available other than those services described in 5.52.020 (Definitions "Massage") of this chapter, nor shall any massage establishment or home visit massage service employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services as described in this chapter.

O. No massage may be carried on within any cubicle, room, booth or any area within a massage establishment which is fitted with a door capable of being locked in which those doors are locked during business hours. Draw drapes, curtain enclosures, or accordion-pleated closures are acceptable on all inner dressing and treatment rooms in lieu of doors.

P. A massage shall not be given unless the patron is properly draped and covered and, in addition, a female patron's breasts are fully covered.

Q. No massage establishment shall be open for business without at least one massage therapist on the premises unless there is a retail clerk selling merchandise or a receptionist taking appointments.

S. An industry standard massage table will be used meeting required health standards.

5.52.080 Massage establishment facilities regulations. Every massage establishment shall maintain facilities meeting the following requirements:

A. Any signs shall be in conformance with the current ordinances of the city.

B. At least one artificial light of not less than forty watts shall be provided in each room or enclosure where massage services are performed on patrons.

C. Minimum ventilation shall be provided in accordance with the Uniform Building Code.

D. Adequate equipment for disinfecting instruments used in performing the acts of massage shall be provided.

E. Hot and cold running water shall be provided at all times.

F. Closed or covered cabinets shall be provided for storage of clean linens.

G. Adequate dressing area and toilet facility shall be provided for patrons.

H. A wash basin for employees shall be provided at all times. The basin shall be located within or as close as practicable to the area devoted to performing of massage services. Sanitary towels shall also be provided at each basin.

I. Pads used on massage tables shall be covered with a washable material.

J. Proof of compliance with all applicable provisions of the Municipal Code shall be provided prior to the issuance of any permit.

K. Home visit massage service. Any massage therapist who provides massage at any hotel or motel, shall first notify the owner, manager, or person in charge thereof that such permittee intends to provide massage to a person or persons registered at the hotel or motel and give such owner, manager, or person in charge the name of his/her massage therapist permit.

L. Inspection by officials. The investigating and enforcing officials of the city, including the county health officials, or their designees, shall have the right to enter the premises from time to time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations, and to enforce compliance with applicable regulations, laws, and provisions of this chapter.

5.52.090 Permits nonassignable. No massage establishment or home visit massage service permit may be sold, transferred or assigned by the permittee, or by operation of law, to any other person or persons; any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be deemed terminated and void; provided and excepting, however, that if the permittee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without affecting a surrender or termination of such permit and in each case the permittee shall thereafter be deemed to be the surviving partner(s). If the permit is issued to a corporation, stock may be sold, transferred, issued, or assigned to stockholders who have been named on the application. If any stock is sold, transferred, issued, or assigned to a person not listed on the application as a stockholder, the permit shall be deemed terminated and void unless the new stockholders are identified within ten days of transfer and they meet all requirements under this chapter for stockholders.

5.52.100 Change of location or name.

A. A change of location of a massage establishment may be approved by the chief of police, the community development director, building official, finance director and the fire chief or their designated representatives, provided all ordinances and regulations of the city are complied with.

B. No permittee shall operate under any name or conduct any massage establishment or home visit service under any designation not specified in the approved permit.

C. Any application for an expansion of a building or other place of business or a massage establishment shall require compliance with this chapter; no expansion of a nonconforming location shall be permitted.

5.52.110 Massage therapist—Permit required. No person shall engage in the business of massage or act as a massage therapist unless such person holds a valid massage therapist's permit issued by the city. Each massage therapist permit holder shall be issued a photo identification badge which will also serve as a massage therapist permit. The permit holder shall display the massage therapist permit during business hours.

5.52.120 Massage therapist permit application.

A. Each applicant for a massage therapist permit shall make application to the chief of police or his/her designee. Prior to submitting an application, a nonrefundable fee in the sum set forth in the city fee schedule shall be paid to help defray the costs of the investigation required by this chapter. A copy of the cashier's receipt shall accompany the application.

B. Permit fees required under this section shall be in addition to any license, permit, fee or tax requirements under any other section or ordinance of this code.

C. The application for permit does not authorize the applicant to provide massage until such permit has been granted.

D. Each applicant for a massage therapist permit shall submit the following information under penalty of perjury:

1. All information required by 5.52.060 (Massage establishment, home visit massage service permit application) (D)(3) through (8), (11), (16), (21) and (22) of this chapter.

2. The applicant must furnish a diploma or certificate of graduation from a -hundred-hour one hundred sixty hour resident course of instruction from either:

a. A recognized school as defined in 5.52.020 (Definitions "Recognized school of massage") of this chapter; or

b. An existing school or institution of learning outside the State of California together with a certified transcript of the applicant's school records showing date of enrollment, hours of instruction and graduation from a course having at least a minimum requirement prescribed by Title 5, Division 21, of the California Administrative Code; wherein the theory, method, profession and work of massage is taught, and a copy of the school's approval by its State Board of Education.

3. Such other identification and information as the police department may require in order to fully investigate the matters as required to be set forth in the application.

4. Two photographs of the applicant to be taken by the city police department designee. Nothing contained herein shall be construed to deny the right of

the chief of police or his designee to confirm the height and weight of the applicant, or to take additional photographs.

5. The chief of police or authorized representative may require the applicant to furnish fingerprints when needed for the purpose of establishing identification. Any required fingerprinting fees will be the responsibility of the applicant. Fingerprinting shall be taken at a place designated by the chief.

6. A certificate from a medical doctor licensed to practice in the State of California stating that the applicant has, within thirty days immediately preceding the date of application, been examined and found to be free of tuberculosis. Pursuant to Health and Safety Code Section 199.20, and unless otherwise required by State or federal law, nothing in this chapter shall require testing or disclosure as to whether an applicant is infected with the human immunodeficiency virus (HIV).

7. Authorization for the city, its agents and employees, to seek information and to investigate the truth of the statements set forth in the application and to investigate the background of the applicant.

8. Each applicant shall successfully complete a practical performance examination administered through the city wherein the applicant has been required to demonstrate a basic knowledge of anatomy, physiology, hygiene, and massage, unless applicant can provide proof of certification by the National Certification Board for Therapeutic Massage and Bodywork or a certified school of massage therapy.

E. The chief of police or authorized representative shall have up to sixty days after the submission of all required information to complete his/her investigation. Upon completion of the investigation, the chief, or authorized representative, shall grant the permit, with or without conditions, if in the exercise of discretion he finds those matters designated in 5.52.060 (Massage home visit establishment, home visit massage service permit application) (D)(3) through (8), (11), (16), (21) and (22) of this chapter have been provided and are true and correct and in the exercise of discretion further finds:

1. The applicant has furnished an acceptable diploma or certificate of graduation from a recognized school;

2. The applicant has furnished written proof from a recognized school that the minimum number of hours of instruction have been completed;

3. The applicant has passed the test required herein.

F. If the chief of police or authorized representative, following investigation of the applicant, in the exercise of discretion, fails to make the findings in subsection E of this section, the chief, or authorized representative, shall deny said application by dated, written notice.

G. New massage therapists—Notification. The holder of the massage establishment or home visit service permit shall notify the chief of police, in writing, of the name and address of each person employed as a massage therapist at such establishment within five days of this person's being employed. The requirements of this section are in addition to the other provisions of this chapter; and nothing contained herein shall relieve the permittee of the responsibility of ascertaining, prior to employment, that said person has a current unrevoked massage therapist's permit.

5.52.130 Renewal of permits—Massage establishment, home visit massage service, massage therapist. Permittees shall have thirty days from date of expiration to

renew their permit. If, upon the thirty-first day an application of renewal has not been received, the permit shall be deemed suspended until such time as the renewal application has been received. If a renewal application and all required information for the renewal is not received within sixty days after expiration, the license shall be deemed expired and no privilege to provide massage shall exist.

Renewals shall be processed and investigated as though they were initial applications, except that the applicant is required to submit only that information which has changed from the last application or renewal. A fingerprint check may be completed upon each renewal.

5.52.140 Application of regulations to existing massage establishments, home visit services, and massage therapists. The provisions of this chapter shall be applicable to all persons and businesses whether the business was established before or after the effective date of the ordinance codified in this chapter, except that massage establishments or home visit services legally in business prior to the effective date shall have six months to file for a massage establishment or home visit service permit and to comply with the provisions of this chapter. Massage therapists who have valid business license permits obtained prior to the effective date of the ordinance codified in this chapter shall have until the expiration of their current business license permit to apply for a massage therapist permit under the terms of this chapter but shall otherwise comply with the operating regulations set forth herein within ninety days.

5.52.150 Prohibited conduct. It is unlawful and a misdemeanor for any person to violate any of the mandatory requirements of this chapter.

5.52.160 Suspension or revocation hearing. The chief of police or authorized representative may revoke or suspend a massage establishment permit or massage therapist permit if it is found that the permittee does not possess the qualifications for the permit as required by this chapter, has been convicted of any violation of the provisions of this chapter or any lesser included offense, has made a material misrepresentation on the permit application or renewal or has violated any mandatory provisions of this chapter, any conditions of the permit, or any of the laws which would have been grounds for denial of the permit. For purposes of this section, permittee shall include the managing responsible officer or employee. Further, the permittee shall be responsible for those acts of its employees which are done in the course and scope of their employment by the permittee.

A hearing shall be scheduled upon not less than ten calendar days' notice to the permittee stating the grounds for proposed revocation or suspension. Notice shall be given by personal service or certified mail to the address shown on the last application or renewal. If reasonable attempts to otherwise serve are not successful, service may be provided by first class mail.

Notice of the decision shall be given in the same manner as for the hearing. The decision of the chief of police or his/her authorized representative may be appealed by the permittee to the city manager within fifteen calendar days of service by filing written notice of appeal with the city manager's office stating the basis for the appeal and the

errors claimed to have occurred. If the permit is suspended or revoked, the permit shall be surrendered.

Service shall be deemed complete when personal service is made, when the certified letter is delivered, or when the decision is mailed by first class mail.

5.52.170. Appeal procedures. Any interested person may appeal the decision to revoke, suspend, deny or approve a massage establishment or massage therapist permit by filing a written notice of appeal, stating the grounds thereof, in accordance with Chapter 1.44 of the Benicia Municipal Code.

5.52.180. Burden of proof. Unless otherwise specifically prohibited by law, the burden of proof is on the permittee/applicant in any hearing or other matter under this chapter.

5.52.190. Public nuisance. Any massage establishment operated, conducted, or maintained contrary to the provisions of this chapter is unlawful and a public nuisance, and the city attorney may in the exercise of discretion, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action or actions, proceeding or proceedings, for the abatement, removal and enjoinder thereof, in a manner provided by law.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 July 15, 2008 and adopted at a regular meeting of the Council held on August 19, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE MASTER FEE SCHEDULE TO INCLUDE PERMIT FEES FOR MASSAGE ESTABLISHMENTS, OWNER/OPERATORS AND MASSAGE THERAPISTS

WHEREAS, on August 19, 2008 the City Council adopted an ordinance adding a new Chapter 5.52 (Massage) to Title 5 (Business Taxes, Licenses and Regulations of the Benicia Municipal Code; and

WHEREAS, the ordinance calls for the City Council to establish, by resolution, fees for a new permit and renewal of a permit; and

WHEREAS, the recommended fee for a permit for an establishment, owner/operator or massage therapist is \$120 for a new permit and \$50 for renewal; and

WHEREAS, a permit is valid for two (2) years and then must be renewed; and

WHEREAS, Exhibit A illustrates the proposed fees, as well as a comparison to other cities.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Benicia amends the Master Fee Schedule to include permit fees for massage establishments, owner/operators and massage therapists.

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

Massage Fee Schedule

City Comparisons and Proposed Benicia Fee Exhibit A

	Concord	Hercules	Pleasant Hill	San Mateo	San Ramon	Union City	Walnut Creek	Recommended Benicia Fees	
Establishment									
New Permit	\$ 131	No Fees	\$ 120	\$ 412	\$ 382	\$ 1,524	\$ 132	\$ 120	
Renewal	-		-	\$86/hour	\$ 350	\$ 637	-	\$ 50	
Owner Operat or									
New Permit	\$ 68		-	\$ 558	\$ 432	\$ 658	-	\$ 120	
Renewal	-		-	-	\$ 390	\$ 93	-	\$ 50	
Therapist									
Masseur / Masseuruse									
New Permit	-		\$ 120	\$ 312	\$ 157	-	-	\$ 120	
Renewal	-		-	\$ 312	\$ 100	-	-	\$ 50	
Outcall (Home Visit)									
New Permit	-		\$ 120	\$ 329	\$ 432	-	-	\$ 120	
Renewal	-		-	\$ 329	\$ 390	-	-	\$ 50	
Background Check	-		-	Actual	-	-	-	Included in Permit	
Fingerprints	-		\$ 120	\$ 81	-	-	-	Prevailing DOJ & FBI Fee	

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE: July 16, 2008

TO: City Manager

FROM: Parks and Community Services Director

SUBJECT: **AUTHORIZATION OF REPAIR OF THE IN-LINE
ROLLER HOCKEY RINK SURFACE**

RECOMMENDATION:

Adopt a resolution authorizing repair of the In-Line Roller Hockey surface in the amount of \$48,680.

EXECUTIVE SUMMARY:

The In-line Roller Hockey Rink surface has been evaluated by staff and is showing signs of lifting and surface separation. In an effort to avoid any potentially unsafe conditions, staff is recommending removing and repairing the affected areas. To remedy the situation and maintain a safe surface staff is requesting authorization to issue a contract for repair.

BUDGET INFORMATION:

The cost to repair the surface is \$48,680. We currently have \$20,000 budgeted in Park Dedication (047-9047-9610) for the In-Line Hockey facility. In an effort to fund the remaining balance of \$28,680, we are proposing to transfer this amount from the balance of the Bridgeview Park Improvements (047-9047-9625). This project has been completed and the remaining balance is \$32,380. The additional funds remaining in this project were due to the assistance provided by our Building Maintenance crews in the prep work required for the installation of the new playground equipment. Their work included construction of a containment area, retaining wall, decomposed granite walkway, and installation of benches.

BACKGROUND:

On July 10, 2008 a total of three (3) bids were received. The bid results are summarized in the table below:

Bid Results:

RANK	BIDDER'S NAME & ADDRESS	TOTAL BASE BID
1	Hess Construction Co., Inc. 4484 Hess Drive American Canyon, California	\$48,680.00
2	R.G. Carter Company P.O. Box 6209 Vallejo, California	\$51,700.00
3	Ghilotti Brothers 525 Jacoby Street San Rafael, California	\$59,600.00

Attachment:

- Proposed Resolution

Proposed Resolution

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE REPAIR OF THE IN-LINE ROLLER HOCKEY RINK
SURFACE IN THE AMOUNT OF \$48,680, ALLOCATED FROM THE PARK
DEDICATION FUND**

WHEREAS, City staff evaluated the surface and determined it is showing signs of lifting and surface separation; and

WHEREAS, it potentially provides an unsafe condition; and

WHEREAS, the City desires to maintain the surface at the In-Line Hockey Rink;
and

WHEREAS, three bids were received and Hess Construction Co., Inc. was the lowest bidder; and

WHEREAS, there are sufficient funds available in the Park Dedication Fund for the surface repair at the In-Line Roller Hockey Rink.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia approves the surface repair of the In-Line Roller Hockey Rink in the amount of \$48,680 appropriated from the Park Dedication Fund, account No. 047-9047-9610 and account No. 047-9047-9625.

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : August 6, 2008
TO : Mayor & City Council
FROM : City Manager
SUBJECT : **AUTHORIZE CONSULTING SERVICES AGREEMENT WITH
DARRELL DEARBORN FOR INTERIM ECONOMIC
DEVELOPMENT MANAGER**

RECOMMENDATION:

Authorize the City Manager to execute a Consulting Services Agreement with Darrell Dearborn to serve as Interim Economic Development Manager for October 2008-March 2009.

EXECUTIVE SUMMARY:

The City's Economic Development Manager will be on maternity leave for approximately five months between October 2008 and March 2009. Darrell Dearborn, a former senior deputy city manager in San Jose, will act as interim Economic Development Manager during the term of the proposed agreement for a cost not to exceed \$61,000.

BUDGET INFORMATION:

The agreement's not-to-exceed amount of \$61,000 will be funded from the existing Economic Development Division budget line items for salary and contract services.

DISCUSSION:

The proposed agreement provides for the interim Economic Development Manager to work an average of three days per week, at a rate of \$100 per hour, during the incumbent's leave. The agreement's term covers a few weeks before and after the anticipated leave, for transition purposes.

Attachment:

- Draft Consulting Services Agreement

AGREEMENT

CONSULTING SERVICES AGREEMENT

This Agreement is made and entered into this ___ day of August, 2008 by and between the **City of BENICIA** (hereinafter referred to as "CITY"), located at 250 East L Street, Benicia, CA 94510, and **DARRELL DEARBORN**, an independent consultant, located at 136 Westfield Circle, Danville CA 94526 (hereinafter referred to as "CONSULTANT").

1. SCOPE OF SERVICES.

CITY hereby retains CONSULTANT to serve as interim Economic Development Manager to perform the duties of the position during the absence of its regular incumbent, and such other duties as may be assigned by the City Manager.

2. COMPENSATION.

CONSULTANT agrees to perform the Scope of Services delineated herein, and CITY agrees to make payments for work completed under the following terms:

A. **Fees.** CITY will pay CONSULTANT an hourly fee of \$100.00 for CONSULTANT'S work hereunder, plus reimbursement for direct expenses incurred by CONSULTANT in the course of his assigned duties. CONSULTANT shall submit copies of receipts for reimbursement. Fees and expenses shall be billed to the CITY on a monthly basis.

B. **Not to Exceed.** CONSULTANT shall normally work up to 24 hours per week. CONSULTANT may work in excess of 24 hours in particular weeks if, in CONSULTANT's judgment, such excess hours are required by the duties of the position. The total compensation to be paid under this Agreement shall not exceed \$61,000.

3. TERM OF AGREEMENT. Unless otherwise agreed to in writing, the term of this Agreement shall be from September 22, 2008 through March 31, 2009.

4. SUPPORT. 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.

5. BUSINESS LICENSE. CONSULTANT shall not be required to obtain a City of Benicia business license.

6. AMENDMENT. This Agreement may be amended, modified or changed by the parties provided that modification or change is in writing and approved by

the authorized representative(s) of the parties.

7. **SUBCONTRACTORS.** CONSULTANT may utilize professional subcontractors only as pre-approved by the City Manager.
8. **ADDITIONAL SERVICES.** In the event the CITY desires to retain CONSULTANT for the performance of additional services in connection with this Agreement, specification of such additional services and compensation therefore shall be made only by amendment to this Agreement in accordance with compensation rates to be negotiated at that time.
9. **INDEPENDENT CONTRACTOR.**

CONSULTANT'S relationship with CITY is that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to create a partnership, agency, joint venture or employment relationship. CONSULTANT will not be entitled to any of the benefits that CITY may make available to its employees, including, but not limited to, group health or life insurance, or retirement benefits. CONSULTANT is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of services and receipt of fees under this agreement. CONSULTANT is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing services under this Agreement. No part of CONSULTANT'S compensation will be subject to withholding by CITY for the payment of any social security, federal, state or any other employee payroll taxes. CITY will regularly report amounts paid to CONSULTANT by filing Form 1099-MISC with the Internal Revenue Service as required by law.

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. Except with respect to CITY employees, 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.

10. **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.

11. CONSULTANT CONFLICT OF INTEREST.

CONSULTANT will comply with all conflict of interest laws and regulations including, without limitation, CITY's Conflict of Interest Code (on file in the City Clerk's Office). It is incumbent upon the CONSULTANT or CONSULTANT'S firm to notify the CITY of any staff changes relating to this Agreement.

12. AGREEMENT BINDING.

This Agreement is binding on the heirs, successors and assigns of the parties hereto.

13. APPLICABLE LAW AND ATTORNEY'S FEES.

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provisions of the Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, court costs or any other costs as may be fixed by the court. Any action arising out of this Agreement shall be venued in the Superior Court of the State of California in and for the County of Solano.

14. SEVERABILITY.

If any one or more of the covenants and agreements or portions thereof shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant, or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed severable from the remaining covenants and agreements or portions thereof, and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

15. TERMINATION

- A. The CITY may terminate this Agreement at any time by giving the CONSULTANT a fourteen (14) day written notice of discontinuance and termination of Agreement.
- B. CITY may, at any time, at its discretion, abandon or suspend any portion of the work being done under the terms of this Agreement. In the event of abandonment or suspension of work for which professional services have been performed under this Agreement by CONSULTANT or in the event of the termination of this Agreement, the CONSULTANT shall immediately stop work on the project required by this Agreement, or shall stop work at the stage directed by the CITY.
- C. In the event of Agreement termination, CITY shall pay CONSULTANT all sums then due and unpaid under the Agreement, including sums for work not completed, but in preparation, on a time and materials basis. Payment by CITY of such compensation shall be considered full and final settlement of all work performed by the CONSULTANT under this Agreement.

16. INSURANCE AND INDEMNIFICATION

- A. **Insurance Requirements.** 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. CONSULTANT'S insurance shall be primary with respect to the City and shall list the CITY as an additional insured.

CONSULTANT shall submit to CITY an endorsement evidencing its required insurance signed by the insurance agent and companies named. Any deductible or self-insured retentions must be declared to and approved by CITY.

- B. **Indemnification.** CONSULTANT shall indemnify, defend with counsel reasonably acceptable to the CITY, and hold harmless the CITY and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of CONSULTANT or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work.

17. MISCELLANEOUS PROVISIONS

- A. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events or conditions beyond the party's control.
- B. This agreement constitutes the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said document. It is not the intent of the parties to this agreement to form a partnership or joint venture.
- C. Where the terms and conditions of this Agreement and any attachments or exhibits hereto conflict, the parties expressly agree that the terms and conditions of this Agreement shall prevail and preside.

18. NOTICE. Written communications and invoices under this agreement shall be addressed as follows:

If to CITY: Jim Erickson, City Manager
City of Benicia
250 East L Street
Benicia CA 94510

If to CONSULTANT: Darrell Dearborn
136 Westfield Circle
Danville CA 94526

IN WITNESS WHEREOF, CITY AND CONSULTANT have caused their authorized representatives to execute this Agreement.

CITY OF BENICIA

CONSULTANT

By: _____
James R. Erickson, City Manager

By: _____
Darrell Dearborn

APPROVED AS TO FORM:

By: _____
Heather C. Mc Laughlin, City Attorney

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR

DATE : July 31, 2008
TO : City Council
FROM : City Attorney 
SUBJECT : **APPROVAL OF AN AGREEMENT WITH MEYERS NAVE
FOR LEGAL SERVICES RELATED TO THE AMATRONE
LAW SUIT**

RECOMMENDATION:

Authorize the City Attorney to execute the agreement with Meyers Nave for legal services related to the Amatrone lawsuit.

EXECUTIVE SUMMARY:

The City has been served with a lawsuit related to the adult entertainment moratorium. This requires the assistance of specialized legal counsel.

BUDGET INFORMATION:

The actual cost of this agreement cannot yet be determined since the amount of work will depend on how long and how complex the litigation is.

BACKGROUND:

Last year, the City adopted a moratorium on adult entertainment uses to allow the City to review its regulations and to modernize them. Mr. Robert Amatrone has brought a lawsuit against the City because he claims he wanted to start a gentleman's club in town. The suit names the former council members, the principal planner, the realtor and me. The City will provide a defense to the council members, planner and me so long as our actions were in the proper scope of our positions.

A request for proposals was prepared and sent to five firms. The City Manager, Community Development Director and I met and reviewed the three proposals that were submitted. Staff unanimously selected Deborah Fox of Meyers Nave. Ms. Fox is currently assisting staff with the revisions to the adult entertainment ordinance. She is also a well-known expert in the field. A copy of her proposal is attached. While the rates are higher than we usually pay for defense of lawsuits, the level of experience and knowledge Ms. Fox has should result in cost efficiency.

Section 3.10.010 of the Benicia Municipal Code requires that service contracts in excess of \$25,000 be awarded by the City Council. Ms. Fox is currently working on the lawsuit under a

contract with a limit of \$25,000. This agreement is being brought to the City Council for approval because it is unknown at this time the total cost of services. Cost will depend on a variety of factors beyond our control.

Attachments:

- Attorney Agreement
- Response to Request for Proposal

ATTORNEY AGREEMENT

ATTORNEY SERVICES AGREEMENT

THIS AGREEMENT, by and between the City of Benicia, a municipal corporation herein referred to as "City," and Meyers Nave, engaged in the practice of law in the State of California, herein called "Special Counsel."

WHEREAS, the City, acting through its City Attorney, desires to engage Deborah J. Fox, in association with the City Attorney, to assist the City Attorney in providing legal services related to the Robert P. Amatrone lawsuit.

WHEREAS, Deborah J. Fox possesses the skills, qualifications and experience necessary to assist as Special Counsel in said matters; and

WHEREAS, the City Attorney of the City of Benicia, herein referred to as "City Attorney," is the chief legal advisor and litigator for the City and is charged with the responsibility of protecting the interest of the City, its directors, officers, employees and agents in any litigation initiated by or against the City, its Council, officers, employees and agents as provided for by California law and the ordinances of the City;

WITNESSETH:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1.0 Scope of Services.

Special Counsel is to perform such legal services as may be required from time to time. Special Counsel's performance hereunder shall be under the direction and supervision of the City Attorney. Special Counsel has been selected previously because of Deborah Fox's expertise in the subject matter. Special Counsel shall coordinate services hereunder with the City Attorney to the extent required by said City Attorney, and that all performances required hereunder by Special Counsel shall be performed to the satisfaction of said City Attorney.

2.0 Time of Performance.

The services of Special Counsel are to commence upon the signing hereof and the assignment of particular matters, and shall be undertaken and completed in such sequence as to assure their completion as expeditiously as is consistent with professional skill and care.

3.0 Compensation, Reimbursement and Methods of Payments.

3.1 Compensation. Special Counsel shall be compensated by the City Attorney at a rate of up to three hundred twenty five dollars (\$325.00) per hour.

3.2 Reimbursement. In addition to the compensation provided above, the City will reimburse Special Counsel only for the following expenses: printing, Westlaw or Lexis (at cost-without any mark-up), copying costs (not to exceed 10 cents a page), long-distance telephone calls. Any other expense (e.g., travel expenses or travel time) must be approved by the City Attorney in writing and in advance.

3.3 The City expects moderation with regard to all compensation and expenses. Billing for more than one attorney at a court hearing, meeting or other similar work is discouraged unless the City Attorney has given prior consent.

3.4 Method of Billing. Unless otherwise agreed, Special Counsel shall provide monthly bills unless charges for a particular month are insignificant. The following information must be provided in monthly bills:

A. A detailed description of work, in time increments of .1 hour (one tenth of an hour) for and by each and every individual billing services. Special Counsel shall keep the City advised regarding the identity and the billing rates of those people who work on the account.

B. Identification of the lawyer who is in charge of the matter.

C. Detailed disbursement breakdowns, including the nature and purpose of each disbursement.

D. Each billing item will be separately stated on a separate line identifying the biller, the time spent and the exact nature of the service rendered.

E. Where charges are made for research time, the specific issue being researched and the need will be identified. City has retained Special Counsel for Deborah Fox's expertise, and therefore expects not to be billed for introductory or background research. The City will not pay for attorneys, law clerks and paralegals educating themselves or doing work of a transient nature on the case.

4.0 Engagement of Other Counsel, Specialists or Experts.

Special Counsel will not engage or otherwise incur an obligation to pay other counsel, specialists or experts for services in connection with this Agreement without the prior written approval of the City Attorney.

5.0 Termination of Agreement and Legal Services.

This Agreement and all legal services to be rendered hereunder may be terminated at any time by written notice from either party with or without cause. In such event, all finished or unfinished documents, project data and reports, both originals and all duplicate copies, in all forms and media requested by the City, shall immediately be turned over to the possession of City, which owns all such materials. In the event of such termination, Special Counsel shall be paid for all satisfactory work, unless such termination is made for cause, in which event compensation, if any, shall be adjusted in the City's sole discretion in light of the particular facts and circumstances involved in such termination.

6.0 Interest of Members of Local Public Agency.

No member of the governing body of the City, and no other officer, employee or agent of the City who exercises any discretion, function or responsibility in connection with the carrying out of any project to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

7.0 Interest of Counsel.

Special Counsel agrees to secure the informed written consent of the City Attorney before accepting any representation adverse to the City (actual or apparent) during the term of this Agreement, and to forego such representation if the City Attorney, in her sole discretion, objects for any reason.

8.0 Conflict of Interest.

Special Counsel certifies that no member, officer or employee of the Special Counsel is an officer or employee of the City of Benicia except to the extent permitted by law.

9.0 Choice of Forum. The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into and/or is to be performed in the City of Benicia and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Solano at a place to be determined by the rules of the forum.

IN WITNESS WHEREOF, the City and Special Counsel agree as set forth hereinabove.

CITY OF BENICIA

MEYERS NAVE

By: _____
Heather C. Mc Laughlin
City Attorney

By: _____

Special Counsel

DATED: _____

DATED: _____

**RESPONSE TO
REQUEST FOR PROPOSAL**

July 15, 2008

VIA ELECTRONIC TRANSMISSION

Heather C. McLaughlin, City Attorney
City of Benicia
City Hall
250 East L Street
Benicia, CA 94510

RE: Engagement of Legal Services – *Amatrone v. City of Benicia, et al.*

Dear Ms. McLaughlin:

In response to your electronic message, I am pleased to submit Meyers Nave's proposal for legal services in defending the City of Benicia ("the City") in the recent civil rights case filed by Robert Amatrone, entitled *Robert P. Amatrone v. Steve Messina, Elizabeth Patterson, Bill Whitney, Mark Hughes, Allan Schwartzman, Heather McLaughlin, Damen Golubits, Steve Ridge and City of Benicia*, Solano County Superior Court, Case No. FCS 031436

I am a principal with the Meyers Nave law firm and for the past twenty years a very substantial part of my litigation practice has been devoted to defending adult use regulations enacted by cities and counties along with drafting such regulations. As well, Meyers Nave is currently retained to provide legal guidance and is drafting the City's revised adult use provisions.

I have advised a number of cities within the State on adult use regulations and I have litigated many cases challenging existing regulations, most recently (and successfully) for the City of Santa Fe Springs in Southern California. In that matter, Judge Solner of the Los Angeles County Superior Court found that Santa Fe Springs provided a reasonable range of sites for adult uses.

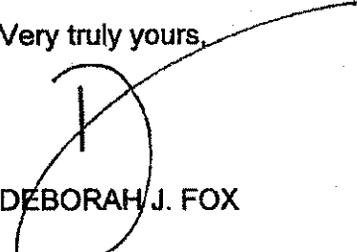
Heather McLaughlin, City Attorney
July 15, 2008
Page 2

I am considered one of California's foremost experts on First Amendment issues affecting the public sector and a copy of my abbreviated resume is found at Attachment A. I have written and lectured frequently on First Amendment issues and I am a member of the League of California Cities Adult Use Task Force and participated in the preparation of the League's Model Ordinance. I was lead counsel for La Habra in the published decision of *Gammoh v. City of La Habra* (9th Cir. 2005) 395 F.3d 1114, modified 402 F.3d 875, cert. denied 126 S.Ct. 374, where the Ninth Circuit upheld the City's restriction on offstage performances. This case serves as the touchstone by which operating standards are judged throughout the country. It is the first appellate case following the United States Supreme Court's 2002 decision in *Alameda Books* to address the evidentiary basis needed for cities to regulate "clothed" performances in adult establishments.

Finally, I am pleased to inform you that I was selected by the Daily Journal as one of California's 2007 Top Women Litigators. This honor is bestowed upon the state's most prominent women litigators for their career achievement and professional contributions.

Per your request, I am also attaching our rate sheet found at Attachment B. If you have any questions concerning our qualifications or need any additional information, please feel free to phone me directly at 213.253.4467. I am confident Meyers Nave has the breadth and depth of experience to provide the City with exceptional legal counsel on this case. I look forward to the prospect of working further with you and the City staff on this case.

Very truly yours,



DEBORAH J. FOX

Attachments
1121253.1

meyers | nave
professional law corporation

VII-E-10

DEBORAH J. FOX
Principal
333 South Grand Avenue, Suite 1670
Los Angeles, California 90071
213-626-2906
dfox@meyersnave.com

PROFILE

Deborah Fox is a principal of the firm and member of the litigation department. Prior to joining Meyers Nave, she was a partner at Fox & Sohagi, LLP for 18 years. Deborah's practice area includes trial and appellate work in both state and federal courts and frequently involves claims for violation of substantive and procedural due process, equal protection, the First Amendment and civil rights, as well as inverse condemnation and takings claims. Deborah is one of California's foremost experts on First Amendment issues affecting the public sector.

Most recently, Deborah obtained an award of attorneys' fees for both Culver City and Palmdale. She defended Culver City in a challenge to its sign ordinance, obtaining a motion to dismiss with prejudice. In an unusual ruling, the Ninth Circuit affirmed an attorneys' fees award to Culver City totaling \$140,000 for a frivolous case. And, in a state court civil rights/takings challenge based on a failed apartment project, Deborah obtained a judgment in the City's favor by way of demurrer and motion for summary judgment. This culminated in the City obtaining an award in excess of \$100,000 against the developer.

She is a member of the State Bar of California, the American Bar Association, the Los Angeles County Bar Association and the League of California Cities Adult Use Task Force, where she participated in the preparation of the League's Model Ordinance. She serves as a settlement officer for the North Central District Division of the Los Angeles Superior Court and is admitted to practice in the courts of the State of California, United States Supreme Court, Ninth Circuit Court of Appeals and several U.S. District Courts.

Deborah has lectured and written extensively on the First Amendment including publications in the *Urban Lawyer*. She is AV rated by Martindale-Hubbell for reaching the height of professional excellence and recognized for the highest levels of skill and integrity. She is listed in Martindale-Hubbell's 2004, 2005 and 2006 Register of Preeminent Lawyers. She was also named one of California's 2007 Top Women Litigators by the *Daily Journal* for her career achievements and overall contributions to the profession.

meyers | nave
professional law corporation

Attachment A

EDUCATION

University of San Diego School of Law
Juris Doctor, 1983

University of Michigan
Bachelor of Arts, Political Science-Cultural Anthropology, 1980

Admitted to practice in the courts of the State of California, United States Supreme Court, Ninth Circuit Court of Appeals and several U.S. District Courts

PUBLISHED DECISIONS

- *Gammoh v. City of La Habra* (9th Cir. 2005) 395 F.3d 1114, amended 402 F.3d 875, cert. denied 126 S.Ct. 374. [adult use]
- *Rogers v. Superior Court (City of Burbank)* (1993) 19 Cal.App.4th 469. [Public Records Act]
- *Building Industry Association v. Superior Court (City of Oceanside)* (1989) 211 Cal.App.3d 277. [managed growth initiative]
- *City of Glendale v. Superior Court (Giovaneffo Enterprises)* (1993) 18 Cal.App.4th 1768. [condemnation]
- *Eldorado Drive v. City of Mesquite* (D. Nev. 1994) 863 F.Supp. 1252. [immunity to city council]
- *Santa Fe Realty Corp. v. City of Westminster* (C.D. Cal. 1995) 906 F.Supp. 1341. [adult uses]
- *City of South El Monte v. Southern California Joint Powers Insurance Authority* (1995) 38 Cal.App.4th 1629, modified 38 Cal.App.4th 1810b. [JPA]
- *3570 East Foothill Boulevard v. City of Pasadena* (C.D. Cal. 1995) 912 F.Supp. 1257, aff'd. (9th Cir. 1996) 99 F.3d 1147. [adult uses]
- *Tily B. v. City of Newport Beach* (1999) 69 Cal.App.4th 1. [adult uses]
- *Lim v. City of Long Beach* (9th Cir. 2000) 217 F.3d 1050, cert. denied (2001) 121 S.Ct. 1189. [adult uses]

PROFESSIONAL ORGANIZATIONS AND ACTIVITIES

- American Bar Association
- The State Bar of California
- Los Angeles County Bar Association
- League of California Cities Adult Use Task Force
- Life Member, National Registry of Who's Who, 2001 Edition
- Condemnation and Land Valuation Litigation Committee of the Los Angeles County Bar
- Judge Pro Tem, Los Angeles Superior Court, Glendale Division

EXAMPLES OF RELEVANT EXPERIENCE

First Amendment Issues.

City of Santa Fe Springs v. Foxz Corporation. City filed a complaint to abate a public nuisance regarding operation of an adult cabaret in violation of the City's zoning ordinance. Deborah charted a careful trial strategy supporting the City's actions and establishing that the City has a constitutionally sufficient number of sites for potential location of adult facilities resulting in a complete victory for the City.

Gammoh v. City of La Habra (9th Cir. 2005) 395 F.3d 1114, *amended* 402 F.3d 875, *cert. denied* 126 S.Ct. 374. Ninth Circuit Court of Appeals affirmed the district court's granting of summary judgment and motion to dismiss, concluding that the City's ordinance requiring "adult cabaret dancers" to remain two feet away from patrons during performances was carefully tailored to reduce secondary effects. This case serves as the touchstone by which operating standards are judged in the Ninth Circuit and throughout the country. It is the first appellate case in the wake of the United States Supreme Court's 2002 decision in *Alameda Books* to address the evidentiary basis needed for cities to regulate "clothed" performances in adult establishments.

Gammoh v. City of La Habra. Defense verdict for the City in a federal court challenge to the City's adult use ordinance and the City's proposed traffic assessment fees of \$250,000. Remanded on *Baby Tam* issues.

City of La Habra v. Gammoh. In this companion state nuisance action, obtained successful preliminary injunction and two contempt citations against adult use operators for violating patron-performer distancing requirements. Defendants were incarcerated for ten (10) days. Obtained a permanent injunction against the adult facility, had it declared a public nuisance and obtained a seizure order. One provision of City's ordinance was found to be unconstitutional by the California Court of Appeal and the case was remanded for a new trial on defendants' cross-complaint. Case settled mid-trial, resulting in City's purchase of the adult facility and property, and adult operator permanently vacating the site and the City.

Ms. Teaz v. City of Folsom. Defense verdict on plaintiff's constitutional challenge to Folsom's restriction precluding sex device stores except in adult zone. Validated Folsom's adoption of a creative approach to regulatory sex devices that have no First Amendment protection.

City of Encinitas v. F Street. City's complaint to abate a public nuisance regarding the operation of an adult business in violation of City's zoning ordinance. Obtained a permanent injunction against operation of adult facility. Bench trial resulting in a total verdict validating the City's definition of adult retail facility using the legal standard of "regular and substantial" to define an adult establishment.

City of Encinitas v. AASJ, Inc. (Showgirls). Successfully obtained a permanent injunction precluding the operation of an topless adult entertainment facility in the wrong zone. The club closed and the site is now home to a sushi restaurant.

Lim v. City of Long Beach (9th Cir. 2000) 217 F.3d 1050, *cert. denied* (2001) 531 U.S. 1191. Ninth Circuit Court of Appeals amicus brief on behalf of 108 cities in support of Long Beach's ordinance and addressing reasonable range of sites, amortization provision and equal protection issues. Author of amicus brief on behalf of 100 cities and counties petitioning for *certiorari* to the U.S. Supreme Court.

Imperial Showgirls v. City of Pico Rivera. Defense of City to civil rights challenge to adult use ordinance. Bench trial before United States District Court Judge Tevrizian on constitutional adequacy of sites. Successfully negotiated consent decree resolving the litigation with sunset provisions on the adult facility's operation.

City of Lake Forest v. Library Lounge. Successful nuisance abatement action prohibiting nude entertainment in wrong zone against adult use operator. Obtained stipulated permanent injunction mandating facility's closure. Handled follow up litigation challenging sham transfer to new adult user. Motion for sanctions against adult operator for violating settlement agreement and court's permanent injunction was granted. Facility is now closed and future home for a mattress store.

County of San Bernardino. Defense of County in four (4) federal civil rights lawsuits challenging the County's adult use ordinance and amortization provision:

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR

DATE : July 31, 2008

TO : Mayor & City Council

FROM : City Manager

SUBJECT : **SUPPORT OF PRESERVING PROPOSITION 10 AND OPPOSING ANY EFFORTS TO DIVERT OR REPROGRAM PROPOSITION 10 FUNDS**

RECOMMENDATION:

Adopt the resolution supporting preservation of Proposition 10 and opposing any efforts to divert to reprogram Proposition 10 funds.

EXECUTIVE SUMMARY:

The local impact of diversion or reprogramming of Proposition 10 funding to address the state budget crisis would result in substantial local harm to community-based organizations, school districts and public agencies funded by First 5 Solano, which has long-term commitments of over \$4 million annually. The proposed resolution supports the preservation of Proposition 10 structure and funding and opposes any efforts to divert or reprogram such funds.

BUDGET INFORMATION:

There is no budget impact associated with this action. Although, should the state elect to divert or reprogram Proposition 10 funds, the City's Family Resource Center could lose up to half of its funding, or approximately \$20,000 over the next two fiscal years.

Attachment:

- Resolution

RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SUPPORTING PRESERVATION OF PROPOSITION 10 AND OPPOSING ANY EFFORTS TO DIVERT OR REPROGRAM PROPOSITION 10 FUNDS

WHEREAS, the first 5 years of life establish a foundation for the future success of children and their ability to reach their full potential, and it is our responsibility to provide them with the best possible start; and

WHEREAS, First 5 California and 58 County First 5 Commissions were established in 1998 by the voters of California through Proposition 10 and funded by a tax on tobacco to provide for the development of programs that focus on children's early development in the areas of health, education and safety; and

WHEREAS, the First 5 Solano Commission have been highly responsible and effective stewards of these funds by making strategic and targeted investments across the local early childhood system, leveraging Proposition 10 funds to almost double the amount available for local services, establishing long-term funding commitments to local public and non-profit partners and putting in place a results-accountability evaluation system that supports measurable improvements for young children; and

WHEREAS, First 5 Solano has faithfully served the children and families of Solano County by creating and supporting a wide range of initiatives that are critical for thousands of underserved children, including:

- 97% health care insurance for children aged 0-5 (Solano Kids Insurance Program/Regional Children's Health Initiative),
- A National Association of Counties award-winning homevisiting program that succeeded in keeping 98% of high-risk children served last year out of foster care placement (Integrated Family Support Initiative),
- A California State Association of Counties award-winning prenatal services program for high-risk mothers, resulting in over 100 babies born last year at full-term, optimum birthweight and substance-free (BabyFirst Solano),
- Substantial support for Family Resource Centers in Benicia, Dixon, Fairfield-Suisun, Rio vista, Vacaville and Vallejo, resulting in the most comprehensive and cohesive parent and family resource center network in California (Children's Network/Family Resource Center Network),
- Hundreds of early mental health screenings and treatment services for young children (Early Childhood Mental Health Initiative),
- Full-day, full-year wraparound for 40 Head Start students,
- Support and training for child care professionals resulting in measurably improved quality of care and markedly higher retention in the field (CARES),

- Comprehensive school readiness services resulting in significant improvement in the competencies of entering kindergarteners (School Readiness Initiative); and

WHEREAS, First 5 Solano is a catalyst that brings together the collaborative partners of Solano County to provide resources and services for families, and takes the lead in uniting organizations, business and schools on behalf of the welfare of children from the prenatal stage through age 5, creating and supporting collaboratives for preschool services, countywide early developmental health strategic planning, positive parenting, parent education and family support and prenatal services; and

WHEREAS, the nature of Proposition 10 funding, which is a declining funding source, followed that best and most prudent practice would be for local First 5 Commissions to establish reserves and long-range financial plans to ensure an effective, stable and reliable early childhood service system; and

WHEREAS, the local impact of diversion or reprogramming of Proposition 10 funding to address the state budget crisis would result in substantial local harm to community-based organizations, school districts and public agencies funded by First 5 Solano, which has long-term commitments of over \$4 million annually; and

WHEREAS, the impact of diversion or reprogramming Proposition 10 funding to address the state budget crisis would be exacerbated by the loss of almost double this amount in matching funds drawn down by local public agencies using First 5 Solano dollars, much of which flow in turn to local faith- and community-based non-profits to fund vital prevention and early intervention services for young children and their families; and

WHEREAS, in addition to the local benefits of leveraging First 5 Solano funds to increase the overall funding base for young children in Solano County (earning First 5 Solano the County Supervisors Association of California' Merit Award in 2007), First 5-funded services have been proven to save local, state and federal dollars by preventing the need for crisis services, thereby reducing pressure on the already-beleaguered education, health and social service agencies; and

WHEREAS, First 5 Solano's services, system supports, partnerships and measurable results have contributed greatly to Solano County's unprecedented three-time recognition as one of the "100 Best Communities in America for Youth" by America's Promise; and

WHEREAS, the unique and diverse nature of Solano's communities demands local control and local solutions to issues that affect young children and their families, making it critical that First 5 Solano retain its ability to receive and distribute Solano County's fair share of revenue generated by the Proposition 10 tobacco tax; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Benicia supports the preservation of Proposition 10 structure and funding and opposes any efforts to divert or reprogram Proposition 10 funds.

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : July 31, 2008
TO : City Council
FROM : City Manager
SUBJECT : **DESIGNATION OF LEAGUE OF CALIFORNIA CITIES VOTING DELEGATES AND ALTERNATES**

RECOMMENDATION:

Approve, by motion, the designation of Mayor Patterson (voting delegate) and Council Member Schwartzman (alternate) to represent the City of Benicia at the League of California Cities Annual Business Meeting.

EXECUTIVE SUMMARY:

The League of California Cities' 2008 Conference will be held September 24-27, 2008 in Long Beach. The Annual Business Meeting at the conference will be September 27th and, in order to vote at that meeting, the City Council must designate a voting delegate. The City may appoint up to two alternate voting delegates in the event that the designee is unable to serve in that capacity. The voting delegate must be present at the meeting in order to cast a vote. The League membership considers and acts on resolutions that establish League policy at the meeting. The City's current League appointed representatives are Mayor Patterson and Council Member Schwartzman (alternate).

BUDGET INFORMATION:

There is no budget impact associated with this action.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : August 1, 2008

TO : City Council

FROM : City Manager

SUBJECT : **APPROVAL OF MODIFICATIONS TO THE ALLOCATION OF POSITIONS IN THE BENICIA FIRE DEPARTMENT AND APPROVING THE JOB DESCRIPTION AND SALARY RANGE FOR FIRE DIVISION CHIEF**

RECOMMENDATION:

Adopt the resolutions modifying the allocation of positions in the Benicia Fire Department and establishing approving the Fire Division Chief job description and salary range.

EXECUTIVE SUMMARY:

The proposed reorganization in the Benicia Fire Department would replace one existing Deputy Chief position and one Administrative Captain position with two Fire Division Chief positions. The recommended action approves the job description and salary range for the new Fire Division Chief position. It also modifies the allocation of positions presently authorized in the 2007-09 Budget by replacing one Deputy Chief position and the Administrative Captain position with two new Fire Division Chief positions.

BUDGET INFORMATION:

This change is cost neutral, as it does not result in any additional positions and the salary adjustments will not increase overall personnel costs for the department.

BACKGROUND:

The current command structure within the Fire Department below the Fire Chief has been two Deputy Fire Chiefs. In addition to the Deputy Fire Chiefs there is one Administrative Fire Captain that is part of staff for the department.

The recent retirement of the former Fire Chief, and subsequent appointment of one of the Deputy Chiefs to the position of Fire Chief has created an opportunity to revisit this structure. By consolidating the department into three divisional areas: Operations, Administrative, and Training, the two Division Chiefs can assume responsibility for Administrative and Training, while the Deputy Chief will retain oversight of Operations. In addition, the Deputy and Division Chiefs will cover off-duty administrative and emergency response coverage. Currently, the two

Deputy Fire Chiefs cover 24/7 response to major incidents. The new Division Chief job description has a residency requirement, which will assure a more efficient and timely response to off-duty and after-hour incidents by a Chief Officer.

The attached memo from the Fire Chief provides additional information regarding the new proposed structure and recommended actions for implementing the reorganization.

Attachments:

- Resolution
- Memorandum from Fire Chief
- Division Chief Job Description

RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA MODIFYING THE ALLOCATION OF POSITIONS IN THE BENICIA FIRE DEPARTMENT AND APPROVING THE DIVISION CHIEF JOB DESCRIPTION AND SALARY RANGE

WHEREAS, the proposed reorganization of the Benicia Fire Department involves the replacement of the Deputy Fire Chief position and Administrative Fire Captain with two Division Chief positions; and

WHEREAS, the proposed command structure will allow for 24/7 response to major incidents by a chief officer and place major functional fire department responsibilities under the direct supervision of a chief officer; and

WHEREAS, the change in allocation of positions is cost neutral, as it does not result in any additional positions and the salary adjustments will not increase overall personnel costs for the department; and

WHEREAS, the proposed job description accurately reflects the management role and responsibilities necessary for the Division Chief position.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves of the job description of Division Chief and establishes the following salary range for the position:

A	B	C	D	E
7,958	8,356	8,774	9,212	9,673

On motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 19th day of August, 2008, and adopted by the following vote:

Ayes:

Noes:

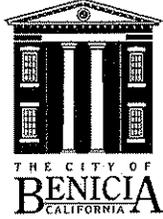
Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

MEMORANDUM FROM FIRE CHIEF



Fire Department
MEMORANDUM

DATE: July 11, 2008
TO: Jim Erickson, City Manager
FROM: Gene Gantt, Fire Chief
SUBJECT: **Fire Department Reorganization Proposal
Position Modification**

Recommendation Summary:

Reorganize the administrative structure of the Benicia Fire Department to one (1) Fire Chief, one (1) Deputy Fire Chief, and two (2) Division Chiefs.

Fiscal Impact:

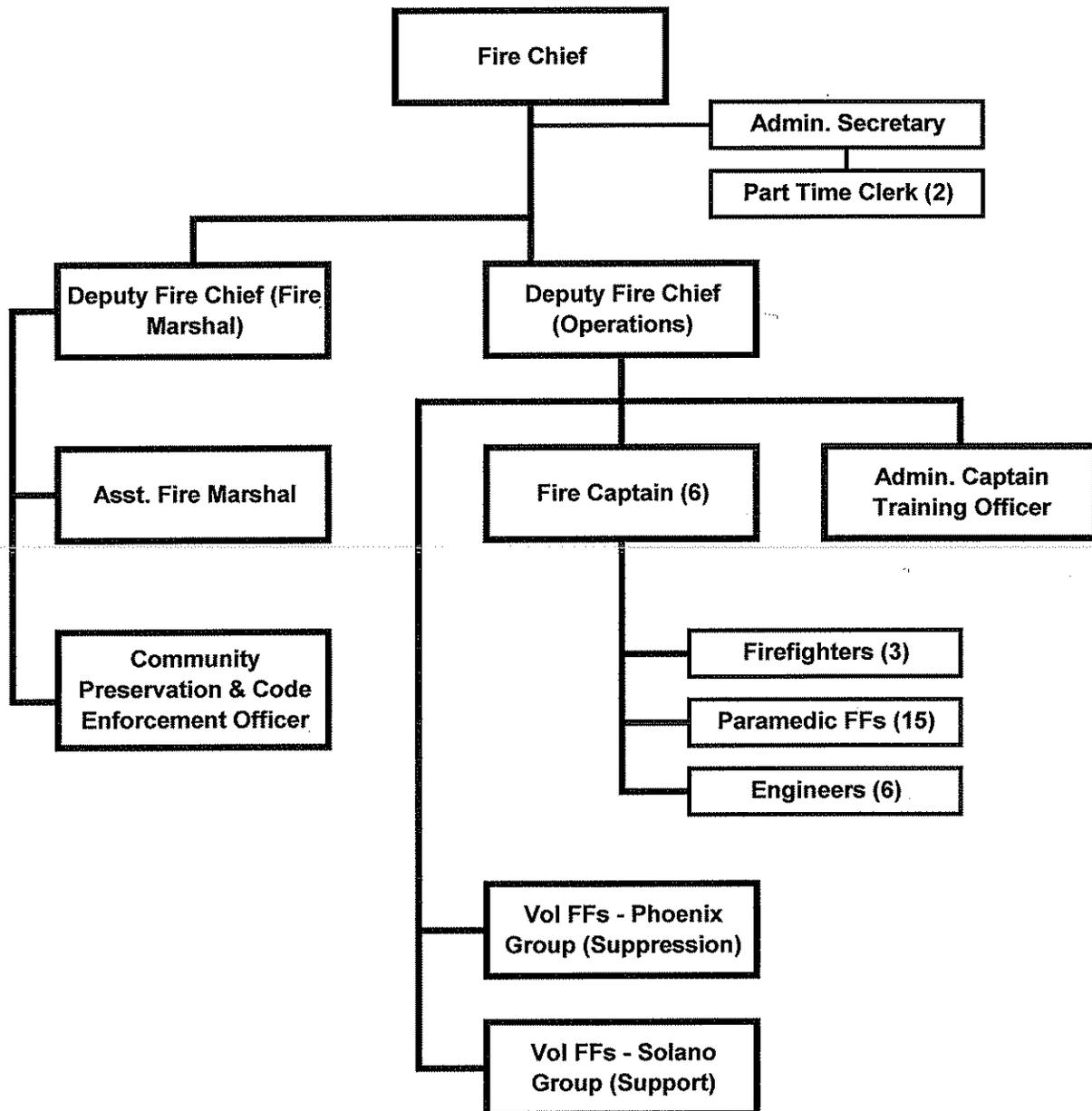
This proposal will be a cost neutral, as there are no additional positions and the salary adjustments due to the rank adjustments will not increase overall personnel costs.

Background:

The current command structure within the Fire Department below the Fire Chief has been two (2) Deputy Fire Chiefs. In addition to the Deputy Fire Chiefs there is one (1) Administrative Fire Captain that is part of staff for the department. The Administrative Fire Captain has functional responsibility for many major functions of the department that include: training, disaster management, the Community Awareness Notification (CAN) system, and other assignments. The Benicia Firefighters Association IAFF Local 1186 represents this position.

The Deputy Fire Chiefs also serve as “duty chiefs” and cover off-duty administrative and emergency response responsibilities.

Benicia Fire Department Organization Chart (As of June 30, 2008)



Analysis:

With the recent retirement of the former Fire Chief and promotion of one of the Deputy Fire Chiefs to Fire Chief, now is a good time to reevaluate our command structure.

The major functional areas within the Benicia Fire Department in addition to the responsibilities of the Fire Chief are: Fire Operations, Personnel, Emergency Medical Services, Administrative Services, Fire and Life Safety/Code Enforcement, Training, Disaster Management/Mitigation and Preparedness which includes BERT and CAN.

In prior discussions with the department's management consultant Dr. Bill Mathis, it has been decided that to better manage and control all of the major functional areas within the organization, it would be an advantage to have the roles and responsibilities currently being done by the Administrative Fire Captain/ Training Officer to be in a "chief" position. In addition, with this lower management position of Division Chief, this gives the Fire Chief the ability to spread these major functions through three chief officers.

Recommendations:

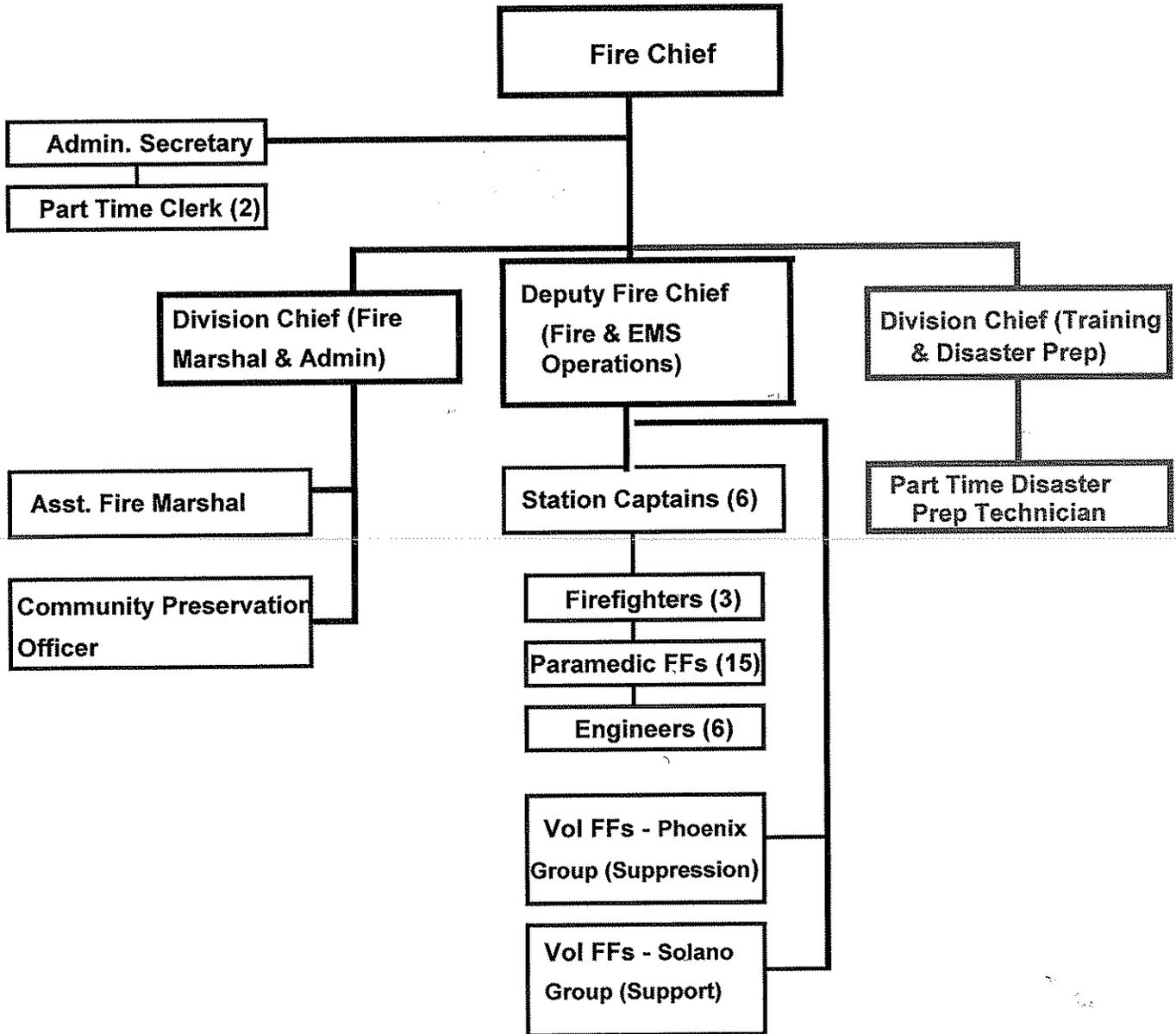
I am recommending consolidating the department into three divisional areas; Operations, Administrative, and Training. In addition, the Deputy and Division Chiefs will cover off-duty administrative and emergency response coverage.

To accomplish this reorganization, the following recommendations would be implemented:

1. Eliminate the rank of one Deputy Fire Chief. Upon retirement or vacancy with the second Deputy Fire Chief's position this role could be re-evaluated. This position could stay at the Deputy Fire Chief rank or be reclassified.
2. A Deputy Chief position would be reclassified as a Division Chief.
3. Reclassify the Administrative Fire Captain position to a Division Chief. The Administrative Fire Captain position would be frozen and not filled.
4. Have an internal promotional process for the two (2) Division Chief positions.

I have met with the leadership of the Benicia Firefighters Association IAFF Local 1186 about this reorganization and I have received positive feedback from them.

Benicia Fire Department Organization Chart (Proposed July 2008)



Cost Analysis:

Current Salary Base (Actuals)

	Annual Salary
Deputy Fire Chief # 1	\$131,388
Deputy Fire Chief # 2	\$131,388
Administrative Fire Captain	\$109,500
Total Salary Cost	\$372,276

Proposed – Position Costs Base (Estimated) FY 08-09

	Annual Salary
Deputy Fire Chief	\$131,388
Division Chief # 1	\$116,076
Division Chief # 2	\$116,076
Total Salary Cost	\$363,540

Attachment: Division Fire Chief Job Description

**FIRE DIVISION CHIEF
JOB DESCRIPTION**



CITY OF BENICIA Fire Division Chief

DEFINITION:

Under general direction of the Fire Chief, may plan, organize, direct, and coordinate the activities of any one or more of the Fire Department's major functions that include: Fire Operations; Administration; Fire and Life Safety (Fire Marshal); Training; Emergency Medical Services and Disaster Preparedness.

DISTINGUISHING CHARACTERISTICS:

The incumbent in this position receives direction from the Fire Chief and provides full line and functional management responsibility for a function or program area within the department. The incumbent in this position is responsible for assisting in the development of departmental budget, goals and objectives. The Division Chief may serve as a liaison between various City departments and/or divisions.

A primary responsibility is performing as an operational "duty-chief" and responding to fire department incidents as a command officer within the Incident Command System for City and mutual aid calls for service. The incumbent in this position will supervise fire suppression/emergency operations.

The position is distinguished from the Fire Captains by the level and scope of responsibilities assigned. The Division Chief is responsible for all assigned personnel within a specific division while the Fire Captain is responsible for supervision of assigned personnel on a specific shift.

REPRESENTATIVE DUTIES: The representative duties listed include essential and non-essential functions that vary by position. Individuals with disabilities will be considered for placement into positions in this class based upon an assessment of the essential functions of the particular position.

The Division Chief may perform in any of the major functions within the Fire Department, which may include:

Response as a command officer and participation in "duty-chief" rotation for both City incidents and mutual aid calls for service including after hours and weekends.

Responds to fire department emergency incidents and situations. Plans and directs all firefighting and lifesaving functions as a command officer.

Prepares reports and makes recommendations to the Fire Chief concerning departmental policies and procedures, budgetary, staffing and equipment requirements.

Recommend the appointment of personnel; provide or coordinate staff training; conduct performance evaluations; implement discipline procedure as required; maintain discipline and high standards necessary for the efficient and professional operation of the Department.

Build and maintain positive working relationships with co-workers, other employees and the public using principles of good customer service.

Attends and participates in professional group meetings; stays abreast of new trends and innovations in the major functions of the Fire Department.

Represent the Fire Department at various council, board, commission or public meetings.

Enforces fire and life safety codes and issues citations, notices and warnings.

Collects, analyzes and evaluates data; prepares and maintains inspection reports and records, technical information and statistical data.

Will supervise, lead, train and assign the work of technical subordinate staff and consultants.

Updates, and trains personnel on the City's Emergency Operations Plan, NIMS, and SIMS

Serves as acting Fire Chief as assigned.

Perform related duties as assigned.

MINIMUM QUALIFICATIONS:

Knowledge of:

Applicable Federal, State and local laws, codes and regulations including California Fire and Building Codes, National Fire Codes, Title 19 and 24 C.C.R.

Principles and practices of fire department organization, administration, budget and personnel management.

Modern fire department training, techniques, operations, and evaluation measures.

Principles and practices of program development and administration.

Methods and techniques of fire, explosive and arson investigations.

Standard fire department operations and terminology.

Emergency Incident Management principles, practices and procedures.

Principals of modern disaster preparedness and homeland security practices.

Principles and practices of leadership, motivation, team building and conflict resolution.

Modern office procedures and computer equipment.

Principles and practices of supervision, training and personnel management.

Ability to:

Analyze problems, identify alternative solutions, and project consequences of proposed actions and implement recommendations.

Read, comprehend, interpret and explain codes, ordinances, rules and regulations relating to fire prevention, inspection and investigation, interpret, explain and enforce fire department and City policies and procedures.

Make effective public presentations and present evidence in court effectively as required by the position.

Understand, interpret and review construction and building plans for compliance with applicable fire and life safety codes, regulations and laws, and calculate sprinkler system requirements.

Perform a variety of fire code inspections and investigations in an organized, detailed and efficient manner and prepare complete and accurate reports.

Effectively manage personnel, equipment and resources.

Plan, direct and coordinate the major functions of the department.

Plan, assign, supervise and evaluate subordinate personnel.

Conduct thorough fact-finding investigations and impartially execute regulations, codes, policies/procedures, ordinances, and the City's Personnel Rules and MOU's.

Prepare statistical reports and equipment specifications.

Conduct training for Fire Department and City personnel, and the public.

Communicate clearly and concisely, both orally and in writing.

Deal courteously and tactfully with the public.

Establish and maintain cooperative relationships with those contacted in the course of work.

Supervise, lead, plan and review the work of assigned staff.

Conduct public education and disaster preparedness training for the general public and private industry.

MINIMUM REQUIREMENTS:

Experience:

Ten (10) years of responsible fire suppression and prevention experience, including at least five (5) years of command experience at the Battalion Chief or Fire Captain level in a career or combination type fire department.

or

Ten (10) years of responsible fire suppression and prevention experience, including at least three (3) years of command experience at the Battalion Chief or Fire Captain level or Assistant Fire Marshal within the City of Benicia Fire Department.

and

Education:

A Bachelors Degree from an accredited college or university with major course work in fire science/technology, fire prevention, fire safety, public administration or other approved related field.

and

License and Certification:

Fire Officer I, California State Fire Training Certification.

Certification and/or graduation from the National Fire Academy – Executive Fire Officer program, and/or the California State Fire Training – Chief Officer program are highly desirable.

Must possess and maintain a valid and appropriate driver's license as issued by the State of California Department of Motor Vehicles.

SPECIAL REQUIREMENTS:

The Division Chief incumbent must reside within a **fifteen (15) minute** response of Fire Station Headquarters prior to six (6) months after successful completion of probation.

POSITION INFORMATION:

Originated: April 2006 (not approved)

Revised: July 21, 2008

Approved by Civil Service Commission: n/a

Approved by City Council:

FLSA: Exempt

Bargaining Unit: Mid-Managers

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : July 31, 2008

TO : City Manager

FROM : Public Works Director

SUBJECT : **SUPPORT OF THE SOLANO COUNTY WATER AGENCY DELTA POLICY AND THE SOLANO COUNTY GUIDING PRINCIPLES FOR USE IN DELTA AND STATEWIDE WATER POLICY DEVELOPMENT**

RECOMMENDATION:

Adopt the resolution supporting the Solano County Water Agency Delta Policy and the Solano County Guiding Principles for use in Delta and statewide policy development.

EXCECUTIVE SUMMARY:

To strengthen Solano County's position in present state negotiations and processes for developing a "solution" to Sacramento-San Joaquin River Delta problems, the Board of Supervisors has requested City support of the County's April 1, 2008 "Guiding Principles for use in Delta and Statewide Water Policy Development." Solano County Water Agency has produced a similar document, which is recommended for City support as well.

BUDGET INFORMATION:

There is no budget impact associated with this action.

BACKGROUND:

There is momentum in the state at present for developing a "solution" to the deteriorating condition of the Sacramento-San Joaquin River Delta. Both Solano County and Solano County Water Agency are actively involved on behalf of our region in various Delta solution negotiations and processes. In that context, the Solano County Board of Supervisors has requested the City Council pass a resolution supporting the County's April 1, 2008 "Guiding Principles for Use in Delta and Statewide Water Policy Development" (County Delta Principles).

The County Delta Principles are similar to Solano County Water Agency's (SCWA's) December 13, 2007 "Solano County Water Agency Delta Policy" (SCWA Delta Policy), which had more City involvement in preparation. There are no major points of conflict between the two

documents. As we comply with the County's request to support formally the County Delta Principles, we believe it appropriate for the City to use this opportunity also to support formally the SCWA Delta Policy.

While statewide compromises will probably be required to achieve a Delta solution, it is helpful for the County and SCWA to state their positions and views in advance. City priorities may differ somewhat from those of County and SCWA, but we do not believe the differences are so significant that they outweigh the present benefit of unity behind these broad policy documents.

The County Delta Principles and SCWA Delta Policy were discussed and adopted in public meetings of the County Board of Supervisors and the SCWA Board of Directors, respectively.

Attachments:

- Resolution
- SCWA Delta Policy
- County Delta Principles

RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SUPPORTING THE SOLANO COUNTY WATER AGENCY DELTA POLICY AND THE SOLANO COUNTY GUIDING PRINCIPLES FOR USE IN DELTA AND STATEWIDE WATER POLICY DEVELOPMENT

WHEREAS, there is an unprecedented momentum in the state for developing a “solution” to the deteriorating condition of the Sacramento-San Joaquin River Delta; and

WHEREAS, to strengthen Solano County’s position in the present state negotiations and processes for developing a solution to Sacramento-San Joaquin River Delta problems, the Board of Supervisors has requested City support of Solano County’s April 1, 2008 “Guiding Principles for use in Delta and Statewide Water Policy Development;” and

WHEREAS, on December 13, 2007, Solano County Water Agency adopted a similar document, the “Solano County Water Agency Delta Policy,” with City involvement, and there are no major points of conflict between the two documents.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia does hereby support Solano County’s April 1, 2008 “Guiding Principles for use in Delta and Statewide Water Policy Development” and Solano County Water Agency’s December 13, 2007 “Solano County Water Agency Delta Policy.”

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

SCWA DELTA POLICY

Solano County Water Agency Delta Policy

Approved by Board of Directors on December 13, 2007

Summary of Policy Position

- State support for funding of an alternate intake to the North Bay Aqueduct is needed to mitigate the impacts for Delta Solutions.
- Any changes in the Cache Slough complex to improve fishery habitat needs to provide protection for existing agricultural water diversions.
- Support consideration of all water conveyance options including through Delta options and alternatives that could include an isolated facility as part of a comprehensive solution that adequately addresses Solano issues.
- Support consideration of more water storage for operational flexibility and for protection of the Delta as part of a comprehensive solution.
- The impacts of changes in salinity to the Suisun Marsh and Delta agriculture need to be fully mitigated.
- Delta levees need adequate funding for capital improvements, ongoing maintenance and emergency response. Beneficiaries of the Delta must contribute to funding.
- Mitigate impacts of conversion of agricultural land to habitat through means such as monetary contributions and agricultural preservation programs.
- Provide for a sustainable Delta. Fully mitigate impacts of changes to the Delta.
- Consider the importance of transportation and utility corridors through the Delta and provide enhancements and protections.
- Governance structure must provide adequate guarantees that the protections will be provided. Local Delta government must be a prominent part of the governance structure.
- Cost allocation to be based on beneficiaries pays.

Introduction

Solano County borders on the Delta and the Bay. We have a strong interest in the future of the Delta currently being discussed in many forums. Our interests are wide and varied and include: water supply, flood control, impacts to the local agricultural economy, transportation, environmental protection and recreation.

There are several programs studying various solutions to Delta problems including, Delta Vision, Bay Delta Conservation Plan and Delta Risk Management Study, in addition to legislative and initiative efforts. For the sake of brevity in this paper we will refer to those programs as "Delta Solutions".

The governing Board of the Solano County Water Agency (SCWA) is made up of all five members of the Solano County Board of Supervisors, mayors of all seven cities (Benicia, Fairfield, Dixon, Rio Vista, Suisun City, Vacaville and Vallejo) in the County and

directors from three districts that provide agricultural water supply (Solano Irrigation District, Maine Prairie Water District and Reclamation District No. 2068).

Water Supply

The SCWA obtains about half of its urban water supply from the North Bay Aqueduct (NBA) which pumps out of the north Delta at Barker Slough. The NBA is part of the State Water Project and serves over 400,000 people in Solano and Napa counties. Barker Slough is part of the Cache Slough complex that is seasonally home to the endangered Delta Smelt and other aquatic species. Additionally, the NBA has been documented as having the worst drinking water quality for all the State Water Project due to high organic carbon and turbidity.

SCWA has been investigating the development of an alternate intake to the NBA. SCWA received CALFED grant funding that completed a feasibility study for a 15 mile underground pipeline and a new pumping station on the Sacramento River near Courtland. SCWA has requested the California Department of Water Resources to start on the permitting and design of the alternate intake. Costs were estimated at \$150 million in 2003 dollars.

Delta Solutions identify the Cache Slough complex as being a key area for habitat restoration for the benefit of Delta smelt and other Delta species. Included is the development of wetlands to produce organic carbon to supplement the aquatic food chain. These future Delta actions have a direct adverse impact on the NBA by increasing the number of endangered fish near the NBA pumps. Additionally, the habitat restoration intentionally result in increases of organic carbon production near the NBA pumps that results, through the water treatment process, in increasing potential carcinogen levels in the drinking water supply.

Delta Solutions that include changes to the Cache Slough complex must mitigate its impact to the NBA. We are therefore requesting partial state funding of the construction of the alternate intake to the NBA.

In addition to the NBA pumps there are several agricultural water supply intakes in the Cache Slough area. These intakes would also suffer with the creation of new Delta smelt habitat. Any changes in the Cache Slough complex to improve fishery habitat needs to provide protection for existing agricultural water diversions. These protections should include take authority for endangered species and protection from prosecution for any fishery impacts above a baseline level.

Delta Solutions will likely recommend a new method of the conveyance of water supply through or around the Delta. An isolated facility may be considered. SCWA supports consideration of all options including through Delta options and alternatives that could include an isolated facility. However, such support is conditioned upon a Delta Solution that adequately addresses all the issues in this paper.

SCWA also sees the need for more water storage for operational flexibility and for protection of the Delta. Both groundwater and surface water storage should be considered. We are concerned about the high cost of surface water storage and want to ensure that costs are paid by the beneficiaries from such projects.

Water Quality

Concerns about water quality impacts to the NBA from Delta Solutions were discussed previously under the Water Supply section.

We also have an overall concern about potential future salinity intrusions into the Delta. Some of the Delta Solution options being considered include allowing a greater variability of salinity in the Delta for ecological reasons. This change in salinity regime could have an adverse impact on Suisun Marsh and Delta agricultural diverters. Any changes in salinity need to recognize the impacts of these changes and fully mitigate them.

Delta Levees

Delta Solutions need to address the long-term sustainability of Delta levees. It is envisioned that significant capital improvements need to be made to strengthen Delta levees to withstand threats such as earthquakes and rising sea level. Given numerous other beneficiaries of the Delta it is unfair to put the costs of all levee improvements on districts and agencies in the Delta. Other beneficiaries of the Delta must contribute towards long-term Delta levee needs including funding ongoing maintenance.

SCWA supports efforts to address the need for quick response in the Delta in the event of an emergency from Delta levee failures such as from an earthquake. Materials and other resources should be stockpiled and a plan of action developed. These plans must also consider the impact on local populations and Delta agriculture in responding to emergencies. Beneficiaries of the Delta need to participate in the funding of these efforts.

Land Use

Delta Solutions identify significant areas in Solano County for habitat development. Some of the land identified is currently in active agriculture. Conversions of this scale will have a major impact on the economy of Solano County. Delta Solutions must mitigate this impact through means such as monetary payments and agricultural preservation programs.

SCWA also has concerns about discussions of a new Delta agency usurping land use control from local government.

Sustainable Delta

SCWA supports a comprehensive Delta Solution that is sustainable. The Delta supports a wide range of values including the ecosystem, recreation, utility/transportation corridors, agriculture and tourism. The overall solution must address climate change and sea level rise. We recognize that the Delta Solution could result in major changes in the Delta, some of which could adversely affect Solano County interests. All these potential actions need to be analyzed for potential adverse impacts and be fully mitigated. SCWA supports comprehensive long-term plans such as the Bay Delta Conservation Plan currently being developed.

Water Conservation/Demand Management

Delta Solutions need to include recognition that water conservation and demand management is an integral part of overall water supply planning. SCWA supports a broad range of programs including water conservation, water recycling and desalination. These types of programs can be costly so feasibility of implementation needs to be considered. Protocols like the exemption process used by the California Urban Water Conservation Council should be considered.

Transportation Corridors

Delta Solutions must consider the importance of transportation corridors through the Delta. The Highway 12 corridor is especially of interest to Solano County.

Governance

Delta Solutions may identify the need for a new governance structure for the Delta. Any new governance structure needs to have local Delta government representation. We understand that given current State and Federal laws there will be limitations on the authorities of a new governance structure. Any new governance structure must provide adequate guarantees that the protections included in Delta Solutions will be provided.

Beneficiary Pays

Delta Solutions will have a substantial cost for implementation. The underlying principle should be beneficiary pays. Of course, the challenge is identifying the beneficiaries and allocating costs. It is appropriate for the State (through general funds likely developed by bond measures) to pay for some measures such as environmental benefits and recreation. It is also appropriate for the State and other benefitting agencies to pay for mitigation of impacts of Delta Solutions where the impacts are not specifically associated with a particular component. Stakeholders including those in Solano County must directly participate in discussions regarding allocation of costs and identification of beneficiaries.

COUNTY DELTA PRINCIPLES

SOLANO COUNTY GUIDING PRINCIPLES FOR USE IN DELTA AND STATEWIDE WATER POLICY DEVELOPMENT

1. Further Study And Analysis Is Necessary On Delta Water Conveyance Options (Including Through Delta, Dual Conveyance And Isolated Facilities Options) And Impacts Of Ecosystem Restoration Projects.

The Bay-Delta Conservation Planning process, Delta Vision, Public Policy Institute of California, and the Governor have all recommended further study of some type of Delta water conveyance facility to meet the needs of south of Delta and statewide water users. In short, almost every research, public policy-based organization and process is proposing further study and analysis of improvements to Delta water conveyance. It is clear that future water export operations in the Delta will change. The key question is, in what form or fashion, and in what way will the future changes in shape and water conveyance operations and ecosystem restoration projects in the Delta impact Solano County? Unfortunately, the answer is unknown at this time.

The Delta Vision Blue Ribbon Task Force released the first part of a two-part report "Our Vision for the California Delta," which offers a vision for sustainable management of the Sacramento-San Joaquin Delta for 30 to 50 years into the future. Currently this group is developing a strategic plan to implement the Vision. Included in this report were three specific strategy recommendations regarding "conveyance." They are:

- A revitalized Delta ecosystem will require reduced diversions, or changes in patterns and timing of those diversions, upstream, within the Delta and exported from the Delta at critical times.
- New facilities for conveyance and storage, and better linkage between the two, are needed to effectively manage California's water resources, the estuary and exports.
- Major investments in the California Delta and the statewide water management system must be consistent with, and integrate specific policies in this vision. In particular, these strategic investments must strengthen selected levees, improve floodplain management and improve water circulation and quality.

The Task Force also identified Near-Term Actions that must be taken because threats to the Delta and Suisun Marsh are so serious. These focus on preparing for disasters in or around the Delta, protecting its ecosystem and water supply system from urban encroachment, and starting work soon on short-term improvements to both the ecosystem and the water supply system. One specific reference dealing with conveyance is:

- Improvements in the current water conveyance and groundwater surface water storage systems should be pursued as rapidly as possible by the responsible agencies and departments, upon direction by the Governor.

Therefore, the County should support a position of further study in a show of good faith in the overall process. However, extreme vigilance is recommended with the goal of protecting County prerogatives, rights, financial needs, impacts to its

Attachment A

residents, future Delta governance, and legal options. It is important for the County to be willing to work with others and consider their needs, but the County **must** have its needs met involving future delta activities, landscapes, and operations. Anything less is unacceptable.

2. Seek Full Mitigation Of Negative Impacts To The County, Its Citizens Or Its Economic Well-Being And Ensure That Solano County And Other Delta Community Concerns Have A Standing Equal To Delta Water Export Interests And Ecosystem Improvements.

It is evident that significant impacts could be coming the County's way. These impacts come in the form of lost business opportunity and income, lost tax and assessment revenues, increased compliance costs with endangered species laws, additional strain on local emergency services, changes to transportation routes, changing flood control operations and reliability, and a potential reduction in urban and agricultural water supplies.

Develop Compensation Concepts

It is critical that the County prepare compensation concepts to determine methods of assessing and receiving financial mitigation of various impacts. The County needs to define, quantify, and seek reparations for these losses, with the goal of not incurring new costs already borne by the County, cities, special districts and their residents. Solano County must actively seek mitigation of all negative impacts to its habitat and urban areas, and ensure that other jurisdictions are held financially responsible for any negative impacts. It will be critical to monitor and support legislation that would provide for mitigation to Solano County and its residents as a way of ensuring that Solano County and other Delta community concerns have a standing equal to Delta water export interests and ecosystem improvements.

3. Preserve County Prerogatives, Including Local Land Use Authority, Tax Revenues, Public Health And Safety, Economic Development, Agricultural Stability, And Environmental Protection.

Being vocal on priorities will show others interested in Delta policy that the County must be included when new policies and proposals are considered. Providing written follow-up, when appropriate, will document the County's position on critical issues. This will further the County's desire for a 'seat at the table' and continue to reflect an offensive posture. Seven specific issues should be defended; land use authority, tax, assessment and fee revenues, public health and safety, economic development, agricultural stability, environmental protection, and the Suisun Marsh.

Land Use Authority

One of the greatest threats the County faces is losing its land use authority within the legal Delta region. Consideration should be given to existing authority rather than creating new authority. Existing authority of the Delta Protection Commission (DPC) provides for land use authority oversight (appeal not permitting authority) through county general plans and local governmental representation on the DPC. The Commission previously provided a letter to Blue Ribbon Task Force that suggested establishing objectives, mandates, benchmarks and timelines through Delta Vision to consider statewide input but then provide authority to carry out through locally driven processes such as DPC.

The Delta Vision identifies eco restoration and water supply as co-equals although there has also been recognition of Delta as place and Delta governance/strategic finance. Control over lands within the County's borders will help continue the primary function of local government – meeting the needs of its citizens and protecting their health and well being. Joining neighboring counties to protect this right should be paramount.

Tax, Assessment and Fee Revenues

Many of the Delta processes and proposals focus on changing land use from private, agricultural, and habitat-based usage to public, habitat-based usage. This will have a negative impact on Solano County and local special district revenues in the short-term with unknown long-term revenue impacts. Concern over the future financial health of the County is not only warranted, but a powerful argument against those seeking to reshape the Delta because of the potentially negative impacts to services provided for County residents.

Public Health and Safety

Public safety is the primary responsibility of County government and could be placed at risk with increased public lands to monitor, impaired capacity and operation of flood control and drainage projects, degraded levee systems (or lack thereof), and increased salinity levels near domestic and agricultural water supplies. The re-wilding of lands near urbanized centers will increase public health threats from expanding mosquito populations and increased vector control costs to control the spread of these populations. It will be important to determine how the County and local governments will pay for increased law enforcement patrols, emergency response, water supply and treatment costs, and the control of elevated public health threats directly and indirectly related to the loss of revenue as a result of land use conversions and modifications.

Economic Development

It is in the interest of and the obligation of Solano County to ensure that sufficient venues remain available for the retention and expansion of existing businesses and new ventures to meet projected employment and economic development needs. To this end, the County has focused the update of its General Plan to improve the viability of agriculture and to provide targeted areas for employers that are not appropriate for urban settings. Many of the Delta proposals would compromise this strategy and the county's agriculture industry, which also serves as the mainstay of the urban separators that contribute significantly to the county's quality of life.

Agricultural Stability

Protection of Solano County's Farm Gate stability is critical. According to the County's Agricultural Commissioner's annual report, Solano County had 360,562 acres that were under agricultural production in 2006. This agriculture generated approximately \$233 million in commodity sales in 2006. Solano County must be fully compensated for any negative impacts to its agricultural resources.

Environmental Protection

Solano County seeks to balance human and environmental needs in support of its diverse land uses that include farmlands and approximately 80 square miles of water. The citizens of this County made a very public commitment to protecting our environment over 20 years ago with an Orderly Growth Initiative that has ensured

the continued prosperity and sustainability of open spaces and active agriculture lands. The County is in the process of a General Plan update that will ensure these long-established set of values are not compromised. Many of the Delta proposals will impact the County's ability to sustain those environmental objectives.

Suisun Marsh

The County remains very concerned with impacts on the Suisun Marsh and its natural habitat and wants to ensure that future action is consistent with the Suisun Marsh Preservation Act and the Suisun Marsh Plan which covers marshlands, bays and sloughs in the waters surrounding the marsh. This means providing for adequate water quality, exercising sound water management practices including drainage within the Marsh, providing the production of valuable waterfowl plant foods and future supplemental fresh water supply.

4. Secure Financial Support For Infrastructure Needs, Including Transportation Corridors, Levees/Flood Control, Storage, Water Delivery Systems, And Improved Emergency Response.

Many of the processes and proposals envision a reshaping of the current Delta landscape and replacing with it with what is anticipated to be a more dynamic, resilient, and sustainable environment. If these processes prove financially detrimental to the County, it will be critical to quantify and recoup any loss. Infrastructure components continue to play a vitally important part in a "new" Delta by providing the necessary access and movement of goods throughout the area, agricultural support services, and recreational opportunities while also protecting the remaining features from deadly flooding and salinity intrusion. It should be a Board priority to support the retention and improvement of remaining infrastructure components so vital to a properly functioning Delta, not only because of the benefits it provides to the County, but for statewide priorities (water transfers) these protect. Three areas of infrastructure improvements should be pursued; Transportation Corridors, Levees/Flood Control, and Water Delivery Systems.

Transportation Corridors

Roads, highways, and shipping channels are vital to public safety, a healthy business climate, recreation, and agricultural vitality throughout the County. Highway 12 is a prime example of a transportation corridor that supports commerce, emergency response, and circulation in the County, but also transects the Delta. Maintaining and improving these routes is vital and funding opportunities should be pursued.

Levees/Flood Control

Projects and activities that have the effect of altering flood hydraulics and hydrology must, as a component of those projects and activities, provide protective mitigation to Solano County lands and populations. Maintaining the capacity and functionality of flood control systems surrounding and protecting the residents of the County is necessary for the protection of life and property. The ability of the local communities and Reclamation Districts to maintain and operate these structures is in direct correlation to the financial ability of having the tax and assessment base to fund the required work and to leverage State and Federal funds for maintenance and improvements. This highlights the County's need to maintain a healthy revenue stream.

Another impact to these facilities is endangered species issues that can limit and sometime prohibit the maintaining entity from performing needed work in a cost-effective way. Obtaining ESA take authority, as a component of the ongoing Bay Delta Conservation Plan, and reliable and reasonable Endangered Species Act (ESA) "safe harbor" protection that applies to all parties along with financial resources to ensure that required facilities are properly maintained and operated is critical to the overall protection of county residents, property and commerce.

Levees are also vital for rural communities and as a defense for agricultural and salt water intrusion. Consideration should be given to the needs for dredging and reuse of material. Federal funding is frequently unreliable for flood control projects. It is therefore critical that the County identify and secure reliable and sustainable funding sources that are accessible to local government.

Water Delivery Systems

Changes in Delta operations will require the County receive a reliable water supply, both in terms quantity and quality. The major cities in the county (and Napa County) receive water from the State Water Project (SWP) through the North Bay Aqueduct (NBA). The pumping plant intake to the NBA is located in a slough in eastern Solano County. Additionally, tens of thousands of acres in eastern Solano County are wholly dependent on Delta water supplies for agricultural uses.

All the recent Delta studies and programs see these agricultural areas in eastern Solano County as prime candidate lands for habitat restoration for the benefit of threatened and endangered species that are in decline in the Delta. However, creating environments for threatened and endangered species to thrive so close to critical water supplies for the County will only increase operating difficulties for urban water suppliers and threaten a critical mass of Solano agriculture in the immediate future. Therefore, alternatives need to include solutions that protect the continued operation and financial viability of the NBA, agricultural intakes in the northwest Delta and the managed wetlands in Suisun Marsh. These solutions should be funded and maintained with financial resources provided by those restoration projects and their sponsoring beneficiaries, coupled with ESA take authority, as a component of the ongoing Bay Delta Conservation Plan, and reliable and reasonable "ESA safe harbor" provisions for continued NBA and agricultural operations in Solano County. Changes in the Delta will have an adverse water quality impact on the NBA (but not on agricultural divisions).

Improved Emergency Response

Department of Water Resources (DWR), Army Corps of Engineers, and Sacramento District must deploy a robust command and control, maintenance and repair capability. The State and counties should coordinate with local agencies to ensure that equipment and supplies (earth moving equipment and supplies of rock/sand) are continuously available at locations throughout the Central Valley to enable agencies to respond rapidly to flood threats and levees that are threatened with failure. Continue to establish and maintain stockpiles of the necessary supplies.

Coordination is essential between all the organizations of the government and exercises and training to prepare for emergency response must be incorporated into business plans.

5. Ensure The County Is A Voting Member Of Any Delta Governance Structure And That Locally Elected Representatives Are A Majority Of The Leaders.

Taking an active and engaged position in multiple, strategically selected policy development arenas allows the County to "have a seat at the table" and minimizes or prevents the County from needing to take a defensive posture. When participating in policy development arenas, three specific areas that should be pursued are Delta processes, State and Federal Legislatures, and the California water community.

Delta Processes

The County is becoming actively engaged in many Delta processes and proposals, through consultants, County staff, elected officials, and governmental entities the County has membership in (Delta Protection Commission [DPC], Solano County Water Agency [SCWA], Solano City County Coordinating Council [SCCCC]). Efforts should continue with meeting attendance, comments to programs and proposals, coordination amongst County consultants and staff, and discussion of County positions within the DPC, SCWA, and Solano CCCC. This will also allow the County to communicate and educate its residents on the current and future importance of these matters. The County should consider the use of additional resources, as they may become available, such as the California State Association of Counties, League of California Cities, California Central Valley Flood Control Association, and the Association of California Water Agencies to advance its policy positions.

State and Federal Legislatures and Agencies

Utilizing the County's Legislative Advocates, seek meetings with State and Federal elected officials to explain the County's concerns regarding impacts from Delta processes and programs. This will allow for direct communication with decision-makers in Sacramento and Washington, D.C., which steer State and Federal agencies' future policies and regulations. An effort to influence State and Federal senior staff employees at the policy and decision-making level should be considered an essential component of this effort.

California Water Community

One-on-one meetings with individual water districts, especially the so-called "water export community," will show the County is serious in protecting its rights and citizens from adverse decisions regarding the future shape of the Delta, while also facilitating relationships with those who seek water from Northern California. These efforts should be coordinated with SCWA's existing relationships with the California water community. The County should evaluate the potential to establish strategic alliances with other Delta and Delta tributary counties that can strengthen the message on common interests and positions.

6. Utilize Legal Standing For Any And All Proposals And Programs That Directly Or Indirectly Impact The County, Its Citizens Or Its Economic Well-Being.

While still unclear, the County will need to preserve its legal standing in a few specific areas if it hopes to achieve success in current Delta discussions. These areas are water rights, area-of-origin and Delta protection statutes, and salinity standards.

Water Rights

The County Supervisors are members of the Solano County Water Agency Board of Directors (SCWA). A substantial portion of Solano County is within the Sacramento

River watershed and a substantial portion is within the legally defined Delta, wherein future water use needs are statutorily superior to export needs. Additional protections apply to the statutory Delta. Protection of the County's ability to secure and defend its area-of-origin rights to water is essential for future growth and prosperity. These rights and the existing appropriative and riparian rights within the county should be well understood and vigorously defended by the County. These existing statutory, contractual, and constitutional water right protections accrue to the benefit of Solano County, its residents and businesses. Proposals to realign and modify these protections and priorities have the potential to cause serious social and economic damage to the County.

Working with SCWA and other water right holders within its borders, the County should seek to perfect these rights and act diligently to maintain their specified quantities, without reduction. Solano County will vigorously defend the statutory protections afforded the County, its cities, districts and residents.

Area-of-Origin and Delta Protection Statutes

Area-of-Origin is a tenant of California's water law that in essence allows those in the area-of-origin to obtain additional water if their needs warrant at the expense of existing water users. The County is part of the Sacramento River watershed and has rights for additional supplies for future growth and prosperity, and should support others within the area-of-origin in their claims for additional supplies. While the area-of-origin concept has not truly been tested in the courts, it should be carefully watched and monitored. There may also be a movement in the State Legislature to change the area-of-origin statute. The County would be well served to oppose any and all attempts to change the law. The Delta is provided an additional level of statutory protection, California Water Code (CWC) §12201, 12202, 12203, 12204 & 12205, collectively part of the Delta statutes.

Salinity Standards

High levels of salinity impacts drinking water, agricultural production and certain types of natural habitats, and has also been of great concern to county residents. State and Federal water operations are currently dictated by the amount of salinity within certain areas of the Delta CWC §12202. These standards are constantly being debated by various water interests (exporters, environmentalists, delta counties, etc.) but ultimately, the Legislature and State Water Quality Control Board holds the power to dictate the acceptable levels. Certain County water users also possess contractual protection of water at a specified quality as measured by various levels of salinity, i.e. *North Delta Water Agency Agreement with the California Department of Water Resources*. As such, Solano County should seek to coordinate with County entities that are directly impacted by salinity and seek a unified position on appropriate salinity levels for County users.

Conclusion

Adopting the six Guiding Principles will allow the County to be well placed to obtain lost resources and be held harmless with whatever proposals and processes emerge from future Delta discussions. This body certainly has every right to demand concessions of those who seek to irreparably change the lives and livelihoods of Solano County's residents.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE: July 29, 2008

TO: City Manager

FROM: Community Development Director
Fire Chief

SUBJECT: **INTRODUCTION OF ORDINANCES AMENDING THE
BENICIA MUNICIPAL CODE TO INCORPORATE
BUILDING AND OTHER "UNIFORM" CODE REVISIONS
AND TO ADJUST RELATED FEES**

RECOMMENDATION:

Introduce the ordinances amending, deleting and/or adopting changes to the Benicia Municipal Code including Chapter 8.28 (Fire Prevention and Life Safety Code) of Title 8 (Health and Safety) and various chapters of Title 15 (Buildings and Construction) to address local conditions as required by State law:

- Chapter 8.28 Fire Prevention/Life Safety Code
- Chapter 15.04 California Building Code
- Chapter 15.08 California Mechanical Code
- Chapter 15.12 California Plumbing Code
- Chapter 15.16 California Electrical Code
- Chapter 15.18 Uniform Housing Code
- Chapter 15.20 Uniform Code for the Abatement of Dangerous Buildings
- Chapter 15.22 Uniform Administrative Code
- Chapter 15.24 Work/Live Occupancy Code
- Chapter 15.26 Building Permit Fees and Other Fees

This may be done as one motion if no changes to the drafts are desired.

EXECUTIVE SUMMARY:

The State of California promulgates uniform construction related codes for statewide use. This ensures quality building construction and greater public safety by standardizing building laws and promoting consistency in construction costs for every jurisdiction within the state. These codes are reviewed and updated on a 3-year cycle and published by the International Code Council, the International Association of Plumbing and Mechanical Officials and the National Fire Protection Association. Since 1998, the State

used the 1997 edition of the Uniform Building Code as the basis for the California Building Code. Effective January 1, 2008, the state began using the International Building Code as the basis for the California Building Code. Cities have the discretion to adopt other uniform codes published by these organizations and specific local amendments due to local climatic, geological or topographical reasons. Individual jurisdictions must use the codes as adopted by the state. Many of the changes in the city codes were necessary to adjust language to reflect wording in the new state code and to adjust chapter numbering.

BUDGET INFORMATION:

Proposed inspection fee increases are based on a 2003 fee study to reflect true inspection costs.

BACKGROUND:

The State of California has recently approved the latest editions of the following codes:

- California Building Code (2007)
- California Mechanical Code (2007)
- California Plumbing Code (2007)
- California Electrical Code (2007)

The Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings and the Uniform Administrative Code have been deleted in the entirety because they are now contained in the adoption of the new code and are, therefore, unnecessary.

The proposed ordinance revisions will adopt the following requirements not mandated by the California Building Code (CBC) or the California Plumbing Code (CPC).

I. The requirements listed below are already in the existing Benicia Municipal Code based upon the findings described below:

1. Section 15.04.067 for CBC Section 501. *Requires lighted street address numbers.*

The City is geographically bordered on two sides by the Carquinez Strait. These large bodies of water cause fog to form in the city, which limits the ability of emergency personnel to quickly locate buildings during night hours without the aid of lighted street address numbers.

2. Section 15.04.110 for CBC Section 1505.8. *Requires Class B or better roof assembly.*

The City is geographically situated in an area subject to frequent periods of strong wind conditions. Additionally, the City contains a significant amount of hilly, undeveloped acreage designated as permanent open space. These large open space areas are characterized as brush and grasslands, which during certain times

of the year present extreme fire hazard. These wind conditions, combined with brush and grassland areas, result in heightened concern for fire damage and require additional constraints on the use of wood shake and shingles on roofs and siding.

3. Section 15.24 Work/Live Occupancy

The City's existing work/live ordinance provisions are unique requirements which are not covered by the uniform codes. The work/live ordinance is consolidated into BMC Section 15.24.

4. Section 1504.111 for CBC Section 2111.14.

Requires any new fireplaces must either be pellet fueled or EPA certified. Any new wood-burning device must meet EPA emission targets as approved by the Bay Area Air Quality Management District. The code revision is at the request of the Bay Area Air Quality Management District. The ordinance is designed to assist the Bay Area in meeting federal standards and improve air quality. The ordinance reflects the most current regulations of the Bay Area Air Quality Management District.

5. Section 15.12.02 for CPC Section 604.15.

Amended to prohibit the use or repair of metal water pipes buried under the concrete slab of a building. In the past few years, an increasing number of buildings have developed water leaks under the building slab and the cost of repair is considerable. The reason for the water pipe failure is unknown. In order to eliminate this problem, buried water pipe will be prohibited under a building slab.

6. Section 15.12.027 for CPC Section 604.11

A section will be added to the CPC allowing the use of PEX water pipe. PEX is a plastic water pipe used throughout the country. Its use will allow flexibility of the piping system and may decrease damage caused by earthquakes.

II. The proposed ordinance revisions include the following new amendments for the reasons listed below:

1. Gypsum wall board (sheetrock) will be prohibited to be used as lateral bracing. As Benicia is located in a high seismic zone, this change is necessary to ensure adequate safety in the event of seismic activity.
2. Water resistant gypsum board (green board) will not be permitted in showers and tub areas subject to water splash. Due to this material's lack of resistance to damage in high moisture areas, premature failure of the product frequently occurs.
3. A definition of public nuisance is being added. The new definition is intended to assist code enforcement and building inspection in using existing ordinances to abate building and code violations.

III. The proposed ordinance adjusts building inspection fees.

Building inspections fees have not been significantly updated in the last 10 to 20 years. In fiscal year 2003-2004, the City commissioned the firm Maximus to conduct a survey to assist the City in evaluating building inspection fees based on the true cost of inspection services. Based on factors including wages, benefits, overhead, productive hours, and other department support, the productive hourly rate of building inspection was determined to be \$129/hour.

Per the Benicia Municipal Code, building fees are assessed in one of two ways: based on either the valuation of the proposed work, or the direct cost of inspection, depending on the type of project. Staff proposes using the \$129/hour rate for direct-fee projects without accounting for inflation because code enforcement, which was included in the 2003 rate, would now be charged as additional hourly time. Valuation-based fees have adjusted automatically since 2003 to reflect inflation.

A number of inspections, such as roofing, water heaters, and minor kitchen and bathroom remodels, were assigned a set fee to charge rather than use a valuation-based fee. Due to the frequency of these inspections, the Building Inspection Division has developed a sense of the time involved for each inspection. With a set fee, the permittee can be treated equally and fairly with other permittees.

Solar units will retain approximately the same fee as before the fee adjustments. This is the fee before was based on the number of solar panels and the new fee is now a flat fee. Based on experience, this will not increase fees to most applicants. This fee will keep the fee assessed for solar installation one of the lowest in the Bay Area.

Fees were added for code enforcement. In the past, no mechanism was available to charge for code violation and the City absorbed this fee. With the new fees, code violations can be assessed for the cost to the City to abate violations. The fees address the different steps the City is required to follow to abate properties of code violations.

Attachments:

- Proposed Ordinance for Chapter 8.28 Fire Prevention/Life Safety Code
- Proposed Ordinance for Chapter 15.04 California Building Code
- Proposed Ordinance for Chapter 15.08 California Mechanical Code
- Proposed Ordinance for Chapter 15.12 California Plumbing Code
- Proposed Ordinance for Chapter 15.16 California Electrical Code
- Proposed Ordinance for Chapter 15.18 Uniform Housing Code
- Proposed Ordinance for Chapter 15.20 Uniform Code for the Abatement of Dangerous Buildings
- Proposed Ordinance for Chapter 15.22 Uniform Administrative Code
- Proposed Ordinance for Chapter 15.24 Work/Live Occupancy Code
- Chapter 15.26 Building Permit Fees and Other Fees

FIRE PREVENTION/LIFE SAFETY CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 8.28 (FIRE PREVENTION AND LIFE SAFETY CODE) IN ITS ENTIRETY OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 8.28 (Fire Prevention and Life Safety Code) of Title 8 (Health and Safety) of the Benicia Municipal Codes is amended in its entirety to read as follows.

Chapter 8.28

Fire Prevention and Life Safety Code¹

Sections:

- 8.28.010 Adoption by reference.
- 8.28.020 Copies on file.
- 8.28.030 Establishment and duties of division of fire and life safety.
- 8.28.040 Definitions.
- 8.28.050 Establishment of limits within the City of Benicia where materials regulated by the code are prohibited or limited.
- 8.28.060 Amendments made in the California Fire Code.
- 8.28.070 Appeals.
- 8.28.080 Penalties.

8.28.010 Adoption by reference. An ordinance of the City of Benicia adopting the 2007 Edition of the California Fire Code (2006 International Fire Code as amended by the State of California), regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Benicia; providing for the issuance of permits and collection of fees therefore; repealing Chapter 8.28 of the City of Benicia Municipal Code, and all other ordinances and parts of the ordinances in conflict therewith.

A. California Fire Code Adopted. That portion of the California Fire Code that imposes substantially the same requirements as are contained in the International Fire Code, 2006 Edition published by the International Code Council and the California

¹ For Statutory provisions adoption by reference of nationally recognized codes, see Govt. Code Section 50022.1 et seq.

Building Standards Commission with errata, together with those portions of the International Fire Code, 2006 Edition, including Appendix Chapters 1, 4, B, C, D, E, F, and G, as modified and amended by this chapter, are adopted by this reference into this chapter, and are hereby collectively declared to be the Fire Code of the City of Benicia, in the State of California regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises as herein provided; providing for the issuance of permits and collection of fees therefore; and each and all of the regulations, provisions, penalties, conditions and terms of said Fire Code on file in the office of the fire marshal are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 2 of this ordinance.

This Code adopts changes, modifications and requirements not mandated by the California Fire Code (CFC) and International Fire Code (IFC) because of local climatic, geological or topographical conditions. The modifications are needed due to the following local conditions that exist in Benicia and on the following findings:

1. The city is geographically situated in an area subject to frequent periods of strong gusty winds from the southwest and north. In addition, temperatures during the summer months range from 80 to 100+ degrees. During this period, the relative humidity can fall below 20%. The city contains a significant amount of hilly undeveloped acreage designated as permanent open space. This wildland/urban interface, in conjunction with the hot, dry and windy climatic conditions, creates a hazardous situation that has led to extensive grass and brush fires in recent years. With more development extending into and adjacent to the open space areas, heat and wind-driven fires could lead to serious consequences.

2. The city is divided by several topographic features, including Interstates 680 and 780. As a result, the city is primarily divided into three parts. Traffic within and between the parts of the city is channeled onto several major thoroughfares that must cross freeways by way of underpasses and overpasses. In addition, it is bordered on two sides by the Carquinez Straits. Periodic heavy traffic congestion on the city's major streets and interstates acts as a barrier to timely response for fire and emergency service vehicles. Because of traffic or accidents, there could be times that fire equipment could be sufficiently slowed as to increase the risk of substantial structural damage. With the possibility of fire services unable to guarantee rapid response to various sections of the city during these times, it is necessary to mitigate this problem by requiring built-in automatic fire protection systems which provide for early detection and suppression until the arrival of firefighting equipment and other emergency services.

3. The city is subject to ground tremors from seismic events on the San Andreas, Concord/Green Valley, Hayward, and/or other major active faults in the greater San Francisco Bay Area. The Concord/Green Valley fault is immediately adjacent to the city to the north. Seismological evidence indicates the probability of an earthquake in the region capable of doing significant damage to buildings is high. A major seismic event would create a citywide demand on fire protection services, which would be beyond the response capability of the fire department. This problem can be

lessened or mitigated by requiring initial fire control through the installation of automatic fire protection systems.

B. International Fire Code Adopted. That portion of the California Building Standards Code that imposes substantially the same requirements as are contained in the International Fire Code, 2006 Edition published by the International Code Council and the California Building Standards Commission with errata, together with those portions of the International Fire Code, 2006 Edition, including Appendix Chapters 1, 4, A, B, C, D, E, F, and G, as modified and amended by this chapter, are adopted by this reference into this chapter, and are hereby collectively declared to be the Fire Code of the City of Benicia for the purpose of regulating and governing the safeguarding of life, property and public welfare to a reasonable degree from the hazards of fire, hazardous materials release and explosion arising from the storage, use and handling of dangerous and hazardous materials, substances and devices, conditions hazardous to life or property in the occupancy and use of buildings and premises, the operation, installation, construction, location, safeguarding and maintenance of attendant equipment, the installation and maintenance of adequate means of egress not provided for by the building code, and providing for the issuance of permits and collection of fees thereof.

8.28.020 Copies on file. One copy of the California Fire Code and Appendix as adopted by Benicia Municipal Code 8.28.010, and all amendments thereto, shall be kept on file in the office of the fire marshal for inspection by the public.

8.28.030 Establishment and duties of division of fire and life safety. The California Fire Code as adopted and amended herein shall be enforced by the fire and life safety division in the fire department of the City of Benicia which is hereby established and which shall be operated under the supervision of the fire chief of the fire department. All members of the fire department may enforce the California Fire Code as adopted and amended herein.

8.28.040 Definitions. Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this chapter:

"Bureau" - Whenever the words "bureau of fire prevention", "fire prevention bureau", or "bureau" are used they shall be held to mean the fire and life safety division.

"Chief of the bureau of the fire prevention" - Whenever the words "chief of the bureau of the fire prevention" are used they shall be held to mean fire marshal.

"Jurisdiction" - Wherever the word "jurisdiction" is used in the California Fire Code, it is the City of Benicia.

8.20.050 Establishment of the limits within the City of Benicia where materials regulated by this code are prohibited or limited.

A. Establishment of limits in which storage of liquefied petroleum gases is to be restricted. The limits referred to in Section 3804.2 of the California Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby established as follows:

The bulk storage of liquefied petroleum gas is prohibited in all residentially zoned areas of the city, excluding public and public safety facilities.

B. Establishment of limits in which the storage of stationary tanks of flammable cryogenic fluids are to be prohibited. The limits referred to in Section 3204.3.1.1 of the California Fire Code in which the storage of flammable cryogenic fluids in stationary containers is prohibited is hereby established as follows: Any area which is zoned for other than industrial use.

C. Establishment of limits in which storage of explosive and blasting agents are to be prohibited. The limits referred to in Section 3301.2.3.1 of the California Fire Code, in which storage of explosives and blasting agents is prohibited, are hereby established as follows: The storage of explosives and blasting agents shall be prohibited within 2,275 feet of any inhabited building, 2,000 feet of any passenger railways or public highways with a traffic volume of more than 3,000 vehicles per day.

D. Establishment of limits in which storage of flammable or combustible liquids in outside above ground tanks, bulk plants or terminals, and bulk transfer operations are to be prohibited. The limits referred to in Section 3404.2.9.5.1 of the California Fire Code in which storage of Class I and II liquids in outside aboveground tanks is prohibited, are hereby established as follows:

1. Storage of flammable or combustible liquids in excess of 2,000 gallons shall be limited to refineries or bulk storage plant location.

2. Storage shall be limited to Public, Limited Industrial (IL), General Industrial (IG), and Water-Related Industrial (IW) zoned districts, or public safety facilities.

8.28.060 Amendments made in the California Fire Code. The California Fire Code is amended and changed in the following respects:

A. Section 101.1 is amended – Title. Section 101.1 of Appendix Chapter 1 is amended to read as follows:

101.1 Title. These regulations shall be known as the Fire Code of the City of Benicia, hereinafter referred to as “this code.”

B. Section 104.3.2 - Peace Officer Designation and Police Assistance. Section 104.3.2 of Appendix Chapter 1 is added to read as follows:

104.3.2 Fire Prevention Bureau Personnel and Police. All sworn safety personnel assigned to the fire and life safety division, or such other full-time fire department officers or fire prevention personnel including the community preservation officer(s), as may be authorized by the chief, shall be peace officers as described in Section 830.37 of the California Penal Code and shall enforce the Penal Code, California Fire Code, and where necessary and appropriate, any sections of the Benicia Municipal Code, California Health and Safety Code, and any other county or state fire-related laws or codes not specifically covered in any part of this code. These police powers include the issuance of misdemeanor citations (Notice to Appear), and as approved by the chief, carrying and use of firearms.

When requested to do so by the fire chief, the chief of police is authorized to assign such available police officers as necessary to assist the fire department in enforcing the provisions of this code.

C. Section 104.3.3 – Fire Clearance. Section 104.3.3 of Appendix Chapter 1 is added to read as follows:

104.3.3 Fire Clearance. It shall be unlawful for any person, firm or corporation to operate a business unless a fire clearance inspection has been made and such businesses are in compliance with all fire department requirements.

D. Subsection 105.4.1.1 is added to read - Plan Review and Fees. Subsection 105.4.1.1 of Appendix Chapter 1 is added to read as follows:

1. Plan Review: The chief, or his/her designee, may review all plans for the construction or remodeling of buildings for the purpose of ascertaining and requiring to be corrected any condition liable to cause fire, or endanger life from fire or panic, or any violation of this code, state laws and regulations, and any other local ordinances or requirements which the chief may deem necessary. The chief of the fire department may establish a schedule of fees, as approved by resolution of the city council; to be charged and collected for plan checking and other required inspection services.

2. Fees. The fire chief may establish a schedule of fees, as approved by the city council, to be charged and collected for plan checking, required inspection services, and for the issuance of permits pursuant to Section 105.8 of this code. Fire service fees may be charged to any person, firm, corporation or business that through negligence, violation of the law or as a result of carelessness is responsible for the cause of any fire department response to the scene of such an incident. A copy of fee schedules shall be kept in the office of the city clerk and the office of the fire marshal, and shall be available for public inspection.

E. Section 108 is amended -Appeal Process. Section 108 of Appendix Chapter 1 is amended to read as follows:

108.1 Board of Appeals established. When it is claimed that the provisions of this code do not apply, or that the true intent and meaning of this code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the chief of the fire department to the city manager within 30 days from the date of the decision of the chief of the fire department. The city manager, or the manager's duly authorized representative, shall be the hearing officer and his or her decision shall be final.

F. Section 109.3 is amended – Violation penalties. Section 109.3 of Appendix Chapter 1 is amended to read as follows:

109.3 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be guilty of an Infraction or Misdemeanor as specified in the California Penal Code. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

G. Subsection 110.1.3 is added -Abatement of Hazards. Subsection 101.1.3 of Appendix Chapter 1 is added to read as follows:

110.1.3 Abatement of Hazards. In situations where immediate abatement of a fire hazard or another potentially hazardous condition is required, the fire chief shall have the authority to abate such hazard immediately. This may include, but is not limited to,

confiscation of flammable liquids, fireworks, removing hazardous wiring and adapters, temporary closure of commercial occupancies, extinguishing unsafe or illegal fires and any other similar hazards determining no smoking and ceasing operation of any type of apparatus that may be a danger to property or life. Costs of abatement may become a lien upon the property affected. Affected persons shall be notified of action taken as soon as possible.

H. Section 111.4 is amended – Failure to comply. Section 111.4 of Appendix Chapter 1 is amended to read as follows:

111.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than five-hundred (\$500.00) dollars or more than fifteen-hundred (\$1,500.00) dollars.

I. Section 307.6 is added – Open Burning. Section 307.6 of Chapter 3 is added to read as follows:

1. 307.6 Open Burning. No person may ignite, permit or maintain an open fire within the city.

2. Open Outdoor Fires - Exceptions. The following are exceptions from the prohibitions in Section 307.6:

a. Fire for cooking of food for human consumption, fire for recreational purpose, recreational heating, or occasional cooking of food for human beings where such use is accomplished in a fireplace or barbecue pit.

b. A fire set or permitted by a public fire official in the performance of official duties:

- i. For the purpose of weed abatement;
- ii. To control the growth of vegetation in irrigation ditches, flood control channels and canals;
- iii. For the purpose of disease and pest prevention in connection with agricultural activities;
- iv. Elimination of a fire hazard and the training of fire department personnel; and
- v. Improvement of wildlife habitat.

J. Table 405.2 Footnote 'a' is amended - Fire and Evacuation Drill Frequency and Participation. Footnote 'a' to Table 405.2 of Chapter 4 is amended to read as follows:

a. The frequency in all school levels shall be allowed to be modified in accordance with Section 408.3.2. Secondary level schools need only conduct evacuation drills twice each school year.

K. Section 502 Definitions. Section 502 of Chapter 5 is amended to add the following definition:

"All-weather driving surface" - A roadway designed to carry the imposed weight loads of fire apparatus complete with all underground utilities, curbs, gutters, and a minimum surface finish of one layer of asphalt or concrete or road pavers.

L. Subsection 503.1.2.2 of Chapter 5 is amended to read as follows:

503.1.2.2 Access to open spaces. When access to open land/space or fire trail systems maintained for public or private use is obstructed by vehicles of any kind, or other obstructions both within the access or the road or street access to the open

space, the vehicle or obstruction may be removed and the cost of such removal will be assessed to the responsible party or vehicle owner.

M. 503.2.1 Dimensions. Section 503.2.1 is amended to add subsection 503.2.1.2 of Chapter 5 to read as follows:

503.2.1.2 Parking of vehicles on fire apparatus access roads. For the parking of vehicles on a fire apparatus access road, roadway widths shall be increased to accommodate the parking of vehicles as follows:

1. Roadways 20 feet (6096 mm) in width, no parking permitted,
2. Roadways 28 feet (8534 mm) in width, parking permitted on one side only. Parking is permitted on the side of the street absent fire hydrants, and
3. Roadways 36 feet (10 973 mm) in width when parking is not restricted.

N. 503.2 Specifications. Subsection 503.2.4 of Chapter 5 is amended to read as follows:

503.2.4 Minimum turning radius. A fire department access road shall have a minimum standard turning radius of 30 feet inside and a 42-foot outside diameter.

O. 503.2 Specifications. Subsection 503.2.5 of Chapter 5 is amended to read as follows:

503.2.5 Dead ends. Dead end fire apparatus access roads in excess of one-hundred fifty (150) feet (45720 mm) in length shall be provided with an approved area for turning around aerial fire apparatus

P. 503.2.7 Grade. Subsection 503.2.7 of Chapter 5 is amended in its entirety and replaced as follows:

503.2.7 Grade. A fire department access road having a grade of between 12% and 15% shall be designed to have a finished surface of grooved concrete or rough asphalt to hold a 50,000-pound traction load. Design for grooved concrete shall be ¼ inch (6 mm) wide by ¼ inch (6 mm) deep and ¾ inch (19 mm) on center. Grades exceeding 15% are not permitted.

Exception: Other approved all-weather surfaces may be used if the skid resistance is equivalent to or greater than grooved concrete as certified by a registered engineer and approved by the fire code official.

Q. Section 503.2 Specifications of Chapter 5 is amended to add subsection 503.2.8 to read as follows:

503.2.8 Angles of approach and departure. The angles of approach and departure for any means of access shall not exceed the design limitations of the fire apparatus of the fire department, subject to the approval of the fire code official.

R. Section 503.2 Specifications of Chapter 5 is amended to add subsection 503.2.9 to read as follows:

503.2.9 Roadway minimum design weight load capacity. A fire department access road shall be designed and maintained to support a minimum load of 60,000 pounds (H-20 Cal-Trans Design Standard) and shall be provided with an all-weather driving surface as specified in this standard.

S. 503.3.1 Building/Access Identification. Section 503.3.1 of Chapter 5 is added to read:

503.3.1 Building/Access Identification. Any business or building that affords vehicular access to the rear through a driveway, alleyway, or parking lot, shall also display the building identification or address numbers on the rear of the building.

At the main entrance driveway to each newly constructed multiple dwelling complex there shall be positioned an illuminated diagram (map) of the complex, which lists all individual addresses of each unit in the complex. The design and location of the map shall be approved by the fire marshal.

T. 503.4.1 Access – Parking Prohibited. Subsection 503.4.1 of Chapter 5 is added to read:

503.4.1 Access – Parking Prohibited. If, in the judgment of the fire chief, it is necessary to prohibit vehicular parking along public or private driveways and other access ways devoted to public use in order to maintain clear and unobstructed access, the fire chief may require the owner, lessee, or other person in charge of the premises to paint the curbs red, install signs, or give other appropriate notice that parking is prohibited. It shall thereafter be unlawful for any such owner, lessee, or other person in charge to fail to install and maintain in good condition the painted curbs, signs, or other appropriate notice so prescribed. When such areas are marked or signed as provided herein, it shall be unlawful for any person to park or leave standing a vehicle adjacent to any such curb marking or contrary to such sign(s).

It shall be unlawful to park any vehicle or in any other way obstruct or block any "Fire Lane", general access road to any building or complex, fire department connection, access roads or areas to any open space, no parking zones at fire stations or within 10 feet of any fire hydrant."

U. Section 508.1 is amended to read -Required Water Supply. Section 508.1 of Chapter 5 is amended as follows:

508.1 Required water supply. An approved water supply meeting the standards approved by the fire code official and capable of supplying the required fire flow for fire protection shall be provided to premises upon which facilities, buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction.

V. Subsection 508.5.1 is amended to read – Where Required. Subsection 508.5.1 of Chapter 5 is amended to read as follows:

508.5.1 Where Required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 300 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

Fire hydrants shall be placed as approved by the fire code official within fifty (50') feet of fire department connections on new construction.

W. Section 903.2 is amended to read – Where Required. Section 903.2 is amended to read as follows:

Section 903.2 Where Required. An approved automatic fire sprinkler system shall be installed and maintained in each new building and addition to an existing building and in the case of the major remodeling of an existing building, with the city requiring a building permit according to the following criteria:

1. A building occupied or used: as a place of assembly (as defined in the California Fire Code), for any purpose, multiple dwelling units, or for any purpose of

marketing goods and services for public consumption where the fire flow requirements for the building are fifteen hundred (1,500) gallons per minute or more based on Appendix B requirements;

2. A building is more than two stories or thirty-five feet in height; or
3. Each building existing on February 17, 1980 is exempt from this

section until such time as:

- a. Structural changes or tenant improvements of forty percent or greater are made to the building, or
- b. The building adds or changes occupancy classification as defined in the California Building Code.

X. Subsection 904.11.7 is added – Existing commercial cooking systems. Subsection 904.11.7 of Chapter 9 is added to read as follows:

904.11.7 Commercial cooking systems. Existing commercial cooking systems which are protected with a pre-engineered automatic dry- or wet-chemical extinguishing systems, which is not in compliance with UL 300 and listed and labeled for the intended application shall install an automatic fire extinguishing system as required by Section 904.11. The new automatic fire extinguishing system must be installed no later than the second required service of the existing automatic fire extinguishing system after January 1, 2008.

Y. Subsection 2201.1.1 is added – Bio-Diesel Fuel. Subsection 2201.1 of Chapter 22 is added to read as follows:

2201.1 Bio-Diesel Fuel Dispensing. For the purposes of dispensing, storing and complying with the operational requirements of Chapter 22, Bio-Diesel blended fuels shall comply with the requirements of a Class IIIA liquid.

Z. Section 3302 is added -Fireworks Findings. Section 3302 of Chapter 33 is added to read as follows:

1. 3302 Fireworks Findings. The city council finds that the sale, use and/or discharge of fireworks in the city, whether classified as "dangerous fireworks" and/or "safe and sane fireworks" pursuant to Health and Safety Code Sections 12500 et seq. will endanger life and property, and may encourage the use and/or discharge of fireworks in neighboring jurisdictions where their sale, use and/or discharge are prohibited.

2. 3302.1 Definitions. Any and all terms used in this article shall have the same meaning as defined in Health and Safety Code Sections 12500 et seq. and shall govern the construction of this article.

3. 3302.2 Applicability of State Law. This article does not supersede State law, but is intended to supplement the provisions of Division 11, Part 2, of the Health and Safety Code (Sections 12500 et seq.) and the administrative regulations adopted pursuant to the law, and to prohibit and/or regulate by local authority, as authorized by Health and Safety Code Section 12541, the sale used and/or discharge of fireworks in the city.

4. 3302.3 Sale, Use, Possession and/or Discharge Prohibited. No person or organization shall sell, use, possess and/or discharge in the city any fireworks, including, but not limited to, dangerous fireworks and safe and sane fireworks, subject to the exceptions set forth in this article.

5. 3302.4 Seizure of Fireworks. The fire chief is authorized to seize, take, remove or cause to be removed at the expense of the owner any and all fireworks, including, but not limited to, dangerous fireworks and safe and sane fireworks, which are possessed in violation of Article 78. Confiscation by any law enforcement officer and/or fire department official is subject to the exceptions set forth in this article.

Exceptions. This article does not prohibit, and does not authorize confiscation of, fireworks possessed for the following:

a. A public display of fireworks, including, but not limited to, dangerous fireworks and safe and sane fireworks, in the city; provided, that the person or organization is properly licensed, strictly complies with all applicable provisions of this article, all regulations adopted by the fire chief, all city resolutions and ordinances, all provisions of the Health and Safety Code, and receives authorization of the fire chief for the public displays of fireworks.

b. Any special item containing pyrotechnic compositions which the State fire marshal, with the advice of the State Advisory Board, has investigated and determined to be limited to industrial, commercial, agricultural use, or religious ceremonies when authorized by a permit granted by the authority having jurisdiction and is classified as "exempt fireworks" in the Health and Safety Code.

c. The use of torpedoes, flares, or fuses by railroads or transportation agencies for signal purposes or illumination.

d. The sale, use or discharge of blank cartridges for ceremonial purposes, athletic or sports events, or military ceremonial or demonstrations.

6. 3302.5 Bond - Insurance. An applicant for a permit to make a public display of fireworks shall furnish proof of adequate compensation insurance for employees as required by State law. The permittee shall furnish a bond or certificate of insurance in an amount deemed adequate by the Fire Chief for payment of damages that may result to person(s) or property caused by the public display of fireworks or negligence on the part of the applicant or his agents or employees.

8.28.070 Appeals. Whenever the fire chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the fire chief to the Fire Code Appeals Board within thirty (30) days from the date of the decision being appealed.

8.28.080 Penalties.

A. Any person who violates any of the provisions of this code or standards hereby adopted or fails to comply therewith, or who violates or fails to comply with any order made thereunder, or who builds in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who fails to comply with such an order as affirmed or modified by the fire chief or by a court of competent jurisdiction, within the time fixed herein, shall severally for each and every such violation and noncompliance, respectively, be guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.

B. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions or the invocation of other remedies provided in the Benicia Municipal Code or by other law.

C. Each person is guilty of a separate offense for each and every day during any portion of which the violation of this code is committed, continued, or permitted by that person.

Section 3.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

CALIFORNIA BUILDING CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 15.04 (CALIFORNIA BUILDING CODE) IN ITS ENTIRETY OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.04 (California Building Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Codes is amended in its entirety to read as follows:

Chapter 15.04

California Building Code

Sections:

- 15.04.10 Adoption by reference.
- 15.04.020 Copies on file.
- 15.04.030 Amendments made in the California Building Code.

15.04.010 Adoption by reference. The California Building Code, 2007 Edition, Volumes 1 and 2, Appendix Chapter 1, Appendix I published by the International Code Council are adopted by reference the same as though fully set forth in this chapter.

15.04.020 Copies on file. One copy of the California Building Code and Appendix as adopted by Benicia Municipal Code 15.04.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public.

15.04.030 Amendments made in the California Building Code. The California Building Code is amended and changed in the following respects:

A. Section 202 of Chapter 2 (Definitions) is amended to add the following definition to read as follows:

Pool: Any outside body of water created by artificial means, any portion of which exceeds eighteen inches (18") in depth.

B. Section 501.2 of Chapter 5 (General building heights and areas) is amended to read as follows:

1. Address numbers. Apartment, Condominium and Townhouse Complexes – An illuminated, diagrammatic representation of the complex shall be installed at the primary vehicular and walkway entrance to each complex. This diagram shall be of sufficient size to be easily visible from said vehicular and walkway entrance.

a. An apartment, condominium, or townhouse complex shall be defined as a group of three or more separate, non-connecting buildings, all located on common ground where each building contains two or more living units.

b. Each building shall be marked at a location clearly visible from the nearest vehicular access with the street address, building number/letter and numbers of units located in that building.

Example: 2237 Address

Bldg. "B" Building designation

Units 1 – 8 Units in building

Minimum numeral size shall be 6" high with a stroke of 1" and shall contrast with the background.

2. Commercial – Individual units shall be addressed front and back. Minimum numeral size shall be 6" high with a stroke of 1" and shall contrast with the background. Units with entrances on both the front and rear of the building shall have identical addresses at both locations.

3. Industrial – Individual units within a building shall be addressed front and back. Individual buildings shall be marked at a point clearly visible from the street. Minimum numeral size shall be 12" high with a 3" wide stroke and shall contrast with the background. Units with entrances on both the front and rear of the building shall have identical addresses at both locations.

Section 502.4: Lighting of Building Addresses – The building address for all new buildings constructed after the date of this ordinance shall be automatically lighted at night.

C. Subsection 1505.1.5 (Shingles and shakes) is added to Chapter 15 (Roofing) of the California Building Code to read as follows:

Shingles and shakes. All new roof coverings shall be a class B or better roof covering assembly as defined by CBC 1505.6.

D. Subsection 1910.1.1 (Minimum slab thickness) is added to Chapter 19 (Concrete) of the California Building Code is added as follows:

Minimum slab thickness. A minimum of four inches (4") of gravel shall be required under all non-engineered concrete floor slabs supported directly on the ground in all occupancies except "M" occupancies that are not attached to another structure. Non-engineered concrete floor slabs on grade shall be reinforced with welded wire mesh (6-6-10-10) or deform reinforcing bars not less than three-eighths inch (3/8") at twenty-four inch (24") each way.

E. Subsection 2111.14 (Wood burning stove appliances) is added to Chapter 21 (Masonry) of the California Building Code to read as follows:

Wood burning stove appliances. Any new wood-burning appliance must be one of the following:

1. A pellet-fueled wood device;
2. A U. S.. EPA Phase II certified device; or
3. A low mass fireplace, masonry heater or other wood burning device

of a make and model that meets EPA emission targets and has been approved in writing by the Air pollution control officer of the Bay Area Air Quality management district or the designee thereof.

F. Section 3109 (Pools) is added to Chapter 31 (Special construction) of the California Building Code to read as follows:

Pools.

1. Any body of water to which a permit issued after March 19, 1998, shall comply with the following: An outdoor swimming pool, spa, hot tub or manmade body of water such as decorative fountains or ponds over 18" deep, shall be provided with a barrier that shall be installed, inspected and approved prior to plastering or filling with water. The barrier shall comply with the following:

a. The top of the barrier shall be at least 60 inches above grade measured on the side of the barrier which faces away from the pool. The vertical clearance between grade and the bottom of the barrier shall not be more than 2 inches measured on the side of the barrier which faces away from the swimming pool. Any decorative design work on the side away from the swimming pool, such as protrusions, indentations or cutouts, which render the barrier easily climbable, is prohibited.

b. Openings in the barrier shall not allow passage of a 4" diameter sphere.

c. Chain link fences used as the barrier shall be substantial and shall not be less than 11 gage.

d. Access gates shall comply with the requirements of Items a. through c. Pedestrian access gates shall be self-closing and have a self-latching device with the latching service at least 60" above grade. Pedestrian gates shall swing away from the pool area. Any gates other than pedestrian access gates shall be equipped with attached lockable hardware or padlocks and shall remain locked at all times when not in use. This gate must have only occasional use.

e. All doors of a dwelling or garage providing direct access to the water area shall provide a separation fence and gate meeting the requirements of Items a, b, c and d.

EXCEPTION: When approved by the building official, one of the following may be used:

i. Self-closing and self-latching devices installed on all doors with direct access to the pool with the release mechanism located a minimum of 60 inches (1524 mm) above the floor.

ii. An alarm installed on all doors with direct access to the pool. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door and its screen, if present, are opened, and be capable of providing a sound pressure level of not less than 85 dba when measured indoors at 10 feet (3048 mm). The alarm shall automatically reset under all conditions. The alarm system shall be equipped with a manual device, such as a touchpad or switch to temporarily deactivate the alarm for a single opening. Such deactivations shall last no longer than 15 seconds. The deactivation switch shall be located at least 60 inches (1524 mm) above the threshold of the door.

iii. Hot tubs or spas with locking safety covers complying with ASTM-Standard F 1346-91 shall be considered in compliance with Pool Enclosure Requirements.

Indoor Swimming Pool. For an indoor swimming pool, protection shall comply with the requirements of Item e.

2. Any pool, spa or hot tub for which a building permit was issued prior to March 19, 1998 shall comply with the following. Every swimming pool shall be completely enclosed by a wall, fence or other substantial structure not less than four feet (4') in height measured on the outside of the enclosure. No openings other than doors and gates with any dimension greater than four inches (4") shall be permitted therein except that a picket fence may be erected or maintained having horizontal spacing between pickets not more than four inches (4"). All gates or door openings through such enclosures shall be equipped with self closing and self-latching devices designed to keep and are capable of keeping such door or gate securely closed at all times when not in actual use; provided, however, that the door of any dwelling occupied by human beings and forming any part of the enclosure hereinabove required need not be so equipped. Any self-latching device accessible from the outside of the pool enclosure shall be located at least four feet (4') above the ground or otherwise equally inaccessible to small children. This requirement applies to any manmade body of water over 18" deep, including decorative fountains or ponds.

G. Section 2505 (Shear wall construction) of Chapter 25 (Gypsum board and plaster) is amended to read as follows:

Shear wall construction.

1. 2505.1 1 - Resistance to shear (wood framing is amended to read as follows:

Delete the section and replace with the following: Wood framed Shear walls sheathed with gypsum board, lath and plaster are not be permitted to resist wind and seismic loads.

2. 2505.2 - Resistance to shear (steel framing) is amended to read as follows:

Delete the section and replace with the following: Steel framed shear walls sheathed with gypsum board, lath and plaster shall not be permitted to resist wind and seismic loads.

H. Subsection 2509.3 (Gypsum board in showers and water closets) of Chapter 25 (Gypsum board and plaster) is amended by adding the following:

4. Gypsum board in showers and water closets. Water-resistant gypsum board shall not be used as a base for tile in showers and bathtub areas.

I. Section 105.5 (Building permit) of Appendix Chapter 1 is amended to read as follows:

Building Permit. Every permit issued shall become invalid unless the work on the site authorized by such permit is commenced within six (6) months after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of six (6) months after the time the work is commenced. The permit will remain valid for a total of two (2) years from the date of the permit issuance. If the work becomes invalid, a new permit must be issued and the permit fees paid as per the city fee schedule for the amount of work required to finish the job.

J. Appendix Chapter 1 Subsection 106.1.1 (Standard plans) to read as follows:

106.1.1 – Standard plans. The building official may approve a set of plans for a building or structure as a "standard plan," provided the applicant has made proper application, submitted complete sets of plans, and paid the plan checking fee as

required by Benicia Municipal Code Chapter 15.26. When it is desired to use an approved "standard plan" for an identical structure, three plot plans shall be submitted, and a plan-checking fee equal to one-half of the full plan-checking fee required by Benicia Municipal Code Chapter 15.26 shall be paid at the time application is made for such identical structure. Such duplicate plans shall be compared, stamped, and kept on the job as required by California Building Code Appendix 106.3.1. In case of any deviation whatsoever from this standard plan, complete plans, together with a full plan-checking fee, shall be submitted for the proposed work, as required by California Building Code Appendix Section 106.1. Standard plans shall be valid for a period of one year from the date of approval. This period may be extended by the Building Official when there is evidence that the plan may be used again.

K. Appendix Chapter 1, Section 113.1 (Unlawful act). Appendix Chapter 1, Section 113.1 - Violation a Public Nuisance is added to read as follows:

It is declared that any violation of this code, the CPC, CMC, CEC or other state building codes constitutes a public nuisance. In addition to any other remedies this code provides for enforcement, the city may bring civil suit to enjoin violation of its provisions.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

MECHANICAL CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 15.08.010 (ADOPTION BY REFERENCE) AND SECTION 15.08.020 (COPIES ON FILE) OF CHAPTER 15.08 (CALIFORNIA MECHANICAL CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Section 15.08.010 (Adoption by reference) of Chapter 15.08 (California Mechanical Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

The California Mechanical Code, 2004-2007 Edition, including the Appendix, is adopted by reference the same as though fully set forth in this chapter.

Section 2.

Copies on file. One copy of the California Mechanical Code as adopted by Benicia Municipal Code 15.08.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public (~~in accordance with SB 127 signed September 30, 1983~~).

Section 3.

Section 15.08.020 (Copies on file) of Chapter 15.08 (California Mechanical Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

Copies on file. One copy of the California Plumbing Code and Appendix as adopted by Benicia Municipal Code 15.12.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public (~~in accordance with SB 127 signed September 30, 1983~~).

Section 3.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

PLUMBING CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 15.12 (CALIFORNIA PLUMBING CODE) IN ITS ENTIRETY OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.12 (California Plumbing Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended in its entirety to read as follows:

Chapter 15.12

California Plumbing Code

Sections:

- 15.12.010 Adoption by reference.
- 15.12.020 Copies on file.
- 15.12.030 Amendments made in the California Plumbing Code.

15.12.010 Adoption by reference. The California Plumbing Code 2007 Edition, including Appendices D and I, is adopted by reference the same as though fully set forth is this chapter.

15.12.020 Copies on file. One copy of the California Plumbing Code and Appendix as adopted by Benicia Municipal Code 15.12.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public.

15.12.030 Amendments made in the California Plumbing Code. The California Plumbing Code is amended and changed in the following respects:

A. Chapter 604 (Water supply and distribution) is amended by adding Section 604.11 (PEX) is added to read as follows:

Section 604.11 – PEX. Cross-linked polyethylene (PEX) tubing shall be marked with the appropriate standard designation(s) listed in Table 14-1 for which the tubing has been listed or approved. PEX tubing shall be installed in compliance with the provisions of this section.

1. 604.11.1 – PEX Fittings. Metal Insert Fittings and Metal Compression Fittings used with PEX tubing shall be manufactured to and marked in accordance with the standards for the fittings in Table 1401.

2. Section 604.11.2 – Water Heater Connections. PEX tubing shall not be installed within the first eighteen (18) inches (457 mm) of piping connected to a water heater.

B. Chapter 604 (Water supply and distribution) is amended by adding Section 604.15 (Metal water piping). Section 604.15 (Metal water piping) is added to read as follows:

Section 604.15 – Metal water piping. Metal water piping, including any repair of any metal water piping, is not permitted buried under any structure except as permitted in individual circumstances and approved by the building official.

C. Chapter 710 (Sanitary drainage) is amended by adding Section 710.1 – (Sewage backwater). Section 710.1 (Sewage backwater) is added to read as follows:

Section 710.1 – Sewage backwater. Where a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public or private sewer, Serving such drainage piping, shall be protected from backflow of sewage by installing an approved type of backwater valve or mushroom type device. Fixtures on floor levels above such level elevation shall not be discharged through the backwater valve.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

ELECTRICAL CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 15.16.010 (ADOPTION BY REFERENCE) AND SECTION 15.16.020 (COPIES ON FILE) OF CHAPTER 15.16 (CALIFORNIA ELECTRICAL CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Section 15.16.010 (Adoption by reference) of Chapter 15.16 (California Electrical Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

The California Electrical Code, 2004 2007 Edition, is adopted by reference the same as though fully set forth in this chapter.

Section 2.

Copies on file. One copy of the California Electrical Code as adopted by Benicia Municipal Code 15.16.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public (~~in accordance with SB 127 signed September 30, 1983~~).

Section 3.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

UNIFORM HOUSING CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA DELETING CHAPTER 15.18 (UNIFORM HOUSING CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.18 (Uniform Housing Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Codes is deleted in its entirety.

~~15.18.010 Adoption by reference.~~

~~15.18.020 Copies on file.~~

~~15.18.030 Repealed.~~

~~15.18.010 Adoption by reference.~~

~~The 1997 Edition of the Uniform Housing Code, published by the International Conference of Building Officials, as referenced by the California Department of Housing and Community Development and pursuant to the provisions of Sections 17958, 17958.5, 17958.7, 17958.9 and 17959 of the California Health and Safety Code, is hereby adopted by reference.~~

~~15.18.020 Copies on file.~~

~~One copy of the Uniform Housing Code as adopted by BMC 15.18.010, and all amendments thereto, shall be kept on file in the public works office for inspection by the public.~~

~~15.18.030 Violation Penalty.~~

~~Repealed by Ord. 03-9~~

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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**CODE FOR THE ABATEMENT OF
DANGEROUS BUILDINGS**

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA DELETING CHAPTER 15.20 (UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.20 (Uniform Code for the Abatement of Dangerous Buildings) of Title 15 (Buildings and Construction) of the Benicia Municipal Codes is deleted in its entirety.

Sections:

~~15.20.010 Adoption by reference.~~

~~15.20.020 Copies on file.~~

~~15.20.030 Violation — Penalty.~~

~~15.20.010 Adoption by reference.~~

~~The Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, published by the International Conference of Building Officials, are adopted by reference the same as though fully set forth in this chapter. (Ord. 99-11; Ord. 95-15 N.S.; Ord. 87-6 N.S. § 2, 1987).~~

~~15.20.020 Copies on file.~~

~~One copy of the Uniform Code for the Abatement of Dangerous Buildings, as adopted by BMC 15.20.010, and all amendments thereto, shall be kept on file in the public works office for inspection by the public (in accordance with SB 127 signed September 30, 1983). (Ord. 99-11; Ord. 95-15 N.S.; Ord. 87-6 N.S. § 2, 1987).~~

~~15.20.030 Violation — Penalty.~~

~~A person who violates the building regulations of this code is guilty of a misdemeanor and upon conviction shall be punished by a fine of \$500.00, imprisonment for six months, or both.~~

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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

ADMINISTRATIVE CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA DELETING CHAPTER 15.22 (ADMINISTRATIVE CODE) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.22 (Administrative Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Codes is deleted in its entirety.

Sections:

~~15.22.010 Adoption by reference.~~

~~15.22.020 Copies on file.~~

~~15.22.030 Repealed.~~

~~**15.22.010 — Adoption by reference.**~~

~~The 1997 Edition of the Uniform Administrative Code, published by the International Conference of Building Officials, is adopted by reference. All fees are referred to Chapter 15.26 BMC. (Ord. 99-11).~~

~~**15.22.020 — Copies on file.**~~

~~One copy of the Uniform Administrative Code as adopted by BMC 15.22.010, and all amendments thereto, shall be kept on file in the public works office for inspection by the public. (Ord. 99-11).~~

~~**15.22.030 — Violation Penalty.**~~

~~Repealed by Ord. 03-9.~~

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 _____, 2008 and
adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

WORK/LIVE OCCUPANCY CODE

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 15.24 (WORK/LIVE OCCUPANCY CODE) IN ITS ENTIRETY OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.24 (Work/Live Occupancy Code) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended in its entirety to read as follows:

Sections:

- 15.24.010 References to California Building Code.
- 15.24.020 Copies on file.
- 15.24.030 Definition of occupancies.
- 15.24.040 General requirements.
- 15.24.050 Living space and accessory uses.
- 15.24.060 H occupancies.
- 15.24.070 Energy conservation.
- 15.24.080 Occupancy classification, exiting and area separation.
- 15.24.090 Mixed uses and other uses in work/live occupancies.
- 15.24.100 Alternate materials and methods of construction.
- 15.24.110 Relationship to other code requirements.

15.24.010 References to California Building Code. Whenever reference is made to the California Building Code herein, it shall refer to the latest edition of the California Building Code, including state of California amendments thereto, and such amendments as may be adopted by the city of Benicia.

15.24.020 Copies on file. One copy of the California Building Code as adopted by Benicia Municipal Code 15.24.010, and all amendments thereto, shall be kept on file in the building official's office for inspection by the public.

15.24.030 Definition of occupancies.
"Work/live occupancy (W/LO)" is a room or combination of rooms in a building used for both art-making (work) and living purposes by one or more persons maintaining a common household in that space. The residential use of the space is secondary to its primary use as a place of art-making (work).

"Art-making," for the purposes of this chapter, is the activity of creating objects and expressions of form (inert, organic, or synthetic) primarily for purposes of visual contemplation. Art-making activities include creative endeavors in the visual arts. Art-making is an activity undertaken by an artist; it is not a hobby activity.

15.24.040 General requirements. Any building which contains a work/live occupancy shall comply with the California Building Code (CBC) ~~including, but not limited to, Chapters 5, 7, 12, 17, 23, 33 and 38,~~ except as provided for herein. Each work/live occupancy shall comply with the standards of habitability set forth in the CBC and other codes and amendments adopted herein. The entire structure containing work/live occupancies shall be equipped with fire sprinklers and fire alarms designed and installed in accordance with the requirements of the Uniform Fire Code, fire marshal and other codes and amendments adopted herein. These requirements may vary depending upon the use, size of structure and location of the structure on the property. Where any building contains a work/live occupancy adjacent to any other units within the building or adjacent to any other building, such units shall be separated by the fire-resistive requirements as required by the CBC and other codes and amendments adopted herein.

All electrical, plumbing and mechanical work in any work/live occupancies shall comply with the requirements of the California Building, Electrical, Mechanical and Plumbing Codes and any amendments adopted by the city of Benicia.

15.24.050 Living space and accessory uses. Any living area shall be deemed a secondary use under the building code.

Work/live occupancies (W/LO) shall conform with all of the following:

- A. The minimum usable floor area of an individual W/LO is 660 square feet.
- B. A minimum of two-thirds of the W/LO floor area is designated as the art-making (work) portion and a maximum of one-third is designated as the living portion.
- C. The art-making (work) portion of the W/LO is not used for nor arranged for any purpose involving employees, nor for regular access by the general public, nor for purposes other than art-making activities. Up to 25 percent of the art-making (work) portion may be arranged for dual purposes such as meeting, telephoning, drawing, accounting, contemplating, reading, etc. The living portion of the W/LO is used for or arranged for purposes such as sleeping, eating, cooking and sanitation. W/LO shall not be used for commercial or retail purposes.
- D. The maximum number of people who live in an individual W/LO is one person for each 150 square feet of floor area that is designated as a living portion of the space.

Work/live units shall not be classified as, or subject to, the standards applicable to efficiency dwelling units under the CBC.

15.24.060 H occupancies. H occupancies, as defined in the California Building Code, are prohibited in any unit containing a work/live occupancy.

15.24.070 Energy conservation. Any unit which contains a work/live occupancy shall comply with the energy conservation and disabled access

requirements of each applicable occupancy group as defined by the CBC and Title 24 of the California Code of Regulations.

Any work room or area in any work/live unit which is available for use by clients, employees or the general public shall comply with the accessibility requirements of the California Building, Electrical, Mechanical and Plumbing Codes and any amendments adopted by the city of Benicia.

Section 15.24.080 Occupancy Classification, Exiting And Area Separation.

A. Any building which contains one or more work/live occupancies shall satisfy the following requirements:

1. The entire building shall comply with the applicable provisions of the California Building Code for B and R-3 occupancies.

2. The sleeping area of any work/live occupancy shall conform to the bedroom egress requirements of the California Building Code or be provided with at least one exit which has direct, unobstructed access in visual sight of the bedroom.

B. Any building containing three or more work/live units shall comply with the requirements for an ~~R-4~~ R-2 occupancy.

C. Any building containing work/live occupancies shall comply with the most restrictive applicable requirements of this code which pertain to the specific occupancy.

15.24.090 Mixed uses and other uses in work/live occupancies. Work areas in work/live occupancies intended for uses other than R-3 or B occupancies shall be classified by the building official in accordance with the California Building Code or amendments made to the code by the city of Benicia. These requirements are not limited to occupancy, separation, allowable area and exits as required by the CBC for a proposed occupancy.

15.24.100 Alternate materials and methods of construction. Notwithstanding the specific requirements, provisions and standards imposed by this chapter, the building official may approve alternate materials and/or methods of construction if he or she determines that such proposed alternate materials and/or methods of construction would be equivalent to that prescribed in this chapter.

15.24.100 Relationship to other code requirements. Except with respect to those requirements, standards and provisions specifically imposed by this chapter, construction materials and methods of construction shall be governed by and in accordance with the California Building Code (CBC). In the event there is a conflict between any requirement, standard or provision imposed by this chapter and any other provision, standard or requirement of state law, the more restrictive standard shall apply.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

BUILDING PERMIT FEES

CITY OF BENICIA

ORDINANCE NO. 08-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 15.26 (BUILDING PERMIT FEES AND OTHER FEES) IN ITS ENTIRETY OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Chapter 15.26 (Building Permit Fees and Other Fees) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended in its entirety to read as follows:

Chapter 15.26

Building Permit Fees And Other Fees

Sections:

- 15.26.010 General requirements and other fees.
- 15.26.020 Building permit fees.
- ~~15.26.030 Residential and miscellaneous electrical permit fees.~~
- ~~15.26.040 Residential and miscellaneous mechanical permit fees.~~
- ~~15.26.050 Residential and miscellaneous plumbing permit fees.~~
- ~~15.26.030 Commercial and industrial electrical, mechanical and plumbing permit fees.~~
- ~~15.26.040 Violation Penalty.~~

15.26.010 General requirements and other fees.

A. Building permit Fees charged on all building permit applications including electrical, mechanical and plumbing permits are in accordance with the fee schedules contained within this chapter.

B. Other fees. (Includes permit issuance fee).

1. a. Inspection for compliance to city codes which requires a letter certifying same: ~~\$35.00.~~ 160.00.

b. Inspection for compliance to city code without a letter: \$ 86.00.

2. Spa permit (prefabricated): ~~\$35.00~~ 96.75 to include installation, plumbing, mechanical and electrical.

3. Electric solar systems: \$125.00.

- 4. Kitchen remodel: lighting only \$106.25.
- 5. Kitchen remodel: plugs and lights \$118.25.
- 6. Kitchen remodel: complete electric and DWV with water lines
\$150.50.
- 7. Bath/ shower remodel: \$129.00.
- 8. Pools.
 - a. Gunite pools-plan review: \$129.00.
 - b. Gunite pool permit issuance and inspection: \$258.00.
 - c. Pool heater: \$64.50.
- 9. Work which was begun prior to required permit issuance \$129.00.
- Investigation fee over 1 hr @ 129.00 per hour.
- 10. Inspections outside of normal business hours, per hour (minimum charge – two hours): \$129.00*.
- 11. Reinspection fees assessed under provisions of Section 305.8, per inspection: \$129.00*.
- 12. Inspections for which no fee is specifically indicated, per hour (minimum charge of one-half hour): \$129.00* (plus issuance fee).
- 13. Additional plan review required by changes, additions or revisions to plans or to plans for which an initial review has been completed, per hour (minimum charge of one-half hour): \$129.00*.
- 14. Inspections outside of normal business hours, per hour (minimum charge – two hours): ~~\$44.25~~129.00*.
- 15. Plan retention.
 - a. A plan retention fee shall be charged at a rate of ~~\$1.00~~ 2.25 per page for all plans and .25 per 8X11 paper with a 1.00 minimum charge to be retained.
 - b. The plan retention fee shall be used solely for the purpose of microfilming preserving building department division plans.
 - c. The building official may adjust the rate charged, on July 30th of each year, to reflect an increase or decrease in cost of microfilming preserving plans.
- 16. Plan review is sixty-five percent (65%) of the building inspection fee.
- 17. Building inspection fees may be refunded upon written request if no work for the permit has begun. An administrative fee of one-hundred ten dollars (\$110) will be assessed for any fee request refund.

* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

15.26.020 Building inspection permit fees.

A. The following building permit fees are adopted:

<u>Total</u>	
<u>Valuation</u>	<u>Fee</u>

\$1.00 to \$500.00	\$22.00 <u>64.50</u>
\$501.00 to \$2,000	\$22.00 <u>64.50</u> for the first \$500.00 plus \$2.75 for each additional \$100.00 or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	\$63.00 <u>105.50</u> for the first \$2,000 plus \$12.50 for each additional \$1,000 or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	\$352.00 <u>394.50</u> for the first \$25,000 plus \$9.00 for each additional \$1,000 or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	\$580.00 <u>622.50</u> for the first \$50,000 plus \$6.25 for each additional \$1,000 or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	\$895.00 <u>937.50</u> for the first \$100,000 plus \$5.00 for each additional \$1,000 or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	\$2,855 <u>2,897.50</u> for the first \$500,000 plus \$4.25 for each additional \$1,000 or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	\$4,955 <u>4,997.50</u> for the first \$1,000,000 plus \$2.75 for each additional \$1,000 or fraction thereof

~~Other Inspections and Fees:~~

- ~~1. Inspections outside of normal business hours (minimum charge—two hours) \$42.00 per hour*~~
- ~~2. Reinspection fees assessed under provisions of Section 305.8 \$42.00 per hour*~~
- ~~3. Inspections for which no fee is specifically indicated (minimum charge—one half hour) \$42.00 per hour*~~
- ~~4. Additional plan review required by changes, additions or revisions to plans (minimum charge—one half hour) \$42.00 per hour*~~
- ~~5. For use of outside consultants for plan checking and inspections, or both Actual costs**~~

~~Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.~~

~~** Actual costs include administrative and overhead costs.~~

- B. Residential and miscellaneous electrical permit fees.
 1. Permit issuance.
 - a. For the issuance of each electrical permit: ~~\$22.00~~ 64.50.
 - b. For the issuance of each supplemental permit for which the original permit has not expired, been canceled, nor finalized: ~~\$6.50~~ 21.50.
 2. System fee schedule. (Note: The following do not include permit-issuing fee.)
 - a. New residential buildings. The following fees shall include all wiring and electrical equipment in or on each building, or other electrical equipment on the same premises constructed at the same time: .06 per foot. For other types of residential occupancies and for alterations, additions and modifications to existing residential buildings, use the unit fee schedule below.

~~Multifamily. For new multifamily buildings (apartments and condominiums) having three or more dwelling units constructed at the same time, not including the area of garages, carports and accessory buildings, per square foot (0.09 m2): \$0.45.~~

~~Single and two family. For new single and two family residential buildings constructed at the same time and not including the area of garages, carports and accessory buildings, per square foot (0.09 m2): \$0.05.~~

b. Temporary power service.

i. For a temporary service pole or pedestal including all pole or pedestal-mounted receptacle outlets and appurtenances, each: ~~\$22.00~~ 30.00.

ii. For a temporary distribution system and temporary lighting and receptacle outlets for construction sites, decorative lights, Christmas tree sales lots, fireworks stands, etc., each: ~~\$11.00~~ 53.75.

3. Unit fee schedule. (Note: The following do not include permit-issuing fee.)

a. Receptacle, switch and light outlets. For receptacle, switch, light or other outlets at which current is used or controlled, except services, feeders and meters:

i. Up to the first 20 fixtures, each: \$1.00. 24.00.

ii. Additional fixtures, each: \$0.65.

(Note: For multi-outlet assemblies, each five feet (1,524 mm) or fraction thereof may be considered as one outlet.)

~~b. Lighting Fixtures:~~

~~i. For lighting fixtures, sockets or other lamp holding devices:~~

~~1.) First 20 fixtures, each: \$1.00. 24.00.~~

~~2.) Additional fixtures, each: \$0.65.~~

~~c. For pole or platform-mounted lighting fixtures, each: \$1.00.~~

~~d. For theatrical type lighting fixtures or assemblies, each: \$1.00.~~

b. Services.

i. For new or replacement residential electric service panels: ~~\$27.25~~ 39.00.

ii. For new or replacement non-residential single phase electric service panels: 64.50.

iii. Three phase 480/277 1000 amp or more: \$161.25.

c. Miscellaneous residential apparatus, conduits and conductors, subpanels for electrical apparatus, conduits and conductors for which a permit is required but for which no fee is herein set forth: ~~\$16.25~~ 43.00.

Note: This fee is not applicable when a fee is paid for one or more services, outlets, fixtures, appliances, power apparatus, busways, signs or other equipment.

~~D. Other Inspections and Fees:~~

~~1. Inspections outside of normal business hours, per hour (minimum charge—two hours): \$44.25*.~~

~~2. Reinspection fees assessed under provisions of Section 305.8, per inspection: \$44.25*.~~

~~3. Inspections for which no fee is specifically indicated, per hour (minimum charge—one-half hour): \$44.25*.~~

4. Additional plan review required by changes, additions or revisions to plans or to plans for which an initial review has been completed, per hour (minimum charge one half hour): ~~\$44.25~~*

* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.

C. Residential and miscellaneous mechanical permit fees.

1. Permit issuance and heaters.

a. For the issuance of each mechanical permit: ~~\$22.00~~ 64.50.

b. For the issuance of each supplemental permit for which the original permit has not expired, been canceled or finalized: ~~\$6.50~~ 21.50.

2. Unit fee schedule. (Note: the following do not include permit-issuing fee.)

a. Furnaces.

i. For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance, up to and including 100,000 Btu/h (29.3 kW): ~~\$13.25~~ 43.00.

ii. For the installation or relocation of each forced-air or gravity-type furnace or burner, including ducts and vents attached to such appliance over 100,000 Btu/h (29.3 kW): \$16.25.

iii. For the installation or relocation of each floor furnace, including vent: ~~\$13.25~~ 53.75.

iv. For the installation or relocation of each suspended heater, recessed wall heater or floor-mounted unit heater: ~~\$13.25~~ 43.00.

b. Appliance vents. For the installation, relocation or replacement of each appliance vent installed and not included in an appliance permit: ~~\$6.50~~ 21.50.

c. Repairs or additions. For the repair of, alteration of, or addition to each heating appliance, refrigeration unit, cooling unit, absorption unit, or each heating, cooling, absorption or evaporative cooling system, including installation of controls regulated by the mechanical code: ~~\$12.25~~ 42.50.

d. Air handlers.

i. For each air-handling unit to and including 10,000 cubic feet per minute (cfm) (4,719 L/s), including ducts attached thereto: ~~\$9.50~~ 32.25.
Note: This fee does not apply to an air-handling unit which is a portion of a factory-assembled appliance, cooling unit, evaporative cooler, or absorption unit for which a permit is required elsewhere in the mechanical code.

ii. For each air-handling unit over 10,000 cfm (4,719 L/s): ~~\$16.15~~ 43.00.

e. Evaporative coolers. For each evaporative cooler other than portable type: ~~\$9.50~~ 21.50.

f. Ventilation and exhaust.

i. For each ventilation fan (bathroom, domestic kitchen, etc.) connected to a single duct: ~~\$6.50~~ 22.00.

ii. For each ventilation system which is not a portion of any heating or air-conditioning system authorized by a permit: ~~\$9.50~~ 43.00.

iii. For the installation of each hood which is served by mechanical exhaust, including the ducts for such hood: ~~\$9.50~~ 43.00.

g. Miscellaneous. For each residential appliance or piece of equipment regulated by the mechanical code but not classed in other appliance categories, or for which no other fee is listed in the table: ~~\$9.50~~ 43.00.

3. Other Inspections and Fees.

~~1. Inspections outside of normal business hours, per hour (minimum charge—two hours): \$44.25*.~~

~~2. Reinspection fees assessed under provisions of Section 305.8, per inspection: \$44.25*.~~

~~3. Inspections for which no fee is specifically indicated, per hour (minimum charge— one half hour): \$44.25*.~~

~~4. Additional plan review required by changes, additions or revision to plans or to plans for which an initial review has been completed, per hour (minimum charge— one half hour): \$44.25*.~~

~~* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.~~

D. Residential and miscellaneous plumbing permit fees.

1. Permit issuance.

a. For the issuance of each plumbing permit: ~~\$22.00~~ 64.50.

b. For the issuance of each supplemental permit for which the original permit has not expired, been canceled or finalized: ~~\$6.50~~ 21.50.

2. Unit fee schedule. (Note: The following do not include permit-issuing fee.)

a. Fixtures and vents. For each plumbing fixture or trap or set of fixtures on one trap (including water, drainage piping and backflow protection thereof): ~~\$8.75~~ 10.75.

b. Sewers. For each building sewer permit: \$22.00.

c. Water piping and water heaters.

i. For installation, alteration, or repair of water piping or water-treating equipment, or both, each: ~~\$4.25~~ 32.25.

ii. For each water heater including vent: ~~\$11.00~~ 32.25.

d. gas piping systems.

i. For each gas piping system of one to five outlets: ~~\$5.50~~ 53.75.

ii. For each additional outlet over five, each: ~~\$4.00~~ 5.00.

e. Lawn sprinklers, vacuum breakers and backflow protection devices. For each lawn sprinkler system on any one meter, including backflow protection devices therefore: \$32.25.

f. Miscellaneous. For each residential appliance or piece of equipment regulated by the plumbing code but not classed in other appliance categories, or for which no other fee is listed in this code: ~~\$8.75~~ 43.00.

~~C. Other Inspections and Fees.~~

~~1. Inspections outside of normal business hours, per hour (minimum charge—two hours): \$44.25*.~~

~~2. Reinspection fees assessed under provisions of Section 305.8, per inspection: \$44.25*.~~

~~3. Inspections for which no fee is specifically indicated, per hour (minimum charge— one half hour): \$44.25*.~~

~~4. Additional plan review required by changes, additions or revision to plans or to plans for which an initial review has been completed, per hour (minimum charge— one half hour): \$44.25*.~~

~~* Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.~~

E. Commercial and industrial electrical, mechanical and plumbing permit fees.

For items not specifically listed above ~~Commercial and industrial~~ non residential electrical, mechanical and plumbing permit fees shall be calculated at one percent of the contract price plus a permit issuance fee.

F. Code Enforcement. The following permit fees for code enforcement are adopted:

<u>First notice/ inspection</u>	<u>Courtesy (no fee)</u>
<u>Subsequent notice/ inspection</u>	<u>\$129.00/ hr</u>
<u>Mileage</u>	<u>I.R.S. allowed</u>
<u>Extension fee</u>	<u>\$96.75</u>
<u>Posting Fee</u>	<u>\$65.00</u>
<u>Administrative hearing</u>	<u>\$390.00</u>
<u>Title fee search</u>	<u>Actual cost + 15% administrative fee</u>
<u>Declaration of substandard and/or public nuisance notice</u>	<u>\$400.00</u>
<u>Removal of declaration</u>	<u>\$350.00</u>
<u>Abatement (cleanup) cost</u>	<u>Actual cost + 15% administrative fee</u>
<u>Preparation of job specification</u>	<u>\$400.00</u>
<u>City council approval of contract</u>	<u>\$200.00</u>
<u>Contract performance inspection</u>	<u>\$258.00</u>
<u>Billing (each instance)</u>	<u>\$60.00</u>
<u>Recording special assessment</u>	<u>\$129.00</u>
<u>Filing special assessment</u>	<u>\$258.00</u>
<u>Code compliance inspections</u>	<u>\$129.00/hr</u>
<u>Court cost and attorneys fees</u>	<u>Actual cost + 15% administrative fee</u>

~~15.26.070 — Violation — Penalty.~~
~~Repealed by Ord. 03-9.~~

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008 and adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : July 30, 2008
TO : City Manager
FROM : Community Development Director
SUBJECT : **APPROVAL OF A BUILDING INSPECTION SERVICES
AGREEMENT WITH MARKER LOVELL**

RECOMMENDATION:

Adopt a Resolution approving a consultant agreement with Marker Lovell for Building Inspection Services and authorizing the City Manager to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY:

Marker Lovell has been providing on-call building inspection services to the City for over twelve years when workload demands. Mr. Lovell's hourly rate is substantially lower than utilizing staff from other outside agencies. The agreement shall not exceed \$50,000 and the term of the agreement is July 1, 2008 – December 30, 2009.

BUDGET INFORMATION:

There are adequate funds in the Building Inspection Division Professional/Technical Services Account No. 010-4205-8106 for on-call inspection services. The Community Development Department anticipates spending approximately \$50,000 between now and the end of the current budget cycle. Costs to the City are reimbursed by project applicants.

Attachments:

- Proposed Resolution
- Consultant Agreement

RESOLUTION

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING A CONSULTANT AGREEMENT WITH MARKER LOVELL FOR
ON-CALL INSPECTION SERVICES AND AUTHORIZING THE CITY
MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY**

WHEREAS, Marker Lovell has provided building inspection services to the City for the past twelve years when workload for the Building Division requires such additional services; and

WHEREAS, there are adequate funds in the Building Inspection Division Professional/Technical Services account for on-call inspection services. Costs to the City are reimbursed by project applicants.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves a consultant agreement with Marker Lovell for daily inspection services and authorizes the City Manager to execute the agreement not to exceed \$50,000.00 on behalf of the City, with minor changes subject to approval by the City Attorney.

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 19th day of August, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

CONSULTANT AGREEMENT

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 Marker Lovell, a sole proprietor, with its primary office located at 727 Avila Place, El Cerrito, CA 94530 (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 building inspections and plan check services as assigned by the Building Official.
2. CITY agrees to pay CONSULTANT as full compensation for all services and duties performed, except as otherwise provided herein, the sum of \$55.00 per hour. CONSULTANT may work up to 40 hours per week for up to 52 weeks per year. The total compensation to be paid under this Agreement shall not exceed \$50,000.00.
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 inspection and plan check 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 CONSULTANT and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subCONSULTANTS, 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.

07/28/05

VII-K-5

7. The term of this Agreement shall be for the period from July 1, 2008 to December 30, 2009, or upon reaching the "not-to-exceed" compensation amount, whichever occurs first. 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 subCONSULTANT 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. CONSULTANT shall take out and maintain at all times during the life of this contract, general liability, workers' compensation, and automobile liability insurance in an amount satisfactory to the City Attorney. CONSULTANT 'S insurance shall be primary with respect to the City and shall list the CITY as an additional insured.

CONSULTANT shall submit to CITY an endorsement evidencing its required insurance signed by the insurance agent and companies named. Any deductible or self-insured retentions must be declared to and approved by CITY.

07/28/05

VII-K-6

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: Marker Lovell
727 Avila Place
El Cerrito, CA 94530

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: _____
Jim Erickson Date Marker Lovell Date
City Manager

RECOMMENDED FOR APPROVAL:

Charlie Knox Date
Community Development Department

APPROVED AS TO FORM:

Heather McLaughlin Date
City Attorney

07/28/05

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
CONSENT CALENDAR**

DATE : August 6, 2008

TO : City Manager

FROM : Community Development Director

SUBJECT : **AWARD OF CONSULTANT CONTRACT AND PAYMENT
AGREEMENT FOR PLAN CHECK AND INSPECTION OF THE
VALERO IMPROVEMENT PROJECT**

RECOMMENDATION:

Approve a resolution authorizing the City Manager to execute a contract for consulting services with Bureau Veritas North America, Inc., and to approve a payment agreement between the City of Benicia and Valero Refining Company – California for plan check and construction inspection for the Valero Improvement Project.

BUDGET INFORMATION:

Valero will be required to reimburse the City for the actual cost of plan check and construction inspection services, plus a 15% fee for overhead costs. The estimated cost to perform this work over a 5-year period is \$600,000.

SUMMARY:

The Valero Improvement Project includes a number of major construction projects within the refinery that are designed to increase efficiency of the plant and reduce emissions.

The Building Inspection Division is required to review plans and perform inspections to insure compliance with State and local regulations. Due to the specialized nature of the proposed construction, an outside consultant will be needed to assist with plan review and inspections. Valero will pay the cost of outside consultant services in accordance with the attached payment agreement between the City and Valero. This agreement will impose a 15% fee to pay for City overhead costs.

City staff requested proposals from five outside agencies capable of performing the work. Interviews were conducted, and Bureau Veritas North America, Inc. was recommended by an independent panel to perform the work on this project. The attached resolution enables approval of a consultant contract with Bureau Veritas North America, Inc. for up to \$600,000. Should

additional work be required, then any necessary cost increases will be paid for by Valero as stipulated in the payment agreement.

Attachments:

- Proposed Resolution
- Consultant Contract with Bureau Veritas North America, Inc.
- Payment Agreement between the City of Benicia and Valero

RESOLUTION

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING A CONSULTANT AGREEMENT WITH BUREAU VERITAS
NORTH AMERICA, INC., AND PAYMENT AGREEMENT FOR PLAN CHECK
AND INSPECTION OF THE VALERO IMPROVEMENT PROJECT AND
AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENTS
ON BEHALF OF THE CITY**

WHEREAS, the Valero Refining Company received Use Permit approval in 2003 for the Valero Improvement Project which includes a number of major construction projects within the refinery that are designed to increase efficiency of the plant and reduce emissions; and

WHEREAS, in July 2008, the Planning Commission approved amendments to the Valero Improvement Project Use Permit; and

WHEREAS, the Building Inspection Division is required to review plans and perform inspections to insure compliance with State and local regulations; and

WHEREAS, due to the specialized nature of the proposed construction, an outside consultant will be needed to assist with plan review and inspections; and

WHEREAS, staff reviewed 5 proposals for these services and recommend Bureau Veritas North America, Inc. as the most capable in all material aspects to perform full contract requirements; and

WHEREAS, Valero will pay the cost of outside consultant services in accordance with the payment agreement between the City and Valero.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves a consultant agreement with Bureau Veritas North America Inc., for plan check and daily inspection services and a payment agreement with Valero Refining Company and authorizes the City Manager to execute the agreement not to exceed \$600,000.00 on behalf of the City, with minor changes subject to approval by the City Attorney.

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 19th day of August, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

CONSULTANT AGREEMENT

CONSULTANT AGREEMENT

This agreement ("Agreement") entered into _____, 2008, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Bureau Veritas North America, Inc., a Delaware Corporation with its primary office located at 5750 Sunrise Blvd., Suite 150, Citrus Heights, California, 95610 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain professional services for the Valero Refinery, Valero Improvement 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 Task Order 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. CONSULTANT shall comply with completion dates noted in Exhibit A unless a written waiver is granted by the CITY's project manager. In the event that CONSULTANT fails to complete a work product in accordance with the completion date noted in Exhibit A, CONSULTANT agrees to pay the CITY liquidated damages in the amount of \$100.00 per day for each work product that is delayed when such delay is caused by CONSULTANT. CONSULTANT and CITY acknowledge that the actual value of delay is extremely difficult to determine, but the daily penalty specified above represents their best estimate of the daily cost of delay to CITY and shall be the exclusive penalty for delay caused by CONSULTANT.

(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 Community Development Director.

(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 rate schedule in Exhibit B attached hereto and hereby incorporated by reference. The rate schedule in Exhibit B itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY'S prior written approval from the Community Development Director, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project.

(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 Council 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: Charlie Knox
Community Development Director
City of Benicia
250 East L Street
Benicia, CA 94510

If to CONSULTANT: Robert DeKruise
Project Manager
Bureau Veritas North America, Inc.
5750 Sunrise Blvd., Suite 150
Citrus Heights, CA 95610
(916) 534-1051
e-mail: Robert.dekruise@us.bureauveritas.com

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 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 CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity, including reasonable attorneys' fees.

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 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/ Professionals' Liability, errors and omissions liability insurance appropriate to the CONSULTANT'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 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.

Bureau Veritas North America, Inc.

CITY OF BENICIA

BY: _____

BY: _____

Jim Erickson, City Manager

DATED

DATED:

RECOMMENDED FOR APPROVAL

Charlie Knox
Community Development Department

APPROVED AS TO FORM

Heather McLaughlin
City Attorney



Scope of Work

City of Benicia | Building Inspection & Plan Review Services

Understanding the Needs of the City of Benicia

Bureau Veritas understands that Valero is doing plant modifications to upgrade the plant to meet recent federal regulations for the Refinery. Bureau Veritas proposes to provide Structural and Electrical Plan Review as well as inspection services to enforce compliance with the minimum 2007 CBC, 2007 CEC, and all other codes, ordinances and standards required by the City of Benicia Building Official.

While we anticipate the majority of work for the City to be completed locally at our Citrus Heights office, **Marco Italia**, Plan Review Services Director, will work closely with **Robert DeKruise**, Project Manager, and the managers of our three plan review offices to ensure continuous availability of resources to assist the City in successfully meeting its plan review time schedules. All personnel assigned to the City's projects will have available the necessary materials, resources and training to conduct plan reviews, including copies of applicable City amendments, policies, procedures and forms.

Approach to Plan Review Services

Bureau Veritas has identified a team of experts within close proximity to provide focused services for the City of Benicia, in the areas of plan check and inspection services with additional backup resources close at hand as needed. We also have the ability to engage a wide variety of experts to call upon, within the structural and electrical disciplines and in other related areas on an as-needed basis.

Per the plan submittal schedule, we anticipate only structural and electrical plans to review, however we stand ready to review all of the following at the request of the City of Benicia.

- 2007 California Building Code
- 2007 California Fire Code
- 2007 California Energy Code
- 2007 California Electrical Code
- 2007 California Mechanical Code
- 2007 California Plumbing Code





Scope of Work

City of Benicia | Building Inspection & Plan Review Services

Service Plan Tasks

Task 1-Project Tracking Setup

The first step of our process is to setup the project to enable Bureau Veritas and City of Benicia to track the progress of our review. Our plan tracking procedures are designed to track each submittal throughout the review process and maintain accurate and comprehensive records for each submittal up to final approval.

We can provide City of Benicia an Active Daily Report created by our DELTEK software that provides concise information such as an update of who is reviewing your project and whether they have reviewed with comments or approved your project. Our software allows for accurate project tracking and requires that we manually send to you electronic copies of this Active Daily Report via email.

Task 2-Complete Submittal Review

Upon receiving the plans by the City, BV will TRIAGE (preliminary plan review performed by BV Plan Review Project Lead) the submittal to verify that the submittal received is complete (i.e., all pertinent plans, calculations, reports and other related documents) in order that we can begin our review. If the submitted package is missing a complete review package, we will communicate with the City to discuss the deficient documents needed to proceed with our review.

Task 3-Plan Review Assignment

After the TRIAGE process is performed and a complete package is verified, the project will be assigned to the most qualified plans examiner and a turnaround time will be assigned to that project. We will log each application into our Deltek database the same day the plans are received to assure that they are routed to all plan reviewers in a timely manner in order to track the project daily.

Task 4-Plan Review

Bureau Veritas will provide the project contact (developer, contractor, architect or engineer) desired by the City, with a list of those items needing correction and clarification to comply with applicable building codes, ordinances, and regulations. A correction list will be created based on the missing codes and ordinances.

In order expedite the plan review process we make it our policy to discuss code issues that could have major impacts to a project with our client and the effected design team participants during or upon completion of our review.

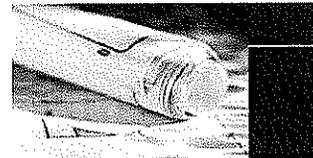
Task 5-Quality Control

Prior to submitting the plan check correction list to the City, the designated Plan Review Project Lead will review the correction list for adherence to the codes and ordinances as well as accuracy and completeness. After completion of our quality control review, a correction list will be emailed to a designated staff person with the City. The correction list and a BV transmittal form will include the following information: a description of the work, type of construction, occupancy group, square footage, number of floors, and sprinkler requirements.

Task 6-Plan Review Rechecks

Plans received for rechecks will be reviewed for conformance. Our goal is to actively work with the designers to resolve all unresolved issues after our second review. If it appears that there are complicated issues that might cause a project to go beyond our second review, we will communicate directly with the designer to resolve these concerns.





Scope of Work

Task 7-Project Approval

Once the final plan review is completed and ready for approval, Bureau Veritas will organize the plans and supporting documents per the City's processing requirements and return them to the City, along with our letter of completion.

Meetings and Communications

Bureau Veritas' plan review team is available to the City staff during City working hours, to conference in or attend meetings at the City's offices to address questions or discuss issues with City staff, design team and/or construction team that may arise on a project.

Turnaround Times

We will work as an extension to the City's staff and will strive to provide a quality product while meeting or exceeding the scheduled turnaround times. Our staff will consult with the City's staff and/or the Building Official to discuss any gray areas of the code or alternate means.

In order to ensure that we have adequate resources to meet or exceed our turnaround times, we have combined our resources in our Pleasanton, Citrus Heights and Fresno plan review offices. Our Project Leads will determine whether additional resources are necessary to meet the City's schedule, if no additional resources are necessary the dedicated Primary Plan Review Team will perform the plan review. **What this means for City of Benicia is a high level of confidence that we will always be able to meet or exceed the turnaround times regardless of the size or complexity of the project.**

The following is our turnaround times for various types of projects:

TYPE OF PLAN	NUMBER OF DAYS	
	INITIAL REVIEW (WORKDAYS)	RECHECK (WORKDAYS)
<input type="checkbox"/> All Plans and Calculations	Within 10	Within 5





Scope of Work

City of Benicia | Building Inspection & Plan Review Services

Inspection Process

Approach to Building Inspection Services

Bureau Veritas will provide full and or part time Inspection Services to the City of Benicia as needed. Bureau Veritas will assist the City of Benicia Building Division by providing inspection services. Bureau Veritas will make every attempt to make available for the City of Benicia a full time inspector (s) who will be the same inspector for the duration of the contract. Bureau Veritas acknowledges that the City of Benicia will not be responsible for paid time off due to vacation time and illness. We understand that the City wants to maintain a consistency in the inspection of projects and that it is in their best interest to provide the City with approximate predetermined time off for the approved inspector. If the inspector needs time off, the Project Manager will fill in.

Availability

1. Bureau Veritas typical notification time is twenty-four (24) hours for our staff to respond to the City's request to providing inspection staff. We understand this project may require a full time inspector.
2. We anticipate that our selected staff will have approved time off with Bureau Veritas of up to two and one half (2-1/2) weeks per year of vacation, sick leave and a minimum of three-day code development training.
3. Our inspection staff member assigned to the City of Benicia will attend all meetings as requested by the City to address question with City staff.
4. Our assigned staff person will be available to attend bi-monthly inspection related meetings as required by the City of Benicia Building Department.
5. The inspector assigned to the project will be available via phone or other means of communication as approved by the City to discuss projects and or technical data.

Statement of Work

Bureau Veritas understands that upon award of contract, our assigned inspector will perform inspection services as assigned by the City.

Field Inspection Services:

1. We recognize that all field inspection and plan review services shall be performed through the City Building Division Office and under the direction of the Chief Building Official or his assigned agent.
2. Our assigned inspector will be combination Certified in Building, Plumbing, and Mechanical and Electrical inspection for commercial and residential construction or as otherwise approved by the Chief Building Official. We further understand that Bureau Veritas shall supply all materials, resources, tools and training.
3. All inspection on behalf of the City of Benicia shall be in compliance with the latest adopted code of the State of California and as amended by the City. Some of the codes to be used will be, but not limited, to the latest addition of the CBC, CEC, CMC, CPC as designated by the City.
4. The inspector assigned to the City shall be the primary contact for all technical field communications between the City and consultant.
5. Bureau Veritas will furnish assigned personnel with all necessary materials, resources, code books, training to conduct inspections and plan review, including a lap top computer with internet access, a current copy of City amendments (provided by the City), policies, procedures and forms as required by the City.
6. Bureau Veritas' assigned inspector shall not recommend approval of any inspection until ALL CODE compliance issues are resolved to the best of the consultant's knowledge and all requirements of the City Building Division are satisfied. Assigned inspector will contact City if there are questions.



BUREAU
VERITAS



Scope of Work

City of Benicia | Building Inspection & Plan Review Services

7. We understand that the consultant shall review all permit documentation as approved by the City of Benicia in a timely manner in order to have substantial knowledge of the project assigned to perform the inspection(s). Upon completion of the project, Bureau Veritas shall return the reviewed documents to the City on DVD.
8. Bureau Veritas will conduct and coordinate all communications with Valero's representative as needed to maintain project schedule and shall copy the City's staff.
9. The assigned Bureau Veritas inspector shall coordinate with the Chief Building Official for all Code Interpretations. We understand that all inspection and plan review comments are subject to the review and approval of the City.
10. Bureau Veritas shall be available within one business day to respond to questions from the City that may be generated during field inspection.

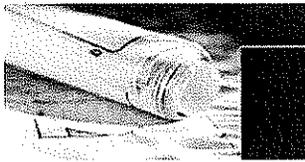
Inspection Services

Inspection services to be provided may include, but are not limited to, field observation of all construction activity, preparation of daily reports, review of submittals and other duties as assigned. Inspections will be performed on a "next-day" basis unless otherwise negotiated.

Communication will be facilitated through cellular phone. Note that the number of inspectors assigned to the City of Benicia for any given time period will be based on actual inspection needs (by day, week, month, etc.) as mutually agreed by Bureau Veritas and the City of Benicia's Chief Building Official.



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VERITAS



Proposed Budget

City of Benicia | Building Inspection & Plan Review Services

Bureau Veritas proposes to provide the services of an inspector, and a plan reviewers on a time and materials basis to meet the needs of the project. We acknowledge the RFP states a not to exceed of 500,000. Upon award Bureau Veritas will meet with the City to negotiate an accurate not to exceed. The proposed rates are as follows:

Personnel Charges – Plan Review Services

<u>Personnel Description</u>	<u>Hourly Billing Rate</u>
Principal	\$150
Project Manager	\$120
Senior Structural Plan Review Engineer	\$120
Structural Plan Review Engineer	\$120
Electrical Plan Review Engineer	\$125
Senior Inspector	\$ 85
Doc Control	\$ 60
Administration	\$ 60
BVnet Admin	\$ 60

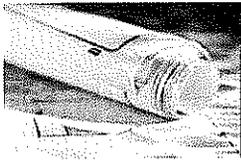
These rates are effective from July 1, 2008 through December 31, 2009. Overtime will be charged at 1.25% of the standard hourly rates. No overtime will be charged without prior authorization by client.

Reimbursable Expenses

Reimbursable expenses shall include, but will not be limited to the following:

Travel (for client requested meetings)	No Charge
Mileage	Current IRS Rate
Domestic Travel Per Diem	\$45/day + Lodging
Outside Consultants	Cost +10%
Other Direct Project Expenses	Cost +10% including:
➤ Public transportation, charter, or rental	
➤ Printing, graphics, photography, and reproduction	
➤ Rental or purchase of special equipment and materials	
➤ Long distance telephone and special shipping	





Proposed Budget

City of Benicia | Building Inspection & Plan Review Services

Communication Fee

Three percent (2%) project labor, which includes telecommunications, faxes, standard U.S. mail, mobile phones, and internet access and hardware.

Direct Expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent (10%) for such items such as:

- Maps, photographs, reproductions, printing, equipment rental and special supplies related to the work.
- Consultants, soils engineers, surveyors, contractors, and other outside services.
- Rented vehicles, local public transportation and taxis, travel and subsistence.
- Specific telecommunications and delivery charges.
- Special fees, insurance, permits, and licenses applicable to the work.
- Outside computer processing, computation, and proprietary programs purchased for the work.
- Counter Services



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PAYMENT AGREEMENT

**PAYMENT AGREEMENT BETWEEN CITY OF BENICIA
AND VALERO REFINING COMPANY – CALIFORNIA**

1. **PARTIES.** This agreement is entered into as of this _____ day of August, 2008, by and between the CITY OF BENICIA, a municipal corporation, hereinafter referred to as “CITY” and VALERO REFINING COMPANY – CALIFORNIA, hereinafter referred to as “VALERO.”

2. **PURPOSE.** The purpose of this agreement is to set forth the terms and conditions under which the City will be reimbursed for the cost of providing certain plan check and inspection services as required by the City of Benicia Municipal Code for as the Inspection agency for the Valero Improvement Project (VIP). Valero has received an approved Use Permit with Conditions, a certified project EIR (with addendum), and a related Mitigation and Monitoring Program.

3. Valero will be required to reimburse the City for the actual cost of plan check and inspection services plus a 15% fee for overhead costs. The property and project are located at 3400 East 2nd Street within the City of Benicia, County of Solano, State of California.

4. **TERMS AND CONDITIONS.** Valero has received necessary approvals for work known as the Valero Improvement Project (VIP) to modify existing refinery equipment and install new equipment at the refinery. Valero is required to design, construct and operate this project according to the California Building Code, the local building codes and applicable laws, ordinances, regulations and standards (LARS) to ensure health and safety. The City requires that Valero submit building construction plans, engineering calculations, specifications and other project-related information to building Inspection for an independent review to ensure compliance with the applicable codes.

The City Building Inspection Division will take the lead role, but will need to hire an outside consultant firm to perform the highly specialized work on this project. The City will act as the Chief Building Official to perform the plan check and construction inspection work on additional related work for this project. The City’s consultant firm will also perform the specialized plan check and inspection on this work on behalf of the City. Valero agrees to pay for the cost of all reasonable outside consultant services in accordance with this agreement between the City and Valero. Valero will also pay a fee for City overhead costs set at 15% of the cost of consultant services of the firm. Bureau Veritas North America, Inc. was recommended by City staff to perform the work on this project. This cost is based upon the current VIP

schedule. Should additional work be required, then any necessary and reasonable cost increases, plus overhead, will be paid for by Valero..

5. **INTEREST AND COLLECTION FEES.** Beginning on the date of execution of this agreement and continuing during the period payments are owed to the consultant firm, interest shall accrue on the unpaid balance and shall be levied and calculated at the Local Agency Investment Fund rate plus 0.125 percent on the unpaid principal. Should City incur any costs in collection of any amount under this agreement, City may recover such costs from Valero or any successors in interest.
6. (blank)
7. **TIME FOR PAYMENT OF FEE.** Valero agrees to pay the total amount of fees plus interest and penalty, if any, to City as follows:
 - a. An initial down payment of \$100,000 shall be paid directly to the City within 30 days of execution of this agreement or prior to the issuance of any City permits on this project, whichever occurs earlier.
 - b. Additional payments of \$50,000 shall be made to the City within 10 days of notification from the City each time 80% of the funds collected to date have been spent by the City's consultant for the services on this project.
 - c. A final payment shall be made to the City within 10 days of notification from the City. This final payment shall include any additional expenses required above the initial price quoted by the City's consultant as approved by City to complete the services necessary on this project.
 - d. In the event Valero elects to pay off the fees over a shorter period of time, there shall be no penalty to do so.
8. **DEFAULT.** The failure of Valero to pay either the down payment or any installment payment on or within ten (10) days after the date payment is due constitutes a material default of this agreement. If such default should occur, the City shall give written notice to Valero indicating a specific time in which the default may be cured. If Valero fails to cure the default within the time specified, all work shall stop on the project and no further plan check or inspection services shall be provided and all permits issued by the City for this project shall become null and void. If Valero acts to cure the default, Valero shall pay a 10% penalty in addition to any late, unpaid installment.
9. **CAPTIONS.** The captions of the sections and subsections of this agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or intent.
10. **SEVERABILITY.** The invalidity in whole or in part of any provisions of this agreement shall not void or affect the validity of any other provision.

11. **ATTORNEY'S FEES.** Valero agrees to pay all costs, including reasonable attorney's fees in the event of any legal action occasioned in the interpretation or enforcement of this agreement, the promissory note, the deed of trust or the lien against the property.
12. **ENTIRE AGREEMENT.** This agreement represents the entire and integrated agreement between City and Valero. This agreement may be amended only by written instrument signed by both City and Valero.
13. **APPLICABLE LAW.** This agreement shall be governed by the laws of the State of California.
14. **ASSIGNMENT PROHIBITED: SUCCESSORS IN INTEREST.** The right, duties, and obligations of this agreement shall not be assigned or delegated by Valero without the prior written consent of City in its sole discretion. Any assignment to which City has not consented shall be null and void and shall never take effect. Except as expressly provided in this Paragraph 13, this agreement shall inure to the benefit of and bind all successors in interest.
15. **AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this agreement.
16. **NOTICES AND PAYMENTS.** All written notices, reports or payments permitted or required to be delivered by this agreement shall be delivered or mailed to the following addresses of the respective parties:

If to the City: Charlie Knox, Community Development Director
 250 East "L" Street
 Benicia, CA 94510
 (707) 746-4240

If to Valero: _____
 Valero Refining Company
 3400 East Second Street
 Benicia, CA 94510
 (707) 745-7011

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year written above .

Valero Refinery

CITY OF BENICIA

BY: _____

BY: _____,
Jim Erickson
City Manager

DATED: _____

DATED: _____

(Attach Notary Acknowledgement)

RECOMMENDED FOR APPROVAL

Charlie Knox
Community Development Director

APPROVED AS TO FORM

Heather McLaughlin
City Attorney

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
ACTION ITEM**

DATE : July 28, 2008

TO : City Council

FROM : City Attorney 

SUBJECT : **INTRODUCTION OF AN ORDINANCE ADDING A NEW CHAPTER 12.52 (NEWSRACKS) TO TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE**

RECOMMENDATION:

Introduce the ordinance regulating newsracks.

EXECUTIVE SUMMARY:

On July 1, 2008 the City Council reviewed a draft ordinance regulating newsracks. The ordinance was designed to regulate the placement, appearance, number, size and servicing of newsracks on the public rights-of-way. An encroachment permit would be required for the placement of a rack on the public rights-of-way. For the Downtown Mixed Use Master Plan area, newsracks would be subject to additional locational requirements. The City Council requested regulations to standardize the racks that contain the newspapers and to reduce the overall number of new racks. The draft ordinance has been revised to reflect those changes.

BUDGET INFORMATION:

There will be no effect on the budget.

SUMMARY:

The City Council recently asked that an ordinance to regulate newsracks be considered. To prepare for this work item, we surveyed the newsracks currently on First Street in February and sent the owners of the racks letters about their condition. We followed up with another survey on June 12, 2008. As of June 12th, nine newsracks were removed, two newsracks were added, five newsracks were in better condition, sixteen newsracks appeared to be in worse condition, and three newsracks were both improved and deteriorated. As of June 16th, there were thirty-nine newsracks in the First Street area. The newsracks include traditional newspapers, as well as what appear to be purely advertising magazines. We reviewed the newsracks again on July 25th and found that nine more newsracks were removed. Thus, there are currently thirty newsracks in the First Street area.

The First Amendment provisions for free speech and freedom of the press protect distribution of newspapers and periodicals. The City may, however, regulate the number, appearance and location of the racks. Although the City has an encroachment permit process to regulate uses in the public right-of-way, it has not been utilized for newsracks. The proposed ordinance would regulate the placement of the newsracks to make sure that the racks do not create a hazard to the public, such as by blocking the sidewalk. It will also regulate the number and location of newsracks in the Downtown Mixed Use Master Plan area, including First Street.

The City recognizes that First Street and the Downtown area is a popular tourist destination with high pedestrian and vehicular traffic volumes. Newsrack owners place their racks in areas that have a high volume of pedestrian traffic especially. The location by the Old Capital Building is a prime example of this. In 2003 there were eight newsracks located on First Street by the Old Capital building side facing First Street. The February 2008 survey found thirteen newsracks at the same location. After we sent letters to newsrack owners, all but six newsracks were quickly removed. As of our July 25th survey, only one newsrack remained at that location.

The proliferation of newsracks along First Street created problems with the ability of people to exit from parked cars on First Street near the Old Capital Building. This has caused some drivers to park too far from the curb resulting in traffic circulation problems. Placement elsewhere on First Street may also impede disabled access. Sometimes, newsracks are chained or placed too close to traffic signs, posts and fire hydrants. This causes a problem with maintenance and use of these signs and other objects.

Due to unique problems in the Downtown Mixed Use Master Plan area, especially along First Street, it is necessary to specifically limit the number of locations and spaces for newsracks. Of the thirty existing newsracks in the First Street area, all of them are separate stand-alone units except for one modular newsrack that contains three publications. The revised ordinance would limit the number of racks in the Downtown Mixed Use Master Plan area to twenty-five. This would cover twenty-four units on First Street and the one on H Street and East Second. The proposed ordinance would, however, probably require the removal of some of the racks near the intersection of Von Pfister and First Street, since they appear to be the same publication. The ordinance would also limit the number of units placed close together to six. This would prevent clutter and, more importantly, allow people to get around the racks more easily than if they were a "wall" of racks.

The distance requirements in the proposed ordinance were developed using ADA access standards, the Fire Code, the City's Standard Plans, the intersection and driveway visibility standards from the Zoning Code, and a comparison with other cities. As of July 25th, only fourteen of the thirty newsracks in the First Street area fully complied with those requirements. Several newsracks failed to comply with more than one standard. Six newsracks were too close to the street curb. Seven newsracks were too close to a building, wall or fence on the far side of the sidewalk. Three newsracks were too close to public benches. One newsrack was bolted to the ground, one newsrack was chained to a building support pillar and City sign pole, and one newsrack was too close to a marked crosswalk.

The purpose of this ordinance is to promote the public health, safety, and welfare through the regulation of location, appearance, number, size and servicing of newsracks on public rights-of-way. Relevant General Plan provisions include:

- General Plan Program 2.12.I: “Maintain public parks, streets, and sidewalks located Downtown in a clean and safe condition.”
- General Plan Goal 2.14: “Enhance Benicia’s small-town atmosphere of pedestrian-friendly streets and neighborhoods.”
- General Plan Goal 3.1: “Maintain and enhance Benicia’s historic character.”

The Downtown Mixed Use Master Plan concludes that First Street’s relatively narrow cross-section does not allow for generous sidewalk areas that might encourage strolling and outdoor seating (Page 2-5).

At the July 1st meeting the City Council requested the ordinance be revised to provide some additional options for consideration. First, the Council requested that the overall allowed number of newsracks in the Downtown area be reduced to 38-40. This change was made in Section 12.52.050 A. Council should decide what number is appropriate. The number could be as low as 30 since that is what the area has. Second, the Council requested the term “abandonment” include when the same periodical edition is left in the container and not updated. Section 12.52.060 F.3. now provides that a newsrack is considered abandoned if the same publication is displayed for more than 35 days. This allows a short period of time for the monthly periodicals to be changed out. Third, the issue of potential conflicts with other uses are addressed in section 12.52.040 D.11. This section provides that newsracks cannot conflict with uses that existed before the newsrack. Fourth, the definition of periodicals is addressed by adding some definition in section 12.52.020. Fifth, the issue of standardizing the containers is addressed with optional language in Section 12.52.050 D for the Council’s consideration. The optional language uses language from the City of Mountain View to define acceptable cabinets for the Downtown area. Similar language could be used for newsracks throughout the city if desired. Requiring standardized cabinets would require some publishers to change their racks and incur that cost. Staff is not fully supportive of the standardized cabinet option. It makes the ordinance more vulnerable to legal challenge if the publishers think their racks are part of the message, i.e. the old USA Today racks. It will also take more staff time to enforce. This ordinance will already require new, additional work from the Public Works staff and code enforcement officer.

Finally, language was added to address racks that are on private property. Section 12.52.110 requires these racks to comply with the design and spacing requirements of the ordinance. Because some areas of First Street have wide “sidewalk” areas that include private property, this regulation is appropriate.

Future regulations could include types of design for the newsracks so that they are more uniform and a sticker program to indicate that the newsrack is a permitted newsrack. If desired, the areas for additional regulation could also be expanded.

Attachments:

1. Proposed Ordinance
2. Map of the Downtown Mixed Use Master Plan Area
3. Map of Newsracks on First Street and East H Street and East Second
4. Table of Newsracks Currently on First Street and H Street and East Second
5. Photographs of Current Newsracks on First Street and H Street and East Second
6. Picture of K-49-16 and K-100
7. Picture of KJ50/KJ55F
8. Picture of HT-94
9. Picture of TK-80
10. Picture of TK-West

ATTACHMENT 1

CITY OF BENICIA

ORDINANCE NO. 08-__

Redlined for discussion purposes only

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 12.52 (NEWSRACKS), TO TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code is amended by adding a new Chapter 12.52 (Newsracks) to read as follows:

Chapter 12.52

NEWSRACKS

Sections:

- 12.52.010 Intent and purpose.
- 12.52.020 Definitions.
- 12.52.030 Newsrack permits.
- 12.52.040 Requirements.
- 12.52.050 Special requirements for newsracks in the Downtown Mixed Use Master Plan area.
- 12.52.060 Removal of newsracks.
- 12.52.070 Amendment to permit.
- 12.52.080 Waiting list.
- 12.52.090 Renewal of permits.
- 12.52.100 Appeals.
- 12.52.110 Newsracks on private property.

12.52.010 Intent and purpose. The City Council finds that this chapter implements provisions of the General Plan and the Downtown Mixed Use Master Plan including:

- A. General Plan Program 2.12.I "Maintain public parks, streets, and sidewalks located Downtown in a clean and safe condition;"
- B. General Plan Goal 2.14 "Enhance Benicia's small-town atmosphere of pedestrian-friendly streets and neighborhoods;"
- C. General Plan Goal 3.1 "Maintain and enhance Benicia's historic character;" and
- D. The Downtown Mixed Use Master Plan concludes that First Street's

relatively narrow cross-section does not allow for generous sidewalk areas that might encourage strolling and outdoor seating. (pages 2-5)

The City Council of the City of Benicia hereby finds that newsracks, containers and similar newspaper and vending devices have proliferated and increased in certain areas of the City of Benicia to the extent that in some instances they constitute a threat to public health, safety and welfare by impeding pedestrian traffic and interfering with ingress and egress to and from buildings and vehicles.

The City of Benicia finds the Downtown Mixed Use Master Plan area including First Street, to be a popular tourist destination with high pedestrian and vehicular traffic volumes. The proliferation of newsracks along First Street interferes unduly with pedestrian and traffic circulation and creates a safety hazard. Due to unique problems in the Downtown Mixed Use Master Plan area, including the historic lack of sidewalks, it is necessary to specifically limit the number of locations and spaces for newsracks.

The purpose of this chapter is to promote the public health, safety, and welfare through the regulation of placement, appearance, number, size and servicing of newsracks on the public rights-of-way so as to:

- A. Provide for pedestrian and driving safety and convenience;
- B. Provide no unreasonable interference with the flow of pedestrian or vehicular traffic including ingress into, or egress from, any residence or place of business, or from the street to the sidewalk, by persons exiting or entering parked or standing vehicles;
- C. Provide reasonable access for the use and maintenance of sidewalks, poles, posts, traffic signs or signals, hydrants, mailboxes, and access to locations used for public transportation services;
- D. Reduce visual blight on the public rights-of-way, and protect the aesthetics of store window displays, public landscaping and other improvements;
- E. Maintain and protect the value of surrounding properties;
- F. Reduce exposure to the city from personal injury or property damage claims and litigation; and
- G. Protect the right to distribute information protected by State and Federal constitutions through the use of newsracks.

It is not the intent of this chapter to in any way discriminate against, regulate, or interfere with the publication, circulation, distribution, or dissemination of any newspapers.

12.52.020 Definitions.

"Director" shall mean the director of public works or his or her designee.

"Journal" shall mean a periodical that contains articles written by authors who are experts in a specific field. A journal article is peer reviewed by other experts in the field to assure that the research is reliable and of high quality.

"Magazine" shall mean a periodical that contains articles of broad interest intended for the general public or a particular interest group. A magazine article is usually written by reporters or journalists and does not provide extensive technical depth or scientific detail that a journal article would have.

"Newsracks" shall mean any type of self-service or coin-operated box, container, storage unit or other dispenser placed upon any public right-of-way for the vending or free distribution of newspapers and other periodicals or other printed material.

"Newspaper shall mean a periodical that is published on a frequent basis such as daily or weekly and contains news stories, feature articles, opinion pieces, and advertisements of interest to the general public.

"Periodicals" shall mean anything that is published on a regular and continual basis. Periodicals include journals, magazines, and newspapers.

"Public right-of-way" shall mean any public property such as public streets, highways, roadways, sidewalks, parkways or alleys, used or intended for use, by the traveling public, whether vehicular or pedestrian, located within the City of Benicia.

12.52.030 Newsrack permits.

A. Permit required. An encroachment permit issued in accordance with this chapter and Chapter 12.12 shall be required prior to the installation, placement or maintenance of any newsrack, which in whole or in part rests upon, in or over any public right-of-way.

B. Existing newsracks. Owners of newsracks in place as of July 25, 2008, 2008 shall have sixty (60) days after the effective date of this ordinance to apply for a permit. They shall have priority to retain their current location provided that the owner of the rack has applied for a permit in the sixty-day period and has complied with the provisions of this chapter. If sufficient space does not exist to accommodate all newsracks sought to be placed at one location without violating the standards set forth in this chapter, and the permit holders are unable to agree among themselves regarding the allocation of spaces, the director of public works shall give priority as follows:

1. First priority shall be publications that are published two or more times a week;

2. Second priority shall be given to publications that are published once per week;

3. Third priority shall be given to publications that are published less than once per week but more than once per month;

4. Fourth priority shall be given to publications that are published monthly or less frequently than monthly.

5. In the event that the above system of prioritization fails to resolve a conflict between two or more publications that are published at the same frequency, historical presence at the location will be the determining factor.

In the event the director of public works is required to utilize the priority system described in subsections (1) through (5) of this subsection, he or she shall permit only one rack per publication in a single location, provided that the Sunday edition of a daily publication shall be considered as a separate publication and shall be in the second category.

C. Application. A written application for a newsrack permit shall be filed with the department of public works, and shall contain the following information:

1. The name, street and mailing address, and telephone number of the applicant, which shall be the duly-authorized representative of both the publisher

and, if applicable, any independent distributor authorized to service the publisher's newsrack for which the permit is sought;

2. The name, street and mailing address, and telephone number of the distributor, or other responsible person, whom the city may notify or contact at any time concerning the applicant's newsrack(s);

3. The number of proposed newsracks and a description of the exact proposed location (including a map or site plan, drawn to scale, with adequate locational information to verify conformance with this chapter) and the proposed means of affixing each proposed newsrack;

4. A description of each proposed newsrack, including its model, dimensions, color, the number of publication spaces it will contain, and whether it contains a coin-operated mechanism;

5. The name and frequency of publication of each publication proposed to be contained in each newsrack;

6. A statement signed by the applicant that the applicant agrees to indemnify, defend and hold harmless, the city and its representatives from all claims, damages, demands, loss, fines or liability to the extent arising out of or in connection with the installation, use or maintenance of any newsrack on public property by or on behalf of any such person, except such injury or harm as may be caused solely and exclusively by the negligence of the city or its authorized representatives; and

7. A statement signed by the applicant that the applicant agrees, upon removal of a newsrack, to repair any damage to the public property caused by the newsrack or its removal.

D. Fee. Each application for a newsrack permit shall be accompanied by an application fee as established by resolution of the City Council.

E. Issuance and denial. The director of public works shall issue a newsrack permit within ten (10) days of the submittal of a complete application and upon a finding the applicant is in compliance with the provisions of this chapter. An application for a newsrack permit shall not be approved, if:

1. The proposed newsrack projects onto, into or over any part of the roadway or public street, or which rests, wholly or in part, upon, along or over any portion of the roadway or public street;

2. The proposed newsrack is to be installed in whole or in part, in or over any sidewalk or parkway; and

a. The newsrack, in its proposed location, would endanger the safety of persons or property; or

b. The proposed location is used for public utility purposes, public transportation purposes or other public use; or

c. The proposed newsrack would unreasonably interfere with or impede the flow of pedestrian or vehicular traffic, the ingress into or egress from any residence, place of business, or any legally parked or stopped vehicle, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other objects present at or near said location; or

d. The proposed newsrack would interfere with the cleaning of any sidewalk by the use of mechanical sidewalk cleaning machinery.

If a permit is denied, the applicant shall be notified in writing of the specific cause

of such denial by the director of public works and the right to appeal in accordance with Chapter 1.44 of the Benicia Municipal Code.

12.52.040 Requirements. Any newsrack, which, in whole or in part, rests upon, in or over any sidewalk, shall substantially comply with the following:

A. Newsracks located near a curb shall be placed not less than twenty-four (24) inches from the edge of the curb. Newsracks placed adjacent to the rear of the sidewalk shall be placed parallel to any walls and/or fences and at least six (6) inches from the wall and/or fences.

B. Newsracks shall not be chained, bolted or otherwise attached to any public property without prior approval of the director of public works and any private property without the consent of the property owner.

C. Newsracks may be attached to one another. Each group of attached newsracks (six maximum) shall be separated by twenty-four (24) inches or more. The director of public works shall review and approve the number and orientation of newsracks that can be bolted, attached or grouped on a location-by-location basis.

- D. Newsracks shall not be placed, installed, used or maintained:
1. Within three (3) feet of any marked crosswalk;
 2. Within fifteen (15) feet of the curb return of any unmarked crosswalk;
 3. Within fifteen (15) feet of any fire hydrant, fire call box, police call box or other emergency facility;
 4. Within three (3) feet of any driveway;
 5. Within forty-two (42) inches ahead of, and fifteen (15) feet to the rear of any sign marking a designated bus stop, measured parallel to the flow of traffic;
 6. Within forty-two (42) inches of any bench or other seating area;
 7. Within the intersection or driveway visibility area, if the newsrack is higher than three (3) feet tall;
 8. At any location whereby the clear space for the passageway of pedestrians is reduced to less than forty-two (42) inches;
 9. Within one hundred (100) feet of another newsrack containing the same newspaper or news periodical except where separated by a street or corner, or except where (1) a newspaper demonstrates that there is insufficient room in one machine for the newspapers which may be sold in one day, or (2) where a newspaper demonstrates that it publishes more than one edition of the newspaper for sale at the same time;
 10. Facing another newsrack, divided only by the width of a public sidewalk; and
 11. Where the newsrack will interfere with a preexisting use of the adjacent property.

E. No advertising shall be affixed to the newsracks, except:

1. The name of the newspaper or periodical being dispensed; and
2. Advertising rack cards contained in card pans which are attached to and located on the front of the newsrack and do not exceed fifteen (15) inches in height and twenty-two (22) inches in length. The rack cards shall be limited to the display, sale or purchase of the newspaper or periodical being dispensed.

F. Newsracks shall be kept clean and maintained in good working order at all times, freshly painted, and without stickers or graffiti.

G. Newsracks shall not be bolted to the sidewalk unless prior approval has been obtained from the director of public works.

H. No person, association, firm or corporation shall place, locate or maintain a newsrack on the public right-of-way unless there is on file with the director of public works, in full force and effect at all times, a document issued by an insurance company authorized to do business in the State of California evidencing that the permittee or owner is insured under a liability insurance policy providing minimum coverage of five hundred thousand dollars (\$500,000.00) for injury or death to one person arising out of the location, placement or operation of the newsrack on the public right-of-way.

12.52.050 Special requirements for newsracks in the Downtown Mixed Use Master Plan area. In addition to all other applicable provisions of this chapter, the following rules shall apply to newsracks in the Downtown Mixed Use Master Plan area;

A. No more than [thirty (30) or thirty-five (35) or some other number] newsracks are permitted in the area.

B. Newsracks shall be located so that they are not located in front of or within 25 feet of the side of any building designated by the City as a historical resource as measured from the front entrance of the building.

C. Each location shall accommodate no more than six (6) newsrack spaces.

D. **Optional Language to standardize cabinets:** When there are more than four (4) freestanding newsracks in a given location, each shall be a modular-style rack, assembled and installed accordingly. No freestanding rack shall be allowed within fifty (50) feet of a modular newsrack installation. A modular rack shall be counted as the number of publications it holds.

1. Modular-style newsracks shall be painted black and be one of the following types: K-49-16, K-100 (as manufactured by "Sho-Rack") or KJ50/KJ55F (as manufactured by "K-Jack") or a similar style as may be approved by the director.

2. Freestanding newsracks may be painted any color. Freestanding newsracks may be of the same type allowed for modular installations or the HT-94 (as manufactured by "Sho-Rack"). Except in the area of the Downtown Precise Plan, freestanding racks may also be one of the following types: TK-80, TK-West, (as manufactured by "Sho-Rack") or a similar style as may be approved by the director.

3. Owners of nonmodular racks shall have sixty (60) days to replace their nonmodular racks with modular racks once more than four (4) newsracks have been installed in a particular location. The director may issue a temporary permit for the newsrack(s) triggering the modular requirement to allow adequate time for conversion of the existing newsracks to a modular installation. The compartments of modular racks shall be placed in such a manner as to provide up to two horizontal rows of up to four (4) compartments per row. In addition, any compartment that is unused in a modular rack installation shall be kept empty and not used for advertising purposes.

4. The City expects all newsrack users to work cooperatively, particularly in modular rack installations. A newsrack owner or operator that installs or maintains a modular rack is expected to share spaces with other publications, so that the public will have the maximum possible choice of news publications, and may recover a

proportional share of the cost of the rack from other publications displayed in the rack. If there are more publications requesting compartments than available compartments, the director may limit each publication to only one compartment. Priorities shall be assigned pursuant to subsection E.

E. In the event that the newsracks proposed to be placed at any one location violate the provisions of subsections 12.52.040(D) or 12.52.050(A) or (B), priority shall be given as follows:

1. Within ninety (90) days after the adoption of the ordinance codified in this chapter:

a. First priority shall be given to vending machines used for the sale of daily publications (those published on five or more days in a calendar week) of general circulation in Solano County that otherwise comply with the provisions of this chapter.

b. Second priority shall be given to vending machines used for sale of weekly publications (those published on at least one day, but less than five days in a calendar week) of general circulation in Solano County that otherwise comply with the provisions of this chapter.

c. Third priority shall be given to vending machines used for sale of daily publications (those published on five or more days in a calendar week) not of general circulation in Solano County that otherwise comply with the provisions of this chapter.

d. Fourth priority shall be given to vending machines used for the sale of weekly publications (those published on at least one day, but less than five days in a calendar week) not of general circulation in Solano County that otherwise comply with the provisions of this chapter.

e. Fifth priority shall be given to all other vending machines on the basis of first-come, first-served.

In the event that an applicant disagrees with the city's priority category for such publication, it shall have the right to appeal in accordance with Chapter 1.44 of the Benicia Municipal Code.

2. Commencing ninety (90) days after the adoption date of the ordinance codified in this chapter, priority shall be given on a first-come, first-served basis.

12.52.060 Removal of newsracks.

A. Commencing ninety (90) days after the adoption date of the ordinance codified in this chapter, any newsrack in violation of any provision of the ordinance codified in this chapter will be deemed nonconforming.

B. In the event that the director of public works determines that a newsrack does not comply with the provisions of this chapter, he or she shall provide written notice of such determination to the permittee or owner. The notice shall specify the nature of the violation, the location of the newsrack which is in violation, the intent of the director of public works to remove the nonconforming newsrack in the event a hearing is not requested, and the right of the permittee to request a hearing, before the director of public works, within fifteen (15) days from the date of the notice. If the newsrack is one which has not been authorized by the director of public works and ownership is not

known, nor apparent after inspection, a notice complying with this section shall be affixed to the newsrack.

C. In the event that a hearing is held pursuant to this section, the director of public works shall render a decision, in writing, within ten (10) days from the date of the hearing, and the decision shall advise the permittee or owner of his or her right to appeal pursuant to the provisions of Chapter 1.44 of the Benicia Municipal Code. Notice of the decision shall be mailed to the permittee or owner and shall be considered effective on the date mailed provided that the notice is properly addressed and placed in the U.S. Mail with first-class postage prepaid.

D. The director of public works may take possession of a newsrack and, upon the expiration of thirty (30) days, dispose of the newsrack as required by law, if:

1. No hearing is requested by the permittee or owner within fifteen (15) days as provided in subsection 12.52.050(B); or
2. The appeal period specified in Chapter 1.44 of the Benicia Municipal Code has expired.

E. The director of public works shall inspect any newsrack reinstalled after removal pursuant to this chapter. The permittee of the newsrack shall be charged a fee for this reinspection as established by resolution of City Council.

F. In the event that any newsrack is abandoned, the director of public works may remove it pursuant to the procedures set out in this section. For the purposes of this section, the term "abandonment" shall mean:

1. The condition of the rack and related circumstances indicate it will not be actively used within a reasonable period of time;
2. No prior written notice has been given by the permittee to the director of public works specifying the reason(s) for nonuse; and
3. No publication has been displayed in the newsrack for a period of fifteen (15) consecutive days or the same publication has been displayed for more than thirty-five (35) days.

12.52.070 Amendment to permit. In the event of a change in any of the information contained in the application, the permittee shall submit such change in writing to the director of public works. A permittee may install and maintain additional newsracks by an amendment to the permit. The rules and procedures of this section shall also apply to the review and approval of any such amendment.

12.52.080 Waiting list. After the original assignment of spaces within the downtown special newsrack district, if application is made to place a newsrack at a location where no space is available, the director of public works shall place the applications on a waiting list. In the event that a space becomes available, the director of public works will determine which applicant shall receive a space according to the priority described in Section 12.52.050.

12.52.090 Renewal of permits. At the expiration of each three-year permitting period, a valid permit holder shall be entitled to keep its previously assigned space(s), as long as the permittee files a timely application for renewal according to procedures developed by the director of public works, and if the application is properly completed, the newsrack meets the standards set forth in this chapter and has not caused a public nuisance from litter or graffiti. Remaining available spaces shall be allocated according

to the priority described in Section 12.52.050.

12.52.100 Appeals. Any permittee or owner who is aggrieved by any decision of the director of public works may appeal the decision in accordance with the provisions of Chapter 1.44 of the Benicia Municipal Code.

12.52.110 Newsracks on private property. Newsracks on private property that are within ten (10) feet of, and visible from, the public right-of-way shall comply with the design and spacing requirements of this Chapter.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008, and adopted at a regular meeting of the Council held on the _____ day of _____, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

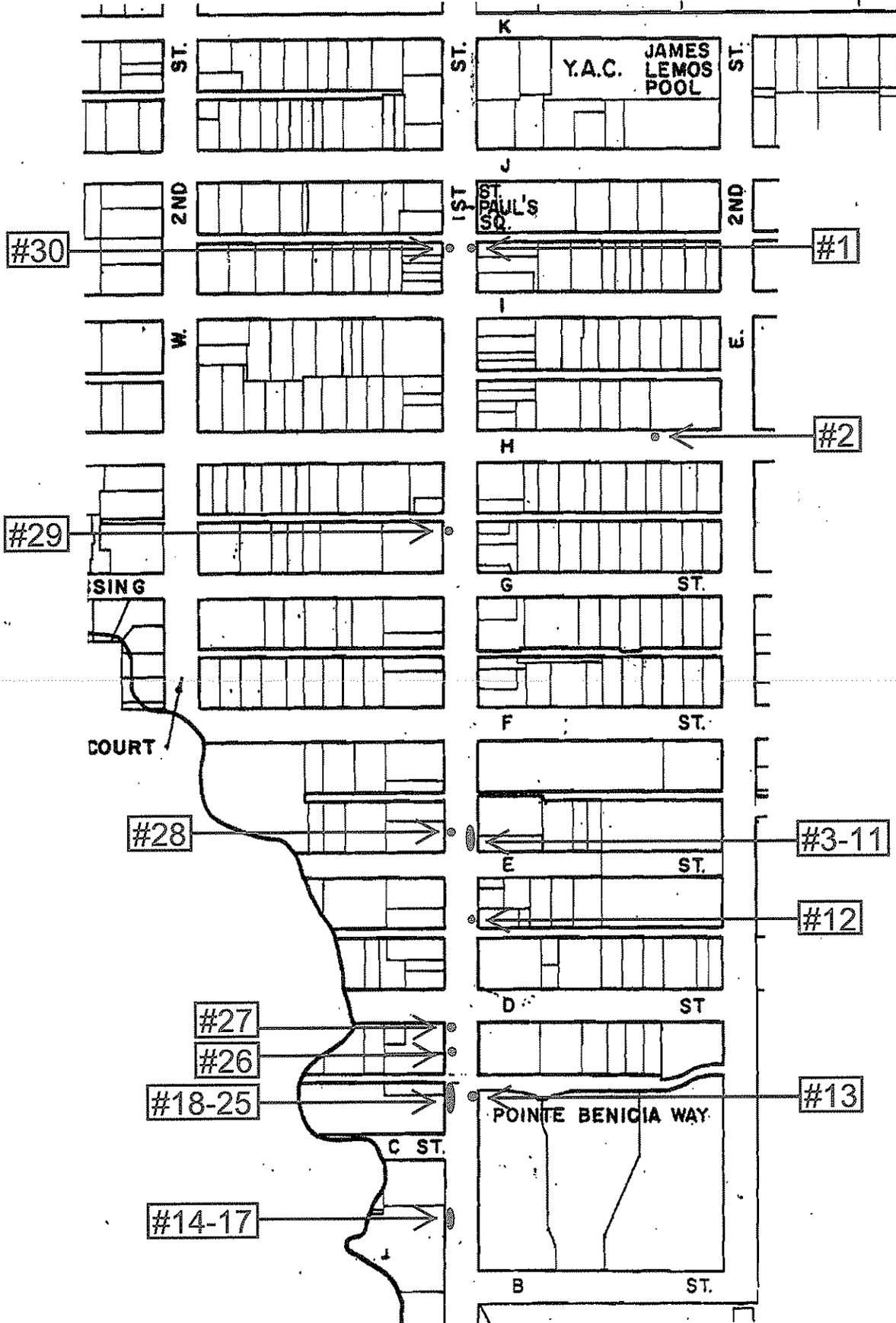
Attest:

Lisa Wolfe, City Clerk

ATTACHMENT 2

ATTACHMENT 3

Map of News Racks on First Street



ATTACHMENT 4

Benicia Newsrack Table

<p>Home Guide</p>		<p>25. Corner of Von Pfister and First St.; back edge of sidewalk</p>	<p>25. No building, wall or fence behind it, 95" from driveway, unattached but only 1" from #22</p>
<p>Homes & Land</p> <ul style="list-style-type: none"> • Of Solano County • Of the North Bay • Sonoma And Lake County • Of Reno Sparks <p>Note: Only send one letter out to Surlow re: Rental Guide & Home & Land (see below)</p>	<p>Homes & Land of Solano County / Homes & Land of the North Bay/ Homes & Land of Sonoma And Lake County 884 2nd Street SANTA ROSA, CA 95404 Contact: Rick Surlow, Publisher (707)578-3300 (707)578-8450- Fax E-mail: rick@surlow.com</p> <p>Homes & Land of Reno/Sparks 8801 LAKESIDE DRIVE RENO, NV 89511 Contact: Joanne Zuppan, Publisher (775)851-1141 (775)851-1224- Fax E-mail: homesandland@sbcglobal.net Website: www.HomesAndLand.com</p>	<p>2. In front of Powerhouse Realty, 191 East H Street</p> <p>5. In front of "Kaigan Sushi Japanese Restaurant," before corner of First St. and East E. St.;</p> <p>8. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St. and East E St.;</p> <p>15. Middle of West C St. and West B St., in front of vacant lot; back edge of sidewalk</p> <p>16. Middle of West C St. and West B St., in front of vacant lot; back edge of sidewalk</p> <p>23. Corner of Von Pfister and First St.; back edge of sidewalk</p> <p>26. Corner of First St. and West D St.; against building</p> <p>30. In front of Prudential CA Realty, Corner of East H St. & First Street; against building</p>	<p>2. <u>22" from curb</u></p> <p>5. <u>16" from curb</u></p> <p>8. <u>19" from curb</u>, unattached but touching #7</p> <p>15. <u>1" from fence, 39" from bench</u> unattached but only 2.5" from #14 and 4" from #16</p> <p>16. <u>4" from fence</u>, unattached but only 4" from #15 and 6" from #17</p> <p>23. No building, wall or fence behind it, 95" from driveway, unattached but only 1" from #22</p> <p><u>26. 2" from wooden railing/stairs</u></p> <p><u>30. 7" from building, 39" from bench</u></p>

Benicia Newsrack Table

<p>Jobs & Careers (<i>Newspaper & Job Fairs/ Northern California's Employment Paper</i>)</p>	<p>477 9th Avenue Suite 110, San Mateo, CA 94402. 650-348-4432 650-348-4450- Fax <u>Website:</u> www.jobscareers.com</p>	<p>6. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St. and East E St.;</p> <p>18. Corner of Von Pfister and First St.; back edge of sidewalk</p>	<p>6. <u>19" from curb</u>, unattached but touching #7</p> <p>18. No building, wall or fence behind it, unattached but only 9" from #19</p>
<p>East Bay Real Estate Guide</p>	<p>CONTRA COSTA & NORTHERN ALAMEDA Contact: Steve Margolis (925) 757-9009</p> <p>SOLANO COUNTY & SOUTHERN ALAMEDA Contact: William Passero (415) 479-7910 solanohomes@comcast.net alamedahomes@comcast.net</p> <p>Phone No./Email on Newsrack: (925) 813-1778 mrd1055@yahoo.com</p> <p><u>Website:</u> www.EBRealEstateGuide.com</p>	<p>19. Corner of Von Pfister and First St.; back edge of sidewalk</p>	<p>19. No building, wall or fence behind it, unattached but only 9" from #18 and touching #20</p>
<p>Weekender Magazine (<i>Since 1988</i>)</p>	<p>Contact: Kelly Castillo - Owner / Managing Editor Email: weekender1@earthlink.net Contact: Thomas Lockett - Distribution</p>	<p>28. Corner of First St. and West F St.; against building</p>	<p>28. 16" from building</p>

Benicia Newsrack Table

<p><u>NEWSPAPERS FOR SALE:</u></p>	<p>Benicia Herald 820 First St. P.O. Box 65 Benicia, CA 94510 (707) 745-0733 (707) 745-8583- Fax</p> <p><u>Website:</u> www.beniciaheraldonline.com www.timesheraldonline.com</p>	<p>1. In front of Benicia Herald Building on corner of First St.; against building</p> <p>7. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St./East E St.</p> <p>13. In front of <i>Starbucks</i>, corner of First St./ Pt. Benicia Way</p> <p>27. Corner of First St. and West D St.</p> <p>29. Middle of West G St. and West H St.; against building</p>	<p>1. <u>Bolted to ground, 4.5" from building, 70" from driveway</u></p> <p>7. <u>22" from curb</u>, unattached but touching #6,8</p> <p>13. <u>23" from curb</u>, 52" from driveway</p> <p>27. 28" from curb, but <u>attached to building support pillar and topped pole</u></p> <p>29. <u>Touching wall, 51" from driveway, 20" from ground tile mural</u></p>
<p>Contra Costa Times</p>	<p>Contra Costa Newspapers 2640 Shadelands Drive Walnut Creek, CA 94598 (925) 935-2525 <u>Website:</u> www.contracostatimes.com</p>	<p>11. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St. and East E St.</p> <p>22. Corner of Von Pfister and First St.; back edge of sidewalk</p>	<p>11. 29.5" from curb, 37" from crosswalk diagonally but <u>24" from crosswalk parallel</u>, unattached but touching #10</p> <p>22. No building, wall or fence behind it, unattached but touching #21 and only 1" from #23, 24 and 25.</p>
<p>San Francisco Chronicle</p>	<p>San Francisco Chronicle 901 Mission Street San Francisco, CA 94103 (415) 777-1111 <u>Website:</u> www.sfgate.com</p>	<p>10. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St. and East E St.</p> <p>21. Corner of Von Pfister and First St.; back edge of sidewalk</p>	<p>10. 29.5" from curb, unattached but touching #9, 11</p> <p>21. No building, wall or fence behind it, unattached but touching #20 and #22</p>
<p>Times Herald</p>	<p>Times-Herald 440 Curtola Pkwy, P.O. Box 3188 Vallejo, CA 94590 (707) 644-1141 <u>Website:</u> timesheraldonline.com</p>	<p>9. In front of <i>Szechwan House Chinese Restaurant</i>, corner of First St. and East E St.</p>	<p>9. 31" from curb, unattached but touching #10</p>

ATTACHMENT 5

Newsrack #1



Newsrack #2

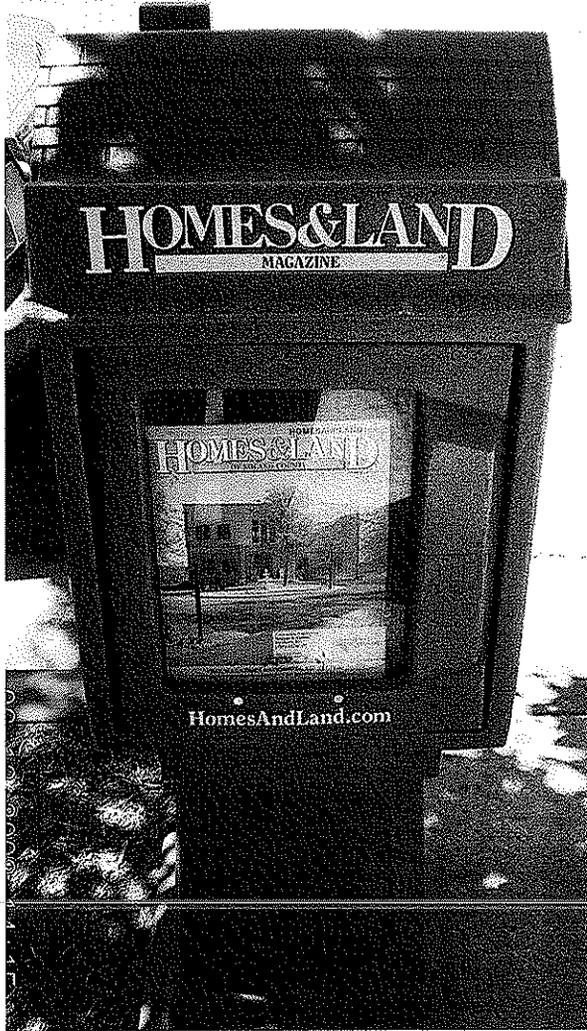


Newsrack #3

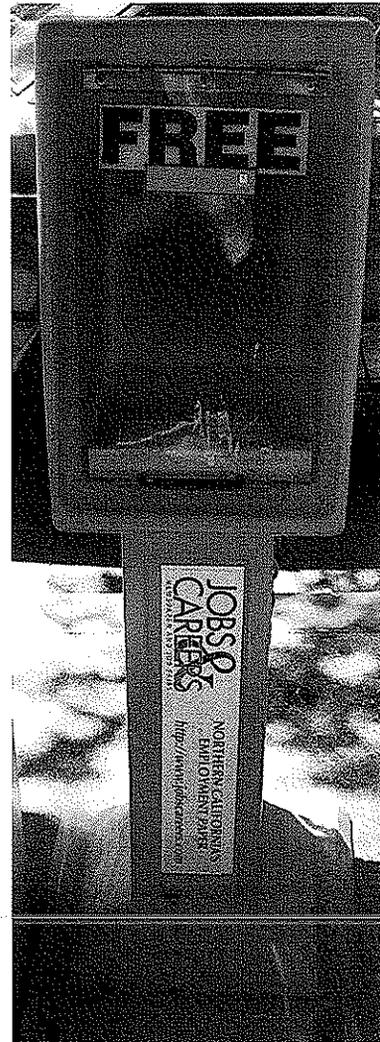


Newsrack #4

Newsrack #5



Newsrack #6



Newsrack #7

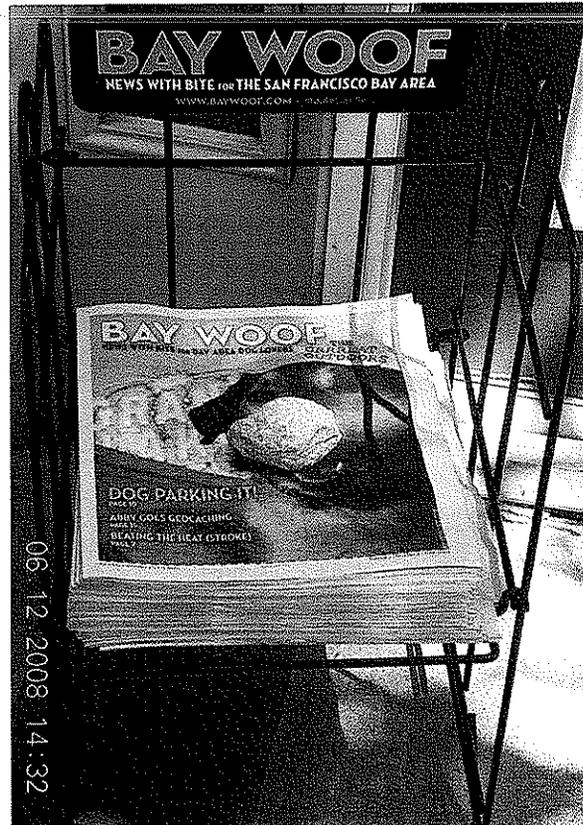


Newsrack #8

Newsrack #9



Newsrack #10



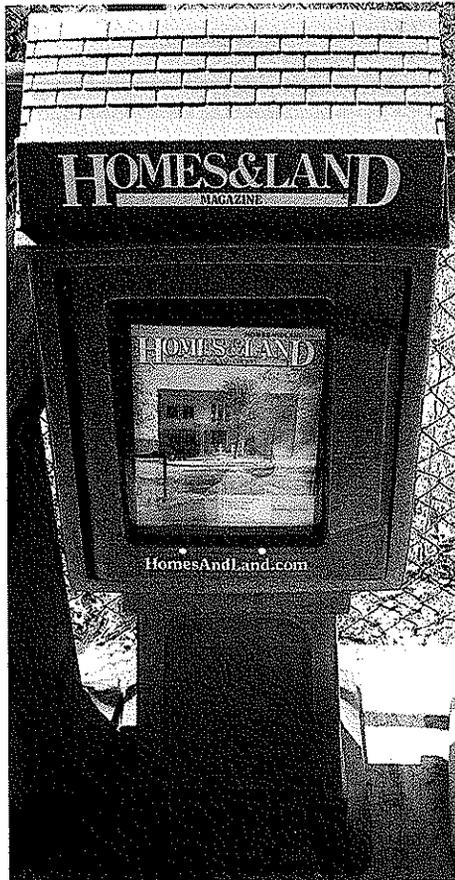
Newsrack #11

Newsrack #12

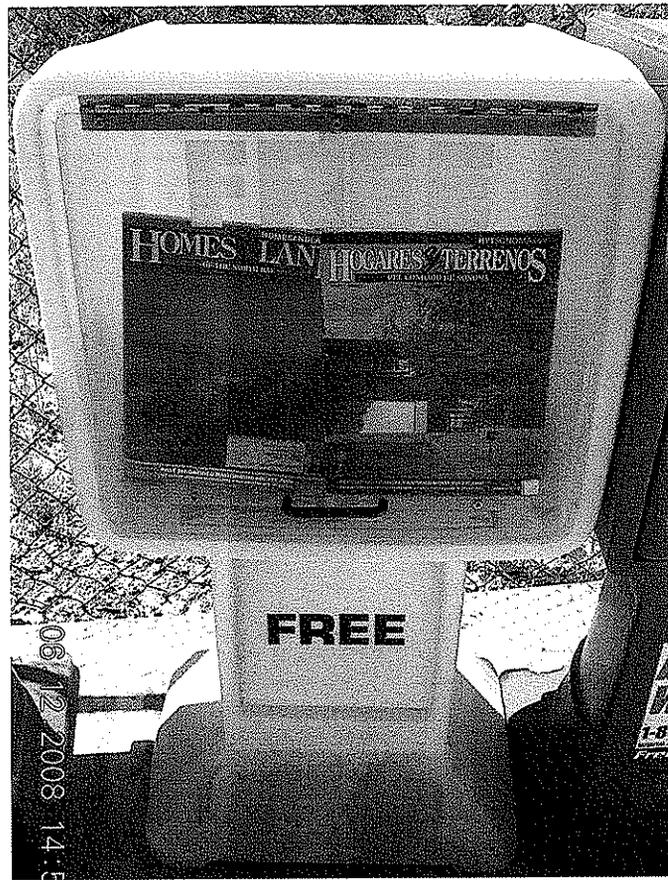
Newsrack #13



Newsrack #14



Newsrack #15



Newsrack #16

Newsrack #17



Newsrack #18



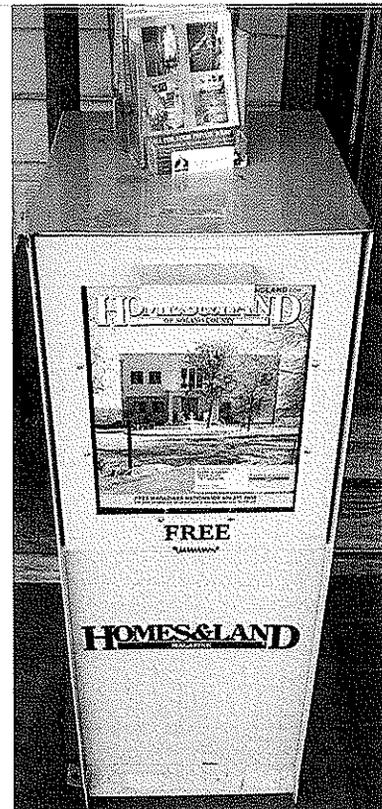
Newsrack #19

Newsrack #20

Newsrack #21



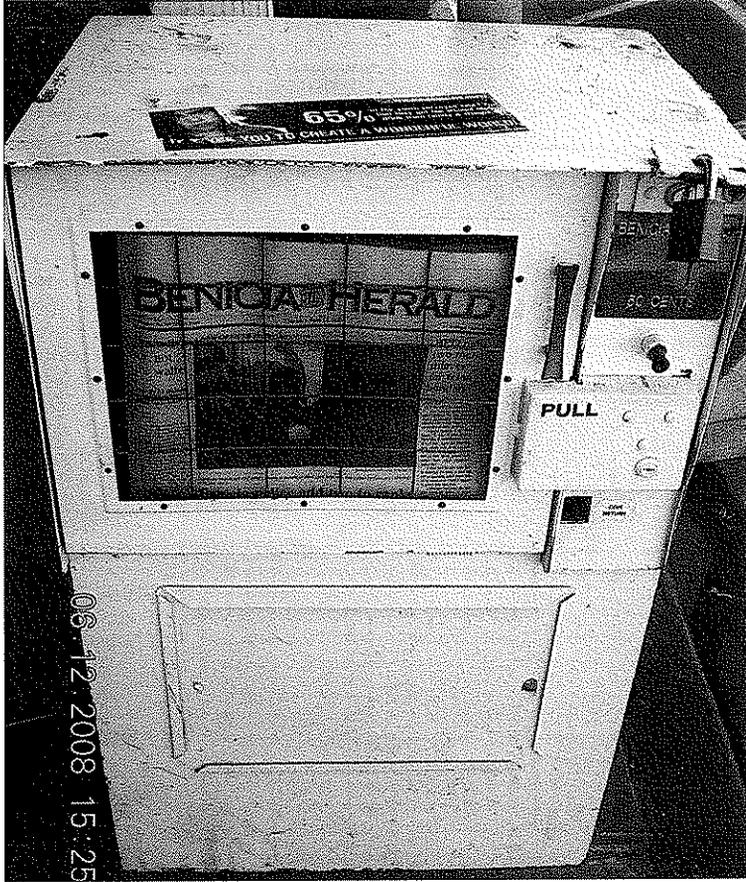
Newsrack #22



Newsracks #23, 24 and 25

Newsrack #26

Newsrack #27



Newsrack #28



Newsrack #29



Newsrack #30

ATTACHMENT 6

Kaspar Sho-Rack

Manufacturing Quality Products Since 1898

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COIN OPERATED NEWS RACKS MODULAR

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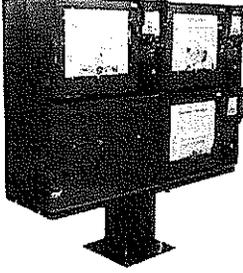
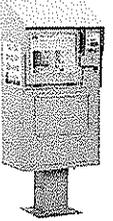
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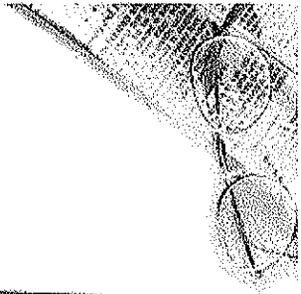
 Traditional 49-16/100	 TK-100 with Center Radius Top	 TK-100 with Slanted Top						
<table border="1" style="margin: auto;"> <tr> <td style="padding: 2px;">Click for Prices</td> <td style="padding: 2px;">Options</td> </tr> <tr> <td style="padding: 2px;">Prices</td> <td style="padding: 2px;">Impressions</td> </tr> </table>	Click for Prices	Options	Prices	Impressions				
Click for Prices	Options							
Prices	Impressions							
	TRAYS 15 3/8" deep (front to back)	PEDESTALS 18" Wide, 6 3/4" deep, 14" x 14" base						
Sho-Racks to be Displayed	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 2px;">MB #1 Single Width 24 1/4" wide 14 lbs. Shipping Wt.</td> <td style="width: 33%; padding: 2px;">MB #2 Double Width 48 1/2" 22 lbs. Shipping Wt.</td> <td style="width: 33%; padding: 2px;">MB #3 Triple Width 72 3/4" 31 lbs. Shipping Wt.</td> </tr> </table>	MB #1 Single Width 24 1/4" wide 14 lbs. Shipping Wt.	MB #2 Double Width 48 1/2" 22 lbs. Shipping Wt.	MB #3 Triple Width 72 3/4" 31 lbs. Shipping Wt.	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; padding: 2px;">MP #1 15 1/4" high 26 lbs. Shipping Wt.</td> <td style="width: 33%; padding: 2px;">MP #2 19" high 26 lbs. Shipping Wt.</td> <td style="width: 33%; padding: 2px;">MP #3 23" high 32 lbs. Shipping Wt.</td> </tr> </table>	MP #1 15 1/4" high 26 lbs. Shipping Wt.	MP #2 19" high 26 lbs. Shipping Wt.	MP #3 23" high 32 lbs. Shipping Wt.
MB #1 Single Width 24 1/4" wide 14 lbs. Shipping Wt.	MB #2 Double Width 48 1/2" 22 lbs. Shipping Wt.	MB #3 Triple Width 72 3/4" 31 lbs. Shipping Wt.						
MP #1 15 1/4" high 26 lbs. Shipping Wt.	MP #2 19" high 26 lbs. Shipping Wt.	MP #3 23" high 32 lbs. Shipping Wt.						
One K-100	One Needed	-	-	One Needed	-	-		
Two K-100's	-	One Needed	-	One Needed	-	-		
Three K-100's	-	-	One Needed	Two Needed	Two Needed	-		
Two K-49-16 (Stacked)	One Needed	-	-	-	One Needed	-		
Two K-49-16 (Side-by-Side)	-	One Needed	-	-	-	One Needed		
Three K-49-16 (Side-by-Side)	-	-	One Needed	-	-	Two Needed		
Four K-49-16 (Stacked) 2 High 2 Wide	-	One Needed	-	-	One Needed	-		
Six K-49-16 (Stacked) 2 High 3 Wide	-	-	One Needed	-	Two Needed	-		
One K-100 and Two K-49-16 (Stacked)	-	One Needed	-	One Needed	-	-		
Two K-100 and								

Two K-49-16 (Stacked)	-	-	One Needed	Two Needed	-	-
One K-100 and Four K-49-16 (Stacked) 2 High 2 Wide	-	-	One Needed	Two Needed	-	-

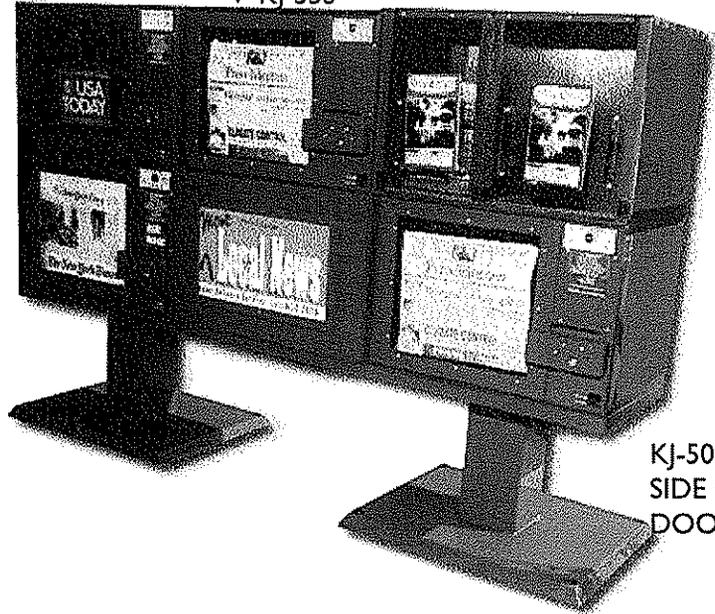
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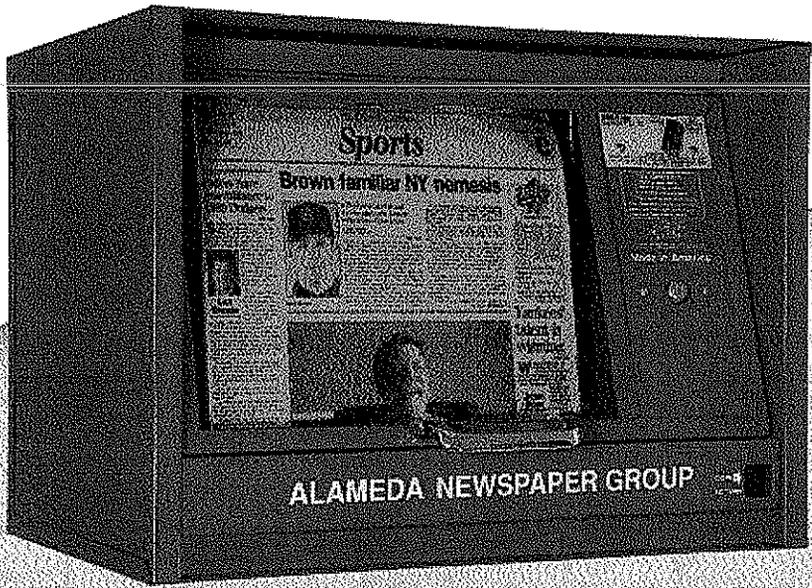
ATTACHMENT 7



▼ KJ-55S™



KJ-50S™
SIDE OPENING
DOOR



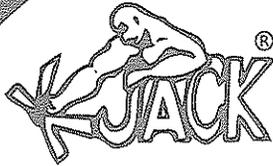
KJ-50E™ PULL UP DOOR

⊗ KJ-50™ NOT SHOWN

KJ-50™ KJ-50E™ KJ-50S™ KJ-55S™ THE STACKER™

K-JACK®

800-775-5225 (Sales & Service)
VISIT OUR WEBSITE www.kjack.com



KJ-50™ THE STACKER™

Only 16 inches depth and 24 inches wide, the stacker was designed for the location where space is at a premium. In a space only 24 inches wide, you can have one, two, or three racks. In a space only 48 inches wide, you can have two, four, or six racks. In a space only 72 inches wide, you can have three, six, or nine racks.

The Stacker™ features the Slide-Out™ insert. This concept makes repair in the field or shop easily accomplished. There is no need to tear the stack apart for maintenance of a particular rack, just pull out the Slide-Out™ insert and do your maintenance or price changing.

▼ STANDARD FEATURES AND EQUIPMENT

▶ APPEARANCE:

- Thirty-Eight standard colors

▶ CAPACITY:

- Fourteen and one-half inches

▶ DEPENDABILITY:

- Built of heavy gauge, reinforced sheet steel
- "Snap-out"™ automatic self-acting coin mechanism
- Coin mechanism clears foreign objects

▶ SECURITY:

- Large capacity, key-locked coin-box
- Coin box provided with locking tabs for a padlock if added security is desired

▶ VISIBILITY:

- K-Jack Lexan™ plastic - front door
- This rack features K-Jack's "Slide-In"™ insert with a key door opener
- The "Slide-In"™ insert facilitates maintenance and price changing

- Coin mechanism is plated, then coated with K-Jack's "Super-Slip"™ to provide excellent operation in wet or freezing weather
- **Automatic penny rejector**

- A stamped serial number for easy identification

▼ ACCESSORY EQUIPMENT

- **Comp-U-Mech™ Electronic Coin Mechanism**
- **ET-ELECTRONIC TOTALIZER™**
- Slide-In™ Insert
- Lock guard

- Paper Holder for door-1/2", 1", or 1-1/2" in depth

Please Note - The pedestal assembly does not come as part of the rack. Please check the parts list for the available stacker configurations and order your pedestals and trays accordingly.

- **Comp-U-Mech™ Electronic Auditing System**
- Key-operated quick change (daily and Sunday)
- K-Jack Van-Glaz™ plastic - heavy duty
- Coin box quick collect

▼ GRAPHICS

- Plastic and/or panels - Minimum charge
- Original silk screens - Reproduced from your camera ready art work
- Decals and/or stripping - Our sales staff will be happy to assist you in designing graphics for your racks

▼ SPECIFICATIONS AND COLOR

- Height - 16 inches
- Width - 24 inches
- Depth - 16 inches
- Shipping Weight - 75 pounds each (without pedestal)
- Truck Load - 223 units (with pedestal)

- Thirty-Eight standard colors.

- For special paint combinations or paint colors, see your sales representative or call our sales department.

website : www.kjack.com

K-JACK®

email : kjack@kjack.com

K-JACK® ENGINEERING CO., INC. ©

CORPORATE OFFICE: 1522 W. 134TH STREET GARDENA, CA. 90249-2299 • (800)775-5225 • (310)327-8389 • FAX(310)769-6997

K.JACK PRODUCTS ARE COVERED BY ONE OR MORE OF THE FOLLOWING PATENTS:

U.S. 231015; U.S. 273019; U.S. 273020; U.S. 273021; U.S. 273022; U.S. 273023; U.S. 273033; U.S. 4049106; U.S. 4062435; U.S. 4067477; U.S. 4183426; U.S. 4227604; U.S. 4465207; U.S. 4576271; U.S. 288061; U.S. 287143; U.S. 287030; U.S. 286895; U.S. 287513; U.S. 287806; U.S. 4718532; U.S. 293592; CANADA 1059958, 1244256; JAPAN 1160372 OTHER PATENTS PENDING.

IX-A-36

ATTACHMENT 8

Kaspar Sho-Rack

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HT-94

Specifications:

Height - 33"
Width - 19 1/2"
Depth - 16 1/4"
Paper Capacity - 18 1/2".
Shipping Weight: 55 lbs.

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[New Option - Security Guard](#) [Security Windows](#)
Sho-Guard



TK-80
(Also in K-Series)

With \$3.00 mech, safety base, quick change keyed Daily/Sunday lockout, hinged 12 gauge armored housing, galvanized material, elevator shelf, .080 vandal guard door plastic, 11" X 17" 4-lip cardholder, plastic paper holder, cement base tray (removable) or 5' security cable or 5' chain or wedge anchor bolts, chain holes in back, stainless steel hardware

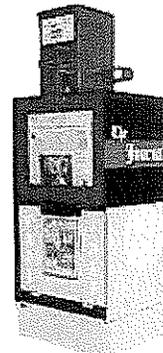
Click below for Rack Prices	Click below for Prices
K-80 Series TK-80 Series TK-80FP TK-80DB	Options Impressions Accessories

Free Publications Compliment Your Paid Publications in this Convenient Display Newsrack.

The new **TK-80FP** (Free Publication) has a convenient lower pull-down door for free publication in the cardholder area.
Top Paper Capacity: 14"
Bottom Paper Capacity: 13"

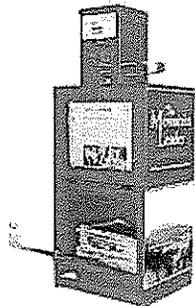


TK-80FP



**TK-80FP with
Optional 6" Base**

The new **TK-80FP** (Free Publication) shown with optional 6" Base. The standard base is 3".



TK-80DB

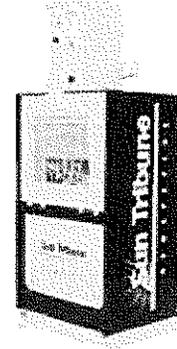
The **TK-80DB** has a lockable storage box in the cardholder area.
Top Paper Capacity: 14"
Bottom Paper Capacity: 12"

A true **50 Web** opening that frames papers nicely. The sheetmetal opening is 10 7/8 inches tall X 12 9/16 inches wide. It is available in K and TK-80 style, Sabre 80 and 80 style Honor Racks. The 50 Web Door is available as a \$3.15 option.



**50 Web
Paper Door**

A **48 Web** opening is now available in the K and TK-80 style, Sabre 80 and 80 style Honor Racks. The sheetmetal opening is 9 5/8 inches tall X 12 1/8 inches wide. The 48 Web Door is available as a \$3.15 option.



Rack Dimensions

Height: 48 5/8"

Shipping Weight: 106 lbs.

Width: 19 1/4"

Front to Back: 16 1/4"

Paper Capacity: 29" w/Elevator Shelf, 26" w/Regular Shelf.

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ATTACHMENT 10

Kaspar Sho-Rack

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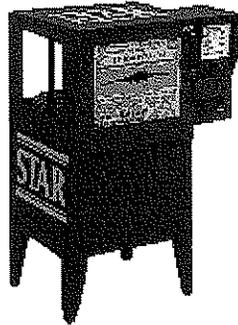
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Security Guard Sho-Guard



TK-West
(Also in K-Series)

With \$3.00 mech, quick change keyed Daily/Sunday lockout, armored housing, galvanized material, full wrapper cabinet, sheetmetal door, plastic paper holder, 11" x17" 4-lip cardholder, side and back windows, stainless steel hardware, 5' chain or 5' security cable, chain holes in back

156 units necessary for full freight allowance and truckload price

Click for Rack Prices	Click below for Prices
K-West Series TK-WestSeries	Options Impressions Accessories

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**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
ACTION ITEM**

DATE : July 31, 2008

TO : Mayor & City Council

FROM : City Manager

SUBJECT : **OPPOSITION OF STATE BUDGET DECISIONS THAT WOULD
BORROW LOCAL GOVERNMENT, REDEVELOPMENT AND
TRANSPORTATION FUNDS**

RECOMMENDATION:

Adopt the resolution opposing fiscally irresponsible state budget decisions that would “borrow” local government, redevelopment and transportation funds.

EXECUTIVE SUMMARY:

The proposed resolution conveys the City’s opposition to the state taking local government, redevelopment or vital transportation revenues to fund the state budget. The voters resoundingly agreed that local government should not continue to serve as the source of funding the meet the state’s financial obligations when they passed Proposition 1A in 2004. They also voted in 2006 to protect Proposition 42 revenues for critical transportation infrastructure improvements. The state needs to find a way to resolve its budget problems without “borrowing” or seizing funds meant for local government.

BUDGET INFORMATION:

There is no immediate budget impact associated with this action, although there would be impacts to the City’s budget should the state rely on local government to balance its budget.

Attachment:

- Resolution

RESOLUTION

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
OPPOSING FISCALLY IRRESPONSIBLE STATE BUDGET DECISIONS THAT
WOULD “BORROW” LOCAL GOVERNMENT, REDEVELOPMENT AND
TRANSPORTATION FUNDS**

WHEREAS, on July 1, 2008 the State Legislature missed its Constitutional budget deadline; and

WHEREAS, both the Governor and the Legislative Budget Conference Committee have recommended balanced budgets without resorting to “loans” or seizures of local government property tax, redevelopment tax increment and transportation sales tax funds; and

WHEREAS, in 1952 the voters of California approved n 1952 the voters approved Article XVI, Section 16 of the California Constitution, providing for tax increment financing for community revitalization—not balancing the state budget, and the voters never authorized the legislature to take or “borrow” community redevelopment funds for state programs; and

WHEREAS, in 2004 by an 84% margin of approval the voters of California approved Proposition 1A and sent a loud and unambiguous message to state leaders that they should stop the destructive and irresponsible practice of taking local government funds to finance the state budget and paper over the state deficit; and

WHEREAS, in 2006 by a 77% margin of approval the voters of California also approved Proposition 42, providing similar protections to transportation funding for state and local transportation projects, including important street maintenance and public transit programs; and

WHEREAS, both ballot measures allow the Governor to declare a “severe state of fiscal hardship” and “borrow” these funds if they are repaid in three years with interest, but the Governor believes it would be irresponsible to “borrow” such funds because it would deepen the state’s structural deficit and cripple local government and transportation services; and

WHEREAS, refusal by the Legislature to carryout its constitutional obligation to compromise on a balanced budget is not a “severe state of fiscal hardship” and would not justify reductions in critical local services, community revitalization programs and infrastructure maintenance at a time when cities are struggling to balance their own budgets during this economic down turn; and

WHEREAS, city investments in infrastructure, affordable housing and basic public safety and other community services will create needed jobs and speed our economic recovery; and

WHEREAS, the Legislature should balance the state budget with state revenues and respect the overwhelming support of voters for not using local property taxes, redevelopment tax increment and transportation sales tax funds to fund the day-to-day operating cost of state programs; and

WHEREAS, it would be the height of fiscal irresponsibility to paper over the state structural deficit with more borrowing, and Californians deserve state leaders who will tell them honestly what needs to be done to produce a balanced budget; and

WHEREAS, it is time for the state of California to cut up its local government credit cards and deal with the budget deficit in a straightforward way, and balance the state budget with state funds; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Benicia hereby opposes any and all efforts by state government to “borrow” or seize local tax funds, redevelopment tax increment and transportation sales tax funds by the state government to finance state operations. Such a move would be fiscally irresponsible for the state and hamper effective local services and infrastructure investments.

BE IT FURTHER RESOLVED, that the City Clerk is hereby directed to send this resolution and communicate this Council’s strong and unswerving opposition on this matter to our Legislators and the Governor along with an expression of our continued appreciation for the Governor’s and any supportive legislators’ steadfast opposition to further borrowing or seizure of these funds.

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
ACTION ITEMS**

DATE : August 12, 2008
TO : City Manager
FROM : Finance Director
SUBJECT : **CONSIDERATION OF MID-CYCLE BUDGET
ADJUSTMENTS FOR FISCAL YEARS 2007-2009**

RECOMMENDATION:

Adopt the resolution approving budget adjustments for FY 2007-2009.

EXECUTIVE SUMMARY:

During the April 15, 2008 review of the Municipal Budgets, staff requested additional time to assess the impacts of an expected State Budget, develop year-end financial projections for FY 2007-08 and update budget estimates for FY 2008-09. Unfortunately, the State has not approved a budget yet, which may lead to budget-balancing in the near future. In the meantime, staff is recommending that budget adjustments be considered for FY 2008-09 to recognize changes in expected revenues and expenditures to allow for the uninterrupted continuation of current service levels in all departments and the completion of prioritized capital projects. The "status quo" recommendations include discretionary and non-discretionary budget adjustments in all City funds based upon preliminary year-end closing numbers. The General Fund Undesignated Fund Balance is estimated to be \$7,057,725 or 22.3% at the end of FY 2007-08 and \$6,598,720 or 20.0% at the end of FY 2008-09.

BUDGET INFORMATION:

The combined budgetary impacts are listed below.

FY 2007-08				
Fund	Revenue Adjustments	Expenditure Adjustments	Balance Sheet Adjustments	Net Impact on Fund Balance
General Fund	\$117,830	(\$751,875)	\$617,755	(\$16,290)
Other Funds	\$124,305	(\$317,715)	\$0	(\$193,410)

FY 2008-09				
Fund	Revenue Adjustments	Expenditure Adjustments	Balance Sheet Adjustments	Net Impact on Fund Balance
General Fund	\$161,370	(\$853,790)	\$0	(\$692,420)
Other Funds	\$115,480	(\$772,190)	\$0	(\$656,710)

BACKGROUND:

Overview. The biennial Municipal Budgets for Fiscal Years 2007-09 were approved by the City Council on June 19, 2007. During the course of the two-year budget, staff is directed to return from time-to-time with recommendations for adjustments to the municipal budgets that reflect known changes in forecasted budget amounts, as well as, additional revenue and expenditure appropriations recommended by the City Manager. The mid-cycle budget recommendations in this report represent Finance staff's preliminary estimates of year-end closing numbers for FY 2007-08. The main goal of providing these early closing numbers is to give the Council an up-to-date budget that reflects current economic conditions and fund balances. It was also hoped the State would have passed a budget by now and the City would know the severity of the State takeaways.

The secondary goal of the budget report is to provide the Council with a snapshot of the General Fund financial position that will be the basis for increasing allocations for prioritized capital projects, such as the Community Center and Library Basement. In this regard, the budget estimates do not show that additional funds are available at the end of FY 2007-08 or FY 2008-09, unless the Council chooses to use "Reserved Funds" or arrange for alternate financing.

The General Fund operations budget came in very close to the budget estimates, yielding a \$126,445 operating surplus. The Capital Projects and Non-Recurring accounts fluctuated a lot from expectations but changed the bottom line very little, when carryovers of capital project costs, about \$716,000, were taken into account. This left the General Fund Undesignated Fund Balance at \$7,057,725 at the end of FY 2007-08 and \$6,598,720 at the end of FY 2008-09. This equates to an Undesignated Reserve Balance percentage of 22.3% and 20.0%, respectively.

Potential State Budget Impacts. While the budget is considered a "status quo" budget that continues to implement the previous directions and priorities of the Council, there are several unknowns that could impact the City's appropriations. The greatest of these is the State Budget debacle that may soon be finalized. There have been several changes to the State's budget proposal and it is virtually impossible to determine which of the City's revenues will be at risk. The list of takeaway targets that are included in the current City budgets and could force future City budget-balancing decisions in the near future is listed below.

Potential State Takeaways and Borrowing

1. Reducing Supplemental Police Grants: Benicia Share \$100,000.
2. Increase in Booking Fees paid to County: \$39,100.
3. Withholding Prop. 172 Public Safety Sales Tax Share: \$245,000.
4. Reducing Vehicle License Fees Subsidy: \$200,000.
5. Borrowing of Property Tax: \$1.1 million.
6. Borrowing of Proposition 42 Streets & Roads Funding: \$256,600.

Total at-risk revenues and expenditures: \$1,940,000

Local Revenues "At-Risk." There are also several local revenues that are facing increased pressure from the continued decline in residential housing prices and the impact it has resonated

throughout the regional economy. Secured Property Taxes, Real Property Transfer Taxes, Supplemental Property Taxes, Sales Taxes, and Motor Vehicle License Fees are just a few of the many that are not producing the growth that was expected when the budget was approved.

However, there are a couple significant events that have occurred locally that have stabilized Secured Property Taxes and Sales Taxes for the coming year. These events include the approval of the \$1.0 billion Valero Improvement Project, the sale of the Cal-West Holdings properties in the Industrial Park, and the relocation of several large sales tax generators in the Industrial Park. While the extent of the impacts are difficult to measure, staff has been gathering information that will help narrow the predictions of future revenue growth. This information should be available prior to the end of the calendar year.

Current Status of General Fund Revenues. General Fund revenues have held a steady course during the past year in the midst of a staggering economy. Many cities in California that rely on residential building growth and retail sales tax have suffered huge losses, as the foreclosure crisis has impacted planned subdivision expansions and forced construction industry layoffs. The recent closure of the new Cornelius Ford Dealership in Vallejo is another indicator of how the economy is influencing consumer spending.

Sales Tax. Fortunately, the City of Benicia continues to benefit from a diverse economic base and many of the local Benicia Industrial Park employers appear to be unaffected by the economic downturn. However, staff has reviewed sales tax information that indicates some employers linked to the residential market are experiencing a decline in sales. Fortunately, because of the diversity in the Benicia Industrial Park, the decline in one industry sector has been matched by gains in another. The FY 2007-08 sales tax receipts, exclusive of the Triple Flip Offset, were \$4,761,000 and are expected to decline to \$4,670,000 in FY 2008-09.

Property Tax. Another area hard-hit by the foreclosure crisis has been residential property values. According to the Board of Realtors website, *Table 1.* below, the number of units sold in 2007 was 18% less than 2006 and at a reduced sales price of 6%. While this information is not good, it is better than the 51% drop in sales volume and 11% drop in sales price in Vallejo.

Table 1. Residential Sales History

YEAR	Vallejo				Benicia			
	UNITS SOLD	% CHANGE	AVG SALES PRICE	% CHANGE	UNITS SOLD	% CHANGE	AVG SALES PRICE	% CHANGE
2007	644	-51%	\$410,933	-11%	274	-18%	\$540,200	-6%
2006	1322	-29%	\$462,894	3%	333	-22%	\$576,834	2%
2005	1864	12%	\$449,152	20%	427	-2%	\$563,971	14%
2004	1668	-7%	\$374,373	21%	434	-4%	\$495,686	25%
2003	1795	8%	\$310,506	18%	454	7%	\$397,861	9%
2002	1664	19%	\$262,580	18%	425	17%	\$365,400	11%
2001	1398	76%	\$221,689	14%	364	88%	\$329,213	15%

The above information is useful in projecting the expected decline in property tax collections in the coming years. As a general rule, a decline in sales volume will impact current year budget collections of supplemental property taxes. Supplemental taxes are those collected on the

difference between the current sales price and the amount registered on the assessment roll. The more a house has appreciated above its assessed value, the greater the supplemental property tax collection. The amount is also influenced by the number sold, as well. The current budget has been adjusted for the downturn in sales volume and price, trending from a high of \$1.15 million in FY 2005-06 to its current amount of \$421,990 on June 30, 2008 and the adjusted \$540,000 in FY 2008-09.

It takes about 18 to 24 months for a change in real estate values to make its way into the Solano County property tax collection and distribution system. The downturn in the housing market began in 2006 and we are now seeing the first moderate financial impacts in FY 2008-09. After further review of the estimated Assessed Valuation, staff is recommending a reduction of (\$327,300) to \$12.4 million this fiscal year.

PG&E Franchise Fee. There are several other important revenue sources in the General Fund and each is on course to finish within the expected budget projection, with the exception of a few that are showing modest gains. One such revenue is the PG&E Franchise Fee, which has improved by about \$125,000 over earlier projections for FY 2007-08, as seen in the shaded area in *Table 2* below. The increase recommended for FY 2008-09 is \$129,000, bringing the total to \$1,137,490.

**Table 2.
PG&E Franchise Tax History**

Fiscal Year	Electric Franchise		SB 703		Gas Franchise		SB 278		Total	
	Amount Received	Percent Change	Amount Received	Percent Change	Amount Received	Percent Change	Amount Received	Percent Change	Amount Received	Percent Change
2000-01									940,110	
2001-02	290,279		2,487		121,045		692,773		1,106,583	15.7%
2002-03	281,824	-2.9%	2,795	12.4%	95,930	-20.7%	329,346	-52.5%	709,894	-35.8%
2003-04	162,081	-42.5%	3,689	32.0%	154,968	61.5%	711,904	116.2%	1,032,642	45.5%
2004-05	154,588	-4.6%	9,018	144.4%	125,585	-19.0%	436,974	-38.6%	726,165	-29.7%
2005-06	183,786	18.9%	3,695	-59.0%	139,617	11.2%	656,239	50.2%	983,336	35.4%
2006-07	179,822	-2.2%	2,604	-29.5%	159,985	14.6%	608,186	-7.3%	950,598	-3.3%
2007-08	183,939	2.3%	3,160	21.3%	170,823	6.8%	746,478	22.7%	1,104,400	16.2%
2008-09	189,457	3.0%	3,255	3.0%	175,948	3.0%	768,872	3.0%	1,137,490	3.0%

The history of the franchise fee shows significant variation in SB 278 collections, which is the amount collected from wholesale gas transmissions. The amount can change swiftly when the monthly natural gas price rises above the contract-based wholesale market price structure and more wholesale gas is delivered to major purchasers under the SB 278 tax umbrella.

Utility Users Tax. Another General Fund primary revenue source is the Utility Users' Tax (UUT). In November 2007, Measure S was approved by the voters, which reduced the collection rate for Telephone and Cable from 4% to 3.5%. Unfortunately, the collection process and related changes did not become universally applied until April 1, 2008. For this reason, it will take

several months to determine the affect on UUT collections. Staff will continue to monitor the UUT changes and report the outcome to the City Council whenever there is a significant change. At the present time, staff is recommending a increase of \$50,000 above previous estimates, for a total of \$701,360 in FY 2008-09.

In recent discussions with Valero representatives, it is known the UUT collections from the Valero Agreement will increase by another \$247,960 above last year's collections. The amount expected in FY 2008-09 is \$2,329,930.

Capital Project Funding. There are several important projects on the City Council priority list that are in need of funding. The four pending immediate consideration are the Commandants Restoration Project, the Mills Community Center Conversion, the Library Basement Conversion, and the Police Station Remedial Improvements. Staff has been investigating several options for funding these projects and will soon have recommendations for the City Council's consideration.

There are several small projects that have appeared in the last few months but have been placed on hold pending the upcoming Strategic Planning process that will begin in the fall for FY 2009-11. These include the Dog Park Road, Downtown Electrical Undergrounding, and Agenda Management Software, just to name a few.

Valero Improvement Projects (VIP). The planned expansion of the Valero Refinery, could approach \$1 billion over the course of a 5-year period. One of the difficulties in projecting the economic benefits for sales tax and property tax from the VIP is the exclusion of "environmental mitigation" purchases from taxation. Staff will continue to communicate with Valero staff to determine the outcome of these important considerations, including an estimate of the resulting sales tax and property tax collections.

Local Housing Recovery and Regional Economic Recovery. Another important factor in analyzing the City's ability to sponsor the projects, is the prediction of when the residential housing market and the economic slump will recover. If the recovery is immediate, the City could experience immediate revenue gains that could sponsor additional debt service capacity that would be used to finance the projects. Without the housing and economic recoveries, it is recommended by the City Manager that all debt financing be carefully scrutinized until such time that financial improvements warrant additional debt service capacity is available. This additional debt service capacity could also be achieved by operational restructuring or ballot measures that would lead to an improved financial position.

State Budget Crisis. The news from the State of California is similar to what California cities received in 2003. While there are many "safeguards" in place to guard against State takeaways, Prop 1B for example, there is no "guarantee" the State will not look to cities to fund their growing deficit in some unforeseen way.

There is no way of knowing what will be recommended by the Governor or what will ultimately be approved by the Legislature. Given the past, it would be prudent to predict the upper limit of the State takeaways at \$1 million and the lower limit at \$500,000. While no action is required by the City Council at this point in time, staff will return with a more accurate projection and budget-balancing recommendations as soon as the State's Budget is passed.

Next Steps. The City Council will receive frequent reports during the next few months relating to the State Budget Crisis, the Valero Improvement Projects, the regional economic situation, and the City's top four capital projects mentioned above. It is hoped that a dramatic turnaround in any of these important issues will lead to a positive financial picture, including the ability to fund the capital projects on the top priority list.

In the meantime, staff will continue to research the items mentioned above and, in addition, examine other options for sustaining the financial health of the City while staying-the-course in our capital project efforts.

Attachments:

- Budget Resolution
- Attachments to the Resolution "A" to "H"
- General Fund Summary
- All Funds Summary

RESOLUTION

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING ADJUSTMENTS TO THE MUNICIPAL BUDGETS FOR FISCAL YEARS 2007-2008 AND 2008-2009

WHEREAS, the City Manager presented a proposed two-year budget for fiscal years 2007-2008 and 2008-2009 that was approved by the City Council on June 19, 2007 for all Municipal Funds; and

WHEREAS, the City Manager has presented recommendations for adjustments to the municipal budgets for fiscal years 2007-2008 and 2008-2009 at a regular meeting of the City Council on August 19, 2008, as evidenced by the Attachments "A" through "H" attached to this resolution and incorporated herein; and

WHEREAS, the City Council has determined the aforementioned adjustments are consistent with the Balanced Operating Budget Policy and the Fund Balance Reserve Policy, previously adopted to ensure the fiscal sustainability of the City of Benicia.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby adopts adjustments to the Municipal Budgets for the Fiscal Years 2007-08 and 2008-09 as evidenced by Attachments "A" through "H" attached hereto and incorporated herein.

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 19th day of August, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**ATTACHMENTS TO THE RESOLUTION
“A” TO “H”**

**ATTACHMENT -A-
Prior Encumbrances and CIP Carryovers - General Fund
Requested Budget Adjustments**

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS		0		0	0		0
Subtotal Operational Revenues		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Reserves	Transfer Designated CIP Reserves	386,880	209,765	596,645	0		0
Subtotal One-Time Revenues		\$ 386,880	\$ 209,765	\$ 596,645	\$ -	\$ -	\$ -
Combined Revenues		\$ 386,880	\$ 209,765	\$ 596,645	\$ -	\$ -	\$ -
EXPENDITURE ADJUSTMENTS							
Operational Expenditures							
010-6105-9144	Citywide Emergency Ops Manuals & Training	0		0	0	15,000	15,000
Subtotal Operational Expenditures		\$ -	\$ -	\$ -	\$ -	\$ 15,000	\$ 15,000
Non-Recurring Expenditures							
011-2405-9999	Transfer Out Storm Drain Street Sweeping	0		0	0	49,035	49,035
010-2405-9999	Transfer Out-Transit Fund CARB	0	209,765	0	0		
011-2605-8256	Tourism	0		0	0	20,000	20,000
011-2605-9187	Business Loans & Grants	0		0	0	40,000	40,000
011-2605-9188	City Gateway/Wayfinding Improvements	0		0	0	20,000	20,000
011-3105-9186	Payroll/Accounting Software Upgrade	0		0	0	60,000	60,000
011-3305-9186	Citywide Windows Software Upgrade	0		0	0	60,000	60,000
011-5205-9999	Transfer Out-Police Building Remodel	0		0	0	25,000	25,000
011-6105-8541	Bert Expenses - Setup	0		0	0	11,000	11,000
011-9205-9177	Bld Maint Camel Barn Repairs	16,450		16,450	0	16,450	16,450
011-9205-9521	Bld Maint Clocktower Improvements	70,000		70,000	0	70,000	70,000
011-9205-9620	Bld Maint Youth Activity Center Remodel	440		440	0	0	0
011-9205-9999	Transfer Out Commandants Residence	0		0	0	86,000	86,000
011-9305-9184	Comm Svcs Online Class Registration	15,000		15,000	0	12,340	12,340
011-9505-9612	Parks BCP Split Rail Fence	1,395		1,395	0	0	0
011-9050-9125	Mills Center-Vehicle Purchase	0		0	0	25,000	25,000
011-4105-9182	CDD Arsenal Master Plan EIR	112,010		112,010	0	32,535	32,535
011-4105-9183	CDD Historic Plan Update	12,175		12,175	0	11,460	11,460
011-4105-9199	CDD Form Based Zoning Codes	23,175		23,175	0	22,175	22,175
011-4105-9200	CDD Housing Element Update (Legal Req)	0		0	0	60,000	60,000
011-4105-9150	Retrofit Diesel Trucks-CARB Reqs.	0		0	0	19,000	19,000
011-8705-9617	First Street Sidewalk Improvements	0		0	0	15,000	15,000
011-8705-9729	Park Rd Bike Route Improvements	5,650		5,650	0	0	0
011-8705-9733	East 2nd St Overlay	1,400		1,400	0	0	0
011-8705-9735	East 5th St Overlay	1,530		1,530	0	0	0
011-8705-9736	East H St Overlay	2,565		2,565	0	0	0
011-8705-9739	Mills Elementary Area Improvements	2,515		2,515	0	0	0
011-8705-9746	Parking Improvements	32,575		32,575	0	32,575	32,575
011-8705-9757	Park Road Walkway	80,000		80,000	0	0	0
011-8705-9758	East 5th Smart Growth	10,000		10,000	0	19,960	19,960
Subtotal One-Time Expenditures		\$ 386,880	\$ 209,765	\$ 386,880	\$ -	\$ 707,530	\$ 707,530
Combined Expenditures		\$ 386,880	\$ 209,765	\$ 386,880	\$ -	\$ 722,530	\$ 722,530
Net Budget Adjustments			\$ -			\$ (722,530)	

ATTACHMENT -B-
Prior Approvals and Non-Discretionary Adjustments - General Fund
Requested Budget Adjustments

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS							
010-6105-7710	3 Calif Integrated Waste Mgmt Grant	0	7,000	7,000	0	0	0
010-5205-7710	2 Police Education & Training	0	8,120	8,120	0	0	0
010-2405-7138	5 Valero UUT	0	0	0	2,124,000	205,930	2,329,930
010-4205-7283	9 Valero Tank (Bureau Veritas)	0	44,000	44,000	0	0	0
010-2405-XXXX	11 Property Tax Adjustment	0	(166,990)	(166,990)	0	(321,510)	(321,510)
010-5205-7508	14 POST Reimbursement	0	0	0	30,000	12,000	42,000
Subtotal Operational Revenues		\$ -	\$ (107,870)	\$ (107,870)	\$ 2,154,000	\$ (103,580)	\$ 2,050,420
011-2405-7710	1 Settlement for attorney fees	0	75,000	75,000	0	0	0
011-Misc	10 Nationwide Settlement Adj	137,815	(59,065)	78,750	77,185	190,880	268,065
011-6105-7549	13 ABAG Safety Planning (BERT) Grant	0	0	0	0	4,000	4,000
Subtotal One-Time Revenues		\$ 137,815	\$ 15,935	\$ 153,750	\$ 77,185	\$ 194,880	\$ 272,065
Combined Revenues		\$ 137,815	\$ (91,935)	\$ 45,880	\$ 2,231,185	\$ 91,300	\$ 2,322,485
EXPENDITURE ADJUSTMENTS							
Operational Expenditures							
010-5205-8113	2 Police Education & Training	64,420	8,120	72,540	0	0	0
010-6105-9858	3 Calif Integrated Waste Mgmt Grant	0	7,000	7,000	0	0	0
010-2405-8100	4 National Citizen Survey	0	0	0	0	(15,600)	(15,600)
010-6105-8134	6 Emergency Generator Parts	0	0	0	0	1,000	1,000
010-3132-XXXX	7 Liability Insurance Premiums	0	0	0	0	(156,680)	(156,680)
010-6105-9858	8 Household Hazardous Waste	0	0	0	17,755	(17,755)	0
010-2405-9858	8 Household Hazardous Waste	0	0	0	0	17,755	17,755
010-4205-8106	9 Valero Tank (Bureau Veritas)	0	44,000	44,000	0	0	0
010-2105-XXXX	12 Additional Staffing City Managers	0	0	0	0	29,440	29,440
010-2405-XXXX	11 Property Tax Adjustment	0	0	0	0	35,925	35,925
010-2505-9116	15 Furniture	0	0	0	0	2,000	2,000
010-5205-XXXX	16 Solnet & CSLEF Sal & Benefit Adjustments	0	0	0	0	(158,505)	(158,505)
010-5205-8998	17 Adjust PD Vehicle Replacement Charge	0	0	0	0	25,000	25,000
Subtotal Operational Expenditures		\$ 64,420	\$ 59,120	\$ 123,540	\$ 17,755	\$ (237,420)	\$ (219,665)
Non-Recurring Expenditures							
011-2405-8260	1 Settlement for attorney fees	0	75,000	75,000	0	0	0
011-2405-8100	4 National Citizen Survey	0	0	0	0	15,600	15,600
011-Misc	10 Nationwide Settlement Adj	0	0	0	0	120,000	120,000
011-6105-8541	13 ABAG Safety Planning (BERT) Grant	0	0	0	0	4,000	4,000
Subtotal One-Time Expenditures		\$ -	\$ 75,000	\$ 75,000	\$ -	\$ 139,600	\$ 139,600
Combined Expenditures		\$ 64,420	\$ 134,120	\$ 198,540	\$ 17,755	\$ (97,820)	\$ (80,065)
Net Budget Adjustments			\$ (226,055)			\$ 189,120	

ATTACHMENT -C-
Prior Approvals and Non-Discretionary Adjustments - General Fund
Requested Budget Adjustments

Item Description

1	Leibert Cassidy Whitmore settlement agreement, \$65,000. Royal settlement agreement, \$10,000.
2	Team Building Workshop POST reimbursement, department request to increase budget, \$8,120.
3	California Integrated Waste Management Grant for removal of medical sharps from waste stream, \$7,000.
4	National Citizen Survey - reduce Non Dept Contract Services \$15,600 and reallocate to One Time Expenditures (011)
5	Adjustment to Valero Annual Utility Users Tax. Effective July 1, 2008 the new annual payment will be \$2,329,930.
6	Additional funds for parts for Emergency Generators not included in the maintenance contract, \$1,000.
7	Liability Insurance Premium adjustments.
8	Reallocate expenses for Household Hazardous Waste from the Fire division to Non Departmental.
9	Plan Check and Building Inspection services for Valero Tank, \$44,000.
10	Nationwide Settlement adjustment.
11	Property Tax adjustment to reflect expected decrease in assessed valuation.
12	Staffing addition of Sr Admin Clerk changed to Halftime Management Analyst II, \$26,640. Office Furniture, \$2,000. Office Equipment \$800.
13	ABAG Safety Planning (BERT) Grant \$4,000
14	Outstanding POST Reimbursement of 07/08 \$12,000 to be received in FY 08/09.
15	City Attorney request for additional funding. Furniture \$2,000
16	Police Salary & Benefit adjustments resulting in changes to Solnet and CSLEF Grants.
17	Increase Police Vehicle Replacement charge \$30,000 (change vehicle life from 10 years to 6 years).

**ATTACHMENT -D-
Discretionary Budget Adjustments - General Fund
Requested Budget Adjustments**

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS							
010-5205-7810	1 Police Donations	0	0	0	0	10,000	10,000
010-5205-7281	1 Dog License	0	0	0	0	36,000	36,000
010-2405-7416	7 Retirement Stabilization Subsidy	0		0	261,595	200,000	461,595
Subtotal Operational Revenues		\$ -	\$ -	\$ -	\$ 261,595	\$ 246,000	\$ 507,595
011-3105-7999	4 Trnsfr In Water & WWater for Sftwr Upgrade	0	0	0	0	30,000	30,000
Subtotal One-Time Revenues		\$ -	\$ -	\$ -	\$ -	\$ 30,000	\$ 30,000
Combined Revenues		\$ -	\$ -	\$ -	\$ 261,595	\$ 276,000	\$ 537,595
EXPENDITURE ADJUSTMENTS							
Operational Expenditures							
010-5205-8476	1 Booking Fees	0	0	0	20,000	35,000	55,000
010-5205-8478	1 Police Data Network	0	0	0	5,000	12,000	17,000
010-5205-8100	1 DOJ Crime Lab Fees	0	0	0	0	20,000	20,000
010-5205-8100	1 Law Enforcement Air Support	0	0	0	0	3,190	3,190
010-2705-XXXX	3 Additional HR Part Time Staff	0	0	0	2,845	11,700	14,545
010-2705-9116	3 Furniture	0	0	0	0	4,000	4,000
010-2705-9117	3 Neo-Gov System	0	0	0	0	12,000	12,000
010-8705-XXXX	5 Expanded Graffiti Abatement Program	0	0	0	0	36,190	36,190
Subtotal Operational Expenditures		\$ -	\$ -	\$ -	\$ 27,845	\$ 134,080	\$ 161,925
Non-Recurring Expenditures							
011-3305-9186	2 Video Streaming and Increased Bandwidth	0	0	0	0	40,000	40,000
011-3105-9186	4 Payroll/Accounting Software Upgrade	0	0	0	0	30,000	30,000
011-2405-9999	6 Transfer to Commandants-Reuse Study	0		0	0	25,000	25,000
Subtotal One-Time Expenditures		\$ -	\$ -	\$ -	\$ -	\$ 95,000	\$ 95,000
Combined Expenditures		\$ -	\$ -	\$ -	\$ 27,845	\$ 229,080	\$ 256,925
Net Budget Adjustments			\$ -			\$ 46,920	

**ATTACHMENT -E-
Discretionary Adjustments - General Fund
Requested Budget Adjustments**

Item Description

1	Police Department budget adjustment requests - Record Dog License revenue under the Police division \$36K. Anticipated donation revenues \$10K. County to reinstate Booking Fees \$35K. CLETS system upgrade requires increase in maintenance costs \$12K. CA DOJ new fee for Regional Crime Laboratories \$20K. Law Enforcement Air Support \$3,190.
2	Video Streaming and increased Bandwidth, \$40,000 to broadcast council chamber meetings.
3	Human Resources request for additional funding. Additional Part-time staffing (20 hours/week, not to exceed 1,000 hours, non-PERS), \$11,700. Furniture, \$4,000. Neo-Gov system for on-line application and hiring processes, including service agreement, training, and initial maintenance \$12,000.
4	Additional funding for the Payroll/Accounting Software Upgrade, \$30,000. Total (with carryover) \$90,000. Additional funds may be needed.
5	Additional funding for the Graffiti Abatement Program. Temp/Part-time staffing \$26,190. Signs, paint supplies, \$10,000.
6	Transfer for Commandants Reuse Study \$25,000.
7	Increase transfer from Retirement Stabilization Reserve \$200,000.

**ATTACHMENT -F-
Prior Encumbrances and CIP Carryovers - Other Funds
Requested Budget Adjustments**

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS							
014 Reserves	1 Wastewater Ops CIP Carryovers	511,300		511,300	0		0
017 Reserves	1 Gas Tax CIP Carryovers	13,035		13,035	0		0
018 Reserves	1 Tourtelot Mitigation Carryovers	87,005		87,005	0		0
019 Reserves	1 Transit Carryovers	220,475		220,475	0		0
032 Reserves	1 Community Services Carryovers	18,885		18,885	0		0
034 Reserves	1 Traffic Mitigation Carryovers	134,560		134,560	0		0
035 Reserves	1 Grant Funded CIP Carryovers	195,280		195,280	0		0
036 Reserves	1 Grant Funded CIP Carryovers	0		0	0		0
038 Reserves	1 SP Depot	12,775		12,775	0		0
042 Reserves	1 Police Seismic Carryovers	52,180		52,180	0		0
044 Reserves	1 Wastewater CIP Carryovers	238,350		238,350	0		0
045 Reserves	1 Water Project CIP Carryovers	349,850		349,850	0		0
046 Reserves	1 Capital License CIP Carryovers	473,670		473,670	0		0
047 Reserves	1 Park Dedication CIP Carryovers	401,260		401,260	0		0
049 Reserves	1 Community Center Carryovers	(227,750)		(227,750)	0		0
L&L Reserves	1 L&L CIP Carryovers	35,510		35,510	0		0
076 Reserves	1 Water Dist Sys Improvement Prj	332,380		332,380	0		0
080 Reserves	1 Storm Drain CIP Carryovers	41,990		41,990	0	49,035	49,035
081 Reserves	1 Recycling Grant Carryovers	(705)		(705)	0		0
084 Reserves	1 CATV CIP Carryovers	50,370		50,370	0		0
085 Reserves	1 CAN Donation Carryovers	13,175		13,175	0		0
087 Reserves	1 Library Donations Carryovers	4,000		4,000	0		0
088 Reserves	1 Interlibrary Loan Carryovers	55,000		55,000	0		0
089 Reserves	1 Literacy State Funded Carryovers	255		255	0		0
090 Reserves	1 Water Operations CIP Carryovers	557,015		557,015	0		0
113-Misc.	1 Building Maintenance Carryovers	73,045		73,045	0		0
114-Misc.	1 Vehicle Replacement Carryovers	65,220		65,220	0		0
115-Misc.	1 Equipment Replacement Carryovers	49,100		49,100	0		0
		0		0	0		0
Revenue Adjustments		\$ 3,757,230	\$ -	\$ 3,757,230	\$ -	\$ 49,035	\$ 49,035
EXPENDITURE ADJUSTMENTS							
014-Misc.	1 Wastewater Ops CIP Carryovers	511,300		511,300	0		0
017-8705-Misc.	1 Gas Tax CIP Carryovers	13,035		13,035	0		0
018-8118-Misc.	1 Traffic Calming Program	87,005		87,005	0		0
019-3119-9302	1 Transit Equipment	220,475		220,475	0		0
032-9532-9250	1 Cemetery Improvements	18,885		18,885	0		0
034-8705-Misc.	1 Traffic Mitigation CIP Carryovers	134,560		134,560	0		0
035-Misc.	1 Grant Funded CIP Carryovers	195,280		195,280	0		0
036-Misc.	1 Grant Funded CIP Carryovers	0		0	0		0
038-8838-9940	1 SP Depot	12,775		12,775	0		0
042-5244-9130	1 PD & Fire Comm Upgrade Carryovers	52,180		52,180	0		0
044-8044-9896	1 Wastewater CIP Carryovers	238,350		238,350	0		0
045-8045-Misc.	1 Water Project CIP Carryovers	349,850		349,850	0		0
046-2446-Misc.	1 Capital License CIP Carryovers	473,670		473,670	0		0
047-9047-Misc.	1 Park Dedication CIP Carryovers	401,260		401,260	0		0
049-Misc.	1 Community Center Carryovers	(227,750)		(227,750)	0		0
L&L Misc.	1 L&L CIP Carryovers	35,510		35,510	0		0
076-8076-Misc.	1 Water Dist Sys Improvement Prj	332,380		332,380	0		0
080-8080-Misc.	1 Storm Drain CIP Carryovers	41,990		41,990	0	49,035	49,035
081-Misc.	1 Recycling Grant Carryovers	(705)		(705)	0		0
084-2484-Misc.	1 CATV CIP Carryovers	50,370		50,370	0		0
085-6105-Misc.	1 CAN Donation Carryovers	13,175		13,175	0		0
087-3489-9115	1 Friends of the Library Carryovers	4,000		4,000	0		0
088-3488-9115	1 ILL Furnishing & Fixtures Carryovers	55,000		55,000	0		0
089-7089-9117	1 Literacy State Funded Carryovers	255		255	0		0
090-Misc.	1 Water Operations CIP Carryovers	557,015		557,015	0		0
113-Misc.	1 Building Maintenance Carryovers	73,045		73,045	0		0
114-Misc.	1 Vehicle Replacement Carryovers	65,220		65,220	0		0
115-Misc.	1 Equipment Replacement Carryovers	49,100		49,100	0		0
Expenditure Adjustments		\$ 3,757,230	\$ -	\$ 3,757,230	\$ -	\$ 49,035	\$ 49,035
Net Budget Adjustments		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

1 CIP Carryovers are held in a special Designated Reserves account and used to fund the projects in the following year.

ATTACHMENT -G-
Prior Approvals and Non-Discretionary Adjustments - Other Funds
Requested Budget Adjustments

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS							
114-6105-7710	1 ABAG Claim Reimb for Fire Truck	0	90,000	90,000	0	0	0
087-3486-7549	3 State Library Grant ELF Add'l Funding	9,745	9,745	19,490	0	0	0
087-3489-7810	4 Friends of the Library Add'l Funding	25,000	25,000	50,000	25,000	1,000	26,000
039-7439-7549	11 Solnet	90,000	0	90,000	30,000	60,000	90,000
084-2484-7552	13 CATV PEG Grant	0	0	0	0	40,000	40,000
115-9305-7999	19 Pool Tarp Rollers	0	21,155	21,155	0	0	0
Revenue Adjustments		\$ 124,745	\$ 145,900	\$ 270,645	\$ 55,000	\$ 101,000	\$ 156,000
EXPENDITURE ADJUSTMENTS							
515-8356-9959	2 Vacon repairs & rental	0	45,200	45,200	0	0	0
087-3486-8679	3 State Library Grant ELF Add'l Funding	9,745	9,745	19,490	0	0	0
087-3489-9115	4 Friends of the Library Add'l Funding	4,500	25,000	29,500	0	1,000	1,000
047-9020-9255	5 Commandant's Residence Improvemtns	2,916,405	289,750	3,206,155	0	0	0
014-8305-8772	6 Chemical Contracts Increase	0	0	0	0	44,000	44,000
090-8205-8771	6 Chemical Contracts Increase	0	0	0	0	127,850	127,850
080-8080-8100	7 Street Sweeping Services	0	0	0	100,000	3,755	103,755
047-9047-9618	8 9th Street Playground Equipment	0	0	0	0	61,215	61,215
044-8044-8106	9 Wastewater System Master Plan Update	0	0	0	0	75,000	75,000
014-8305-8106	9 Wastewater System Master Plan Update	0	0	0	0	75,000	75,000
047-9047-9610	10 Roller Hockey Resurfacing Project	0	0	0	0	32,380	32,380
039-7439-8000	11 Solnet	90,000	0	90,000	30,000	60,000	90,000
046-2446-9129	12 Police Firing Range	190,000	(170,000)	20,000	0	0	0
084-2484-9173	13 PEG Grant Expense	40,000	0	40,000	0	19,965	19,965
034-8705-9722	14 Reimbursement Rose Center Project	0	118,020	118,020	0	0	0
116-3102-8080	15 Retirement Stabilization Subsidy	0	0	0	306,720	200,000	506,720
113-9205-9260	16 Library Roof	0	0	0	33,040	13,100	46,140
115-9305-9118	19 Pool Tarp Rollers	6,700	21,155	27,855	0	0	0
Expenditure Adjustments		\$ 3,257,350	\$ 338,870	\$ 3,596,220	\$ 469,760	\$ 713,265	\$ 1,183,025
Net Budget Adjustments		\$ (192,970)			\$ (612,265)		

**ATTACHMENT -H-
Discretionary Adjustments - Other Funds
Requested Budget Adjustments**

Acct. #	Description	Amended Budget 2007-08	Proposed Adjustments 08/19/08	Amended Budget 2007-08	Amended Budget 2008-09	Proposed Adjustments 08/19/08	Amended Budget 2008-09
REVENUE ADJUSTMENTS							
036-7036-7538	12 SLESF Grant	0		0	100,000	(50,000)	50,000
110-2401-7992	18 Workers Comp	0	(440)	(440)	0	(5,710)	(5,710)
Subtotal Operational Revenues		\$ -	\$ (440)	\$ (440)	\$ 100,000	\$ (55,710)	\$ 44,290
		0		0	0		0
		0		0	0		0
Subtotal One-Time Revenues		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Combined Revenues		\$ -	\$ (440)	\$ (440)	\$ 100,000	\$ (55,710)	\$ 44,290
EXPENDITURE ADJUSTMENTS							
Operational Expenditures							
036-7036-XXXX	12 SLESF Grant	0		0	102,530	(51,265)	51,265
046-2446-9129	12 Cap Lic Police Range Improvements	20,000		20,000	0	10,000	10,000
Subtotal Operational Expenditures		\$ 20,000	\$ -	\$ 20,000	\$ 102,530	\$ (41,265)	\$ 61,265
Non-Recurring Expenditures							
014-8305-9999	17 Transfer Out Pysl/Acctg Software Upgrade	0		0	0	15,000	15,000
090-8205-9999	17 Transfer Out Pysl/Acctg Software Upgrade	0		0	0	15,000	15,000
	19	0		0	0		0
Subtotal One-Time Expenditures		\$ -	\$ -	\$ -	\$ -	\$ 30,000	\$ 30,000
Combined Expenditures		\$ 20,000	\$ -	\$ 20,000	\$ 102,530	\$ (11,265)	\$ 91,265
Net Budget Adjustments			\$ (440)			\$ (44,445)	

**ATTACHMENT -I-
FY 2007-09 All Other Funds Budget Update
Requested Budget Adjustments**

Item Description

1	ABAG Claim Reimbursement for loss of Fire Brush Truck, \$90,000.
2	Unexpected breakdown of the Vacon vehicle cost of \$45,200 for repair and rental.
3	Received additional funding from the State for ELF Grant, \$9,745
4	Received additional donation from Friends of the Library for furnishings & fixtures, \$25,000 FY 07/08. Received additional funding from Friends' of the Library for reimbursement of expenses incurred by the Poet Laureate, \$1,000 FY 08/09.
5	Additional funding needed to fill the gap for Pacific Coast Reconstruction & Building contract, \$289,750.
6	Award of Chemical Contracts for Water and Wastewater Treatment FY 08/09. Cost increase of \$44,000 Wastewater and \$127,850 for Water.
7	Allied Waste street sweeping increase 2.89% - \$3,755
8	Reso 08-82 New playground equipment for 9th Street Park, \$49,215+12,000.
9	Reso 08-84 Engineering services for the Wastewater System Master Plan Update, \$150,000.
10	Roller Hockey Resurfacing Project - completed Bridgeview Park Project had a remaining balance that will cover the additional funding for Roller Hockey Resurfacing \$32,380.
11	Solnet agreement increased to \$90,000 FY 08/09
12	Police Department budget adjustment requests - State cut SLESF funding <\$50K>. Add'l funding for Range Improvements \$10K
13	CATV PEG Grant increase expense for video and film equipment \$19,965. Additional Capital Grant \$40,000.
14	RESO 08-46 Reimbursement of Traffic Fees for Rose Center Project, \$118,020.
15	Adjust Retirement Stabilization Subsidy, \$200,000.
16	Library Roof Repairs - Additional funding for design and construction, \$13,100.
17	Funding for Payroll/Accounting Software Upgrade, \$30,000 from Water & Wastewater.
18	Adj to Workers Comp revenue is result of adjustments to salaries in IT, CMO, Streets, & Police.
19	Funding for Pool Tarp Rollers - Transfer \$21,155 from Park Dedication by reducing West 9th St Park, to Equipment Replacement 115-9305. Council approved April 1, 2008.

GENERAL FUND SUMMARY

**General Fund Summary
FY 2007-2008**

YEAR END

	Amended FY 2007/08 04/15/08	Encumbrance/ Carryovers Adjustments	Prior Approve/ Non-Discretion Adjustments	Discretionary Adjustments	Total Budget Adjustments	Amended FY 2007/08 08/19/08	Actual YTD 06/30/08	%
Revenues								
Use of Designated Reserves	0				0	0	0	
City Clerk	0				0	0	200	
City Treasurer	54,670				0	54,670	47,785	87%
City Manager	0				0	0	570	
City Attorney	0				0	0	0	
Community Grants & Promotions	0				0	0		
Economic Development	0				0	0	1,000	
Human Resources	0				0	0	515	
Finance	0				0	0		
Library	69,475				0	69,475	67,365	93%
Community Development	583,450		44,000		44,000	627,450	484,865	83%
Police	505,400		8,120		8,120	513,520	453,825	90%
Fire	124,750		7,000		7,000	131,750	335,435	269%
Public Works	52,000				0	52,000	45,255	87%
Parks & Community Services	936,000				0	936,000	1,029,705	107%
Insurances	0				0	0	6,640	
Non-Departmental	29,835,025		(166,990)		(166,990)	29,668,035	29,282,175	99%
Interfund Transfer-In	78,165				0	78,165	78,165	100%
Revenue Total	32,238,935	0	(107,870)	0	(107,870)	32,131,065	31,833,500	99%
Expenditures								
City Council	96,005				0	96,005	97,000	101%
City Clerk	79,395				0	79,395	78,010	98%
City Treasurer	60,080				0	60,080	56,850	95%
City Manager	444,890				0	444,890	454,430	102%
City Attorney	568,685				0	568,685	568,685	100%
Human Resources	407,155				0	407,155	414,110	102%
Finance	1,109,480				0	1,109,480	1,064,280	96%
Community Grants & Promotions	485,755				0	485,755	486,255	100%
Economic Development	473,290				0	473,290	454,740	96%
Library	1,234,565				0	1,234,565	1,208,635	98%
Community Development	1,460,815		44,000		44,000	1,504,815	1,429,670	98%
Police	8,017,340		8,120		8,120	8,025,460	8,008,670	100%
Fire	7,016,175		7,000		7,000	7,023,175	6,877,040	98%
Public Works	2,012,340				0	2,012,340	1,950,280	97%
Parks & Community Services	5,281,505				0	5,281,505	5,211,545	99%
Insurances	647,930				0	647,930	639,735	99%
Non-Departmental	1,704,405				0	1,704,405	2,150,345	126%
Interfund Transfer-Out	604,350				0	604,350	556,775	92%
Expenditure Total	31,704,160	0	59,120	0	59,120	31,763,280	31,707,055	100%
Operational Surplus/(Deficit)	534,775	0	(166,990)	0	(166,990)	367,785	126,445	
Capital Projects & Non-Recurring								
Non-Recurring Revenues	634,695	209,765	15,935		225,700	860,395	1,303,985	205%
Non-Recurring Expenditures	1,688,510	209,765	482,990		692,755	2,381,265	1,660,110	98%
Non-Recurring Surplus/(Deficit)	(1,053,815)	0	(467,055)	0	(467,055)	(1,520,870)	(356,125)	
Combined Surplus/(Deficit)	(519,040)	0	(634,045)	0	(634,045)	(1,153,085)	(229,680)	
Transfers to Balance Sheet	(25,400)		(617,755)		(617,755)	(643,155)	(321,270)	
Fund Balance	6,472,495				(16,290)	6,456,205	7,057,725	
	20.4%					20.3%	22.3%	

**General Fund Summary
FY 2008-2009**

YEAR END

	Amended FY 2008/09 04/15/08	Encumbrance/ Carryovers Adjustments	Prior Approve/ Non-Discretionary Adjustments	Discretionary Adjustments	Total Budget Adjustments	Amended FY 2008/09 08/19/08
Revenues						
Use of Designated Reserves	0				0	0
City Clerk	0				0	0
City Treasurer	55,285				0	55,285
City Manager	0				0	0
City Attorney	0				0	0
Community Grants & Promotions	0				0	0
Economic Development	0				0	0
Human Resources	0				0	0
Finance	0				0	0
Library	72,770				0	72,770
Community Development	583,450				0	583,450
Police	523,000		12,000	46,000	58,000	581,000
Fire	124,750				0	124,750
Public Works	52,000				0	52,000
Parks & Community Services	996,000				0	996,000
Insurances	0				0	0
Non-Departmental	30,710,395		(321,510)	200,000	(121,510)	30,588,885
Interfund Transfer-In	80,415				0	80,415
Revenue Total	33,198,065	0	(309,510)	246,000	(63,510)	33,134,555
Expenditures						
City Council	101,575				0	101,575
City Clerk	81,230				0	81,230
City Treasurer	61,380				0	61,380
City Manager	462,085		29,440		29,440	491,525
City Attorney	578,085		2,000		2,000	580,085
Human Resources	416,470			27,700	27,700	444,170
Finance	1,178,815				0	1,178,815
Community Grants & Promotions	534,025				0	534,025
Economic Development	494,305				0	494,305
Library	1,296,140				0	1,296,140
Community Development	1,504,965				0	1,504,965
Police	8,266,605		(133,505)	70,190	(63,315)	8,203,290
Fire	7,243,235	15,000	(16,755)		(1,755)	7,241,480
Public Works	2,093,810			36,190	36,190	2,130,000
Parks & Community Services	5,703,935				0	5,703,935
Insurances	673,305		(156,680)		(156,680)	516,625
Non-Departmental	1,707,685		38,080		38,080	1,745,765
Interfund Transfer-Out	674,990				0	674,990
Expenditure Total	33,072,640	15,000	(237,420)	134,080	(88,340)	32,984,300
Operational Surplus/(Deficit)	125,425	(15,000)	(72,090)	111,920	24,830	150,255
Capital Projects & Non-Recurring						
Non-Recurring Revenues	187,185		194,880	30,000	224,880	412,065
Non-Recurring Expenditures	145,630	707,530	139,600	95,000	942,130	1,087,760
Non-Recurring Surplus/(Deficit)	41,555	(707,530)	55,280	(65,000)	(717,250)	(675,695)
Combined Surplus/(Deficit)	166,980	(722,530)	(16,810)	46,920	(692,420)	(525,440)
Transfers to Balance Sheet	(66,440)				0	(66,440)
Fund Balance	6,689,625				(692,420)	6,598,720
	20.2%					20.0%

ALL FUNDS SUMMARY

All Funds Summary

	FT Emp	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues										
General Fund		29,419,145	32,387,125	31,421,030	1,570,430	32,991,460	33,137,485	32,957,505	589,116	33,546,620
Special Revenue Funds		3,188,545	3,101,545	3,493,965	122,135	3,626,100	3,218,920	3,410,350	100,200	3,510,550
Debt Service Funds		3,075,835	1,129,940	3,024,600	26,720	3,051,320	1,227,415	1,266,685	0	1,266,685
Capital Project Funds		3,009,460	4,274,580	5,480,470	2,597,050	8,077,520	2,863,505	4,241,560	2,677,580	6,919,140
Internal Service Funds		5,237,615	3,618,555	4,737,535	159,275	4,896,810	3,786,535	4,109,140	(179,780)	3,929,360
Enterprise Funds		54,168,060	39,661,950	19,989,315	209,765	20,199,080	18,403,185	18,287,355	555,213	18,842,568
Agency Funds		2,147,255	2,168,535	1,915,850	0	1,915,850	1,968,260	1,921,080	0	1,921,080
Revenue Total		\$ 100,245,915	86,342,230	70,062,765	4,685,375	74,758,140	64,605,305	66,193,675	3,742,329	69,936,003
Expenditures										
General Fund	169	28,404,515	30,086,505	33,059,485	1,085,060	34,144,545	33,367,165	32,918,490	1,153,575	34,072,065
Special Revenue Funds	13	2,863,515	3,448,905	3,968,880	485,095	4,453,975	2,814,690	3,640,430	172,390	3,812,820
Debt Service Funds		857,755	3,109,095	2,961,975	26,720	2,988,695	1,238,160	1,180,750	0	1,180,750
Capital Project Funds	1	3,232,570	9,303,790	10,898,635	1,605,735	12,490,995	3,476,565	4,639,430	3,047,715	7,687,145
Internal Service Funds	7	2,458,420	3,341,245	4,907,600	240,055	5,147,655	4,206,760	3,826,190	124,375	3,950,565
Enterprise Funds	44	48,546,790	44,008,645	23,692,265	2,284,615	25,976,880	20,462,335	19,728,730	(31,560)	19,697,170
Agency Funds		2,291,095	2,077,400	1,915,500	0	1,915,500	1,913,810	1,920,730	0	1,920,730
Expenditure Total	234	88,654,660	95,375,585	81,404,340	5,727,280	87,118,245	67,479,485	67,854,750	4,466,495	72,321,245
Combined Surplus/(Deficit)		11,591,255	(9,033,355)	(11,341,575)		(12,360,105)		(1,661,075)		(2,385,243)
Fund Balance										
General Fund		6,928,885	6,966,135	6,533,065	0	6,456,205	7,057,725	6,638,520	0	6,598,720
Special Revenue Funds		3,051,705	2,701,320	1,884,120	0	1,804,090	3,099,005	1,597,485	0	2,758,175
Debt Service Funds		3,388,705	1,409,550	1,206,110	0	1,472,175	1,398,805	1,292,045	0	1,484,740
Capital Project Funds		9,714,215	4,969,405	554,815	0	555,930	4,356,345	156,945	0	3,588,340
Internal Service Funds		1,962,895	2,240,205	2,103,680	0	2,062,640	1,301,125	2,386,630	0	2,129,045
Enterprise Funds		30,776,180	26,431,435	23,200,780	0	20,006,430	25,013,255	22,825,655	0	18,240,703
Agency Funds		2,287,785	2,378,920	2,197,800	0	2,251,620	2,305,720	2,198,150	0	2,306,070
Total Fund Balance		\$ 58,110,370	47,096,970	37,680,370	0	34,609,090	44,531,980	37,095,430	0	37,105,793

General Fund Summary - By Department

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08	Mid Year Adjustment	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09	Mid Year Adjustment	Amended 2008-09
Revenues									
City Council	0	0	0	0	0	200	0	0	0
City Clerk	0	50	0	0	0	0	0	0	0
City Treasurer	21,390	52,570	54,670	0	54,670	47,785	55,285	0	55,285
City Manager	2,560	190	0	0	0	570	0	0	0
City Attorney	1,605	130	0	0	0	0	0	0	0
Economic Development	40	0	0	0	0	1,000	0	0	0
Human Resources	260	505	0	0	0	515	0	0	0
Finance	210	30	0	0	0	0	0	0	0
Library	73,085	74,195	72,770	(3,295)	69,475	67,365	72,770	0	72,770
Community Development	710,070	510,100	583,450	44,000	627,450	484,865	583,450	0	583,450
Police	493,095	483,210	505,400	8,120	513,520	453,825	523,000	58,000	581,000
Fire	147,545	286,275	124,750	7,000	131,750	335,435	124,750	0	124,750
Public Works	78,455	198,000	52,000	0	52,000	45,255	52,000	0	52,000
Parks & Community Services	978,605	961,310	961,000	(25,000)	936,000	1,029,705	996,000	0	996,000
Insurances	10	0	0	0	0	6,640	0	0	0
Non-Departmental	25,971,055	27,511,940	28,878,825	789,210	29,668,035	29,282,175	30,359,835	229,051	30,588,885
Interfund Transfer-In	115,910	168,230	78,165	0	78,165	78,165	80,415	0	80,415
Revenue Total	\$ 28,593,895	30,246,735	31,311,030	820,035	32,131,065	31,833,500	32,847,505	287,051	33,134,555
Expenditures									
City Council	94,930	82,420	96,005	0	96,005	97,000	101,575	0	101,575
City Clerk	81,300	69,175	74,695	4,700	79,395	78,010	76,410	4,820	81,230
City Treasurer	34,145	52,570	54,670	5,410	60,080	56,850	55,285	6,095	61,380
City Manager	399,275	418,230	425,675	19,215	444,890	454,430	441,940	49,590	491,530
City Attorney	481,645	571,485	574,380	(5,695)	568,685	568,685	584,070	(3,985)	580,085
Human Resources	368,250	450,820	419,255	(12,100)	407,155	414,110	414,525	29,645	444,170
Finance	936,990	999,675	1,067,715	41,765	1,109,480	1,064,280	1,127,060	51,755	1,178,815
Community Grants & Programs	346,100	388,225	483,255	2,500	485,755	486,255	526,525	7,500	534,025
Economic Development	265,150	383,335	462,835	10,455	473,290	454,740	483,220	11,085	494,305
Library	1,013,665	1,144,595	1,192,505	42,060	1,234,565	1,208,635	1,241,465	-54,675	1,296,140
Community Development	1,166,155	1,227,030	1,427,830	76,985	1,504,815	1,429,670	1,476,170	28,795	1,504,965
Police	6,611,815	7,293,635	8,011,210	14,250	8,025,460	8,008,670	8,214,255	(10,965)	8,203,290
Fire	5,772,525	6,203,785	6,830,340	192,835	7,023,175	6,877,040	7,048,230	193,250	7,241,480
Public Works	1,661,840	1,774,765	1,979,990	32,350	2,012,340	1,950,280	2,059,420	70,580	2,130,000
Parks & Community Services	3,977,935	4,366,800	5,188,185	93,320	5,281,505	5,211,545	5,495,790	208,145	5,703,935
Insurances	799,805	725,110	647,930	0	647,930	639,735	673,305	(156,680)	516,625
Non-Departmental & Debt Service	1,649,490	1,547,545	2,170,430	(466,025)	1,704,405	2,150,345	2,078,625	(332,860)	1,745,765
Interfund Transfer-Out	241,335	632,785	641,300	(36,950)	604,350	556,775	674,990	0	674,990
Expenditure Total	\$ 25,902,350	28,331,985	31,748,205	15,075	31,763,280	31,707,055	32,772,860	211,445	32,984,305
Operational Surplus/(Deficit)	2,691,545	1,914,750	(437,175)	367,785	126,445	74,645	150,250	-1.4%	0.5%
Capital Projects & Non-Recurring									
Non-Recurring Revenues	825,250	2,140,390	110,000	750,395	860,395	1,303,985	110,000	302,065	412,065
Non-Recurring Expenditures	2,502,165	1,754,520	1,311,280	1,069,985	2,381,265	1,660,110	145,630	942,130	1,087,760
Combined Surplus/(Deficit)	1,014,630	2,300,620	(1,638,455)	(1,153,085)	(229,680)	39,015	(640,065)	(525,446)	
Transfers to B.S. Loans Receivable	(201,960)	(190,115)	(25,400)	407,990	(643,155)	(321,270)	(66,440)	0	(66,440)
Transfers to Internal Service Funds	0		0				0		
Transfers to Designated Reserves	921,865		0				0		
Transfers to Project Reserves	0	2,550,535							
Misc Adj to Fund Balance	(97,050)			(490,480)				(490,480)	
End Balance	\$ 6,928,885	6,966,135	6,533,065	6,456,205	7,057,725	6,638,520	6,598,720		
Reserve Percentage	26.8%	24.6%	20.6%	20.3%	22.3%	20.3%	20.0%		
Over/(Short) of 20% Requirement	1,748,415	1,299,738	183,424	103,549	716,314	83,948	1,859		

Special Revenue Funds Summary

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues									
BUSD Fields	130,925	246,770	0	0	0	0	0	0	0
Community Development Block Grants	80,575	56,155	20,000	0	20,000	9,965	26,000	0	26,000
Community Services Programs	51,775	30,760	34,430	0	34,430	57,550	33,810	0	33,810
Fire Special Revenue Funds	22,620	8,925	15,560	0	15,560	34,605	22,800	0	22,800
Gas Tax Funds	833,830	518,935	1,190,470	0	1,190,470	963,250	1,047,235	0	1,047,235
Human Services Fund	117,145	117,495	251,770	0	251,770	247,925	256,770	0	256,770
Landscaping & Lighting Districts	451,890	458,475	448,225	5,400	453,625	454,890	448,225	0	448,225
Library Special Revenue Funds	1,034,220	1,146,930	1,054,450	52,990	1,107,440	1,048,220	1,071,360	1,000	1,072,360
Southern Pacific Depot	24,645	27,385	26,910	(7,200)	19,710	19,360	27,480	(10,800)	16,680
Police Special Revenue Funds	352,185	400,500	426,480	70,945	497,425	348,695	458,170	40,000	498,170
Tourtelot Mitigation	18,325	30,455	24,670	0	24,670	25,275	18,250	0	18,250
FEMA OES	6,595	20,850	0	0	0	0	0	0	0
Climate Plan Grant	0	0	0	0	10,000	0	0	30,000	30,000
Cable Television Activities	63,815	37,910	1,000	0	1,000	9,185	250	40,000	40,250
Revenue Total	\$ 3,188,545	3,101,545	3,493,965	122,135	3,626,100	3,218,920	3,410,350	100,200	3,510,550
Expenditures									
BUSD Fields	130,925	246,770	0	0	0	0	0	0	0
Community Development Block Grants	0	0	167,500	0	167,500	121,675	167,500	0	167,500
Community Services Programs	23,925	200	50,000	23,715	73,715	43,200	50,000	0	50,000
Fire Department Grants	43,460	13,975	22,905	(705)	22,200	26,500	30,000	0	30,000
Gas Tax Funds	749,920	836,130	1,037,525	13,035	1,050,560	388,860	858,220	0	858,220
Human Services Fund	150,315	139,185	254,795	0	254,795	250,800	254,795	0	254,795
Landscaping & Lighting Districts	431,895	450,100	531,360	54,155	585,515	472,295	546,425	17,615	564,040
Library Grants	968,030	1,299,285	1,162,860	185,670	1,348,530	1,093,295	1,156,440	68,075	1,224,515
Southern Pacific Depot	280	12,225	12,500	12,775	25,275	15,065	12,500	0	12,500
Police Department Grants	310,825	366,595	489,435	80,875	570,310	347,155	495,550	38,735	534,285
Tourtelot Mitigation	27,790	42,515	185,000	87,005	272,005	32,235	43,000	0	43,000
FEMA OES	10,915	13,530	0	0	0	0	0	0	0
Climate Plan Grant	0	0	0	8,200	8,200	2,215	0	28,000	28,000
Cable Television Activities	15,235	28,395	55,000	20,370	75,370	21,395	26,000	19,965	45,965
Expenditure Total	\$ 2,863,515	3,448,905	3,968,880	485,095	4,453,975	2,814,690	3,640,430	172,390	3,812,820
Combined Surplus/(Deficit)	325,030	(347,360)	(474,915)	(362,960)	(827,875)	404,230	(230,080)	(72,190)	(302,270)
Fund Balance									
BUSD Fields	0	0	0	0	0	0	0	0	0
Community Development Block Grants	317,150	373,305	189,650	0	156,450	261,595	48,150	0	120,095
Community Services Programs	102,595	133,155	93,795	0	93,870	147,505	77,605	0	131,315
Fire Department Grants	16,635	11,585	15,000	0	4,945	13,145	0	0	(1,855)
Gas Tax Funds	342,050	24,855	94,000	0	164,765	599,245	283,015	0	788,260
Human Services Fund	139,120	117,430	98,385	0	114,405	114,555	100,360	0	116,530
Landscaping & Lighting Districts	402,730	411,105	327,970	0	279,215	393,700	181,015	0	277,885
Library Grants	664,475	512,095	344,405	0	271,005	467,020	259,325	0	314,865
Southern Pacific Depot	112,440	127,595	134,620	0	122,030	131,890	149,600	0	136,070
Police Department Grants	155,900	189,800	104,070	0	116,915	191,340	66,690	0	186,625
Tourtelot Mitigation	707,835	695,775	456,315	0	448,440	688,815	431,565	0	664,065
FEMA OES	(4,320)	0	0	0	0	0	0	0	0
Climate Plan Grant	0	0	0	0	1,800	(2,215)	0	0	(215)
Cable Television Activities	95,095	104,620	25,910	0	30,250	92,410	160	0	24,535
Total Fund Balance	\$ 3,051,705	2,701,320	1,884,120	0	1,804,090	3,099,005	1,597,485	0	2,758,175

Debt Service Funds

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues									
Vilarrasa Senior Housing	2,345	4,405	114,120	0	114,120	114,810	114,315	0	114,315
Police Remodel and Storm Water	2,196,445	337,430	276,680	0	276,680	287,225	276,680	0	276,680
Fire Engines	0	0	281,635	26,720	308,355	0	0	0	0
Facility Upgrade	0	0	1,500,000	0	1,500,000	0	0	0	0
1997 Wastewater Bond	877,045	788,105	852,165	0	852,165	825,380	875,690	0	875,690
Revenue Total	\$ 3,075,835	1,129,940	3,024,600	26,720	3,051,320	1,227,415	1,266,685	0	1,266,685
Expenditures									
Vilarrasa Senior Housing	70,220	63,000	114,315	0	114,315	114,315	114,315	0	114,315
Police Remodel and Storm Water	0	2,255,995	276,680	0	276,680	276,680	276,680	0	276,680
Fire Engines	0	0	281,635	26,720	308,355	0	0	0	0
Facility Upgrade	0	0	1,500,000	0	1,500,000	0	0	0	0
1978 Wastewater Bond	0	0	0	0	0	0	0	0	0
1997 Wastewater Bond	787,535	790,100	789,345	0	789,345	847,165	789,755	0	789,755
Expenditure Total	\$ 857,755	3,109,095	2,961,975	26,720	2,988,695	1,238,160	1,180,750	0	1,180,750
Combined Surplus/(Deficit)	2,218,080	(1,979,155)	62,625	0	62,625	(10,745)	85,935	0	85,935
Fund Balance									
Vilarrasa Senior Housing	58,595	0	0	0	(195)	495	0	0	495
Police Remodel and Storm Water	2,196,445	277,880	0	0	277,880	288,425	0	0	288,425
Fire Engines	0	0	0	0	0	0	0	0	0
Facility Upgrade	0	0	0	0	0	0	0	0	0
1978 Wastewater Bond	0	0	0	0	0	0	0	0	0
1997 Wastewater Bond	1,133,665	1,131,670	1,206,110	0	1,194,490	1,109,885	1,292,045	0	1,195,820
Total Fund Balance	\$ 3,388,705	1,409,550	1,206,110	0	1,472,175	1,398,805	1,292,045	0	1,484,740

Capital Project Funds Summary

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues									
Capital License	219,850	285,530	61,690	0	61,690	47,705	20,560	0	20,560
Community Center	9,205	15,650	1,712,500	91,480	1,803,980	116,815	0	0	0
Intermodal Center	24,325	43,485	45,000	0	45,000	37,300	47,000	0	47,000
McAllister Assessment Dist.	120,420	417,025	65,000	0	65,000	1,160	0	0	0
Park Dedication	947,685	735,190	1,015,000	2,456,535	3,471,535	892,075	95,000	2,628,545	2,723,545
Police Building	343,150	923,160	200,000	0	200,000	79,765	0	0	0
Traffic Mitigation	407,925	376,825	459,780	0	459,780	212,135	291,500	0	291,500
Storm Water Improvements	846,140	1,050,515	642,500	49,035	691,535	558,265	317,500	49,035	366,535
Donation Funded Projects	4,510	7,410	0	0	0	705	0	0	0
Special Fund Street Projects	72,750	119,790	1,167,000	0	1,167,000	890,385	3,470,000	0	3,470,000
Casa de Vilarrasa	13,500	0	0	0	0	0	0	0	0
Library Basement Project	0	300,000	112,000	0	112,000	27,195	0	0	0
Revenue Total	\$ 3,009,460	4,274,580	5,480,470	2,597,050	8,077,520	2,863,505	4,241,560	2,677,580	6,919,140
Expenditures									
Capital License	293,570	197,395	340,000	395,150	735,150	351,860	10,000	10,000	20,000
Community Center	26,415	227,750	2,100,880	(87,965)	2,012,915	431,755	0	0	0
Intermodal Center	0	0	50,850	0	50,850	54,635	47,000	0	47,000
McAllister Assessment Dist.	1,075,320	3,311,380	1,044,680	0	1,044,680	0	0	0	0
Park Dedication	634,495	767,545	3,676,365	691,010	4,367,375	1,191,760	0	2,985,350	2,985,350
Police Building	580,190	1,273,175	200,000	52,180	252,180	173,805	0	0	0
Traffic Mitigation	37,370	702,445	1,080,685	255,880	1,336,565	274,740	794,930	(425)	794,505
Storm Water Improvements	178,375	1,853,245	642,500	91,025	733,525	467,705	317,500	52,790	370,290
Donation Funded Projects	32,215	158,070	18,675	13,175	18,475	(770)	0	0	0
Special Fund Street Projects	91,280	529,445	1,332,000	195,280	1,527,280	494,345	3,470,000	0	3,470,000
Casa de Vilarrasa	283,340	283,340	0	0	0	0	0	0	0
Library Basement Project	0	0	412,000	0	412,000	36,730	0	0	0
Expenditure Total	\$ 3,232,570	9,303,790	10,898,635	1,605,735	12,490,995	3,476,565	4,639,430	3,047,715	7,687,145
Combined Surplus/(Deficit)	(223,110)	(5,029,210)	(5,418,165)	991,315	(4,413,475)	(613,060)	(397,870)	(370,135)	(768,005)
Fund Balance									
Capital License	500,225	588,630	13,985	0	(84,830)	284,475	24,545	0	285,035
Community Center	355,880	143,780	(244,600)	0	(65,155)	(171,160)	(244,600)	0	(171,160)
Intermodal Center	973,850	1,017,335	1,000,000	0	1,011,485	1,000,000	1,000,000	0	1,000,000
McAllister Assessment Dist.	2,914,955	20,600	0	0	(959,080)	21,760	0	0	21,760
Park Dedication	902,595	870,240	(1,791,125)	0	(25,600)	570,555	(1,696,125)	0	308,750
Police Building	380,630	30,615	0	0	(21,565)	(63,425)	0	0	(63,425)
Traffic Mitigation	2,901,300	2,575,680	1,466,565	0	1,698,895	2,513,075	963,135	0	2,010,070
Storm Water Improvements	712,170	(90,560)	0	0	(132,550)	0	0	0	(3,755)
Donation Funded Projects	170,960	21,090	0	0	2,615	22,565	0	0	22,565
Special Fund Street Projects	(98,350)	(508,005)	109,990	0	(868,285)	(111,965)	109,990	0	(111,965)
Casa de Vilarrasa	0	0	0	0	0	0	0	0	0
Library Basement Project	0	300,000	0	0	0	290,465	0	0	290,465
Total Fund Balance	\$ 9,714,215	4,969,405	554,815	0	555,930	4,356,345	156,945	0	3,588,340

Internal Service Funds Summary

	Actual 2004-05	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues										
Admin Services - Enterprises	0	467,330	501,265	721,045	(34,190)	686,855	525,870	735,305	(81,115)	654,190
Fleet & Equipment Services	0	390,600	401,170	468,710	(4,795)	463,915	387,170	459,485	(5,290)	454,195
Workers' Compensation	0	489,220	544,435	650,590	10,905	661,495	563,980	513,730	6,625	520,355
Equipment Replacement	0	676,445	119,460	250,910	21,155	272,065	258,615	250,180	0	250,180
Vehicle Replacement	0	1,518,660	474,210	1,018,745	160,030	1,178,775	534,115	472,620	0	472,620
Facility Maintenance	0	594,385	243,715	324,655	6,170	330,825	252,455	335,760	(100,000)	235,760
Retirement Stabilization	232,485	1,100,975	1,334,300	1,302,880	0	1,302,880	1,264,330	1,342,060	0	1,342,060
Revenue Total	\$ 232,485	5,237,615	3,618,555	4,737,535	159,275	4,896,810	3,786,535	4,109,140	(179,780)	3,929,360
Expenses										
Admin Services - Enterprises	0	467,330	501,265	721,045	(34,190)	686,855	613,260	735,305	(81,115)	654,190
Fleet & Equipment Services	0	390,600	401,170	468,710	(4,795)	463,915	390,895	459,485	(5,290)	454,195
Workers' Compensation	0	427,435	542,390	585,390	(2,245)	583,145	513,700	594,125	(2,320)	591,805
Equipment Replacement	0	97,245	76,710	77,315	70,255	147,570	43,545	95,095	0	95,095
Vehicle Replacement	0	175,765	352,995	1,052,000	131,815	1,183,815	1,173,300	207,330	0	207,330
Facility Maintenance	0	68,390	277,575	718,300	79,215	797,515	182,645	308,040	13,100	321,140
Retirement Stabilization	0	831,655	1,189,140	1,284,840	0	1,284,840	1,289,415	1,426,810	200,000	1,626,810
Expense Total	\$ 0	2,458,420	3,341,245	4,907,600	240,055	5,147,655	4,206,760	3,826,190	124,375	3,950,565
Combined Surplus/(Deficit)	232,485	2,779,195	277,310	(170,065)	(80,780)	(250,845)	(420,225)	282,950	(304,155)	(21,205)
Working Capital										
Admin Services - Enterprises	0	0	0	0	0	0	0	0	0	0
Fleet & Equipment Services	0	0	0	0	0	0	(3,725)	0	0	0
Workers' Compensation	0	61,785	63,830	325,080	0	142,180	0	244,685	0	70,730
Equipment Replacement	0	258,790	301,540	474,965	0	599,460	516,610	630,050	0	785,135
Vehicle Replacement	0	614,520	735,735	672,360	0	730,695	96,550	937,650	0	995,985
Facility Maintenance	0	525,995	492,135	84,455	0	25,445	69,810	112,175	0	(59,935)
Retirement Stabilization	232,485	501,805	646,965	546,820	0	564,860	621,880	462,070	0	337,130
Total Working Capital	\$ 232,485	1,962,895	2,240,205	2,103,680	0	2,062,640	1,301,125	2,386,630	0	2,129,045

Enterprise Funds

	Actual 2004-05	Actual 2005-06	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues									
Benicia Marina Fund	543,030	355,155	445,100	0	445,100	306,160	498,435	0	498,435
Benicia Transit Fund	1,099,315	1,334,250	1,287,570	209,765	1,497,335	1,629,300	1,342,255	555,213	1,897,468
Wastewater Utility	17,630,310	20,642,365	7,840,000	0	7,840,000	7,270,090	7,790,000	0	7,790,000
Water Utility	7,981,210	31,836,290	10,416,645	0	10,416,645	9,197,635	8,656,665	0	8,656,665
Revenue Total	\$ 27,253,865	54,168,060	19,989,315	209,765	20,199,080	18,403,185	18,287,355	555,213	18,842,568
Expenses									
Benicia Marina Fund	495,695	501,000	524,045	0	524,045	534,445	529,300	0	529,300
Benicia Transit Fund	1,099,015	1,537,590	1,364,820	195,180	1,560,000	1,928,925	1,507,965	(270,450)	1,237,515
Wastewater Utility	11,161,175	17,791,405	8,417,190	767,720	9,184,910	7,141,005	8,492,380	154,405	8,646,785
Water Utility	8,748,745	28,716,795	13,386,210	1,321,715	14,707,925	10,857,960	9,199,085	84,485	9,283,570
Expense Total	\$ 21,504,630	48,546,790	23,692,265	2,284,615	25,976,880	20,462,335	19,728,730	(31,560)	19,697,170
Combined Surplus/(Deficit)	5,749,235	5,621,270	(3,702,950)	(2,074,850)	(5,777,800)		(1,441,375)	586,773	
Working Capital									
Benicia Marina Fund	452,205	314,165	80,865	0	24,810	(124,530)	50,000	0	(6,055)
Benicia Transit Fund	182,560	(20,775)	(20,775)	0	(393,165)	(576,065)	(70,775)	0	(296,842)
Wastewater Utility	7,206,200	8,781,345	8,273,260	0	8,645,815	9,317,450	7,570,880	0	7,441,535
Water Utility	12,792,665	21,701,445	14,867,430	0	11,728,970	16,396,400	15,275,550	0	11,102,065
Total Working Capital	\$ 20,633,630	30,776,180	23,200,780	0	20,006,430	25,013,255	22,825,655	0	18,240,703

Agency Funds

	Actual 2005-06	Actual 2006-07	Adopted Budget 2007-08 (2)	Mid Year Adjustment 2007-08	Amended 2007-08	Actual as of 6/30/08	Adopted Budget 2008-09 (3)	Mid Year Adjustment 2008-09	Amended 2008-09
Revenues									
Affordable Housing	425	755	350	0	350	660	350	0	350
Drake/Gateway Infrastructure AD	171,360	145,480	145,795	0	145,795	121,030	152,440	0	152,440
East 2nd St. Infrastructure	499,610	501,040	478,895	0	478,895	485,700	479,635	0	479,635
Fleetside Infrastructure	441,335	452,200	427,885	0	427,885	444,890	424,190	0	424,190
McAllister Infrastructure	901,410	930,950	862,925	0	862,925	915,980	864,465	0	864,465
Benicia Historical Museum	133,115	138,110	0	0	0	0	0	0	0
Revenue Total	\$ 2,147,255	2,168,535	1,915,850	0	1,915,850	1,968,260	1,921,080	0	1,921,080
Expenditures									
Affordable Housing	0	0	0	0	0	0	0	0	0
Drake/Gateway Infrastructure	176,890	144,595	145,795	0	145,795	141,845	152,440	0	152,440
East 2nd St. Infrastructure	519,830	482,120	478,895	0	478,895	478,280	479,635	0	479,635
Fleetside Infrastructure	426,550	425,365	427,885	0	427,885	430,360	424,190	0	424,190
McAllister Infrastructure	967,125	865,195	862,925	0	862,925	863,325	864,465	0	864,465
Benicia Historical Museum	200,700	160,125	0	0	0	0	0	0	0
Expenditure Total	\$ 2,291,095	2,077,400	1,915,500	0	1,915,500	1,913,810	1,920,730	0	1,920,730
Combined Surplus/(Deficit)	(143,840)	91,135	350	0	350	54,450	350	0	350
Fund Balance									
Affordable Housing	17,070	17,825	17,770		18,175	18,485	18,120		18,835
Drake/Gateway Infrastructure	235,825	236,710	233,410	0	236,710	215,895	233,410	0	215,895
East 2nd St. Infrastructure	642,325	661,245	651,320	0	661,245	668,665	651,320	0	668,665
Fleetside Infrastructure	559,715	586,550	577,980	0	586,550	601,080	577,980	0	601,080
McAllister Infrastructure	683,185	748,940	717,320	0	748,940	801,595	717,320	0	801,595
Benicia Historical Museum	149,665	127,650	0	0	0	0	0	0	0
Total Fund Balance	\$ 2,287,785	2,378,920	2,197,800	0	2,251,620	2,305,720	2,198,150	0	2,306,070

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
ACTION ITEM

DATE : July 28, 2008

TO : City Council

FROM : City Attorney 

SUBJECT : **INTRODUCTION OF AN ORDINANCE AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) AND SECTION 4.20.010 (OPEN GOVERNMENT COMMISSION) OF THE BENICIA MUNICIPAL CODE TO STANDARDIZE THE GENERAL RULES FOR BOARDS AND COMMISSIONS**

RECOMMENDATION:

Introduce the ordinance to standardize the rules applicable to boards and commissions. The ordinance also reorganizes Title 2 into two divisions to group similar chapters together. Amendment of Section 4.20.010 is needed to remove the term and term limit provisions for the Open Government Commission.

EXECUTIVE SUMMARY:

On July 1, 2008, the City Council discussed term limits and lengths for City boards and commissions. The Council directed staff to make changes to the applicable ordinances so that all the boards or commissions established by ordinance have similar rules. The ordinance provides for standardized terms of office; appointment, reappointment and vacancy procedures; attendance requirements; quorum; rules of procedure requirements; use of support staff; compensation; statement of economic interest; and removal. Optional language is provided for the Council's consideration on removal.

BUDGET INFORMATION:

There will be no effect on the budget.

BACKGROUND:

This year the City Council has been considering the board and commissions process. At the July 1, 2008 meeting, the City Council requested the boards and commissions process be standardized. This ordinance does that.

1. Terms.

A. Length. The length of terms varies among the boards and commissions. Typically,

when a board or commission is first established, the terms are staggered to promote continuity. Because the existing boards and commissions have cycled through the staggered terms, this language has been removed all of the Chapters except for the Industrial Development Authority since there are no members currently. The nearly standard length of a term is four years. Civil Service, Library Board, and the Industrial Development Authority have three-year terms. The term has not been changed for the Library Board of Trustees since state law dictates the three-year term. The Industrial Development Authority language has been modified to comply with state law which requires a three-year term unless the City Council appoints itself as the board. No changes were made to the term of office for the student member of the Parks Recreation and Cemetery Commission since it is expected that the student representative will graduate high school on time. The language standardizing the terms at four years and providing for the exception noted above is contained in a new general "Term of office" section, Section 2.60.030.

B. Term Limits. Currently, the Open Government Commission, the Planning Commission, Economic Development Board and Building Board of Appeals have term limits.¹ The term limits for these bodies is two consecutive full terms. The Council directed that term limits be eliminated. The term limit language was contained previously in the "Term of Office" section for these boards and commissions. As noted above, there is now a general "Term of office" section. It does not include term limits except for the student member of the Parks, Recreation and Cemetery Commission.

2. Appointment, reappointment and vacancy procedures. The procedures are pretty standardized but contained in different parts of the ordinances for each board and commission. It is now included in a new general section. Section 2.60.040 Appointments, reappointments and vacancies. This section refers to the Council's rules of procedures for appointments.

3. Attendance requirements. Existing language declares the office vacant if a member misses a number of meetings. The variation was in the number of meetings a member could miss. The language is now standardized at three successive regular meetings. Excused absences do not count. See Section 2.60.050 Attendance.

4. Quorum. Not all of the existing boards and commissions have quorum language. A new general section has been added as Section 2.60.060.

5. Rules of procedure requirements. Not all of the boards and commissions have a requirement for rules of procedure. This requirement has been added as a standard requirement as Section 2.60.070. The City has Rules of Procedures that can be customized to each board or commission.

6. Use of support staff. A new general section has been added to discuss the use of support staff by boards and commissions. It is in keeping with the Council's Code of Conduct. See Section 2.60.080.

¹ The student member of the Parks, Recreation and Cemetery Commission has a term limit since they may only serve for up to two years.

7. Compensation. None of the boards and commissions provide for compensation except for the Mobile Home Rent Review Board. This board has not met in my tenure with the City. A general paragraph has been added to state that compensation or City benefits are not provided to members except for reimbursement. See Section 2.60.090. Language for compensation for the Mobile Home Rent Review Board has not been removed from their Chapter.

8. Statement of economic interest. To provide potential members some notice that they may have to fill out the statement of economic interest forms, a new general Section 2.60.100 has been added.

9. Removal. A new general paragraph has been added as Section 2.60.110. This section provides several options for the Council to choose when they introduce the ordinance. The first option is the removal without cause by the supermajority vote of the Council. The second is removal with specific cause but no majority. The third is the removal upon recommendation of a subcommittee similar to the appointment subcommittees.

The ordinance also reorganizes Title 2 into two divisions so that all of the information on boards and commissions is located in one division. This way the new general paragraph on “Advisory Bodies” is easier to find. No changes have been made to the chapters now put under “Organization” except to renumber a couple of them as noted on the ordinance.

Attachment:

- Proposed Ordinance

PROPOSED ORDINANCE

CITY OF BENICIA

ORDINANCE NO. 08-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING TITLE 2 (ADMINISTRATION AND PERSONNEL) AND SECTION 4.20.010 (OPEN GOVERNMENT COMMISSION) OF CHAPTER 4.20 (OPEN GOVERNMENT COMMISSION) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO STANDARDIZE THE GENERAL RULES FOR BOARDS AND COMMISSIONS

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

Section 1.

Title 2 (Administration and Personnel) of the Benicia Municipal Code is amended by dividing the Title into Division 1 (Organization) and Division 2 (Boards and Commissions), renumbering chapters 2.36, 2.40 and 2.44; adding a new chapter 2.60 (Advisory Bodies); amending chapters 2.64, 2.68, 2.72, 2.76, 2.80, 2.84, 2.88, 2.92, 2.96 and 2.100 to standardize the general rules for boards and commissions to read as follows:

Title 2

ADMINISTRATION AND PERSONNEL

Chapters:

Division 1. Organization

2.04	City Council
2.08	City Manager
2.12	City Clerk
2.16	Director of Finance
2.20	Officers' Bonds and Compensation
2.24	Fire Department
2.28	Police Officer Standards and Training
2.32	Planning Department
2.36	Emergency Organization (renumbered)
2.40	Personnel System (renumbered)
2.44	Retirement System (renumbered)
2.44	Reserved
2.48	Reserved
2.52	Reserved

Division 2. Boards and Commissions

2.60	Advisory Bodies
2.64	Board of Library Trustees
2.68	Civil Service Commission
2.72	Mobile Home Rent Review Commission
2.76	Parks, Recreation and Cemetery Commission
2.80	Planning Commission
2.84	Historic Preservation Review Commission
2.88	Industrial Development Authority
2.92	Design Review Commission
2.96	Building Board of Appeals
2.100	Economic Development Board

Chapter 2.60

ADVISORY BODIES

Sections:

2.60.010	Purpose.
2.60.020	Eligibility.
2.60.030	Term of office.
2.60.040	Appointments, reappointments and vacancies.
2.60.050	Attendance.
2.60.060	Quorum.
2.60.070	Rules of procedure.
2.60.080	Support staff.
2.60.090	Compensation.
2.60.100	Statement of economic interest.
2.60.110	Removal.
2.60.120.	Application.

2.60.010 Purpose. Boards, committees and commissions (hereinafter referred to as "advisory bodies") play an important role in city government by obtaining community input, developing recommendations and providing information to the city council.

2.60.020 Eligibility. All advisory body members must be residents of the city unless otherwise noted. The city council or state or federal law may establish additional requirements.

2.60.030 Term of office.
A. The term of office for members of an advisory body is four years, unless otherwise noted. Each member serves until his or her successor is appointed and qualifies.

B. The following term limits are exceptions to the limits specified above:

1. Library Board of Trustees. The term of office for members of the library board of trustees is three years.¹

2. Parks, Recreation and Cemetery Commission. The term of office for the student member is one year with the option of a second term at the recommendation of the commission and reappointment in accordance with Section 2.60.040.

3. Industrial Development Authority. The term of office for members shall be three years unless the city council adopts a resolution declaring itself to be the Industrial Development Commission.

C. Unless otherwise noted, there are no term limits for serving on an advisory body.

2.60.040 Appointments, reappointments, and vacancies.

Appointments shall be made in accordance with the city council's rules and procedures for appointments. Reappointments of eligible advisory body members shall be made in accordance with the city council's rules and procedures for appointments. Whenever a vacancy occurs within an advisory body, the vacancy shall be filled in accordance with the city council's rules and procedures for appointments.

2.60.050 Attendance.

A. All members must be active participants in order for an advisory body to function effectively and accomplish its goals. This means all members must be present unless excused from attending a meeting by the chair. If a member is absent without cause from three successive regular meetings, the office becomes automatically vacant. The chair shall immediately notify the city council of the vacancy.

B. A member is not absent without cause if his or her absence is:

1. Due to illness; or
2. Unavoidable and the member gives the secretary of the advisory body written notice before the day of the meeting that he or she will be absent and giving the reason for the absence.

2.60.060 Quorum. A majority of the entire membership of the advisory body constitutes a quorum for the transaction of business. For example, if the body has 5 members, three members are a quorum.

2.60.070 Rules of procedure. Each advisory body must maintain rules of procedure that are in accordance with the Brown Act, the Open Government Ordinance and the Council's Code of Conduct.

¹ The term of the Library Board of Trustees is three years per section 18911 of the California Education Code which governs municipal libraries.

2.60.080 Support staff. Staff support and assistance is provided, but advisory bodies do not have supervisory authority over city employees. Staff members remain responsible to their immediate supervisors and ultimately to the city manager and council.

2.60.090 Compensation. Except as otherwise provided, advisory bodies do not receive compensation or city benefits for their service. Reimbursement for expenses in accordance with adopted City policy is allowed with prior approval.

2.60.100 Statement of economic interest. Certain advisory body members may be required to file statements of economic interest (also known as conflict of interest forms) upon taking office. Determination of the need to file such forms is made in accordance with the council's conflict of interest code.

2.60.110 Removal. Optional language.

1. A member of an advisory body may be removed by four affirmative votes of the council. (Current language: *Requires supermajority of council but no reason.*)

2. A member of an advisory body may be removed for cause by a majority vote of the council.

3. A member of an advisory body may be removed by a majority vote of the council upon recommendation of the council's appointment subcommittee.

2.60.120 Application.

This Chapter applies to the following advisory bodies:

1. Board of Library Trustees
2. Civil Service Commission
3. Mobile Home Rent Review Commission
4. Parks, Recreation and Cemetery Commission
5. Planning Commission
6. Historic Preservation Review Commission
7. Industrial Development Authority
8. Design Review Board
9. Building Board of Appeals
10. Economic Development Board

Chapter 2.64

BOARD OF LIBRARY TRUSTEES²

Sections:

- 2.64.010 Established.
- 2.64.020 Members – Qualifications.
- 2.64.030 Meeting time and place.
- 2.64.040 Officers – Appointment.
- 2.64.050 Officers – Duties.
- 2.64.060 Powers and duties.
- 2.64.070 Annual report.

2.64.010 Established. A board of library trustees of the city is established.

2.64.020 Members – Qualifications. Each member of the board of library trustees shall be a qualified elector of the city. A person who holds any salaried public office or employment with the city is not eligible for the board. A member of the board of library trustees is not eligible for appointment to any salaried office or employment with the city during such time as he is a member of the board.

2.64.030 Meeting time and place. The board shall meet on the second Monday of each month at 6:30 p.m. at the Benicia Library.

2.64.040 Officers – Appointment.
The board shall elect a president and president pro tem from among its members. The president and president pro tem serve for a term of one year and until the successor of each is appointed and qualified. The board shall appoint a secretary who need not be a member of the board.

- 2.64.050 Officers – Duties.
- A. President. The president shall preside at all meetings of the board. He shall appoint all committees and shall perform all the duties necessary or incidental to his office.
 - B. President Pro Tem. The president pro tem is president in the absence or inability of the president to act.
 - C. Secretary. The secretary shall keep minutes of each meeting and shall record each hearing and official action. On all official actions upon which a

²Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Established was removed. No wording changes were made to the remaining sections.

vote is taken, the secretary shall take the vote by voice vote unless a member requests the vote be taken by roll call. If a roll call vote is used, the vote shall be taken in alphabetical order with the president voting last. The secretary shall examine incoming mail for proper referral and answer correspondence for the board. The secretary shall maintain records of operations and shall perform such other duties as the board may assign.

2.64.060 Powers and duties.

The board of library trustees shall:

- A. Make and enforce rules, regulations and bylaws necessary for the administration, government and protection of the public library except for the powers delegated to the personnel officer under Chapter 2.40 BMC, relating to personnel administration;
- B. Administer any trust declared or created for the library and received by property, by gift, demise, or bequest and hold it and, where not otherwise provided, dispose of the property for the benefit of the library;
- C. Prescribe the duties and powers of the library director and other nonclassified officers and employees of the library and recommend to the city council the number and compensation of the library director, nonclassified library employees and classified library employees;
- D. Purchase necessary books, journals and publications and other personal property;
- E. Borrow books from and rent books to and exchange books with other libraries and allow nonresidents to borrow books set upon such conditions as the board prescribes;
- F. Do all acts and things necessary or proper to carry out this chapter.

2.64.070 Annual report. The board of library trustees shall on or before the first day of August of each year make a report to the city council giving the condition of the library on June 30th preceding, together with a statement of its proceedings for the year. The board shall forward a statement of its proceedings to the State Library at Sacramento.

Chapter 2.68

CIVIL SERVICE COMMISSION³

Sections:

- 2.68.010 Establishment – Membership.
- 2.68.020 Members – Qualifications.

³Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Establishment- Membership was removed. No wording changes were made to the remaining sections.

- 2.68.030 Meetings – Time and place.
- 2.68.040 Meetings – Conduct.
- 2.68.050 Officers – Appointment.
- 2.68.060 Officers – Duties.
- 2.68.070 Powers and duties.

2.68.010 Establishment – Membership. The civil service commission of the city is established.

2.68.020 Members – Qualifications. Members of the civil service commission shall be qualified electorates of the city. A person who holds any salaried public office or employment with the city is not eligible for the commission. A member of the civil service commission is not eligible for an appointment to any salaried office or employment with the city during such time as he/she is a member of the commission.

2.68.030 Meetings – Time and place. The civil service commission shall hold regular meetings at such time and place within the city as shall be designated by the rules and regulations adopted by the civil service commission. Any regular meeting may be adjourned to a time certain and to a place designated by the chairman. In addition, the commission may hold special meetings upon the call of the chairman or a majority of the members of the commission.

2.68.040 Meetings – Conduct. Meetings of the civil service commission shall be conducted in accordance with state law and such rules and procedures as may be adopted by the commission. Meetings shall be open and public; provided, that hearings related to the appointment, employment or dismissal of a city employee or a complaint or charge brought against an officer or employee of the city shall be held in private unless such officer or employee requests a public hearing. The commission may exclude from any such public or private meeting, during the examination of witnesses, any or all other witnesses in the matter being investigated by the body. The meeting need not be conducted according to technical rules relating to evidence and witnesses.

2.68.050 Officers – Appointment. The commission shall elect a chairman and vice-chairman from among its members. The chairman and vice-chairman serve for a term of one year and until the successor of each is appointed and qualified. The personnel officer or his/her designee shall serve as secretary to the commission.

2.68.060 Officers – Duties.
A. Chairman. The chairman shall preside at all meetings of the commission. He/she shall appoint all committees and shall perform all the duties necessary or incidental to his office.

B. Vice-Chairman. The vice-chairman is chairman in the absence or inability of the chairman to act.

C. Secretary. The secretary shall keep minutes of each meeting and shall record each hearing and official action. The secretary shall examine incoming mail for proper referral and answer correspondence for the commission. The secretary shall maintain records of operations and shall perform such other duties as the commission may assign.

2.68.070 Powers and duties.

A. The commission, as provided by this chapter and by the personnel rules, shall hear and make final determinations on appeals submitted by any person in the competitive service relative to any disciplinary action of dismissal, demotion, reduction in pay or suspension, or alleged violation of this chapter or the personnel rules, and to certify its findings and recommendations.

B. In any investigation or hearing conducted by the civil service commission, it shall have the power to examine witnesses under oath and compel their attendance or production of evidence by subpoenas to be issued in the name of the city, and attested by the city clerk. It shall be the duty of the chief of police to cause all such subpoenas to be served, and refusal of a person to attend or testify in answer to such a subpoena shall subject the person to prosecution in the same manner set forth by law for failure to appear before the city council in response to a subpoena issued by the city council. Each member of the civil service commission shall have the power to administer oaths to witnesses.

C. The duties of the civil service commission shall otherwise include the following:

1. Review and approve class specifications for employees in the competitive service;
2. Make recommendations to the city council on adoptions and revisions to the classification plan;
3. Consider and recommend to the city council any adoption of and amendments to the personnel rules (pursuant to BMC 2.70.070);
4. Approve requests for any variances to the personnel rules related to selection and hiring procedures for employees in the competitive service; and
5. Advise the city manager and city council on matters related to recruitment and selection processes for employees in the competitive service and on any other matters related to personnel administration. In serving in such capacity, the commission may initiate inquiries and request investigations to be conducted in accordance with procedures outlined in the personnel rules and the civil service commission rules of conduct.

Chapter 2.72

MOBILE HOME RENT REVIEW COMMISSION⁴

Sections:

- 2.72.010 Findings.
- 2.72.020 Definitions.
- 2.72.030 Establishment – Membership – Compensation.
- 2.72.040 Powers and duties.
- 2.72.050 Initiation of review and hearing process.

2.72.010 Findings. There is presently within the city and the surrounding areas a shortage of spaces for the location of mobile homes. Because of the shortage, there is a low vacancy rate, and rents have been for several years, and are presently, rising rapidly and causing concern among a substantial number of Benicia residents. Because of the high cost of moving mobile homes, the potential for damage resulting therefrom, the requirements relating to the installation of mobile homes, including permits, landscaping and site preparation, the lack of alternative homesites for mobile home residents and the substantial investment of mobile homeowners in such homes, the city council finds and declares it necessary to protect the owners and occupiers of mobile homes from unreasonable rent increases while, at the same time, recognizing the need of the park owners to receive a "fair return" on their investment and rental increases sufficient to cover the increased cost of repairs, maintenance, insurance, upkeep and additional amenities.

2.72.020 Definitions. For the purposes of this chapter, the following terms shall be defined as follows:

- A. "Board" means the mobile home rent review commission board established by BMC 2.72.030.
- B. "Commissioners" means commissioners of the mobile home rent review commission.
- C. "Mobile home park owner" or "owner" means the owner, lessor, operator or manager of a mobile home park within the purview of this chapter.
- D. "Mobile home tenant" or "tenant" means any person entitled to occupy a mobile home dwelling unit pursuant to ownership thereof or a rental or lease arrangement with the owner thereof and living within a mobile home park.
- E. "Space rent" means the consideration, including any bonus, benefits or gratuity demanded or received in connection with the use and occupancy of a mobile home space in a mobile home park, or for the transfer of a

⁴ Drafting note: The appointment process, the term, term limits, quorum, removal and vacancy processes in Establishment-Membership-term of office-Compensation were removed and the section renamed to Establishment- Membership- Compensation. No wording changes were made to the remaining sections.

lease for park space, services and amenities, subletting and security deposits, but exclusive of any amounts paid for the use of the mobile home dwelling unit.

2.72.030 Establishment – Membership – Compensation.

A. There is created within the city a rent review commission, consisting of five members.

1. Two members shall be mobile home park tenants and shall be selected by the mayor from a list of no more than five applicants supplied through the mobile home tenants association.

2. Two members shall be mobile home park owners, operators, or managers and shall be selected by the mayor from a list of no more than five applicants supplied through the mobile home park owners and operators association.

3. The fifth member shall be nominated by the American Arbitration Association as an independent fifth party.

B. Commissioners shall not be compensated for their services on the commission but shall be entitled to receive the sum of \$30.00 per person per hearing and a maximum of \$60.00 per day when hearing complaints from the tenants of a park with respect to a rent adjustment by the park ownership as hereinafter provided.

2.72.040 Powers and duties. Within the limitations provided by law, the commission shall have the following powers:

A. To meet from time to time as requested by the city manager or upon the filing of a petition, and to utilize city offices and/or facilities as needed;

B. To receive, investigate, hold hearings on, and pass judgment upon the petitions of mobile home tenants as set forth in this chapter;

C. To make or conduct such independent hearings or investigations as may be appropriate to obtain such information as is necessary to carry out their duties;

D. To adjust maximum rents either upward or downward upon completion of their hearings and investigations;

E. To render at least semiannually a comprehensive written report to the city council concerning their activities, rulings, actions, results or hearings and all other matters pertinent to this chapter which may be of interest to the council;

F. To adopt, promulgate, and amend and rescind administrative rules to effectuate the purposes and policies of the chapter;

G. To maintain and keep at City Hall rent review hearing files and dockets listing the time, date and place of hearings, the parties involved, the addresses involved and the final disposition of the petition.

2.72.050 Initiation of review and hearing process.

A. Upon the written petition of more than 50 percent of the tenants of any mobile home park who will be or have been within a 90-day period subject to a rental or service charge increase, or upon the written petition of a mobile home

park owner who seeks commission approval of a rental increase no sooner than 10 days and no later than 30 days at a place and time to be set by the commission, to determine whether or not the rental or service charge increase is so great as to be unconscionable or an unreasonable increase. A reasonable continuance may be granted if stipulated to by both parties or at the commission's discretion.

B. The cost of reviewing and hearing a petition shall not exceed \$2,000. This cost shall be borne by the mobile home park owner in question who shall pay \$450.00 at the time the petition is filed and additional sums from time to time as requested by the commission up to said maximum.

C. Upon receipt of the petition, the commission shall notify the park owner, operator and manager and the tenants of the mobile home park in writing of the petition and the date, time and place of the hearing.

D. All rent review hearings shall be open to the public.

E. All parties to a hearing may have assistance in presenting evidence, or in setting forth by argument their position, from an attorney or such other person as may be designated by said parties.

F. In the event that either the petitioner or the respondent should fail to appear at the hearing at the specified time and place, the commission may hear and review such evidence as may be presented and make such decisions just as if both parties had been present.

G. The commission shall make a final decision no later than 10 days after the conclusion of its hearing on any petition. No rent adjustment shall be granted unless supported by the preponderance of evidence submitted at the hearing. All parties to a hearing shall be sent a notice of the board's decision and a copy of the findings upon which the decision is based.

H. Pursuant to the findings, the commission shall require the mobile home park owner to:

1. Reduce the rental or service charges to a rate to be determined by the commission;
2. Continue the rental or service charges as they existed under the former lease or rental arrangement; or
3. Increase the rental or service charges to a rate set by the commission or to the rate requested by the park owner.

I. Any rental or service charge increases which have been collected by a mobile home park owner pursuant to an increase which is the subject of a petition for hearing and which is later determined by the commission to have been excessive shall be either returned to the tenants or credited to future rental charges.

J. In evaluating the rent increase proposed or effected by the park owner, the commission shall consider increased costs to the owner attributable to increases in utility rates and property taxes, insurance, advertising, governmental assessments, cost of living increases attributable to incidental services, normal repair and maintenance, capital improvements, upgrading and addition of amenities or services as well as fair rate of return on investment and increased property values.

K. The conclusions and findings of the commission shall be final and there shall be no appeal rights to the city council.

Chapter 2.76

PARKS, RECREATION AND CEMETERY COMMISSION⁵

Sections:

- 2.76.010 Established – Membership.
- 2.76.020 Purpose.
- 2.76.030 Members – Qualification.
- 2.76.040 Meeting time and place.
- 2.76.050 Officers – Appointment.
- 2.76.060 Officers – Duties.
- 2.76.070 Powers.
- 2.76.080 Duties.

2.76.010 Established – Membership. A parks, recreation and cemetery commission is established in the city.

2.76.020 Purpose. The purpose of the commission is to develop and conduct all aspects of the city parks and recreation program, to advise the city council as to the city's proper role and participation in the development and conducting of recreational programs, and to develop and conduct all aspects of the city cemetery program.

2.76.030 Members – Qualification.

- A. Each member of the parks and recreation commission shall be a resident of the city.
- B. The student member shall be a junior or senior high school student.

2.76.040 Meeting time and place. The commission shall meet on the second Wednesday of each month at the hour of 6:30 p.m. in the Commission Room, City Hall, 250 East L Street, Benicia, California.

2.76.050 Officers – Appointment. The commission shall elect a chairperson and a vice-chairperson from among its members. The chairperson and vice-chairperson serve for a term of one year and until the successor of each takes office. The commission shall also appoint a secretary. The secretary need not be a member of the commission.

⁵ Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Established- Membership was removed. No wording changes were made to the remaining sections.

2.76.060 Officers – Duties.

A. Chairperson. The chairperson shall preside at all meetings of the commission. He/she shall appoint all committees and shall perform the duties necessary or incidental to his office.

B. Vice-Chairperson. The vice-chairperson is chairperson in the absence of the chairperson or in case of the inability of the chairperson to act.

C. Secretary. The secretary shall keep minutes of each meeting and shall record the official action taken. On all official actions on which a vote is taken, the secretary shall take the vote by roll call, in alphabetical order, with the chairperson voting last. The secretary shall certify each official document and resolution of the commission. The secretary shall maintain records of operation and shall perform such other duties as the commission assigns.

2.76.070 Powers.

A. The commission is advisory in character and may not be delegated administrative authority or responsibility beyond that which the city council may authorize.

B. The commission may assist and cooperate with any existing agency or group, which has as its object the development or improvement of cemeteries, parks or recreational activities and programs.

C. The commission may plan for the orderly growth and development of cemetery, parks and recreational facilities and make recommendations to the city council.

D. The commission may accept gifts and grants from any source to assist it in the performance of its functions. These gifts and grants operate to augment any appropriation made for the support of the commission.

2.76.080 Duties. The commission shall:

A. Consider and study park, recreation and cemetery facilities within the city and the use and improvement of them;

B. Make investigations and studies for the purpose of recommending to the city council leisure time activities, recreational and social programs;

C. Hold public hearings on its studies;

D. Send to the city council annually a written report of its activities and recommendations for improvements and additions to existing city park and cemetery facilities and to existing recreational programs and for ways in which the city may encourage and promote these programs, services and facilities;

E. Assist and guide by consulting with the city council, city manager, director of parks, recreation and cemeteries and other groups interested in the development of recreational programs to meet the needs of the citizens;

F. Work closely with the director of parks, recreation and cemeteries and other departments and agencies of the city to the end that the resources of the city are used as effectively and efficiently as possible on behalf of parks, cemeteries and recreational activities;

G. Study, consider and recommend to the city council the taking of action with regard to:

1. Promoting cooperation among youth organizations in making the Benicia area a more wholesome place in which to live;
2. Coordinating efforts of youth organizations in the city in the interest of preventing delinquency;
3. Maintaining effective liaison between the city and public schools with regard to youth problems and opportunities;
4. Planning the study of resources, conditions and needs of youth;
5. Advancing the education of the general public regarding conditions to be improved and needs to be met;
6. Serving effective democratic action towards improving conditions and meeting the needs of youth;
7. Assisting in the creation of an atmosphere in which all youth feel they belong and are wanted;
8. Initiation and planning of joint activities around the needs of the youth;
9. Enabling the youth to aid in planning the future of the Benicia area;
10. Offering a means through which youth can join hands with adults in serving the area;
11. Affording youth an opportunity to gain experience by dealing with social problems at first hand;
12. Planning coordinated action in which representatives of all youth organizations can work together effectively;

H. Advise the city council with regard to youth programs and problems;

I. Coordinate the activities of youth organizations towards common goals;

J. Provide a forum for the presentation and discussion of youth plans, programs and problems;

K. Plan long-range programs of benefit to the youth and to the community;

L. Monitor the management and conduct of recreational activities on public property in the city;

M. Act as a clearing house and information center on all aspects of recreational activities. The commission shall make this information available to the public;

N. Formulate general policies relating to the duties and functions of the commission.

Chapter 2.80

PLANNING COMMISSION⁶

Sections:

- 2.80.010 Establishment – Membership.
- 2.80.020 Members – Qualifications.
- 2.80.030 Meeting time and place.
- 2.80.040 Officers – Appointment.
- 2.80.050 Officers – Duties.
- 2.80.060 Powers and duties.

2.80.010 Establishment – Membership. The city planning commission is established.

2.80.020 Members – Qualifications.

A. It is the intent of the city council to have the planning commission composed of people from all geographical, social, environmental, and economic sectors of the community and to avoid potential conflicts with subsection (C) of this section.

B. Each member of the planning commission shall be a Benicia resident and registered voter, and shall be qualified by knowledge and experience to make decisions on questions of community growth and development.

C. Members shall not be severely constrained with potential conflicts of interest under the Political Reform Act or the Benicia open government ordinance (BMC Title 4).

2.80.030 Meeting time and place. The commission shall meet on the second Thursday of each month at the hour of 7:00 p.m. at the Council Chambers, City Hall, 250 East L Street, Benicia, California.

2.80.040 Officers – Appointment. The commission shall elect a chairman and vice-chairman from among its members. The chairman and vice-chairman serve for a term of one year and until the successor of each is appointed and qualified. The commission shall appoint a secretary who need not be a member of the commission.

⁶ Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Established- Membership was removed. No wording changes were made to the remaining sections.

2.80.050 Officers – Duties.

A. Chairman. The chairman shall preside at all meetings of the commission. He shall appoint all committees and shall perform all the duties necessary or incidental to his office.

B. Vice-Chairman. The vice-chairman is chairman in the absence or inability of the chairman to act.

C. Secretary. The secretary shall keep minutes of each meeting and shall record each hearing and official action. On all official actions upon which a vote is taken the secretary shall take the vote by roll call vote in alphabetical order with the chairman voting last. The secretary shall examine incoming mail for proper referral and answer correspondence for the commission. The secretary shall maintain records of operations and shall perform such other duties as the commission may assign.

2.80.060 Powers and duties. In addition to the duties, rights and powers imposed by state law, the commission shall perform the duties and has the rights, powers and privileges provided by ordinance or resolution of the city council.

Chapter 2.84

HISTORIC PRESERVATION REVIEW COMMISSION⁷

Sections:

- 2.84.010 Purpose.
- 2.84.020 Established – Membership.
- 2.84.030 Members – Qualification.
- 2.84.040 Meeting time and place.
- 2.84.050 Tie Vote.
- 2.84.060 Officers – Appointment.
- 2.84.070 Officers – Duties.
- 2.84.080 Powers and duties.

2.84.010 Purpose. The purpose of the historic preservation review commission is to identify, register, designate, preserve, protect, enhance and perpetuate those historic structures, districts and neighborhoods which contribute to the cultural and aesthetic heritage of Benicia; to foster civic pride in the beauty and accomplishments of the past; to stabilize and improve the economic value of certain historic structures, districts and neighborhoods; to promote and encourage continued private ownership and utilization of such buildings and other structures now so owned and used; to conduct design review in historic

⁷Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Established- Membership was removed. The language on Tie Votes is only found in this Commission's language. No wording changes were made to the remaining sections.

other structures now so owned and used; to conduct design review in historic overlay (H) districts as provided for in Chapter 17.108 BMC; and to advise and assist the city council in implementing the goals, policies and programs set forth in the city's general plan relating to preservation and enhancement of the city's historic character and protection of the city's archeological sites and resources. (

2.84.020 Established – Membership. A historic preservation review commission is established in the city. The commission consists of seven voting members.

2.84.030 Members – Qualification.

A. Each member of the historic preservation review commission shall be a Benicia resident and have a demonstrated special interest, competence or knowledge of historic preservation.

B. Members shall, to the extent possible, be:

1. Professionals in the disciplines of history, architecture, architectural history, planning, pre-historic and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture or related disciplines, such as urban planning, American studies, American civilization, or cultural geography, to the extent that such professionals are available in the community; or

2. Lay members who have demonstrated special interest, competence, experience, or knowledge in historic preservation.

C. At least two members shall be owners of a historic property within the historic district. One of these members shall be the owner of a residence in the historic district. The other member shall be the owner of either a residence or business property in the historic district.

2.84.040 Meeting time and place. The commission shall meet as often as necessary, but at least four times a year, with meetings held in a public place, advertised in advance, and open to the public, pursuant to the Ralph M. Brown Act (Government Code Section 54950 et seq.) for open meetings.

2.84.050 Tie Vote. A tie vote on any matter before the commission shall be deemed to be a disapproval thereof.

2.84.060 Officers – Appointment. The commission shall elect a chairperson and a vice-chairperson from among its members. The chairperson and vice-chairperson serve for a term of one year and until the successor of each takes office. The commission shall also appoint a secretary. The secretary need not be a member of the commission.

2.84.070 Officers – Duties.

A. Chairperson. The chairperson shall preside at all meetings of the commission. He/she shall appoint all committees and shall perform the duties necessary or incidental to his/her office.

B. Vice-Chairperson. The vice-chairperson is chairperson in the absence of the chairperson or in case of the inability of the chairperson to act.

C. Secretary. The secretary shall keep minutes of each meeting, shall record the official action taken and perform such other duties as the commission assigns. The secretary need not be a member of the commission.

2.84.080 Powers and duties. The commission shall:

A. Conduct design reviews for restoration, remodeling and development projects in the historic overlay (H) zones in accordance with Chapter 17.08 BMC and/or Chapter 17.54 BMC, or which involve city-owned historical buildings. Ensure that restoration, remodeling and new development complies with the "Secretary of the Interior's Standards for the Treatment of Historical Properties," the criteria contained in the general plan and the criteria in the adopted historic plans for each district. Support decisions by specific findings based on the "Secretary of the Interior's Standards for the Treatment of Historical Properties," the general plan and the adopted historic plans for each district, as detailed in the relevant sections of the Benicia Municipal Code, as they may be amended from time to time;

B. Maintain a program to compile, record and update an inventory of cultural resources within the city. The inventory shall be based on comprehensive surveys conducted in conformance with state survey standards and procedures;

C. Make policy recommendations to the city council on matters that relate to historic preservation and the restoration of designated buildings and districts;

D. Review and certify CEQA documents for projects which require only HPRC approval and review CEQA documents and make recommendations for approval to the planning commission and city council as appropriate;

E. Each commission member is expected to annually attend an informational or educational meeting, seminar, workshop or conference that pertains directly to the work of the commission or would be approvable by the State Office of Historic Preservation;

F. Produce an annual report, in accordance with the requirements of certified local government, on the activities of the commission;

G. Oversee and establish a program to assist owners of historic homes in lower-income areas to apply for low interest loans through community development block grants (CDGBs), when available;

H. Oversee the publicizing of opportunities and incentives for historic preservation to owners of historic buildings;

I. Oversee the maintenance of a list of historic preservation review commission educational materials. These items will have been determined by the commission as providing important background information necessary for commissioners to do the work of the commission. The commission may modify this list at its discretion. As soon as is practicable after appointment, commissioners are required to review the items on this list;

J. Pursuant to the program established by the city council, oversee a program for property tax incentives in accordance with the California Mills Act

and recommend to the city council execution of Mills Act agreements. Provide potential buyers with information about the California Mills Act and federal investment tax credits;

K. Maintain a program to coordinate with the California Archaeological Inventory to develop and maintain an inventory of existing and potential archaeological sites;

L. Maintain a program to inform title companies that properties in Benicia may be affected by historic preservation regulations;

M. Work with Main Street, the Benicia Historical Society, the Benicia Historical Museum at the Camel Barns, and other community groups on historic preservation issues;

N. Recommend nomination of properties for the California and National Register;

O. Create, maintain and increase the community awareness of our historic resources;

P. Oversee the administration of the city's official historic plaque program; and

Q. Perform other duties as provided by the city council.

Chapter 2.88

INDUSTRIAL DEVELOPMENT AUTHORITY⁸

Sections:

- | | |
|----------|---------------------------------|
| 2.88.010 | Authority established. |
| 2.88.020 | Commission – Membership. |
| 2.88.030 | Commission – Powers and duties. |

2.88.010 Authority established. It is found and declared that there is a need for the industrial development authority of the city (the “authority”) created by California Government Code Section 91520(a) and that the authority shall function in the city, and the authority is authorized to transact business and to exercise all powers permitted by law.

2.88.020 Commission – Appointment. The city industrial development commission shall consist of seven members, none of whom shall be officials or employees of the city. Of the seven members first appointed under this chapter, four shall be appointed for a period of two years, and three shall be appointed for a period of three years. The city manager, or his designated representative, shall also serve as the secretary to the commission for the purpose of expediting the

⁸ Drafting note: The appointment process, terms, quorum and removal were removed from the Commission- Membership. This section was previously named Commission-Appointment-Term. No wording changes were made to the remaining sections.

commission's work and keeping appropriate minutes. The city manager shall have no vote.

2.88.030 Commission – Powers and duties.

A. The industrial development commission shall hold one regular meeting each month on a date and at an hour to be fixed by the commission, and hold regular meetings, adjourned meetings and special meetings at such times as circumstances shall require. The city manager shall attend all regular meetings and furnish necessary information, data, maps and records as required by the commission. With the consent of the city manager, the commission may also call upon the services of any of the departments of the city and the department heads shall respond to the request for attendance by the commission.

B. The industrial development commission shall have the duty and power to:

1. Stimulate the growth of existing businesses and enterprises within the city limits;
2. Locate and stimulate growth of new industries within the city, which said industries are compatible to the area and within the framework of the zoning law;
3. Develop, compile and coordinate information regarding available sites suitable for the said industrial or commercial development.

Chapter 2.92

DESIGN REVIEW COMMISSION⁹

Sections:

- 2.92.010 Established – Membership.
- 2.92.020 Purpose.
- 2.92.030 Members – Qualifications.
- 2.92.040 Meeting time and place.
- 2.92.050 Officers – Appointment.
- 2.92.060 Officers – Duties.
- 2.92.070 Powers and duties.

2.92.010 Established – Membership. There is created a design review commission. The commission consists of seven members.

⁹ Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Creation was removed and the section renamed Established- Membership. No wording changes were made to the remaining sections.

2.92.020 Purpose. The purpose of the design review commission is to promote orderly, harmonious and attractive development in the city, encourage the stability of land values and investments, and promote the general welfare. Further, the purpose of the commission is to further the purposes of the design review expressed in Chapter 17.108 BMC.

2.92.030 Members – Qualifications. Each member of the design review commission shall reside within the city. To be eligible for appointment, an individual shall have demonstrated talent and be interested in aesthetics and design either through education, training, experience or occupation.

2.92.040 Meeting time and place. The commission shall fix the time and place of its regular meetings in accordance with state law.

2.92.050 Officers – Appointment. The commission shall elect a chairman, a vice-chairman, and a secretary from among its members. These officers serve for a term of one year and until the successor of each is appointed and takes office.

2.92.060 Officers – Duties.

A. Chairman. The chairman shall preside at all meetings of the commission. He shall appoint each committee and shall perform the duties necessary or incidental to this office.

B. Vice-Chairman. The vice-chairman is chairman in the absence of the chairman, or in the case of inability of the chairman to act.

C. Secretary. The secretary shall keep minutes of each meeting and shall record the official action taken. The secretary shall certify each official document and resolution of the commission and shall perform such other duties as the commission assigns.

2.92.070 Powers and duties. The commission shall perform the duties and has the rights and powers established by ordinance or resolution of the city council. This chapter hereby establishes that the historic preservation review commission is the design review commission.

Chapter 2.96

BUILDING BOARD OF APPEALS¹⁰

Sections:

2.96.010	Established – Membership.
2.96.020	Members – Qualifications.
2.96.030	Meeting time and place.
2.96.040	Adoption of rules.
2.96.050	Officers – Appointment.
2.96.060	Officers – Duties.
2.96.070	Powers and duties.

2.96.010 Establishment – Membership. The building board of appeals is established. The board shall consist of three members.

2.96.020 Members – Qualifications. Each member of the board shall be a qualified elector of the city and shall have the experience and training to judge matters pertaining to building construction.

2.96.030 Meeting time and place. The board shall meet as needed at the time and place noted on the board's agenda.

2.96.040 Adoption of rules. The board shall adopt rules for the transaction of its business and shall keep a public record of its resolutions, transactions, findings and determinations.

2.96.050 Officers – Appointment. The board shall elect a chairman and vice-chairman from among its members. The chairman and vice-chairman serve for a term of one year and until the successor of each is appointed and qualified. The board shall appoint a secretary who need not be a member of the commission.

2.96.060 Officers – Duties.
A. Chairman. The chairman shall preside at all meetings of the board. He shall appoint all committees and shall perform all the duties necessary or incidental to his office.
B. Vice-Chairman. The vice-chairman is chairman in the absence or inability of the chairman to act.

¹⁰Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Established- Membership was removed and the section renamed Established. No wording changes were made to the remaining sections.

C. Secretary. The building official is an ex-officio nonvoting member and is the secretary. The secretary shall keep minutes of each meeting and shall record each hearing and official action. On all official actions upon which a vote is taken the secretary shall take the vote by roll call vote in alphabetical order with the chairman voting last. The secretary shall examine incoming mail for proper referral and answer correspondence for the board. The secretary shall maintain records of operations and shall perform such other duties as the board may assign.

2.96.070 Powers and duties. The primary duty of the building board of appeals is to hear appeals regarding the Uniform Code or California Code. In addition to this duty and any duties, rights and powers imposed by state law and the Uniform or California Codes related to building construction or safety, the board shall perform the duties and has the rights, powers and privileges provided by ordinance or resolution of the city council.

Chapter 2.92

ECONOMIC DEVELOPMENT BOARD¹¹

Sections:

- 2.92.010 Establishment – Membership.
- 2.92.020 Members – Qualifications.
- 2.92.030 Meeting time and place.
- 2.92.040 Officers – Appointment.
- 2.92.050 Officers – Duties.
- 2.92.060 Powers and duties.

2.92.010 Establishment – Membership. There is created in the city of Benicia an economic development board. The board shall consist of seven members.

2.92.020 Members – Qualifications. To be eligible for appointment to the board, an individual shall have demonstrated interest in, and commitment to, furthering the economic development of the city of Benicia. Appointments shall be to citizens living in or owning, managing or operating economic entities in Benicia.

¹¹Drafting note: The following sections were removed: Members- Term of office, Members- Compensation, Quorum, Absence from meeting, Removal- Vacancy filling, and Adoption of rules. The appointment process in Establishment- Membership was removed. No wording changes were made to the remaining sections.

2.92.030 Meeting time and place. The board shall fix the time and place for its regular meetings.

2.92.040 Officers – Appointment. The board shall elect a chairman and vice-chairman from among its members. The chairman and vice-chairman serve for a term of one year and until the successor of each is appointed and qualified. The board shall appoint a secretary who need not be a member of the commission.

2.92.050 Officers – Duties.

A. Chairman. The chairman shall preside at all meetings of the board. He shall appoint all committees and shall perform all the duties necessary or incidental to his office.

B. Vice-Chairman. The vice-chairman is chairman in the absence or inability of the chairman to act.

C. Secretary. The secretary shall keep minutes of each meeting and shall record each hearing and official action. On all official actions upon which a vote is taken the secretary shall take the vote by roll call vote in alphabetical order with the chairman voting last. The secretary shall examine incoming mail for proper referral and answer correspondence for the board. The secretary shall maintain records of operations and shall perform such other duties as the board may assign. The secretary is a nonvoting member if not a member of the board.

2.92.070 Powers and duties. The board shall have the following duties and powers:

A. Identify and investigate economic development needs and opportunities in the city and annually make recommendations to the city council regarding those needs and opportunities on both a short- and long-term basis;

B. Extend and promote an interest in new business relocation to the city;

C. Extend and promote the economic well-being and expansion of all existing businesses;

D. Promote downtown revitalization;

E. Investigate development of city-owned property and land disposition, and promote if appropriate.

Section 2.

Section 4.20.010 (Open government commission) of Chapter 4.20 (Open Government Commission) of Title 4 (Open Government) is amended to read as follows:

4.20.010 Open government commission.¹²

A. Duties. In the implementation of this title, the commission shall:

¹² Drafting Note: Subsection B is amended to remove the terms and term limits.

1. Advise the city council and provide information to other city departments and bodies on appropriate ways in which to implement this title with a priority on simple, standard procedures.

2. Assist in citywide training for implementing the title.

3. Develop and maintain an administrative process for review and enforcement of this title.

4. Propose amendments to the city council of this title as needed.

5. Report to the city council on any practical or policy problems encountered in the administration of this title.

B. The commission shall consist of five members of the public. All commission members shall have a demonstrated interest in open and ethical government through such activities as, but not limited to, attendance at meetings of government bodies, requests for documents from government agencies, disseminating information about government to others, and familiarity with the Brown Act and/or Public Records Act. All members shall be without known conflicts of interest and shall be residents of the city to the extent possible.

C. The commission will meet as needed, but at least quarterly, unless otherwise directed by the city council.

D. The commission shall provide an annual report on implementation and compliance with this title.

Section 3.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrase 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 _____, 2008, and adopted at a regular
meeting of the Council held on the _____ day of _____, 2008, by the
following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
INFORMATIONAL ITEMS**

DATE : August 7, 2008
TO : Mayor & City Council
FROM : City Manager
SUBJECT : **VALERO IMPROVEMENT PROJECT SETTLEMENT**

RECOMMENDATION:

Direct staff to prepare a complete list of programs for allocating funds from the 2008 Valero Improvement Project settlement, including for water conservation and greenhouse gas reduction demonstration projects at City facilities such as the Community Center and Library, and for conservation projects involving City operations, such as planting street trees, shifting to low-water-demand landscaping and improving water metering capabilities.

EXECUTIVE SUMMARY:

On July 10, 2008, the Planning Commission approved amendments to the 2003 Use Permit for the Valero Improvement Project. A condition of that approval requires Valero to provide \$14 million in funding for community environmental protection programs, as formally agreed to by Valero and the Good Neighbor Steering Committee (a group of local concerned citizens). Appropriate uses for these funds have been preliminarily identified.

BUDGET INFORMATION:

The 2008 Valero Improvement Project (VIP) Use Permit Amendment settlement provides \$11.35 million directly to the City through FY 2013-14. The settlement also requires Valero to allocate \$2 million in land acquisition funds (in partnership with the City, as appropriate), \$400,000 to the Benicia Unified School District, and \$250,000 for air quality monitoring and reporting.

SUMMARY:

Most of the refinery components included in the original VIP have not yet been constructed. The amended use permit allows changes to some of these remaining components to improve air pollution control and energy efficiency and minimize flaring while accommodating lower-grade raw material (crude oil instead of gas oil).

The approved VIP changes include:

- replacing an existing plant with a more efficient one to produce hydrogen for use in refining;
- using the future flue gas scrubber to treat exhaust from the fluid catalytic cracker unit (as well as from the coker);
- replacing two pipestill furnaces with new ones that can operate at the higher pressures required for the redesigned scrubber;
- installing a second desalter to clean refinery feedstocks; and
- constructing a new fire station.

Condition 23 of the 2008 Planning Commission approval requires compliance with the 2003 settlement agreement between Valero and the Good Neighbor Steering Committee, as amended by a July 10, 2008 settlement agreement. The 2008 agreement requires Valero to provide \$200,000 for a permanent shelter for the community on-site air monitoring facility and \$50,000 to fund five years of its operation, and allocates \$400,000 to the School District – primarily for an energy-saving lighting retrofit program.

The agreement also allocates \$1 million for watershed acquisition and preservation, and accordingly the Sky Valley Open Space Committee has engaged the California Rangeland Trust to work with Sky Valley landowners to purchase and retire development rights upstream of Lake Herman, Sulphur Springs Creek and the refinery. Another \$1 million will be used to purchase land to enhance the buffer between the refinery/industrial uses and the remainder of the city.

The majority of the money to be provided directly to the City (\$10 million) will be dedicated to City-approved water conservation projects. It is anticipated that these funds will be used initially for City projects, including priority projects underway (though the funds would not supplant existing funding), and then be distributed to Benicia residents, businesses and non-profits for projects that best spread the benefits of water conservation to as many members of the community as possible, based on criteria that would include: quantity of water saved, cost effectiveness, public benefit, and support of General Plan goals and other city policies (such as those of the Urban Water Management Plan).

The remaining \$1.35 million to the City will be used for greenhouse gas reduction efforts: \$700,000 for a tree program, \$600,000 to implement the Climate Action Plan (expected in May 2009) and \$50,000 to purchase two plug-in hybrid vehicles. All funds expended or allocated by the City are expected to be tied to measurable conservation and climate protection results, beginning with tracking and reporting methodology established prior to funding.

Appropriate City programs for expending the settlement funds could include:

- demonstration projects at City facilities such as the Community Center and Library Basement (including water-conserving fixtures, low-water-use landscaping, alternative heating and cooling systems, and green building);
- leak detection and remote-read water meters;

- new installations and/or conversions to water-conserving plant materials and irrigation systems for parkland, ball fields, street medians, parkways, lighting and landscaping districts and other City facilities;
- water conservation devices for distribution to the public;
- tree planting and maintenance, including equipment such as a lift and water truck to better care for City trees in a water-efficient manner;
- a Citywide tree inventory to support the work of the Tree Committee; and
- community education regarding conservation and climate protection efforts and initiatives.

Residential, business and non-profit projects eligible for program funding could include: water conservation and greenhouse gas reduction in building design, construction and operation; low-water-use landscaping; water-conserving fixtures; and tree planting and maintenance by land owners and community groups such as the non-profit Friends of the Benicia Urban Forest.

Attachments

- Planning Commission Resolution No. 08-05 & July 10, 2008 Settlement Agreement

RESOLUTION NO. 08-5

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
APPROVING A USE PERMIT FOR AMENDMENTS TO THE VALERO
IMPROVEMENT PROJECT (07PLN-00032)**

WHEREAS, on April 28, 2003, the City of Benicia Planning Commission certified an Environmental Impact Report (EIR) and approved a conditional Use Permit for the Valero Improvement Project (Application PLN 2002-00022) to be carried out at the Valero Benicia Refinery; and

WHEREAS, Valero Refining Company – California has submitted Application 07PLN-00032 requesting Use Permit approval for amendments to the Valero Improvement Project (VIP) that was approved in 2003; and

WHEREAS, an Addendum to the VIP EIR disclosing the environmental effects of the VIP Amendments was prepared and has been made available for public comment since June 11, 2008; and

WHEREAS, the Planning Commission has considered the Addendum with the Final EIR for the VIP; and

WHEREAS, the Planning Commission at a regular meeting on July 10, 2008, considered and discussed the Addendum, the staff report and the proposed Use Permit with conditions of approval for the VIP Amendments, and conducted a public hearing to receive testimony from members of the public regarding the documentation and the proposed Use Permit;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia makes the following findings based on the application for the Valero Improvement Project Amendments, the staff report, the Addendum to the Final EIR for the VIP together with the Final EIR itself, and information presented at the public hearing on July 10, 2008:

- 1) The Addendum to the VIP EIR is appropriate under the California Environmental Quality Act (CEQA) to address the environmental effects of the VIP Amendments because:
 - a) Neither the VIP Amendments themselves, nor changes in circumstances under which they would be undertaken, would result in the involvement of new significant effects or a substantial increase in severity of previously identified significant effects; and
 - b) No new information not known at the time of the EIR shows significant effects not discussed in the EIR or that significant effects identified in the EIR would be substantially more severe as a result of the VIP Amendments; and
 - c) No mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project.

- 2) That the proposed location of the use is in accord with the objectives of the City of Benicia Zoning Ordinance set forth as Title 17 of the Municipal Code, and the purposes of the district in which the site is located.

Section 17.04.030 of the Zoning Ordinance sets forth nine specific overall purposes of the Ordinance as follows:

17.04.030 Purposes

- A. "Provide a precise guide for the physical development of the city in order to:
1. Preserve the character and quality of residential neighborhoods,
 2. Foster convenient, harmonious, and workable relationships among land uses, and
 3. Achieve progressively the arrangement of land uses described in the general plan;
- B. Promote the economic stability of existing land uses that are consistent with the general plan and protect them from intrusions by inharmonious or harmful land uses;
- C. Prevent excessive population densities and overcrowding of land or buildings;
- D. Ensure the provision of adequate open space for light, air, and fire safety;
- E. Permit the development of office, commercial, industrial, and related land uses that are consistent with the general plan, in order to strengthen the city's economic base;
- F. Conserve and enhance the city's architectural and cultural resources;
- G. Conserve and enhance key visual features of Benicia's setting, including the shoreline and undeveloped hillsides and ridgelines, consistent with the general plan;
- H. Require the provision of adequate off-street parking and loading facilities, and promote a safe, effective traffic circulation system; and
- I. Ensure that service demands of new development will not exceed the capacities of existing streets, utilities, or public services."

The VIP Amendments would be consistent with Purpose A because they would be located entirely within the existing refinery where their location could not create a new conflict with other land uses; and because the Addendum shows that the project would not have, or contribute to, significant environmental effects on other land uses.

The VIP Amendments would be consistent with Purpose B because the existence of the refinery in its location is consistent with its General Plan designation, and the project would promote the economic stability of the refinery.

The VIP Amendments would add no more than 30 new employees to the 20 required for the VIP and thus would not cause or make a significant contribution to excessive population densities, consistent with Purpose C.

The VIP Amendments would not affect existing open space nor would they interfere with future open space plans of the City; therefore the project would be consistent with Purpose D.

The project would be consistent with Purpose E because the refinery is an industrial use that is consistent with the General Plan and the VIP Amendments would improve the City's economic base by facilitating an increase in the refinery's output and helping it to remain competitive in the marketplace.

The project would have no effect on the City's architectural and cultural resources and, therefore it would be consistent with Purpose F.

The VIP Amendments would not have a new substantial adverse effect on views of the shoreline and undeveloped hillsides and ridgelines and, therefore it would be consistent with Purpose G.

The refinery's existing parking and the replacement parking proposed in the VIP Amendments are substantially in excess of Zoning Ordinance requirements and the short-term effects of construction traffic would be mitigated by measures provided in the VIP EIR and the Mitigation Monitoring and Reporting Program. Therefore, the project would be consistent with Purpose H.

The VIP Amendments would not have service demands that exceed the capacities of existing streets, utilities or public services. No other potentially significant effects on City services are projected and, therefore, the project would be consistent with Purpose I.

Section 17.32.010 of the Zoning Ordinance sets forth the following specific purposes of industrial district regulations:

17.32.010 Specific Purposes

1. "Provide appropriately located areas consistent with the general plan for a broad range of manufacturing and service uses;
2. Strengthen the city's economic base, and provide employment opportunities close to home for residents of the city and surrounding communities;
3. Provide a suitable environment for various types of industrial uses, and protect them from the adverse impacts of inharmonious uses;
4. Reserve areas for port terminals and water-related industry;
5. Ensure that the appearance and effects of industrial uses are compatible with the character of the area in which they are located;
6. Minimize the impact of industrial uses on adjacent residential districts;
7. Ensure the provision of adequate off-street parking and loading facilities."

The VIP as amended would be consistent with Purposes 1 and 3 because it would consist of changes and improvements to an existing industrial use in an existing industrial district. The project would be constructed within the existing refinery footprint, and

would not cause or contribute to any significant environmental impacts on other land uses. Therefore, the amended VIP would be consistent with Purposes 5 and 6. As stated under Purpose E above, the project would strengthen the City's economic base. The VIP Amendments would also provide 30 permanent jobs in addition to the 20 to be provided by the VIP, thereby establishing consistency with Purpose 2. The VIP Amendments would not affect land use in a Water-Related Industrial zoning district and thus would be consistent with Purpose 4. As stated under Purpose H above, the VIP Amendments will ensure the provision of sufficient parking to accommodate the use, consistent with Purpose 7.

Section 17.32.010 also contains the following statement of purpose for the IG (General Industrial) district:

"To provide sites for the full range of manufacturing, industrial processing, general service, and distribution uses deemed suitable for location in Benicia; and to protect Benicia's general industrial areas, to the extent feasible, from disruption and competition for space from unrelated retail and commercial uses that could more appropriately be located elsewhere in the city. Performance standards will minimize potential environmental impacts".

The refinery, as a use that manufactures products (fuels) by processing raw materials (crude oil and gas oil), is consistent with the purpose of the IG district and the VIP Amendments, which would support the refinery's ability to fulfill that purpose, would also be consistent with the purpose. The amended VIP, as conditioned, would meet performance standards set forth in Section 17.70.240 of the Zoning Ordinance to ensure that development projects conform with all applicable air and water quality regulations and do not create hazards or problems related to noise, glare, hazardous materials, heat and humidity or electromagnetic interference.

- 3) That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained would be consistent with the General Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the use, nor detrimental to the properties or improvements in the vicinity or to the general welfare of the city for the following reasons:

The Addendum analysis, together with the VIP EIR and the conditions of approval set forth herein and discussed in the staff report, show that the VIP Amendments, as conditioned, would be consistent with all applicable goals and policies of the General Plan. The VIP Amendments would not be detrimental to public health, safety, and welfare because the Amendments would not cause any significant environmental impacts nor would they cause any significant impacts identified in the VIP EIR to be substantially more severe. In addition, the proposed scrubber would enhance consistency with Finding 2 by reducing air emissions below current levels and below levels projected in the VIP EIR.

4) That the proposed conditional use will comply with the provisions of the Zoning Ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located, based on the following:

As shown by Findings 2) and 3), and the discussion in the staff report, the VIP Amendments would comply with the provisions of the Zoning Ordinance. There are no specific conditions required for oil and gas refining in the IG district except that a use permit is required.

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby amends the VIP use permit conditions of approval as shown below and approves the proposed use permit for the Valero Improvement Project Amendments subject to the conditions shown.

- 1) The scope of approval is limited to the amended Valero Improvement Project as described in the Use Permit Application PLN 2002-00022 as modified by Use Permit Application 07PLN-00032, submitted by Valero to the City of Benicia and including the following documents:
 - a) Application for City of Benicia Use Permit, dated March 20, 2002;
 - b) Noise Assessment, prepared by Illingworth & Rodkin, Inc., May 30, 2002;
 - c) Public Safety Analysis, prepared by URS Corporation, June 28, 2002;
 - d) Air Emission Calculations: Baseline and Project Emissions, prepared by URS Corporation, dated June 30, 2002;
 - e) Assessment of Visible Steam Plume Formation, prepared by URS Corporation, dated June 2002;
 - f) Visual Simulations with accompanying text and process block diagrams, prepared by Environmental Vision and URS Corporation;
 - g) Geotechnical and Geologic Assessment, prepared by URS Corporation, dated May 2002;
 - h) Health Risk Assessment, prepared by URS Corporation, June 30, 2002;
 - i) Response to VIP Review of Application for Completeness, prepared by URS Corporation, dated August 8, 2002;
 - j) Letter from URS Corporation to BAAQMD, dated August 6, 2002, supplementing the application for Authority to Construct/Permit to Operate with regard to ship emissions;
 - k) Letter from Sam Hammonds at Valero dated July 23, 2002, amending the use permit application to add the hydrocracker maximization project and pressure swing adsorption of hydrogen and the cat feed hydrotreater guard reactor installation;
 - l) Letter from Sam Hammonds at Valero dated September 27, 2002, providing additional information regarding project sequencing and schedule;
 - m) Letter from Sam Hammonds at Valero, dated October 21, 2002, amending the use permit application to limit the circumstances under which the refinery would operate without the main stack scrubber;

- n) Final Environmental Impact Report for the Valero Improvement Project, dated March 2003, consisting of the Draft EIR dated October 2002 and the Response to Comments dated March 2003.
- o) Response to the Valero Improvement Project Review of Application for Completeness, prepared by URS Corporation, dated May 28, 2002.
- p) Letter from Sam Hammonds at Valero, dated October 24, 2002, detailing additional water consumption forecast due to VIP.
- q) Application for City of Benicia Use Permit for the Valero Improvement Project Amendments, dated February 28, 2008, updating Use Permit Application No. 07PLN2002-00022 submitted on April 25, 2007 and updated on October 5, 2007.
- r) Valero's Response to March 2008 Data Requests from ESA
- s) Valero Improvement Project, Addendum to VIP EIR, June 2008.

Any substantial changes in the project as described in the above documents shall require a Use Permit amendment with associated CEQA review in order to proceed.

- 2) This approval is based in part on the assumption that conditions of approval imposed by the BAAQMD on the amended VIP will continue to reflect established District policies and procedures, and conditions imposed by the District on the original VIP, to prevent any net increase in overall refinery emissions. A change in the amended VIP, or in the BAAQMD conditions of approval for the VIP, such that project facilities would result in such a net emission increase shall require a use permit amendment with associated CEQA review.
- 3) Valero shall provide the City with copies of any application to the BAAQMD for a new Authority to Construct or any amendment to an existing Authority to Construct for any part of the amended VIP, so that the City may evaluate the proposals for consistency with the scope of the use permit approval and the VIP EIR analysis. The documents shall be provided at no cost to the City.
- 4) Valero shall provide the City with copies of its emissions reports to the Bay Area Air Quality Management District whenever such reports are requested by the City to evaluate whether the VIP is being constructed or operated consistent with Condition 1. Reasons for such a request may include, but are not limited to, approval by the BAAQMD of a new or amended Authority to Construct for any part of the amended VIP. The documents shall be provided at no cost to the City.
- 5) All of the mitigation measures set forth in the Final EIR are hereby incorporated by reference and included as conditions of approval of the use permit. The Mitigation Monitoring and Reporting Program, adopted by the Planning Commission on April 28, 2003, and attached hereto as Exhibit A, is hereby incorporated and included as a condition of the use permit approval to ensure that the mitigation measures identified in the EIR are complied with during project implementation.

- 6) The Valero Improvement Project as amended shall adhere to all applicable ordinances, plans, and specifications of the City of Benicia.
- 7) Any significant alteration of the approved plans shall be requested in writing and approved as consistent with the Use Permit by the Community Development Department prior to changes being made in the field.
- 8) Valero shall apply for separate building and grading permits for each major component or group of components of the amended Valero Improvement Project, as determined necessary by the City.
- 9) The amended Valero Improvement Project is comprised of a number of individual components; construction of the components is expected to occur at various times between approval of the use permit and the end of 2014; and some components may not be constructed, depending upon the needs of the refinery. To ensure that the City is able to properly evaluate the plans for each phase of construction, Valero shall notify the Community Development Department at least six months in advance of the planned construction of any major component or group of components, and shall work with the City to develop a mutually acceptable schedule for submission and review of plans and required documentation in advance of construction. Submittals shall contain sufficient information to verify that they are within the scope of approval set forth in Condition 1. Submittals may be reviewed by the compliance monitors provided for in Condition 20, and/or by other plan review experts, as determined necessary by the City. Reasonable costs of expert review shall be paid by Valero.
- 10) Prior to the issuance of a building or grading permit for any portion of the amended Valero Improvement Project, the applicant shall document to the City of Benicia that it has obtained necessary permits and approvals from reviewing agencies, including but not limited to Authority to Construct from the Bay Area Air Quality Management District, and approval of wastewater treatment plant modifications, if required, from the Regional Water Quality Control Board.
- 11) All equipment installed as part of the amended Valero Improvement Project shall be painted to blend with the refinery's overall color scheme with the exception of stainless steel components of the fluid catalytic cracker unit/coker scrubber, which may be left in their natural color. Any paint colors other than the existing green and gold shall be submitted to the Community Development Department in advance for approval.
- 12) The design of proposed exterior lighting fixtures, and drawings showing the plans for installation shall comply with requirements of Zoning Ordinance Section 17.70.240 D.2, and shall be submitted to the Community Development Director or designee in advance for approval.

13) **Condition deleted(7/10/08)**

~~Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated October 11, 2002, and signed by the Refinery Vice President and General Manager, as modified by the June 4, 2003, Settlement Agreement signed by the refinery Vice President and General Manager.~~

- 14a) Valero shall not operate the sulfur plant expansion until the fluid catalytic cracker unit/coker scrubber is installed and operational.
- 14b) Notwithstanding any Bay Area Air Quality Management District permit conditions that may allow higher crude rates without such restriction, the refinery shall not operate more than a total of 1,096 consecutive or non-consecutive days at crude rates above 135,000 barrels per day and/or with the third air blower in operation without installing and operating the scrubber. If the scrubber is not completed and operating by the deadline, the refinery shall not process more than 135,000 barrels of crude per day, and shall deactivate the third air blower, if operating, until such time as the scrubber is in operation.
- 15) Valero shall provide the City with copies of its Anti-Degradation Report and, when requested, monthly self-monitoring reports when those reports are submitted to the Regional Water Quality Control Board. The documents shall be provided at no cost to the City.
- 16) Valero shall submit Stormwater Pollution Prevention Plans to the City of Benicia when required under the City's Grading Ordinance for any component or group of components of the amended Valero Improvement Project. If wastewater treatment plant improvements are to be constructed in a 100-year flood zone, Valero shall comply with the City of Benicia Floodplain Management Policy in designing the improvements and shall document such compliance when it applies for associated building and grading permits.
- 17) Valero shall notify the Public Works Department and shall meet with designated representatives of the Police and Public Works Departments in advance of construction and monthly during construction to coordinate issues related to construction traffic and determine what traffic control measures need to be implemented by Valero.
- 18) Valero shall submit semi-annual construction progress reports to the Community Development Department during all phases of project construction.
- 19) Valero shall submit annual reports no later than 60 days following December 31 of each year documenting compliance with the conditions of approval, the June 4, 2003 Settlement Agreement, and the Mitigation Monitoring and Reporting Program. The annual reports shall contain supporting information from other regulatory agencies as applicable. For each condition and mitigation measure, the

report shall identify the status of compliance with the measure, the procedures or standards used to judge the compliance, times and dates of the monitoring and whether further action is required. The reports shall be submitted until the year 2015. If at that time the applicant has completed all mitigation measures and complied with the conditions of approval, no further reports shall be necessary. The Community Development Director shall notify Valero in writing when the reports shall no longer be required.

- 20) The Community Development Department will retain expert consultants to assist the City in monitoring Valero's compliance with the conditions of the use permit. The consultants' scope of work shall be discussed with Valero in advance but, at a minimum, the scope shall include advising the City with respect to technical aspects of the project that are outside the expertise of City staff. All costs of compliance monitoring shall be paid by Valero. Monitoring costs shall not exceed \$70,000 unless changing circumstances dictate a need for additional funding. In that case, the City and Valero shall discuss and determine any additional amount needed by mutual agreement.
- 21) Valero shall record the conditions of approval of this use permit with the Solano County Recorder in a form that is satisfactory to the City of Benicia. The use permit shall not be in full force and effect until Valero provides evidence to the City that the required recordation has been accomplished.
- 22) This use permit shall expire two years from the approval date unless activated by the commencement of construction of one or more components of the amended Valero Improvement Project. The use permit shall be vested with respect to each component when a building permit has been issued and construction of that component has been diligently pursued. The use permit shall expire on December 31, 2014, with respect to any components of the amended Valero Improvement Project for which construction has not commenced.
- 23) The June 4, 2003 Settlement Agreement settling the appeal of the VIP use permit approval is hereby incorporated by reference and included as a condition of approval, as amended by the July 10, 2008 Settlement Agreement which specifically sets forth in Exhibit A conditions of approval, which are incorporated by reference and included as additional conditions of approval of this amended use permit.
- 24) As-built fugitive POC emissions of the VIP as amended shall not exceed 6 tons per year. Valero shall provide documentation of compliance with this condition at the same time that the information is provided to the BAAQMD.
- 25) The applicant shall defend, indemnify, and hold harmless the City of Benicia and its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia, or its agents, officers, or employees to attack, set aside, void or annul any approval of the Planning Commission, City Council, Community

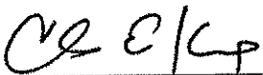
Development Director, or any other employee, department, committee, or agency of the City concerning the environmental review, use permit approval, or other actions, permits and approvals for the Valero Improvement Project; provided, however, that the applicant's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's defense of said claims, actions, or proceedings. This duty to indemnify includes any damages awarded against the City, if any, the cost of suit, attorney's fees, and other costs and expenses incurred in connection with such claim, action or proceeding and whether incurred by Valero, the City and/or the parties initiating or bringing such claim, action, or proceeding.

In the event Valero is required to defend the City, the City shall retain the right to (a) approve the counsel to defend the City, (b) approve all significant decisions concerning the manner in which the defense is conducted, and (c) approve all settlements, which approval shall not be unreasonably withheld. The City shall have the right not to participate in said defense, except the City shall cooperate with the applicant in the defense of said claim, action or proceeding.

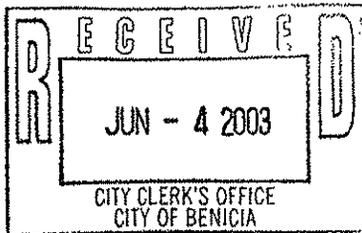
* * * * *

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on July 10, 2008 by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Healy, Syracuse, Thomas and Chair Railsback
Noes: None
Absent: Commissioner Sherry



Charlie Knox
Planning Commission Secretary



ORIGINAL

SETTLEMENT AGREEMENT

This agreement is entered into as of June 4, 2003.

1. Background. The following organizations and representatives of organizations have filed appeals of the April 28, 2003 decisions by the City of Benicia Planning Commission to certify an Environmental Impact Report, adopt a Mitigation Monitoring and Reporting Program, and approve a use permit and related conditions and findings for the Valero Improvement Project (collectively "April 28, 2003 Planning Commission Decisions"): the Good Neighbor Steering Committee; the Solano County Green Party; the Sierra Club, Solano Chapter; Dana Dean; Doug MacDonald; and Jerri Curry (collectively "Appellants").

2. Purpose of Agreement. Valero Refining Company—California ("Valero") enters into this Agreement in good faith for the purpose of settling the disputes between Valero and the Appellants relating to the Valero Improvement Project, including Valero's desire to obtain the issuance of any necessary approvals and entitlements for the Valero Improvement Project.

3. Definitions. For the purpose of this agreement, the Valero Improvement Project ("VIP") is defined as that project permitted by the Benicia Planning Commission on April 28, 2003 and incorporating the amendments herein. The project does not include any subsequent environmental review.

4. Conditions. Valero agrees to be bound by the provisions of Paragraphs 5 through 7 below, subject to the following conditions:

(a) No later than 6:30 p.m. on June 4, 2003, all Appellants withdraw, in writing, their appeals of the April 28, 2003 Planning Commission Decisions;

(b) The City of Benicia accepts all Appellants' withdrawal of their appeals of the April 28, 2003 Planning Commission Decisions, and the April 28, 2003 Planning Commission Decisions become final decisions without further action by the City of Benicia Planning Commission or City Council;

(c) No person or entity appeals or otherwise challenges the April 28, 2003 Planning Commission Decisions or the City of Benicia's acceptance of the withdrawals of Appellants' appeals of the April 28, 2003 Planning Commission Decisions;

(d) Upon request by Valero, the Good Neighbor Steering Committee supports, in writing and in person, the approval and construction of the VIP. Support includes testifying on behalf of the VIP before the appropriate regulatory bodies. Approval for the purposes of this Agreement means City, BAAQMD, and RWQCB approvals necessary to build the VIP; and

(e) The Appellants do not object to, challenge, or appeal the approval or construction of the VIP. Approval for the purposes of this Agreement means City, BAAQMD, and RWQCB approvals necessary to build and operate the VIP.

5. Commitment to Water Reuse Project. Condition 13 of the Use Permit for the Valero Improvement Project, approved by the City of Benicia Planning Commission on April 28, 2002, ("Condition 13") provides "Valero shall continue to participate in the planning and development of the City's wastewater reuse project, consistent with its commitment to that project dated

October 11, 2002, and signed by the Refinery Vice President and General Manager." Valero's October 11, 2002 Commitment of Support for Water Reuse at the Valero Benicia Refinery ("Commitment of Support") states in part "Valero's commitment of support will continue as long as the reuse project continues to be economically, regulatorily, and technically feasible." For purposes of the City of Benicia's interpretation and enforcement of Condition 13, Valero agrees "economically feasible," as used by Valero in its Commitment of Support shall be defined to reflect approximately \$15 million of financial support for the water reuse project so long as Valero is anticipated to receive, as agreed by Valero and the City, at least 1 million gallons of useable water per day from the water reuse project. The obligation to contribute to the water reuse project shall not be interpreted to require Valero to contribute more than the actual cost of the water reuse project. For example, should the water reuse project receive grants which reduce the cost of the project, or if other factors result in a project cost less than \$15 million, Valero shall only be obligated to contribute the actual cost even if the cost is less than \$15 million.

6. Air Quality Monitoring. Valero will take the following actions in order to enhance available air quality monitoring data:

- (a) For an initial one-year period and to provide a comparison of the suitability of the two systems to monitor air quality and to provide data relevant to the Benicia Community and the Valero Refinery, Valero will support an SB 25 monitoring station as described herein.
 - (i) Upon CARB/BAAQMD approval, Valero shall assist in the location of an SB25 monitoring station in the City of Benicia. Assistance includes providing (1) financial support of up to \$30,000, if requested by CARB/BAAQMD, for a site assessment study to determine the appropriate location for the monitoring equipment, and (2) meteorological data consistent with air quality monitoring needs, as determined by CARB/BAAQMD. If CARB/BAAQMD requires additional meteorological data that is not available from existing sources, Valero agrees to install additional equipment, at a cost of up to \$15,000.00, to provide the required data.
 - (ii) If an additional open path air monitoring system such as CEREX is procured by the Good Neighbor Steering Committee and if approved by CARB/BAAQMD, the additional system shall be co-located based upon CARB/BAAQMD's initial site assessment or other further recommendation of CARB/BAAQMD. The cost of the additional system shall be borne by the City and/or the Good Neighbor Steering Committee. The City may use any excess funds from the site assessment study or the meteorological equipment discussed in paragraph 6(a)(i) above to fund its share of the additional monitoring system.
- (b) At the end of the one-year period, the data from the two systems shall be reviewed by BAAQMD, Valero, the City and the Good Neighbor Steering Committee. BAAQMD, Valero, the City and the Good Neighbor Steering Committee shall meet and discuss the results. BAAQMD will determine if additional monitoring is required.

7. Main Stack Scrubber. Condition 14a of the Use Permit for the Valero Improvement Project, approved by the City of Benicia Planning Commission on April 28, 2002, ("Condition 14a") provides: "Valero shall construct and operate the main stack scrubber at the same time that the sulfur plant expansion is constructed." For purposes of the City of Benicia's interpretation and enforcement of Condition 14a, Valero agrees "sulfur plant expansion," shall be defined to include the new Pipestill Furnace described in section 3.4.3.5 of the Draft Environmental Impact Report for the Valero Improvement Project.

8. No Third Party Rights. Upon execution by Valero, this agreement shall be provided to the City of Benicia. The City of Benicia is the beneficiary of this agreement; and this agreement is enforceable only by the City of Benicia. This agreement is not intended to, and shall not, create any rights in favor of any persons or entities other than the City of Benicia.

9. Enforcement. In enforcing Conditions 13 and 14a, as those conditions have been defined in this agreement, the City shall have available to it all of the remedies that it normally has to enforce a condition of a use permit, including but not limited to, issuance of a stop work order.

10. Warranty of Authority. The signatory to this agreement hereby represents and warrants that he/she is duly authorized to execute this agreement on behalf of Valero Refining Company-California and to bind Valero to the terms of this agreement.

VALERO REFINING COMPANY – CALIFORNIA



W. H. Buckalew

Vice President and General Manager

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual Release of all Claims ("Agreement") is made by and between GOOD NEIGHBOR STEERING COMMITTEE ("GNSC") an unincorporated association, and VALERO REFINING COMPANY-CALIFORNIA. The parties to this agreement are referred to collectively as the "Parties."

I. DEFINITIONS

"GNSC" shall refer to GOOD NEIGHBOR STEERING COMMITTEE, an unincorporated association of Benicia residents and business owners who are concerned about potential environmental impacts of Benicia Refinery operations generally and the VIP and amendments specifically.

"VALERO" shall refer to Valero Refining Company-California, a California corporation duly organized and existing under and by virtue of the laws of the State of California and including, but not limited to its executors, administrators, trustees, trustees, beneficiaries, predecessors, successors, assigns, indemnities, partners, partnerships, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, employees, servants, representatives, and all persons, firms, associations and/or corporations connected with them (including but not limited to all consultants, engineers, trade contractors, subcontractors, material suppliers, title officers, sales persons and sales organizations), who are or may ever become liable to them, including, without limitation, their insurers, sureties and attorneys;

"City" shall refer to the City of Benicia – a municipal corporation located in Solano County California. The City is the lead agency with respect to approval of the subject project and is responsible for complying with provisions of local law and the California Environmental Quality Act (CEQA.)

"VIP" shall refer to Valero Improvement Project as permitted by the City on or about April 28, 2003 and amended by the related June 3, 2003 Settlement Agreement between Valero and the City.

"VIP amendments" shall refer to the amendments to the VIP currently proposed by Valero.

II. RECITALS

A. On April 28, 2003 the City of Benicia Planning Commission approved a Use Permit with Conditions for the VIP, certified the project EIR, and adopted the related Mitigation and Monitoring Program ("MMRP")

B. GNSC and others subsequently appealed the Planning Commission's April 28, 2003 actions based on, among other things, their concerns regarding plant expansion.

C. In order to settle the appeal, Valero and the City entered into an agreement, the terms of which involved additional requirements for Valero's performance of the Conditions of Approval for VIP.

D. In or about early 2008, Valero applied to the City for certain amendments to the VIP Use Permit.

E. On or about June 2008, the City released an Addendum to the VIP EIR for public review and comment related to the VIP Amendments;

F. On July 10, 2008, the Planning Commission will hold a public hearing and consider the acceptance of the Addendum and approval of a Use Permit for the VIP Amendments;

G. GNSC has submitted written comments to the City alleging, among other things:

(1) that the Addendum is an inadequate environmental review because there exists significant change to the surrounding circumstances since the approvals of the original VIP EIR. Such changes include but are not limited to changes in the reliability of water supply, climates changes effect on the project, and the project effects on climate change;

(2) that the mitigations and conditions of approval as currently proposed for adoption by the Planning Commission are insufficient to mitigate potential significant impacts in such areas as water supply; general plan compliance; global warming, etc.;

H. Valero believes the proposed VIP Amendments and/or the original VIP project implementation address GNSC concerns and/or such concerns are not specifically related to the approval of the proposed VIP Amendments and an Addendum is the appropriate environmental review for the VIP Amendments as the implementation of the VIP amendments would not result in new significant environmental effects or a substantial increase in severity of previously identified significant effects and that there are no project alternatives or mitigation measures previously found to be infeasible that are, in fact, feasible and that would substantially reduce one or more significant effects on the environment;

I. There is, therefore, a current and ongoing dispute and controversy that exists between the Parties. The Parties wish to resolve the dispute between them and avoid further proceedings. This Agreement is entered into between the Parties to bring to a close all disputes, controversies and/or claims regarding the Addendum to the VIP EIR and the amended Use Permit for VIP Amendments, and any potential future claims or complaints in any way related to the current and future Industrial Activities on the current and future use of the Project.

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS SET FORTH IN THIS MUTUAL AGREEMENT, THE PARTIES AGREE AS FOLLOWS:

III. INCORPORATION OF RECITALS

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

IV. COVENANTS

A. In exchange for the Covenants made by Valero herein, GNSC agrees and covenants to forego any appeal of a Planning Commission approval of the VIP Amendments and any subsequent approvals associated with the VIP Amendments so long as said VIP Amendments approval includes adoption and acceptance by the City of the additional commitments as detailed in Exhibit A, attached hereto, incorporated by reference, and agreed to by Valero herein. In so covenanting, GNSC expressly reserves all rights to comment on and otherwise challenge subsequent projects that may result in a substantial change to VIP amendments as defined herein.

B. In exchange for the Covenants made by GNSC herein, Valero agrees and covenants to abide by the additional commitments as detailed in Exhibit A, so long as the July 10, 2008 Planning Commission approvals are issued and upheld without amendment on any appeal by no later than August 31, 2008. All of said commitments become operable 30 days after final approval.

C. This Agreement is a compromise and settlement of disputed claims among the Parties and shall not be construed as an admission of liability by any of the parties hereto. It is expressly understood and agreed by the Parties that this Agreement is the result of a compromise of disputed claims and that the Parties deny any liability whatsoever to each other, but in executing this Agreement, it is the intention of the Parties to fully and finally dispose of any and all claims which exist or may hereafter exist arising out of or in any manner connected with or related to the claims or the lawsuit resulting therein.

D. The parties hereby represent, warrant and agree as follows: The Parties have made no statement, representation, or promise, other than as set forth herein, to the opposing parties in entering into this Agreement which has been relied upon in entering into or executing Agreement; any representation, warranty, promise, or condition, whether written or oral, not specifically incorporated herein shall not be binding upon any of the parties hereto; the parties acknowledge that in entering into the Agreement they have not relied upon any representation, promise, or conditions not specifically set forth herein; and that the parties have the full legal right and authority to enter into this Agreement and fully authorize and release the matters referred to herein.

E. The Agreement may be executed in one or more counter parts, each of which shall be deemed an original, and which taken together, shall constitute one and the same instrument. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

F. The Parties acknowledge and agree that the drafting of this Agreement has been a joint effort by the parties and that the Agreement shall not be deemed prepared or drafted by any one of the Parties.

G. This Agreement constitutes a single, integrated, written contract and expresses the entire agreement of the Parties hereto with respect to the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the Parties hereto.

H. This Agreement constitutes the entire agreement between the Parties and it is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever except by a writing duly executed by authorized representatives of the Parties. The Parties hereby agree and acknowledge that they will not claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character. There are not oral understandings, statements, or stipulations bearing upon the effect of this Agreement, which have not been incorporated herein.

I. The invalidity or unenforceability of any provision of this Agreement, or any part of any such provision, as determined by a court of competent jurisdiction, shall in no way affect the validity or enforceability of any other provision of this Agreement or the remainder of such provision. Each party agrees to bear its own attorneys fees and costs in the drafting of this document.

J. In the event of any controversy, claim or dispute between or among any of the parties arising out of this Agreement, the prevailing party, as defined by California Code of Civil Procedure section 1032(4), except that the prevailing party may be determined in mediation, by the arbitrator or by a court and such prevailing party shall be entitled to recover from the losing party or parties its reasonable attorneys' fees and costs after mediation, arbitration and/or court.

K. This Agreement is made, and shall be construed and enforced in accordance with the laws of the State of California. Nothing contained herein shall be construed so as to require the commission of any acts contrary to law, and wherever there appears a conflict between any provision of this Agreement and any present or future statute, law, ordinance or regulation, operation of this Agreement shall be curtailed and limited only to the extent necessary to make it comply with such statute, law, ordinance or regulation.

L. Paragraph and section headings within this settlement agreement are of no legal force and effect, but are provided solely for convenience.

WHEREFORE, the Parties hereto have executed this Agreement the day and year indicated below.

Date: 7-10-08, VALERO

By: 
Doug Comeau

Date: July 10 2008, GNSC

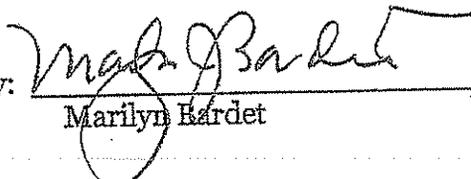
By: 
Marilyn Hardet

Exhibit A

To be incorporated as additional Use Permit Conditions into the Valero Refining Company-California, dba, Valero Benicia Refinery ("Valero") proposed Valero Improvement Project Amendments (07PLN-32) July 10, 2008, Planning Commission approvals.

Commitment to Air Quality Monitoring

To ensure the continued availability of air quality monitoring data, Valero will support on-going operation of the existing temporary open-path air quality monitoring station for the next 5 years.

1. Provide a total not to exceed \$10,000 per year for 5 years for continued operation of the community air monitoring equipment. These funds would be used for equipment and site maintenance, data management, and communication of results.
2. Within one year of the approval of the VIP Amendments, construct a permanent monitoring shelter (estimated at \$200,000) for the community air monitoring equipment.
3. Sponsor a joint community workshop with the Bay Area Air Quality Management District ("BAAQMD") to discuss air quality data gathered to date.
4. Valero will work in good-faith with the GNSC, the Community Advisory Panel ("CAP"), and the BAAQMD to maintain permanently an air monitoring station at the present location.
5. Provide routine air quality data reports about air quality monitoring results directly to the CAP and make such information available to the City upon request.

Commitment to Refinery Buffer Area

Valero recognizes the importance of a buffer zone between the refinery processing area and surrounding community residences. Valero has no plans to develop nor will they seek to develop refinery process units or storage tanks west of East 2nd Street or in areas east of East 2nd designated in the Benicia General Plan as limited industrial.

Valero also supports the possible future acquisition of land between refinery operations and the community to enhance the buffer zone. To that end, Valero will in good faith support acquisition of additional buffering land on its own or in partnership with others. Valero will make available a total not to exceed \$1,000,000 to be used to acquire such lands.

Commitment to GHG Reduction Initiatives

Valero recognizes the GNSC concerns over GHG emissions. To that end, Valero will:

1. Commit to the implementation of projects at the refinery that improve energy efficiency and reduces GHG emissions
2. Provide a total not to exceed \$700,000 to the City for a tree program.
3. Provide a total not to exceed \$50,000 to the City toward the purchase of hybrid vehicles for the City's vehicle fleet.
4. Provide a total not to exceed \$200,000 per year for 3 years to the City for projects identified in the City's Climate Action Plan now under development.
5. Provide a total not to exceed \$400,000 to BUSD toward implementation of GHG reductions measures identified from energy audits conducted by the BUSD.
6. Provide routine reports about refinery GHG emission inventory and future compliance plans for AB 32 directly to the CAP and make such information available to the City upon request.

Commitment to Water Conservation

Valero remains committed to water conservation in our operations. As a demonstration of this commitment, Valero will:

1. Provide a total not to exceed \$2,000,000 per year for 5 years to the City toward City-approved water conservation projects. The annual amount must be used for verifiable water reduction projects implemented by the City, community residents, Valero, and businesses in Benicia. Any proposed Valero water conservation projects must be discretionary and not regulatorily mandated.
2. In good faith support acquisition of land on its own or in partnership with others to be used for watershed protection/watershed preservation. Valero will make available a total not to exceed \$1,000,000 to be used to acquire such lands.
3. Provide routine reports about refinery water usage directly to the CAP and make such information available to the City upon request.

Satisfaction of the items 1 through 3 above fulfills any remaining obligation that Valero might have under Provision 5 of the June 5, 2003 Settlement Agreement.

Commitment to VIP Project Timing

Valero will construct and operate the FCCU/Coker Scrubber before the beginning of operation of the sulfur plant expansion.

**AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
INFORMATIONAL ITEM**

DATE : August 6, 2008
TO : City Manager
FROM : Police Chief
SUBJECT : **UPDATE ON STRATEGIC PLANNING PROCESS FOR THE
YOUTH ACTION TASK FORCE (YATF)**

RECOMMENDATION:

This is an informational report, no action is necessary.

EXECUTIVE SUMMARY:

On June 13, 2008 members of the Youth Action Task Force participated in a Strategic Planning session facilitated by Sharon O'Hara, a professional facilitator. The purpose of the meeting was to review committee operations, goals and objectives. A second planning session was held on July 30, 2008 in the Commission Room at City Hall and was facilitated by YATF Coordinator Patti Baron.

BACKGROUND:

The following is a list of the areas discussed:

- Committee vision, mission, name, structure, membership, and communication plan
- Reviewed the Task Force successes and challenges
- YATF role in meeting requirements for the Alcohol, Tobacco and Other Drugs (ATOD) grant
- Establishing a Chair/Vice Chair
- Sector representation
- The role of the Coordinator
- Future direction of YATF

As a result of the two planning meetings, there was consensus on the following action items:

- 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 subcommittee will meet to develop rules and procedures for the coalition including membership sectors, which will be presented at the August meeting.
- 4) A meeting chair and vice chair position has been established for the purpose of meeting organization and coalition leadership. This will rotate annually at the August meeting. Nominations and selection for these two positions will be completed by the August meeting, by group consensus.

Strategic Planning participants include:

- Alan Schwartzman – Council Member
- Mike Ioakimedes – Council Member
- Jim Erickson - City Manager
- Sandra Spagnoli - Police Chief
- Patti Baron - YATF Consultant
- Janice Adams – Benicia Unified School District (BUSD) Superintendent
- Rosie Switzer- BUSD School board member
- Spence Rundberg – BUSD School Psychologist
- Jim Trimble – Former Police Chief & Community Member
- Ashley Howe - Parks and Community Services Department
- Allison Angell - Library
- Gary Wing – Crisis Response Team & Youth Pastor
- Jerry Pollard – Benicia Police Department Police Chaplain, Local Pastor
- Mary Frances Kelly Poh – Community Action Council
- Karen LaRivierre – Parent Group Representative
- Mike Minahen – Vice Principal, Benicia High School
- Jane Ablee – Principal, Liberty High
- Curtis Hunt – ACT Coordinator
- Bill Whitney – Former City Council Member & Community Member
- Mary Eichbauer – Board of Library Trustees
- Annie Lloyd – Parks, Recreation and Cemetery Commission
- Sharon O'Hara - Facilitator

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
INFORMATIONAL ITEM

DATE : August 6, 2008
TO : Mayor & City Council
FROM : City Manager
SUBJECT : **UPDATE FROM THE POLICE CHIEF REGARDING PUBLIC SAFETY STATISTICS AND COMPARISONS**

RECOMMENDATION:

This is an informational report, no action is necessary.

EXECUTIVE SUMMARY:

The Police Chief will present a summary of the 2007 and 2008 (year-to-date) Uniform Crime Reports for Benicia. An overview of Benicia's policing philosophy will also be provided by the Chief, along with a summary of important crime prevention strategies.

Attachment:

- Memo from Police Chief

MEMO



Police Department
MEMORANDUM

Date: August 1, 2008
To: Jim Erickson, City Manager
From: Sandra Spagnoli, Police Chief
Subject: **2007 Benicia Uniform Crime Reporting Statistics/
2008 Year-to-date Benicia Uniform Crime Reporting Statistics**

Background

The Benicia Police Department reports crime according to the FBI's Uniform Crime Reporting (UCR) Program. The UCR program is a national system of uniform crime statistics that uses standardized offense definitions for seven main offense classifications known as Part I crimes. The seven Part I offense classifications include the violent crimes of murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft. Based on the information provided in this report, we can compare the crime rate in Benicia to other cities. Benicia continues to be one of the safest cities to live and work.

Benicia Crime Statistics and Comparisons

Index crime rates are calculated relative to each jurisdiction's population. Rates are expressed as index crimes per 100,000 residents. The number of FBI index crime per 100,000 residents is a standard measure used throughout the law enforcement community.

As you can see below, the overall crime rate in the City of Benicia has declined 4% during the 2007 calendar year, despite some high profile incidents that occurred during this time period. This decline is encouraging, even more so, when compared to the other cities in Solano County. 4 of the 8 jurisdiction's crime rates in Solano County actually increased. Additionally, when comparing Part 1 crimes on a per capita basis with nearby cities of like populations, the City of Benicia enjoys the lowest crime rate of the group at nearly 40% below the group average.

Uniform Crime Report- 2007

Offense	Benicia PD	Dixon PD	Hercules PD	Pleasant Hill PD	Solano CO SO	Suisun City PD
Homicide	1	1	0	1	2	0
Rape	5	9	5	10	8	11
Robbery	22	14	24	48	25	42
Aggravated Assault	28	43	109	65	143	87
Burglary	154	115	129	218	161	181
Larceny	262	603	267	1178	244	462
Auto Theft	61	83	95	205	13	129
Arson	13	3	*	13	23	*
TOTAL	546	871	629	1738	619	912
Per Capita	19.55	49.36	26.35	52.72	30.75	32.59
Population	27,916	17,644	23,864	32,964	20,125	27,980
* Unavailable data						

Uniform Crime Report- 2006 and 2007 comparison

The below chart compares Benicia's Uniform Crime Statistics from 2006 and 2007 to other cities.

	Benicia PD			Dixon PD			Fairfield PD	
	2006	2007		2006	2007		2006	2007
Homicide	0	1	Homicide	0	1	Homicide	7	7
Rape	7	5	Rape	8	9	Rape	36	36
Robbery	13	22	Robbery	12	14	Robbery	241	221
Aggravated Assault	47	28	Aggravated Assault	48	43	Aggravated Assault	363	326
Burglary	116	154	Burglary	104	115	Burglary	745	698
Larceny	308	262	Larceny	423	603	Larceny	2915	2830
Vehicle theft	72	61	Vehicle theft	75	83	Vehicle theft	706	680
Arson	8	13	Arson	13	3	Arson	35	33
Crime Down 4%			Crime Up 28%			Crime Down 4%		
State UCR Totals *	571	546	State UCR Totals *	683	871	State UCR Totals *	5048	4831

	Rio Vista	
	2006	2007
Homicide	0	0
Rape	0	0
Robbery	0	3
Aggravated Assault	0	41
Burglary	21	50
Larceny	39	62
Vehicle theft	12	12
Arson	0	0
Crime Up 133%		
State UCR Totals *	72	168

	Solano SO	
	2006	2007
Homicide	0	2
Rape	7	8
Robbery	12	25
Aggravated Assault	137	143
Burglary	243	161
Larceny	200	244
Vehicle theft	16	13
Arson	23	23
Crime Down 3%		
State UCR Totals *	638	619

	Suisun PD	
	2006	2007
Homicide	2	0
Rape	14	11
Robbery	30	42
Aggravated Assault	101	87
Burglary	180	181
Larceny	376	462
Vehicle theft	137	129
Arson	N/A	N/A
Crime Up 9%		
State UCR Totals *	840	912

	Vacaville PD	
	2006	2007
Homicide	1	5
Rape	25	25
Robbery	112	83
Aggravated Assault	142	147
Burglary	320	289
Larceny	1733	1473
Vehicle theft	331	274
Arson	32	37
Crime Down 13%		
State UCR Totals *	2696	2333

	Vallejo PD	
	2006	2007
Homicide	7	15
Rape	20	25
Robbery	399	362
Aggravated Assault	347	1400
Burglary	1037	1330
Larceny	3074	2898
Vehicle theft	1426	1354
Arson	N/A	N/A
Crime Up 17%		
State UCR Totals *	6310	7384

Benicia arrests by Year- 3 year comparison

The below chart reflects arrests over a 3-year period, reflecting an increase of 20% in arrests over the last year. Arrests are one of several strategies used to control criminal behavior.

	2007	2006	2005
Adult Arrests			
Misdemeanor	633	435	571
Felony	260	235	288
Totals	893	670	859
Juvenile Arrests			
Misdemeanor	136	137	106
Felony	60	73	58
Totals	196	210	164

The following 4 charts provides a historical perspective of Benicia crime statistics between 1980 and 2007, taking into consideration the relationship between population and crime.

Uniform Crime Reports and Index of Crime in Benicia in the State of California enforced by Benicia Police from 1985 to 2007

Number of Violent Crimes Reported by Benicia Police by Year and Total						
Year	Population	Murder/ Man- slaughter	Rape	Robbery	Aggravated Assault	Total Violent Crime
2007	27,916	1	5	22	28	56
2006	26,597	0	7	13	47	67
2005	27,006	0	3	14	36	53
2004	27,252	1	5	10	52	68
2003	27,444	1	3	8	26	38
2002	27,852	0	4	14	28	46
2001	27,364	1	2	19	16	38
2000	26,865	0	6	14	31	51
1995	27,161	2	6	17	45	70
1990	24,437	0	3	11	30	44
1985	18,974	0	4	11	23	38
1980	15,075	0	3	5	33	41

Number of Property Crimes Reported by Benicia Police by Year and Total					
Year	Population	Burglary	Larceny Theft	Vehicle Theft	Total Property Crime
2007	27,916	154	262	61	477
2006	26,597	116	308	72	496
2005	27,006	160	303	87	550
2004	27,252	150	246	84	480
2003	27,444	169	292	92	553
2002	27,852	139	309	58	506
2001	27,364	146	308	47	501
2000	26,865	129	288	70	487
1995	27,161	205	525	82	812
1990	24,437	189	594	120	903
1985	18,974	215	577	43	835
1980	15,075	179	476	35	690

Benicia Violent Crime Index base upon 100,000 People

Year	Population	Murder/ Man- slaughter	Rape	Robbery	Aggravated Assault	Total Violent Crime
2007	27,916	3.6	17.9	78.8	100.3	200.6
2006	26,597	0.0	26.3	48.9	176.7	251.9
2005	27,006	0.0	11.1	51.8	133.3	196.3
2004	27,252	3.7	18.3	36.7	190.8	249.5
2003	27,444	3.6	10.9	29.2	94.7	138.5
2002	27,852	0.0	14.4	50.3	100.5	165.2
2001	27,364	3.7	7.3	69.4	58.5	138.9
2000	26,865	0.0	22.3	52.1	115.4	189.8
1995	27,161	7.4	22.1	62.6	165.7	257.7
1990	24,437	0.0	12.3	45.0	122.8	180.1
1985	18,974	0.0	21.1	58.0	121.2	200.3
1980	15,075	0.0	19.9	33.2	218.9	272.0

Benicia Property Crime Index per 100,000 People

Year	Population	Burglary	Larceny Theft	Vehicle Theft	Total Property Crime
2007	27,916	551.7	938.5	218.5	1,708.7
2006	26,597	436.13	1,158.0	270.7	1,864.9
2005	27,006	592.5	1,122.0	322.2	2,036.6
2004	27,252	550.4	902.7	308.2	1,761.3
2003	27,444	615.8	1,064.0	335.2	2,015.0
2002	27,852	499.1	1,109.4	208.2	1,816.7
2001	27,364	533.5	1,125.6	171.8	1,830.9
2000	26,865	480.2	1,072.0	260.6	1,812.8
1995	27,161	754.8	1,932.9	301.9	2,989.6
1990	24,437	773.4	2,430.7	491.1	3,695.2
1985	18,974	1,133.1	3,041.0	226.6	4,400.8
1980	15,075	1,187.4	3,157.5	232.2	4,577.1

The chart on the following page reflects our current year to date crime statistical performance. Currently the City of Benicia is on target to continue to have a 4% decrease in crime from 2006 and even with 2007.

Monthly State UCR Totals

July 2008

Classification	Offenses			% Change	Offenses Cleared		
	Current Month	Y-T-D	2007 Y-T-D	Up/(Down)	Current Month	Y-T-D	2007 Y-T-D
Homicide	0	1	0	100%	0	0	0
Rape	1	3	3	0%	0	2	2
Robbery	1	7	16	(56%)	0	1	6
Aggravated Assault	4	25	17	47%	3	19	8
Burglary	16	85	102	(17%)	1	8	15
Larceny	22	183	159	15%	3	18	28
10851	3	38	41	(7%)	0	3	1
Arson	1	6	9	(33%)	0	3	1
State UCR Totals *	48	348	347	0%	7	52	61

Benicia policing philosophy and crime prevention strategies

There are often many social causes of crime. The police department continues to embrace a community policing philosophy, including working with other city departments and city resources (service providers) to address issues related to crime and quality of life. Social conditions such as unemployment, state of the economy, drug abuse are factors that can have an impact on crime. These factors are impacting cities on a regional bases, and not specific necessarily to Benicia. I have summarized our policing philosophy and crime prevention strategies.

BPD Community Policing Approach

The Benicia Police Department has developed a community-oriented policing service that uses a synergistic approach to meeting the safety and security needs of the community we serve. Our goal is to be more accessible to, and accepted by, our community, while providing more efficient and effective services. Community policing is a philosophy, management style, and organizational strategy that promotes pro-active problem solving and police-community partnerships to address the causes of crime and fear as well as other community issues.

Principles of BPD Community Policing

- Respects and protects human rights
- Creates understanding and trust between the police and the community
- Shares responsibility and decision making
- Solves problems in consultation with the community and consistently strives to improve responsiveness and to identify and prioritized community needs
- Educates police personnel and members of the community to enable constructive participation in addressing the problems of safety and security

- Resolves conflict between and within community groups in a manner that enhances peace and stability
- Enhances accountability of the police
- Sustains commitment from both the police and the community to safety and security

Strategies for Community Policing at BPD

- Participation by all members of the Benicia Police Department in community policing and problem solving initiatives
- Commitment from police managers and supervisors to develop new skills through training that incorporates problem solving, networking, mediation, facilitation, conflict resolution, and community involvement
- Encouragement for police officers to assume responsibility for addressing safety and security problems within their areas of responsibility; to promote initiative, creativity, and pride in achievement; and to promote self-disciplined and motivated personnel
- Identification and mobilization of community resources and organizations to assist in addressing safety and security concerns
- Development of honest, open, and effective communication between the police and the community to enhance the consultative roles of the police and the community in general
- Development of a dedicated traffic unit to enhance service and directly address the most frequently reported community concern- traffic related problems

Strategies for Crime Prevention

- Analyze crime to identify crime patterns or serial crime
- Coordinate criminal investigations with local and county law enforcement agencies
- Provide crime prevention through community education and awareness and neighborhood watch programs
- Enforce narcotics crimes as a means to impact community safety, as narcotics offences are often associated with other crimes
- Assertively pursue and investigate serious crimes and arrest / prosecute offenders
- Coordinate services between the police and other city service providers
- Add officer staffing to patrols or undercover operations as necessary
- Long term problem solving to resolve issues resulting in crime, disorder and calls for police service

Conclusion

In summary, Benicia continues to be one of the safest communities in the greater Bay Area due to our efforts in:

- Supporting prevention and intervention programs
- Proactively pursuing law violators,
- Establishing best practices and environmental strategies, and
- Building community relationships and partnerships

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 13, 2008
TO : Mayor Patterson
FROM : City Manager
SUBJECT : **MAYORS' COMMITTEE MEETING**

The following information is provided for your committee report at the August 19, 2008 City Council meeting.

The Mayors' Committee meetings are held on the third Wednesday of each month at 6:00 pm. The next meeting is August 20, 2008. The agenda packet for this meeting has not yet been distributed as of the date of this memo. The packet from the July Mayors' Committee follows.

SOLANO COUNTY

MAYORS' COMMITTEE MEETING

**Carino's Italian Grill
1640 Gateway Boulevard
Fairfield, CA**

Wednesday
July 16, 2008
6:30 p.m.

AGENDA

1. Roll Call / Call to Order
2. Introductions by Mayor Mary Ann Courville
3. Business:
 - a. Approval of Minutes for the May 21, 2008, meeting.
 - b. Approval of Minutes for the June 18, 2008, meeting.
 - c. Roundtable discussion of mutual City issues.
4. Adjournment

**Solano County
Mayors' Conference Meeting**

**City of Dixon
Senior Multi-Use Center
201 South Fifth Street
Dixon, California**

Wednesday, June 18, 2008

MINUTES

1. Roll Call/Call to Order

Chairperson/Mayor Mary Ann Courville called the meeting to order at 6:05 p.m.

Mayors Present:

Mayor Mary Ann Courville	City of Dixon
Mayor Harry Price	City of Fairfield
Mayor Eddie Woodruff	City of Rio Vista

Mayors Absent:

Mayor Elizabeth Patterson	City of Benicia
Mayor Pete Sanchez	City of Suisun City
Mayor Len Augustine	City of Vacaville
Mayor Osby Davis	City of Vallejo

2. Introductions by Mayor Mary Ann Courville

Mayor Courville introduced State and County elected officials. Each Mayor/Vice Mayor/Councilmember introduced their City's representatives present.

3. Dinner

4. Presentation:

John Kirlin, Delta Vision Executive Director, and Linda Fiack, Delta Protection Commission Executive Director, discussed the vision for the California Delta, recommendations of the Blue Ribbon Task Force, and the role of the Delta Protection Commission.

5. Adjournment

The meeting was adjourned at 8:45 p.m.

The next meeting is scheduled for July 16, 2008, at Carino's Italian Grill, Fairfield

**Solano County
Mayors' Committee Meeting**

**Carinos Italian Grill
1640 Gateway Boulevard
Fairfield, California**

Wednesday, May 21, 2008

MINUTES

1. Roll Call/Call to Order

Chairperson/Mayor Mary Ann Courville called the meeting to order at 7:10 p.m.

Mayors present:

Mayor Elizabeth Patterson	City of Benicia
Mayor Mary Ann Courville	City of Dixon
Mayor Eddie Woodruff	City of Rio Vista
Councilmember Steve Wilkins	City of Vacaville

Mayors Absent

Mayor Harry Price	City of Fairfield
Mayor Pete Sanchez	City of Suisun City
Mayor Osby Davis	City of Vallejo

Others Present

Janice Beaman, City Clerk	City of Dixon
---------------------------	---------------

2. Introductions by Mayor Mary Ann Courville

All were acquainted and a quorum was present.

3. Business

A. Approval of Minutes for the April 16, 2008, minutes.

A motion was made by Mayor Woodruff and seconded by Mayor Patterson to approve the April 16, 2008, minutes. The minutes were unanimously approved.

B. Resolution of support of the Solano County Board of Supervisors' approval of the "Solano County Guiding Principles for Use in Delta and Statewide Water Policy Development".

Mayor Courville reported the Guiding Principles presented in the proposed Resolution are the same as those approved by the Board of Supervisors.

A lengthy discussion took place relating to the role of the Delta Vision Blue Ribbon Task Force, vision for the California Delta, levee repairs, water flowing to Southern California, studies that should be completed, the needs of the U.S. Fish and Wildlife, the need for a tour of the Delta, and zebra and Delta smelt.

Mayor Courville suggested the delta be a topic for the City-County Coordinating Council (4C's) and that an education program should be developed to inform the City Councils within the County.

A motion was made by Mayor Woodruff, seconded by Councilmember Wilkins, to approve the Resolution supported the Solano County Guiding Principles for use in the Delta and Statewide Water Policy Development. The motion was unanimously approved.

C. General Discussion Topics – Status of:

- General Plan
 - Cities want emphasis on City-centered growth;
 - Suggested a paragraph be prepared for all cities to use and be sent to the Board of Supervisors.

- State Budget
 - Possible reductions and affects to City budgets.

- Appointment process for Cities
 - Benicia Workshop;
 - Conflict of Interest;
 - Working with Service Clubs;
 - Diversity

D. Roundtable discussion of mutual City issues.

The Mayors discussed the following topics:

- Rescinding the decision to close the State Parks in Benicia;
- Status of City budgets;
- Labor negotiations;
- Long range planning;
- Seeno Projects
- Highway 152 Reservoir

4. Adjournment

The meeting was adjourned at 9:20 p.m.

The next meeting is scheduled for June 18, 2008, in Dixon.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 12, 2008
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 19, 2008 council meeting:

- The ABAG Fall General Assembly will be held on Friday, October 24th at the Oakland Marriott. A topic has not been chosen yet.

AGENDA ITEM
CITY COUNCIL MEETING: AUGUST 19, 2008
COUNCIL MEMBER COMMITTEE REPORTS

DATE : August 11, 2008

TO : Vice Mayor Campbell
Council Member Schwartzman

FROM : Finance Director

SUBJECT : **AUDIT AND FINANCE COMMITTEE**

The following information is provided for your committee report at the August 19, 2008 Council meeting.

The committee met on August 8, 2008 at 8am in the Commission Room. The *Draft Minutes* are attached for your review. The next meeting will be held on Friday, September 5, 2008.

**AUDIT & FINANCE COMMITTEE
REGULAR MEETING *DRAFT* MINUTES
AUGUST 08, 2008 - 8:00 AM**

1. Call to Order at 8:05am.

Attended by Committee Chair Ralph DeJesu, Vice-Mayor Tom Campbell, Council Member Alan Schwartzman, Treasurer Teddie Bidou, BIPA Representative Dan Miceli and Citizen Rick Ernst. Staff present included Finance Director Robert Sousa and Assistant Finance Director Abby Urrutia.

2. Notice to the Public by Chair

3. Approval of Minutes from the Regular Meeting held on June 6, 2008 by consensus.

4. Previous Two Months Warrant Register Review for June and July 2008.

Member Schwartzman inquired about:

- a. The invoices from Kitty Hammer regarding the Valero MTBE Phase-Out. The Finance Director will review the invoice with the Community Development Director.
- b. The invoice from the IRS for a Tax Penalty. The Assistant Finance Director explained it was for a portion of a payroll that had been misreported. The Finance Director will review the invoice.
- c. The invoice from Cecile for contract services to the Youth Action Task Force. The Finance Director will review the invoice.
- d. Invoices for Petty Cash for the Water Utility and Streets. The Finance Director explained that employees on overtime or callback are reimbursed for meal related expenses.

Chair DeJesu inquired about:

- a. Invoice from MV Transportation. The Finance Director explained that MV provides bus services to the City for a fixed monthly rate plus maintenance and repair services to the City's bus fleet.
- b. Invoice from Department of Boating. The Finance Director explained that the Marina has four debt issues with the State, which is paid on an annual basis.
- c. Invoice from Mallory Company for Fire camera. The Finance Director explained that this was for an infrared camera used by the Fire Department.

Recommendation: Approve Warrant Registers

5. Review of Current Budget Issues and the Long Range Budget Model

The Finance Director delivered a report showing the preliminary fiscal results of FY 2007-08. The report showed revenue and expenditure estimates that left the General Fund balanced on a 20% reserve of \$6.6 million. There was a discussion by the board of key elements in the report and inquiries as to the ability of the General Fund to support

CITY COUNCIL MEMBER

REQUEST FOR ITEM ON COUNCIL AGENDA

Please submit this request by the Friday preceding the agenda packet distribution day, or 12 calendar days prior to the meeting. (For example, for a Council meeting on March 21st, please submit the request by March 10th.)

Requested by:

Mayor Patterson

Requested Council Meeting Date:

August 19, 2008

While every effort will be made to include your item on the requested date, please note that depending on the number of items already on an agenda, it may be placed on the subsequent meeting date.

Agenda Item Name:

Request to agendize an update of the graffiti ordinance.

Description of Item (i.e., the text that will go on the agenda as the middle paragraph, between the title and recommendation):

This ordinance needs to be updated to better reflect recent legislation and current practices. Attached is a copy of the current ordinance.

If you would like any attachments regarding your item included in the packet, please note them below and forward them via email to acardwell@ci.benicia.ca.us, if possible, along with this completed form. If attachment(s) are not available via email, please describe the attachment(s) desired and any information you may have on where to locate (website, etc.) so they can be included in the packet.

A copy of this completed form will be included in the packet, followed by any attachments you note above. Thank you!



Chapter 8.38 GRAFFITI CONTROL

Sections:

- 8.38.010 Purpose.
- 8.38.020 Definitions.
- 8.38.030 Graffiti under state law.
- 8.38.040 Purchase or possession of graffiti implements.
- 8.38.050 Penalties for violations.
- 8.38.060 Declaration of nuisance.
- 8.38.070 Removal by person applying graffiti.
- 8.38.080 Abatement at owner's expense.
- 8.38.090 Abatement at owner's expense – Notice to abate.
- 8.38.100 Abatement at owner's expense – Hearing.
- 8.38.110 Abatement at owner's expense – Costs.
- 8.38.120 Removal at city expense.
- 8.38.130 Alternative means of enforcement.
- 8.38.140 Severability.

8.38.010 Purpose.

The purpose of this chapter is to provide enforcement tools in addition to those already provided by state law for removal of graffiti and to prevent and control the further spread of graffiti on walls and structures on both public and private property in the city. The increase of graffiti on both public and private property is creating a condition of blight within the city which results in deterioration of property and business values for the property tagged by the graffiti as well as the surrounding properties. The city council finds and determines that graffiti is detrimental to the public health, safety and general welfare and constitutes a public nuisance which must be abated. It is further the intent of the city council, through the adoption of this chapter, to give notice to all who disregard the property rights of others that the city will strictly enforce all laws prohibiting graffiti, including but not limited to Sections 594, 594.1, 640.5 and 640.6 of the California Penal Code, Section 13202.6 of the California Vehicle Code, and the provisions of this chapter. (Ord. 96-13 N.S.).

8.38.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively defined by this section:

- A. "Administrative hearing officer" means the city's director of parks and community service or his/her designated representative.
- B. "Aerosol container" means any aerosol container regardless of the material from which it was made, which is adopted or made for the purpose of spraying paint, dye, ink or other substance capable of defacing property.
- C. "Felt tip marker" means any marker or similar implement with a tip which, at its broadest width, is greater than one-eighth inch and contains an ink that is not water soluble.
- D. "Graffiti" includes any unauthorized inscription, word, figure or design that is marked, etched, scratched, drawn, or painted on any structural component of any building, structure, or other facility or surface, regardless of the nature of the material of that structural component.
- E. "Graffiti implement" means an aerosol container, a felt tip marker, gum label, a paint stick or an etching tool capable of scarring glass, metal, concrete or wood.
- F. "Gum label" means any sheet of paper, fabric, plastic or other substance with an adhesive backing which, when placed on a surface, is not easily removable.
- G. "Paint stick" means a device containing a solid form of paint, chalk, wax, epoxy, or other

similar substance capable of being applied to a surface by pressure, and upon application leaving a mark at least one-eighth inch in width, and not water soluble. (Ord. 96-13 N.S.).

8.38.030 Graffiti under state law.

A. It is unlawful for any person to violate California Penal Code Section 640.6 which provides that any person who writes, sprays, scratches, or otherwise affixes graffiti on any real or personal property not his or her own is guilty of an infraction.

B. It is unlawful for any person to violate California Penal Code Section 594 which provides that any person who maliciously (1) defaces with paint or any other liquid; (2) damages; or (3) destroys any real or personal property not his or her own, in cases other than those specified by state law, is guilty of vandalism punishable by fine and/or imprisonment.

C. It is unlawful for any person to violate California Penal Code Section 640.5 which provides that any person who writes, sprays, scratches, or otherwise affixes graffiti on or in the facilities or vehicles of a governmental entity, whether leased or owned by the governmental entity, is guilty of an infraction.

D. It is unlawful for any person to violate California Penal Code Section 594.1 which provides that it is a misdemeanor for (1) any person to sell or furnish to any minor under the age of 18 an aerosol container, other than the parent or legal guardian of such minor; (2) any minor to purchase an aerosol container; and (3) any minor to possess an aerosol container while upon any public highway, street or alley. (Ord. 96-13 N.S.).

8.38.040 Purchase or possession of graffiti implements.

A. Purchase by or Furnishing to Minors. It shall be unlawful for any person under the age of 18 years to purchase any graffiti implement unless accompanied by a parent or legal guardian. It shall be unlawful for any person, other than a parent or legal guardian, to sell, exchange, give, loan, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of 18 years without the prior consent of the parent or other lawfully designated guardian of the person.

B. Possession. No person shall have in his/her possession and in plain view any graffiti implement for the purpose of inscribing graffiti while upon any public right-of-way or property in the city. Public property shall include any public park, playground, swimming pool, school or recreational facility if such are posted with signs stating that it is a misdemeanor to possess graffiti implements (as defined in this chapter). This section shall not apply to any person who has received valid authorization from the governmental entity which has jurisdiction over the public area. (Ord. 96-13 N.S.).

8.38.050 Penalties for violations.

Unless otherwise provided by California State law, any violation of this chapter shall be a misdemeanor offense punishable by either six months in jail, a \$1,000 fine, or both. Additional penalties which may be recommended to the court on an ad hoc basis:

A. Vehicle Code Section 42001.7 permits a court to require a littering offender (Vehicle Code Sections 23111, 23112 and 23113) to pick up litter or clean up graffiti;

B. Vehicle Code Section 13202.6 permits a court to suspend or delay issuance of a driver's license for one year for each conviction of a graffiti offense;

C. Minors determined to be wards of the court under Welfare and Institutions Code Section 602 as a result of committing an offense in the city of Benicia shall be required, at the city's request of the court, to perform community service, which may include a graffiti removal service of not less than six hours nor more than 80 hours;

D. The city may request the court, pursuant to Civil Code Section 1714.1, to hold the parent or legal guardian of a minor who violates this chapter, or the state laws mentioned herein, personally responsible for any and all costs incurred in connection with the removal of graffiti caused by said minor, including attorneys' fees and court costs;

E. If the court does not hold the parent or legal guardian of a minor who violates this chapter, or the state laws mentioned herein, responsible for the city's removal costs, then the city may make such costs a special assessment against a parcel of land owned by the parent

or legal guardian pursuant to Government Code Section 38773.6 so long as 30 days' prior written notice is provided to the parent or legal guardian about the anticipated special assessment if such costs are not paid to the city. (Ord. 96-13 N.S.).

8.38.060 Declaration of nuisance.

The city council finds and declares that the existence of graffiti anywhere within the boundaries of the city of Benicia is obnoxious and offensive, thereby constituting a public and private nuisance. Such graffiti shall be abated according to the provisions and procedures contained in this chapter. (Ord. 96-13 N.S.).

8.38.070 Removal by person applying graffiti.

Any person applying graffiti within the city shall have the duty to remove the same immediately, and in no event longer than 72 hours after notice by the city or the public or private owner of the property involved. Each instance of failure by any person to remove graffiti following notice shall constitute a separate violation. Every day that said graffiti is not removed, after notice, shall constitute a separate offense. (Ord. 96-13 N.S.).

8.38.080 Abatement at owner's expense.

Grffiti located on privately or publicly owned property within the city of Benicia so as to be capable of being viewed by a person utilizing any public right-of-way may be removed by the city at the owner's expense as a public nuisance after service of a notice to abate as herein set forth. (Ord. 96-13 N.S.).

8.38.090 Abatement at owner's expense – Notice to abate.

A. Whenever the city is apprised of the presence of graffiti located on privately or publicly owned property within the city of Benicia, the city shall serve a written notice to abate such graffiti upon the owner of the affected premises as such owner's name and address appears on the last equalized assessment roll or the supplemental roll, whichever is more current, and to the tenant, where applicable and if known to the city.

B. Contents of Notice. The notice shall be substantially as set out in Form 8.38.090 at the end of this chapter and contain substantially the following information:

1. The street address, legal description, or other description sufficient to identify the premises affected by the described graffiti;
2. The length of time permitted for voluntary abatement of the graffiti;
3. A statement that the property owner may, during the abatement period, file a written request for hearing if the owner disagrees with the demand to abate the graffiti;
4. A statement that if the graffiti is not voluntarily abated within the stated period, the city will abate the graffiti, that the costs of such abatement shall be assessed against the premises and shall be collected in the same manner as city taxes.

C. Service of Notice.

1. The notice to abate the graffiti shall be personally served in the same manner as summons in a civil action in accordance with Section 415.10 of the Code of Civil Procedure. If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of 10 days and publication thereof in a newspaper of general circulation published in Solano County pursuant to Government Code Section 6062.

2. The failure to make or attempt such service on any person as required herein shall not invalidate any proceedings under this chapter as to any other person duly served. (Ord. 96-13 N.S.).

8.38.100 Abatement at owner's expense – Hearing.

A. A written request for hearing must be received by the administrative hearing officer or his/her designated representative within seven days of service of the notice. The administrative hearing officer, or designee, shall set a time and date for the hearing and notify the person requesting the hearing of the time, date, and place. The hearing shall be before the administrative hearing officer. The hearing shall be an informal opportunity for the person

requesting the hearing to present his/her arguments against the requirement to abate the graffiti at his/her expense. Such arguments may include requesting the city to abate at its cost in accordance with BMC 8.38.120.

B. At the hearing, the administrative hearing officer shall render a decision, in writing, upholding or denying the requirement of abatement. If the requirement is upheld, the decision shall contain an order to abate and a deadline for abatement, and shall be served on the person requesting the hearing by U.S. mail. The decision of the administrative hearing officer may be appealed to the city council pursuant to Chapter 1.44 BMC. (Ord. 07-39 § 1; Ord. 96-13 N.S.).

8.38.110 Abatement at owner's expense – Costs.

A. If the graffiti is not completely abated by the owner or occupier of the premises within the time prescribed in the (1) notice to abate; (2) decision of the administrative hearing officer; or (3) decision of the city council, whichever is applicable, the city's director of parks and community services or his/her designated representative is authorized and directed to cause the graffiti to be abated by city personnel or private contract, and the city, or its private contractor, is expressly authorized to enter upon the premises for such purposes.

B. The city's director of parks and community services or his/her designated representative shall keep an account of the costs and expenses, including all administrative and legal costs, in abating such graffiti and shall serve by U.S. mail a statement of such costs to the person or persons receiving the notice to abate. Such person or persons receiving the notice to abate shall be liable to the city for any and all costs and expenses to the city involved in abating the graffiti.

C. If all or any portion of the costs and expenses incurred by the city in abating the graffiti and accounted for by the city's director of parks and community services remains unpaid after 30 days, then pursuant to authority created by law, including Government Code Sections 38773.5, 38773.6 and 38773.7, such portion thereof as remains unpaid shall constitute and is hereby declared to constitute an assessment on the real property which was served with the notice to abate and/or the subject property. The city's director of parks and community services or city clerk, prior to August 10th of each year, shall deliver to the county auditor of Solano County a notice to levy the special assessment on the property for placement on the secured roll. Thereafter, the special assessment shall be collected and enforced in the same manner as municipal taxes. (Ord. 96-13 N.S.).

8.38.120 Removal at city expense.

Graffiti located on publicly or privately owned real property within the city of Benicia so as to be capable of being viewed by a person utilizing any public right-of-way may be removed solely at the city's expense, without reimbursement from the property owner or assessment upon the property, upon all of the following conditions:

A. The administrative hearing officer, pursuant to a hearing under BMC 8.38.100, determines that (1) the owner of the affected property is unable to remove the graffiti due to extreme financial hardship; or (2) the same owner of the affected property has made no more than one request for such city removal at the city's sole expense within a calendar year; and

B. In removing the graffiti, the painting or repair of a more extensive area beyond the tagged area shall not be authorized;

C. When the work is to be performed by the city, or by contract at the direction of the city, the removal of the graffiti may not proceed until the written consent of the person or entity having jurisdiction over the structure is obtained along with a release of the city from liability. Such consent and release shall be substantially as set out in Form 8.38.120 at the end of this chapter.

Nothing herein shall be construed as obligating the administrative hearing officer to require that any graffiti be abated at the sole expense of the city. (Ord. 96-13 N.S.).

8.38.130 Alternative means of enforcement.

Nothing in this chapter shall be deemed to prevent the city council from authorizing the city

attorney to commence any other available civil or criminal proceedings to enjoin or abate a public nuisance under applicable provisions of state law as an alternative to proceedings set forth in this chapter. (Ord. 96-13 N.S.).

8.38.140 Severability.

If any provision, clause, sentence, or paragraph of this chapter, or application thereof to any person or circumstances, is held invalid by a court of law, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications. Therefore, the provisions of this chapter are declared to be severable. (Ord. 96-13 N.S.).

Form 8.38.090

NOTICE OF INTENT TO REMOVE GRAFFITI

Date:

NOTICE IS HEREBY GIVEN that you are required at your expense to remove or paint over the Graffiti located on the property commonly known as _____, Benicia, California, which is visible to public view, within seven (7) days after the date of this notice; or, if you fail to do so, then City employees or private City contractors will enter upon your property and abate the public nuisance by removing or painting over the Graffiti. The cost of the abatement by the City employees or its private contractors, including any administrative and legal expenses incurred, will be assessed upon your property, and collected in the same manner as municipal taxes.

All persons having any objection to or interest in said matters are hereby notified to submit any objections in writing to the City's Director of Parks and Community Service for the City of Benicia within seven (7) days from the date of this notice. If no such written objections are received by the City by the conclusion of this seven (7) day period, the City may proceed with the abatement of the Graffiti inscribed on your property at your expense without further notice.

(Signature of City Employee)
CITY OF BENICIA
250 East L Street
Benicia, CA 94510

Form 8.38.120

CONSENT TO ENTER PROPERTY AND HOLD HARMLESS AGREEMENT GRAFFITI REMOVAL

We grant permission to the City of Benicia, or its authorized agents, to enter our property for Graffiti removal. We recognize that the City of Benicia can only provide for the removal or painting of the area which is the subject of the Graffiti. We waive any claims which we may have against the City arising out of this work and agree to indemnify it, its City Council, its agents, officers and employees against any claims or demands whatsoever arising out of their performance of this work.

DATE:

NAME & ADDRESS:

TELEPHONE NO.:

SIGNATURE OF PROPERTY OWNER OR TENANT:

Return to: City of Benicia
250 East L Street

Benicia, CA 94510

