

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
SEPTEMBER 4, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, September 4, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina 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:

Openings on Boards and Commissions:

- Benicia Housing Authority
One unexpired term to June 30, 2011
- Human Services and Arts Board
One unexpired term to June 30, 2009
- Library Board of Trustees
Poet Laureate
One full term to November 30, 2009
- Open Government Commission
One full term to November 30, 2011
- Planning Commission
One unexpired term to September 30, 2008
- Sky Valley Open Space Committee
One unexpired term to September 30, 2010

APPOINTMENTS:

RESOLUTION 07-95 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ROBERT H. SHEROCK TO THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING AUGUST 30, 2010

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

Council Member Patterson discussed some concerns regarding some of the proposed appointments. Some of the applications were not complete, she had issues with some of the candidate's qualifications, potential conflicts of interest, and there is not a fair representation of the community.

Council Member Hughes discussed his support of the proposed Planning Commission appointments.

RESOLUTION 07-96 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JAMES FREDRICK ERNST TO THE PLANNING COMMISSION TO A FULL TERM ENDING SEPTEMBER 30, 2011

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

RESOLUTION 07-97 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ROD SHERRY TO THE PLANNING COMMISSION TO A FULL TERM ENDING SEPTEMBER 30, 2011

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: Council Member Patterson

RESOLUTION 07- 98- A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF BRAD THOMAS TO THE PLANNING COMMISSION TO A FULL TERM ENDING SEPTEMBER 30, 2011

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

Vice Mayor Schwartzman requested on future agendas, all openings on boards and commissions be listed until the actual appointment is confirmed. Mayor Messina stated that he felt that suggestion was appropriate.

PRESENTATIONS:

None

PROCLAMATIONS:

- National Preparedness Month – September 2007
- Pollution Prevention Week – September 17-21, 2007

- Literacy Awareness Day – September 8, 2007

ADOPTION OF AGENDA:

Mr. Erickson stated that item VIII-A would be continued.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (hard copies on file).

PUBLIC COMMENT:

None

CONSENT CALENDAR:

On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, the Consent Calendar was adopted as presented, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

The Minutes of August 21, 2007 were approved.

RESOLUTION 07-99 - RESOLUTION APPROVING MODIFICATIONS TO THE DEVELOPER AGREEMENT FOR THE WEST 7TH STREET STORM DRAIN PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN SAID AGREEMENT ON BEHALF OF THE CITY

RESOLUTION 07-100 - A RESOLUTION ACCEPTING THE BIDS FOR THE WEST 7TH STREET STORM DRAIN PROJECT, AWARDED THE CONSTRUCTION CONTRACT TO HUDSON EXCAVATING INC., IN THE AMOUNT OF \$316,950, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 2.20.040 (CONDITIONS) AND ADDING SECTION 2.20.070 (CRIME AND DISHONESTY INSURANCE POLICY) OF CHAPTER 2.20 (OFFICERS' BONDS AND COMPENSATION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

RESOLUTION 07-101 - A RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION FOR A CALIFORNIA LIBRARY LITERACY SERVICE MATCHING FUNDS GRANT FOR FISCAL YEAR 2007-2008 AND AUTHORIZING THE LIBRARY DIRECTOR TO SIGN DOCUMENTS

RESOLUTION 07-102 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) ESTABLISHING MEMBERSHIP IN THE SOLANO COUNTY INTERAGENCY HAZARDOUS MATERIALS TEAM (SCIHMT)

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

Appeal of 221 First Street building permit:

Mayor Messina recused himself from this portion of the meeting due to a conflict of interest.

Vice Mayor Schwartzman chaired this portion of the meeting.

Heather McLaughlin, City Attorney, stated that she received notice from the appellants that this item was very close to being settled. Staff felt all issues would be ironed out by the next Council meeting. Staff recommended this item be continued to the next Council meeting.

Public Comment:

None

On motion of Council Member Patterson, seconded by Council Member Whitney, Council approved continuing this item to the next Council meeting, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney

Noes: None

Abstain: Mayor Messina

Adoption of the Initial Study/Mitigated Negative Declaration and approval of Benicia Views ("Raffanti Project") Tentative Subdivision Map (East H and East I Streets east of East 6th Street):

Charlie Knox, Community Development Director, reviewed the staff report.

Council Member Whitney inquired about lot size. Are the lots 50 or 60 ft. lots? Mr. Knox clarified that the lots are proposed as 50 ft. lots.

Council Member Hughes asked if deed restrictions or deed notifications would need to be disclosed in real estate transactions.

Vice Mayor Schwartzman discussed the issue of real estate disclosures. He asked Mr. Richard Bortolazzo to prepare information regarding the issue (hard copy of handout on file).

Council Member Patterson inquired if the supplemental documents Council received was substantial enough to continue the item. Ms. McLaughlin stated that Council needed to make a determination whether the information was considered ‘substantial.’

Mayor Messina stated that Council would continue with the public hearing and decide at that point if the item needed to be continued.

Council Member Patterson discussed the following issues: deed notice, cork oak tree, alley, grading and drainage, saving a few of the trees, and use of the City’s property as a park.

Council Member Hughes asked staff if the City had an additional \$100,000, would it go towards a park for Bottle Hill, or would it be used for other uses. Mr. Alvarez discussed the possibility of a park at the end of East 7th Street.

Applicant:

Mr. Trace Anthony discussed the project. The applicants believe they have brought the best use for the property forward. He discussed the notification process. City Staff suggested the applicant improve the alley, however, the cork oak tree sticks out too far to go around. He discussed the issue of grading and water runoff.

Mr. Dan Raffanti stated that he planned on living on the property. He felt this was the highest and best use of the property. He thanked Staff for their efforts on the project. The neighbors have been super. He discussed deed restrictions and the notification process.

Council Member Patterson suggested the applicant consider French drains with regard to the cork oak tree. Mr. Anthony stated that he did not think that would be feasible.

Mayor Messina asked for confirmation on the lot width the applicant applied for. Mr. Anthony stated that there were 60 ft. requirements on H Street, and they were allowed 50 ft. lot width on I Street.

Public Hearing Opened

Public Comment:

1. Dana Dean – Ms. Dean stated that she was representing Amports. She stated they were not trying to stop the development, but were trying to make sure the development is appropriately mitigated so that it is consistent with the General Plan. She discussed buffers, appropriately conditioned residential uses, construction standards to lessen industrial impacts, the fact that the disclosure does not work, and the need for a deed restriction.
2. Marilyn Bardet – Ms. Bardet discussed the lack of parks on the east side of town, and her concerns regarding contaminated property.
3. Earl Miller – Mr. Miller spoke in support of the project.
4. John Canazarro – Mr. Canazarro spoke in support of the project.

5. Delfino Ferrara – Mr. Ferrara spoke in support of the project. He spoke in support of disclosure, but against deed restrictions.
6. Richard Lockwood – Mr. Lockwood spoke in support of the project. He spoke against the issue of deed restrictions.
7. Christine Mead – Ms. Mead discussed the issue of putting a park in the neighborhood. She spoke against the issue of deed restrictions. She does not want to see more low-income apartments built in the area.
8. Jane Kurl – Ms. Kurl spoke in support of the project. She did not think the area was suitable for any sort of park, except for maybe a planting park/area. She requested the City do something with the property at the Mills site with regards to a park.
9. Sam Willis – Mr. Willis spoke in support of the project, but against deed restrictions.
10. Bob Beard – Mr. Beard spoke in support of the project. He does not see the need for a park in the Bottle Hill Area. He did not see the need for swapping land.
11. Don Obendorf – Mr. Obendorf spoke in support of a project for single-family homes in the area. He would like to see the rock preserved, similarly to the overlook area in St. Catherine’s Woods. He does not want to see the hill destroyed.
12. Jim Pucci – Mr. Pucci discussed the issue of deed restrictions, Amports, and the rights of property owners.
13. Mark Salizar – Mr. Salizar spoke in support of the project.
14. Richard Armanino – Mr. Armanino discussed the issue of deed restrictions. Amports does not pay any import taxes. He spoke in favor of the project.
15. Stanley Lovett – Mr. Lovett discussed the hill in the proposed area. Most of the garbage that is dumped is in the area that is owned by the City. The City has never cleaned the garbage up. He spoke in support of the project, but would like to save the hill and trees, and suggested having a retaining wall built to support them.
16. Joe Garcia – Mr. Garcia spoke in support of the project. He would like to see the houses built large and expensive. He would like to see restrictions put on Amports. He would like to find a way to have the rock preserved.
17. Liz Gibboney – Ms. Gibboney spoke in support of the project. She would prefer the homes be built on 60 ft. lots. If the tree has to go, they could plant some more trees. She hoped Council would take the issue of deed restrictions very seriously. She hopes Council will support the project and continue to invest in the east side of town.
18. Ben Diaz – Mr. Diaz clarified that the developer did not want to swap the land. He wants to live on the property.

Council Members Schwartzman and Whitney did not feel the information submitted tonight was substantial enough to delay this item.

Council Member Patterson requested a 5-minute break to review the information.

Council Member Hughes asked if the additional information had been addressed by Ms. Dean in her earlier comments.

Ms. Dean stated that all of the documents were not in the staff report. Amports is readily available to meet and discuss the issues at hand.

Mr. Knox confirmed that the complete mitigated negative declaration was in the staff report.

Mayor Messina called for a 10-minute break at 8:55 p.m. so Council could review the information in question.

The meeting resumed at 9:02 p.m.

Council Member Patterson stated her concerns regarding CEQA. She asked Ms. McLaughlin about the assertions of Amports Attorney (Ms. Dean) regarding access to documentation. Ms. McLaughlin stated that the only letters in the files were letters from the neighbors. The only environmentally related comments were regarding hydraulic issues. Ms. McLaughlin confirmed it would be appropriate for Council to recognize that the drainage condition is recognizing the mitigation request.

Motion to close public hearing

It was motioned by Council Member Patterson, seconded by Vice Mayor Schwartzman to close the public hearing. The motion was approved, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

Public Hearing Closed

Mr. Erickson stated that Staff supported the Planning Commission's recommendations.

Vice Mayor Schwartzman discussed the tree, hill, park, the City cleaning up the debris and trash on the parcel (possibly even mowing the area), deed restrictions, residents not being restricted from having a voice on the issue, triple paned windows, filters, and the notification process.

Mr. Anthony stated that triple paned windows only added 25-30% of sound reduction; however, they would consider the possibility of the windows and air filters.

Council Member Whitney stated that he walked the neighborhood and did not encounter anyone who did not support the project. He did not want to continue the public hearing. He discussed alley access, land swapping, deed restrictions, cork oak tree, and planting more trees. The project is in the best interest of the neighborhood and the City.

Council Member Hughes did not feel the issue was complex. He discussed the issues of swapping properties, deed restrictions, deed notification, and real estate disclosure. He believed the project was good for the neighborhood and the City.

Council Member Patterson stated that she supported the project. She disclosed that she had exparte communications with many members of the public on this issue. She would like to add a finding to protect the City regarding Ms. Dean's letter dated 9/4 (buffer requirement). She would like to change the condition # 2 (VIII-B-6) regarding the drainage on I Street to add that there shall be no net increase of flow on I Street as a result of the project. She concurs with the issue of deed notification, triple paned windows, air filters, etc.

Mayor Messina stated he was okay with the buffer comment and the storm water runoff condition.

Vice Mayor Schwartzman disclosed that he had an exparte communication with Ms. Dean. Regarding the changes to the Resolution, if the street is good enough for the project, it is good enough for Amports. He agreed with the no net storm water increase language.

Council Member Whitney stated that he was okay with the buffer comments being added, but did not agree with the storm water runoff condition – it is already there. He amended his motion to include the comment about the buffer (but not the storm water runoff).

Council Members Hughes, Whitney, and Messina disclosed exparte communications with various individuals.

RESOLUTION 07-103 - A RESOLUTION APPROVING THE BENICIA VIEWS TENTATIVE SUBDIVISION MAP FOR THE SUBDIVISION OF FOUR VACANT RESIDENTIAL PARCELS INTO SEVEN RESIDENTIAL PARCELS LOCATED ON EAST H AND EAST I STREETS EAST OF EAST SIXTH STREET, AND ADOPTING THE INITIAL STUDY/MITIGATED NEGATIVE DECLARATION FOR THE PROPOSED SUBDIVISION

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

Downtown Mixed Use Master Plan and associated environmental analysis and ordinance amendments:

Mayor Messina and Vice Mayor Schwartzman recused themselves due to conflicts of interest.

Council Member Whitney chaired this portion of the meeting.

Charlie Knox, Community Development Director, reviewed the staff report.

Public Comment:

1. Cheri Graff – Ms. Graff discussed opening a salon that would include hair and tattoo services. This item might affect the ability for her to open a business in the Downtown Area. She has spent \$20,000 so far, and will probably need to spend another \$20,000 getting the shop ready at 636 First Street.

Council and Staff discussed the issue of allowing tattoo services in the Downtown Area. Mr. Erickson recommended Council be tighter than looser with regards to the requirements regarding this type of adult business.

Council Member Patterson asked if, since the hair salon was the predominant use and the tattoo service was the secondary use, were there provisions that could be made.

Mr. Knox discussed the possibility of putting a footnote 3 in the ‘personal services’ section calling out that personal body art as a use that requires use permit review. That would be the cleanest way to get a use permit requirement. However, he was also persuaded by the City Manager’s comments regarding what the City wants and does not want in the Downtown Area.

Council Member Patterson discussed the issue of body art services as a secondary use. The footnote should read ‘only as a secondary use’ never a primary use, and it would always be subject to a permit. The matter before Council should, with regards to Ms. Graff, be subject to that.

Mr. Knox clarified that footnote 3 under personal services could read ‘body art and piercing only allowed as a secondary use with permit approval.’ With the use permit process, there is no guarantee of success.

Mr. Erickson stated that Staff was very concerned about nurturing the Downtown Area. Staff thinks that not calling this an adult use that would be prohibited would be a mistake.

2. Neil Leary – Mr. Leary requested a slight modification to change the 100 East G Street to ‘neighborhood general’ – the street is narrow and currently has parking issues. It does not make sense to bring commercial down the street. Mr. Neal submitted a signed petition (on file) from residents on the 100 block of East G Street.

Council and Staff discussed the current zoning for the 100 block of East G Street, as well as the following issues: home occupation, parking requirements, percentage of use (25%), number of employees, advertising, signage, and residential appearance.

3. Jeanne Hamann – Ms. Hamann requested that this issue be clarified – the old library building was never meant to be residential. It is a perfect opportunity to get office space off of First Street. Most of the homes on the street have off-street parking.

Council Member Hughes clarified that although there may be issues with one specific building, the City should not spot zone, but should look at the bigger picture.

Mr. Knox cautioned against trying to solve a problem for just one property, which could end up creating problems elsewhere. The options are still available, which range from changing the recommendation from the Planning Commission (neighborhood general open on both sides of the street), changing any of the use permit or not use permit requirements for highly impacted uses, or getting back at the office issue in neighborhood general. Maybe the use permit process is the most appropriate. He is a little uncomfortable that some of the other solutions would create enough additional traffic and parking impacts that the City would need to go back and redo some of the environmental analysis.

4. Gerald Christensen – Mr. Christensen clarified that there was no off-street parking on East G Street.
5. Cristina Strawbridge – Ms. Strawbridge discussed the property at 144 East G Street. There is parking available. She would like some reconsideration on the percentage of the use of the building.
6. Emily Thomas – Ms. Thomas discussed the zoning on the 100 block of East G Street. There is not off-street parking in the neighborhood. Neighborhood general on both sides of the street would be okay. She would like the buildings to look like homes, not businesses.

Mr. Knox suggested that if Council was comfortable with the home occupation list, an easy fix might be to go back to neighborhood general, but open it up more by not requiring home occupation to be in an ancillary building.

7. Jeff Gregory – Mr. Gregory discussed the parking issues on the 100 block of East G Street.
8. Dana Dean – Ms. Dean spoke on behalf 221 First Street LLC. She discussed an ‘eleventh-hour’ change per her memo (copy on file). The City is singling out three properties.
9. Mike Ioakimedes – Mr. Ioakimedes discussed the language discussed by Ms. Dean. Rather than calling it retail, it could be called retail preferred. Staff level use permits could be done.
10. Bob Berman – Mr. Berman discussed concerns with why the speaker who wanted to own a beauty shop and tattoo parlor’s application was not judged on the current rules. He discussed the mitigated negative declaration, single-family design review, and problems with having two separate plans or documents for the Downtown Area. Regarding the revision to mitigation measure ‘culture 1’ – the language ‘and designated in the Downtown Historic Conservation Plan’ should be changed ‘or designated in the Downtown Historic Conservation Plan.’ The issue of having different boundaries for each document was discussed. The two plans should be integrated into one plan. Regarding the non-residential to retail issue – perhaps there could be a better definition of ‘non-residential.’
11. Marilyn Bardet – Ms. Bardet discussed the issue of new construction that is next to a historic structure.

12. Jon Van Landschoot – Mr. Van Landschoot discussed the issue of design review in the Historic District and the issue of story poles.

Public Hearing Closed

Council Member Patterson discussed page VIII-C-2 – citizen involvement process – her initial intent was to have the neighbors involved. She would like that to be changed to read ‘a neighborhood citizen involved process.’

Council Member Hughes clarified that in order for this resolution to pass tonight, it would need all three votes: He was okay with 98% of what is in the plan. On the E Street lot – he would go along with changing the language as suggested by Council Member Patterson. He did not support changing the language on First Street - he would clarify the language for ‘non-residential’, but not change it. The issue of design review for all structures in the Historic District will be an issue tonight. He suggested allowing the HPRC to discuss that issue and bring it back to Council. He did not want to hold this up because of that. His other issue is East G Street. He was okay with changing ‘and’ to ‘or’.

Council Member Whitney agreed with Council Member Hughes. He suggested allowing the process to go forward tonight and let the HPRC deal with the issue of design review. He was okay with the E Street lot and parking language as suggested by Council Member Patterson. The issue of changing ‘non-residential’ is too big - 25% was okay. He agreed with the change of ‘and’ to ‘or’. He wanted some assurances from Staff regarding historic structures.

Council Member Patterson agreed on all the points. On the issue of non-residential she suggested adding ‘exclusive of ancillary structures’ to address the issue of garages.

Council Member Hughes was not comfortable with changing the definition of non-residential as suggested by Council Member Patterson.

Public Comment:

1. Dana Dean – Ms. Dean discussed changing the language for three properties. Non-residential is already pretty particular per pages 4-8 and 4-9.

Council Member Patterson made a motion to adopt the resolution, changing ‘and’ to ‘or’, changing the last now therefore be it further resolved to address parking garages or similar uses, delete footnote 3 and apply home occupations to page 4-24, on the line below that - clarifying they cannot be below 300 sq. ft, insert neighborhood and general citizen involvement for the planning of the City-owned parcels, recognize that the HPRC is preparing a draft single-family ordinance and that time is of the essence, East G Street goes back to the original designation of neighborhood general on both sides of the street. Council Member Patterson stated that she would also like to include the proposal to allow a note to allow tattoo services by a use permit if they are a secondary use to a permitted use.

RESOLUTION 07-104 - A RESOLUTION APPROVING THE ADOPTION OF THE DOWNTOWN MIXED USE MASTER PLAN AND THE ASSOCIATED INITIAL STUDY/MITIGATED NEGATIVE DECLARATION

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

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

ORDINANCE 07- - AN ORDINANCE AMENDING THE GENERAL PLAN, AND MUNICIPAL CODE CHAPTER 17.28 (COMMERCIAL DISTRICTS), CHAPTER 17.46 (USE REGULATIONS SUMMARY), CHAPTER 17.48 (PROPERTY DEVELOPMENT REGULATIONS SUMMARY), SECTION 17.70.200 (OUTDOOR FACILITIES), CHAPTER 17.74 (OFF-STREET PARKING AND LOADING REGULATIONS), CHAPTER 17.108 (DESIGN REVIEW) AND ADDING CHAPTER 17.26 (MIXED USE DISTRICTS) OF THE BENICIA MUNICIPAL CODE TO UPDATE DEVELOPMENT STANDARDS AND REGULATIONS FOR THE DOWNTOWN MIXED USE MASTER PLAN

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

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

At 11:58 p.m., Council Member Hughes made a motion to hear item IX-A, as it was a time-sensitive item, and the petitioners had been very patient. There was no second to the motion. Mayor Messina Adjourned the meeting at 11:59 p.m. Mayor Messina then stated that Council needed to hear public comment on the agenda item before the meeting could be adjourned. Vice Mayor Schwartzman stated that if Council was going to hear public comment, it might as well hear the agenda item.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, Council agreed to reconsider item IX-A, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, at 12:00 a.m., Council approved continuing the meeting past 11:00 p.m., on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

ACTION ITEMS:

Petition for a temporary relief under Benicia Municipal Code 8.20.210 (Noise Ordinance):

Captain Ken Davena reviewed the staff report.

Petitioner:

Ms. Trammel, Captain Walsh House, stated that they were asking for the temporary relief for only two occasions, both of which were booked over one year ago. Ms. Trammel reviewed how her business and contracts worked.

Mr. Knox explained how use permits and noise ordinance work.

Public Comment:

1. Don Basso – Mr. Basso spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
2. Bob Sedrell – Mr. Sedrell spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
3. John McDowell – Mr. McDowell spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
4. Bobbie Enderlin – Ms. Enderlin spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
5. Nanette Hardy – Ms. Hardy spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
6. Ron Gessler – Mr. Gessler spoke in support of the temporary relief of the noise ordinance for the Captain Walsh House.
7. Peter Histed – Mr. Histed spoke in opposition of the temporary relief of the noise ordinance for the Captain Walsh House. If the petition is granted, the City must consider changing its laws. When there is a wedding or family barbeque at the site, there is a lot of noise, which is unsettling to his family. He urged Council not to grant the petition.

Ms. McLaughlin suggested spelling out the two specific days in question for the temporary relief, which are September 15, 2007 and October 6, 2007 until 9:00 p.m.

Vice Mayor Schwartzman stated that he sympathized with both parties. He discussed what both parties could have done to be more informed

Council Member Hughes stated that he was supportive of the relief for the two occasions until 9:00 p.m. After the two dates, if the petitioner comes back for additional extensions, he would not be receptive to the request.

Council Member Patterson suggested repositioning the speakers to help with the noise issue. The petitioners should use a decibel meter to police themselves. She was sympathetic to the petitioners however; she did not expect to have such a request from them again. She would like the noise ordinance addressed by Council in the future.

Council Member Whitney supported the relief for the two specific days. On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, Council approved the petition for temporary relief under Benicia Municipal Code 8.20.210 (Noise Ordinance). The petitioner will monitor the decibel level and reposition the speakers to lessen the noise. The motion was approved on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

INFORMATIONAL ITEMS:

Reports from the City Manager:

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:29 a.m. on 9/5/07.

Lisa Wolfe, City Clerk