

**BENICIA CITY COUNCIL
REGULAR MEETING AGENDA**

**City Council Chambers
September 04, 2012
7:00 PM**

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

Please Note:

**Regardless of whether there is a Closed Session scheduled for 6:00 pm,
the open session will begin at 7:00 pm.**

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

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL.

B. PLEDGE OF ALLEGIANCE.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC.

A plaque stating the fundamental rights of each member of the public is posted at the entrance to this meeting room per section 4.04.030 of the City of Benicia's Open Government Ordinance.

IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

A. ANNOUNCEMENTS.

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

2. Openings on Boards and Commissions:

Building Board of Appeals
1 full term
Open Until Filled

SolTrans Public Advisory Committee
1 full term
Open Until Filled

Historic Preservation Review Commission
1 full term
Open Until Filled

Art and Culture Commission
2 unexpired terms
Open Until Filled

Planning Commission
1 Full Term
Open Until Filled

3. Mayor's Office Hours:

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

4. Benicia Arsenal Update: Verbal Update

B. APPOINTMENTS.

C. PRESENTATIONS.

D. PROCLAMATIONS.

1. In Recognition of International Literacy Day

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply

indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT.

B. PUBLIC COMMENT.

VII. CONSENT CALENDAR (7:30 PM):

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

A. Due to technical difficulties with the Sire Minutes Plus Software, the minutes from the August 21, 2012 meeting are not currently available. They should be on the next regular meeting agenda. (City Clerk).

B. APPROVAL OF AN AMENDMENT TO A LEASE AGREEMENT FOR A WIRELESS COMMUNICATION FACILITY AT CITY RESERVOIR 1 SITE WITH STC FIVE, LLC. (Economic Development Manager)

The proposed lease amendment with STC Five, LLC, a Delaware limited liability company extends the term of the existing agreement to the year 2047. The proposed amendment extends the term of the current agreement by twenty-five years. In consideration for this extension the City will receive rent increase, a set annual increase of 3% and a onetime lease extension fee of \$35,000.

Recommendation: Adopt a resolution approving an amendment to a Lease Agreement between the City of Benicia and STC Five, LLC, extending the term of the agreement by twenty-five years and authorizing the City Manager to execute the agreement on behalf of the City.

C. SECOND READING OF ORDINANCE AMENDING MEETING LOCATION FOR REGULAR CITY COUNCIL MEETINGS. (City Attorney)

Earlier this year the City Council amended the Municipal Code to provide for a third regular meeting. Since that time the third regular meeting has been held at the Community Center and not City Hall. This amendment will make the Community Center the default location for the third meeting.

Recommendation: Adopt the ordinance to amend the meeting location

for regular City Council meetings.

D. DENIAL OF CLAIM AGAINST THE CITY BY BOBBY RICHARDSON AND REFERRAL TO INSURANCE CARRIER. (City Attorney)

Claimant asserts the Benicia Police Department violated his 4th Amendment rights regarding his arrest for domestic violence on July 5, 2012.

Recommendation: Deny the claim against Bobby Richardson.

E. GRANTING SIGNATURE AUTHORITY TO SPECIFIED OFFICERS RELATED TO CITY BANK ACCOUNTS. (City Attorney)

In order to conduct the business of the City, various documents related to the City's bank accounts need to be signed. This action designates the officers who are allowed to sign and replaces previous documents that named individuals.

Recommendation: Adopt the resolution granting signature authority to certain officers.

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

VIII. BUSINESS ITEMS (7:45 PM):

A. INTRODUCTION OF A ZONING ORDINANCE AMENDMENT TO REMOVE REMNANT REFERENCES TO THE FORMER DOWNTOWN COMMERCIAL ZONING DISTRICT. (Community Development Director)

In May 2007, the City Council adopted Ordinance No. 07-12, which established regulations for Formula Businesses. Subsequently the City Council adopted the Downtown Mixed Use Master Plan (DMUMP) in September 2007, which updated the standards and regulations in the downtown area. Implementation of the DMUMP resulted in rezoning most of Downtown including the First Street corridor. This rezoning replaced the Downtown Commercial (CD) zoning district, thus eliminating its presence within Title 17. At the time of adoption, the Zoning Ordinance was amended to reflect these changes; however, a reference to the CD zoning district in Section 17.70.350 Formula Business was mistakenly not removed. The purpose of this text amendment is to remove this obsolete regulation pertaining to the CD zoning district and instead reference the DMUMP, which now regulates this area of the City.

Recommendation: Introduce an ordinance to amend Benicia Municipal Code Section 17.70.350 to remove remnant standards and regulations pertaining to the former Downtown Commercial (CD) zoning district and

instead properly reference the Downtown Mixed Use Master Plan.

B. APPROVAL OF THE BENICIA PUBLIC ART PROGRAM PREPARED BY THE BENICIA ARTS AND CULTURE COMMISSION. (Library Director)

The Arts and Culture Commission has prepared a public art program consisting of policy and procedures designed to serve as a guide for the City's acquisition, display, placement, and retention of public art.

Recommendation: Approve, by motion, the Benicia Public Art Program prepared by the Benicia Arts and Culture Commission (BACC).

IX. ADJOURNMENT (9:30 PM):

Public Participation

The Benicia City Council welcomes public participation.

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

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

Disabled Access or Special Needs

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

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended

action does not limit, or necessarily indicate, what action may be taken by the City Council.

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

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

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council. A complete proceeding of each meeting is also recorded and available through the City Clerk's Office.



PROCLAMATION

IN RECOGNITION OF

“International Literacy Day” September 8, 2012

WHEREAS, The United Nations' International Literacy Day annually falls on September 8 to raise people's awareness of and concern for literacy issues in the world; and

WHEREAS, education and literacy are central to our efforts to improve the lives of all people, to guarantee their basic human rights, and to strengthen the capabilities of individuals, families and communities; and

WHEREAS, it is in the best interests of our society to help increase the literacy levels of all its members, yet according to the United Nations Educational, Scientific, and Cultural Organization, about 774 million adults lack minimum literacy skills; and

WHEREAS, the Benicia Public Library's Adult Literacy & English as a Second Language (ESL) Program trains volunteers to provide literacy instruction to participating adults and to help adult literacy learners read to their children and grandchildren, thus helping to build “a community of readers”; and

WHEREAS, in Benicia, International Literacy Day will be celebrated with information throughout the month at the Benicia Public Library.

NOW, THEREFORE, BE IT RESOLVED THAT I, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby proclaim September 8, 2012 as Literacy Awareness Day. I commend the efforts of the hundreds of volunteers, tutors and adult learners who have worked through the Library's Adult Literacy & ESL Program in the past 25 years. I urge all citizens to support the goals of the Library's literacy program to make Benicia a more literate community.



Elizabeth Patterson, Mayor
September 4, 2012

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 4, 2012
CONSENT CALENDAR

DATE : August 13, 2012

TO : City Manager

FROM : Economic Development Manager

SUBJECT : **APPROVAL OF AN AMENDMENT TO A LEASE AGREEMENT FOR A WIRELESS COMMUNICATION FACILITY AT CITY RESERVOIR 1 SITE WITH STC FIVE, LLC**

RECOMMENDATION:

Adopt a resolution approving an amendment to a Lease Agreement between the City of Benicia and STC Five, LLC, extending the term of the agreement by twenty-five years and authorizing the City Manager to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY:

The proposed lease amendment with STC Five, LLC, a Delaware limited liability company extends the term of the existing agreement to the year 2047. The proposed amendment extends the term of the current agreement by twenty-five years. In consideration for this extension the City will receive rent increase, a set annual increase of 3% and a onetime lease extension fee of \$35,000.

BUDGET INFORMATION:

The City will realize an immediate financial gain of \$35,000 as a one-time lease extension fee. In addition, there will be a 15% increase in rental incoming beginning in 2022. Presently, the monthly lease payment is \$2,362. In ten years the new monthly lease rate will be \$3,650.

GENERAL PLAN:

Relevant General Plan Goals:

- Goal 2.43: Allow installation of telecommunications equipment and distribution networks that maintain and protect health, safety, and quality of life and avoid visual clutter.
- Goal 2.5: Facilitate and encourage new uses and development, which provide substantial and sustainable fiscal and economic benefits to the City and community while maintaining health, safety and quality of life.

STRATEGIC PLAN:

Relevant Strategic Plan Goals:

- Strategic Issue 3: Strengthening Economic and Fiscal Conditions
- Strategic Issue 4: Preserving and Enhancing Infrastructure
 - Strategy #3: Address technology needs

BACKGROUND:

On September 4, 1997 the City of Benicia and Sprint Spectrum L.P. entered into a sub-lease agreement for the installation of a wireless communication facility at 1471 Park Road, also referred to as R1 or MT Reservoir. Four years after the original agreement was executed it was amended in 2001 to provide additional square feet for the telecommunications equipment.

Following the budget reductions in the Fall of 2010 staff has been working to secure additional revenue by enhancing existing lease agreements and developing new ones. To that end, staff began negotiations with STC Five, the successor company to Sprint Spectrum, for a lease extension.

STC Five requested an extension to year 2047. In consideration for the twenty-five year extension, City staff and representatives from Crown Castle (agent for STC Five) negotiated a 15% rent increase beginning in 2022, an annual 3% rent escalation and a one-time lease renewal fee of \$35,000.

Staff recommends the adoption of the proposed resolution, approving the amendment to lease agreement with STC Five LLC.

Attachments:

- Proposed Resolution
- Amendment to Lease Agreement

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF BENICIA AND STC FIVE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR A WIRELESS COMMUNICATION FACILITY AT 1471 PARK ROAD, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY

WHEREAS, the City entered into a lease agreement with Sprint Spectrum L.P. on September 4 1997; and

WHEREAS, that lease agreement was subsequently assigned to STC Five LLC; and

WHEREAS, the original agreement is scheduled to expire in 2022; and

WHEREAS, both parties desire to extend the term of the agreement to 2047; and

WHEREAS, STC Five has provided the City adequate consideration including a one-time lease extension fee of \$35,000.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council hereby approves an amendment to the Lease Agreement between the City of Benicia and STC Five LLC, a Delaware limited liability company to extend the term of wireless communication facility at 1472 Park Road, and authorizes the City Manager to execute the agreement on behalf of the City, 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 on the 4th day of September 2012 and adopted by the following vote:

Ayes:
Noes:
Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**SECOND AMENDMENT TO
PERSONAL COMMUNICATIONS SERVICES LEASE AGREEMENT**

THIS SECOND AMENDMENT TO PERSONAL COMMUNICATIONS SERVICES LEASE AGREEMENT (the "Second Amendment") is made effective on the last date of execution of the parties, by and between CITY OF BENICIA, a political subdivision of the State of California (hereinafter "Lessor") and STC FIVE LLC, a Delaware limited liability company, by and through its Attorney In Fact, Global Signal Acquisitions II LLC, a Delaware limited liability company (hereinafter "Lessee").

RECITALS

WHEREAS, Lessor has fee title to a parcel of land in the City of Benicia, County of Solano, located at 1471 Park Road, Benicia, CA 94510; (hereafter "Property"), commonly referred to as MT Reservoir (formerly known as Old R-1); and

WHEREAS, on September 4, 1997, Sprint Spectrum L.P. entered into a Personal Communications Services Lease Agreement (hereafter "Original Lease") to lease a certain portion of Lessor's Property (hereafter "Premises") for the construction and operation of a personal communications service system facility (See Exhibit "A" which is the "Original Lease"); and

WHEREAS, Sprint Spectrum LP subsequently assigned its interest in the Lease to SSLP, its affiliate, which subsequently amended the Lease with Lessor on September 4, 2001, to enable SSLP to obtain an additional 330 square feet of ground space to allow Metro PCS to co-locate with SSLP on the Premises and install certain improvements (See Exhibit "B" which is the "First Amendment" to the "Original Lease"); and

WHEREAS, STC Five LLC is currently the Lessee as successor in interest under the Lease as Amended (hereafter the "Original Lease" and its "First Amendment" are collectively referred to as the "Lease"); and

WHEREAS, Lessor and Lessee desire to amend the Lease on the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Lessor and Lessee agree as follows:

1. Recitals; Defined Terms. The parties acknowledge the accuracy of the foregoing recitals. Any capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

2. Term. The first paragraph of Section 4 entitled "Term" of the Original Lease is deleted and is replaced with the following:

The initial term of this Lease shall be for a period of five years commencing on October 1, 1997 ("Commencement Date") and expiring on September 30, 2002 (the "Initial Term"). At the conclusion of the Initial Term, Lessee shall be entitled to nine extensions of five years each, with the final lease extension expiring on September 30, 2047 (each extension is referred to as a "Renewal Term"). The Initial Term and any Renewal Term shall be collectively referred to as the "Lease Term". The Lease Term shall automatically be extended for each successive Renewal Term unless Lessee notifies Lessor of its intention not to renew at least ninety days prior to the expiration of the then current five year term. Lessor and Lessee hereby acknowledge that Lessee has exercised the first and second Renewal Terms, leaving a balance of seven Renewal Terms.

3. Rent Adjustments. Section 5(b) of the Original Lease entitled "Rent" shall be deleted and replaced with the following:

- a. Regular Rent Increase. Commencing on October 1, 2012, and every year thereafter (each an "Adjustment Date"), the Rent, as defined in Section 5(a) of the Original Lease, shall increase by an amount equal to three percent (3%) of the Rent in effect for the month immediately preceding the Adjustment Date ("Regular Rent Increase").

- b. One-Time Rent Increase. On October 1, 2022, the Rent shall increase by an amount equal to fifteen percent (15%) of the Rent in effect for the month immediately preceding the October 1, 2022 Adjustment Date ("One-Time Rent Increase"). This One-Time Rent Increase replaces and is in lieu of the Regular Rent Increase scheduled to occur pursuant to the Lease on the same date. Following the One-Time Rent Increase, the Rent shall continue to adjust annually pursuant to this Section as set forth above.

- d. Late Charges. Lessee hereby acknowledges that a late payment by Lessee to Lessor or other fees due hereunder will cause Lessor to incur costs not contemplated by this Agreement, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of Rent or a sum due from Lessee is not received by Lessor within five (5) days after the due dates set forth in this Agreement, Lessee shall pay to Lessor a late charge equal to ten percent (10%) of such overdue

amount. The parties agree that such late charge represents a fair and reasonable estimate of the cost Lessor will incur by reason of the late payment by Lessee.

4. Notices. Lessee's notice address as stated in Section 17(c) of the Original Lease and Section 7 of the First Amendment is amended as follows:

Lessee:

STC Five LLC
c/o Crown Castle USA Inc.
E. Blake Hawk, General Counsel
Attn: Legal Department - Real Estate
2000 Corporate Drive
Canonsburg, PA 15317

5. Consideration. Section 4 of the First Amendment shall be deleted and replaced with the following:

Lessee will pay to Lessor a one-time amount of Thirty Five Thousand and 00/100 Dollars (\$35,000.00) for the full execution of this Second Amendment, which shall be payable within sixty (60) days of the full execution of this Second Amendment ("Conditional Signing Bonus"). In the event that this Second Amendment is not fully executed by both Lessor and Lessee for any reason, Lessee shall have no obligation to pay the Conditional Signing Bonus to Lessor.

6. Representations, Warranties and Covenants of Lessor. Section 14 of the Original Lease entitled Title and Quiet Enjoyment is deleted and replaced with the following:

LESSOR represents and warrants (a) that it is the owner of the Site in fee simple, unencumbered by any lien, agreement, mortgage, condition or covenant that would adversely affect LESSEE's use of the Premises pursuant to this Lease; and (b) that it is duly organized, validly existing and in good standing and has all the rights powers and authority to make this Lease and bind itself through the party set forth below as signatory of LESSOR.

LESSEE represents and warrants that it is duly organized, validly existing and in good standing and has all the rights powers and authority to make this Lease and bind itself through the party set forth below as signatory of LESSEE.

7. IRS Form W-9. Lessor agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Second Amendment and at such other times as may be reasonably requested by Lessee. In the event the Lessor's Property is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in the rent to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default if not cured by Lessor within sixty (60) days of receipt of written notice of default and Lessee may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

8. Remainder of Lease Unaffected. Except as explicitly amended therein, the remainder of the Lease (including the Original Lease and the First Amendment) shall remain in full force and effect. Any portion of the Lease that is inconsistent with this Second Amendment shall be interpreted to be consistent with the meaning and intent of this Second Amendment.

Lessor and Lessee have caused this Second Amendment to be duly executed on last date indicated below.

LESSOR:
CITY OF BENICIA,

By: _____ Date: _____

Print Name: _____

LESSEE:
STC FIVE LLC, a Delaware limited liability company
By: Global Signal Acquisitions II LLC, a Delaware limited liability company

By: _____ Date: _____

Print Name: _____

CO-LOCATOR LEASE

AMENDMENT TO PCS SITE AGREEMENT

This Amendment to PCS Site Agreement ("Amendment") is made and entered into as of the 04 day of September, 2001 ("Execution Date"), by and between Sprint Spectrum Realty Company, LLC, a Delaware limited liability company ("SSLP"), and City of Benicia ("Owner").

RECITALS

A. Sprint Spectrum, L.P., a Delaware limited partnership ("Parent") leased from Owner certain real property in Solano County, California pursuant to a PCS Site Agreement signed by Owner on September 4, 1997 ("Agreement"). Parent subsequently assigned its interest in the Agreement to SSLP, its affiliate.

B. SSLP and Owner desire to amend the Agreement on the terms and conditions contained herein to enable SSLP to obtain additional ground space which will enable SSLP to allow Metro PCS ("Co-Locator") to co-locate with SSLP on the Site. This amendment only permits SSLP to allow Metro PCS to co-locate on the site. All additional future sub-leases will require individual amendments to the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the parties hereby agree as follows:

1. The effective date ("Effective Date") of this Amendment shall be the date that SSLP enters into an agreement with Co-Locator whereby SSLP grants to Co-Locator the right to co-locate on the site ("Co-Location Agreement").

2. As of the Effective Date, Owner hereby lease to SSLP the additional 330 square feet of real property described in the attached Exhibit A ("Additional Space"), and Exhibits B-1 and B-2 of the Agreement, as revised to show improvements to be installed pursuant to this Amendment. All references to the Site in the Agreement will be deemed to include the Additional Space.

3. SSLP will pay to Owner rent for the Additional Space ("Additional Rent") in advance in the amount of \$1,250.00 per month. Additional Rent will commence on the first day of the first month following the earlier of the (a) date that Co-Locator commences construction on SSLP's Site or (b) the date which is 90 days from the Effective Date (partial month to be prorated). The Additional Rent will escalate at the same time and in the same manner as described in Section 3 of the Agreement.

4. SSLP will pay to Owner an additional, one-time lump sum payment of ten thousand dollars (\$10,000.00) for off-site mitigation of view corridor impairments resulting from the installation of additional panels on tower during the term of this co-location, and future co-locations (if any) approved by Owner and placed upon this tower.

5. If Co-Locator and SSLP have not entered into a Co-Location Agreement ninety (90) days following the Execution Date, either Owner or SSLP may terminate this Amendment at any time prior to the date that Co-Locator and SSLP enter into the Co-Location Agreement by providing written notice of termination to the other party.

6. SSLP will require Co-Locator to comply with the provisions of the Agreement.

7. Section 17(c) of the Agreement entitled "Notices" is hereby deleted in its entirety and replaced with the following:

"All notices must be in writing and are effective when deposited in US Mail, certified and postage prepaid, or when sent via over night delivery to the following addresses:

If to SSLP: 4457 Willow Road, Suite 202
Pleasanton, California 94588

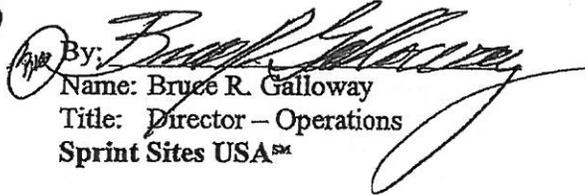
If to Owner: Finance Director
City of Benicia
250 East L Street
Benicia, CA 94510"

8. All capitalized terms not defined herein shall have the meaning given to such terms in the Agreement. Except as explicitly amended hereby, the Agreement remains in full force and effect and is hereby restated, ratified and confirmed in accordance with its original terms, as amended hereby.

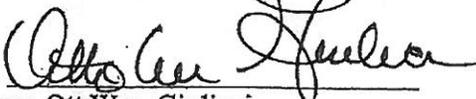
Signature page follows.

IN WITNESS WHEREOF, SSLP and Owner have executed this Amendment as of the date first above written.

SPRINT SPECTRUM REALTY CO., L.L.C.

RP
By: 
Name: Bruce R. Galloway
Title: Director - Operations
Sprint Sites USASM

City of Benicia
A municipal corporation of the State of California.

By: 
Name: Otto Wm. Giuliani
Title: City Manager

APPROVED AS TO FORM:

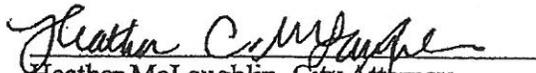
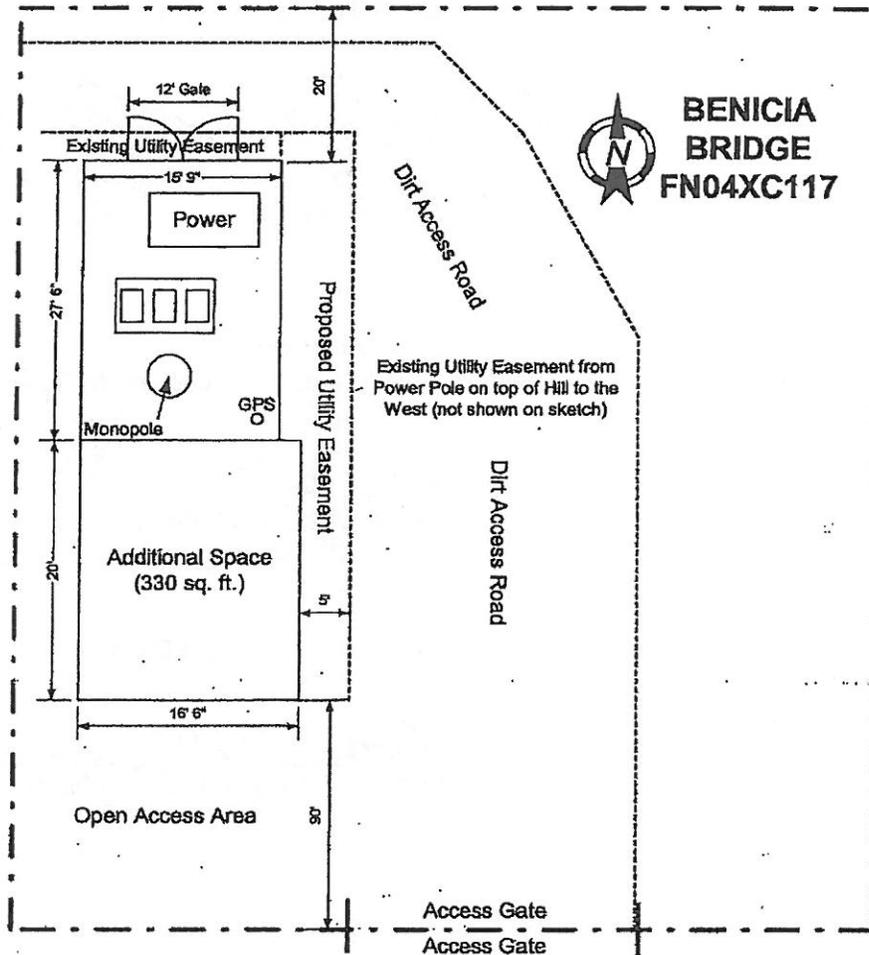

Heather McLaughlin, City Attorney

EXHIBIT A

DESCRIPTION OF "ADDITIONAL SPACE"

Owner is the owner of the real property described below and hereby leases to SSLP the property described below together with non-exclusive easement for reasonable access thereto and to the appropriate, in the discretion of SSLP, source of electric and telephone facilities.

The "Additional Space" is described and/or depicted as follows:



Note: Lease is being made on behalf of METRO PCS

Notes:

This Exhibit is not to scale and may be replaced by a land survey of the Additional Space once it is received by Lessee. Setback of the Additional Space from the Land's boundaries shall be the distance required by the applicable governmental authorities. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments. The type, number and mounting positions and locations of antennas and transmission lines, if depicted, are illustrative only. Actual types, numbers, mounting positions may vary from what is shown above.

Initials
<i>ESS</i>
<i>CRG</i>

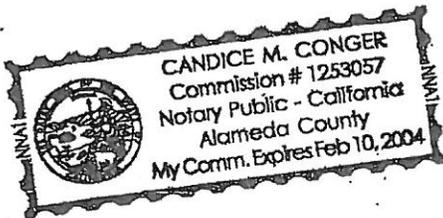
BENICIA BRIDGE. FN04XC117

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Alameda } ss.

On 8/17/01 before me, Candice M. Conger
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Bruce R. Gallaway
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Candice M. Conger
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: amendment to PCS Agreement

Document Date: 8/21/01 Number of Pages: 5

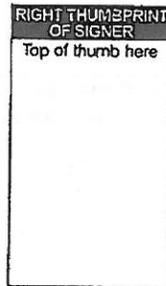
Signer(s) Other Than Named Above: Off Wm. Giuliani

Capacity(ies) Claimed by Signer

Signer's Name: Bruce Gallaway

- Individual
- Corporate Officer — Title(s): Director, OPS
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: Sprint

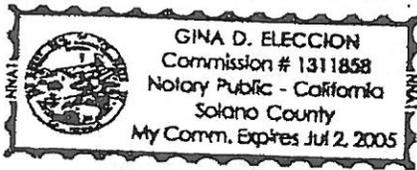


ACKNOWLEDGEMENTS

STATE OF California)
COUNTY OF Solano) ss.

This instrument was acknowledged before me this 6th day of September, 2001, by Otto Wm. Gulliani, known to me or satisfactorily proven to be the person (s) whose name is subscribed to this instrument and acknowledged that he/she executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

WITNESS my hand and official seal.



Gina D Eleccion
Notary Public

STATE OF _____)
COUNTY OF _____) ss.

This instrument was acknowledged before me this _____ day of _____, 2001, by _____, known to me or satisfactorily proven to be the person (s) whose name is subscribed to this instrument and acknowledged that he/she executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

WITNESS my hand and official seal.

Notary Public

STATE OF _____)
COUNTY OF _____) ss.

This instrument was acknowledged before me this _____ day of _____, 2001, by _____, known to me or satisfactorily proven to be the person (s) whose name is subscribed to this instrument and acknowledged that he/she executed the same. If this person's name is subscribed in a representative capacity, it is for the principal named and in the capacity indicated.

WITNESS my hand and official seal.

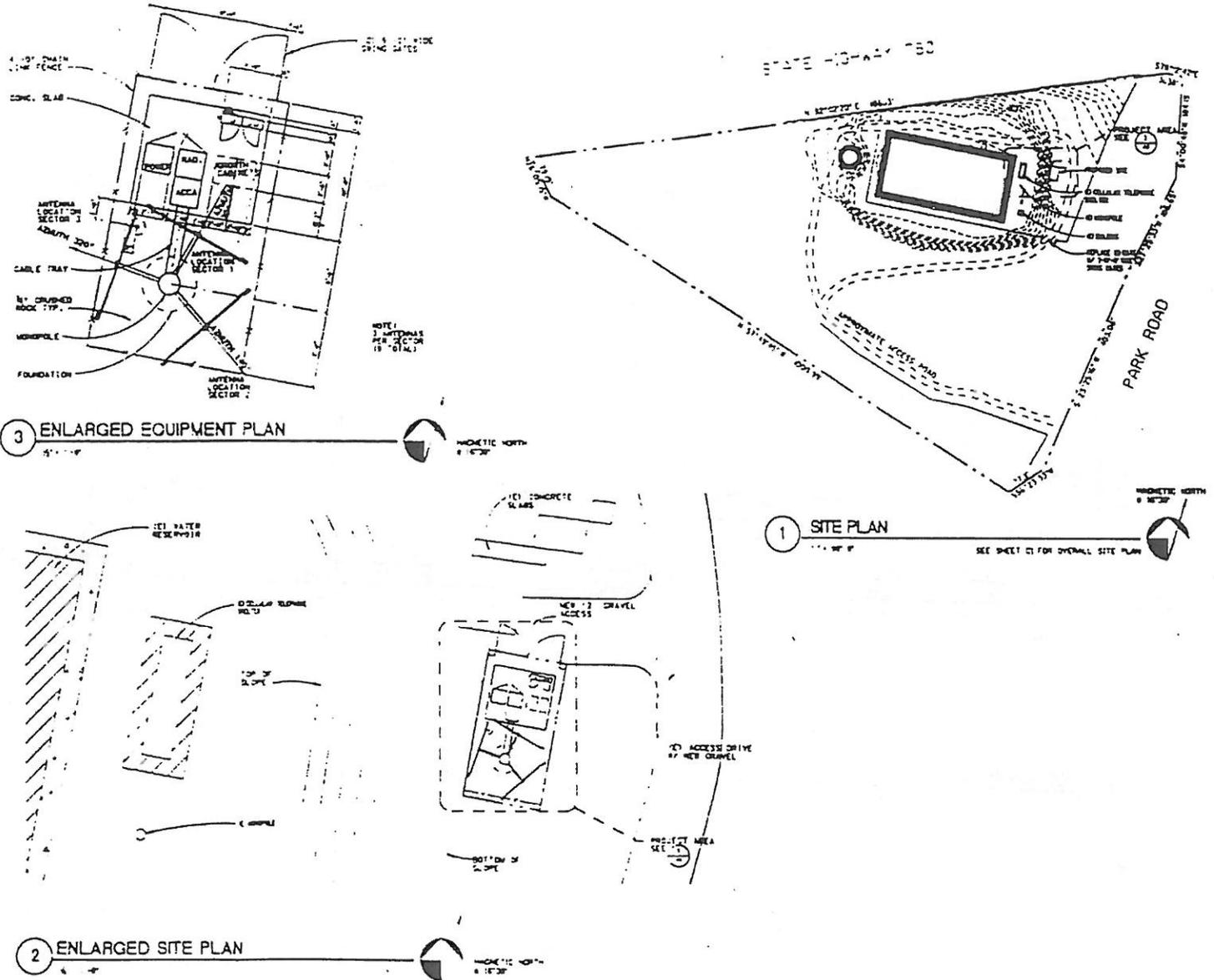
Notary Public

EXHIBIT B-2
to
PCS LEASE AGREEMENT
Description of the Property

Site Name : Benicia Bridge

Site I.D. No.: FN-08-17.1A

Description of Lessee's facilities:



Lessor and Lessee may at Lessee's option replace this exhibit with an exhibit setting forth the legal description of the property on which the Premises is located and/or an as-built drawing depicting the Premises and Lessee's facilities.

Lessor Initials *AWB*
Lessee Initials *GN*

EXHIBIT B-1
to
PCS LEASE AGREEMENT
Description of the Property

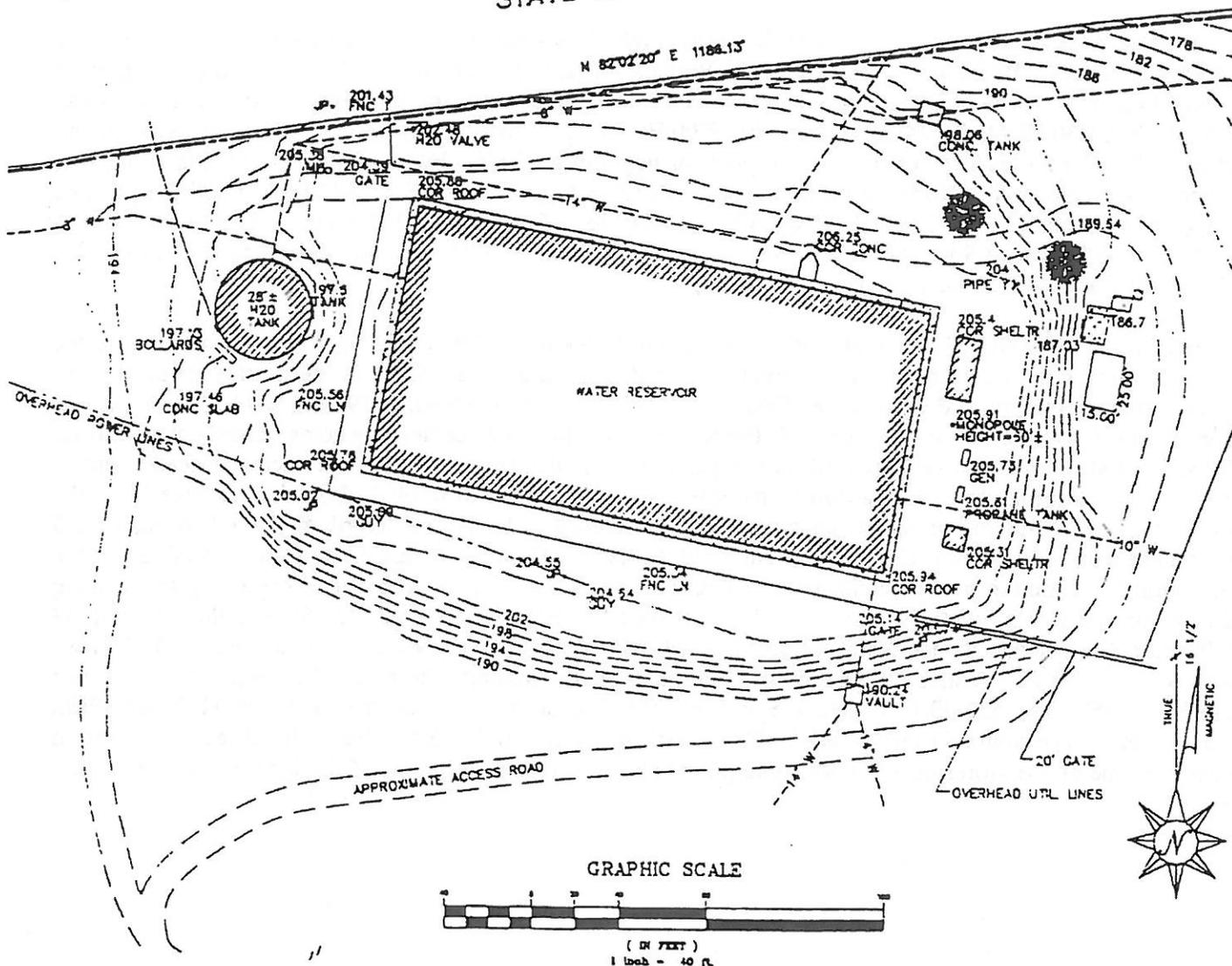
Site Name : Benicia Bridge

Site I.D. No.: FN-08-17.1A

Description of Premises:

A portion of the Lessor's Property situated in the city of Benicia, County of Solano, State of California, depicted as follows:

STATE HIGHWAY 780



Lessor and Lessee may at Lessee's option replace this exhibit with an exhibit setting forth the legal description of the property on which the Premises is located and/or an as-built drawing depicting the Premises and Lessee's facilities.

Lessor Initials *CLW*

Lessee Initials *GM*

EXHIBIT A
to
PCS LEASE AGREEMENT
Description of the Property

Site Name : Benicia Bridge

Site I.D. No.: FN-08-17.1A

Legal Description of Lessor's Property:

The real property situated in the City of Benicia, County of Solano, State of California commonly described as: 1471 Park Road, Benicia, California 94510, Assessor's Parcel Number: 0080-140-660 & 0080-140-670

Commencing at the most Westerly corner of that certain 690.33+/- acre parcel of land identified as Tract No. 1 on the Map entitled: "Benicia Arsenal, California, Boundary Map", dated October 1935 and recorded in Book 8 of Maps, Page 8, Records of Solano County, California; said point also being proposed Southerly right-of-way line South 60 04'30" East, 497.00 feet; North 29 39'00 East, 117.83 feet; South 80 53'22" East, 478.47 feet; and North 82 02'20" East, 216.16 feet to the true point of beginning of Area No. 1; thence continuing along said Southerly right-of-way line North 82 02'20" East, 1186.13 feet, and South 78 12'42" East, 31.38 feet; thence leaving said right-of-way line South 4 00'48" West, 184.19 feet; South 27 25'33" West, 186.65 feet; South 23 25'16" West, 403.08 feet; South 56 23'33" West, 77.11 feet; North 57 49'45" West, 1000.99 feet; and North 26 05'15" West, 79.19 feet to the true point of beginning.

EXCEPTING THEREFROM a strip of land 70 feet in width, the center line of which is described below, to the extent such land falls within that certain parcel of land described as Area No. 1 in the deed from the United States of America to City of Benicia, dated February 26, 1965, recorded March 1, 1965 in Book 1324 of Official Records of the County of Solano at Page 396, Instrument No. 5441, such center line being described as follows: COMMENCING on the Southerly exterior line of parcel of land designated as 1,996.981 acres on the Record of Survey, Benicia Arsenal, Benicia, California, recorded August 26, 1964 in Book 9 of Surveys at Page 11, at the most Westerly terminus of the course designated on said Record of Survey as "North 59 59'41" West, 180.15 feet"; thence from said point of Commencement South 59 59'41" East, along said exterior line, 35.00 feet to the actual point of beginning of the herein described center line; thence from said point of beginning and leaving said exterior line, North 30 00'06" East 856.62 feet; thence North 33 12'21" East, 221.56 feet; thence North 32 26'39" East, 641.61 feet; thence North 22 55'51" East, 559.73 feet; hence North 30 00'06" East, 342.17 feet; thence North 55 56'22" East, 1,150.18 feet to a point that shall hereinafter be referred to as point "A"; thence South 80 30'55" East, 531.93 feet; thence South 59 39'55" East, 451.62 feet; thence South 71 02'05" East, 1,295.76 feet; thence South 41 06'39" East, 620.73 feet' thence South 37 55'12" East 120.68 feet to a point on the exterior line of the aforesaid 1,996.981 acre parcel and the point of terminus of the herein described center line.

Lessor Initials _____

CB

Lessee Initials _____

GM

PERSONAL COMMUNICATIONS SERVICES LEASE AGREEMENT

THIS COMMUNICATION SITE LEASE AGREEMENT dated as of September 4, 1997 is between Sprint Spectrum L.P., a Delaware limited partnership, ("Lessee") whose California address is 4683 Chabot Drive, Suite 100, Pleasanton, CA 94588 and CITY OF BENICIA, a political subdivision of the State of California ("Lessor") whose address is 250 East L Street, Benicia, CA 94510.

1. Premises. The CITY, as Lessor, has fee title to a parcel of land (the "Land") as described in Exhibit A annexed hereto. The CITY leases to SPRINT SPECTRUM L.P. a certain portion of the Land (the "Premises") as described in Exhibit A hereto, together with such rights as CITY may have in those roads, alleys, easements and rights-of-way upon, or adjoining, the Land as may be necessary for access to the Premises.

2. Use. The Premises may be used by Lessee for the installation, removal, replacement, maintenance and operation of the personal communications service system facilities generally depicted in Exhibit B-1 and described on Exhibit B-2, attached hereto and incorporated herein ("Lessee's Facilities"). The Lessee's Facilities are being installed for provision of mobile/wireless communications services including, but not limited to, the transmission and reception of radio communication signals on various frequencies. Recognizing future changes in technology, Lessee may make minor changes to Lessee's Facilities without Lessor's approval and shall be entitled to maintain, repair and replace Lessee's Facilities without Lessor's approval. Substantial changes involving the (i) relocation of Lessee's Facilities, (ii) the substantial increase in size of Lessee's Facilities, or (iii) the installation of additional (as opposed to replacement) facilities will be subject to approval of Lessor prior to installation, which approval shall not be unreasonably withheld or delayed. Lessor agrees, at no expense to Lessor, to cooperate with Lessee, in making application for and obtaining all licenses, permits and any and all other necessary approvals that may be required for Lessee's intended use of the Premises.

3. Conditions Precedent. This lease is conditioned upon Lessee, or Lessee's assigns, obtaining all consents, governmental permits and approvals enabling Lessee, or its assigns, to construct and operate mobile/wireless communications facilities on the Premises.

4. Term. The term of this lease ("Term") shall be five (5) years commencing with the issuance of a local building permit allowing Lessee to construct its mobile/wireless communications facilities on the Premises, or October 1, 1997, whichever is earlier ("Commencement Date"). Lessee shall have the right to extend the Term of this Lease for four (4) additional terms (individually, a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions of this Lease, except that the Rent shall be increased as set forth hereinbelow. This Lease shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing

of Lessee's intention not to extend this Lease at least thirty (30) days prior to the expiration of the initial five year Term or any Renewal Term.

Notwithstanding the foregoing, Lessor shall have the right to terminate this Lease effective upon the expiration of the initial term or any Renewal Term, but only upon written notice provided by Lessor to Lessee no less than twelve (12) months prior to the expiration of the initial term or any Renewal Term. Lessee shall also have the right to relocate the Premises on Lessor's Property, either by building its own antenna support structure or by placing its antennas on any new structure built on Lessor's Property; provided, however Lessor shall have the right to approve any such new location for Lessee's Facilities which approval shall not be unreasonably withheld or delayed. If Lessee and Lessor agree on a new location, this Lease shall not terminate and the relocated Premises shall become the new Premises hereunder, with no changes in terms hereof, including Rent, and shall require Lessee, as a condition to such relocation, to obtain any federal, state and local permits required for such relocation.

5. Rent.

a) Upon the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Six Hundred Dollars (\$600.00) per month ("Rent"). Rent shall be payable on the first (1st) day of each month, in advance, to Lessor's address specified in Paragraph 17, Miscellaneous.

b) Rent shall be adjusted on each anniversary of the Commencement Date to the extent of any percentage change which occurred in the Consumer Price Index (All Items. Base 1982-83=100) as published by the United States Department of Labor, Bureau of Labor Statistics for All Consumers for the San Francisco-Oakland-San Jose Metropolitan area (hereinafter "CPI"). The rental adjustment shall be calculated by multiplying the Rent then in effect by the change in the CPI in effect as of the first day of the month prior to the anniversary date. Notwithstanding the foregoing, in no event shall Rent be increased by more the 5% of the Rent paid during the previous year nor less than the Rent paid during the previous year.

c) If the Commencement Date is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar month in which the Term commences, and thereafter, Lessee shall pay a full month's Rent on the first day of each calendar month, except that payment shall be prorated for the final fractional month of this Lease, or if this Lease is terminated before the expiration of any month for which Rent should have been paid.

6. Improvements: Utilities Access

a) Lessee shall have the right (but not the obligation) at any time following the full execution of this Lease and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections and engineering surveys (and soil tests where

applicable) and other reasonably necessary tests (collectively, "Tests") to determine the suitability of the Premises for Lessee's Facilities (as defined herein) and for the purpose of preparing for the construction of Lessee's Facilities. During any Tests or pre-construction work, Lessee will have insurance as set forth in Section 12, Insurance. Lessee will notify Lessor of any proposed Tests or pre-construction work and will coordinate the scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable scheduling of same with Lessor. If Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee will notify Lessor and this Lease will terminate.

b) Subject to any applicable FCC (defined below) rules and regulations, Lessee has the right to construct, maintain and operate on the Premises Lessee's Facilities, including radio communications facilities, including but not limited to radio frequency transmitting and receiving equipment, batteries, utility lines, transmission lines, radio frequency transmitting and receiving antennas and a monopole supporting structure and improvements substantially as depicted on Exhibits B-1 and B-2 attached hereto. In connection therewith, Lessee has the right to do all work necessary to prepare, add, maintain and alter the Premises for Lessee's communications operations and to install utility lines and transmission lines connecting antennas to transmitters and receivers subject to Lessor's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. All of Lessee's construction and installation work shall be performed at Lessee's sole cost and expenses and in a good and workmanlike manner and shall not interfere with Lessor, or any prior lessee or licensee's facilities. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of the Lease.

c) Lessor shall provide access to Lessee, Lessee's employees, agents, contractors and subcontractors to the Premises twenty-four (24) hours a day, seven (7) days a week, at no charge to Lessee. Lessor represents and warrants that it has full rights of ingress or egress from the Premises and the authority to grant the same to Lessee, and hereby grants such rights to Lessee to the extent required to construct, maintain, install and operate Lessee's Facilities on the Premises. Lessee's exercise of such rights shall not cause undue inconvenience to Lessor.

d) Lessor shall maintain all access roadways from the nearest public roadway to the Premises in a manner sufficient to allow Lessee reasonable access thereto. Lessor shall be responsible for maintaining and repairing such roadways, at its sole expense, except for any damage caused by Lessee's use of such roadways. If Lessee causes any damage, it shall promptly repair same.

e) Lessee shall have the right to install utilities at Lessee's expense, and to use and/or improve the present utilities on or near the Premises (including but not limited to the installation of emergency back-up power and separate electric meter). Lessee shall have the right

to place utilities on (or to bring utilities across) Lessor's Property in order to service the Premises and Lessee's Facilities as depicted on Exhibit B-1 and B-2 attached hereto.

f) Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities.

g) Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or earlier termination of the Term or any Renewal Term; provided, Lessee repairs any damage to the Premises caused by such removal. Upon the expiration or earlier termination of this Agreement, if Lessee desires to remove any or all of the Lessee's Facilities, unless required otherwise by Lessor, it shall remove the foundation for such portion of the Facilities to a level of two feet below grade level and then repair the ground to grade level. If at the expiration or earlier termination of this Agreement, Lessee does not desire to remove some portion or all the Lessee's Facilities, Lessor shall have the option to have such Facilities remain intact. Lessee shall remove any portion which Lessor does not desire to remain on the Premises in the manner provided herein above. Lessee shall not be required to remove any foundation more than two (2) feet below grade level, unless Lessor determines that the foundation must be removed to accommodate a determined use of the site.

7. Interference with Communications. Lessee's Facilities shall not disturb the communications configuration, equipment and frequency which exist on Lessor's Property on the Commencement Date ("Pre-existing Communications"), and Lessee's Facilities shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Lessor shall not permit any new use of or any new activity by a third party upon any portion of Lessor's Property in a way which interferes with the communications operations of Lessee described in Paragraph 2, above. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore, Lessee shall have the right to bring action against such Third Party to enjoin such interference or to terminate the Lease immediately upon notice to Lessor. Notwithstanding the foregoing, pre-existing communications operating in the same manner as on the Commencement Date shall not be deemed interference.

8. Taxes. This Lease may create a possessory interest in the property subject to property tax. Lessee shall pay all personal property and possessory interest taxes as may be legally and properly imposed or assessed against Lessee's Facilities.

9. Termination. This Lease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, (ii) by Lessor for any reason or for no reason, provided Lessee delivers written notice of termination to Lessor prior to the Commencement Date, (iii) by Lessee if it does not obtain or maintain licenses, permits or other approvals necessary to the construction or

operation of Lessee's Facilities, or (iv) by Lessee if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including but not limited to a take back of channels or change in frequencies, or (v) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including without limitation signal strength or interference.

10. Destruction of Premises. If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgement to hinder its effective use of Lessor's Property, Lessee may elect to terminate this Lease as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Lease shall cease as of the date of the damage or destruction.

11. Condemnation. If a condemning authority takes all of Lessor's Property, or a portion which is Lessee's reasonable opinion is sufficient to render the Premises unsuitable for Lessee's use, then this Lease shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding, each party shall be entitled to make a claim against the condemning authority for just compensation (which for Lessee shall include the value of Lessee's Facilities, moving expenses, prepaid rent, business dislocation expenses, bonus value of the lease and any other amounts recoverable under condemnation law). Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain, shall be treated as taking by a condemning authority.

12. Insurance.

a) Lessee shall maintain the following insurance: (i) Commercial General Liability with limits of \$5,000,000.00 per occurrence, (ii) Automobile Liability with a combined single limit of \$1,000,000.00 per accident, (iii) Worker's Compensation as required by law, and (iv) Employer's Liability with limits of \$1,000,000.00 per occurrence.

b) Lessee to this Lease shall maintain standard form property insurance ("All Risk" coverage) equal to at least 90% of the replacement cost covering its property. Lessee waives any rights of recovery against injury or loss due to hazards covered by its property insurance. Lessee shall name Lessor as an additional insured with respect to the above Commercial General Liability insurance and provide an endorsement naming Lessor and its officers, agents and employees as additional insured.

c) Lessee shall indemnify and hold harmless Lessor, its officers, officials, directors, employees, agents and volunteers from and against all claims, damages, losses and expenses including attorney fees to the extent arising out of the use or occupancy by Lessee of the leased Premises described herein by any negligent act or omission by Lessee, anyone directly or indirectly employed by them or anyone for whose acts, any of them may be liable, except where

caused by the sole negligence or willful misconduct of Lessor.

13. Assignments. Lessee may not assign, or otherwise transfer all or any part of its interest in this Lease or in the Premises without the prior written consent of Lessor, such consent not to be unreasonably withheld or delayed; provided however, that Lessee may assign its interest to its parent company, any subsidiary or affiliate.

14. Title and Quiet Enjoyment.

a) Lessor warrants that it has full right, power and authority to execute this Lease. Lessor further warrants that Lessee shall have quiet enjoyment of the Premises during the Term of this Lease or any Renewal Term.

b) Lessee has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice. If, in the opinion of Lessee, such title report shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor.

15. Repairs. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors.

16. Environmental. With the exception of pesticides and other chemicals used in connection with Lessor's landscaping, water treatment, and other activities on the Premises. Lessor represents and warrants that to the best of its knowledge as of the date of this Agreement, it has not received any notice of the unlawful presence, use, treatment or storage of hazardous materials, hazardous substances or hazardous wastes (as such terms are defined under federal, state and local law) or the violation of any laws relating to the environmental condition of the Lessor's Property or the Premises. Lessee agrees that it will not use, generate, store or dispose of any hazardous materials, hazardous substances or hazardous wastes, on, under, about or within the Premises in violation of the law.

17. Miscellaneous.

a) If any provision of the Lease is invalid or unenforceable with respect to any party, the remainder of this Lease or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

b) This Lease shall be binding on and inure to the benefits of the successors and permitted assignees of the respective parties.

c) Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight mail to the address of the respective parties set forth below:

Lessor: City of Benicia
250 East L Street
Benicia, CA 94510
ATTN: Alan Nadritch
Telephone: (707) 746-4223
Facsimile: (707) 747-8115

Lessee: Sprint Spectrum L.P.
4683 Chabot Drive, Suite 100
Pleasanton, CA 94588
ATTN: Richard Tang
Telephone: (510) 468-7800
Facsimile: (510) 468-7990

Lessor or Lessee may from time to time designate any other address for this purpose by written notice to the other party.

d) This Lease shall be governed under the laws of the State of California. Any actions regarding this agreement shall be brought in Solano County.

e) The substantially prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

f) Terms and conditions of this Lease which by their sense and context survive the termination, cancellation or expiration of this Lease will so survive.

g) Upon request either party may require that a Memorandum of Lease be recorded in the form of Exhibit "C".

h) This Lease constitutes the entire Lease and understanding between the parties and supersedes all offers, negotiations and other leases concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties.

18. Lessee shall indemnify, defend and hold harmless Lessor, its officers, agents, and employees from and against any claim or suit arising from or in any manner connected to this lease or the performance or non performance of any of the obligations under this Lease.

Lessor and Lessee have executed this Lease as of the date first written above.

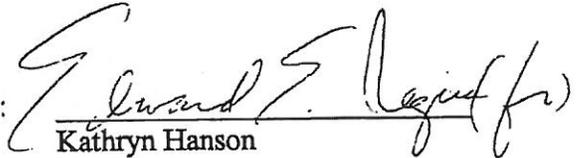
Lessor:

Lessee:

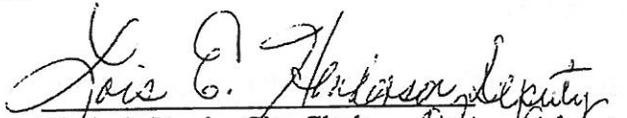
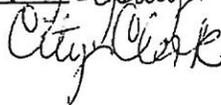
City of Benicia,
a political subdivision
of the State of California

Sprint Spectrum, L.P.

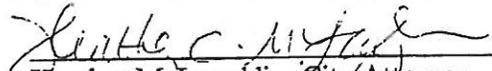
By: 
Otto Wm. Giuliani
City Manager

By: 
Kathryn Hanson
Director of Engineering and
Operations

Attest:


Linda S. Purdy, City Clerk 

Approved as to form:


Heather McLaughlin, City Attorney

F:\PWA\Agree\Sprint.797

AGENDA ITEM
CITY COUNCIL MEETING DATE - AUGUST 21, 2012
CONSENT CALENDAR

DATE : July 27, 2012
TO : City Council
FROM : City Attorney
SUBJECT : **SECOND READING OF ORDINANCE AMENDING MEETING LOCATION FOR REGULAR CITY COUNCIL MEETINGS**

RECOMMENDATION:

Adopt the ordinance to amend the meeting location for regular City Council meetings.

EXECUTIVE SUMMARY:

Earlier this year the City Council amended the Municipal Code to provide for a third regular meeting. Since that time the third regular meeting has been held at the Community Center and not City Hall. This amendment will make the Community Center the default location for the third meeting.

BUDGET INFORMATION:

There is no fiscal impact.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

The City Council earlier this year approved an ordinance to allow a third regular meeting each month. The Benicia Municipal Code ("BMC") provides the location of the regular meeting is the Council Chamber unless the City Manager decides, the Council Chamber is not large enough to accommodate the number of persons likely to attend or special facilities are required for a particular meeting. This ordinance amends the BMC to provide that the Community Center is the default location for the third regular meeting. Currently only , audio recordings, and not video recordings, are made of the meetings in the Community Center due to the high cost of hiring remote video equipment.

Attachment:

- Ordinance

CITY OF BENICIA

ORDINANCE NO. 12-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B OF SECTION 2.04.010 (MEETING TIME AND PLACE) OF CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE IS AMENDED TO DESIGNATE THE MEETING LOCATION FOR THE FOURTH TUESDAY REGULAR MEETINGS

Section 1. Subsection B of Section 2.04.010 (Meeting time and place) of Chapter 2.04 (City Council) of Title 2 (Administration and Personnel) of the Benicia Municipal Code is amended to designate the meeting location for the fourth Tuesday regular meetings to read as follows:

B. The place of the first and third Tuesday regular meeting is the Council Chamber, City Hall, 250 East L Street, Benicia, California. The place of the fourth Tuesday regular meeting is the Community Center, 370 East L Street, Benicia, California. The location of the meeting may be changed by the city manager if it appears:

1. The Council Chamber or the Community Center is not large enough to accommodate the number of persons likely to attend any meeting; or
2. Special facilities in accordance with BMC Title 4 are required for a particular meeting.

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 24TH day of July, 2012, and adopted at a regular meeting of the Council held on the 21st day of August, 2012, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 4, 2012
CONSENT CALENDAR

DATE : August 23, 2012

TO : City Council

FROM : City Attorney

SUBJECT : **DENIAL OF CLAIM AGAINST THE CITY BY BOBBY RICHARDSON AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against Bobby Richardson.

EXECUTIVE SUMMARY:

Claimant asserts the Benicia Police Department violated his 4th Amendment rights regarding his arrest for domestic violence on July 5, 2012.

BUDGET INFORMATION:

The amount of the claim is \$650,000.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A-there is not a relevant Strategic Plan Goal

BACKGROUND:

Upon rejection of the claim, the City Clerk should issue the attached rejection notice. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachments:

- Complaint
- Summons in Civil Action
- Civil Cover Sheet
- Rejection Notice

1 Your Name
2 Address
3 City, State, Zip Code
4 Telephone Number

6 IN THE UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA

8 Your Name,

9 Plaintiff, *Bobby C. Richardson Pro Se*

10 vs.

No.

11 Defendants in the Complaint,

12 Defendant(s).

COMPLAINT

13 *Benicia Police Dept /*

14 A civil complaint can be typed or printed by hand. Your complaint must be
15 legible and clearly stated, so that it is easily understood. Clearly set out your grievance,
16 against whom and what you would like the court to do to correct the situation. The
17 format of a civil complaint is clearly outlined in the Federal Rules of Civil Procedure.
18 You may add additional pages on numbered pleading paper as necessary. Please refer
19 to Federal Rule of Civil Procedure 10.

20 You must sign your complaint.

22 Sample Format for Pro Se Litigants

UNITED STATES DISTRICT COURT

for the

Sacramento ~~Eastern~~ District of California

Plaintiff

v.

Civil Action No.

Benicia CA, Police Department
Defendant

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Benicia Police Department
200 East L. Street
Benicia, CA 94510

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS <u>Bobby C. Richardson Pro Se</u></p> <p>(b) County of Residence of First Listed Plaintiff <u>Solano</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number)</p>	<p>DEFENDANTS <u>Benicia Police Department</u></p> <p>County of Residence of First Listed Defendant <u>Solano</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input checked="" type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width: 100%;"> <tr> <td>Citizen of This State</td> <td>PTF <input checked="" type="checkbox"/> 1</td> <td>DEF <input checked="" type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td>PTE <input checked="" type="checkbox"/> 4</td> <td>DEF <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTE <input checked="" type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input checked="" type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTE <input checked="" type="checkbox"/> 4	DEF <input checked="" type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Benicia Police violated my 4th Amendment Rights

Brief description of cause:
Upon receiving a call from my estranged wife on 7/4/12, BPD entered later ill

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 650.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

of Case #

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Dear Sir:

NOTICE IS HEREBY GIVEN that to the extent the claim you presented to the City of Benicia on July 19, 2012 is seeking to recover damages incurred by you prior to January 19, 2012, that claim is being returned because it was not presented within six months after the events or occurrences as required by law. See sections 901 and 911.2 of the California Government Code. Because the claim was not presented within the time allowed by law, no action was taken on the claim.

Your only recourse at this time, in connection with the claims being returned without action, is to apply without delay to the City of Benicia for leave to present a late claim. See sections 911.4 to 912.2, inclusive, and section 946.6 of the California Government Code. Under some circumstances, leave to present a late claim will be granted. See section 911.6 of the California Government Code.

You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

NOTICE IS ALSO HEREBY GIVEN that to the extent the claim you presented to the City of Benicia on July 19, 2012 is seeking to recover damages incurred by you on or after January 19, 2012, that claim was rejected by the City of Benicia on _____, 2012.

WARNING

Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See California Government Code section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

As allowed by California Code of Civil Procedure sections 128.5 and 1038, the City of Benicia will seek to recover all incurred costs and attorneys' fees from you and your attorney if you ultimately serve the City of Benicia with a lawsuit and it is later determined the suit was not brought in good faith or on reasonable grounds. If you feel you must name the City of Benicia in the lawsuit to protect yourself, we urge you not to serve the City of Benicia with a summons and complaint until you are certain there is a justiciable controversy with the City of Benicia.

Very truly yours,

City of Benicia
(Name of Person Authorized to Send Rejection Notices)

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 4, 2012
CONSENT CALENDAR

DATE : August 28, 2012

TO : City Council

FROM : City Attorney

SUBJECT : **GRANTING SIGNATURE AUTHORITY TO SPECIFIED OFFICERS
RELATED TO CITY BANK ACCOUNTS**

RECOMMENDATION:

Adopt the resolution granting signature authority to certain officers.

EXECUTIVE SUMMARY:

In order to conduct the business of the City, various documents related to the City's bank accounts need to be signed. This action designates the officers who are allowed to sign and replaces previous documents that named individuals.

BUDGET INFORMATION:

There is no budget impact.

GENERAL PLAN:

N/A

STRATEGIC PLAN:

N/A

BACKGROUND:

The city has established bank accounts to allow it to operate. These accounts require signature authority for various actions including writing checks. In the past, the City specifically named individuals. This resolution uses titles instead of specific names so that it does not have to be changed every time there is a change in people. As in the past, two signatures are required: either a staff person and an elected official or two elected officials. Use of the titles will allow the City to comply with the Government Finance Officers Association (GFOA) best practices to prevent bank account fraud by keeping the signature cards current.

Attachment:

- Resolution

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE SIGNING AND ENDORSING OF CHECKS AND OTHER FINANCIAL INSTRUMENTS

WHEREAS, it is necessary for the City to establish various bank accounts for general operating purposes and thereafter deposit, or draw, portions of such funds to pay the City's outstanding accounts and other obligations and debts as they become due; and

WHEREAS, as a check and balance system, the City desires all checks, drafts and other instruments for payment from said accounts at said offices be signed on behalf of the City of Benicia by two people; and

WHEREAS, any checks, drafts, wire transfers, or other instruments for the payment of money, endorsed on behalf of the City for deposit with or collection by said bank, may be endorsed in the name of the City or by written or stamped endorsements, without designation or signature of the person making such endorsement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENICIA that the following officers are hereby authorized to draw and sign on behalf of the City of Benicia all checks, drafts, wire transfers, and other instruments for payment from said accounts, including those drawn to the individual order of any officer or other person authorized to sign the same:

1. Any one of the following: City Manager, Administrative Services Director, Finance Director, or Assistant Finance Director and the City Clerk or City Treasurer, or
2. Any two of the following: the Mayor, the City Clerk or City Treasurer.

As used in this section, "officers" includes those persons acting in an acting or interim capacity for the particular office.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized and directed to certify to said banks that this Resolution has been duly adopted and to certify the signatures.

BE IT FURTHER RESOLVED that said banks are hereby requested and authorized to receive, honor, certify or pay any such instrument signed or endorsed in accordance with this Resolution and the certification then in effect as above provided for, including any such instrument drawn or endorsed to the personal order of, or presented for negotiation or encashment by any official signing, endorsing, or purporting to bear the facsimile signature of same.

BE IT FURTHER RESOLVED that prior resolutions regarding bank signatures, except those related to Local Agency Investment Fund (LAIF) and to bonds if the bond documents required other officers, are hereby superseded and said banks are authorized and requested to rely and act upon the duly certified signatures pursuant to this resolution until the signatures are superseded.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council on the 4th day of September 2012 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 4, 2012
BUSINESS ITEMS

DATE : August 6, 2012

TO : City Manager

FROM : Community Development Director

SUBJECT : **INTRODUCTION OF A ZONING ORDINANCE AMENDMENT TO REMOVE REMNANT REFERENCES TO THE FORMER DOWNTOWN COMMERCIAL ZONING DISTRICT**

RECOMMENDATION:

Introduce an ordinance to amend Benicia Municipal Code Section 17.70.350 to remove remnant standards and regulations pertaining to the former Downtown Commercial (CD) zoning district and instead properly reference the Downtown Mixed Use Master Plan.

EXECUTIVE SUMMARY:

In May 2007, the City Council adopted Ordinance No. 07-12, which established regulations for Formula Businesses. Subsequently the City Council adopted the Downtown Mixed Use Master Plan (DMUMP) in September 2007, which updated the standards and regulations in the downtown area. Implementation of the DMUMP resulted in rezoning most of Downtown including the First Street corridor. This rezoning replaced the Downtown Commercial (CD) zoning district, thus eliminating its presence within Title 17. At the time of adoption, the Zoning Ordinance was amended to reflect these changes; however, a reference to the CD zoning district in Section 17.70.350 Formula Business was mistakenly not removed. The purpose of this text amendment is to remove this obsolete regulation pertaining to the CD zoning district and instead reference the DMUMP, which now regulates this area of the City.

ENVIRONMENTAL REVIEW:

In accordance with the California Environmental Quality Act (CEQA), environmental review of the Formula Business text amendments and Downtown Mixed Use Master Plan (DMUMP) were completed during their relative adoption process. The formula business ordinance was determined to be categorically exempt per Section 15308, which excludes actions by regulatory agencies to protect the environment. For the adoption of the DMUMP, an Initial Study was conducted to determine whether the draft DMUMP could have a significant adverse effect on the environment. The result of that evaluation was the

preparation and adoption of a Mitigated Negative Declaration. No additional environmental review is required.

BUDGET INFORMATION:

No budget impacts are associated with this item.

STRATEGIC PLAN:

N/A

GENERAL PLAN:

Staff has identified the following General Plan Goal that relates to the proposed text amendment:

Goal 2.1: Preserve Benicia as a small-sized city.

“Small-sized city” refers to Benicia’s open and uncluttered space, safe neighborhoods and streets, pedestrian-friendly streets, the “Main Street” character of First Street, open vistas of hills and water, historic sites and buildings, strong sense of community and civic pride, good schools, well developed community facilities including parks and a library, low-crime, small town atmosphere, and numerous community-wide celebrations, cultural events, and family-oriented activities.

BACKGROUND:

In December 2006, the City Council established a subcommittee of Vice-Mayor Schwartzman and Council Member Patterson to determine how to address formula businesses. The subcommittee directed staff to draft an ordinance to initiate Council discussion of options for regulating formula businesses. At its February 20, 2007 regular meeting, Council considered the draft ordinance and directed the Planning Commission to provide a recommendation to Council regarding the drafted ordinance.

In 2007, the Economic Development Board and Planning Commission considered the draft formula businesses ordinance and recommended regulation of formula businesses and big box businesses. At its May 1, 2007 meeting, the City Council adopted Ordinance No. 07-12 to regulate formula businesses.

At its July 26, 2012 meeting, the Planning Commission recommended approval of the draft ordinance to remove the remnant references to the CD, Downtown Commercial zoning district by adopting Resolution No. 12-6 attached.

One of the goals in the adoption of the Formula Business regulations was to preserve the small-town atmosphere of Benicia and more specifically the downtown area.

Zoning Ordinance Section 17.12.030 defines "Formula business" as: **an eating and drinking establishment that maintains any of the following features in common with more than four other establishments in the nine Bay Area counties: standardized array of services and/or merchandise, trademark, logo, service mark, symbol, sign, decor, uniform, menu, or other similar standardized feature.**

Staff evaluated several different possibilities for incorporating the DMUMP that would meet the intent of Section 17.70.350 Formula Business. When the regulations for formula business were added, restricting the regulations to the Downtown Commercial (CD) zoning district and Solano/Davies Square areas provided a set boundary. The adoption of the Downtown Mixed Use Master Plan (DMUMP) essentially established a new boundary for Benicia's downtown. This new boundary is much larger than that of the CD zoning district. (See attached maps).

The proposed amendment would clarify that the formula business regulations apply to the Town Core, Town Core-Open and Neighborhood General-Open zoning districts in addition to Solano/Davies Square. The Neighborhood General zoning district is primarily occupied by residential uses (single-family and multi-family) and allows only limited types of commercial uses that do not include eating and drinking establishments. The table below in Figure 1 shows a simplified outline of the land use regulations in the DMUMP. The use classifications in the DMUMP that coincide with the definition of "formula business" are "Bar, tavern, night club" and "Restaurant, café, coffee shop".

Figure 1: Downtown Mixed Use Master Plan Retail/Office Use Table

	Town Core (TC)	Town Core-Open (TC-O)	Neighborhood General (NG)	Neighborhood General-Open (NG-O)
Bar, tavern, night club	P ¹	UP ²	-	-
Restaurant, café, coffee shop	P	MUP	-	MUP

P = Permitted Use

UP = Use Permit (Commission-level)

MUP = Minor Use Permit (Staff-level)

- = Not Permitted

1= Operating between 9pm and 7am requires a Use Permit

2 = Operating between 9pm and 7am is not permitted

The proposed amendment would replace reference to the CD zoning district with the entire DMUMP area in the regulations for formula business in order to

include all parcels previously regulated. It is possible to meet the intent of the formula business regulations by limiting the regulations to Town Core, Town Core-Open and Neighborhood General-Open zoning districts only. However, given that the language in Section 17.70.350 regulates Solano/Davies Square as a geographic area, it is more consistent to extend the regulations to the DMUMP as a geographic area as well.

The proposed amendment is shown with strikeout through the text to be removed and new text underlined.

Section 17.70.350 Formula Business. In the combined ~~CD district~~ Downtown Mixed Use Master Plan and Solano/Davies Square areas (bounded by Military, N and West and East Second Streets), no more than one establishment of any particular formula business shall be allowed.

Staff also evaluated replacing the CD zoning district with the Town Core (TC) zoning district only. The proposed text amendment would essentially change the language in Section 17.70.350 to be TC district instead of CD district. The former CD zoning district encompassed approximately 150 parcels throughout downtown including, but not limited to the First Street corridor. The TC zoning district is exclusive to the First Street corridor and therefore includes fewer parcels, approximately 70 parcels. Although regulating Formula Business through the TC zoning district would cover the main commercial corridor, Benicia's small-town atmosphere is established by more than First Street. There are many parcels along the east and west lettered streets that contribute to the promotion and success of Benicia's small-town character. Limiting the regulations to First Street only would continue to allow many of the downtown parcels to have an unlimited number of formula businesses. Consequently, staff recommends extending the limitation of formula businesses to the DMUMP as set forth in the proposed text amendment.

Attachments:

- ❑ Draft Ordinance
- ❑ Planning Commission Resolution
- ❑ Downtown Map (Town Core vs. Downtown Commercial)
- ❑ Downtown Mixed Use Master Plan Area

CITY OF BENICIA

ORDINANCE NO. 12-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.70.350 (FORMULA BUSINESSES) OF CHAPTER 17.70 (SITE REGULATIONS), OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO UPDATE THE DEVELOPMENT STANDARDS AND REGULATIONS REFLECTING THE ELIMINATION OF THE CD DOWNTOWN COMMERCIAL ZONING DISTRICT WITH ADOPTION OF THE DOWNTOWN MIXED USE MASTER PLAN.

Section 1.

The first sentence of Section 17.70.350 (Formula businesses.) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

Section 17.70.350 Formula Business. In the combined Downtown Mixed Use Master Plan and Solano/Davies Square areas (bounded by Military, N and West and East Second Streets), no more than one establishment of any particular formula business shall be allowed.

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 ordinance was introduced at a regular meeting of the City Council on the 4th day of September, 2012, and adopted at a regular meeting of the City Council held on the _____, 2012, by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

RESOLUTION NO. 12-6 (PC)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
RECOMMENDING CITY COUNCIL APPROVAL OF A ZONING TEXT
AMENDMENT TO SECTION 17.70.350 TO REMOVE REFERENCE TO THE CD,
DOWNTOWN COMMERCIAL ZONING DISTRICT AND INCORPORATE THE
DOWNTOWN MIXED USE MASTER PLAN**

WHEREAS, at its February 20, 2007 meeting, the City Council received public comment and considered an ordinance to regulate formula businesses; and

WHEREAS, at its February 28, 2007 meeting, the Economic Development Board considered the draft formula businesses ordinance and adopted a motion in favor of limiting the number of operations of any particular formula business in the combined First Street and Solano/Davies Square area; and

WHEREAS, the Planning Commission at a regular meeting on March 8, 2007, conducted a hearing, heard public comment and reviewed the proposed draft formula business ordinance and staff report and recommended approval to the City Council; and

WHEREAS, at its May 1, 2007 meeting, the City Council received public comment and adopted Ordinance 07-12 to regulate formula businesses; and

WHEREAS, at its September 4, 2007 meeting, the City Council adopted the Downtown Mixed Use Master Plan which modified the zoning district designation for the majority of the Downtown. The result of that rezoning was the elimination of the CD, Downtown Commercial zoning district; and

WHEREAS, at its regularly scheduled July 12, 2012 meeting, the Planning Commission conducted a hearing, heard public comment and reviewed the proposed Zoning Text Amendment eliminating the remaining references to the no longer existing CD, Downtown Commercial zoning district.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends the City Council approve the attached draft Ordinance containing a zoning text amendment to remove the remaining reference to the no longer existing CD, Downtown Commercial zoning district.

BE IT FURTHER RESOLVED THAT the Planning Commission of the City of Benicia finds that:

- a) A formula business ordinance would be categorically exempt from environmental review by California Environmental Quality Act Guidelines Section 15308, which excludes actions by regulatory agencies to protect the environment.
- b) The proposed zoning text amendment is consistent with all the applicable objectives and provisions of Title 17 of the Benicia Municipal Code and the Downtown Mixed Use Master Plan; and
- c) The proposed text amendment is consistent with General Plan Goal 2.1: "Preserve Benicia as a small-sized City" and Policy 2.1.1 as follows:

Goal 2.1: "Small-sized city" refers to Benicia's open and uncluttered space, safe neighborhoods and streets, pedestrian-friendly streets, the "Main Street" character of First Street, open vistas of hills and water, historic sites and buildings, strong sense of community and civic pride, good schools, well developed community facilities including parks and a library, low-crime, small town atmosphere, and numerous community-wide celebrations, cultural events, and family-oriented activities.

Policy 2.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above).

"Compatible" means "capable of existing together without detrimental effects." This policy applies broadly and citywide to residential and nonresidential uses. Its purpose is to ensure harmonious development in terms of intensity, and architectural character. It is not intended to restrict new buildings or additions to exact duplications of styles or heights; nor is it intended to limit new uses or densities to those found in adjacent existing development. This policy also is not intended to restrict the conversion of single-family dwellings to apartments if the parcel is zoned for multifamily use and if there are other multifamily uses nearby.

* * * *

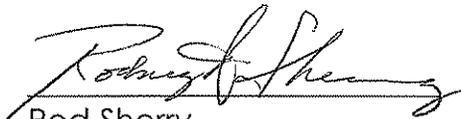
On a motion of Commissioner Thomas, seconded by Commissioner Syracuse, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 12TH day of July, 2012, and adopted by the following vote:

Ayes: Commissioners Dean, Oakes, Thomas Syracuse and Chair Sherry

Noes: None

Absent: Commissioners Smith and Grossman

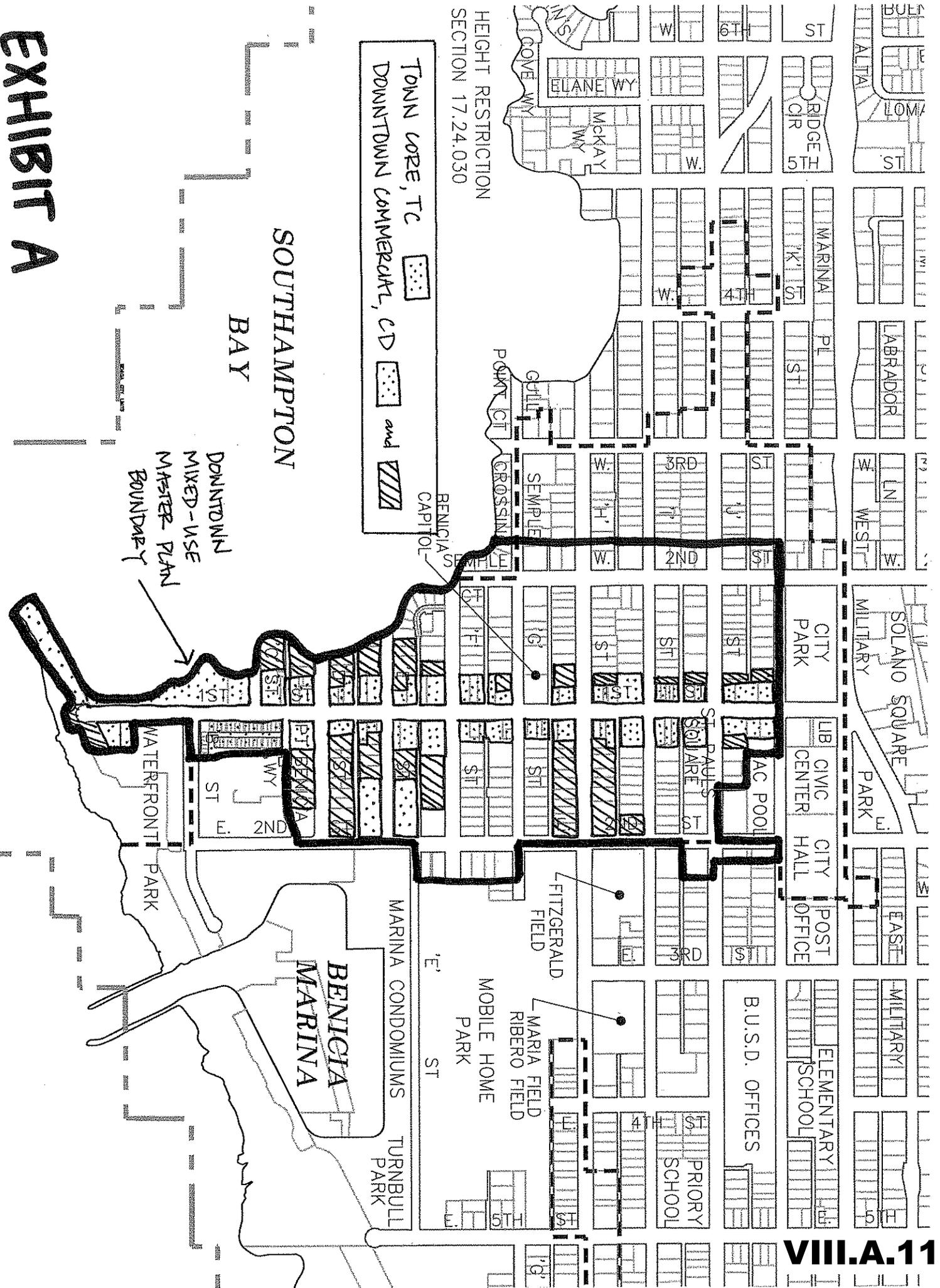
Abstain: None

A handwritten signature in cursive script, appearing to read "Rod Sherry".

Rod Sherry

Planning Commission Chair

EXHIBIT A



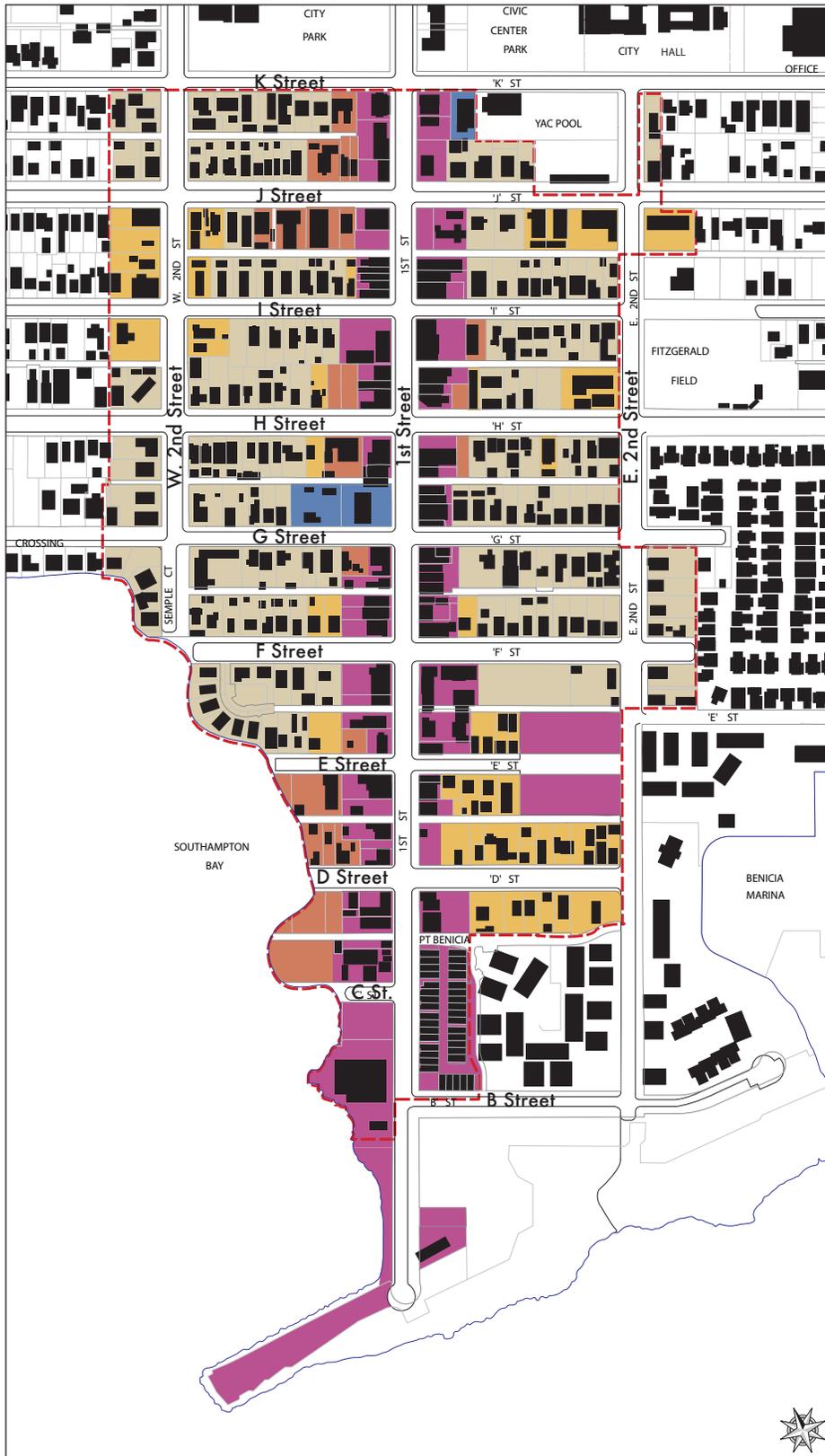
HEIGHT RESTRICTION
SECTION 17.24.030

TOWN CORE, TC [dotted pattern]
DOWNTOWN COMMERCIAL, CD [solid black fill] and [diagonal hatched pattern]

DOWNTOWN
MIXED-USE
MASTER PLAN
BOUNDARY

Regulating Plan

Downtown Mixed Use Master Plan Area and Parcels South of B Street



Zoning Districts

- Town Core
- Town Core-Open
- Neighborhood General
- Neighborhood General - Open
- Public & Semi-Public

AGENDA ITEM
CITY COUNCIL MEETING DATE - SEPTEMBER 4, 2012
CONSENT CALENDAR

DATE : July 31, 2012

TO : City Manager

FROM : Library Director

SUBJECT : **APPROVAL OF THE BENICIA PUBLIC ART PROGRAM PREPARED BY THE BENICIA ARTS AND CULTURE COMMISSION**

RECOMMENDATION:

Approve, by motion, the Benicia Public Art Program prepared by the Benicia Arts and Culture Commission (BACC).

EXECUTIVE SUMMARY:

The Arts and Culture Commission has prepared a public art program consisting of policy and procedures designed to serve as a guide for the City's acquisition, display, placement, and retention of public art.

BUDGET INFORMATION:

Funding collected for public art through fundraising or developer fees will be placed in a revenue account established for a Public Art Fund.

GENERAL PLAN:

Relevant Goals and Policies:

- Goal 3.6: Support and promote the arts as a major element of Benicia's community identity.
 - Policy 3.6.3: Enhance public places with art.

STRATEGIC PLAN:

Relevant Strategic Plan Issue and Strategies:

- Strategic Plan Issue #3: Strengthening Economic and Fiscal Conditions
 - Strategy #1: Implement Economic Development Strategy

- Strategic Plan Issue #5: Maintain and Enhance a High Quality of Life
 - Strategy #3: Promote arts and culture
 - Action (b): Pursue funding sources for arts and culture activities

SUMMARY:

As part of their strategic plan, the Commission has established the following mission statement:

The City of Benicia Arts and Culture Commission (BACC) exists to ensure that arts and culture are integral to our community's quality of life, economic vitality and central identity.

The BACC recognizes that the inclusion of public art in the City of Benicia will promote the cultural heritage, history, and artistic development of our City. Public Art will enhance our City's character and identity, contribute to economic development and tourism, add warmth, beauty, and accessibility of public spaces and will expand the experience of citizens with our visual art.

The Public Art Policies and Procedures together form a Public Art Program designed to serve as a comprehensive guide for the City's acquisition, display, placement and retention of public art. Included is an outline of responsibilities for the administration and management of the City of Benicia's public art program. The Public Art Program has been separated into two sections: the first section (Policies) provides the overarching goals, objectives and policies for the program, while the second section (Procedures) provides guidance for the practical implementation of the program.

The policy section includes information on creation of a Public Art Fund that would create a fund for gifts, bequests and other monies specifically designated for public art. The hope of the Arts and Culture Commission is that sufficient funds may eventually be placed in this fund to allow the purchase of one or more pieces of public art for the City of Benicia.

Information establishing the criteria by which the artwork and artists will be selected is also included in the policy section, along with details on maintenance, ownership, deaccessioning and other details specific to the program.

General information on criteria for the placement of the artwork is included, with guidelines for identification of sites and placement on private commercial property.

The second section outlines specific procedures to be followed and is designed to provide practical steps for the process.

Included in the Procedures section is information to be used for selection of art and artists, details on the artist selection panel, responsibilities of the City Council and City of Benicia, as well as the process for including city departments and

other commissions. Affected city departments have reviewed this document and added input pertaining to related responsibilities.

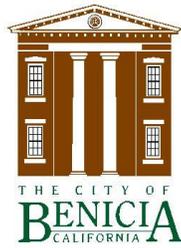
This document replaces Resolution No. 90-53, Gifts of Art, and creates a clear process for public art in Benicia.

The Public Art Committee, in coordination with the BACC and the City of Benicia, shall be the manager of the Public Art Program, as outlined in the included policies and procedures.

The Arts and Culture Commission has worked extensively on this document over the past year and believes it will provide a framework for public art within the city.

Attachment:

- BACC Approved Public Arts Program



Rev. June 15, 2012
Approved by Benicia
Arts and Culture
Commission 6/14/12

BENICIA PUBLIC ART PROGRAM

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REASONS FOR THE PROGRAM

The Benicia Public Art Program is designed to serve as a guide for the City's acquisition, display, placement, and retention of public art. This document is separated into two sections: the first provides the overarching policies for the program and the second provides guidance for the practical implementation of procedures.

Planning Documents

City of Benicia General Plan

Goal 3.6: Support and promote the arts as a major element of Benicia's community identity.

- Policy 3.6.3: Enhance public places with art.

City of Benicia Strategic Plan

Strategic Plan Issue #5: Maintain and Enhance a High Quality of Life

- Strategy #3: Promote arts and culture

SECTION I – POLICIES

POLICY STATEMENT

In the interest of making public art an integral element of the city of Benicia, the City of Benicia shall establish and maintain a program for the creation and acquisition of public artwork.

The Benicia Arts and Culture Commission (BACC) will be responsible for the Public Art Program including, but not limited to, the approval of public art guidelines, policies and procedures, and an annual public art plan. The BACC will include information on the Public Art Program in their annual report to the City Council and will make recommendations for any substantive changes in the program to the City Council for review and approval. The BACC will make recommendations to the City Council on commissions for arts, artwork, and art acquisitions and will advise the planning commission or the city council, as the case may be, on any required public art dedications pursuant to section 16.32.120.

PURPOSE

The City of Benicia recognizes that the inclusion of public art will promote the cultural heritage, history, and artistic development of our City.

For purposes of this document, the term public art refers to works of art in any media that have been planned and executed with the specific intention of being sited or staged in the public domain, including publicly accessible buildings. Two types of art are described in this document: 1) public art sited on publicly owned spaces; and, 2) public art sited on private commercial property. For public art on large-scale commercial developments, specifics will be determined on a case by case basis depending on the scope of the project.

Public art may be accepted as a gift or donation or as a work commissioned by the City upon the recommendation of the Arts and Culture Commission to the City Council.

This document establishes funding mechanisms, procedures, criteria, roles, and responsibilities for the administration and management of the City of Benicia Public Art Program. The Benicia Arts and Culture Commission will manage the Public Art Program as outlined in the following policies and procedures.

GOALS AND OBJECTIVES OF THE PUBLIC ART POLICY

The Public Art Program seeks to develop an enduring and varied collection of artwork that enhances, enlivens, and enriches Benicia, while reflecting the value and history of our community by:

- ❑ Enhancing our City's character and identity
- ❑ Contributing to economic development and tourism
- ❑ Adding warmth, beauty, and accessibility to public spaces
- ❑ Expanding the experience of citizens with visual art
- ❑ Promoting excellence and demonstrating diversity and variety of media
- ❑ Increasing public exhibition opportunities for new and experienced artists
- ❑ Encouraging public participation and interaction with public spaces kindling awareness of how surroundings impact experience
- ❑ Enriching the public environment for both residents and visitors through the addition of public art and the incorporation of the arts

FUNDING

Public Art Fund

The City shall establish a special revenue fund designated as the "Public Art Fund" for the deposit of gifts, bequests to the City for public artwork, and other funds for works of art in accordance with the Public Art Program. The Public Art Fund is used exclusively as a means of isolating and identifying all monetary transactions pertaining exclusively to the City's Public Art Program.

Per Benicia Municipal Code section 16.32.120, a “subdivider shall be required to dedicate land, pay fees, or both, for fire stations, library sites, child day care, public art or any other public facilities pursuant to, and in order to implement the provisions of the general plan regarding such facilities”. Any funds collected for public art shall be placed in the Public Art Fund.

Funding for the Public Art Program will be in compliance with Benicia Municipal Code section 2.104.080 (B): [The Arts and Culture Commission will] make recommendations to the city council regarding the funding of community art projects, including the search for private and public grants. The BACC may also seek grants and gifts of public art and may coordinate fundraising activities for the purpose of raising funds for public art.

SELECTION OF ARTISTS AND ARTWORK

Criteria of Artwork

Public art is acquired through loan, purchase, commission, and donation or by contract with the artist. It should be recognized that the acquisition of public art can be controversial and at times technically difficult. Public art submissions will be considered based on the following criteria:

- ❑ Media: All visual art forms and materials will be considered.
- ❑ Style: Artwork reflecting any school, movement, or method style will be considered.
- ❑ Range: Artwork may be functional or non-functional; conceptual or tangible; portable or site-specific; folk art, craft or fine art; temporarily or permanently installed; borrowed or purchased.
- ❑ Character: Artwork must be appropriate in scale, media, style, and content to the project and environment to which they will relate.
- ❑ Permanence: Consideration should be given to structural and surface integrity, and must be durable and require minimal maintenance.
- ❑ Design Elements: In addition to meeting aesthetic requirements, public art may also be asked to serve as a means of defining architectural space, e.g. establish focal points, clarify, identify or indicate boundaries, modify and/or enhance specific spaces.
- ❑ Public Safety/Liability: Artwork and art places must be free of unsafe conditions or other factors bearing on public liability.
- ❑ Diversity: The Public Art Program should strive for diversity, reflecting the social, ethnic and cultural fabric of the City.

Works of art or proposals submitted by the project architect and/or members of the design team and artists who are members of or related to the Benicia Arts and Culture Commission or the Artist Selection Panel will be excluded from consideration.

Artists' works will be the original product of the artists' own creative efforts and will not infringe on any third party's copyrights or other intellectual property rights.

Methods of Selecting Artist or Artists

Artists' work will be chosen on the basis of qualifications as demonstrated by past work, past experience with public art, and successful completion of previous projects similar in scope and demand. In addition, new and emerging artists including students may be considered. Selected artwork will be original work completed by the submitting artist(s). The various methods of selection, based upon the objectives of the project, are as follows:

- ❑ Open Competition: All artists are welcome to apply, subject to limitations established by Artist's Selection Panel.
- ❑ Direct Selection: Artist(s) chosen directly by an Artist's Selection Panel
- ❑ Limited Competition or Invitational: A small number of artists are invited by Artist's Selection Panel to submit proposal or, in some circumstances, may be paid to develop a proposal.
- ❑ Donation / Gift of art: Triggered by a citizen offer to contribute artwork to the Public Art Program, the Artist's Selection Panel will review the work in terms of whether it satisfies stated "Criteria of Artwork" elements, and whether a suitable and appropriate site exists to exhibit the artwork.

See "Section II – Procedures" for specific description of each type of selection.

MAINTENANCE

All permanent public art must be durable and require minimal maintenance. All permanent works of art must have a life expectancy of 20 years or more. An analysis of anticipated maintenance requirements will precede the selection of each public artwork.

OWNERSHIP

Ownership/Copyright/Reproduction/Resale

Artwork purchased, commissioned or accepted as a donation shall be the property of the City of Benicia unless otherwise stipulated. All conveyances of art to the City shall be made in writing, in a form prescribed by the City Manager, signed by the artist or the owner at the time of conveyance, and said written conveyance shall provide that the right of ownership is expressly transferred to

the City. Any conveyance of a work of art shall be subject to whatever terms or conditions that are both (a) contained in said written conveyance and (b) specifically accepted by the City Council as provided in this paragraph.

All work of art conveyed to the City shall be displayed in a public place to be selected by the City, at its sole discretion. The City retains the right to transfer the work from one site to another, as it deems necessary.

At the time of application, the artist and City relationship will be defined by an agreement addressing copyright, reproduction, and resale issues.

In the event that the work of art is accepted by the City as provided herein, the City Manager shall accept in writing and provide the artist or owner at the time of the conveyance a copy of said written acceptance.

Non-Destruction/Alteration

If any alteration occurs to the public art piece, after the receipt of the work by the City, whether intentional or accidental, the artist has the right to request the work of art shall no longer be represented to be the work of the artist.

Deaccessioning

The City of Benicia, in partnership with the BACC, may recommend the deaccessioning of artwork for one or more of the following reasons in the event that it cannot be re-sited:

- ❑ The condition or security of the artwork cannot be reasonably guaranteed.
- ❑ The public art has been damaged or has deteriorated, has faults of design and repair is impractical or unfeasible.
- ❑ In the case of site-specific artwork, the artwork's relationship to the site is altered because of changes to the site.

In the event that the City should determine that the work of art conveyed to the City is no longer of value to the City, then the work of art shall be offered by the City Manager, for purposes of display, to the Library Board, ownership of the work of art to remain in the City. In the event that the Library Board either (i) does not accept the work of art for display or (ii) after accepting, failing, in the sole judgment of the City, to display the art in a public place for a substantial period of each year, then the work of art shall revert to the City for either display, sale, transferral or disposal in accordance with City policies, resolutions, and applicable law.

Proceeds from sales of deaccessioned artwork shall be used to fund additional purchases or commissions conforming to the Criteria and Selection methods described in this document.

IDENTIFYING SITES FOR ARTWORK

In conjunction with the Public Art Program established by the Benicia Arts and Culture Commission, the Benicia Arts and Culture Commission and City staff will collaborate to:

1. Identify possible sites for artwork.
2. Evaluate the site, or alternative sites, using the following criteria:
 - a. Visibility and public access to the site
 - b. Traffic patterns to and around the site
 - c. Existing works of art or design elements within the site's proximity
 - d. Existing architectural and natural features adjacent to the site
 - e. Potential impact of the art on the surrounding environment
 - f. Potential impact of the art on other City departments, residents, and businesses
 - g. Future development potential of the site
 - h. Public safety
 - i. Maintenance requirements
 - j. Accessibility in accordance with the Americans with Disabilities Act

After acceptance of donated art or conceptual approval for a project by the City Council, members of the Benicia Arts and Culture Commission will:

- ❑ Consult with affected City departments
- ❑ For sites located on City owned property, obtain approval through appropriate commissions.
- ❑ Advise the Benicia City Council of any development requirements associated with the site.

Based on the preceding evaluation, the Benicia Arts and Culture Commission will make a recommendation to the City Council to approve the site for the proposed artwork.

PLACEMENT OF PUBLIC ART ON PRIVATE COMMERCIAL PROPERTY

The most successful public art projects are those that are well integrated into their sites. The selection and involvement of the artist in the early stages of the design process can help accomplish this integration. Often works of high quality fail in public situations because they are out of scale in their location, hidden by an architectural feature, situated in an unused site, or improperly lighted. Site-specific artwork is encouraged.

The selection of a site is as important as the selection of the artist. The criteria for the selection of the artwork and site listed in these Policies and Procedures apply to both municipal and private development projects.

When funding for and incorporation of a piece of public art onto private commercial property is the sole responsibility of the property owner, the Benicia Arts and Culture Commission may assist by informing the applicant of the criteria for artwork and art selection opportunities included herein.

An application for placement of public art on private commercial property must be submitted to the Community Development Director and must include the following:

- Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed public art, including an accurate description of the colors and materials to be used
- An appraisal or other evidence of the value of the proposed public artwork, including acquisition and installation costs.
- A site plan clearly showing the location of the public art and its relation to pedestrian paths of travel on the site and in the vicinity, including the street elevations of adjacent properties.
- A narrative statement to demonstrate that the public art will be displayed in an area open and freely available to the general public, or that public accessibility will be provided in an equivalent manner based on the characteristics of the artwork or its placement on the site.
- Draft covenants, conditions and restrictions to be recorded with the County Recorder, which require the property owner, successor in interest, and assigns to:
 - Maintain the public art in good condition as required by the City's Public Art Policy and Procedures
 - Indemnify, defend, and hold the City and related parties harmless from any and all claims or liabilities from the public art, in a form acceptable to the City Attorney
 - Maintain liability insurance, including coverage and limits as may be specified by the City's Risk Manager.

SECTION II – PROCEDURES

ABOUT THE SELECTION OF ARTISTS AND ARTWORK

Introduction

The Benicia Arts and Culture Commission will recommend public art projects.

ARTIST SELECTION PANEL

The Public Art Committee or designees shall serve as the Artist Selection Panel. The artist selection process shall occur during the schematic design phase of a project to which the public art relates and the results reported to the Benicia Arts and Culture Commission. When the schematic design for the project is reviewed, the Benicia Arts and Culture Commission will present a recommendation for approval of the schematic design to the City Council.

Artist Selection Panel Composition

The Artist Selection Panel (Panel) shall be comprised of a minimum of five (5) voting members, including two (2) members of the Benicia Arts and Culture Commission and one (1) member of City staff. The remaining members shall include members of the public at large appointed by the Benicia Arts and Culture Commission. The Benicia Arts and Culture Commissioners and City staff shall serve in an advisory capacity to the Panel and artists with respect to the physical opportunities and constraints of the site, the historic background of the department(s) residing in the building where the artwork will be placed, and other building design and structural information that may assist the panel in evaluating proposals.

Conflict of Interest of Panelists and Committee Members

Any persons who would receive financial gain from the selection of artists or artworks are ineligible to serve on an Artist Selection Panel. Such persons include gallery dealers, artists' agents, and brokers. Relatives of the Benicia Arts and Culture Commission, or any persons, who have a personal relationship with competing artists that could be identified as a conflict of interest, are not eligible to serve on Artist Selection Panels. Any artist selected to serve on the Artist Selection Panel is precluded from having his/her work considered for any public art projects or commissions.

Artist Selection and Design Review Process

The selection process will proceed as follows:

1. The Benicia Arts and Culture Commission shall issue written instructions to the Artist Selection Panel (Panel) members detailing their duties and responsibilities related to the selection.
2. The Panel shall choose one of the methods of selecting artists or artwork listed below.
3. The Panel shall use the credentials, proposals, and/or materials submitted by artists to evaluate them with the Artists Selection Criteria.
4. The Panel shall recommend to the Benicia Arts and Culture Commission an artist or artists to be commissioned for the project; an artist or artists to develop design proposals for the project; or an artist or artists whose existing work is to be selected for the project. In the case where an artist or artists have been asked to prepare a specific design proposal, the panel shall review the proposals and shall select the artwork in accordance with the established criteria.
5. If a consensus cannot be reached, a vote shall be taken with the majority carrying the decision. Panelists shall each have one vote, and no panelist shall have the right to veto. The Panel shall have the option of making no selection.
6. The Panel's recommendation shall be submitted to the Benicia Arts and Culture Commission for approval.
7. The Benicia Arts and Culture Commission shall review the panel's recommendation and vote to approve, reject, or refer the recommendation back to the Panel for further review with changes recommended by the Commission.
8. The Benicia Arts and Culture Commission will make a recommendation for approval to the City Council.

Methods of Selecting Artist or Artists

The various methods of selection are as follows:

Open Competition

Any professional artist is eligible to participate, subject to limitations established by the Benicia Arts and Culture Commission.

A Request for Qualifications (RFQ) or a Request for Proposals (RFP) shall be developed. The RFQ or RFP shall be distributed as widely as possible through local media, the arts media, and through direct mailings to artists and art organizations. The RFQ or RFP shall include:

1. A description of the project including its goals and the project parameters, including the characteristics of the site, potential approaches to the project and any physical or legal restrictions that may apply.
2. The anticipated scope of work for the artist.
3. Application procedures, including requested materials, eligibility factors, and timelines.
4. Selection procedures.
5. Criteria for the selection of artist(s) and artwork(s).
6. The project budget.

Direct selection

For public art projects that fall under the budget amount required for a competitive request for proposal (RFP) process pursuant to City policies, the Benicia Arts and Culture Commission may:

1. In compliance with the City's bidding process, select one or more artists to work on the project through direct invitation of qualified candidates by means of direct mailings of the RFQ or RFP, or through phone contact with artists, arts organizations, galleries, or other sources for the purpose of soliciting names of artists to be considered for a project.
2. Develop a short list of qualified artists to present to a selection panel for review and selection of one or more artists for the project. Artist(s) or completed artwork(s) may be chosen directly by the Benicia Arts and Culture Commission upon recommendation from a selection panel.

Any selection for professional services shall be in accordance with City policies.

Limited competition or invitational

For public art projects that fall under the budget amount required for a competitive Request for Proposal (RFP) or Request for Qualifications (RFQ) process pursuant to the City's policies and bidding process, the Benicia Arts and Culture Commission may invite artists to submit proposals, a completed artwork, or otherwise participate in a public art project. Applicants may be pre-screened and evaluated relative to the minimum criteria and qualifications outlined in the Request for Qualifications (RFQ) or Request for Proposals (RFP). The Artist Selection Panel reviews the slate of qualified candidates. In some instances, an artist may be paid to develop a proposal to meet the criteria established by the project proposal.

Donations

Donations may also be accepted or rejected in accordance with the Criteria for Artwork described previously (page8) and using the Artists Selection Criteria following. A recommendation to accept or reject any gift, bequest or devise of art will be made to the City Council by the Benicia Arts and Culture Commission.

Artist Selection Criteria

The Artist Selection Panel shall evaluate an artist through consideration of the following criteria:

1. Artistic quality, including excellence in the artwork's craftsmanship, originality in conception, and integrity of the materials used.
2. The appropriateness of the artwork to the surrounding community to include its scale, form, content, and design.
3. The relationship of the artwork to the social and cultural identity of the community where the artwork will occur.
4. The artist's proposed budget and the artist's ability to successfully complete the project on time and within the proposed budget.
5. The artist's proposed materials and their appropriateness to the project with regard to structural and surface integrity, protection against theft, vandalism, public safety and weathering, and an analysis of long-term maintenance needs.
6. The artist's proposed method of installation of the artwork and an evaluation of safety and structural factors involved in the installation.
7. The durability of the materials and the projected cost of maintenance of the artwork.

8. Artists will be considered for commission on the basis of their professional qualifications, as demonstrated by past work, relevant professional experience, the appropriateness of a specific proposal to the project goal and parameters, and the probability that the artist can successfully complete the project.
9. Artists shall not receive more than two commissions from the City of Benicia in any five-year period, nor shall artists receive more than one commission in consecutive years. These restrictions shall apply to individual artists, artists who are commissioned as part of a team, and/or any artists who will receive credit for any commissioned project.
10. Although preference may be given to local artists on any given project, the Benicia Arts and Culture Commission shall encourage a wide diversity in style, scale, and media in public art, and encourages the exchange of ideas and creative skills from all artists.

Approval for Placement of Public Art on Private Commercial Property

1. The applicant presents the application for acceptance of public art to the Community Development Director for review.
2. The Community Development Director forwards the completed application to the Arts and Culture Commission to review the proposed art.
3. Upon the recommendation of the Benicia Arts and Culture Commission, the public art application is forwarded to the Parks, Recreation and Cemetery Commission, the Planning Commission or the Historic Preservation Review Commission for final review as to the consistency with applicable City plans and policies.
4. All approvals for placement of public art on private property will be obtained prior to issuance of a building permit.

Definitions

Public Art: Art sited in a manner accessible and visible to the public.

Public Art Master Plan: A planning document including public art policies and guidelines, recommending sites and expenditures for public art work, and describing public art's relationship to the City of Benicia's General Plan.

Public Art Program: The Benicia Public Art Policy and Procedures and the Benicia Municipal Code ordinance on Public Art.

Public Spaces: All publicly and privately owned spaces, indoors or outdoors, which are generally accessible to the public.

Permanent Works of Art: Artwork or art placed within a permanent site as opposed to a temporary site.

Temporary Works of Art: Artwork that is installed in a given place for a limited time.

RESPONSIBILITIES

City of Benicia

- ❑ Exert reasonable efforts to ensure that the artwork is available for public viewing, and, when available for public viewing, is displayed in an appropriate and respectful manner.
- ❑ Exert reasonable efforts to protect the artwork from theft, vandalism, or other damages. Notwithstanding the foregoing, the City of Benicia shall not be liable for any damage to or theft of the artwork.
- ❑ The City of Benicia shall be responsible for the proper cleaning, maintenance and protection of the work after its installation, considering any written instructions provided by the artist at the time of application.
- ❑ In partnership with the Benicia Arts and Culture Commission, recommend the deaccessioning of artwork if appropriate.

City Council

- ❑ Authorize funds for major pieces public art.
- ❑ Accept or reject gifts, loans, or public art on behalf of the City.
- ❑ Approve contracts and agreements with artists.
- ❑ Authorize budget requests or capital expenditures from the General Fund for the purchase of major pieces of art.
- ❑ Authorize the deaccessioning of artwork if appropriate.

Parks and Community Services Department

- ❑ Collaborate with the Benicia Arts and Culture Commission or designees to identify and evaluate sites for exterior artwork.
- ❑ Work with the Benicia Arts and Culture Commission or the Public Art Committee to evaluate maintenance needs of public art work.
- ❑ For projects residing in City parks, assist the Benicia Arts and Culture Commission in coordinating with the Parks, Recreation and Cemetery Commission.

Public Works Department

- ❑ Work with the Benicia Arts and Culture Commission or designees to assess potential site restrictions for public artwork and incorporate necessary changes based on the assessment into the design of each project.

- Coordinate installation of the artwork with the implementation of building projects.

Benicia Arts and Culture Commission

Manage and administer all implementation aspects of the Public Art Program as follows, coordinating with others including, but not limited to, the City Council, City staff, appropriate City departments, and City Boards and Commissions as appropriate.

1. Develop and implement a plan for public art in the City of Benicia.
2. Collaborate with above-mentioned entities in identifying and evaluating potential sites for the installation of Public Art.
3. Coordinate the design, development, fabrication, and installation of public art with appropriate entities.
4. Convene Artist's Selection Panel and coordinate its work.
5. Make recommendations to the City Council of artists to be selected and public artwork to be commissioned.
6. Serve as information conduit and link between artists, project and building managers, City staff and others as necessary for proper project flow.
7. For projects residing in City parks, coordinate with and obtain approval from the Parks, Recreation and Cemetery Commission.
8. Serve as resource, guide and counsel to the City of Benicia regarding planning, maintenance of projects, and other issues related to the Public Art Program.
9. Ensure community outreach and education, publications, and promotion of Public Art Program.
10. Include a section on Public Art in the Commission's annual report to the City Council.
11. The Benicia Arts and Culture Commission may establish a Public Art Committee, dedicated to the presentation of public art in all its forms, to manage this program.
12. A Public Art Committee may be established to make reports, give recommendations to the Benicia Arts and Culture Commission regarding Public Art in the community, and serve as an Artist's Selection Panel.

Public Art Committee / Artist's Selection Panel

The Benicia Arts and Culture Commission will identify and recruit panelists for the Artist's Selection Panel. The Artist's Selection Panel makes recommendations to Benicia Arts and Culture Commission for approval. The

Benicia Arts and Culture Commission will then make recommendations to the City Council for final contract approval.

Artist's Selection Panel Responsibilities:

- ❑ Within the guidelines herein and the City's regulations, establish which method of selection will be used.
- ❑ Implement, when appropriate, a Call for Artists that will ensure the best possible results, and that the selection process is fair.
- ❑ Establish guidelines and clearly state the terms of the selection process, including the submission requirements, project goals, and site plan.
- ❑ Review, evaluate, and discuss credentials, proposals, and materials submitted by the artists.
- ❑ Convene and facilitate public meetings for the project when appropriate.
- ❑ Conclude evaluation and, via majority vote, make a recommendation.
- ❑ After artist selection, coordinate the physical and logistical components of art installation with the artist.
- ❑ Coordinate preparation of any necessary signage, including identification labels and/or plaques.

The Artist's Selection Panel retains the right to make no recommendation if, in its opinion, there is insufficient merit among the submissions. If this occurs, the Benicia Arts and Culture Commission will determine whether to recommend that the project be abandoned, begin a new selection process, or take some other course of action.

Artist Responsibilities

- ❑ Be willing to sign and abide by the terms stated within any contract or agreement with the City of Benicia.
- ❑ Execute and complete the work in a timely and professional manner.
- ❑ Maintain an effective working relationship with the Artist's Selection Panel and other representatives of the City.
- ❑ Advise Benicia Arts and Culture Commission immediately of any significant changes to the scope, materials or design of the work after contract is signed (all changes must be reviewed and approved prior to completion, in accordance with the City requirements).
- ❑ Be responsible for all design and execution of the work, including site preparation and installation, unless otherwise stipulated in the contract.

If an existing work is selected for a commission, the artist (or owner) will:

- Deliver the selected piece as agreed.
- Ensure that it is substantially and wholly the same work whose image was reviewed by the Artist's Selection Panel.

OVERARCHING DESCRIPTIONS OF COMMISSIONS AND CITY DEPARTMENTS

In case of an unusual circumstance or situation that may require approval from a department or commission outside the normal procedures, a description of the scope and responsibilities of various commissions and departments is included.

Commissions

Following are responsibilities and duties of selected city commissions.

Parks, Recreation and Cemetery Commission (Chapter 2.76)

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. (Ord. 08-05 § 1; Ord. 77-20 N.S. § 2, 1977; Ord. 76-10 N.S. § 2, 1976; prior code § 3-313. Formerly 2.48.020).

Powers:

- The Commission is advisory in character and may not be delegated administrative authority or responsibility beyond that which the city council may authorize.
- 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.
- The commission may plan for the orderly growth and development of cemetery, parks and recreational facilities and make recommendations to the city council.
- The commission may make recommendations to the City Council to accept gifts and grants from any source to assist in the performance of its functions. These gifts and grants operate to augment any appropriation made for the support of the commission. Refer to ordinance No. 08-05 § 1. ;

Powers:

- ❑ Consider and study park, recreation and cemetery facilities within the city and the use and improvement of them;
- ❑ Make investigations and studies for the purpose of recommending to the city council leisure time activities, recreational and social programs;
- ❑ Hold public hearings on its studies;
- ❑ 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;
- ❑ 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;
- ❑ 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;
- ❑ Other powers described in 2.76.020 BMC.

Planning Commission (Chapter 2.80)

In addition to the duties, rights and powers imposed by state law¹, the commission shall perform the duties and has the rights, powers and privileges provided by ordinance or resolution of the city council. (Ord. 08-05 § 1; Ord. 1261 M.C. § 110, 1970. Formerly 2.52.120).

Historic Preservation Review Commission (Chapter 2.84)**Purpose:**

The purpose of the historic preservation review commission (HPRC) 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 overlay districts as provided for in Chapter 17.108 Benicia Municipal Code; and

¹ For statutory provisions on the planning commission, see Government Code section 65100 et seq. and section 65150.

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 historical character and protection of the city's archaeological sites and resources.

Design Review Commission (Chapter 2.92)

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. Section 2.92.070 establishes that the historic preservation review commission is the design review commission.

DEPARTMENT RESPONSIBILITIES

Following are selective responsibilities and duties of various city departments as they relate to this document.

City Attorney

Under policy direction of the City Council, the City Attorney acts as legal advisor to, and as counsel for, the City Council and City officials in matters relating to their official City duties. The City Attorney supervises all outside counsel and may also represent the City in litigation. In addition to providing legal services, the City Attorney also provides general risk management services including work and other non-legal works as assigned. (Note: this includes insurance.)

Community Development Department (CDD)

- Planning (CDD)
 - Development review, current and advanced planning
 - Sustainability coordination
 - Staff to Planning Commission, Historic Preservation Review Commission, Sustainability Commission
 - Staff to Tri-City and County Open Space Committee
 - Implements City's General Plan and zoning ordinance

- Building
 - Development review, permit issuance, inspections

Public Works Department (PW)

- Engineering
 - Construction Improvement Projects, development review and traffic programs
 - Provide technical assistance and advice to the public, City Departments, etc.
 - Includes planning, design, inspection, construction management and contract administration for the City's public works construction projects
 - Provides preliminary analysis and review of new residential construction and commercial development, plan checking & inspection of public improvements
 - Storm Water Management Program
- Street Maintenance Division
 - Provide safe, clean and accessible (well lit) streets
 - Signs

Parks and Community Services Department

Maintains and operates developed park and landscaped areas plus one 577 acre regional park, city buildings, community center, pool, etc. The Department has responsibility for over 68 open space access areas and maintenance of 5 landscape and lighting districts.

Library

The Library's primary responsibility is to connect patrons with resources. The Library supports cultural activities and the arts by hosting musical performances including concerts, dance demonstrations, and poetry performances. The Library staffs the Arts and Culture Commission and works closely with the Commission to enhance arts and cultural programs in the community. Within the Library, gallery space is provided to artists on a competitive basis.

RESOLUTION NO. 90-53, GIFTS OF ART

RESOLUTION NO. 90-53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING A POLICY FOR THE ACCEPTANCE AND MAINTENANCE OF GIFTS OF ART TO THE CITY AND AUTHORIZING THE CITY MANAGER TO ACCEPT GIFTS OF ART

WHEREAS, the City of Benicia has been and continues to be the recipient of gifts of art; and

WHEREAS, California Government Code Section 37350 permits a city to accept or reject any gift, bequest or devise of art made to the city or to any of its officers in their official capacity; and

WHEREAS, California Civil Code Section 988 provides that an artist who conveys the right to publicly display a work of art retains ownership of the physical work of art, unless such right of ownership is expressly transferred by a writing signed either by the artist, the owner at the time of conveyance, or their duly authorized agent; and

WHEREAS, it is the intent of the City of Benicia to establish a policy for the acceptance or rejection of any gift, bequest or devise of art made to the City and, in the event of acceptance, to obtain ownership of the physical work of art; and

WHEREAS, it is the intent of the City of Benicia to establish a policy for the potential disposal of works of art received as gifts should they be judged to be no longer of value to the City for public display by first offering the work of art to the Board of Library Trustees. In the event that the Board does not accept the work of art on the same terms and conditions that the City accepted the gift, then to provide that ownership shall revert to the artist or the owner at the time of the conveyance to the City, provided that the donor can be located within 60 days; and

WHEREAS, it is the intent of the City of Benicia to make the policy established herein applicable to all gifts of art already received by the City.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BENICIA that:

1. All works of art previously donated to the City of Benicia re hereby accepted subject to the terms and conditions of the conveyance to the City. Where no written conveyance was made to the City, the City Manager shall attempt to locate the artist or the owner at the time of the conveyance and obtain a written conveyance in a form expressly transferring the work of art to the City as provided by Civil Code Section 988;
2. The City Manager is authorized to accept or reject any gift, bequest or devise of art made to the City or to any of its officers in their official capacity, effective sixty-days after notice of written acceptance. The City Manager shall advise the City Council

~~of all works of art accepted or rejected by him within twenty-one days of action by the City Manager. The action of the City Manager accepting or rejecting said works of art shall become final in sixty-days unless the Council orders otherwise;~~

~~3. All conveyances of art to the City shall be made in writing, in a form prescribed by the City Manager, signed by the artist or the owner at the time of conveyance, and said written conveyance shall provide that the right of ownership is expressly transferred to the City. Any conveyance of a work of art shall be subject to whatever terms or conditions that are both (a) contained in said written conveyance and (b) specifically accepted by the City Manager as provided in this paragraph. In the event that the work of art is accepted by the City as provided herein, the City Manager shall accept in writing and provide the artist or owner at the time of the conveyance a copy of said written acceptance.~~

~~4. All work of art conveyed to the City by gift, bequest or devise shall be displayed in a public place to be selected by the City, at its sole discretion, for substantial period of each year;~~

~~5. The City shall maintain works of art conveyed to the City by gift, bequest or devise, and insure any work of art where, in the judgment of the City Manager, it is deemed appropriate; and~~

~~6. In the event that the City, acting by and through the City Manager, should determine that the work of art conveyed to the City is no longer of value to the City then the work of art shall be offered by the City Manager, for purposes of display, to the Library Board, ownership of the work of art to remain in the City. In the event that the Library Board either (i) does not accept the work of art for display or (ii) after accepting, fails, in the sole judgment of the City, to display the art in a public place for a substantial period of each year, then the work of art shall revert to the City for either display or disposal as provided in this paragraph. If the work of art is to be disposed of, then ownership shall revert to the artist or the owner at the time of the conveyance to the City, provided that the artist or owner can be located after notice. In the event that the artist or owner at the time of the conveyance cannot be located within 90-days of the time that a notice of intent to dispose of the art is mailed to the last known address of the artist or owner at the time of the conveyance, then ownership shall not revert and the City Manager may dispose of the art by any method which in the sound judgment of the City Manager is appropriate, provided that if the art has a market value, the City Manager must first attempt to sell the art work at its approximate market value. In the event of sale, no appraisal shall be required. However, public notice of the sale must be given in the same manner that public notice is given for public meetings of the City Council.~~

~~On motion of Councilmember Fulton, seconded by Councilmember Chiarrocchi, 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 3rd day of April, 1990, and adopted by the following vote:

Ayes: Councilmen Ciarrocchi, Fulton, Shafer, Silva and
Mayor O'Rourke
Noes: None
Absent: None


Marilyn E. O'Rourke, Mayor

Attest:


Frances D. Greco, City Clerk

I, Frances D. Greco, City Clerk of the City of Benicia, County of Solano, State of California, hereby certify that the foregoing resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council held on the 3rd day of April, 1990, and adopted by the following vote:

Ayes: Councilmen Ciarrocchi, Fulton, Shafer, Silva and
Mayor O'Rourke
Noes: None
Absent: None

WITNESS my hand and the seal of said City this 4th day of April, 1990.


Frances D. Greco, City Clerk

