

September 6, 2005

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office at the end of the business day on the Wednesday before the Council meeting.

Benicia City Council Agenda

**BENICIA CITY COUNCIL
CITY COUNCIL CHAMBERS**

REGULAR MEETING AGENDA

September 6, 2005

6:45 P.M.

- I. CALL TO ORDER:
 - A. ANNOUNCEMENT OF CLOSED SESSION
- II. CLOSED SESSION:
 - A. Conference with Labor Negotiator (Government Code Section 54957.6 (a))
Agency negotiators: City Manager, Human Resources Director, Senior Personnel Analyst, Bill Avery of Avery & Associates
Employee organization: Benicia Firefighters Association and Police Managers
 - B. Conference with Real Property Negotiator
Property: Right of Way adjacent to 994 West K Street
Negotiating Parties: City Manager, Public Works Director
Under Negotiations: Instruction to negotiator on price, terms of payment or both
- III. CONVENE OPEN SESSION:
 - A. ROLL CALL
 - B. PLEDGE OF ALLEGIANCE
- IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:
 - A. ANNOUNCEMENTS:
 1. Announcement of action taken at Closed Session, if any.
 2. Openings on:
 - Open Government Commission: 5 terms
 3. Pollution Prevention Week Display at the Benicia Public Library
 - B. APPOINTMENTS:
 1. [Planning Commission](#)
-Scott Strawbridge
 - C. PRESENTATIONS:
 1. Report on Mosquito Abatement
- John Blegen, Manager - Solano County Mosquito Abatement District
and
Michael White, Trustee - Solano County Mosquito Abatement District
Board

2. **Plastics in the Ocean**
- Carol Keiper, Marine Ecologist - Oikonos Ecosystem Knowledge

D. PROCLAMATIONS:

1. [Pollution Prevention Week, September 19-25, 2005](#)
- Carol Keiper, Marine Ecologist - Oikonos Ecosystem Knowledge
2. [Literacy Awareness Day, September 8, 2005](#)
- Lynne A. Price, Literacy Coordinator

V. ADOPTION OF AGENDA:

VI. COMMUNICATIONS:

1. WRITTEN

2. PUBLIC COMMENT

VII. CONSENT CALENDAR:

- . Approval of Minutes of August 16, 2005. (City Clerk)
- A. Denial of claims against the City and referral to insurance carrier. (City Attorney)
 1. [James Schroeder: This claim was submitted for reimbursement of plumbing expenses for a sewer backup.](#)
 2. [Jeff Anderton: This claim was submitted for repair of the scratches on the side of Mr. Anderton's van caused by bushes that extended past the gutter.](#)
 3. [Janice Yardly: This claim was submitted for damage to Ms. Yardley's home resulting from a sewer spill.](#)

Recommendation: Deny the claims against the City by James Schroeder, Jeff Anderton and Janice Yardly.

B. [Adoption of a resolution authorizing the destruction of various City records. \(City Attorney\)](#)

As part of the City's ongoing efforts to streamline processes and ensure practices are in accordance with the Sunshine Ordinance, staff has revised the resolution authorizing destruction of City records. This resolution was last updated in 2000. Changes to the resolution include updating the names of documents.

Recommendation: Adopt the resolution authorizing the destruction of certain City records.

C. [Approve the salary range for the classification of Economic Development Manager. \(Human Resources Director\)](#)

This resolution seeks to establish the salary range for the position of Economic Development Manager. The recommended range is based on an internal relationship review of all position classifications as they relate to the latest salary survey of benchmark positions at comparable jurisdictions. The salary for this position will be re-allocated from the vacant Assistant City Manager/Economic Development Director position.

Recommendation: Adopt the resolution approving the salary range for the classification of Economic Development Manager.

**D. [Acceptance and Notice of Completion for Military East Traffic Signal Upgrades Project.](#)
(Public Works Director)**

This project included an upgrade of traffic signals located at First/Military, East 2nd/Military, East 5th/Military and Southampton Rd./Military. The work included new signal electronics, installation of LED lights, and battery back-up systems to upgrade these signals and allow operation during power outages. The total project cost is \$92,765 and is budgeted from a combination of accounts, as well as a UPS Grant from the Energy Commission totaling \$19,600.

Recommendation: Adopt the resolution accepting the Military East Traffic Signal Upgrades Project, approving Contract Change Order Numbers 1 and 2, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file the Notice of Completion with the Solano County Recorder.

E. [Approval of the new job description of Management Analyst I/II and approve the re-title of three incumbents.](#) (Human Resources Director)

With the recent Council approval of the Police Department reorganization, an audit of duties and responsibilities of the Management Assistant I/II classification was completed in order to update the duties to incorporate the needs of the Police Department. The position title of Management Analyst I/II better identified the professional analytical responsibilities of the position. The City is also proposing to reclassify three incumbent Management Assistant IIs to Management Analyst IIs. There is no modification to the salary range.

Recommendation: Adopt the resolution approving the new job description of Management Analyst I/II and re-titling of three incumbents.

F. [Award of the construction contract for the Civic Center Tennis Court Lighting Project.](#) (Parks & Community Services Director)

Staff solicited for bids beginning July 18, 2005 and opened bids on August 18, 2005. Two bids were received for this project. Bleyco Incorporated of Castro Valley, CA was the low bidder for \$102,242.50. Funding for the project was approved in the 2004-05 Budget.

Recommendation: Adopt the resolution awarding the contract for the Civic Center Tennis Court Lighting Project and authorize the City Manager to sign the construction contract.

G. [Approval of Amendment No. 1 to TransLink Interagency Participation Agreement.](#) (Finance Director)

The amendment to the TransLink Interagency Participation Agreement reflects a change to Article II of the Agreement dealing with Legal Representation and Conflict of Interest. Changes to the agreement require formal approval by each of the member agencies. There is no financial impact associated with this amendment.

Recommendation: Authorize, by motion, the City Manager to sign the agreement and make minor amendments to the agreement as necessary.

H. [Approval of additional appraisal expenses for The Valero Refinery Assessment Appeal.](#) (Finance Director)

On October 11, 2002, the City of Benicia entered into an agreement with the County of Solano to equally share appraisal expenses for the Valero Refinery assessment appeal. Due to the complicated and protracted valuation requirements, the County now anticipates additional spending needs for the appeals hearing in October. The City's obligation per previous agreement is to fund 50% of the increase or \$62,500. Staff recommends approving this increase, which will come from Undesignated Reserves, as the City will significantly benefit from the increased valuation and assessment of the Valero Refinery.

Recommendation: Adopt the resolution approving additional appraisal expenses for the Valero Refinery Assessment Appeal.

I. [Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Professional and Confidential Group.](#) (Human Resources Director)

The City concluded negotiations with the Benicia Professional and Confidential Group on August 11, 2005. The Professional and Confidential Group has 27 incumbents. This group is comprised of our Technical, Analytical and Confidential positions. The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Professional and Confidential Group with the amendments is attached.

Recommendation: Adopt the resolution approving the July 1, 2005 through June 30, 2006 amendments to the Labor Agreement with the Benicia Professional and Confidential Group.

J. [Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Supervisory Group.](#)(Human Resources Director)

The City concluded negotiations with the Benicia Supervisory Group on August 26, 2005. The Supervisory Group consists of 9 incumbents. This group is comprised of our Division Supervisor positions. The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Supervisory Group with the amendments is attached.

Recommendation: Adopt the resolution approving the July 1, 2005 through June 30, 2006 amendments to the Labor Agreement with the Benicia Supervisory Group.

K. [Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Middle Management Group.](#) (Human Resources Director)

The City concluded negotiations with the Benicia Middle Management Group on August 30, 2005. The Middle Management Group consists of 16 incumbents. This group is comprised of our Plant/Division Superintendents, Deputy Fire Chiefs, Assistant Directors, and Public

Services Librarian positions. The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Middle Management Group with amendments is attached.

Recommendation: Adopt the resolution approving the July 1, 2005 through June 30, 2006 amendments to the Labor Agreement with the Benicia Middle Management Group.

L. [Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Senior Management Group.](#) (Human Resources Director)

The City concluded negotiations with the Benicia Senior Management Group on August 16, 2005. The Senior Management Group consists of 8 incumbents. This group is comprised of our Department Directors. The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Senior Management Group with the amendments is attached.

Recommendation: Adopt the resolution approving the July 1, 2005 through June 30, 2006 amendments to the Labor Agreement with the Benicia Senior Management Group.

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

VIII. PUBLIC HEARINGS:

. [Adopt a Master Fee Schedule.](#) (Finance Director)

Each department in the City has assembled a list of fees and charges that are currently in existence and recommended they be included in the Master Fee Schedule. Some departments also submitted requests to adjust certain fees and charges to reflect changes in the costs of providing those services to the public. Changes in the development related fees and charges, such as Planning and Engineering services, require a public hearing. Any changes in the Master Fee Schedule will be implemented 60 days after approval by the City Council. Future increases will be linked to changes in the Consumer Price Index.

Recommendation: Conduct a public hearing and adopt a resolution establishing a Master Fee Schedule that includes changes in development related fees and charges, including Planning and Engineering fees and charges.

IX. UNFINISHED BUSINESS:

. [Review of Traffic Analysis for Columbus/Rose Intersection.](#)(Public Works Director)

The City of Vallejo Bordonni Ranch Project involves the development of 445 new homes located along Columbus Parkway north of Benicia Road within the City of Vallejo. Benicia's comments on the project EIR have been included in the final EIR; however, Council still has concerns regarding the impacts of this project on the intersection of Columbus Parkway and Rose Drive. Benicia staff has provided the Council with more detailed information on the traffic analysis and will forward any additional comments to the City of Vallejo for their consideration when taking final action on this project.

Recommendation: Provide staff with any additional comments regarding the traffic analysis to forward to the City of Vallejo for their consideration when taking final action on this project.

A. [Second reading of an ordinance amending The Benicia Municipal Code provisions regarding appointment of Planning Commissioners and adoption of a resolution amending the rules of procedure.](#) (City Attorney)

The Council introduced an ordinance amending various provisions of the Municipal Code related to the appointment of Planning Commissioners. If adopted, the ordinance would be effective 30 days after adoption. The amendment to the Council's rules of procedure will bring the rules into conformance with the ordinance. There is no budget impact associated with this action.

Recommendations:

1. Adopt the ordinance amending Section 2.52.010 (Establishment - membership), Section 2.52.020 (Members - qualifications), and Section 2.52.030 (members-term of office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and personnel) of the Benicia Municipal Code.
2. Adopt the resolution amending the rules of procedure for appointments.

X. **NEW BUSINESS:**

. [Approval to amend the name of the Sky Valley Open Space Committee.](#) (Community Development Director)

The Committee recommends the name change to better reflect the purpose and intent of the committee and to better inform the community about what the Committee seeks to achieve. The requested action has no fiscal impact.

Recommendation: Adopt the resolution amending the name of the Sky Valley Open Space Committee to Sky Valley Watershed Preservation Committee.

A. [Approval of an agreement with Comcast to extend the cable franchise to 2010.](#) (City Attorney)

The cable franchise agreement with Comcast was subject to an automatic renewal on June 13, 2003. The automatic renewal period was for five years. This agreement would add an additional four years in exchange for certain upgrades being made ahead of schedule. The agreement would not change the calculation of the Cable Franchise Fees received by the City, which is dependent on the number of subscribers.

Recommendation: Adopt the resolution approving the non-exclusive cable franchise extension agreement with Comcast and authorizing the City Manager to execute the agreement.

B. [Contribution to Bay Area Water Forum.](#) (Public Works Director)

The Bay Area Water Forum (BAWF) is soliciting one-time voluntary contributions to support the planning efforts of their organization. The BAWF is a collaboration of water resource stakeholders in the Bay Area established to explore water supply reliability, watershed management, water conservation/recycling, water quality improvements and other key issues critical to the Bay Area.

Recommendation: Should the Council decide to make a contribution, per Vice Mayor Patterson's request, the recommended amount is at the \$1,000 level, which is appropriate for an agency of the City's size.

C. [Authorize the refinancing of the 1993 refunding Wastewater Revenue Bonds through the issuance and sale of the 2005 Wastewater Refunding Revenue Bonds.](#)(Finance Director)

The City previously issued the \$6,195,000 City of Benicia 1993 Refunding Wastewater Revenue Bonds (the "1993 Bonds"), for the purpose of refinancing certain improvements to its municipal wastewater enterprise. Currently, interest rates are at historically low levels and the City can reduce its debt service obligations by refinancing the 1993 Bonds. It is expected that the annual debt service will be reduced from approximately \$420,000 to \$360,000 per year or approximately \$60,000 per year. The total costs of issuance and underwriting will be approximately \$120,000, yielding a net savings of \$780,000 (present value of \$210,000) over the remaining 15-year life of the bonds.

Recommendation: Adopt the Resolution authorizing the issuance and sale of City of Benicia 2005 Wastewater Refunding Revenue Bonds, approving and an indenture of trust, an escrow agreement, a bond purchase agreement and a preliminary official statement, and authorizing and directing the execution thereof and authorizing actions related thereto.

XI. REPORTS FROM CITY MANAGER:

. Status report on the repaving for the 100 block of West K Street. (Public Works Director)

Information will be provided regarding the schedule for the repaving work. Restoring the street is the responsibility of the contractor on the Inflow/Infiltration Improvement Project, now that the relief sewer pipe is in place.

Recommendation: Oral report, for information only.

A. [Review of progress toward resolving differences with Benicia Unified School District \(BUSD\) regarding the proposed joint use agreement.](#) (City Manager)

The Superintendent and the City Manager are currently working on proposed recommendations for addressing differences in the proposed agreements for City maintenance of BUSD fields.

Recommendation: Status report, for information only.

XII. REPORTS FROM CITY COUNCIL COMMITTEES:

XIII. ADJOURNMENT:

Public Participation

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

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

Disabled Access

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

Meeting Procedures

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Downloading of reports from this agenda

Some agenda items have attached reports available for downloading from this web page. To view these reports, you must have the latest Adobe Acrobat reader installed in your web browser.

Click [here](#) to download the free Acrobat reader

- [!\[\]\(f1baaede8f2dd2b0cd8139a15f012dd1_img.jpg\) IV-B planning strawbridge.pdf](#)
- [!\[\]\(38c4208cc2e48561702146f3b41cc81d_img.jpg\) IV-D-1 pollution week.pdf](#)
- [!\[\]\(d510d6da6efeca0d2d0bee8915785b09_img.jpg\) IV-D literacy awareness day.pdf](#)
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- [!\[\]\(ecfd24c79b52de40fd4d09629bc407d9_img.jpg\) VII-E military east traffic signals.pdf](#)
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- [!\[\]\(20bebcb5f60c2319dee98d4a55b9e6a8_img.jpg\) VII-K supervisory agreement.pdf](#)
- [!\[\]\(16c70d88c4caf9d2d1f9bf6dc3969856_img.jpg\) VII-L mid-managers agreement.pdf](#)
- [!\[\]\(71300866dc21911be23dc7fbf843cb50_img.jpg\) VII-M senior managers agreement.pdf](#)
- [!\[\]\(e1e19809b2c5e6a43cf7fdf489336691_img.jpg\) VIII-A master fee schedule.pdf](#)
- [!\[\]\(c309f8cab67094dd5e5cd5b51b2c5636_img.jpg\) IX-A bordoni ranch traffic analysis.pdf](#)
- [!\[\]\(4b14ec354eaa54eca651d4f4a5aa04f8_img.jpg\) IX-B planning commission appointments.pdf](#)
- [!\[\]\(ff746862283c28bfb854933eb2b3e026_img.jpg\) X-A sky valley name amendment.pdf](#)
- [!\[\]\(ad8f8cb72cf076f4be11c3ee49431db3_img.jpg\) X-B cable extension final.pdf](#)
- [!\[\]\(aa07192eae47cfe34658af366aa2b1f6_img.jpg\) X-C bawf report.pdf](#)
- [!\[\]\(73a54375d5f924e0619d34daa5c4b58b_img.jpg\) X-D bond refunding.pdf](#)
- [!\[\]\(6c4e7fe9970a9c7c7d53b6d68a795470_img.jpg\) XI-B joint use agreement.pdf](#)

RESOLUTION NO. 05-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
CONFIRMING THE MAYOR'S APPOINTMENT OF SCOTT STRAWBRIDGE TO
THE PLANNING COMMISSION TO A TERM ENDING SEPTEMBER 30, 2008**

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of Scott Strawbridge to the Planning Commission by Mayor Messina is hereby confirmed.

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th day of September, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

APPLICATION

(If viewing online, this attachment is available from the City Clerk's Office)

VICE MAYOR'S EVALUATIONS OF APPLICANTS

P R O C L A M A T I O N

**POLLUTION PREVENTION WEEK
September 19-25, 2005**

WHEREAS, the City of Benicia is in favor of a clean and safe environment; and reduction of plastic pollution in the ocean; and

WHEREAS, pollution prevention is a successful approach to environmental protection that focuses on waste prevention, and is therefore the most favorable and progressive strategy for protecting our environment; and

WHEREAS, pollution prevention can increase efficiency and save government and businesses money by decreasing disposal costs and by reducing present and future liability associated with generation of wastes; and

WHEREAS, pollution prevention offers both environmental protection and increased competitiveness; and

WHEREAS, by focusing attention on pollution prevention, the City of Benicia will meet the challenges of the new millennium for economic competitiveness and environmental protection; and

WHEREAS, Pollution Prevention Week is an opportunity for government, industry, and environmental groups to celebrate the potential of pollution prevention and to work together to plan for a prosperous and sustainable future; and

WHEREAS, the City of Benicia will support and incorporate pollution prevention in its day-to-day operations.

NOW, THEREFORE, BE IT RESOLVED THAT I, Steve Messina, Mayor, on behalf of the City of Benicia, do hereby designate September 19 through September 25, 2005 as "Pollution Prevention Week."

**Steve Messina, Mayor
CITY OF BENICIA**

DATE: SEPTEMBER 6, 2005



PROCLAMATION

“Literacy Awareness Day” September 8, 2005

Whereas, our community’s greatest resource is its people; and

Whereas, the growth and stability of our community are significantly affected by the ability of its citizens to read and write; and

Whereas there is a correlation among literacy, individual self-esteem, and the vitality of our cities; and

Whereas, it is in the best interests of our society to help increase the literacy levels of all its members; and

Whereas, Benicia Public Library has utilized the services of volunteer tutors since 1987 to increase the literacy levels in Benicia and surrounding areas by offering free, private English-language literacy tutoring for adults; and

Whereas, the California State Library is celebrating 21 years of California Library Literacy Service provision by its adult literacy program on September 8, 2005; and

Whereas, International Literacy Day is observed worldwide on September 8 and in Benicia will be celebrated with a literacy day of programming at the Benicia Public Library,

NOW, THEREFORE, BE IT RESOLVED THAT I, Steve Messina, Mayor, on behalf of the city of Benicia, do hereby proclaim September 8, 2005 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 18 years. I urge all citizens to support the goals of the Library’s literacy program to make Benicia a more literate community.

Steve Messina, Mayor
CITY OF BENICIA
DATE: September 6, 2005

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 8, 2005
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY JAMES SCHROEDER AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Reject the claim against the City by James Schroeder.

EXECUTIVE SUMMARY:

A claim was submitted by James Schroeder for reimbursement of plumbing expenses for a sewer backup.

BUDGET INFORMATION:

This is claim is for \$190.00.

BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). 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. The claim was submitted for reimbursement for clean out the resident's lateral sewer line. The plumbing invoice included with the claim noted that the line was clogged with tree roots. The Parks Department has confirmed that the trees do not belong to the City. Although there are two cleanouts at this location, the Public Works Department had no prior knowledge of them. They had not been televised and accepted by the City and, therefore, were not the responsibility of the City to maintain.

Attachment:

- Copy of Claim Filed Against City (*If viewing on line, this attachment is available upon request from the City Clerk's office.*)

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 15, 2005
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY JEFF ANDERTON AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against the City by Jeff Anderton.

EXECUTIVE SUMMARY:

A claim was submitted by Jeff Anderton for repair of the scratches on the side of his van caused by bushes that extended past the gutter.

BUDGET INFORMATION:

The amount of the claim is unknown.

BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual together with a no jurisdiction letter and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice, no jurisdiction letter and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney. An inspection of the location revealed this is not City property. The bushes in question belong to Sterling Heights Apartments.

Attachment:

- Copy of Claim Filed Against City (*If viewing on line, this attachment is available upon request from the City Clerk's office.*)

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 15, 2005
TO : City Council
FROM : City Attorney
SUBJECT : **DENIAL OF THE CLAIM AGAINST THE CITY BY JANICE YARDLY AND REFERRAL TO INSURANCE CARRIER**

RECOMMENDATION:

Deny the claim against the City by Janice Yardly.

EXECUTIVE SUMMARY:

A claim was submitted by Janice Yardly for damage to her home resulting from a sewer spill.

BUDGET INFORMATION:

The amount of this claim is \$5,371.53.

BACKGROUND:

Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice and proof of service by mail form should be sent to Bruce Carey (ABAG Claims Examiner) and the City Attorney. Public Works Department staff have verified the backup was due to a blockage in the City sewer main. I have authorized settlement of this claim up to \$5,371.53. Expenses totaling \$5,060.62 have been paid. The final payment of \$310.91 has not been made awaiting the signed release sent to Ms. Yardly. Several attempts have been made to follow up with Ms. Yardly but she has not returned any phone calls or responded to any letters sent to her. By rejecting the claim we will hopefully expedite the return of the signed release.

Attachment:

- Copy of Claim Filed Against City (*If viewing on line, this attachment is available upon request from the City Clerk's office.*)

VII-B-1

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 1, 2005
TO : City Council
FROM : City Attorney
SUBJECT: **ADOPTION OF A RESOLUTION AUTHORIZING THE
DESTRUCTION OF VARIOUS CITY RECORDS**

RECOMMENDATION:

Adopt the resolution authorizing the destruction of various City Records.

BUDGET INFORMATION:

There is no impact on the budget.

SUMMARY:

As part of the City's ongoing efforts to streamline processes and to bring practices up to date, staff has revised the resolution authorizing destruction of City records. This resolution was last updated in 2000. Changes to the resolution include updating the names of documents and inserting legal references. This resolution was presented to the City Council in 2004. The Council deferred action until adoption of the Sunshine Ordinance. The time frames set forth in the resolution comply with the Sunshine Ordinance.

In accordance with State law, destruction of most City records must be authorized by resolution of the City Council. Written consent of the City Attorney is also required. Certain records such as those affecting title to real property or liens thereon; court records; records required to be kept by statute; records less than two years old; and the minutes, ordinances and resolutions of the City Council and its boards and commissions cannot be destroyed unless an archival type reproduction of the records is made.

Attachment:

- [Proposed Resolution](#)

RESOLUTION

RESOLUTION NO. 05-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE DESTRUCTION OF CERTAIN CITY RECORDS**

WHEREAS, State law allows for the destruction of City records with the approval of the City Council and the written consent of the City Attorney; and

WHEREAS, the various City departments have prepared the attached schedule of records recommended to be destroyed in accordance with State law; and

WHEREAS, the City Attorney has provided written consent to destroy the records in accordance with State law and will provide written consent to destroy records in the future in accordance with this schedule.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia authorizes the destruction, on an annual basis, of City records so noted in the attached Schedule A after the expiration of the period of time set forth therein, subject to the exceptions therein set forth, and with the written consent of the City Attorney.

BE IT FURTHER RESOLVED that Resolution No. 00-168 is hereby superceded by this resolution.

On a motion of Council Member _____, seconded by Council Member _____, the foregoing Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the _____ day of September, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

SCHEDULE A

DESTRUCTION OF RECORDS

Nothing in this schedule shall be interpreted to authorize the destruction of records affecting title to real property or liens thereon; court records; records required to be kept by statute; records less than two years old; and the minutes, ordinances and resolutions of the City Council and its boards and commissions unless an archival reproduction that meets the requirements of Government Code Section 34090.6 has been made.

OFFICE/RECORD TYPE	LEGAL RETENTION REFERENCE	SCHEDULE
CITY ATTORNEY'S OFFICE*		
Assembly / Senate Bills	GC §34090	2 years
Attorney's Office Miscellaneous Files	GC §34090	2 years
Bar Association Records	GC §34090	2 years
Calendars	GC §34090	2 years
City Council Projects	GC §34090	2 years
Contracts**		CCP §337
		While Active + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Council Updates	GC §34090	2 years
Customer Service Information	GC §34090	2 years
Encroachment Permits/Revised Agreements	GC §34090	Indefinitely
Fee Payment Agreements	CCP §337	While Active + 4 years
Financial Reports	GC §34090	2 years
General Plan Documents	GC §34090	2 years
Historical Conservation Corresp. & Misc.	GC §34090	2 years
Intern Program Records	GC §34090	2 years
Internal Staff Memos	GC §34090	2 years
Meeting Records	GC §34090	2 years
Newspaper Articles	GC §34090	2 years
Phone Message Logs	GC §34090	2 years
Planning Commission Meetings Records	GC §34090	2 years
Potential Personnel	GC §34090	2 years
Project Files	GC §34090	2 years
Publications	GC §34090	2 years
Public Record Requests	GC §34090	2 years
Secretary of State Prepaid Phone Account	GC §34090	2 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loan agency.

** 10 Years for Construction Defect cases

Staff Reports	GC §34090	2 years
Staff Meeting Minutes	GC §34090	2 years
Supply Records	GC §34090	2 years
Volunteer Records	GC §34090	Tenure + 2 years
Weed Abatement Schedule	GC §34090	2 years
West Coast Beauty Supply	GC §34090	2 years
Year End Finance Reports	GC §34090	2 years
CITY CLERK'S OFFICE*		
Calendars	GC §34090	2 years
Contracts	CCP §337	While Active + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Internal Staff Memos	GC §34090	2 years
Phone Message Logs	GC §34090	2 years
Staff Reports	GC §34090	2 years
Supply Records	GC §34090	2 years
CITY MANAGER'S OFFICE / COUNCIL*		
Calendars	GC §34090	2 years
Citizen Communications	GC §34090	5 years
Contracts	CCP §337	While Active + 4 years
Correspondence, Miscellaneous	GC §34090	5 years
General Subject Project Files	GC §34090	5 years
Internal Staff Memos	GC §34090	2 years
Phone Message Logs	GC §34090	2 years
Staff Meeting Minutes	GC §34090	2 years
Staff Reports	GC §34090	5 years
Strategic Planning	GC §34090	5 years
Supply Records	GC §34090	2 years
COMMUNITY DEVELOPMENT DEPARTMENT*		
Calendars	GC §34090	2 years
Contracts	CCP §337	Current year + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Design Review Commission Agendas	GC §34090	2 years
Design Review Commission Correspondence	GC §34090	2 years
Design Review Commission Files	GC §34090	Indefinitely
Design Review Commission Tapes	GC §34090	Indefinitely
Historic Preservation Advisory Committee Agendas	GC §34090	2 years
Historic Preservation Advisory Committee Corresp.	GC §34090	2 years
Historic Preservation Adv. Committee Files	GC §34090	Indefinitely
Housing Element Committee Agendas	GC §34090	2 years
Housing Element Committee Correspondence	GC §34090	2 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

Housing Element Committee Files	GC §34090	Indefinitely
Phone Message Logs	GC §34090	2 years
Planning Commission Agendas	GC §34090	2 years
Planning Commission Correspondence	GC §34090	2 years
Planning Commission Files	GC §34090	Indefinitely
Planning Commission Tapes	GC §34090	Indefinitely
Staff Reports	GC §34090	2 years
Supply Records	GC §34090	2 years
Zoning Administrator Agendas	GC §34090	2 years
Zoning Administrator Correspondence	GC §34090	2 years
Zoning Administrator Files	GC §34090	Indefinitely

FINANCE DEPARTMENT*

Accounts Payable:

Accounts Payable Posting Reports	CCP §337	Current year + 4 years
Check Registers	CCP §337	Current year + 4 years
Disemburce Reports	CCP §337	Current year + 4 years
Distribution Reports	CCP §337	Current year + 4 years
Pay Selection Register	CCP §337	Current year + 4 years
Purchase Orders	CCP §337	Current year + 4 years
Vendor Files	CCP §337	Current year + 4 years

Accounts Receivable/Cash Receipts:

AR Statements	CCP §337	Current year + 4 years
AR Posting	CCP §337	Current year + 4 years
Cash Receipt Proof & Posting Reports	CCP §337	Current year + 4 years

Payroll:

Check copies/pick up list/void checks	GC §34090; 29 CFR 516.5, 516.6	Current year + 4 years
Payroll Bank Reconciliations	CCP §337	Current year + 4 years
Payroll Reports - Distribution/ Contribution//Pay/Posting registers	GC §34090; 29 CFR 516.5, 516.6	Current year + 4 years
Payroll Tax Returns	CCP 338; 29 CFR 516.5, 516.6	5 Years
PERS Report	29 CFR 516.5, 516.6, 1627.3	Current year + 4 years
Prelists	GC §34090	2 years
Terminated Employee Files	29 CFR 1627.3; GC §12946; 29 CFR 1602.31	2 years from termination
Timecard Entry Report	29 CFR 516.5; 516.6	Current year + 4 years

Miscellaneous:

Transit Reports	GC §34090	2 years
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Utility Billing:

Billing Register Summary	CCP §337	Current year + 4 years
Cash Receipts Proof List	CCP §337	Current year + 4 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

GL Distribution Reports	CCP §337	Current year + 4 years
Meter Misread Reports	GC §34090	2 years
Meter Reading Proof List	GC §34090	2 years
MVRS Reports	CCP §337	Current year + 4 years
Past Due Modification Report	CCP §337	Current year + 4 years

FIRE DEPARTMENT*

Calendars	GC §34090	2 years
Contracts	CCP §337	While Active + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Department Directives	GC §34090	2 years
Department Log Books	GC §34090	Indefinitely
Fire Incident Reports	GC §34090	3 years
Fire Investigative Photos	GC §34090	3 years
Fire Investigative Reports	GC §34090	3 years
General Subject Files	GC §34090	Current year + 2 years
Inspection Records	GC §34090	Indefinitely
Internal Staff Memos	GC §34090	2 years
Patient Care Reports	GC §34090	7 years
Phone Message Logs	GC §34090	2 years
Staff Meeting Minutes	GC §34090	2 years
Staff Reports	GC §34090	2 years
Supply Records	GC §34090	2 years

HUMAN RESOURCES DEPARTMENT*

Alcohol & Drug Testing Records:

Administration of Alcohol & Drug Testing	49 CFR 40.333, 382.401	5 years
Collection Process Records	49 CFR 40.333, 382.401	5 years
Driver's Test Results	49 CFR 40.333, 382.401	1 year if negative; 5 years if positive
Evaluation Records	49 CFR 40.333, 382.401	5 years
Education and Training Records	49 CFR 40.333, 382.401	Tenure + 2 years
Budget Preparation Files	GC §34090	2 years
Calendars	GC §34090	2 years
Confidential Complaint Investigations	GC §12946; 29 CFR 1602.14; 1627.3	Tenure + 2 years of employees
Contracts	CCP §337	Current Year + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Employee Medical Files (not Workers' Comp)	GC §12946	Tenure + 2 years
Employee Personnel Files	GC §12946	Tenure + 2 years
EEOC Annual Reports	29 CFR 1602.14, 1602.32	Current year + 2 years
Examination & Test Documents	29 CFR 1627.3	3 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

Fingerprint Reports/Reports	GC §12946	2 years from date of termination
Grievance Investigations & Complaints	GC §12946	2 years from date of termination
H & W Benefit Contracts, Corresp, Complaints	29 CFR 1627.3(b)(2)	While Active + 5 years
I-9 Proof of Eligibility for Employment Forms	GC §12946	2 years from date of termination
Internal Staff Memos	GC §34090	2 years
Invoice & Claim Forms	GC §34090	2 years
Labor Negotiation Files & Notes	GC §34090	Indefinite
Memorandum of Understandings & Employee Agreements	CCP §337	Indefinite
Old Policies & Procedures	GC §34090	2 years from date of last revision
Old Job Descriptions	GC §12946, 29 CFR 1627.3	3 years from date of last revision
PERS Contract Amendment Corresp.& Info	29 CFR 516.5, 516.6, 1627.3	10 years
Phone Message Logs	GC §34090	2 years
Recruitment Files	GC §12946, 29 CFR 1627.3	2 years after personnel action
Staff Meeting Minutes	GC §34090	2 years
Staff Reports	GC §34090	2 years
Supply Records	GC §34090	2 years
Workers' Compensation Reports & Files	8 CCR §10102	Whichever Is The Latest Date To Occur: 5 years from date of injury; or 1 year from when all compensation due or may be due is paid; or 1 year after termination of employee if frequent claims were made; or when any audit involving file is completed.
INFORMATION SYSTEMS*		
Calendars	GC §34090	2 years
Contracts	CCP §337	While Active + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Formal bids	GC §34090	2 years
Phone Message Logs	GC §34090	2 years
Supply Records	GC §34090	2 years

LIBRARY*

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

Annual Report to State Library	GC §34090	Indefinitely
Art Gallery Committee Agendas	GC §34090	2 years
Art Gallery Committee Minutes	GC §34090	Indefinite
Calendars	GC §34090	2 years
Contracts	CCP §337	While Active + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Friends of Library Minutes & Agendas***	GC §34090	5 years
Incident Reports	GC §34090	2 years
Interlibrary loan records	GC §34090	7 years
Internal Staff Memos	GC §34090	2 years
Library Board Agendas	GC §34090	5 years
Library Board Minutes	GC §34090	Indefinite
Phone Message Logs	GC §34090	2 years
Staff Meeting Minutes	GC §34090	2 years
Staff Reports	GC §34090	2 years
Supply Records	GC §34090	2 years

PARKS & COMMUNITY SERVICES DEPARTMENT*

Activity Guides	GC §34090	2 years
Activity Guide Sign Up Sheets	GC §34090	2 years
Budget Preparation Files	GC §34090	2 years
Cable Channel 6/27 Calendars & Requests	GC §34090	2 years
Calendars	GC §34090	2 years
Cemetery Records	GC §34090	Indefinite
Class Registration/Liability Forms	GC §34090	2 years
Commission Agendas	GC §34090	Indefinite
Completed Project Files	GC §34090	2 years
Consultant Contract/Agreement Files	CCP§337	While Active + 4 years
Contracts	CCP §337	While Active + 4 years
Correspondence & Notes	GC §34090	2 years
Correspondence, Miscellaneous	GC §34090	2 years
Facilities Rental & Reservation Forms	GC §34090	2 years
Financial Accounts & Ledgers	CCP §337	Current year + 4 years
Forms of Participants Involved In An Accident	GC §34090	5 years
Full-time Employee Files	GC §12946	Tenure + 2 years
Instructor/Consultant Contracts	CCP §337	While Active + 4 years
Internal Staff Memos	GC §34090	2 years
Invoice and Claim Forms	GC §34090	2 years
Key Checkout Log	GC §34090	2 years
Park Reservations	GC §34090	2 years
Part-time Employee Files	GC §12946	Tenure + 2 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

*** Official records of the Friends of the Library are maintained by the Friends of the Library.

Phone Message Logs	GC §34090	2 years
Pool Accident Reports	GC §34090	3 years
Special Event Requests	GC §34090	2 years
Sports Rosters & Schedules	GC §34090	2 years
Staff Reports	GC §34090	2 years
Staff Meeting Minutes	GC §34090	2 years
Supply Records	GC §34090	2 years
Tree Trimming Permits	GC §34090	2 years
 POLICE DEPARTMENT*		
Abandoned Vehicle Reports (no case numbers)	GC §34090	2 years
Accident Reports (excluding fatalities or when civil or criminal action is pending)	GC §34090	2 years
Accidents (fatalities)	Secretary of State	Indefinite
All index cards on Cases Purged/Destroyed	GC §34090	2 years
All information on Persons Arrested Upon Notification From Dept. of Justice That Purge Criteria Applies	GC §34090	Current year + 2 years
Attempted Suicides	GC §34090	5 years
Background Investigations	GC §12946	Current year + 2 years
Bicycle Reports, Lost, Found & Thefts	GC §34090	Current year + 2 years
Bicycle Licenses (expired records)	GC §34090	2 years
Bicycle Auction Receipts & Records	GC §34090	2 years
Calendars	GC §34090	2 years
Citizen Complaints Against Employees, Unfounded	PC §832.5	5 years
Civil Matters Involving City Property or Personnel (other than traffic collisions)	GC §34090	5 years
Contracts	CCP §337	Current year + 4 years
Correspondence, Miscellaneous	GC §34090	2 years
Daily Activity Logs	GC §34090	Current year + 2 years
Dispatch Cards (which generate a report)	GC §34090	5 years
Felony Crime Reports (arrest, no conviction, no outstanding warrants and statute of limitations has expired. Begins date of report or arrest)	PC §800	6 years
Felony Reports (convictions and crimes of violence)	PC §§799, 800	Indefinitely
Felony Arrest Reports Reduced to Misdemeanor or Nonretainable Offences	GC §34090	5 years
Field Interrogation Cards	GC §34090	2 years
Gun Registration	Secretary of State	Indefinitely
Health & Safety Marijuana Citations	H & S §11361.5	2 years

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

Kidnapping, Falsification of Public Records, Misuse of Public Funds, Trainwreckings, Treason & All Federal Crimes Without Statute of Limitations	PC §§799, 800	Indefinitely
Lost & Found Property Reports Which Reflect No Criminal Intent (except firearms)	Secretary of State; GC §34090	Current year + 2 years
Lost Firearms (and identifiable artifacts where Value exceeds \$1,000)	GC §34090	Indefinitely
Mental Cases (except multiple entry and last entry is less than two years, unless active)	GC §34090; W & I §5328	5 years
Mental Cases (multiple cases - active)	GC §34090; W & I §5328	Indefinitely
Misdemeanor Crime Reports	PC §801	Current year + 3 years
Misdemeanor Crime Reports/arrest Which Result In A Conviction	PC §801	5 years from date of arrest
Misdemeanor Arrests not resulting in a conviction OR for which 5 years from date of arrest no disposition was received	GC §34090	Current year + 2 years
Missing Person Reports (excluding those not located)	GC §34090	5 years
Murder (manslaughter, voluntary - involuntary)	PC §799	Indefinitely
Narcotic Registrants 11850 H&S (terminated upon court order)	GC §34090	Indefinitely
Natural Deaths & Found Bodies (not involving crimes of violence & Coroner's declaration that death is due to natural causes)	GC §34090	5 years
Phone Message Logs	GC §34090	2 years
Police Dispatch Cards (which generate no report)	GC §34090	2 years
Public Assist & Other Noncriminal Police Contact Reports	GC §34090	5 years
Receipt Books	GC §34090	2 years
Records of telephone & Radio Communications	GC §34090.6	100 days
Retainable Arrests (which are later termed "Detention Only" under 849 (b) Penal Code)	GC §34090	5 years from date of detention/arrest
Runaway Juvenile Reports (excluding those not located)	GC §34090	5 years
Sex Registrants 290 PC within jurisdiction	Secretary of State	Life of Registrant or terminated upon court order
Solicitor Permits (expired)	GC §34090	2 years
Staff Reports	GC §34090	2 years
Subpoena Cards	GC §34090	2 years
Suicides	GC §34090; W & I §5328	Indefinite
Supply Records	GC §34090	2 years
Suspicious Circumstances, Person	GC §34090	5 years

& Vehicle Reports		
Taxi Permits (expired)	GC §34090	2 years
Traffic Citations (moving, parking, mechanical & other)	GC §34090	2 years
Traffic Information Reports (miscellaneous)	GC §34090	5 years
Voided Citations	GC §34090	2 years
Warrant Service Cards (closed & inactive)	GC §34090	2 years
Warrants (unserved misdemeanor), back to court and warrant cards and corresponding cases	Secretary of State	5 years
Warrants (unserved felony), back to court and warrant cards and corresponding cases	Secretary of State	10 years
Weapons (stolen, with serial numbers or identifiable)	Secretary of State	Indefinite

PUBLIC WORKS DEPARTMENT*

Administration/Alpha Files/subject Files:

Agreements	CCP §337.2	Current year + 4 years
Budget Preparation	GC §34090	2 years
Chronological Files	GC §34090	2 years
Claim Forms (duplicates)	GC §34090	2 years
General Correspondence:		
City Departments	GC §34090	2 years
Various Federal, State & County Agencies	GC §34090	2 years
Grant Applications	GC §34090	2 years
Phone Message Logs	GC §34090	2 years
Reports (various)	GC §34090	2 years
Traffic Safety Committee Minutes	GC §36814; §34090; §40801	Indefinitely
Traffic Accident Reports (duplicates)	GC §34090	3 years
Traffic Counts	GC §34090	Indefinitely
Utility Rate Studies	GC §34090	3 years

Engineering:

Abandonment/Vacation R/W	GC §34090	Indefinitely
Encroachment Permits	GC §34090	5 years
Grading Permits	CCP §338(2)	5 years
Inspector logs/reports	GC §34090	5 years
Maps/Aerials (unless duplicates)	GC §34090	Indefinitely
Capital Improvement Projects	CCP §337.15	Indefinitely

Maintenance Division:

Correspondence	GC §34090	2 years
Service Requests	CCP §337	Current year + 4 years
Work Orders	CCP §337	Current year + 4 years
Vehicle Service Records	GC §34090	As long as City

* Documents related to federal or state grants or loans will be retained for the period specified by the granting/loaning agency.

owns vehicle

Utilities Division (WTP and WWTP):

Correspondence	GC §34090	2 years
Technical Charts	GC §34090	3 years
Maintenance and Operations Logs	40 CFR 403.12	3 years
Technical Reports and Studies	40 CFR 403.12	3 years
Monthly and Annual Reports	40 CFR 403.12	3 years
Project Files	GC §34090	Indefinitely

NOTE: The above “legal references” specify the minimum time that is required by law to retain the various city records. However, the time specified to retain city records by the “retention schedule” may be longer than is required by law, yet must be followed as the “retention schedule” has been set at the discretion of the City Attorney.

INDEX TO LEGAL REFERENCES

CALIFORNIA STATE LAW:

CCP	=	California Code of Civil Procedure
GC	=	California Government Code
H & S	=	California Code of Health & Safety
PC	=	California Penal Code
W & I	=	California Welfare & Institutions Code
CCR	=	California Code of Regulations

FEDERAL LAW:

USC	=	United States Code
CFR	=	Code of Federal Regulations

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 4, 2005
TO : City Council
FROM : City Manager
SUBJECT : **APPROVE THE SALARY RANGE FOR THE
CLASSIFICATION OF ECONOMIC DEVELOPMENT
MANAGER**

RECOMMENDATION:

Adopt the resolution approving the salary range for the classification of Economic Development Manager.

EXECUTIVE SUMMARY:

This resolution seeks to establish the salary range for the position of Economic Development Manager.

BUDGET INFORMATION:

No budget impact. Salary for this position will come from salary allocated for the vacant Assistant City Manager/Economic Development Director.

BACKGROUND:

Council approved the position classification of Economic Development Manager at your July 19, 2005 Council meeting. At that time there was no proposed salary range. The Human Resources Director has completed the internal relationship review of all position classifications as they relate to the latest salary survey of benchmark positions. The salary range for the classification of Economic Development Manager has now been established as it relates to others in the agency.

Attachment:

- [Resolution](#)

RESOLUTION

RESOLUTION NO. 05-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING THE SALARY RANGE FOR THE CLASSIFICATION OF
ECONOMIC DEVELOPMENT MANAGER**

WHEREAS, the City Council approved the position of Economic Development Manager at their September 6, 2005 Council meeting; and

WHEREAS, the City has completed its audit of internal salary relationships of all positions within the city; and

WHEREAS, the classification of Economic Development Manager currently does not have a salary range associated with this position.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council hereby establishes the salary range for the classification of Economic Development Manager as:

A	B	C	D	E
7347	7714	8100	8505	8930

On Motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 6th day of September 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 31, 2005
TO : City Manager
FROM : Director of Public Works
SUBJECT : **MILITARY EAST TRAFFIC SIGNAL UPGRADES:
ACCEPTANCE AND NOTICE OF COMPLETION**

RECOMMENDATION:

Adopt the resolution accepting the Military East Traffic Signal Upgrades Project, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

EXECUTIVE SUMMARY:

This project included upgrade of traffic signals located at First/Military, East 2nd/Military, East 5th/Military with additional work performed at Southampton Rd/Military. The work included new signal electronics, installation of LED lights, countdown pedestrian signals and battery back up systems to upgrade these traffic signals and allow operation to continue during power outages.

BUDGET INFORMATION:

This project was budgeted from a combination of accounts from Misc. Public Improvements, Signal Upgrades, UPS Local Match and a UPS Grant from the Energy Commission. The final cost of \$92,765.00 includes two change orders as outlined below.

Change Order No.	Item Description	Amount
--	Original Contract (Council Resolution No. 03-177)	\$65,200.00
#1	Change Order to furnish and install 5 battery back-up systems at 5 traffic signal locations – directed by staff.	24,300.00
#2	Furnish and install 6 LED countdown pedestrian signal heads at 2 intersections – Military/First and Military East/East 2 nd Street – directed by staff.	3,265.00
--	Final Construction Cost	\$92,765.00

BACKGROUND:

The contractor, Republic Electric, of Novato has completed this project to the satisfaction of the City Engineer. Delay of formal acceptance of this project allowed staff the time necessary to monitor the signals operations during the one-year warranty period. The project included changing cabinets and controls, install LED lights, pedestrian countdown signals, battery back up systems, and other necessary electrical items to upgrade traffic signals.

Attachments:

- [Proposed Resolution](#)
- [Notice of Completion](#)

Proposed Resolution

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE MILITARY EAST TRAFFIC SIGNAL UPGRADES PROJECT, APPROVING CONTRACT CHANGE ORDER NUMBERS 1 AND 2, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SOLANO COUNTY RECORDER

WHEREAS, by Resolution No. 03-177 the City Council awarded the construction contract to Republic Electric of Novato, CA, for the Military East Traffic Signal Upgrades Project in accordance with the plans and specifications; and

WHEREAS, Republic Electric has completed the work, including Change Orders No. 1 and No. 2, to the satisfaction of the City.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby accepts the Military East Traffic Signal Upgrades Project as complete and approves Contract Change Order Nos. 1 and 2 for a final construction contract cost of \$92,765.00.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice with the Solano County Recorder's office.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

Notice of Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA
ATTN: CITY ENGINEER
250 EAST 'L' STREET
BENICIA, CA 94510

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The City of Benicia, 250 East "L" Street, Benicia, CA, 94510, is the owner of property described as:

VARIOUS STREET RIGHTS-OF-WAY
(No APN's for street rights-of-way.)

2. The nature of City's ownership is in fee title.
3. A work of improvement known as the **MILITARY EAST TRAFFIC SIGNAL UPGRADES** on the property herein above described was completed and accepted by the City Council of the City of Benicia at a regular meeting thereof on September 6, 2005.
4. The name of the contractor for such improvement was Republic Electric, of Novato, CA.

CITY OF BENICIA

Dated: _____

By: _____
James R. Erickson, City Manager

Attest: _____
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that the facts stated therein are true, under penalty of perjury.

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 17, 2005

TO : City Manager

FROM : Human Resources Director

SUBJECT : **APPROVE THE NEW JOB DESCRIPTION OF MANAGEMENT ANALYST I/II AND APPROVE THE RETITLE OF THREE INCUMBANTS**

RECOMMENDATION:

Adopt the resolution approving the new job description of Management Analyst I/II and approve the retitle of three incumbents.

EXECUTIVE SUMMARY:

With recent Council approval of the Police Department reorganization an audit of the duties and responsibilities of the Management Assistant I/II classification was completed in order to update the duties to incorporate the needs of the Police Department. The position title of Management Analyst I/II better identified the professional analytical responsibilities of the position.

The City is also proposing to reclassify the three incumbent Management Assistant II's to Management Analyst II's. The new position's title and duties more accurately reflect the work done by these individuals. We are not proposing to modify the salary range.

BUDGET INFORMATION:

There is no budget impact for these changes in this fiscal year. Funding for the Police Department position has been approved in the current fiscal year budget numbers.

SUMMARY:

This position will be added to the Professional/Confidential Group. This position qualifies for the administrative exemption from the Federal Labor Standards Act (FLSA), and is also exempt from Civil Service reporting.

Attachments:

- ❑ [Resolution](#)
- ❑ [Proposed Job Description](#)
- ❑ [Out-dated Job Description for Management Assistant I/II](#)

RESOLUTION

RESOLUTION NO. 05-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE NEW JOB DESCRIPTION OF MANAGEMENT ANALYSIT I/II AND THE RETITLING OF THREE INCUMBANTS

WHEREAS, the City Council authorized a reorganization of the Police Department in fiscal year 2005/2007 which included the hiring of a Management Assistant; and

WHEREAS, the current job description of Management Assistant originated in August of 1991; and

WHEREAS, the Human Resources Department seeks to review, update and modernize all job descriptions prior to recruitment to incorporate necessary ADA language and revise language to incorporate today's needs; and

WHEREAS, this new position will allow the City to retitle current Management Assistants to a position title which more accurately identifies their duties and responsibilities.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council hereby approves adding the new classification of Management Analyst I/II to the Professional/Confidential group, and amending the Classification Plan.

On Motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 6th day of September, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 22, 2005
TO : City Manager
FROM : Parks & Community Services Director
SUBJECT : **AWARD OF THE CONSTRUCTION CONTRACT FOR THE
CIVIC CENTER TENNIS COURT LIGHTING PROJECT**

RECOMMENDATION:

Adopt the resolution awarding the contract for the Civic Center Tennis Court Lighting Project and authorize the City Manager to sign the construction contract.

EXECUTIVE SUMMARY:

Staff solicited for bids beginning July 18, 2005 and opened bids on August 18, 2005. Two bids were received for this project. Bleyco Incorporated of Castro Valley, CA, was the low bidder for \$102,242.50.

BUDGET INFORMATION:

Funding for the Civic Center Tennis Court Lighting Project was approved in the 2004-05 Budget. The following is a breakdown of the funding sources for the project:

Proposition 40 Grant Funds	\$60,000 (Resolution No.03-134)
City of Benicia General Fund	<u>\$60,000 (Resolution No.05-77)</u>
Total	\$120, 000

BACKGROUND:

The project, as approved by the City Council and the California Department of Parks and Recreation, includes the lighting of the two tennis courts located at Civic Center Park.

The funding for this project was approved in the 2003-05 budget. The California Department of Parks and Recreation entered into an agreement with the City to provide grant funds (Proposition 40) for \$60,000 to design and construct the described improvements. The remaining \$60,000 to complete the project was approved by City Council on May 17, 2005.

Two bids were received on August 18, 2005 for this project. A summary of the bid results is provided:

Bid Results:

RANK	BIDDER'S NAME & ADDRESS	BID
1	Bleyco Incorporated 11425 Cull Canyon Rd. Castro Valley CA 94552	\$102,242.50
2	Steiny & CO., Inc P.O. Box 23008 Vallejo, CA 94590	\$110,050.00

Staff has reviewed the bids and finds them in order. Staff worked with Bleyco Incorporated on the Benicia Ballfield Lighting Project in 2003-04. During this project, Bleyco Incorporated provided quality work, met construction schedules, and was easy to work with.

Based on the lowest responsive bid and their background and experience, staff recommends the City Council award the bid for the Civic Center Tennis Court Lighting Project to Bleyco Incorporated.

Attachment:

- [Proposed Resolution](#)

RESOLUTION

RESOLUTION NO. 05 –

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING BIDS AND AWARDING THE CONSTRUCTION CONTRACT FOR THE CIVIC CENTER TENNIS COURT LIGHTING PROJECT IN THE AMOUNT OF \$102,242.50 TO BLEYCO INCORPORATED, AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY

WHEREAS, the project was approved by the City Council and the California Department of Parks and Recreation for the lighting of two (2) tennis courts located at Civic Center Park; and

WHEREAS, the City of Benicia's Civic Center Tennis Court Lighting project was advertised for construction bids; and

WHEREAS, staff solicited bids beginning July 14, 2005 and opened two (2) properly received sealed bids on August 18, 2005; and

WHEREAS, Bleyco Incorporated of Castro Valley, California submitted the lowest responsible bid for the project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby accepts the bids and awards the construction contract for the Civic Center Tennis Court Lighting project in the amount of \$102,242.50 to Bleyco, Incorporated.

NOW, BE IT FURTHER RESOLVED that the City Council of the City of Benicia hereby authorizes the City Manager to sign the construction contract 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 held on the 6th day of September 2005 and adopted by the following vote:

Ayes:
Noes:
Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 9, 2005
TO : City Manager
FROM : Finance Director
SUBJECT : **APPROVAL OF AMENDMENT NO. 1 TO TRANSLINK
INTERAGENCY PARTICPATION AGREEMENT**

RECOMMENDATION:

Authorize City Manager to sign the agreement and make minor amendments as necessary.

EXECUTIVE SUMMARY:

The amendment to the TransLink Interagency Participation Agreement reflects changes to Article II of the Agreement dealing with Legal Representation and Conflict of Interest. Changes to the agreement require formal approval by each of the member agencies.

BUDGET INFORMATION:

There is no impact to the Benicia Transportation Fund or the City General Fund.

BACKGROUND:

The amendment to the Agreement, Subsection E, discusses the addition of legal counsel to represent the TransLink Consortium, common interests among the other transit operators, and a need for joint cooperation in legal matters relating to TransLink.

The other amendment, Subsection F, addresses potential conflict of interests that may occur while having membership on the TransLink Consortium.

Attachment:

- [Amendment No. 1 to TransLink Interagency Participation Agreement](#)

AMENDMENT NO. 1

**AMENDMENT NO. 1
TO
TRANSLINK® INTERAGENCY PARTICIPATION AGREEMENT**

This Amendment No. One to TransLink® Interagency Participation Agreement (the “Agreement”) is entered into this _____ day of _____, 2005, by and among the Alameda-Contra Costa Transit District (“AC Transit”), Golden Gate Bridge Highway and Transportation District (“GGBHTD”), the San Francisco Bay Area Rapid Transit District (“BART”), the City and County of San Francisco, acting by and through its Municipal Transportation Agency (“MTA”), the San Mateo County Transit District (“SamTrans”), the Santa Clara Valley Transportation Authority (“VTA”), the Metropolitan Transportation Commission (“MTC”) (collectively, "Charter Members"); and Tri Delta Transit; Livermore Amador Valley Transit Authority ("LAVTA"); City of Benicia ("Benicia Transit"), and the Peninsula Corridor Joint Powers Board ("Caltrain") (collectively, "General Members"). The Charter Members and General Members are collectively referred to herein as “the Members.”

RECITALS

A. On December 12, 2003, the Charter Members executed the Agreement, for the purpose of establishing the TransLink® Consortium for joint Agency decision-making essential to the success of TransLink®, an automated fare payment system for intra- and inter-operator transit trips to be implemented on transit systems within the Bay Area.

B. Since the effective date of the Agreement, the General Members have signed on to the Agreement to become a part of the Consortium.

C. The Members wish to amend the Agreement to clarify the terms of representation by legal counsel.

D. Article II of Agreement is amended by adding Subsections E (Legal Representation) and F (Conflict of Interest) to read as follows:

E. Legal Representation.

1. **Counsel for Consortium.** The Consortium shall be represented by counsel. The Chair of the TMG shall appoint general counsel to serve for the term of the Chair, subject to the consent of the Member whom the counsel regularly represents.
2. **Common Interest.** The Members of the Consortium recognize a mutuality of interest, and a need for joint cooperation in legal matters relating to TransLink®. In furtherance of this common interest, any communications between Members of the Consortium and counsel for the Consortium (including special counsel appointed in connection with legal matters relating to TransLink®) shall be confidential and protected from disclosure to any third party by each and every privilege – including, but

not limited to, the attorney-client privilege, the attorney work product privilege, and the pooled information privilege – notwithstanding the dissemination of the communications and work product between individual Members of the Consortium and counsel for the individual Members. The Members agree that they will not voluntarily disclose exchanged information to any third party without a written waiver of the privileges by the counsel that made the information available in the first instance. If information covered by the privileges is requested by a third party pursuant to a subpoena or other discovery request, then counsel receiving the request shall notify in a timely fashion the counsel who disclosed the information so that the privileges against disclosure may be asserted.

Should any Member withdraw from, be expelled from, or otherwise terminate its participation in the Consortium under the provisions of Article VI of this Agreement, such withdrawal, expulsion or termination shall not impair the privileges that protect any information that has been shared prior to such action. Any Member who withdraws from the Consortium shall promptly return all privileged materials that the Member has received.

F. Conflict of Interest

Each Member, after being informed by its attorney of the general nature of the conflicts that might arise, concludes that the risk of any potential conflict of interest is outweighed by the benefits and economies of cooperation and sharing information as part of the Consortium, and knowingly and intelligently waives any conflict of interest that may arise on account of its membership in the Consortium.

IN WITNESS WHEREOF, this Amendment No. 1 to the TransLink® Interagency Participation Agreement has been duly authorized and executed by the parties hereto on the date indicated above.

Alameda Contra Costa Transit District

Approved as to Form

Rick Fernandez, General Manager

Kenneth C. Scheidig, General Counsel

Golden Gate Bridge Highway and Transportation District

Approved as to Form

Celia G. Kupersmith, General Manager

David J. Miller
General Counsel

San Francisco Bay Area Rapid Transit District

Approved as to Form
Office of the General Counsel

Tom Margro, General Manager

Sherwood Wakeman
General Counsel

**City and County of San Francisco
Municipal Transportation Agency**

Approved as to Form
Dennis J. Herrera, City Attorney

Stuart Sunshine
Acting Director of Transportation

Robin M. Reitzes
Deputy City Attorney

San Mateo County Transit District

Approved as to Form:

Michael Scanlon, General Manager and
Chief Executive Officer

David J. Miller
General Counsel

Santa Clara Valley Transportation Authority

Approved as to Form

Michael T. Burns, General Manager

Suzanne Gifford
General Counsel

Metropolitan Transportation Commission

Approved as to Form

Steve Heminger, Executive Director

Tri Delta Transit

Jeanne Krieg, General Manager

Livermore Amador Valley Transit Authority

Barbara Duffy, General Manager

Peninsula Corridor Joint Powers Board

Michael Scanlon, General Manager and CEO
San Mateo County Transit District, Managing Operator

City of Benicia (Benicia Transit)

Jim Erickson, City Manager

Melanie J. Morgan
Deputy General Counsel

Approved as to Form

Approved as to Form

Michael N. Conneran
General Counsel

Approved as to Form

David J. Miller
General Counsel

Approved as to Form

Heather McLaughlin
City Attorney

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR

DATE : August 3, 2005

TO : City Manager

FROM : Finance Director

SUBJECT : **APPROVAL OF ADDITIONAL APPRAISAL EXPENSES FOR THE VALERO REFINERY ASSESSMENT APPEAL**

RECOMMENDATION:

Adopt the resolution authorizing the City Manager to amend the contract with the County of Solano and approving a General Fund budget adjustment of \$62,500 for FY 2005-06.

EXECUTIVE SUMMARY:

On October 11, 2002, the City of Benicia entered into an agreement with the County of Solano to equally share appraisal expenses for the Valero Refinery assessment appeal. The appraisal costs were originally estimated at \$400,000 and the City and County agreed to pay up to \$200,000 each. Due to the complicated and protracted valuation requirements, the County now anticipates spending approximately \$525,000 in appraisal costs and is requesting that the City agree to fund 50% of the increase or \$62,500. Staff recommends approving the increased contribution as the City will significantly benefit from the increased valuation and assessment of the Valero Refinery.

BUDGET INFORMATION:

The General Fund budget adjustment of \$62,500 will come from Undesignated Reserves. The transfer will reduce the budgeted Undesignated Fund Balance to \$5,562,855 or 20.9%.

BACKGROUND:

If the Valero Refining Company ("Valero") property tax appeal is successful, the assessed valuation could decline from \$952 million to as low as \$637 million in FY 2004-05. This would translate to a future range of loss for the General Fund between \$0 and \$985,000 annually. The City's share of the initial refund to Valero could take as much as \$3.4 million from General Fund reserves, depending on how the County distributes the refund.

Valero purchased the Northern California Exxon Refinery Operations and Service Stations in May 2000 at a reported purchase price \$895 million. The sales price was reduced by the approximate value of the Service Stations and the Benicia property was placed on the Assessed Value Roll in FY 2001-02 at \$776 million. Valero filed an appeal claiming the value should have been \$600 million.

The City and County retained refinery appraisal specialists, Baker & O'Brien, to substantiate the assessed value of Valero's Refinery. Baker & O'Brien's preliminary review of the records indicated an assessed value of \$915 million. The increase of approximately \$140 million was placed on the Assessed Value Roll in FY 2002-03 and generated approximately \$1.4 million in new property tax revenues, of which the City's share was approximately \$448,000 or 31.2%.

In order to sustain the increase in the assessed valuation through the assessment appeals process, the City and County entered a cost-sharing agreement to retain Baker & O'Brien at a cost not-to-exceed \$400,000. The City's share was limited to 50% or \$200,000. Unfortunately, Baker & O'Brien were not able to complete the process and the County transferred the appraisal responsibilities to Barnes & Click on or about January 2003.

Barnes & Click re-evaluated the information assembled by Baker & O'Brien, along with new information, and estimated the value at \$1.159 billion "as of the sale date in May 2000". Using this new appraisal, in late calendar year 2004 the Assessor felt confident in adjusting the assessed valuation role in FY 2001-02 from \$660 million to \$915 million. (Apparently, when the Assessor adjusted FY 2002-03 to \$915 million two years earlier, they did not "arc" all the way back to the first full year of ownership, FY 2001-02.)

As soon as the Assessor distributed the "arc-ed" property taxes to jurisdictions in the County in December 2004, Valero reported that it had discovered several boxes of information that would alter the results of the most recent Barnes and Click appraisal. The boxes were then shipped to the County, whereby the appraisers spent several days perusing the information for evidence that might influence their valuation formulas.

The information used to determine the value of the refinery has been deemed highly confidential and only a select group of County representatives are allowed to be present when the information is discussed. Apparently, recent meetings with Barnes and Click indicated that the appraisal is far enough along to schedule the long-awaited meeting with the Property Tax Appeals Board on October 11, 2005. The additional expenses requested by the County will pay for the additional appraisal work required to get us to the October 11th meeting.

Table 1. below provides an overview of the potential budget impacts to the General Fund:

Table 1.
County Assessed Value vs. Valero's Appeal Assessed Value

Fiscal Year	County Assessed Value	Valero Appeal Assessed Value	Difference	Total Property Tax Impact	Benicia Impact
2001-02	\$ 776,000,000	\$ 600,000,000	\$(176,000,000)	\$ (1,760,000)	\$ (549,120)
2002-03	\$ 915,356,000	\$ 612,000,000	\$(303,356,000)	\$ (3,033,560)	\$ (946,471)
2003-04	\$ 933,663,120	\$ 624,240,000	\$(309,423,120)	\$ (3,094,231)	\$ (965,400)
2004-05	\$ 952,336,382	\$ 636,724,800	\$(315,611,582)	\$ (3,156,116)	\$ (984,708)
Total Impact on General Fund				\$ (11,043,907)	\$(3,445,699)

Attachment:

- [Resolution](#)

RESOLUTION

RESOLUTION NO. 05-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING ADDITIONAL APPRAISAL EXPENSES FOR THE VALERO
REFINERY ASSESSMENT APPEAL**

WHEREAS, the City Council approved an agreement on October 11, 2002 to share appraisal expenses of \$400,000 equally with the County of Solano to establish a value for the Valero Refinery; and

WHEREAS, due to the complicated and protracted valuation requirements, the County now anticipates spending approximately \$525,000 in appraisal costs and is requesting that the City agree to fund 50% of the increase or \$62,500; and

WHEREAS, City will significantly benefit from the increased valuation and assessment of the Valero Refinery; and

WHEREAS, the Finance Director has determined that a budget appropriation from the General Fund Undesignated Reserves is required and will not reduce the balance below the 20% minimum established in the General Fund Reserve Policy.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the City Manager to amend the agreement with the County of Solano for additional appraisal expenses.

BE IT FURTHER RESOLVED THAT the Council approves a budget adjustment of \$62,500 from General Fund Undesignated Reserves for the Fiscal Year 2005-06 in accordance with the authorized contract amendment with the County of Solano.

On motion of Council Member _____, seconded by _____, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the 6th day of September, 2005, by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 15, 2005
TO : City Manager
FROM : Human Resources Director
SUBJECT : **APPROVE THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA PROFESSIONAL AND CONFIDENTIAL GROUP**

RECOMMENDATION:

Adopt the resolution approving the amendments to the July 1, 2005 through June 30, 2006 Labor Agreement with the Benicia Professional and Confidential Group.

EXECUTIVE SUMMARY:

The City concluded negotiations with the Benicia Professional and Confidential Group on August 11, 2005. The Professional and Confidential Group has 27 incumbents. This group is comprised of our Technical, Analytical and Confidential positions.

The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Professional and Confidential Group with the amendments is attached.

BUDGET INFORMATION:

The total budget impact for FY 2005/2006 will be approximately \$58,174.07. 2% of this cost has already been included in the FY 2005/2006 budget numbers. The additional budgetary cost for this agreement, over this 2%, is \$1,140.67.

Attachments:

- [Proposed Resolution](#)

If viewing online, a copy of the following attachment is available at the City Clerk's Office:

- Proposed Changes to Agreement

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA PROFESSIONAL AND CONFIDENTIAL GROUP

WHEREAS, the existing Agreement between the City of Benicia and the Benicia Professional and Confidential Group which covers salaries and other conditions of employment lapsed on June 30, 2005; and

WHEREAS, the City has concluded negotiations with the Benicia Professional and Confidential Group relative to amendments to the Agreement for the term covering July 1, 2005 to June 30, 2006; and

WHEREAS, the Benicia Professional and Confidential Group accepted the terms of the July 1, 2005 to June 30, 2006 amendments to the Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves changes to the following sections in the July 1, 2005 through June 30, 2006 Agreement (a complete copy of the Agreement with the specified amendment language is attached to the staff report), and the City Council authorizes the City Manager to execute the Agreement as amended:

1. Section II (A) – Compensation
2. Section IV – Deferred Compensation
3. Section VII – Health and Medical Insurance
4. Section X – Retiree Health Savings Plan
5. Miscellaneous additions and deletions to codify current practices.

On Motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 16, 2005
TO : City Manager
FROM : Human Resources Director
SUBJECT : **APPROVE THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS
TO THE LABOR AGREEMENT WITH THE BENICIA
SUPERVISORY GROUP**

RECOMMENDATION:

Adopt the resolution approving the amendments to the July 1, 2005 through June 30, 2006 Labor Agreement with the Benicia Supervisory Group.

EXECUTIVE SUMMARY:

The City concluded negotiations with the Benicia Supervisory Group on August 26, 2005. The Supervisory Group consists of 9 incumbents. This group is comprised of our Division Supervisor positions.

The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Supervisory Group with the amendments is attached.

BUDGET INFORMATION:

The total budget impact for FY 2005/2006 will be approximately \$23,821.59. 2% of this cost has already been included in the FY 2005/2006 budget numbers. The additional budgetary cost for this agreement, over this 2%, is \$467.09.

Attachments:

- [Proposed Resolution](#)

If viewing online, a copy of the following attachment is available at the City Clerk's Office:

- Proposed Changes to Agreement

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA SUPERVISORY GROUP

WHEREAS, the existing Agreement between the City of Benicia and the Benicia Supervisory Group which covers salaries and other conditions of employment lapsed on June 30, 2005; and

WHEREAS, the City has concluded negotiations with the Benicia Supervisory Group relative to amendments to the Agreement for the term covering July 1, 2005 to June 30, 2006; and

WHEREAS, the Benicia Supervisory Group accepted the terms of the July 1, 2005 to June 30, 2006 amendments to the Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves changes to the following sections in the July 1, 2005 through June 30, 2006 Agreement (a complete copy of the Agreement with the specified amendment language is attached to the staff report), and the City Council authorizes the City Manager to execute the Agreement as amended:

1. Section II (A) – Compensation
2. Section II (B) – Deferred Compensation
3. Section VI – Retiree Health Savings Plan
4. Miscellaneous additions and deletions to codify current practices.

On Motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 16, 2005

TO : City Manager

FROM : Human Resources Director

SUBJECT : **APPROVE THE JULY 1, 2005 TO JUNE 30, 2006
AMENDMENTS TO THE LABOR AGREEMENT WITH
THE BENICIA MIDDLE MANAGEMENT GROUP**

RECOMMENDATION:

Adopt the resolution approving the amendments to the July 1, 2005 through June 30, 2006 Labor Agreement with the Benicia Middle Management Group.

EXECUTIVE SUMMARY:

The City concluded negotiations with the Benicia Middle Management Group on August 30, 2005. The Middle Management Group consists of 16 incumbents. This group is comprised of our Plant/Division Superintendents, Deputy Fire Chiefs, Assistant Directors, and Public Services Librarian positions.

The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Middle Management Group with amendments is attached.

BUDGET INFORMATION:

The total budget impact for FY 2005/2006 will be approximately \$53,652.95. 2% of this cost has already been included in the FY 2005/2006 budget numbers. The additional budgetary cost for this agreement, over this 2%, is \$1,052.02.

Attachments:

- [Proposed Resolution](#)

If viewing online, a copy of the following attachment is available at the City Clerk's Office:

- Proposed Changes to Agreement

RESOLUTION

RESOLUTION NO. 05-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE
LABOR AGREEMENT WITH THE BENICIA MIDDLE MANAGEMENT
GROUP**

WHEREAS, the existing Agreement between the City of Benicia and the Benicia Middle Management Group which covers salaries and other conditions of employment lapsed on June 30, 2005; and

WHEREAS, the City has concluded negotiations with the Benicia Middle Management Group relative to amendments to the Agreement for the term covering July 1, 2005 to June 30, 2006; and

WHEREAS, the Benicia Middle Management Group accepted the terms of the July 1, 2005 to June 30, 2006 amendments to the Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves changes to the following sections in the July 1, 2005 through June 30, 2006 Agreement (a complete copy of the Agreement with the specified amendment language is attached to the staff report), and the City Council authorizes the City Manager to execute the Agreement as amended:

1. Section II (A) – Compensation
2. Section III (A) - Vacation
3. Section VII – Retiree Health Savings Plan
4. Miscellaneous additions and deletions to codify current practices.

On Motion of Council Member _____, seconded by
Council Member _____, the above resolution was introduced and
passed by the Council of the City of Benicia at a regular meeting of said Council on the
6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGREEMENT
Proposed Language

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
CONSENT CALENDAR**

DATE : August 16, 2005
TO : City Manager
FROM : Human Resources Director
SUBJECT : **APPROVE THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS
TO THE LABOR AGREEMENT WITH THE BENICIA SENIOR
MANAGEMENT GROUP**

RECOMMENDATION:

Adopt the resolution approving the amendments to the July 1, 2005 through June 30, 2006 Labor Agreement with the Benicia Senior Management Group.

EXECUTIVE SUMMARY:

The City concluded negotiations with the Benicia Senior Management Group on August 16, 2005. The Senior Management Group consists of 8 incumbents. This group is comprised of our Department Directors.

The attached resolution outlines the amendments to the Agreement. A complete copy of the Agreement between the City of Benicia and the Benicia Senior Management Group with the amendments is attached.

BUDGET INFORMATION:

The total budget impact for FY 2005/2006 will be approximately \$34,563,66. 2% of this cost has already been included in the FY 2005/2006 budget numbers. The additional budgetary cost for this agreement, over this 2%, is \$677.72.

Attachments:

- [Proposed Resolution](#)

If viewing online, a copy of the following attachment is available at the City Clerk's Office:

- Proposed Changes to Agreement

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA SENIOR MANAGEMENT GROUP

WHEREAS, the existing Agreement between the City of Benicia and the Benicia Senior Management Group which covers salaries and other conditions of employment lapsed on June 30, 2005; and

WHEREAS, the City has concluded negotiations with the Benicia Senior Management Group relative to amendments to the Agreement for the term covering July 1, 2005 to June 30, 2006; and

WHEREAS, the Benicia Senior Management Group accepted the terms of the July 1, 2005 to June 30, 2006 amendments to the Agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves changes to the following sections in the July 1, 2005 through June 30, 2006 Agreement (a complete copy of the Agreement with the specified amendment language is attached to the staff report), and the City Council authorizes the City Manager to execute the Agreement as amended:

1. Section II (A) – Compensation
2. Section VII – Retiree Health Savings Plan
3. Miscellaneous additions and deletions to codify current practices.

On Motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the Council of the City of Benicia at a regular meeting of said Council on the 6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
PUBLIC HEARING**

DATE: August 25, 2005

TO: City Manager

FROM: Finance Director

SUBJECT: **ADOPT A MASTER FEE SCHEDULE THAT INCLUDES
CHANGES IN DEPARTMENTAL FEE STRUCTURES,
INCLUDING DEVELOPMENT RELATED FEES AND CHARGES**

RECOMMENDATION:

Conduct a public hearing and adopt a Resolution establishing a Master Fee Schedule that includes changes in development related fees, including Planning and Engineering fees and charges.

EXECUTIVE SUMMARY:

Each department in the City has assembled a list of fees and charges that are currently in existence and recommended they be included in the Master Fee Schedule. Some departments also submitted requests to adjust certain fees and charges to reflect changes in the costs of providing those services to the public. Changes in the development related fees and charges, such as Planning and Engineering services, require a public hearing. Any changes in the Master Fee Schedule will be implemented 60 days after approval by the City Council. Future increases will be linked to changes in the Consumer Price Index.

BUDGET INFORMATION:

The proposed fee schedule would increase the Planning Division Cost recovery from 16% to 53% of the cost of processing development applications and generate an additional \$67,000 in the remainder of the fiscal year. The changes in Engineering Fees would generate approximately \$10,000 and all other departments approximately \$10,000. Total General Fund impact is expected to be 87,000 in FY 2005-06 and has been addressed in the current budget. State law requires the development fees go into effect no earlier than 60 days after adoption. In order to minimize confusion, staff recommends all the fees be effective 60 days after adoption of the Resolution or November 5, 2005.

PLANNING DIVISION:

While all departments are presented for review, the division undergoing the greatest amount of scrutiny has been the Planning Division. Planning fees were last updated over 13 years ago. Consequently, revenue generated through collecting development

application fees (approximately \$49,000) is substantially less than the cost of processing the applications (approximately \$318,000) during the past fiscal year. The cost of processing development applications constituted approximately 39% of the Planning Division Budget in FY 04/05. All other expenditures are related to long-range planning activities and special projects that do not generate income. In order to reduce the amount of the general fund subsidy regarding development applications, the Community Development Department proposes to increase Planning fees so that they more closely approximate the cost of processing applications.

State law requires that fees for Use Permits, Variances, Subdivision Maps, and other planning services not exceed the reasonable cost of providing the service. Excessive fees convert the fee into a tax.

Cost of Services

Based on the administrative, professional, and management costs associated with processing various types of applications, the cost of reviewing development proposals was approximately \$318,000 in FY 04/05, as shown in *Exhibit I - A*. Using Benicia's current fee schedule revenue generated in the same year is approximately 16% of the cost of processing development applications.

Methodology

This analysis compares the fees charged by Benicia and surrounding jurisdictions that use a flat fee, or flat fee plus escalator, for common planning actions. The jurisdictions included in this study are Fairfield, Martinez, Solano County, Suisun City, Vacaville and Vallejo. The fee schedules used in preparing the report were those in effect in FY 04/05. The study then uses the three-year average number of actions processed by the City of Benicia Planning Division to make revenue projections based on the fee schedules of Benicia and the other jurisdictions.

Fee Comparison

The fee comparison table, attached as *Exhibit I - B*, shows the type of permits used in the comparison study and the projected number of each type of action the City of Benicia processes. The fee Benicia charges is listed followed by the fees charged by the jurisdictions studied. Finally, the average fee charged by the jurisdictions, excluding Benicia is calculated and the difference in this average and the Benicia fee is shown in the final column.

The City of Benicia's Planning Fee Schedule is substantially lower than surrounding jurisdictions in the area. The low fees offset less than 10% of the projected costs of processing these applications. At least three of the jurisdictions polled in this study raised their fees during the last nine months. The disparity between the City of Benicia and the surrounding area is likely to grow larger if the Planning Fee Schedule is not revised.

Planning Recommendation

Because Benicia's fees are substantially lower than the fees of surrounding communities, and generate revenue that is substantially less than the cost of providing services, staff is recommending a fee increase.

In order to arrive at the proposed fee schedule, staff compared revenue that would be generated under two scenarios; 1) application of the area average for fees, and; 2) establishing fees that would generate revenue commensurate with the full cost of providing services, summarized in *Exhibit I - C*. The annual income, projected at the area average for fees, would increase the cost recovery to 55%. In order to reach full cost recovery, the City of Benicia would have to increase fees by approximately 600%.

Staff is recommending a fee increase that:

- a. Does not exceed Benicia's reasonable costs of providing services;
- b. Approximates the fee average for the region;
- c. Increases cost recovery to approximately 53% of the cost of processing development applications; and
- d. Would generate revenue that is consistent with the proposed budget.

ENGINEERING:

The Engineering Department has historically charged for services by the hour, similar to consulting engineers. The increases in the fee schedule recommended by the Public Works Director basically reflects changes in the average hourly rate for division personnel and to the minimum charge for each of the related services. The new average hourly rate for all division personnel will be \$50 per hour.

The Director is also requesting that the fees for Development Plan Checking also be adjusted from 1% of the estimated project cost to 3%. The amount for Development Inspections is also requested to be 3%, down from 5%, which represents the costs of providing engineering services to the projects. Individual fee adjustments and supporting cost information are attached to this report as *Exhibit II*. Individual fee numbers are shown in the left hand column of the Fee Schedule and in the upper right had corner of the worksheets.

Currently, Performance Bonds have been established at \$500 for all types of projects. The Director is requesting that the amounts be adjusted for each service type in order to cover the potential completion costs in the current construction environment. The largest increase will be for development projects, going from \$500 to \$10,000.

PARKS AND COMMUNITY SERVICES:

The Recreation Program and Facility Fees charged by the Department are proposed by staff, and are recommended by the Parks, Recreation and Cemetery Commission for approval by the City Council. At the May 11, 2005 Parks, Recreation and Cemetery

meeting (Exhibit III), the Commission reviewed and is recommending that City Council approve the proposed recreation and facility fee schedule by increasing resident fees by 20% and non-resident fees by 30%. The increases are requested to offset the escalating costs of staff, utilities, supplies, equipment and maintenance. The survey presented to the Commission demonstrated that the new fee increases are generally below the recreation industry average.

MISCELLANEOUS:

The Miscellaneous Schedule includes a new charge of \$24 per year for City Council Agenda Subscriptions when they are distributed through regular mail. This equates to \$1.00 per Agenda. Each subscriber would also need to supply the City Clerk with stamped self-addressed envelopes. The subscription rate for Boards and Commissions would be \$12 per year. This also equates to \$1.00 per Agenda. Charges for all Agenda Packets would be collected at \$.25 per page. Alternatively, anyone wanting free access may download the Agendas and Packets from the City's website.

FIRE:

The Fire Chief has recommended that several fees be added or adjusted. At the current time, all Fire Department Fees are collected by either the Building Department or the Finance Department and the Fire Marshal's Office provides the inspections. If the council approves, the Fire Department would charge for individual permits and required inspections, other than building permits or business licenses. There are a total of 18 new fees and 17 adjustments for the department. The majority of the increases in fees are due to the extra time it takes the department to inspect prior to issuance of a fire permit. The last time Fire Department fees were raised (Resolution 88-52) was 1988.

New fees include fire permits as required by the California Fire Code and a false alarm response fee. The false alarm fee will be charged to vendors/contractors and/or businesses that conduct work on fire protection systems without notifying fire dispatch of the work and, as a result, the fire department responds to a reported fire alarm. The department responded to 70 of these false alarms in 2004.

ALL OTHER DIVISIONS

The Finance Department is requesting an increase in return check fees from \$20 to \$28 to accurately reflect staff time and bank charges. The Library and Police Department are not requesting fee adjustments at this time.

Attachments:

- [Resolution](#) and [Master Fee Schedule](#)
- [Exhibit I: Analysis of Planning Services](#)
- [Exhibit II: Analysis of Engineering Services](#)
- [Exhibit III: Report to Parks, Recreation and Cemetery Commission](#)

RESOLUTION AND MASTER FEE SCHEDULE

RESOLUTION NO. 05-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
ADOPTING A MASTER FEE SCHEDULE THAT INCLUDES CHANGES IN
DEPARTMENTAL FEE STRUCTURES, INCLUDING DEVELOPMENT
RELATED FEES AND CHARGES**

WHEREAS, City Departments developed data and conducted surveys as necessary to support the need to amend the current fees and charges schedules; and

WHEREAS, the City Council has determined that current fees charged by the Planning, Engineering Divisions are not sufficient to recover the actual estimated processing and filing costs associated with development proposals; and

WHEREAS, the City Council has reviewed the proposed fee schedules for the all divisions and has determined that the fees are appropriate for the various types of applications; and

WHEREAS, the adjusted development fees do not exceed the estimated reasonable costs of providing the services in accordance with Government Code §§66013 and 66014; and

WHEREAS, the adoption of new processing fees does not constitute a project as defined by §15378(b)(4) of the California Environmental Quality Act Guidelines; and

WHEREAS, the City Council at a regular meeting on September 6, 2005, conducted a public hearing and reviewed the proposed fee schedule.

NOW, THEREFORE, the City Council of the City of Benicia hereby resolves as follows:

1. That the new Zoning, Subdivision, Environmental Quality Act Fees, and other various fees and charges be incorporated into the revised Master Fee Schedule approved for the processing of applications by the City Council on September 6, 2005;
2. That the revised Master Fee Schedule will become effective 60 days after the date of adoption, except that those fees which are decreased by this action may become effective immediately;
3. That the Master Fee Schedule will be updated by the Finance Director annually on July 1, with development related fees based on the annual San Francisco Bay Area Consumer Price Index (CPI) for the previous year. The new fees shall be rounded to the nearest \$1, as appropriate, and the updated Master Fee Schedule will be subject to approval by the City Council each year prior to implementation.

On motion of Council Member _____, seconded by _____, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the 6th day of September, 2005, by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
UNFINISHED BUSINESS**

DATE : August 16, 2005

TO : City Manager

FROM : Director of Public Works

SUBJECT : **CITY OF VALLEJO BORDONI RANCH PROJECT –
TRAFFIC ANALYSIS FOR COLUMBUS/ROSE INTERSECTION**

RECOMMENDATION:

Provide staff with any additional comments regarding the traffic analysis for the Columbus Parkway/Rose Drive intersection to forward to the City of Vallejo for their consideration when taking final action on this project.

EXECUTIVE SUMMARY:

The Bordoni Ranch Project involves the development of 445 new homes located along Columbus Parkway north of Benicia Road within the City of Vallejo. Benicia's comments on the project EIR have been included in the final EIR; however, Council still has concerns regarding the impacts of this project on the intersection of Columbus Parkway and Rose Drive. Benicia staff has provided the Council with more detailed information on the traffic analysis and will forward any additional comments to the City of Vallejo for their consideration when taking final action on this project.

BUDGET INFORMATION:

There are no impacts to the City's budget associated with this item. The mitigation measures in the EIR will require this development to install and/or pay their fair share of public street improvements within the City of Benicia.

BACKGROUND:

The City of Vallejo is the lead agency for the Environmental Impact Report (EIR) prepared for the Bordoni Ranch Project located on Columbus Parkway north of Benicia Road. Staff and Council representatives from Benicia and Vallejo have met on several occasions to review this project and the mitigation measures proposed to address the impacts that would be created from this development. Benicia sent a formal list of comments on the Draft EIR in an eleven-page letter signed by the City Manager which included concerns regarding the transportation (vehicle, bicycle and pedestrian) impacts, visual and biological impacts, land use, historical resources, geotechnical hazards, off-site runoff, and the discussion of alternatives. The response to Benicia's comments was incorporated into the Final EIR document. This response did include a

revised mitigation measure to address a major concern raised by the City with regard to the traffic impacts created by the Bordonni Ranch Project.

However, the Council expressed additional concerns regarding the improvements necessary for the Columbus Parkway/Rose Drive intersection. Staff was directed to review the traffic analyses conducted for the Bordonni Ranch project and for the Benicia Commercial Center project and provide a recommendation to the Council on the future improvements required to address the future traffic demands at this intersection.

The intersection of Columbus Parkway/Rose Drive was evaluated as part of the traffic analysis conducted by Fehr and Peers in September 2003 as part of the Bordonni Ranch EIR. Previous studies were conducted for the Benicia Commercial Center Project in October 2000 and for the updated Benicia General Plan in 1995. A summary of each evaluation is listed below:

Columbus Parkway/Rose Drive Intersection Analyses:

1. <i>Bordonni Ranch evaluation (Fehr & Peers)</i>	<i>AM Peak Hr.</i>	<i>PM Peak Hr.</i>
Existing traffic (total intersection volume)	1,971	2,335
Existing LOS (level of service)	D	C
Future LOS (with project)	E (unmitigated)	D
2. <i>Benicia Commercial Center (Omni-Means)</i>		
Existing traffic (total intersection volume)	1,924	2,071
Existing LOS	B	C
Future LOS (with project)	B	C
3. <i>Benicia General Plan (Fehr & Peers)</i>		
Existing traffic (total intersection volume)	--	1,969
Existing LOS	--	D
Future LOS (with buildout)	--	F (unmitigated)

Each one of the traffic studies used traffic volumes that were similar. As would be expected, the traffic volumes increased slightly for the most recent study conducted in 2003. The level of service (LOS) calculations follow the guidelines established by the Institute of Transportation Engineers with a grade ranging from A (free flowing conditions) to F (traffic gridlock). The two studies prepared by Fehr and Peers indicate an existing LOS of C or D for this intersection. A level of service D for the peak hour of traffic is in conformance with the Benicia General Plan standard. It does appear that the LOS calculations for the Benicia Commercial Center prepared by Omni-Means are optimistic and the LOS of B for the existing and future AM peak hours of traffic appears to be low.

The Fehr and Peer studies both indicate a need for future improvements to the intersection of Columbus Parkway/Rose Drive. The Benicia General Plan also identifies improvements required for this intersection to mitigate the impacts of future development in this area to an acceptable LOS of D. This is reflected in the City of Benicia's Traffic Impact Fee Program which sets aside \$250,000 for future improvements to this intersection. Some of the improvements envisioned by Benicia staff at this time include widening intersection approaches, adding in left turn arrows, and installing other traffic signal upgrades. A portion of this funding can also be used toward the

cost of widening Columbus Parkway west of the intersection and widening of the bridge over the I-780 freeway.

The widening of the bridge over the I-780 freeway is currently a priority project with the City of Benicia. Design is underway and grant funding is being pursued at this time for the \$1.5 million needed for construction costs. The City of Vallejo supports Benicia's efforts on this project and will work with our staff in the grant application effort through the Solano Transportation Authority. They also have been asked to require the Bordoni Ranch developer to contribute one-half of the local matching funds that will be required with a successful grant application. The local match is typically 10% of the total costs, so the developer would be expected to make a \$75,000 contribution.

The proposed Columbus/Rose intersection improvements (additional right turn lane and modifying the signal operation to provide for separate left turn arrows) would provide for additional convenience, but are not required for safety at this time. These improvements will be scheduled in the future utilizing the traffic mitigation funding set aside for this location.

The Bordoni Ranch EIR does identify a need to install a separate right turn lane for southbound Rose Drive, so the developer will be required to pay for their fair share of the costs as determined by the each city. The EIR also identifies the need to widen Columbus Parkway to 4 through lanes with turn lanes, bike lanes, curbs and sidewalk between Rose Drive and Benicia Road to address future traffic from cumulative development. While not required at this time, the roadway widening improvements will need to be installed by the Bordoni Ranch developer before issuance of the 175th building permit on their project. When these improvements are completed, the City of Benicia can then modify the existing westbound right turn lane at the Columbus Parkway/Rose Drive intersection to allow for right turns and through traffic to address the backups that currently occur during the peak PM hour of traffic. As a worst case scenario, it may be necessary to widen this approach to provide for two through lanes and a separate right-turn and left-turn lane. The most recent Bordoni Ranch traffic study does not consider this necessary, therefore it would be necessary to use the Benicia Traffic Impact funds for this improvement.

The City Council may wish to provide follow up comments to the City of Vallejo on this project addressing the issues discussed above. As you are aware, the decision of whether to incorporate Benicia's comments will be made by the City of Vallejo City Council acting as the lead agency on this project.

cc: David Golick, Community Development Director
Michael Throne, City Engineer

Attachment:

- Aerial map of Columbus/Rose Drive area (if viewing online, this attachment is available upon request from the City Clerk's Office)

Aerial Map of Columbus/Rose Drive Area

(if viewing online, this attachment is available upon request from the
City Clerk's Office)

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
UNFINISHED BUSINESS

DATE : August 18, 2005

TO : City Council

FROM : City Attorney

SUBJECT : **SECOND READING OF AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE PROVISIONS REGARDING APPOINTMENT OF PLANNING COMMISSIONERS AND ADOPTION OF AN RESOLUTION AMENDING THE RULES OF PROCEDURE**

RECOMMENDATION:

1. Adopt the ordinance amending Section 2.52.010 (Establishment - membership), Section 2.52.020 (Members - qualifications), and Section 2.52.030 (members-term of office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and personnel) of the Benicia Municipal Code.
2. Adopt the resolution amending the rules of procedure for appointments.

EXECUTIVE SUMMARY:

The Council introduced an ordinance amending various provisions of the Municipal Code related to the appointment of Planning Commissioners. If adopted, the ordinance would be effective 30 days after adoption. The amendment to the Council's rules of procedure will bring the rules into conformance with the ordinance.

BUDGET INFORMATION:

There is no budget impact.

BACKGROUND:

This ordinance was proposed to bring the City's code into conformance with the Attorney General's Opinion. The Attorney General had concluded that city councils, as a whole, had the power to appoint planning commissioners. This opinion was contrary to the City's Municipal Code that provided the Mayor makes the appointment subject to the approval of the Council.

The proposed ordinance does the following:

1. Planning Commission members will be appointed by the Council. Any member of the Council may nominate a person for appointment. In fact, each member of the Council

may nominate a different person for a single opening. The Council would then have to choose from the people nominated.

2. Minimal qualifications for commissioners are established. The intent to have a diverse commission is set forth. In addition, the ordinance states the intent to avoid potential members who may have so many conflicts of interests (such as owning property all over town) to be able to participate in decisions.
3. Planning Commission members will not continue to serve while their successor is appointed. Once a member's term is up, the person is no longer a member of the commission unless the Council chooses to reappoint him or her. This provision will be effective when the ordinance is effective (30 days after adoption of the ordinance.) Any current members who are serving on the Planning Commission due to a successor not being named will cease service on the effective date of the ordinance.

In addition, the Council's rules of procedure were amended to conform to the change. Please see Section IV. B. for the amended language. (The redline/strikeout will be removed in the final document if the Council approves the change.)

Attachments:

- [Ordinance amending the Municipal Code pertaining to the Planning Commission](#)
- [Resolution adopting Rules of Procedure](#)

ORDINANCE

CITY OF BENICIA

ORDINANCE NO. 05-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 2.52.010 (ESTABLISHMENT – MEMBERSHIP), SECTION 2.52.020 (MEMBERS – QUALIFICATIONS), AND SECTION 2.52.030 (MEMBERS—TERM OF OFFICE) OF CHAPTER 2.52 (PLANNING COMMISSION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

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

Section 1.

Section 2.52.010 (Establishment – Membership) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code is amended to read as follows:

A. The city planning commission is established. The planning commission shall consist of seven members appointed by the city council.

B. In the event the city council cannot reach an agreement on the appointment, the city council may establish an ad hoc advisory committee to seek, interview and recommend candidates for the planning commission to the city council for their consideration. If an advisory committee is established, the committee shall be made up of five members; each council member shall have one appointment to the committee. The advisory committee shall establish rules of procedure not inconsistent with this chapter.

Section 2.

Section 2.52.020 (Members-Qualifications) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code is amended to read as follows:

A. It is the intent of the city council to have the planning commission composed of people from all geographical, social, environment, and economic sectors of the community and to avoid potential conflicts with paragraph C. of this section.

B. Each member of the planning commission shall be a Benicia resident and registered voter, and shall be qualified by knowledge and experience to make decisions on questions of community growth and development.

C. Members shall not be severely constrained with potential conflicts of interest under the Political Reform Act or the Benicia Sunshine Ordinance.

Section 3.

Section 2.52.030 (Members-Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code is amended to read as follows:

The term of office of each member is four years. No member may serve more than two full consecutive terms. A vacancy exists upon the expiration of the term the member was appointed to fill and until the successor is appointed and qualifies. No member shall continue to serve after the expiration of his term unless he has been reappointed.

Section 4.

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

The City Council hereby declares that it would have passed this and each section, subsection, phrase or 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 6th day of _____ September, 2005, and adopted at a regular meeting of the Council held on the _____ day of _____, 2005, by the following votes:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS

WHEREAS, the City Council of the City of Benicia desires to have all citizens fully participate in the proceedings of the City Council; and

WHEREAS, the City Council must consider many public matters which vitally affect the interest of the citizens of Benicia and it is both necessary and desirable that these meetings be regulated in order to permit the Council to give consideration and public discussion to the more important public issues; and

WHEREAS, it is the purpose of this resolution to provide for the orderly and expeditious conduct of Council meetings in a manner which will give adequate consideration and public discussion to all matters affecting the City; and

WHEREAS, Government Code Sections 36813 and 54954.3 give the City Council discretion to adopt reasonable regulations concerning the proceedings and order of business of City Council meetings.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENICIA as follows:

Section 1. The City Council of the City of Benicia approves and adopts the Rules of Procedure attached hereto as Exhibit "A" and by this reference incorporated herein.

Section 2. This resolution shall supersede any and all Rules of Procedure previously adopted by the City Council.

Section 3. This resolution shall be effective only upon the effective date of the ordinance amending the Benicia Municipal Code regarding appointments of Planning Commissioners (Ordinance No. 05-___ Amending Section 2.52.010 (Establishment - membership), Section 2.52.020 (Members - qualifications), and Section 2.52.030 (members-term of office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and personnel) of the Benicia Municipal Code.)

On motion of Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

EXHIBIT A

CITY COUNCIL OF THE CITY OF BENICIA
RULES OF PROCEDURE

I. AGENDA

A. SECTIONS

The agenda shall consist of the following sections in order:

1. CALL TO ORDER
Announcement of Closed Session (If Any)
2. CLOSED SESSION (If Any)
3. CONVENE OPEN SESSION
Roll Call
Pledge of Allegiance
4. ANNOUNCEMENTS, APPOINTMENTS, PRESENTATIONS
5. ADOPTION OF AGENDA

The Council, by majority vote, shall adopt the agenda as final. Following such adoption, agenda items may not be added, removed or their order changed unless by the unanimous consent of the Council Members present at the time the agenda was adopted as final. All matters shall be considered by the Council in the order listed on the agenda adopted as final, to the extent of time available. Only matters on the agenda as adopted final or modified under this section may be considered. Agenda items not considered or completed at a meeting for lack of time become agenda items at the following meeting in accordance with the foregoing policies.

6. COMMUNICATIONS:
 - (a) Written: All written communications suitable for the agenda, received since the preparation of the subject agenda, addressed to or intended for the City Council and not otherwise included in the agenda in a preceding section, shall be listed in this section in the order received.
 - (b) Public Comment: This section of the agenda is for members of the public to make comments to the City

Council about agendized and non-agendized matters of general interest to the citizens of Benicia, provided, however, that:

(1) any item raised by a member of the public which is not agendized, but may require Council action, shall be automatically referred to the City Staff for investigation and disposition, unless the item requires action to be taken by the Council at the meeting during which it was raised and constitutes an emergency or the need to take such action arose after the posting of the agenda within the meaning of Government Code §54954.2(b). In either event the Council is entitled to discuss the matter before making the determination required under said Government Code provision, and if either finding is made, may take action thereon.

(2) all public comments are also subject to the provisions of Section II below.

7. CONSENT CALENDAR

Items listed under the Consent Calendar are considered routine and will be enacted, approved or adopted by one (1) motion unless a request for removal for discussion or explanation is received from a Council Member, staff, or a member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

8. PUBLIC HEARINGS

This section of the agenda is for the City Council to conduct Public Hearings and to hear properly noticed appeals.

9. UNFINISHED BUSINESS

10. NEW BUSINESS

11. REPORTS FROM CITY MANAGER

12. REPORTS FROM CITY COUNCIL COMMITTEES

13. ADJOURNMENT

B. PREPARATION

1. The Mayor and the City Manager shall prepare an agenda for each meeting of the Council. Items to be included on the agenda must be submitted to the City Manager in writing by noon on the 7th working day preceding the regular meeting. Any Council Member may request that a new item be placed on the agenda. Items shall be placed on the agenda in their appropriate section with the item title specified by the requesting Council Member.

To place a review of a matter decided in the last year on a future agenda requires three affirmative votes.

2. Council Members may request the full City Council review a matter that has been decided in the last year by following the procedures set forth in 1.B.1 above. A brief write-up of the matter and date of last action must be included on the Request for Policy Consideration Form (Appendix A). The request for a review will be placed on the agenda in SECTION 10. NEW BUSINESS.
3. The City Manager will inform the Council and public of the tentative, upcoming issues on the next Council agenda on the afternoon of the 5th working day preceding the regular meeting.
4. The City Manager shall prepare and provide each Council Member and the City Attorney, an agenda packet not later than the Friday preceding each regular meeting. The City Manager shall mail a copy of the agenda or a copy of all the documents constituting the agenda packet to every person who has requested the same in writing during the preceding year, has provided stamped self-addressed envelopes and has paid the applicable fee. The agenda packet will be available for those persons so requesting at the time the agenda is posted or upon distribution to all, or a majority of, the Council Members upon payment of the applicable fee.

II. PUBLIC PARTICIPATION

A. RECOGNITION

No person may address the Council without the permission of the Presiding Officer, or a majority of the quorum, or as otherwise required by law. Except as required by law, the Presiding Officer is obligated to recognize members of the Council and staff prior to opening up items for public discussion.

B. ADDRESSING THE COUNCIL

Those persons desiring to speak on an agendized matter, on a Public Hearing agenda item, or under Public Comment should complete a Speaker's Card and present it to the City Clerk at the beginning of the meeting or upon their arrival in the Council Chambers. The Presiding Officer shall recognize speakers on an agendized matter when that item is before the City Council for consideration. The Presiding Officer shall recognize speakers on Public Hearing items at the Public Hearing. The Presiding Officer shall recognize speakers on non-agendized matters under Public Comment portion of the agenda. Persons addressing the Council shall do so only at the speakers' rostrum and should begin by stating their name and address for the records. All remarks shall be addressed to the Council as a body and not to any member thereof, or to staff, or to the public. No person other than a member of the Council, the City Manager, or the City Attorney and the person having the floor, shall be permitted to enter into any discussion without the permission of the Presiding Officer.

C. LIMITS

Each speaker shall speak only once on an agenda item and limit his/her remarks to five (5) minutes, except as otherwise specifically provided for in these Rules, or except as time is extended by the Presiding Officer with the consent of a majority of the Council. Each speaker shall avoid repetition of the remarks of prior speakers and speak only to the specific agenda item under consideration.

D. QUESTIONS

Following each speaker's remarks, each Council Member shall be given the opportunity to comment further and to address questions to the speaker. The speaker may not be permitted or required to answer such questions if a majority of Council Members present other than the questioner object.

III. HEARING PROCEDURES

A. A Public Hearing should not exceed one hour in length.

B. The procedures for Public Hearings are as follows:

1. Presentation by Staff.
2. Presentation by Proponents.
3. Presentation by Opponents.
4. Rebuttal by the Proponents.
5. The Presiding Officer shall recognize supplemental speakers as required by law or deemed appropriate to gather information relevant to the matter before the City Council. Supplemental speakers shall limit their remarks to presenting new information not already covered by other speakers, and must limit their presentation to five (5) minutes.

6. Following the public portion of the hearing, the Presiding Officer shall declare the public portion of the hearing closed and the matter is then before the City Council for the Council portion of the hearing. Each Council Member shall be given an opportunity to speak to the subject. When the Council discussion has been concluded, the Council shall make its decision.
- C. Spokespersons for the Proponent and Opponent shall each have fifteen (15) minutes to present their case. The spokesperson for the Proponent shall have five (5) minutes to present any rebuttal.

IV. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS

A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS

The Council may create committees, boards, and commissions to assist in the conduct of the operation of the City Government with such duties as the Council may specify, not inconsistent with the City Code. Any committee, board, or commission so created shall cease to exist upon the accomplishment of the special purpose for which it was created, or when abolished by a majority vote of the Council. No committee so appointed shall have powers other than advisory to the Council or to the City Manager, except as otherwise specified by the City Code.

B. MEMBERSHIP AND SELECTIONS

1. Membership and selection of members shall be as provided by the Council if not specified by the City Code. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.
2. Except for appointments to the Planning Commission or to a board or commission where state law provides for appointment by the Council as a whole, The Vice Mayor shall review applications for appointments and provide advice to the Mayor. The Mayor, when making the appointment, shall note if Mayor disagreed with the advice of the Vice Mayor. ~~The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.~~
3. For appointments to the Planning Commission or to a board or commission where state law provides for appointment by the Council as a whole, any Council member may nominate a person for appointment. All prospective candidates will be interviewed by the chairs of the Planning Commission and Historic Preservation Review Commission and two City Council members. The interview panel will make a recommendation to the City Council.

The council, as provided by ordinance, may create an advisory committee to seek, interview and recommend selection of commissioners to the above committee for Council appointment. The advisory committee shall be composed of people who are not Council Members. The committee may establish rules or follow the above Council procedures.

C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS & COMMISSIONS

The Council may remove any member of any committee, board or commission which it has created by an affirmative vote of at least four (4) members of the Council, if removal is not specified in the City Code.

V. RULES OF ORDER

A. QUORUM

Three Council Members shall constitute a quorum for the transaction of business, except that less than a quorum may adjourn meetings of the Board. If a quorum is not present within one hour after the time noticed for commencement of the meeting and thereafter any Council Member who was present at the end of such hour leaves and does not return, no meeting shall be held on that date notwithstanding the later presence of three (3) or more Council Members.

B. RIGHT TO THE FLOOR

A Council Member shall not have the right to the floor without being recognized by the Presiding Officer, except upon a point of order.

C. ORDINANCES, RESOLUTIONS, AND MOTIONS --- PRECEDENTS

When any ordinance, resolution, or motion is properly brought before the Council and seconded by another Council Member, no other action shall be considered except a point of order, or a motion to adjourn, to table, to table to a time certain, to close debate, to refer or to amend. Such items shall have precedence in the order stated in the preceding sentence. Points of order shall be ruled upon by the Presiding Officer, provided that such ruling may be overridden by a majority of the Council. All of such motions, except motions to amend, shall be put to a vote without debate and decided by a majority. Any of the foregoing motions shall be in order at anytime the speaker is duly recognized, except when repeated without intervening business or discussion, or if made when the motion to close debate has been adopted or while a vote is being taken.

1. MOTION TO TABLE

If a motion to table without time certain passes, consideration of the matter may be resumed only upon the motion of a member voting with the majority on the motion to table.

2. MOTION TO CLOSE DEBATE

When a motion to close debate is duly made and seconded, there shall be no further debate. If the question carries, the Presiding Officer shall put pending amendments to a vote, without debate, in the inverse order of their introduction before putting the main question. If the question is decided negatively, the main question and its amendments remain before the Council.

3. RECONSIDERATION

Providing that no intervening rights shall be prejudiced, any Council Member who voted with the majority on a question may move the reconsideration of that question at the same meeting in which the original decision was made or at the next following meeting. After a motion for reconsideration has been acted upon, no other similar motion shall be made without unanimous consent.

4. VOTING

Unless otherwise required by applicable law, three affirmative votes are required to enact an ordinance, to adopt a resolution, or to adopt a motion granting a franchise or authorizing the payment or expenditure of money or incurring of a debt. The majority of a quorum is required to adopt other motions, unless otherwise required by applicable law. A "majority" refers to a majority of the quorum present. All ordinances, resolutions and appointments shall be adopted by a roll call vote. All other matters may be referred to a voice vote unless a roll call is requested by any Council Member. On all matters for which a voice vote is authorized, the Presiding Officer may ask for, "objections to the question". If no objection is expressed, the Presiding Officer shall, "so order" and the minutes shall record a unanimous vote in favor. If any Council Member objects to the procedure, a roll call vote shall be called in the normal manner.

D. ADJOURNMENT

It is the desire of the City Council to adjourn their meetings by 11:30 p.m. Therefore, no new business will be taken up by the Council after 11:30 p.m. unless the City Council adopts a motion to continue. The remaining items will be placed on the next regularly scheduled Council meeting at the beginning of the

unfinished portion of the agenda, unless the City Council calls for a special meeting to consider one or more of the continued items.

E. DIVISION OF THE QUESTION

If a matter properly put before the Council contains two or more separable propositions, the Presiding Officer shall, with the consent of one other Council Member, divide the question into its separable parts for consideration in order.

APPENDIX A

REQUEST FOR POLICY CONSIDERATION

Requested by: _____

Council Meeting Date: _____

Problem/Issue/Idea Name: _____

Description of Problem/Issue/Idea _____

COUNCIL DIRECTION

- No Further Action

- Refer to: Staff _____
 Commission _____
 Board _____
 Committee _____

Date Due: _____

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
NEW BUSINESS**

DATE : August 19, 2005
TO : City Manager
FROM : Community Development Director
SUBJECT : **APPROVAL TO AMEND THE NAME OF THE SKY VALLEY
OPEN SPACE COMMITTEE**

RECOMMENDATION:

Approve the resolution amending the name of the Committee from Sky Valley Open Space Committee to Sky Valley Watershed Preservation Committee.

EXECUTIVE SUMMARY:

The Committee discussed the possible name change on several occasions. It is the consensus of the Committee that the name change would better reflect the purpose and intent of the Committee and would better inform the community about what the Committee seeks to achieve.

BUDGET INFORMATION:

The requested action has no fiscal impact.

[Resolution](#)

RESOLUTION

RESOLUTION NO. 05-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE NAME OF THE SKY VALLEY OPEN SPACE COMMITTEE TO SKY VALLEY WATERSHED PRESERVATION COMMITTEE

WHEREAS, the Benicia City Council is committed to protection and enhancement of open space, particularly the area north of Lake Herman Road; and

WHEREAS, the Sky Valley Open Space Committee, which formerly existed under the title Northern Area Open Space Committee, seeks to protect agricultural uses and the watershed north of Lake Herman Road.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby amends the name of the Committee from Sky Valley Open Space Committee to Sky Valley Watershed Preservation Committee.

On motion by Council Member _____, seconded by Council Member _____, the above resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th day of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
NEW BUSINESS**

DATE : August 16, 2005
TO : City Council
FROM : City Attorney
SUBJECT : **APPROVAL OF AN AGREEMENT WITH COMCAST TO
EXTEND THE CABLE FRANCHISE TO 2010**

RECOMMENDATION:

Adopt the resolution authorize the City Manager to execute the agreement with Comcast to extend the cable franchise to June 13, 2010.

EXECUTIVE SUMMARY:

The cable franchise agreement with Comcast was subject to an automatic renewal on June 13, 2003. The automatic renewal period was for 5 years. This agreement would add an additional four years in exchange for certain upgrades being made ahead of schedule.

BUDGET INFORMATION:

The City received \$232,695 in Cable Franchise Fees for fiscal year 03/04 and \$258,971 for fiscal year 04/05. This agreement would not change the calculation of the fee which depends on the number of subscribers.

BACKGROUND:

Cable service is provided in the City by Comcast. Comcast took over the cable franchise in November of 2002 from AT&T. The cable franchise has what amounts to an automatic renewal provision that extends the franchise from June of 2003 to June of 2008. You may remember that staff investigated whether we could terminate the franchise because of poor service. We hired technical consultants and an attorney well versed in cable regulations to assist us. The technical consultants discovered many technical violations but none of the violations would allow the City to terminate the franchise agreement. Thus, staff began negotiations to improve service.

In exchange for extending the term of the cable franchise for an additional four (4) years the City received the following benefits:

1. The previous cable system was rebuilt to increase the system capacity to at least 750 MHz.

2. The system was rebuilt to provide digital service with two-way capability.
3. The City received an additional PEG (public, educational, and government) channel which staff proposes be dedicated to educational uses.
4. Comcast installed and will maintain a fiber link in place of the Institutional Network proposed in the original Franchise.
5. A pass through fund for equipment. This pass through is made up of a 25 cent charge to the customers.
6. Senior discounts will be continued for the term of the franchise.

The two-way capability allows “on-demand” services so that customers can order movies and other material to be shown at the customer’s convenience.

The additional PEG channel is being provided even though our current programming needs do not qualify us for the additional channel under the franchise agreement. The additional channel will allow more use by the Benicia Unified School District and may provide other opportunities for other education groups like the community college. The School District will have to get equipment to broadcast on the additional PEG channel.

Your staff of Rick Knight and Bill Guggemos did an excellent job of negotiating with the Comcast technical folks. At the request of the City, Comcast installed a fiber link between City facilities including the Wastewater Treatment Plant, the Youth Center, the Corporation Yard and Fire Station 12. (The Library and Fire Station 11 were already linked to City Hall.) City staff estimated in 2004 that the value of the conduit alone without fiber is in excess of \$917,000 for the four locations. Estimates of cost are based upon the information from the contractor for the Inflow and Installation project. We were also successful in having Comcast pull the fiber into City Hall instead of terminating it at the street.

The pass through will assist the City in upgrading the equipment in the City Council chambers. That money will be fronted by Comcast and recovered via a pass through to the approximately 7310 Benicia subscribers at approximately \$.25 per subscriber per month (in order to minimize the subscriber impact). Initially, Comcast would give the City \$40,000 up front and collect the money. Once the \$40,000 is recovered, the pass through will continue to be collected and given to the City for further capital equipment purchases. As reported in the Capital Improvement Plan (and as you have experienced) the City’s audio/visual equipment needs improvement. The current equipment does not produce good quality recording, the microphones are poor and the screens to show the presentations are inadequate. With the requirements of the Sunshine Ordinance, staff would also like to “upgrade” the audio/visual equipment for the Commission Room and Dona Benicia Room.

The senior discount is proposed to be amended. Comcast’s attorneys advise that the senior discount is legally vulnerable. In order to minimize disruption to the seniors, it is proposed that Comcast will be allowed to discontinue the discount in two years. However, seniors who have the discount at that time and who DO NOT change rate plans or discontinue service may continue to receive the discount. It is important to note that this plan will not allow the seniors to continue to switch back and forth between discounted plans.

Attachments:

- [Resolution approving the extension of the cable franchise agreement with Comcast](#)
- [Proposed Extension Agreement](#)

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE NON-EXCLUSIVE CABLE FRANCHISE EXTENSION AGREEMENT WITH COMCAST AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, on June 13, 1993, the City by a Franchise Renewal Agreement ("Renewal Agreement") renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

WHEREAS, Comcast requested an extension of the Renewal Agreement with the City; and

WHEREAS, the City indicated its intent to extend the term of the Renewal Agreement by five (5) years, pursuant to Section 1.4 of the same and for an additional four (4) years for a total of nine (9) years; and

WHEREAS, Comcast has completed a rebuild of the cable system that serves Benicia to provide for cable system capacity of at least 750 mhz and two way capability; and

WHEREAS, the City also desires that Comcast provide an additional video channel dedicated exclusively for PEG use; and

WHEREAS, after the City has determined to extend the non-exclusive franchise held by Comcast on substantially the terms and conditions specified in the existing Renewal Agreement, except as provided in the extension agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the Non-Exclusive Franchise Extension Agreement with Comcast and authorizes the City Manager to execute the Agreement with minor changes as approved by the City Attorney.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

AGREEMENT

NON-EXCLUSIVE FRANCHISE
EXTENSION AGREEMENT

This Franchise Extension Agreement ("Extension Agreement") is entered into as of _____, 2005, by and between the City of Benicia, ("City") and Comcast of East San Fernando Valley, L.P. ("Comcast").

WHEREAS, the City, in Ordinance No. 91-6 N.S. § 2, codified in Chapter 5.40 of the City's Municipal Code, set forth the initial requirements for nonexclusive franchise to construct, operate and maintain a cable television system within the City; and

WHEREAS, on June 13, 1993, the City by a Franchise Renewal Agreement ("Renewal Agreement") renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

WHEREAS, the term of the renewal expired June 13, 2003, has been continued on a month to month basis to allow for completion of the Extension Agreement and ; and

WHEREAS, prior to the expiration of the Renewal Agreement, Comcast requested an extension of the Renewal Agreement with the City; and

WHEREAS, the City indicated its intent to extend the term of the Renewal Agreement by five (5) years, pursuant to Section 1.4 of the same and for an additional two (2) years for a total of seven (7) years; and

WHEREAS, Comcast has completed a rebuild of the cable system that serves Benicia to provide for cable system capacity of at least 750 mhz and two way capability; and

WHEREAS, the City also desires that Comcast provide an additional video channel dedicated exclusively for PEG use;

WHEREAS, after the City has determined to extend the non-exclusive franchise held by Comcast (City and Comcast collectively hereinafter "Parties") on substantially the terms and conditions specified in the existing Renewal Agreement, except as provided herein;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 Extension. The current Renewal Agreement between City and Comcast expired on June 13, 2003 and was extended on a month to month basis to allow for completion of this Extension Agreement. Section 1.4 of the Renewal Agreement provides for a five (5) year extension. The parties, however, desire to extend and hereby agree to a seven (7) year extension of the franchise. Subject to the terms and conditions of this Agreement, the parties agree to extend the Renewal Agreement, as set forth herein.

1.1 Term of Extension. The duration of the current franchise will be extended by a period of seven (7) years commencing on the effective date of this Extension Agreement, provided that this Extension Agreement is adopted by and in an official resolution of the City and accepted by Comcast by filing a Certificate of Acceptance, in the form attached hereto as Exhibit A, with the City Clerk no later than 30 days after adoption of the resolution approving the Extension Agreement..

2.0 Upgrade. The upgraded system will comply with the terms of this Extension Agreement, the Renewal Agreement, and the City's Cable Communication Regulatory Ordinance. The upgraded system will comply with all applicable regulations and codes, including but not limited to the National Electrical Code, California Public Utilities Code General Order 95, and California Public Utilities Code Order 128.

3.0 Additional PEG Access Channel.

(a) Within sixty (60) days of approval and acceptance of this Extension Agreement and notwithstanding the provision in the Renewal Agreement requiring a programming threshold, Comcast shall make one additional (1) video channel available exclusively for PEG use. The new PEG Access Channel shall comply with all the terms and requirements regarding PEG Access Channels found in Exhibit B of the Renewal Agreement. Any request from the City for use of the third PEG channel as contemplated by the Renewal Agreement shall comply with the programming threshold requirements.

(b) At such time as the entire Cable System is digital, the analog PEG signals shall be carried on the digital platform, and Grantee shall be responsible for the costs of end user equipment necessary to receive and transmit programming for the PEG channels or converting the analog signal to digital Grantor shall be responsible for any other costs for transmitting and receiving the digital signals, including but not limited to any needed fiber transmitter or equivalent equipment necessary to transport the

digital signal to Grantee's headend . The activation of any additional channels will be subject to the programming thresholds set forth in the Renewal Agreement, Exhibit B.

(c) PEG channels shall be available on the lowest tier of basic service. The channel(s), in the sole discretion of the City, may be utilized in any PEG combination and may be shared with other communities or designated for exclusive use within the City's jurisdiction, provided however, that such shared use with other communities shall not be considered towards the hourly cablecasting triggers for new PEG channels.

(d) PEG channels will not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue for the Franchising Authority or PEG users or compete with current or future services provided by the Grantee.

(e) Grantor agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the Grantee's channels for PEG by Grantee or its designee(s).

3.1. PEG Pass Through. Within thirty (30) days of the effective date of this Extension, Grantee shall provide an upfront capital grant to the City in the amount of Forty Thousand Dollars (\$40,000) for equipment costs associated with PEG capital and equipment. Grantee shall collect from Subscribers a PEG capitol pass through in the monthly amount of twenty-five (\$.25) cents per subscriber, beginning ninety (90) days after the effective date of this Extension Agreement. Grantee shall recover the upfront \$40,000 capital grant from this pass-through. After Grantee has recovered the \$40,000, the pass-though amount shall be paid to the City quarterly. In year four (4) of this Extension Agreement (i.e. 2009), Grantee shall provide an additional capital grant in the amount of Forty Thousand Dollars (\$40,000) for PEG equipment and capital expenses, which Grantee shall also recover via the pass-through as set forth above. After Grantee has recovered this additional \$40,000, the pass-through amount shall again be paid to the City. Grantee may request in writing and City shall provide a report to Grantee on the use of the funds received for PEG capital and equipment. If City does not expend the Forty Thousand Dollars (\$40,000) after the initial capital grant, then Grantee shall not be required to make the second capital payment to the City until City has expended the initial capital grant.

4.0 Institutional Network. Section 3.5 of the Renewal Agreement is hereby deleted in its entirety. In lieu of the Institutional Network required by Section 3.5 of the Renewal Agreement, Comcast agrees to and shall provide at the time of rebuild, the fiber links described on Exhibit B, attached hereto. These fiber links shall be

owned and maintained by Comcast for the sole and exclusive use by the City and any public agencies authorized to utilize these links by the City.

5.0 Emergency Alert. The City and Comcast agree that section 3.7, emergency alert system override capacity shall be supplied through the emergency services systems in place and in compliance with federal law.

5.5 Senior discount. Grantee currently provides a "senior discount" of \$3.00 per month to qualifying residential subscribers within the City. Grantee desires to discontinue this discount. Grantee and City agree that Grantee may discontinue the existing "senior discount" two years from the effective date of this Extension provided, however, that after the two year period, existing customers who then have the senior discount may continue to receive this discount unless and until the customer has a break in cable service (the service is discontinued, either voluntarily or involuntarily due to non payment) or the customer voluntarily opts for a different discount, at which time the acceptance of the alternative discount shall cause the senior discount to be discontinued and the senior discount will not be reinstated for that customer.

6.0 Enforcement. Subject to applicable federal and state law, in the event that the City determines that Comcast is in default or has breached any provision in this Extension Agreement, the Renewal Agreement, or the City's Cable Communication Regulatory Ordinance, the City may pursue its remedies in accordance to the terms and procedures set forth in the Renewal Agreement and/or the City's Cable Communication Regulatory Ordinance.

7.0 Actions of Parties. In any action by the City or Comcast that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.0 Descriptive Headings. The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.0 Severability. If any section, subsection, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other

section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

10.0 Technology Grant. Within thirty (30) days of the effective date of this Extension Agreement, Comcast shall provide a grant in the amount of \$22,000 to be utilized for technology improvements in the city, or for any other purposes within the City's discretion.

11.0 Except as modified or amended in this Agreement, all terms, conditions, agreements and obligations of the Renewal Agreement shall remain in full force and effect through the term of the Extension Agreement.

IN WITNESS WHEREOF, the City and Comcast have executed this Extension Agreement as of the date and year first written above.

CITY OF BENICIA

By _____

Approved as to form:

City Attorney

COMCAST OF EAST SAN FERNANDO VALLEY, L.P.

By _____

Its: _____

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

Comcast of East San Fernando Valley, L.P. ("Comcast") hereby, unconditionally, irrevocably and without reservation accepts the Extension Agreement to the Cable Television Franchise Renewal Agreement granted on June 13, 1993, ("Renewal Agreement") which renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

_____, By the execution, delivery and filing of this Certificate, the undersigned further:

(1) Covenants and promises to faithfully undertake and perform each and every promise, covenant, commitment and undertaking contained in the Extension Agreement;

(2) Represents and warrants that this Certificate, and the Renewal Agreement constitute a valid and binding obligation, as to each and every term thereof, enforceable against the undersigned in accordance with the terms thereof;

(4) Represents and warrants that the persons who have executed this Certificate are duly authorized to do so by all necessary action;

(5) Represents and warrants that the execution and delivery of this Certificate does not violate any provision of the By-Laws and/or Articles of Incorporation of any of the named corporations;

(6) Expressly decrees and agrees that adequate and sufficient consideration has been provided for each and every promise, covenant, commitment and undertaking of the undersigned contained in the franchise agreement and Ordinance approving the transfer; and

(7) Expressly declares and agrees to comply with each and every term, condition and agreement contained in the Extension Agreement and reaffirms its obligation to comply with each and every term, condition and agreement contained in the Renewal Agreement, except as modified by the Extension Agreement.

(8) This Certificate shall be valid when and only when executed by t Comcast of East San Fernando Valley, L.P. ("Comcast")

IN WITNESS WHEREOF, this Certificate is executed effective
_____ 2000.

Comcast of East San Fernando Valley, L.P.

By: _____

Its: _____

[NOTE: ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT B
FIBER LINKS

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
NEW BUSINESS**

DATE : August 16, 2005
TO : City Council
FROM : City Attorney
SUBJECT : **APPROVAL OF AN AGREEMENT WITH COMCAST TO
EXTEND THE CABLE FRANCHISE TO 2010**

RECOMMENDATION:

Adopt the resolution authorize the City Manager to execute the agreement with Comcast to extend the cable franchise to June 13, 2010.

EXECUTIVE SUMMARY:

The cable franchise agreement with Comcast was subject to an automatic renewal on June 13, 2003. The automatic renewal period was for 5 years. This agreement would add an additional four years in exchange for certain upgrades being made ahead of schedule.

BUDGET INFORMATION:

The City received \$232,695 in Cable Franchise Fees for fiscal year 03/04 and \$258,971 for fiscal year 04/05. This agreement would not change the calculation of the fee which depends on the number of subscribers.

BACKGROUND:

Cable service is provided in the City by Comcast. Comcast took over the cable franchise in November of 2002 from AT&T. The cable franchise has what amounts to an automatic renewal provision that extends the franchise from June of 2003 to June of 2008. You may remember that staff investigated whether we could terminate the franchise because of poor service. We hired technical consultants and an attorney well versed in cable regulations to assist us. The technical consultants discovered many technical violations but none of the violations would allow the City to terminate the franchise agreement. Thus, staff began negotiations to improve service.

In exchange for extending the term of the cable franchise for an additional four (4) years the City received the following benefits:

1. The previous cable system was rebuilt to increase the system capacity to at least 750 MHz.

2. The system was rebuilt to provide digital service with two-way capability.
3. The City received an additional PEG (public, educational, and government) channel which staff proposes be dedicated to educational uses.
4. Comcast installed and will maintain a fiber link in place of the Institutional Network proposed in the original Franchise.
5. A pass through fund for equipment. This pass through is made up of a 25 cent charge to the customers.
6. Senior discounts will be continued for the term of the franchise.

The two-way capability allows “on-demand” services so that customers can order movies and other material to be shown at the customer’s convenience.

The additional PEG channel is being provided even though our current programming needs do not qualify us for the additional channel under the franchise agreement. The additional channel will allow more use by the Benicia Unified School District and may provide other opportunities for other education groups like the community college. The School District will have to get equipment to broadcast on the additional PEG channel.

Your staff of Rick Knight and Bill Guggemos did an excellent job of negotiating with the Comcast technical folks. At the request of the City, Comcast installed a fiber link between City facilities including the Wastewater Treatment Plant, the Youth Center, the Corporation Yard and Fire Station 12. (The Library and Fire Station 11 were already linked to City Hall.) City staff estimated in 2004 that the value of the conduit alone without fiber is in excess of \$917,000 for the four locations. Estimates of cost are based upon the information from the contractor for the Inflow and Installation project. We were also successful in having Comcast pull the fiber into City Hall instead of terminating it at the street.

The pass through will assist the City in upgrading the equipment in the City Council chambers. That money will be fronted by Comcast and recovered via a pass through to the approximately 7310 Benicia subscribers at approximately \$.25 per subscriber per month (in order to minimize the subscriber impact). Initially, Comcast would give the City \$40,000 up front and collect the money. Once the \$40,000 is recovered, the pass through will continue to be collected and given to the City for further capital equipment purchases. As reported in the Capital Improvement Plan (and as you have experienced) the City’s audio/visual equipment needs improvement. The current equipment does not produce good quality recording, the microphones are poor and the screens to show the presentations are inadequate. With the requirements of the Sunshine Ordinance, staff would also like to “upgrade” the audio/visual equipment for the Commission Room and Dona Benicia Room.

The senior discount is proposed to be amended. Comcast’s attorneys advise that the senior discount is legally vulnerable. In order to minimize disruption to the seniors, it is proposed that Comcast will be allowed to discontinue the discount in two years. However, seniors who have the discount at that time and who DO NOT change rate plans or discontinue service may continue to receive the discount. It is important to note that this plan will not allow the seniors to continue to switch back and forth between discounted plans.

Attachments:

- [Resolution approving the extension of the cable franchise agreement with Comcast](#)
- [Proposed Extension Agreement](#)

RESOLUTION

RESOLUTION NO. 05-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE NON-EXCLUSIVE CABLE FRANCHISE EXTENSION AGREEMENT WITH COMCAST AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, on June 13, 1993, the City by a Franchise Renewal Agreement ("Renewal Agreement") renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

WHEREAS, Comcast requested an extension of the Renewal Agreement with the City; and

WHEREAS, the City indicated its intent to extend the term of the Renewal Agreement by five (5) years, pursuant to Section 1.4 of the same and for an additional four (4) years for a total of nine (9) years; and

WHEREAS, Comcast has completed a rebuild of the cable system that serves Benicia to provide for cable system capacity of at least 750 mhz and two way capability; and

WHEREAS, the City also desires that Comcast provide an additional video channel dedicated exclusively for PEG use; and

WHEREAS, after the City has determined to extend the non-exclusive franchise held by Comcast on substantially the terms and conditions specified in the existing Renewal Agreement, except as provided in the extension agreement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the Non-Exclusive Franchise Extension Agreement with Comcast and authorizes the City Manager to execute the Agreement with minor changes as approved by the City Attorney.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th of September, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

AGREEMENT

NON-EXCLUSIVE FRANCHISE
EXTENSION AGREEMENT

This Franchise Extension Agreement ("Extension Agreement") is entered into as of _____, 2005, by and between the City of Benicia, ("City") and Comcast of East San Fernando Valley, L.P. ("Comcast").

WHEREAS, the City, in Ordinance No. 91-6 N.S. § 2, codified in Chapter 5.40 of the City's Municipal Code, set forth the initial requirements for nonexclusive franchise to construct, operate and maintain a cable television system within the City; and

WHEREAS, on June 13, 1993, the City by a Franchise Renewal Agreement ("Renewal Agreement") renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

WHEREAS, the term of the renewal expired June 13, 2003, has been continued on a month to month basis to allow for completion of the Extension Agreement and ; and

WHEREAS, prior to the expiration of the Renewal Agreement, Comcast requested an extension of the Renewal Agreement with the City; and

WHEREAS, the City indicated its intent to extend the term of the Renewal Agreement by five (5) years, pursuant to Section 1.4 of the same and for an additional two (2) years for a total of seven (7) years; and

WHEREAS, Comcast has completed a rebuild of the cable system that serves Benicia to provide for cable system capacity of at least 750 mhz and two way capability; and

WHEREAS, the City also desires that Comcast provide an additional video channel dedicated exclusively for PEG use;

WHEREAS, after the City has determined to extend the non-exclusive franchise held by Comcast (City and Comcast collectively hereinafter "Parties") on substantially the terms and conditions specified in the existing Renewal Agreement, except as provided herein;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1.0 Extension. The current Renewal Agreement between City and Comcast expired on June 13, 2003 and was extended on a month to month basis to allow for completion of this Extension Agreement. Section 1.4 of the Renewal Agreement provides for a five (5) year extension. The parties, however, desire to extend and hereby agree to a seven (7) year extension of the franchise. Subject to the terms and conditions of this Agreement, the parties agree to extend the Renewal Agreement, as set forth herein.

1.1 Term of Extension. The duration of the current franchise will be extended by a period of seven (7) years commencing on the effective date of this Extension Agreement, provided that this Extension Agreement is adopted by and in an official resolution of the City and accepted by Comcast by filing a Certificate of Acceptance, in the form attached hereto as Exhibit A, with the City Clerk no later than 30 days after adoption of the resolution approving the Extension Agreement..

2.0 Upgrade. The upgraded system will comply with the terms of this Extension Agreement, the Renewal Agreement, and the City's Cable Communication Regulatory Ordinance. The upgraded system will comply with all applicable regulations and codes, including but not limited to the National Electrical Code, California Public Utilities Code General Order 95, and California Public Utilities Code Order 128.

3.0 Additional PEG Access Channel.

(a) Within sixty (60) days of approval and acceptance of this Extension Agreement and notwithstanding the provision in the Renewal Agreement requiring a programming threshold, Comcast shall make one additional (1) video channel available exclusively for PEG use. The new PEG Access Channel shall comply with all the terms and requirements regarding PEG Access Channels found in Exhibit B of the Renewal Agreement. Any request from the City for use of the third PEG channel as contemplated by the Renewal Agreement shall comply with the programming threshold requirements.

(b) At such time as the entire Cable System is digital, the analog PEG signals shall be carried on the digital platform, and Grantee shall be responsible for the costs of end user equipment necessary to receive and transmit programming for the PEG channels or converting the analog signal to digital Grantor shall be responsible for any other costs for transmitting and receiving the digital signals, including but not limited to any needed fiber transmitter or equivalent equipment necessary to transport the

digital signal to Grantee's headend . The activation of any additional channels will be subject to the programming thresholds set forth in the Renewal Agreement, Exhibit B.

(c) PEG channels shall be available on the lowest tier of basic service. The channel(s), in the sole discretion of the City, may be utilized in any PEG combination and may be shared with other communities or designated for exclusive use within the City's jurisdiction, provided however, that such shared use with other communities shall not be considered towards the hourly cablecasting triggers for new PEG channels.

(d) PEG channels will not be used for commercial purposes, such as leasing capacity, advertising, or any use whatsoever that may generate revenue for the Franchising Authority or PEG users or compete with current or future services provided by the Grantee.

(e) Grantor agrees to indemnify, save and hold harmless the Grantee from and against any and all liability resulting from the use of the Grantee's channels for PEG by Grantee or its designee(s).

3.1. PEG Pass Through. Within thirty (30) days of the effective date of this Extension, Grantee shall provide an upfront capital grant to the City in the amount of Forty Thousand Dollars (\$40,000) for equipment costs associated with PEG capital and equipment. Grantee shall collect from Subscribers a PEG capitol pass through in the monthly amount of twenty-five (\$.25) cents per subscriber, beginning ninety (90) days after the effective date of this Extension Agreement. Grantee shall recover the upfront \$40,000 capital grant from this pass-through. After Grantee has recovered the \$40,000, the pass-though amount shall be paid to the City quarterly. In year four (4) of this Extension Agreement (i.e. 2009), Grantee shall provide an additional capital grant in the amount of Forty Thousand Dollars (\$40,000) for PEG equipment and capital expenses, which Grantee shall also recover via the pass-through as set forth above. After Grantee has recovered this additional \$40,000, the pass-through amount shall again be paid to the City. Grantee may request in writing and City shall provide a report to Grantee on the use of the funds received for PEG capital and equipment. If City does not expend the Forty Thousand Dollars (\$40,000) after the initial capital grant, then Grantee shall not be required to make the second capital payment to the City until City has expended the initial capital grant.

4.0 Institutional Network. Section 3.5 of the Renewal Agreement is hereby deleted in its entirety. In lieu of the Institutional Network required by Section 3.5 of the Renewal Agreement, Comcast agrees to and shall provide at the time of rebuild, the fiber links described on Exhibit B, attached hereto. These fiber links shall be

owned and maintained by Comcast for the sole and exclusive use by the City and any public agencies authorized to utilize these links by the City.

5.0 Emergency Alert. The City and Comcast agree that section 3.7, emergency alert system override capacity shall be supplied through the emergency services systems in place and in compliance with federal law.

5.5 Senior discount. Grantee currently provides a "senior discount" of \$3.00 per month to qualifying residential subscribers within the City. Grantee desires to discontinue this discount. Grantee and City agree that Grantee may discontinue the existing "senior discount" two years from the effective date of this Extension provided, however, that after the two year period, existing customers who then have the senior discount may continue to receive this discount unless and until the customer has a break in cable service (the service is discontinued, either voluntarily or involuntarily due to non payment) or the customer voluntarily opts for a different discount, at which time the acceptance of the alternative discount shall cause the senior discount to be discontinued and the senior discount will not be reinstated for that customer.

6.0 Enforcement. Subject to applicable federal and state law, in the event that the City determines that Comcast is in default or has breached any provision in this Extension Agreement, the Renewal Agreement, or the City's Cable Communication Regulatory Ordinance, the City may pursue its remedies in accordance to the terms and procedures set forth in the Renewal Agreement and/or the City's Cable Communication Regulatory Ordinance.

7.0 Actions of Parties. In any action by the City or Comcast that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.0 Descriptive Headings. The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

9.0 Severability. If any section, subsection, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other

section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

10.0 Technology Grant. Within thirty (30) days of the effective date of this Extension Agreement, Comcast shall provide a grant in the amount of \$22,000 to be utilized for technology improvements in the city, or for any other purposes within the City's discretion.

11.0 Except as modified or amended in this Agreement, all terms, conditions, agreements and obligations of the Renewal Agreement shall remain in full force and effect through the term of the Extension Agreement.

IN WITNESS WHEREOF, the City and Comcast have executed this Extension Agreement as of the date and year first written above.

CITY OF BENICIA

By _____

Approved as to form:

City Attorney

COMCAST OF EAST SAN FERNANDO VALLEY, L.P.

By _____

Its: _____

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

Comcast of East San Fernando Valley, L.P. ("Comcast") hereby, unconditionally, irrevocably and without reservation accepts the Extension Agreement to the Cable Television Franchise Renewal Agreement granted on June 13, 1993, ("Renewal Agreement") which renewed the non-exclusive franchise then existing between the City and Century Cable of Northern California, Comcast's predecessor in interest; and

_____, By the execution, delivery and filing of this Certificate, the undersigned further:

(1) Covenants and promises to faithfully undertake and perform each and every promise, covenant, commitment and undertaking contained in the Extension Agreement;

(2) Represents and warrants that this Certificate, and the Renewal Agreement constitute a valid and binding obligation, as to each and every term thereof, enforceable against the undersigned in accordance with the terms thereof;

(4) Represents and warrants that the persons who have executed this Certificate are duly authorized to do so by all necessary action;

(5) Represents and warrants that the execution and delivery of this Certificate does not violate any provision of the By-Laws and/or Articles of Incorporation of any of the named corporations;

(6) Expressly decrees and agrees that adequate and sufficient consideration has been provided for each and every promise, covenant, commitment and undertaking of the undersigned contained in the franchise agreement and Ordinance approving the transfer; and

(7) Expressly declares and agrees to comply with each and every term, condition and agreement contained in the Extension Agreement and reaffirms its obligation to comply with each and every term, condition and agreement contained in the Renewal Agreement, except as modified by the Extension Agreement.

(8) This Certificate shall be valid when and only when executed by t Comcast of East San Fernando Valley, L.P. ("Comcast")

IN WITNESS WHEREOF, this Certificate is executed effective
_____ 2000.

Comcast of East San Fernando Valley, L.P.

By: _____

Its: _____

[NOTE: ALL SIGNATURES MUST BE NOTARIZED]

EXHIBIT B
FIBER LINKS

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
NEW BUSINESS**

DATE : August 24, 2005
TO : City Council
FROM : City Manager
SUBJECT : **CONTRIBUTION TO BAY AREA WATER FORUM**

RECOMMENDATION:

Should the Council decide to make a contribution, the amount should be at the \$1,000 level which is appropriate for an agency of our size.

EXECUTIVE SUMMARY:

The Bay Area Water Forum (BAWF) is soliciting one-time voluntary contributions to support the planning efforts of their organization. The BAWF is a collaboration of water resource stakeholders in the Bay Area established to explore water supply reliability, watershed management, water conservation/recycling, water quality improvements and other key issues critical to the Bay Area.

BUDGET INFORMATION:

Sufficient funds are available in the water enterprise fund to support the \$1,000 contribution

BACKGROUND:

The Bay Area Water Forum (BAWF) sent out a request for one-time contributions from water resource stakeholders in the Bay Area to support the efforts of the BAWF in reviewing the key water related issues for the Bay Area. The request to Benicia suggested contribution levels ranging from \$1,000 to \$10,000. Should Council support a contribution, staff considers the \$1,000 level as appropriate for an agency of our size considering some of the other players are very large agencies including the East Bay Municipal Utilities District, Contra Costa Water District and the Solano County Water Agency.

Please note that the contribution request from the BAWF was reviewed by the Solano County Water Agency at their Board meeting of August 11, 2005 and they were not able to get a majority vote to support a \$10,000 contribution.

Attachment:

If viewing online, a copy of the following attachment is available at the City Clerk's Office:

- ABAG Letter, Voluntary Contribution Form, Task Force Information, Press Release

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
NEW BUSINESS**

DATE : August 25, 2005

TO : City Manager

FROM : Finance Director

SUBJECT : **AUTHORIZE THE REFINANCING OF THE 1993 REFUNDING WASTEWATER REVENUE BONDS THROUGH THE ISSUANCE AND SALE OF THE 2005 WASTEWATER REFUNDING REVENUE BONDS**

RECOMMENDATION:

Adopt the Resolution authorizing actions that will allow the refinancing of the 1993 Refunding Wastewater Revenue Bonds and the issuance and sale of the 2005 Wastewater Refunding Revenue Bonds: including approval of the Indenture of Trust, Escrow Agreement, Bond Purchase Agreement, Preliminary Official Statement, and actions related thereto.

EXECUTIVE SUMMARY:

The City previously issued the \$6,195,000 City of Benicia 1993 Refunding Wastewater Revenue Bonds (the "1993 Bonds"), for the purpose of refinancing certain improvements to its municipal wastewater enterprise. Currently, interest rates are at historically low levels and the City can reduce its debt service obligations by refinancing the 1993 Bonds. It is expected that the annual debt service will be reduced from approximately \$420,000 to \$360,000 per year or approximately \$60,000 per year. The total costs of issuance and underwriting will be approximately \$120,000, yielding net present value savings of \$210,000 or 5% over the remaining 15 year life of the bonds.

BUDGET INFORMATION:

Refinancing the 1993 Bonds will yield annual debt service savings of approximately \$60,000 for the Wastewater Operations Fund.

BACKGROUND:

The 2005 Bond Documents will be delivered under separate cover to the City Council. The public may review these documents at the office of the City Clerk or by accessing the Web at the following location: <http://www.qtlp.com/Benicia.html> . Table 1 on the following page summarizes the estimated Sources and Uses of Funds and Table 2 lists the individual Costs of Issuance.

Table 1.

**Sources and Uses of Funds
2005 Refunding Wastewater Revenue Bonds**

Sources of Funds:

Par Amount of Bonds	3,945,000.00
Less: (OID) Plus: OIP	0.00
Less: Underwriter's Discount (1)	(49,312.50)
Net Bond Proceeds at Closing	3,895,687.50
Outstanding Reserve Fund	430,500.00
12/1/05 Debt Service Due	310,668.13
Total Other Funds	<u>741,168.13</u>
Total Sources of Funds	4,636,855.63

Uses of Funds:

Cost of Escrow Securities (SLGs)	4,530,791.00
Beginning Escrow Cash Balance	0.10
Reserve Fund (2)	-
Reserve Fund Surety (3)	11,415.38
Cost of Issuance (4)	65,000.00
Bond Insurance Premium (5)	<u>25,818.20</u>
Total Uses of Funds	4,633,024.68

Adjustment **3,830.95**

Assumptions

-
- (1) 1.25% (\$12.50 / Bond) of the Par Amount of Bonds
 - (2) Maximum Annual Debt Service (MADS) - Bond Year Basis - Funded by Surety Bond
 - (3) 3.00% of the Reserve Fund Requirement
 - (4) See Attached Schedule
 - (5) 50bp (0.50%) of Total Principal and Interest

**Table 2.
Costs of Issuance
2005 Refunding Wastewater Revenue Bonds**

Costs of Issuance

Bond Counsel	30,000.00
Disclosure Counsel	20,000.00
Paying Agent / Trustee	3,000.00
Regulatory Fees	2,000.00
Printing / Misc.	5,000.00
Computer Analysis	2,500.00
Verification Agent	<u>2,500.00</u>
Total	65,000.00

Attachment:

- [Resolution](#)

RESOLUTION

RESOLUTION NO. 05-___

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE ISSUANCE AND SALE OF ITS CITY OF BENICIA 2005
WASTEWATER REFUNDING REVENUE BONDS, APPROVING AN INDENTURE OF
TRUST, AN ESCROW AGREEMENT, A BOND PURCHASE AGREEMENT AND A
PRELIMINARY OFFICIAL STATEMENT, AND AUTHORIZING AND DIRECTING
THE EXECUTION THEREOF AND AUTHORIZING ACTIONS RELATED THERETO**

WHEREAS, the City has previously issued its \$6,195,000 City of Benicia 1993 Refunding Wastewater Revenue Bonds (the “1993 Bonds”), for the purpose of refinancing certain improvements to its municipal wastewater enterprise; and

WHEREAS, interest rates are currently at historically low levels and the City can reduce its debt service obligations with respect to the 1993 Bonds by refunding the 1993 Bonds; and

WHEREAS, section 53570 *et seq.* of the California Government Code (the “Refunding Bond Law”) authorizes the City to issue its refunding revenue bonds for the purpose of refunding revenue obligations of the City such as the 1993 Bonds; and

WHEREAS, the City, after due investigation and deliberation, has determined that it is in the interests of the City at this time to provide for the issuance of bonds under the Refunding Bond Law to provide for the refunding of the 1993 Bonds; and

WHEREAS, to that end, the City has determined to issue its City of Benicia (Solano County, California) 2005 Wastewater Refunding Revenue Bonds (the “2005 Bonds”), pursuant to an indenture of trust (the “Indenture”), by and between the City and U.S. Bank National Association, as trustee (the “Trustee”); and

WHEREAS, the Council has duly considered such transactions and wishes at this time to approve said transactions in the public interests of the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia as follows:

SECTION 1. Determination to Carry Out Refunding. The Council hereby determines to carry out the issuance and sale of the 2005 Bonds to provide for the refunding of the 1993 Bonds.

SECTION 2. Issuance of the 2005 Bonds; Approval of Indenture. The Council hereby authorizes the issuance of the 2005 Bonds. The 2005 Bonds shall be issued pursuant to the Indenture. The Council hereby approves the Indenture in substantially the form on file with the City Clerk, together with such non-material additions thereto and changes therein as the Mayor, the City Manager or the Finance Director (the “Designated Officers”) shall deem necessary, desirable or appropriate, the execution of which by the City shall be conclusive evidence of the approval of any such non-material additions and changes. The Designated Officers, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and

directed to attest to, the final form of the Indenture for and in the name and on behalf of the City. The Council hereby authorizes the delivery and performance of the Indenture.

SECTION 3. Approval of Escrow Agreement. The Council hereby approves the escrow agreement, by and between the City and U.S. Bank National Association, as escrow bank and as successor trustee for the 1993 Bonds (the “Escrow Agreement”), in substantially the form of the Escrow Agreement on file with the City Clerk, together with such non-material additions thereto and changes therein as a Designated Officer shall deem necessary, desirable or appropriate, the execution of which by the City shall be conclusive evidence of the approval of any such non-material additions and changes. The Designated Officers, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Escrow Agreement for and in the name and on behalf of the City. The City hereby authorizes the delivery and performance of the Escrow Agreement.

SECTION 4. Continuing Disclosure Certificate. The City hereby approves a continuing disclosure certificate (the “Continuing Disclosure Certificate”), in substantially the form on file with the City Clerk, together with such non-material additions thereto and changes therein as a Designated Officer shall deem necessary, desirable or appropriate, the execution of which by the City shall be conclusive evidence of the approval of any such non-material additions and changes. The Designated Officers, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Continuing Disclosure Certificate for and in the name and on behalf of the City. The City hereby authorizes the delivery and performance of the Continuing Disclosure Certificate.

SECTION 5. Official Statement. The Council hereby approves and deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 except for permitted omissions, a preliminary form of official statement describing the Bonds (the “Preliminary Official Statement”) in the form on file with the City Clerk. Distribution of the Preliminary Official Statement to prospective purchasers of the Bonds is hereby approved. The Designated Officers are hereby authorized to execute a final form of official statement (the “Final Official Statement”), including as it may be modified by such additions thereto and changes therein as the Designated Officer shall deem necessary, desirable or appropriate, and the execution of the Final Official Statement by a Designated Officer shall be conclusive evidence of the approval of any such additions and changes. The City hereby authorizes the distribution of the Final Official Statement. The Final Official Statement shall be executed in the name and on behalf of the City by a Designated Officer.

SECTION 6. Sale of the Bonds. The Council hereby approves the sale of the Bonds by negotiated sale to Wulff, Hansen & Co. (the “Underwriter”). The Council hereby approves a bond purchase agreement, by and between the City and the Underwriter (the “Bond Purchase Agreement”), in substantially the form of the Bond Purchase Agreement on file with the City Clerk, together with such non-material additions thereto and changes therein as a Designated Officer shall deem necessary, desirable or appropriate, the execution of which by the City shall be conclusive evidence of the approval of any such non-material additions and changes, so long as the Underwriter’s discount (exclusive of original issue discount which does not constitute compensation to the Underwriter) is not greater than 1.50% and so long as the net present value

savings to the City is at least 3% of the refunded par amount of the 1993 Bonds. The Designated Officers, each acting alone, are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, the final form of the Bond Purchase Agreement for and in the name and on behalf of the City. The City hereby authorizes the delivery and performance of the Bond Purchase Agreement.

SECTION 7. Official Actions. The Mayor, the City Manager, the Finance Director, the City Clerk and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions, including execution and delivery of any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and sale of the 2005 Bonds and the consummation of the transactions as described herein.

SECTION 8. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6th day of September, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 6, 2005
REPORTS FROM CITY MANAGER

DATE : August 31, 2005

TO : City Council

FROM : City Manager

SUBJECT : **PROGRESS TOWARD RESOLVING DIFFERENCES WITH BENICIA UNIFIED SCHOOL DISTRICT REGARDING THE PROPOSED JOINT USE AGREEMENT**

RECOMMENDATION:

Status report, for information only.

EXECUTIVE SUMMARY:

The Superintendent and the City Manager are currently working on proposed recommendations for addressing differences in the proposed agreements for City maintenance of BUSD fields.

BACKGROUND:

On July 19, 2005, the Council authorized the City Manager to initiate discussions with the School District Superintendent to resolve differences for the proposed joint use agreement (JUA). The JUA would permit the City to provide up to \$1 million of turf upgrades, and ongoing field maintenance at four school sites. In return, the District would permit City use of all District fields, gyms, multi-purpose rooms and at least one classroom at each school.

The City Manager, Parks and Community Services Director and BUSD Superintendent have met on several occasions since July 19th. All major issues, and all but a few known lesser issues, have been reviewed. Of the major issues, City and BUSD staff appear to be in agreement on nearly all of them.

Of the lesser issues (identified in memo from City Attorney dated July 12, 2005) all appear resolvable with 31 of 40 issues reviewed. City staff will submit recommendations to the Superintendent this week for addressing the last nine lesser issues.

All tentative agreements have been committed to writing in common language. District and City staff plan to review a complete package of tentative agreement in the next few days. Following confirmation of the tentative agreements, the City Attorney will incorporate the proposed amendments into the draft JUA for Council and Board action.

Staff has avoided in the memo, elaborating on tentative agreements to protect the integrity of negotiations between staff. To publicly discuss differences, of which there are few, may harden positions and make compromise more difficult.

The School/City Liaison Committee requested at their meeting on August 25th that a joint meeting of the Council and School Board be set prior to the end of September in anticipation that the draft JUA will be ready for adoption. Contract negotiations between the District and its maintenance personnel may preclude setting a date for a joint City Council/BUSD Board meeting at this time. We understand the District Board will discuss this matter at their September 16th meeting.