

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 on the Friday afternoon before the Council meeting.

**MINUTES OF THE
SPECIAL MEETING - CITY COUNCIL
SEPTEMBER 6, 2005**

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:45 p.m. on Tuesday, September 6, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina
Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENT OF CLOSED SESSION:

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

CLOSED SESSION:

1. Conference with Labor Negotiator (Government Code Section 54957.6 (a))

Agency negotiators: City Manager, Human Resources Director, Senior Personnel Analyst, and Bill Avery of Avery & Associates

Employee organization: Benicia Firefighters Association and Police Managers

2. 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

ADJOURNMENT:

Mayor Messina adjourned the Closed Session at 6:47 p.m.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
SEPTEMBER 6, 2005**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7: 43 p.m. on Tuesday, September 6, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Announcement of action taken at Closed Session:

Heather McLaughlin, City Attorney announced the following actions taken during closed session:

1. Conference with Labor Negotiator - Benicia Firefighters Association - Council received information from negotiators including a letter from University Research and Associates. Council gave direction to negotiators. Council wishes to treat all groups fairly and negotiate multi-year contracts next year.
2. Conference with Labor Negotiator - Benicia Police Managers - Council received information from Staff. This item will be brought back to Council in the future.
3. Conference with Real Property Negotiator - Right of Way adjacent to 994 West K Street - Before deciding whether or not to proceed, Council would like the City Manager or his designee to hold a workshop with applicant and neighbors to review the design guidelines to be prepared by the applicant and to discuss view issues. The matter will be brought back to Council in the future.

Mayor Messina made the following announcements:

- There is a plaque at the entrance to Council Chambers stating the fundamental rights of each member of the public per section 4.04.030 of BMC Ordinance 05-6.
- There are five openings on the Open Government Commission.
- There is a pollution prevention display at the Library this month.
- On behalf of the City of Benicia, our thoughts go out to those impacted by the devastation of Hurricane Katrina. A number of local organizations and individuals are working to coordinate efforts to assist those in need. For further information on how you can support local efforts, He encouraged citizens to contact the City Manager's Office at 746-4200.

Jim Erickson, City Manager, discussed Hurricane Katrina. He discussed possible ways for people to help the victims of Hurricane Katrina. The City had contact with the Solano County Office of Emergency Services (OES) to ask and evaluate requests that are made of the City. Issues of housing, equipment needs, etc. were discussed. Staff has been in contact with the Benicia Housing Authority. HUD is

encouraging all Housing Authority offices to find ways of being of assistance to the evacuees of Hurricane Katrina. We are working with OES to do anything we can to be of help. The City received a bulletin from the State of California OES requesting assistance with housing. Approximately 1,000 people that are being evacuated are in need of housing. They are asking if the City of Benicia can commit to housing any of the evacuees on both a short term and long term basis. We will know more about the request tomorrow. He stated that Council might need to call a special Council meeting to discuss and/or approve any action that would be taken.

Vice Mayor Patterson stated that the City of Sacramento is donating 300 housing units (military barracks) for the Katrina victims. She suggested that at the special meeting, Council discuss the option of adopting a policy for giving paid leave to City Staff who would go to the Louisiana Coast to aid the Katrina victims. She would like to have the idea of having the Benicia Fire Department aid the City in the coordination of governmental and non-governmental efforts discussed. She asked the public to think about conserving energy. Possibly not driving vehicles or driving vehicles at lower speeds. That would take the pressure off of the high cost of gasoline situation.

Council Member Smith commended City Staff for being on top of the situation.

APPOINTMENTS:

Planning Commission:

Council Member Campbell stated that he spoke with Mr. Strawbridge whom he thinks will do a good job.

Vice Mayor Patterson stated that she would be voting no because Mr. Strawbridge does not represent the segment of the community that has not had a voice on the Planning Commission for a long time. However impressed with Mr. Strawbridge, she thinks the appointment was tardy. A new process for appointment is about to begin and it would be prudent to send the appointment to the new committee that would be making the recommendation.

Council Member Smith stated that he is looking for a candidate that is familiar with the City's General Plan and CEQA. He stated that Mr. Strawbridge confessed that he was not very familiar with either.

Council Member Whitney stated that he is happy to have someone that the majority of Council can vote on.

RESOLUTION 05-137 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF SCOTT STRAWBRIDGE TO THE PLANNING COMMISSION TO A TERM ENDING SEPTEMBER 30, 2008

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

Ayes: Council Members Campbell, Whitney, and Mayor Messina

Noes: Council Members Patterson and Smith

PRESENTATIONS:

Report on Mosquito Abatement:

Mr. John Blegen, Manager, Solano County Mosquito Abatement District and Mr. Michael White, Trustee, Solano County Mosquito Abatement District Board reviewed an update on West Nile Virus. Mr. Blegen reviewed procedures the public should follow to avoid contact with mosquitoes, including wearing the right mosquito repellent.

Plastics in the Ocean:

Ms. Carol Keiper, Marine Ecologist, Oikonos Ecosystem Knowledge, reviewed a PowerPoint presentation titled 'Plastic Pollution Prevention.'

PROCLAMATIONS:

Mayor Messina presented the following proclamations:

- Pollution Prevention Week - September 19-25, 2005 - Ms. Carol Keiper, Marine Ecologist, Oikonos Ecosystem Knowledge, accepted the proclamation.
- Literacy Awareness Day - September 8, 2005 - Ms. Lynne Price, Literacy Coordinator, accepted the proclamation.

ADOPTION OF AGENDA:

On motion of Council Member Smith, seconded by Council Member Whitney, the agenda was adopted as presented, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

COMMUNICATIONS:

WRITTEN:

PUBLIC COMMENT:

1. John Woods - Mr. Woods wanted to address the problem of signage within the City of Benicia. The code is way out of date. Various elements of the code have been selectively enforced. City Staff is trying to place restrictions on the sale of various homes. He was told this action was necessary due to an overwhelming number of complaints. He listed various departments and stated that they had not received any complaints thus far. He listed various signs within the City that do not meet the current codes. It is time for a moratorium. He wants this issue looked into and a report given at a future Council Meeting.

Mayor Messina asked Mr. Erickson to look into this issue and report back to Council. Mr. Erickson stated that Staff has met with the real estate community to discuss this issue. Staff will report back to Council at a future meeting.

Vice Mayor Patterson stated that the City has made revisions in the budget for a code enforcement officer. She asked Staff to give a brief report on this at a future Council meeting.

2. Steve Booth - Mr. Booth represents the Benicia Firefighters Association. The BFA is hopeful for a timely settlement on labor negotiations. He is hopeful that tomorrow's meeting will be productive. In the recent past, several BFA members had served on a salary survey committee.

The proposal they submitted to the City of Benicia is consistent with the City's goal of bringing its staff up to the level that is consistent with the salary compensation in the areas surveyed by the salary survey committee.

3. Sue Johnson - Ms. Johnson wanted to discuss a project Mr. Mark Lobdell is working on at 120 Incline Place.

Council Member Campbell excused himself due to a conflict of interest.

Ms. Johnson listed various aspects of the project. She asked Council to review Mr. Lobdell's lot line adjustment. The lot line adjustment is not minor. She wants Council to do an open review of this project.

Council Member Smith asked if she would be doing an appeal. She stated that the whole appeal process is confusing. He suggested she go through the appeal process.

4. Jeanine Seeds - Ms. Seeds stated that she wished to discuss the cost of the Valero item on the agenda. Why can't Staff work on this? Why do we have to continue hiring consultants for high dollar projects? She discussed the issue of appointing a planning commissioner before Council voted on the new process. Both CEQA and the General Plan are big issues. Council just appointed another commissioner that may or may not be qualified to do the job. Would that person have been hired to work in the planning department? We need to hire people that are qualified to do the job.
5. Marilyn Bardet - Ms. Bardet discussed Hurricane Katrina. She wondered if we are prepared for a natural disaster. She is a member of Benicia Emergency Response Team (BERT). The citizens of Benicia would have to take care of themselves for three days in the event of a natural disaster. BERT only has a handful of members (volunteers) for each area of the City. She encouraged members of the public to join BERT. In terms of long-range planning, we need to consider adding community mental health services or medical/professional services in town. Medical services for our town are needed. She suggested the Mills site for these services. Citizens interested in joining BERT should call 746-4275 for information.
6. Jon Van Landschoot - Mr. Van Landschoot discussed the Planning Commission appointment process. He cautioned Council on the renaming of the Sky Valley Open Commission. If we put the word 'watershed' in the name, it suggests growth. He would like Council to consider a moratorium on building within the Historic District. There are things happening within the Planning Department. There are two projects on the way in the Arsenal. The projects are ill suited for the Historic District. If we don't do something soon, there will be a number of appeals on future projects.
7. Mayor Messina asked Mr. Erickson if there was a list of all the applications for planning, development, and building permits. He discussed the appeal process and how it works. It may be more appropriate to trigger the appeal once the decisions are made. He would like to see these issues come back to Council.
8. Vice Mayor Patterson stated that law guides the appeal process. The correct information is being given, but because of the complexities, it could be misunderstood. This won't help the

plaintiff's now, but for the future, we need to have a design review process for new single-family homes, for new and significant rebuilds, and we need to do proper noticing to inform neighbors of building activity that may affect them.

9. Council Member Campbell discussed a previous issue discussed by Council Member Whitney regarding noticing procedures. The notices should go out to citizens within a certain range of the project via certified mail. There needs to be a better tracking mechanism.
10. Council Member Smith read a prepared statement regarding Hurricane Katrina. It is critical for Benicia citizens to have emergency supplies on hand. He urged citizens to be prepared. He then announced the following upcoming events:
 - o Farmers Market on Thursdays
 - o 9/10 - There will be three fundraisers:
 1. Friends of the Library book sale,
 2. Reach Out in Benicia's annual fundraiser, and
 3. Soroptomists International of Benicia's talent showcase fundraiser titled 'Viva Las Vegas.'
 - o 9/11 - Concert at the Library featuring the VOENA Choir to remember 9/11
 - o 9/15 - Blood Drive at the First Baptist Church
 - o 9/15 - Lecture at the Library on clean beaches to save seabirds
 - o 9/17 - 'Coastal Clean Up' at various locations in Benicia
 - o 9/17 - Handicraft Fair and fine art sale on First Street

Mayor Messina discussed the FEMA training that he, Vice Mayor Patterson, and Council Member Whitney attended. He encouraged Council Members Campbell and Smith to attend the FEMA training for city officials.

Mayor Messina called for a break at 9:01 p.m.

The meeting resumed at 9:06 p.m.

CONSENT CALENDAR:

Council pulled items VII-E, VII-G, VII-I, VII-J, and VII-K

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

The minutes of August 16, 2005 were approved.

Council approved the denial of claims against the City and referral to insurance carrier for the following claims:

- James Schroeder
- Jeff Anderton
- Janice Yardley

RESOLUTION 05-138 - A RESOLUTION AUTHORIZING THE DESTRUCTION OF CERTAIN CITY RECORDS

RESOLUTION 05-139 - A RESOLUTION APPROVING THE SALARY RANGE FOR THE CLASSIFICATION OF ECONOMIC DEVELOPMENT MANAGER

RESOLUTION 05-140 - A RESOLUTION APPROVING THE NEW JOB DESCRIPTION OF MANAGEMENT ANALYST I/II AND THE RE-TITLING OF THREE INCUMBENTS

APPROVAL OF AMENDMENT No. 1 TO TRANSLINK INTERAGENCY PARTICIPATION AGREEMENT

RESOLUTION 05-141 - A RESOLUTION APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA MIDDLE MANAGEMENT GROUP

RESOLUTION 05-142 - A RESOLUTION APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA SENIOR MANAGEMENT GROUP

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Acceptance and Notice of Completion for Military East Traffic Signal Upgrades Project:

Council Member Smith pulled this item because the cost increase for the change order did not go before the Council. He has been assured that future change orders of that level will go before Council in the future.

RESOLUTION 05-143- A 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

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Award of the construction contract for the Civic Center Tennis Court Lighting Project:

Public Comment:

1. Cody Margolis - Mr. Margolis stated that the current signage posted on the tennis courts state that the courts will open at dawn and close at dusk. He stated that signage at the City Park indicates the park will close at 10:00 p.m. Opening the tennis courts for night play will increase the amount of erosion on the courts and force the City to resurface the courts more frequently. The improvements to the courts are not necessary. The money could be used for less frivolous expenses, taking into consideration the recent school closure. Spending the City's money for nighttime recreation such as this does not seem necessary.

Mr. Erickson stated that there have been many citizens that have expressed support for the lighting of the tennis courts. It is a healthy recreational activity. The cost has been in the City's budget for some time now.

Council Member Smith stated that lighting of the City's athletic facilities provides for more efficient and greater use of them. This is a healthy activity. During this eight years on the Parks, Recreation and Cemetery Commission, they received repeated requests to provide lighted tennis courts in town. We are presented with an opportunity to only have to pay 50% of the price. Prop 40 will be paying for the remaining funding.

Vice Mayor Patterson stated that the budget situation that led to the Mills closure is a separate budget from the City's. This issue has been discussed in many meetings over the years. We are fortunate to have received a grant from Prop 40, which the public voted for.

RESOLUTION 05-144 - A RESOLUTION 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

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Approval of additional appraisal expenses for the Valero Refinery Assessment Appeal:
Council Member Campbell wanted to remind the public how much money (\$263,000) the City is spending on this appeal.

RESOLUTION 05-145 - A RESOLUTION APPROVING ADDITIONAL APPRAISAL EXPENSES FOR THE VALERO REFINERY ASSESSMENT APPEAL

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Professional and Confidential Group:

Vice Mayor Patterson asked Staff to explain the provision for administrative leave so that Staff could attend meetings. Mr. Erickson stated that this provision existed in previous MOU's. It is part of the base MOU. There are demands on those position classifications under the agreements that go beyond the 8:00 - 5:00 time period. It is not just for 'attending Council meetings.' The provision is to cover for that time. Vice Mayor Patterson stated that the provision should be made more clear in the future.

RESOLUTION 05-146 - A RESOLUTION APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA PROFESSIONAL AND CONFIDENTIAL GROUP

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Approve the July 1, 2005 to June 30, 2006 amendments to the Labor Agreement with the Benicia Supervisory Group:

Vice Mayor Patterson stated that she pulled this item for the same reasons as the previous Resolution. Her questions were answered adequately.

RESOLUTION 05-147 - A RESOLUTION APPROVING THE JULY 1, 2005 TO JUNE 30, 2006 AMENDMENTS TO THE LABOR AGREEMENT WITH THE BENICIA SUPERVISORY GROUP

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

PUBLIC HEARINGS:

Adopt a Master Fee Schedule:

Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Smith stated that just about every department with the exception of the Library and the Police are requesting fee adjustments. He asked if the publication would include fees for those two departments as well. Mr. Sousa confirmed that it would. The Master Fee Schedule will be published annually.

Vice Mayor Patterson stated that the fees for card rooms were significantly less than the fees for fortune telling, and asked when they would be updated. Mr. Sousa stated that they looked at the frequency of occurrence was looked at when setting the fees. One item that was looked at was the cost of fingerprinting and background screening. He stated that he would make it part of an offline study.

Vice Mayor Patterson then asked what the 'special event permit' covered. Mr. Sousa stated that he is currently meeting with the Special Event Committee. Currently, the \$50.00 fee is designed to cover mostly non-profit events, not events such as weddings. The Parks, Recreation and Cemetery Commission did not make a recommendation to increase the fees. Staff will be doing a presentation on 10/4 showing the costs of special events are much more than anticipated. They will also be bringing to light the cultural and other community benefits that result from those. The full cost for special events generally involves review by several departments. The minimum time spent on most events is 4 hours. The minimum cost recovery should be at \$200.00.

Council Member Whitney asked Staff if the City is receiving the average amount for its fee schedule. Staff stated that the City has not updated the fee schedule in 13 years. The current fees are covering only 40% of the actual costs incurred. The proposed fee schedule is average of the communities polled. We would be covering approximately 50% of the fees, which is average. The highest recovery rate is approximately 85%, which is very aggressive.

Council Member Campbell discussed the fees in the Community Development department. The City is basically subsidizing the infill development at 47%, which is not necessarily a bad thing. The larger projects (i.e.: Tourtelot, Olson project) have already paid their fees.

Public Hearing Opened

Public Comment:

None

Public Hearing Closed

RESOLUTION 05-148 - A RESOLUTION ADOPTING A MASTER FEE SCHEDULE THAT INCLUDES CHANGES IN DEPARTMENTAL FEE STRUCTURES, INCLUDING DEVELOPMENT RELATED FEES AND CHARGES

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

UNFINISHED BUSINESS:

Review of Traffic Analysis for Columbus/Rose Intersection:

Dan Schiada, Director of Public Works, reviewed the Staff report.

Council Member Campbell asked about the Level of Service (LOS) numbers. Mr. Schiada reviewed how the numbers are computed. Council Member Campbell discussed the 'D' rating and asked how many cars it would take to push it to an 'F' rating. Mr. Schiada explained how the rating system works. Council Member Campbell asked about convenience vs. safety. Are these convenience or safety numbers? Why should Benicia sacrifice convenience to the point when it hits the safety issue for a project that won't supply us with income, etc? Mr. Schiada stated that the LOS numbers are 'capacity' numbers. There

isn't an immediate concern right now for the right turn pocket and left turn green arrows. However, he (Mr. Schiada) constantly monitors the traffic situation at this location. This intersection is not an immediate safety problem.

Council Member Whitney wanted to discuss dollars. He is concerned whether or not the developer is covering their fair share of the inconvenience to Benicia. He is pretty sure they are not. Mr. Schiada discussed the EIR for the Bordoni Ranch Project and certain items that they are responsible for per that EIR. Mr. Schiada stated that if we (Benicia) need to provide an additional approach lane by the Shell Station, it would be the City's responsibility, which would cost approximately \$100,000 to \$150,000. Funding for that would come from the Traffic Mitigation Fund. However, there is room in there for other modifications that would work that are in the \$50,000 - \$75,000 range. The fund balance is currently over \$1 million. Council Member Whitney wanted to make sure that Council's concerns are made clear to the City of Vallejo.

Vice Mayor Patterson discussed LAFCO and the role they have with the EIR. She wants to make sure Staff puts Council's concerns in writing to LAFCO for their consideration of the annexation. She would like to restate to LAFCO Council's comments to the draft EIR. There are the MTC principles that the STA has adopted dealing with smart growth. She suggested asking the question about the study that has not been done on the traffic from Vallejo to the Benicia State Park. We are walking a fine line between wanting and having cooperative communications with Vallejo, however we need to take care of our citizens. Vallejo has a responsibility to work with the developer on contributing to the expansion of the State Park Road bridge. She wants to have meetings with our (Staff/Council) counterparts in Vallejo every six weeks or so.

Council Member Campbell and Staff discussed the issue of the rating that the intersection was given.

Council Member Smith agrees with several points that the other Council Members made. Regarding the 175th home, it may be too long to wait to widen Columbus Parkway. He agreed that Council should continue to write to LAFCO. He agrees with the regional nature of the State Park Road bridge.

Mayor Messina stated that he is not as concerned about widening the section of the road between Rose Drive and Benicia Road to four lanes. That is more a benefit for Bordoni Ranch and the City of Vallejo. However, regarding safety, the right hand turn pocket when you are coming off of the freeway to Rose Drive is important. Also, coming down Rose Drive, increasing it to three lanes and having a permanent right hand turn lane, straight through and left turn lane is important. He puts a high priority on the arrows. He does not see why we need two lanes by the Shell station. We should approach Cal-Trans to provide some auxiliary lanes on the approach to the exit off of I-780 to Rose Drive. It might need to go from the Military West exit through the Columbus Parkway exit. Regarding the pedestrian/bike bridge, he thinks that is one of the most important issues. We need to increase the priority on that. Having Vallejo on board will help us at STA. Staff needs to work with Vallejo Staff to try and give it a higher priority. He stated that it would be nice if we could find another city that has designed one and maybe use that design. Council Member Smith clarified that we are not talking about adding a pedestrian bridge, but expanding the current bridge. Staff confirmed that the project has morphed into widening the current bridge. Also, by widening the existing bridge, the maintenance of the bridge would be the

responsibility of Cal Trans.

Council Member Campbell had more questions on why we don't ask Vallejo upfront to pay for half of the bridge. Mr. Schiada stated that the bridge is the legal responsibility of Cal Trans. They own the top of the road, the bridge, and the road underneath. Staff is doing the best they can to garner the joint support needed for a grant application. Adding the 400+ homes will create additional impacts on the bridge. Council Member Campbell stated that we need to start looking at the #50 home mark and ask the Bordoni developer to contribute approximately \$500,000 to \$750,000 for the bridge.

Mr. Erickson stated that regarding the bridge, Staff will reinforce the issue of the need for more of a contribution from Vallejo.

Second reading and adoption of an ordinance amending the Benicia Municipal Code provisions regarding appointment of Planning Commissioners and adoption of a resolution amending the rules of procedure:

Heather McLaughlin, City Attorney, reviewed the Staff report.

Council Member Whitney asked for clarification on what was voted on at the last meeting. Ms. McLaughlin clarified what was voted on.

Vice Mayor Patterson reviewed what she understood and stated that what was in the minutes reflects what took place. The procedure as provided supports that the Council should appoint, but we have a process by which the nomination comes to Council. That is the part Council got twisted up on. The intent of the ordinance was that the Council appoint. What was not clear was how the names would be put forth to Council. The ordinance, as written provides clarity on how the names get brought forward to Council.

Council Member Whitney wants to defer this item. The Mayor has a letter (along with the other mayors) to Assemblywoman Wolk requesting an opinion. We should wait to hear the Attorney General's opinion. He asked the Council to be patient.

Council Member Whitney made a motion to table this item until Council hears back from the Attorney General's office.

On motion of Council Member Whitney, seconded by Council Member Campbell, Council voted against tabling this item, on roll call by the following vote:

Ayes: Council Member Whitney and Mayor Messina

Noes: Council Members Campbell, Patterson, and Smith

Public Comment:

1. Marilyn Bardet - Ms. Bardet stated that she is concerned about the current appointment process for the Planning Commission. Since 1995, she has had to challenge almost every negative declaration that has come up at considerable personal expense. It has got to stop. She should not have to be on the Planning Commission to expect that those that would provide that

service would have the qualifications at least as good as hers to review an EIR with a great sense of purpose. She was appalled at how we reviewed the Jefferson Street project. The issue is not about the commissioners as people, it is an issue of the long-term negative consequences that occur because of the decisions of the commissioners.

2. Kitty Griffin - Ms. Griffin stated that the issue is whether or not we are going to drop the idea of the importance of appointing planning commissioners that are going to take the approach that Ms. Bardet pointed out. It does not make sense to be in a panic if no appointments are coming up. Council seems to have the votes to postpone this item. She would like to see this item kept in the forefront.
3. Bob Craft - Mr. Craft stated that he sees a 'smoke and mirrors' exercise being done. There are many communities in California already using the procedure. The notion that it needs the approval from the Attorney General is not correct. The Council members should be honest about what they want and vote that way.

Council Member Smith stated that the City Attorney has already stated the proposed ordinance is legal. He does not foresee the Attorney General having a different opinion.

Council Member Smith asked Vice Mayor Patterson to clarify the word 'environment' on page IX-B-4, section 2, should be 'environmental.'

ORDINANCE 05-8 - AN 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

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

Ayes: Council Members Campbell, Patterson, and Smith

Noes: Council Member Whitney and Mayor Messina

RESOLUTION 05-149 - A RESOLUTION ADOPTING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS

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

Ayes: Council Members Campbell, Patterson, and Smith

Noes: Council Member Whitney and Mayor Messina

NEW BUSINESS:

Approval to amend the name of the Sky Valley Open Space Committee:

David Golick, Interim Community Development Director, and Vice Mayor Patterson reviewed the Staff report.

Public Comment:

1. Kitty Griffin - Ms. Griffin stated that she is concerned that the committee not lose sight that the citizens' poured their responsibility and trust in the Committee. She listed the expectations she and the public had of the committee when it was voted on. She has no objection to changing the name, but she wants Council to say formally that they accept the responsibility of the role of being the receptacle of the trust from the community and developing in their behalf a serious plan for long-term preservation.

Vice Mayor Patterson reviewed the objectives of the committee. They have kept the original objectives, and added two additional objectives. The objectives of the committee are being addressed and fulfilled. The name change would not change the objectives and tasks of the committee. The name change would make it easier to communicate its objectives with others, and qualify for watershed grants.

RESOLUTION 05-- A RESOLUTION AMENDING THE NAME OF THE SKY VALLEY OPEN SPACE COMMITTEE TO SKY VALLEY WATERSHED PRESERVATION COMMITTEE

On motion of Vice Mayor Patterson, seconded by Council Member Smith, the above Resolution was not adopted, on roll call by the following vote:

Ayes: Council Members Patterson and Smith

Noes: Council Members Campbell, Whitney, and Mayor Messina

Mr. Erickson stated that due to the late hour, Council should consider moving items X-B and X-D up on the agenda.

Council Member Smith stated that he does not want Council to take action on the Comcast item (X-B). There are some technical issues that Council could benefit from outreaching to the community on. He would like to see a timetable for rollout on fiber optics.

Ms. McLaughlin stated that the City's outside counsel and Comcast's counsel are both present at the meeting, and are being paid for their time.

On motion of Council Member Whitney, seconded by Council Member Smith, Council agreed at 11:10 p.m. to proceed with item X-D, on roll call by the following vote:

Ayes: Council Members Campbell, Smith, Whitney, and Mayor Messina

Noes: Vice Mayor Patterson

Mayor Messina asked Ms. McLaughlin to verify if agenda items could be moved per the recently adopted Sunshine Ordinance. Ms. McLaughlin stated that 'following the adoption of the agenda, items can't be moved, removed, or the order changed without the unanimous consent of the Council.' Upon receiving that information, Council proceeded with the next agenda item (X-B).

Approval of an agreement with Comcast to extend the cable franchise to 2010:
Heather McLaughlin, City Attorney, reviewed the Staff report.

Mayor Messina asked what would happen if the City did not extend the contract and let it expire.

Ms. Harriet Steiner, Counsel for the City, explained that the City has an obligation under the Federal Law, to enter into negotiations and attempt to renew the franchise so long as it meets the community needs that the City determines. The City does not have authority over price and rate regulation.

Council Member Smith asked Ms. McLaughlin about the reference made to the number of subscribers needed to qualify for other upgrades. Ms. McLaughlin clarified that was a reference to the existing cable franchise. We do not have enough hours to get the extra channel. Ms. Steiner stated that what this agreement does is provide one additional channel that we would otherwise qualify under the existing franchise. Council Member Smith stated that it also puts the responsibility on the school district to buy the equipment to be able to use the channel. Council Member Smith asked if Ms. Steiner if she was aware of other communities are negotiating to get fiber optic roll out in their franchise agreements. Ms. Steiner stated that the communities she is aware of are looking more at what the capacity of the system is rather than fiber optics.

Mayor Messina asked what services Benicia does not have that other communities have negotiated and asked for. Ms. Steiner stated that some communities have negotiated for larger pass through's and more money for equipment for the public education channel. She explained how pass through's are negotiated.

Council Member Smith asked if the cost of the equipment could be negotiated. Ms. Steiner stated that it could, but the subscribers would pay the cost. Council Member Smith stated that the extra channel and equipment is not viable, as the district can't afford the cost. Council Member Smith stated that there is another company that Comcast is competing with in Concord and Walnut Creek. He reiterated his concern with regards to the roll out of fiber optics. He stated that service has improved in some respects, but he wants some assurances that Benicia is getting the best deal it can. At this point, he is not sure if that is the case.

Vice Mayor Patterson asked if it was possible to vote on the resolution with the exception that it would include the equipment and the pass through rates for the schools. The way she understands it is that the pass through cannot be negotiated, but the amount that is passed through is.

Ms. McLaughlin stated that we are assuming that the school district is interested in the equipment, but do not have direct confirmation as of yet.

Ms. Lee Ann Pelig, Government Affairs Director, Comcast, stated that there are a lot of varying levels of service that the school district may want.

Mayor Messina asked if there was a way to reduce the cost to the users, increase programming, or a way to protect our seniors in terms of rate discounts. Ms. Pelig stated that the FCC regulates the rates. The current basic rate in Benicia is \$14.50. There may be one or two other cities in California that are approximately \$11.70. In terms of all channels, with the exception of the basic tier, Comcast can set the rates. Comcast currently pays Benicia a 5% franchise fee for the use of the rights-of-way, which is the

ceiling. The franchise fee could be negotiated lower if the City wanted to do so. Regarding the senior discounts, the current discounts will be honored for two years. After two years, the discounts would not be available. Currently, Comcast absorbs the cost of the senior discounts. The reason for discontinuing the senior discounts is due to the very low basic tier. Also, Comcast had concerns with offering discounts to a particular portion of the subscriber base and not to others.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, Council directed Staff to investigate the public, educational and government (PEG) equipment issue with BUSD and find out what type of programming they would like to offer on that PEG Channel and bring the agreement back with the extra equipment cost either as part of what we are getting from Comcast or as a pass through, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

On motion of Council Member Whitney, seconded by Vice Mayor Patterson, Council agreed at 11:52 p.m. to hear item X-D, and continue all other agenda items to the next Council meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

Contribution to Bay Area Water Forum:

Continued to the next Council meeting.

Authorize the refinancing of the 1993 wastewater revenue bonds through the issuance and sale of the 2005 wastewater refunding revenue bonds:

Rob Sousa, Finance Director, reviewed the Staff report.

Vice Mayor Patterson asked why the City pays bond counsel \$30,000 and disclosure counsel \$20,000 to do this. Ms. McLaughlin stated that it is excruciatingly hard to read and you have to pay someone a lot of money to do it. It is a very specialized area. Vice Mayor Patterson stated that it is a lot of money to do something that is basically refinancing. She was expressing her frustration toward the industry. It is unfortunate that public money has to be spent on financing these professional services.

RESOLUTION 05-150 - A RESOLUTION 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 TO

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

Ayes: Council Members Campbell, Patterson, Smith, Whitney, and Mayor Messina

Noes: None

REPORTS FROM CITY MANAGER:

Status report on the repaving for the 100 block of West K Street:
Continued to the next Council meeting.

Review of progress toward resolving differences with Benicia Unified School District (BUSD) regarding the proposed Joint Use Agreement (JUA):
Continued to the next Council meeting/

REPORTS FROM CITY COUNCIL COMMITTEES:

N/A

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:59 p.m.

Lisa Wolfe, City Clerk