



**BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
September 07, 2010  
7:00 PM**

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

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

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL.**

**B. PLEDGE OF ALLEGIANCE.**

1. The Hi-Point Quartet will perform the Star Spangled Banner.  
(David Knight, Ollie Brilhante, Wayne Knight, & Mark Shreve)

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:**

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

**IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**A. ANNOUNCEMENTS.**

1. Announcement of action taken at Closed Session, if any.
2. Openings on Boards and Commissions:

Finance, Audit and Budget Committee:  
One unexpired term to January 31, 2013

CAP (Community Advisory Panel to Valero):  
One unexpired term to April 30, 2011

Open Government Commission:  
One unexpired term to January 31, 2013

**3. Mayor's Office Hours:**

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

**B. APPOINTMENTS.**

**C. PRESENTATIONS.**

- 1. Amy Jenkins, Legislative Intergovernmental and Public Affairs Officer - Delta National Heritage Area**

**D. PROCLAMATIONS.**

- 1. In Recognition of Literacy Day, September 8, 2010**

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda. Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

**A. WRITTEN COMMENT.**

**B. PUBLIC COMMENT.**

**VII. CONSENT CALENDAR (7:15 PM):**

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

**A. Approval of Minutes of Special and Regular Meeting, August 17, 2010 and Special Meeting, August 24, 2010. (City Clerk).**

**B. BUDGET MODIFICATIONS FOR FY 2009-11 PRIORITY STREET RESURFACING PROJECTS. (Public Works and Community Development Director)**

Multiple resurfacing projects are scheduled for construction during the FY 2009-11 budget cycle, in order to take advantage of the favorable bidding climate. Non-General Fund budget modifications are needed at this time to coordinate funding and to reprogram cost savings so that current and future street projects are fully funded.

**Recommendation: Adopt a resolution modifying the budget for Fiscal Years 2009-11 Priority Street Resurfacing Projects.**

**C. ACCEPTANCE AND NOTICE OF COMPLETION FOR THE 2009-10 STREET RESURFACING PROJECT. (Public Works and Community Development Director)**

The 2009-10 Street Resurfacing Project resurfaced 3½ miles of residential streets and patched streets at approximately 75 locations, primarily in the Industrial Park. The final construction cost of \$635,139 is funded with a combination of Gas Tax and Proposition 1B monies. Formal acceptance of the work by the City Council is now required to allow final payment to the contractor.

**Recommendation: Adopt a resolution accepting the 2009-10 Street Resurfacing Project as complete, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.**

**D. AWARD OF CONSTRUCTION CONTRACT FOR THE 2010 STREET RESURFACING PROJECT. (Public Works and Community Development Director)**

This project will resurface Rose Drive between East Second Street and McAllister Drive and patch the northbound lane of East Second Street between Industrial Way and Wanger Street. The project is funded with Proposition 1B monies. Bids were received from eight (8) paving contractors and staff is

recommending award of the construction contract to the low bidder, Team Ghilotti, Inc. of Petaluma, California.

**Recommendation: Adopt a resolution accepting the bids for the 2010 Street Resurfacing Project, awarding the construction contract to Team Ghilotti, Inc. in the amount of \$194,929, and authorizing the City Manager to sign the contract on behalf of the City.**

**E. QUARTERLY REPORT ON TOURISM MARKETING AND AMENDMENT TO CONTRACT WITH WOLF COMMUNICATIONS. (Economic Development Manager)**

In order to fund administration of the tourism advertising campaign and a supplemental ad during the holidays, without an increase in overall expenditures for tourism marketing, \$8805 is recommended to shift from the Marketing category of the contract to the Media Buy category. It is also recommended that the quarterly reports' due dates be pushed back by one week.

**Recommendation: Receive regular quarterly update on progress of tourism marketing program and, by motion, approve amendments to the contract's work plan to do more advertising campaign administration and related work.**

**F. AMENDMENT TO THE CALRECYCLE USED OIL PAYMENT PROGRAM RESOLUTION. (Administrative Services Director)**

On July 6, 2010, Council approved Resolution No. 10-81, which referenced language that is no longer used by CalRecycle to refer to the Used Oil Payment Program (OPP). Under the California Oil Recycling Enhancement Act and CalRecycle, the City is authorized to apply for grant funds made available by CalRecycle. The previously approved resolution which allowed the City Manager to execute a grant application through CalRecycle on behalf of the City for Fiscal Year 2010– 2011 for the Used Oil Payment Program cannot be used by Calrecycle. The Resolution referred to the Oil Payment Program for FY 2010-2011, as Cycle 16 and that language must be amended to remove the Cycle 16 reference so that the application can continue to be processed by CalRecycle. This year's application to the CalRecycle Oil Payment Program (OPP) for FY 2010/11 will provide funding for activities that reduce the amount of illegally disposed used oil, recycle used oil/used oil filters, reclaim used oil and to educate citizens and increase awareness of the program. The resolution amendment approved on this date will supersede Resolution 10-81.

**Recommendation: Adopt an amendment to the resolution that authorized the submittal of a grant application made available through CalRecycle for FY 2010/2011 for the Used Oil Payment Program.**

**G. SECOND READING OF AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEAL CASE. (City Attorney)**

On August 17, 2010 City Council introduced an ordinance to amend the city's inclusionary housing ordinance in regard to its application to rental developments.

**Recommendation: Adopt the ordinance to modify and update the existing city inclusionary housing ordinance.**

**H. APPOINTMENT OF THE INTERIM CITY MANAGER. (City Attorney)**

At the previous city council meeting the City Council appointed Jim Erickson as interim city manager. The term of the agreement is until September 15, 2010 unless mutually extended by the parties. The parties desire to extend the agreement until October 15, 2010 or until a new city manager can be hired, if earlier. This action amends the agreement to extend the term.

**Recommendation: Adopt the resolution approving an extension to the agreement with Jim Erickson for interim city manager services.**

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

**VIII. PUBLIC HEARINGS:**

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

**IX. ACTION ITEMS:**

**X. INFORMATIONAL ITEMS (7:30 PM):**

**A. City Manager Reports.**

**1. UPDATE ON 2010-11 BUDGET BALANCING MEASURES. (City Manager)**

At August 24th study session, the Council considered recommendations for balancing the 2010-11 budget, which currently has a projected

shortfall approaching \$1.2 million. An overview of the process for gathering input from the community regarding balancing the City's budget was reviewed, including the results of an online survey and two community workshops. The process resulted in a list of 26 cost saving measures and 3 revenue measures that will offset the budget deficit by \$1,200,000 annually. The Council provided direction to staff regarding working with the various stakeholders and gathering additional suggestions for budget balancing measures. At the September 7th Council meeting, staff will provide Council with a brief update on progress made to this end and next steps.

**RECOMMENDATION: This is an informational report. There is no action necessary at this time.**

**2. PROPOSITION 19 THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010. (City Manager)**

Proposition 19, also known as the Regulate, Control and Tax Cannabis Act of 2010, is a California ballot proposition which is on the November 2, 2010 California statewide ballot as an initiated state statute. Proposition 19, if approved by voters, will permit the possession and cultivation of marijuana throughout the state. It authorizes local governments, should they choose to do so, to enact their own regulatory and taxing laws with respect to marijuana. It does not authorize the state of California to impose any marijuana-specific taxes. It restricts the ability of employers to discipline employees for marijuana possession or use. Medical marijuana is permissible in California, due to the enactment of Proposition 215 in 1996.

**RECOMMENDATION: Informational report; no action requested. Staff recommends agendaing at a future meeting the adoption of a resolution opposing the proposition based on the information available at this time.**

**3. CONSIDERATION OF FINANCE AUDIT AND BUDGET COMMITTEE MISSION, DUTIES AND STRUCTURE. (Finance Director)**

The Benicia Finance Audit and Budget (FAB) Committee met on July 23, 2010 and authorized the Chairperson to draft a letter to the City Council requesting changes to their mission, duties and structure. Over the course of time, the Mayor and Council have appointed a very experienced committee membership with significant knowledge in the areas of Financial and Investment Planning, Banking and Investment Strategies, Budget Management, and Operations. The committee members feel their talents could be better utilized by modifying the current structure from committee to commission, adding one additional

citizen member and moving two Council members to ex-officio status, and expanding the duties of the new commission to include an annual work program approved in advance by the Council. Staff will allocate available time to the annual work program, the balance of which will be conducted by ad hoc committees assigned by the FAB. If approved for implementation, staff will introduce an ordinance at a future Council meeting establishing the new commission.

**RECOMMENDATION: Consider recommendations from the Finance Audit and Budget Committee regarding their mission, duties and structure and provide comments.**

**4. PROPOSED ACTION BY THE STATE DEPARTMENT OF TOXIC SUBSTANCES CONTROL REGARDING INVESTIGATION AND POTENTIAL CLEAN UP IN THE BENICIA ARSENAL. (City Attorney)**

A verbal report will be presented.

**RECOMMENDATION: Consider the report and provide comments.**

**XI. COUNCIL MEMBERS REPORTS:**

- A. Request to agendize Proposition 23 (the AB 32 Suspension measure). Council Member Campbell.**

**XII. ADJOURNMENT (9:15 PM):**

**Public Participation**

The Benicia City Council welcomes public participation.

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

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

**Disabled Access**

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

### **Meeting Procedures**

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

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

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

### **Public Records**

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



# PROCLAMATION

IN RECOGNITION OF

## Literacy Awareness Day September 8, 2010

**WHEREAS**, our community's greatest resource is its people; and

**WHEREAS**, the growth and stability of our community is significantly affected by the ability of its citizens to read and write; and

**WHEREAS**, literacy is a right and the foundation of learning for everyone, empowering individuals to recognize the importance of participation, citizenship and social development; and

**WHEREAS**, literacy skills are essential in today's societies, strengthening the capabilities of individuals, families and communities; and

**WHEREAS**, the 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, ESL group classes for adults and family literacy services, thus helping to build "a community of readers"; and

**WHEREAS**, International Literacy Day is observed worldwide on September 8 and in Benicia will be celebrated with special literacy programming and information throughout the month at the Benicia Public Library.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby proclaim September 8, 2010 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 23 years. I urge all citizens to support the goals of the Library's literacy program to make Benicia a more literate community.



Elizabeth Patterson, Mayor  
September 7, 2010



MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
August 17, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 6:00 p.m.

**II. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

**B. PLEDGE OF ALLEGIANCE**

Mayor Patterson led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:**

**III. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

**B. PUBLIC COMMENT**

None

**IV. ADOPTION OF AGENDA:**

On motion of Council Member Ioakimedes Council adopted the agenda as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes

Noes: (None)

**V. CLOSED SESSION:**

Heather McLaughlin, City Attorney, read the announcement of Closed Session.

Mayor Patterson adjourned the meeting to Closed Session at 6:02 p.m.

**A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR (Government Code Section §54956.8)**

City owned property (City of Benicia Park Road Right of Way between Stone Road and East Second Street, i.e., the location of the "Nationwide" sign)

Negotiating parties: City Manager and Economic Development Manager - Instruction to negotiator on price and terms of payment.

**B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Subdivision (b) of Government Code Section 54957)  
Title: City Manager**

**C. APPOINTMENT OF INTERIM CITY MANAGER  
(Subdivision (b) of Government Code Section 54957)**

**VI. PRESENTATION:**

**A. CALTRANS BENICIA-MARTINEZ BRIDGE PROJECT LANDSCAPING PRESENTATION**

Mayor Patterson called the Open Session to order at 6:38 p.m.

Jim Erickson, City Manager, introduced the item.

Charlie Knox, Public Works & Community Development Director, reviewed the staff report. He reviewed a map provided by Caltrans.

Ms. Jean Gorum, Caltrans, reviewed an update on the project. The irrigation system has been installed, with the exception of two booster pumps, which are on order from the manufacturer. There will be a three-year plan establishment period from the contractor. After the three years, it will turn over to the Caltrans maintenance department.

Mayor Patterson discussed how pleased she was that the landscaping was going forward. She has heard some concern regarding the landscaping of the corridor into Benicia.

Ms. Gorum discussed how Caltrans had worked with the Parks, Recreation and Cemetery Commission regarding the landscaping. They made some plant changes and came up with a design for the project. They received a letter from Mr. Goetz regarding his desire for them to expand the limits of the start/stop sections of planting. She discussed the issue of rehabilitation projects, which are currently not being funded.

Mayor Patterson discussed the area off of I-780 where the water tower was located. She wondered if that area would be landscaped. Caltrans confirmed it would be landscaped. The area by Hospital Road would not be landscaped. They did not think it had ever been approved.

Council Member loakimedes asked Caltrans what Benicia could do improve the other areas that needed to be landscaped. Ms. Gorum discussed the Adopt-a-Highway tree and planting program. The City could do enhanced landscaping at its own cost. There would need to be an agreement in place.

Mayor Patterson discussed the possibility of starting an Adopt-a-Highway planting program this year. If the City was willing to contribute, Caltrans could work with staff to come up with a plan to landscape the areas.

Vice Mayor Schwartzman asked if there was a provision where a local service club could take over a designated area and landscape it. If someone wanted to move forward with that, they would have to work with the City, who would in turn work with Caltrans.

Mayor Patterson and Ms. Gorum discussed the possibility of the Arts and Culture Commission having artists paint the underside of the overpass on East Second Street. There are safety provisions that would need to be met. Caltrans would assist the City with processing the paperwork necessary to do such a project.

Council Member loakimedes and Staff discussed tree planting in the area of Hospital Road. It is currently not being considered. They could talk to the Tree Committee about the issue.

#### Public Comment:

Steve Goetz - Mr. Goetz discussed the letter he wrote to Staff (copy in file) that was included in the staff report.

Marilyn Bardet - Ms. Bardet urged Council to press Caltrans to include the area by East Fifth Street in the landscaping project.

Council Member Hughes thought Mr. Goetz's ideas were good. It would not hurt to ask Caltrans to do the work. If the new proposal is missing some of the previous commitments, the City would need to address that with Caltrans.

Mayor Patterson stated the direction was to provide information and seek cooperation for the Adopt-a-Highway program, submit all information to Caltrans for that project - specifically for planting on East Fifth to the halfway point on the original plan, and then Caltrans would plant on to Hospital Road. That would be the ideal, but short of the ideal, nonetheless, all of the work would be done. The

second stage would be looking at potential reimbursement so the work could be done with the current contractor. Mayor Patterson directed Staff to work with Arts and Culture Commission on looking into the mural painting on the East Second Street overpass under area. She directed Staff to work with the Tree Commission to consider tree planting on East Fifth Street to Hospital Road, and for Staff to formally ask the Caltrans director (in a letter) to landscape the median. She asked Staff to get more information (in writing) from Caltrans on the split program for I-780 for the replanting of the trees.

**VII. ADJOURNMENT:**

Mayor Patterson adjourned the meeting at 7:10 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
August 17, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 7:20 p.m.

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

**B. PLEDGE OF ALLEGIANCE**

Jim Erickson led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**

**IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**A. ANNOUNCEMENTS**

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

Ms. McLaughlin stated Council gave direction to Staff on the public employee performance evaluation and the appointment of interim city manager. Due to time constraints, Council was not able to get to the conference with real property negotiator item.

**2. Openings on Boards and Commissions:**

Finance, Audit and Budget Committee: One unexpired term to January 31, 2013

CAP (Community Advisory Panel to Valero) One unexpired term to April 30, 2011

**3. Mayor's Office Hours:**

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

**B. APPOINTMENTS**

**1. Reappointment of Sharon Petrellese to the Human Services Board for a full term to July 31, 2014.**

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-103 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF SHARON PETRELLESE TO THE HUMAN SERVICES BOARD FOR A FULL TERM ENDING JULY 31, 2014

**2. Reappointment of Michael Caplin to the Human Services Board for a full term to July 31, 2014.**

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-104 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF MICHAEL CAPLIN TO THE HUMAN SERVICES BOARD FOR A FULL TERM ENDING JULY 31, 2014

**3. Reappointment of Charles Edward Hendricks to the Human Services Board for a full term to July 31, 2014.**

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

RESOLUTION 10-105 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF CHARLES EDWARD HENDRICKS TO THE HUMAN SERVICES BOARD FOR A FULL TERM ENDING JULY 31, 2014

**4. Appointment of Claire M. McFadden to the Economic Development Board for a full term to July 31, 2014.**

On motion of Mayor Patterson Council adopted the Resolution, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes  
Noes: (None)

**RESOLUTION 10-106 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF CLARIE M. MCFADDEN TO THE ECONOMIC DEVELOPMENT BOARD FOR A FULL TERM ENDING JULY 31, 2014**

**C. PRESENTATIONS**

**D. PROCLAMATIONS**

**V. ADOPTION OF AGENDA:**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the agenda as presented, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Mr. Erickson discussed a slight change in the Americorp resolution, a revision to an ordinance on the pretreatment of waste, and the public hearing item; Staff recommended the item be pulled and discussed at a future meeting. Staff received information from a source questioning the legality of the ordinance. Staff did not have time to look into the concerns before tonight's meeting. Staff had concerns regarding the consistency of the ordinance with state law.

Mayor Patterson requested Council add an item to the agenda. The item related to the Carquinez Strait and its designation as part of the Delta National Historic Area. She would like the item to follow the consent calendar items.

Council Member Hughes said he had never seen an item added to an agenda, however, he understood the urgency. He would like to see the item right after the consent calendar.

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

Mayor Patterson discussed the ten additional pieces of correspondence that were submitted (copies on file).

**B. PUBLIC COMMENT**

Marilyn Bardet - Ms. Bardet spoke on behalf of Benicia Community Gardens, Inc. She discussed the property on East D Street. They need help with additional gardeners. She discussed their plan for a garden on the property.

Mary Wika - Ms. Wika discussed the Rose Center project. She disagreed with the outcome of her appeal (denial). She discussed concerns regarding the

parking at the Rose Center project.

Mayor Patterson asked Ms. McLaughlin to provide direction to Council on what they could discuss. McLaughlin suggested Council have Staff look into the issue and report back to Council.

Gretchen Burgess - Ms. Burgess discussed Benicia being named the fourth largest dog friendly town in the country.

Dana Dean - Ms. Dean congratulated Council for placing Ms. McFadden on the EDB.

Council Member Campbell discussed the hanging plants on First Street and the handicapped ramp at the Depot building. Staff had some information on the ramp. Staff could get back to him in a week with information on the hanging plants.

Council Member loakimedes discussed an article he read on the issue of people being cut off during public comment, and asked Staff to look into and it and follow the issue. Mayor Patterson discussed steps Council has taken in the past and possible steps it could take if someone was out of line. Council Member Campbell discussed an event that took place seven years ago when an attorney's comments were cut off.

## **VII. CONSENT CALENDAR:**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council approved the Consent Calendar, as amended, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Council pulled items VII-B, VII-F, and VII-K.

Ms. McLaughlin confirmed Council Members Campbell and loakimedes could stay at dais and did not need to recuse themselves for item VII-B, as the questions were simple clarifications.

- A. Approval of Minutes of July 20, 2010 Special Meeting, July 20, 2010 Regular Meeting and August 3, 2010 Special Meeting**
- B. SECOND READING AND ADOPTION OF ORDINANCE AMENDING CHAPTER 13.50 PRETREATMENT AND SOURCE CONTROL OF WASTE DISPOSAL OR DISCHARGE**

ORDINANCE 10-2- AN ORDINANCE AMENDING CHAPTER 13.50  
(PRETREATMENT AND SOURCE CONTROL OF WASTE DISPOSAL OR

DISCHARGE) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE

Council and Staff discussed the technical changes that were requested when the item was introduced.

Public Comment:

Dana Dean - Ms. Dean spoke on behalf of Amports. She discussed concerns regarding the use of the term 'users' and the language regarding being notified of violation or fine within ten days.

Staff confirmed they could delete 'industrial' from 'users' and change language regarding superintendent to read 'a request for the superintendent to reconsider the fine or applicable enforcement action within ten days of being notified of the fine or enforcement action.'

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

Ayes: Patterson, Schwartzman, Hughes

Noes: (None)

**C. APPROVE THE PURCHASE OF A COMMAND VEHICLE FOR THE POLICE DEPARTMENT WITH SLESF FUNDS**

RESOLUTION 10-107 - A RESOLUTION AUTHORIZING THE PURCHASE OF A WATCH COMMANDER VEHICLE FOR THE POLICE DEPARTMENT FROM MAITA CHEVROLET OF ELK GROVE IN THE AMOUNT OF \$30,098.87, AND AUTHORIZING THE ICTY MANAGER TO SIGN THE PURCHASE ORDER ON BEHALF OF THE CITY

**D. INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEALS CASE**

ORDINANCE 10- - AN ORDINANCE AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS), AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS

**E. AWARD OF CONTRACTS FOR THE WASTEWATER TREATMENT PLANT EFFLUENT PIPELINE IMPROVEMENT PROJECT**

RESOLUTION 10-108 - A RESOLUTION ACCEPTING THE BIDS FOR THE

EFFLUENT PIPELINE IMPROVEMENT PROJECT; AWARDING THE CONSTRUCTION CONTRACT FOR THE EFFLUENT PIPELINE IMPROVEMENT PROJECT TO TIDELANDS CONSTRUCTION COMPANY OF BRENTWOOD IN THE AMOUNT OF %545,000; APPROVING A CONTRACT FOR CONSTRUCTION MANAGEMENT/ENGINEERING SUPPORT SERVICES FOR THE EFFLUENT PIPELINE IMPROVEMENT PROJECT WITH CAMP DRESSER & MCKEE, INC. FOR A NOT -TO-EXCEED COST OF \$99,848; AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACTS ON BEHALF OF THE CITY

**F. REDUCTION IN CITY COUNCIL COMPENSATION**

RESOLUTION 10-114 - A RESOLUTION APPROVING A REDUCTION IN THE COMPENSATION PACKAGE FOR THE CITY COUNCIL

Heather McLaughlin, City Attorney, reviewed the staff report.

Council and Staff discussed how this would affect future Council Members.

Public Comment:

None

Council Member loakimedes clarified that this was not a leadership move. This was a respectful gesture of solidarity. Their leadership would come in future actions.

On motion of Council Member Hughes, seconded by Council Member loakimedes, Council adopted the Resolution, on roll call by the following vote:  
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes  
Noes: (None)

**G. PURCHASE OF CRUSHED AGGREGATE ROCK FOR FISCAL YEAR 2010-2011**

RESOLUTION 10-109- A RESOLUTION AUTHORIZING THE PURCHASE OF CRUSHED AGGREGATE ROCK FOR FISCAL YEAR 2010-2011 FROM SYAR INDUSTRIES INC. OF VALLEJO, CALIFORNIA, FOR A NOT T-TO-EXCEED COST OF \$25,000

**H. PURCHASE OF FITTINGS AND HARDWARE FOR FISCAL YEAR 2010-2011**

RESOLUTION 10-110 - A RESOLUTION AUTHORIZING THE PURCHASE OF WATER DISTRIBUTION PIPELINE FITTINGS AND HARDWARE FOR FISCAL YEAR 2010-2011 FROM ROBERTS & BRUNE CO. OF OAKLEY, CALIFORNIA, FOR A NOT-TO-EXCEED COST OF \$75,000

**I. RECOMMENDATION FOR CITY COUNCIL TO AUTHORIZE \$16,000 FOR AMERICORPS VOLUNTEER PROGRAM AND AUTHORIZE THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING**

RESOLUTION 10-111 - A RESOLUTION AUTHORIZING \$16,000 IN MATCHING FUNDS FROM THE VALERO IMPROVEMENT PROJECT (VIP) SETTLEMENT AGREEMENT FUND FOR AN AMERICORPS VOLUNTEER TO SUPPORT CITYWIDE GREENHOUSE GAS (GHG) REDUCTION AND CLIMATE ACTION EFFORTS AND AUTHORIZING THE PUBLIC WORKS & COMMUNITY DEVELOPMENT DIRECTOR TO EXECUTE THE MEMORANDUM OF UNDERSTANDING ON BEHALF OF THE CITY

**J. APPOINTMENT OF THE INTERIM CITY MANAGER**

RESOLUTION 10-112 - A RESOLUTION HIRING JIM ERICKSON AS THE INTERIM CITY MANAGER

**K. RECOMMENDATION TO APPROVE A CONTRACT AMENDMENT WITH CATERPILLAR PUPPETS FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM**

RESOLUTION 10-115 - A RESOLUTION TO APPROVE A CONTRACT AMENDMENT WITH JOE & RONNA LEON OF CATERPILLAR PUPPETS FOR ADDITIONAL PROFESSIONAL SERVICES FOR THE EARLY WATER CONSERVATION EDUCATION PROGRAM AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT AMENDMENT ON BEHALF OF THE CITY

Council Member Campbell discussed concerns regarding the cost of the program.

Council Member Hughes discussed his support for the program.

Mayor Patterson discussed her support for the program.

Public Comment:

Dana Dean - Ms. Dean spoke in support of the program.

On motion of Council Member Ioakimedes, seconded by Vice Mayor Schwartzman, Council adopted the Resolution, on roll call by the following vote:  
Ayes: Patterson, Schwartzman, Campbell, Hughes, Ioakimedes  
Noes: (None)

**L. DESIGNATING THE CITY OF BENICIA FIRE STATIONS AS SAFE**

## **SURRENDER SITES**

### **RESOLUTION 10-113 - A RESOLUTION REQUESTING SOLANO COUNTY BOARD OF SUPERVISORS TO DESIGNATE THE CITY OF BENICIA FIRE STATIONS AS SAFE SURRENDER SITES**

- M. Approval to waive the reading of all ordinances introduced and adopted pursuant to this agenda.**
- N. Letter in support of the Carquinez Strait and its designation as part of the Delta National Historic Area**

Heather McLaughlin, City Attorney reviewed the letter received regarding the Carquinez Strait and its designation as part of the Delta National Historic Area.

Ms. Bonnie Silveria, Chair, Carquinez Trust - Ms. Silveria discussed the Carquinez Trust and how it was formed. They are trying to get the City of Vallejo and the City of Benicia to send letters in support of making the Carquinez Strait part of the Delta National Historic Area. There are currently no heritage areas in the Western United States.

On motion of Council Member Hughes, seconded by Vice Mayor Schwartzman, Council approved sending letter to the Solano County Board of Supervisors in support of the Carquinez Strait being designated as part of the Delta National Historic Area, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

## **VIII. PUBLIC HEARINGS:**

### **A. INTRODUCTION OF AN ORDINANCE TO AMEND THE DEVELOPMENT AGREEMENT ORDINANCE**

On motion of Vice Mayor Schwartzman, seconded by Council Member loakimedes, Council approved continuing this item to the first meeting in October 2010, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Item was continued per adoption of the agenda. This was continued to the first meeting in October 2010.

Public Comment:

None

**IX. ACTION ITEMS:**

**A. REQUEST COUNCIL SUPPORT AND GIVE DIRECTION TO BEGIN FORMAL DISCUSSIONS WITH THE CITY OF VALLEJO TO PREPARE A PROPOSAL AND CONTRACT FOR 24/7 MUNICIPAL FIRE DISPATCHING SERVICES**

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, Council adopted the Resolution, on roll call by the following vote:  
Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes  
Noes: (None)

**RESOLUTION 10-116 - A RESOLUTION AUTHORIZING CITY STAFF TO BEGIN FORMAL DISCUSSIONS WITH THE CITY OF VALLEJO TO SUBMIT A PROPOSAL AND PREPARE A CONTRACT TO PROVIDE 24/7 MUNICIPAL FIRE DISPATCHING SERVICES**

Jim Erickson, City Manager, and Chief Spagnoli, introduced the item.

Lieutenant Mike Daley reviewed the staff report, and a PowerPoint presentation (copy on file).

Council Member loakimedes and Staff discussed the amount of calls that come in during an emergency, what is done when the system is overloaded, and how dispatchers prioritize calls in such events.

Vice Mayor Schwartzman and Staff discussed the alarm calls the police and fire personnel respond to.

Mayor Patterson and Staff discussed how call transfers would take place, the cost of the next step (no cost at this time), taking the City of Vallejo's bankruptcy status into consideration, what the likelihood is of them paying the bills for these services.

Council Member Campbell and Staff discussed what the \$42,000 would be used for (computers and technology), and what percentage of calls the City of Benicia would be taking for the City of Vallejo.

Council Member Hughes and Staff discussed the dispatcher's support of the proposal, staffing levels, and the need to educate the public on what the dispatchers do.

Vice Mayor Schwartzman and Staff discussed what would happen if the City of Vallejo did not pay their contract fees (that would be addressed in the contract).

Mayor Patterson requested Staff provide Council with a list of the other

jurisdictions where the dispatch services are shared.

Public Comment:

Larry Fullington - Mr. Fullington discussed the issue of seeking payment in advance to address the concerns of non-payment. Mayor Patterson stated Staff would take that into consideration when negotiating the contract.

Rick Ernst - Mr. Ernst discussed separating the medical calls from the fire calls. Staff explained how medical and fire calls were addressed.

Council Member Campbell discussed the need for a good termination clause in the agreement.

**B. SB 435 (PAVELY) MOTORCYCLE EXHAUST SYSTEM FEDERAL NOISE LABEL**

Mayor Patterson introduced the item.

Public Comment:

None

Mayor Patterson stated the direction to Staff was to prepare a short letter saying this was not good enough, that something needed to be done regarding the issue, and that Council would like to see something better.

**X. INFORMATIONAL ITEMS:**

**A. City Manager Reports**

**1. BUDGET STUDY SESSION – AUGUST 24, 2010**

Jim Erickson, City Manager, discussed the 8/24/10 budget study session. There will be some difficult, but necessary recommendations made by Staff.

Public Comment:

None

**B. Council Member Committee Reports**

(Council Member serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by the Council Members are made only by exception.)

1. **Mayor's Committee Meeting. (Mayor Patterson)**  
**Next meeting date: August 18, 2010**
2. **Association of Bay Area Governments (ABAG). (Mayor Patterson and Council Member Ioakimedes)**  
**Next meeting date: Fall General Assembly is Thursday, October 21, 2010.**
3. **Finance, Audit and Budget Committee. (Vice Mayor Schwartzman and Council Member Campbell)**  
**Next meeting date: August 27, 2010.**

Council Member Campbell discussed recommendations the committee has made regarding name, make up, etc.

Mayor Patterson stated she had discussed this with Mr. Erickson, and the issue would be agendaized in the future. Mr. Erickson verified it would be discussed on 9/7/10.

4. **League of California Cities. (Mayor Patterson and Vice Mayor Schwartzman)**  
**Next meeting date: Annual Conference and Expo September 15-17 2010**
5. **School Liaison Committee. (Council Members Ioakimedes and Hughes)**  
**Next meeting date: TBD**
6. **Sky Valley Open Space Committee. (Council Members Campbell and Hughes)**  
**Next meeting date: November 3, 2010**
7. **Solano EDC Board of Directors. (Mayor Patterson and Council Member Campbell)**  
**Next meeting date: September 23, 2010**
8. **Solano Transportation Authority (STA). (Mayor Patterson and Council Member Ioakimedes)**  
**Next Meeting date: September 8, 2010,**

Mayor Patterson discussed actions taken at recent STA meetings.

9. **Solano Water Authority-Solano County Water Agency and Delta Committee. (Mayor Patterson and Vice Mayor Schwartzman)**  
**Next meeting date: September 9, 2010**

10. **Traffic, Pedestrian and Bicycle Safety Committee. (Council Members Hughes and loakimedes)**  
Next meeting date: **October 21, 2010**
11. **Tri-City and County Regional Parks and Open Space. (Council Members Campbell and Hughes)**  
Next meeting date: **TBD**
12. **Valero Community Advisory Panel (CAP). (Council Member Hughes)**  
Next meeting date: **TBD**
13. **Youth Action Coalition. (Vice Mayor Schwartzman and Council Member Campbell)**  
Next meeting date: **August 25, 2010**
14. **ABAG-CAL FED Task Force-Bay Area Water Forum. (Mayor Patterson)**  
Next meeting date: **September 27, 2010**

## **XI. COUNCIL MEMBER REPORTS**

### **A. Request to agendize Port Fees**

On motion of Council Member Hughes, seconded by Council Member loakimedes, Council approved placing this item on a future agenda, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, loakimedes

Noes: (None)

Council Member Campbell reviewed his request. He briefly reviewed the history of the port, and why port fees are necessary.

Mayor Patterson asked, if this item comes back, if Staff could bring forward the past work that had been done on this issue.

#### Public Comment:

Dana Dean, representing Amports - Ms. Dean discussed concerns with the accuracy of some of Council Member Campbell's comments.

Larry Fullington - Mr. Fullington spoke in support for bringing this item back for exploration and discussion.

Council Member loakimedes expressed support for re-examining this issue. He discussed why the EDB passed on the issue a few years ago - it was not a slam-

dunk.

Vice Mayor Schwartzman expressed support for re-examining the issue and looking at all options.

**XII. ADJOURNMENT:**

Mayor Patterson adjourned the meeting at 9:39 p.m.



MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
August 24, 2010

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 5:05 p.m.

**II. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

**B. PLEDGE OF ALLEGIANCE**

Mayor Patterson led the Pledge of Allegiance.

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC:**

**III. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

**B. PUBLIC COMMENT**

None

**IV. ADOPTION OF AGENDA:**

**V. CLOSED SESSION:**

Heather McLaughlin, City Attorney, read the announcement of Closed Session.

- A. Public Employee Appointment:**  
**Pursuant to Government Code section 54957(b)**  
**Employee: City Manager**

**VI. ADJOURNMENT:**

Mayor Patterson adjourned the meeting to Closed Session at 5:07 p.m.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010**  
**CONSENT CALENDAR**

**DATE** : August 18, 2010

**TO** : City Manager

**FROM** : Public Works and Community Development Director

**SUBJECT** : **BUDGET MODIFICATIONS FOR FY 2009-11 PRIORITY STREET RESURFACING PROJECTS**

**RECOMMENDATION:**

Adopt a resolution modifying the budget for Fiscal Years 2009-11 Priority Street Resurfacing Projects.

**EXECUTIVE SUMMARY:**

Multiple resurfacing projects are scheduled for construction during the FY 2009-11 budget cycle, in order to take advantage of the favorable bidding climate. Non-General Fund budget modifications are needed at this time to coordinate funding and to reprogram cost savings so that current and future street projects are fully funded.

**BUDGET INFORMATION:**

The budget modification involves shifting Gas Tax, Traffic Mitigation, and Proposition 1B funds between projects. No additional funding needs to be appropriated and the modifications do not include General Fund monies.

**GENERAL PLAN:**

Relevant General Plan Goals include:

- Goal 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit, balancing vehicle-flow improvements with multi-modal considerations
- Goal 2.28: Improve and maintain public facilities and services

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies include:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #1: Provide safe, functional and complete streets
  - Strategy #4: Provide adequate funding for ongoing infrastructure needs

**BACKGROUND:**

The budget modifications affect three street resurfacing projects scheduled for completion in Fiscal Years 2009-11.

The current adopted budget for these projects is as follows:

PROJECTS	FUNDING SOURCE			
	Gas Tax Fund (State)	Proposition 1B	Local Streets & Roads (Federal)	Traffic Mitigation Fund (Local)
<b><u>2009-10 Street Resurfacing Project</u></b> 3 ½ miles of resurfacing on residential streets; patching at 75 locations (project completed)	\$237,000	\$415,000		
<b><u>2010 Street Resurfacing Project</u></b> Overlay Rose Drive from McAllister Drive to East 2 <sup>nd</sup> Street; patch East 2 <sup>nd</sup> Street from Industrial Way to Wanger Court, northbound side (scheduled for Fall 2010)	\$195,000			\$155,000
<b><u>2011 Street Resurfacing Project</u></b> Overlay Columbus Parkway from I-780 ramps to Rose Drive; patch intersections Southampton Road/West 7 <sup>th</sup> Street/I-780 ramps (scheduled for Spring 2010)	\$48,000		\$371,000	
<b>TOTAL:</b>	<b>\$480,000</b>	<b>\$415,000</b>	<b>\$371,000</b>	<b>\$155,000</b>

The proposed modified budgets are as follows:

PROJECTS	FUNDING SOURCE			
	Gas Tax Fund (State)	Proposition 1B	Local Streets & Roads (Federal)	Traffic Mitigation Fund (Local)
<b><u>2009-10 Street Resurfacing Project</u></b> 3 ½ miles of resurfacing on residential streets; patching at 75 locations (project completed for \$16,500 less than budgeted)	\$485,000	\$150,000		
<b><u>2010 Street Resurfacing Project</u></b> Overlay Rose Drive from McAllister Drive to East 2 <sup>nd</sup> Street; patch East 2 <sup>nd</sup> Street from Industrial Way to Wanger Court, northbound side (Scheduled for Fall 2010. Project Bid + contingency is \$135,000 less than budget)		\$215,000		
<b><u>2011 Street Resurfacing Project</u></b> Overlay Columbus Parkway from I-780 ramps to Rose Drive; patch intersections Southampton Road/West 7 <sup>th</sup> Street/I-780 ramps (Scheduled for Spring 2010)		\$48,000	\$371,000	
<b><u>Cost Savings</u></b> To be reprogrammed for future street improvement projects		\$2,000		\$155,000
<b>TOTAL:</b>	<b>\$485,000</b>	<b>\$415,000</b>	<b>\$371,000</b>	<b>\$155,000</b>

The FY 2009-10 Street Resurfacing Project budget originally included the City's final annual \$415,000 share of Proposition 1B monies. However, the State was unable to disburse the funding on time because the poor economy caused a delay in the bond sales. As a result, \$150,000 in Proposition 1B funding was available for this project. It is proposed the remaining \$265,000 be swapped with Gas Tax funding budgeted for the 2010 and 2011 Street Resurfacing Projects so that all three projects can be fully funded. There is sufficient funding in the Gas Tax Fund for the additional \$5,000 needed to fully fund the 2009-10 Street Resurfacing Project. In addition, 2009-10 project costs were \$16,500 less than the project budget.

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Bids were recently opened on the 2010 Street Resurfacing Project. Due to the favorable bidding climate the project can be constructed for \$215,000, compared to the \$350,000 originally budgeted. It is proposed the \$155,000 in cost savings be returned to the Traffic Mitigation Fund where it can be reprogrammed to a future project.

The 2011 Street Resurfacing Project is scheduled to go to bid in Spring 2011, the earliest time possible given the environmental approvals needed for the project. It is anticipated the bidding climate will still be favorable and the project will include bid alternates so that any additional cost savings can be used to construct additional improvements at that time.

Attachment:

- Proposed Resolution

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA MODIFYING THE BUDGET FOR FY 2009-11 PRIORITY STREET RESURFACING PROJECTS**

**WHEREAS**, multiple street resurfacing projects are scheduled for construction this FY 2009-11 budget cycle to take advantage of the very favorable bidding climate; and

**WHEREAS**, the State was delayed in disbursing the City's full \$415,000 share of Proposition 1B funding due to the negative impact the poor economy had on bond sales; and

**WHEREAS**, as a result \$150,000 of the \$415,000 in Proposition 1B monies budgeted for the 2009-10 Street Resurfacing Project can be expended on the project; and

**WHEREAS**, the remaining \$265,000 in Proposition 1B monies can be exchanged with Gas Tax Funding on the 2010 Street Resurfacing Project and 2011 Street Resurfacing Project so that all three projects are fully funded; and

**WHEREAS**, the \$155,000 cost savings on the 2011 Street Resurfacing Project can be returned to the Traffic Mitigation Fund and to be reprogrammed to future projects.

**NOW, THEREFORE, BE IT RESOLVED THAT** to fully fund street resurfacing projects for this budget cycle and future projects the City Council of the City of Benicia hereby approves the budget modifications including the funding exchange, reprogramming of cost savings, and other minor budgeting amendments as shown on Exhibit "A."

\*\*\*\*\*

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 7<sup>th</sup> day of September, 2010 and adopted by the following vote:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**Exhibit A**

PROJECTS	FUNDING SOURCE			
	Gas Tax Fund (State)	Proposition 1B	Local Streets & Roads (Federal)	Traffic Mitigation Fund (Local)
<u><b>2009-10 Street Resurfacing Project</b></u> 3 ½ miles of resurfacing on residential streets; patching at 75 locations (project completed)	\$485,000	\$150,000		
<u><b>2010 Street Resurfacing Project</b></u> Overlay Rose Drive from McAllister Drive to East 2 <sup>nd</sup> Street; patch East 2 <sup>nd</sup> Street from Industrial Way to Wanger Court, northbound side (scheduled for Fall 2010)		\$215,000		
<u><b>2011 Street Resurfacing Project</b></u> Overlay Columbus Parkway from I-780 ramps to Rose Drive; patch intersections Southampton Road/West 7 <sup>th</sup> Street/I-780 ramps (scheduled for Spring 2010)		\$48,000	\$371,000	
<u><b>Cost Savings</b></u> To be reprogrammed for future street improvement projects		\$2,000		\$155,000
<b>TOTAL:</b>	<b>\$485,000</b>	<b>\$415,000</b>	<b>\$371,000</b>	<b>\$155,000</b>

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010  
CONSENT CALENDAR**

**DATE** : August 18, 2010  
**TO** : City Manager  
**FROM** : Public Works and Community Development Director  
**SUBJECT** : **ACCEPTANCE AND NOTICE OF COMPLETION FOR THE 2009-10 STREET RESURFACING PROJECT**

**RECOMMENDATION:**

Adopt a resolution accepting the 2009-10 Street Resurfacing Project as complete, 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:**

The 2009-10 Street Resurfacing Project resurfaced 3½ miles of residential streets and patched streets at approximately 75 locations, primarily in the Industrial Park. The final construction cost of \$635,139 is funded with a combination of Gas Tax and Proposition 1B monies. Formal acceptance of the work by the City Council is now required to allow final payment to the contractor.

**BUDGET INFORMATION:**

The final project budget is as follows:

**Project Budget**

Gas Tax Street Resurfacing Account.....	\$501,615
Proposition 1B Fund .....	\$150,000
<hr/>	
Total Budget .....	\$651,615

**Final Project Expenditures**

Construction Contract.....	\$592,375
Change Order No. 1: Adjustment for Final Quantities ( <i>Staff Approved</i> ) .	\$42,194
<u>Change Order No. 2: Additional Striping (<i>This Request</i>) .....</u>	<u>\$570</u>
Total Expenditure .....	\$635,139

Change Order No. 1 is an adjustment for the actual quantities of work performed by the contractor (versus the bid quantities). This change order reflects additional patching on Columbus Parkway and Industrial Way that was added to the contract including striping, crack sealing, and slurry sealing quantities that were greater than the bid quantities.

Change Order No. 2 is to install 2 additional "Slow School Xing" markings. The total combined change order amount of \$42,764 constitutes a 7% change from the original contract amount and is under the 10% contingency budgeted for the project. The remaining \$16,476 will be returned to the Gas Tax fund for future projects.

### **GENERAL PLAN:**

Relevant Goals include:

- Goal 2.28: Improve and maintain public facilities and services

### **STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #1: Provide safe, functional and complete streets
  - Strategy #4: Provide adequate funding for ongoing infrastructure needs

### **BACKGROUND:**

On September 15, 2009, the City Council awarded a construction contract to MCK Services, Inc. of Concord, CA, for the 2009-10 Street Resurfacing Project. The project resurfaced approximately 3½ miles of residential streets.

Approximately 3 miles of these streets were resurfaced with slurry seal, which is a thin layer of asphalt that is placed on top of the existing street. The slurry seal provides a new wearing surface that improves traction. Slurry seal treatments last approximately 7-10 years and are a cost effective way to lengthen the service life of streets.

Approximately ½ mile of the residential streets were overlaid with a 1½" layer of asphalt concrete, often referred to as "blacktop." Asphalt concrete provides the benefits of slurry seal and adds structural strength to the road, needed for more highly traveled roads and roads that are in poorer condition. Asphalt overlay treatments last approximately 15-20 years. The City used a computerized pavement management program developed by the Metropolitan Transportation Commission to select the street maintenance treatment for the 2009 Street Resurfacing Project. Using the pavement management program ensures the City's street inventory is managed in the most cost effective manner possible.

The 2009-10 Street Resurfacing Project was completed for a final construction cost of \$635,139, which is within the allocated budget. The project was completed to the satisfaction of the City Engineer and it is therefore recommended that City Council accept this project as complete.

Attachments:

- ❑ Proposed Resolution
- ❑ Notice of Completion
- ❑ Location Map



**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE 2009-2010 STREET RESURFACING PROJECT AS COMPLETE INCLUDING CHANGE ORDER NOS. 1 AND 2, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 09-95, City Council awarded the contract for the 2009-10 Street Resurfacing Project to MCK Services, Inc. of Concord, CA; and

**WHEREAS**, MCK Services, Inc. has completed the work in accordance with the plans and specifications and to the satisfaction of the City Engineer for a final construction cost of \$635,139, including Change Order Nos.1-2; and

**WHEREAS**, formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the 2009-10 Street Resurfacing Project as complete, including Change Order Nos.1 and 2, for a final construction cost of \$635,139.

**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.

\*\*\*\*\*

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 7<sup>th</sup> day of September, 2010, and adopted by the following vote:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



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 the property described as:

**Miscellaneous Streets** located in the City of Benicia, County of Solano, State of California.

**Nature of title as stated owner: In Fee.**

2. A work of improvement known as the **2009-2010 Street Resurfacing Project** at the property described was completed and accepted by the City Council of the City of Benicia on September 7, 2010.
3. The name of the contractor for the improvement is **MCK Services Inc. of Concord, California.**

CITY OF BENICIA

Dated: \_\_\_\_\_

Manager

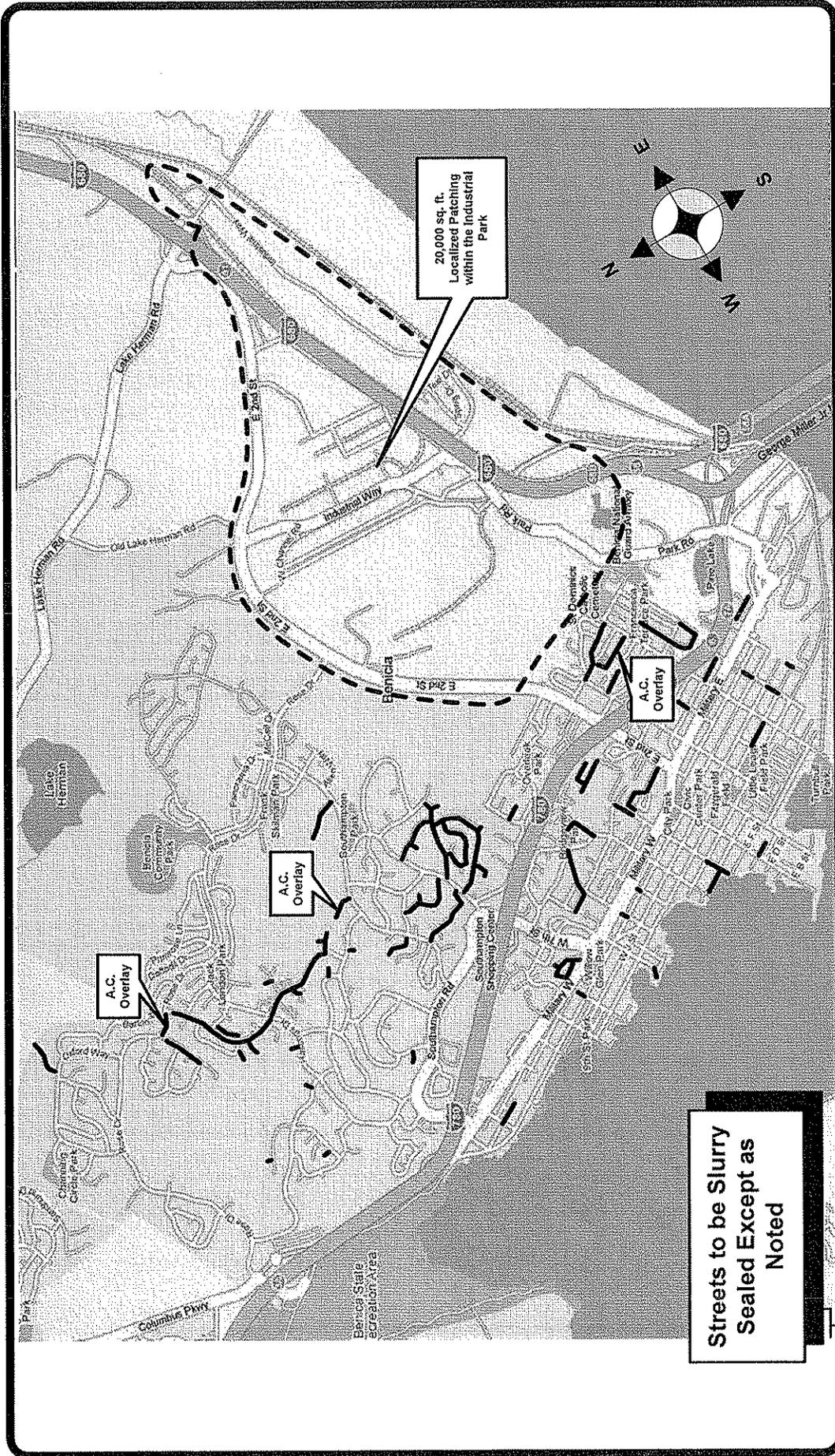
By: \_\_\_\_\_  
James R. Erickson, City

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

---

Lisa Wolfe, City Clerk



PUBLIC WORKS DEPARTMENT

**CITY OF BENICIA**

**2009 STREET RESURFACING PROJECT**



REVISIONS			
NO.	DESCRIPTION	BY	DATE

PROJECT \_\_\_\_\_ DATE May 2009 SHEET \_\_\_\_\_

FILE: 2009 PAVEMENT BID EXHIBIT.DWG LASTREV: JUN 17 2009



**AGENDA ITEM  
CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010  
CONSENT CALENDAR**

**DATE** : August 18, 2010  
**TO** : City Council  
**FROM** : Public Works and Community Development Director  
**SUBJECT** : **AWARD OF CONSTRUCTION CONTRACT FOR THE 2010 STREET RESURFACING PROJECT**

**RECOMMENDATION:**

Adopt a resolution accepting the bids for the 2010 Street Resurfacing Project, awarding the construction contract to Team Ghilotti, Inc. in the amount of \$194,929, and authorizing the City Manager to sign the contract on behalf of the City.

**EXECUTIVE SUMMARY:**

This project will resurface Rose Drive between East Second Street and McAllister Drive and patch the northbound lane of East Second Street between Industrial Way and Wanger Street. The project is funded with Proposition 1B monies. Bids were received from eight (8) paving contractors and staff is recommending award of the construction contract to the low bidder, Team Ghilotti, Inc. of Petaluma, California.

**BUDGET INFORMATION:**

The proposed project budget is outlined below:

**Project Budget**

Proposition 1B Funds.....	\$215,000
<b>Total Project Budget .....</b>	<b>\$215,000</b>

A summary of the anticipated construction expenditures is outlined below:

**Project Expenditures**

Construction Contract .....	\$194,929
Construction Contingency.....	\$20,071
<b>Total Project Expenditures .....</b>	<b>\$215,000</b>

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- Goal 2.28: Improve and maintain public facilities and services

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #1: Provide safe, functional and complete streets
  - Strategy #4: Provide adequate funding for ongoing infrastructure needs

**CEQA:**

This project is categorically exempt from CEQA review in accordance with Section 15031(c), which applies to maintenance and repair of existing streets.

**BACKGROUND:**

On August 13, 2010, the City received and opened a total of eight (8) bids for the 2010 Street Resurfacing Project as summarized below:

<b>RANK</b>	<b>BIDDER'S NAME</b>	<b>TOTAL BID</b>
1	Team Ghilotti	\$194,929.00
2	MCK Services	198,900.00
3	Argonaut Construction	199,991.00
4	Bay Cities Paving & Grading	209,833.63
5	Ghilotti Construction	226,226.00
6	Ghilotti Bros.	259,703.40
7	G.D. Nielson	277,181.00
8	CF Contracting	288,341.50
	<i>Engineer's Estimate</i>	<i>\$338,060.00</i>

The low bid, submitted by Team Ghilotti, Inc. of Petaluma, California, was reviewed and determined to be responsive. Team Ghilotti has successfully completed projects for multiple public agencies throughout the Bay Area and is considered a responsive bidder.

This project will resurface Rose Drive between East Second Street and McAllister Drive with 1 ½ inches of asphalt concrete overlay. This new asphalt will be placed over the existing street, providing a new driving surface and strengthening the street. In addition, the lane width on Rose Drive will be decreased during the striping application in accordance with the City's Traffic

Calming Program to help reduce traffic speeds. Work also includes patching deteriorated asphalt sections along the northbound lane of East Second Street between Industrial Way and Wanger Street, improving durability and enhancing safety for the heavy truck traffic accessing the Benicia Industrial Park.

Team Ghilotti's low bid of \$194,929 is well below the engineer's estimate of \$338,060 and the project is fully funded with Proposition 1B monies. Therefore staff recommends awarding the construction contract to Team Ghilotti, Inc. in the amount of \$194,929. Construction is scheduled to begin in October and to be completed within 30 working days.

Attachments:

- ❑ Proposed Resolution
- ❑ Budget Modifications for the FY 2010-11 Priority Street Resurfacing Projects
- ❑ Location Map



**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BIDS FOR THE 2010 STREET RESURFACING PROJECT, AWARDING THE CONSTRUCTION CONTRACT TO TEAM GHILOTTI, INC. IN THE AMOUNT OF \$194,929, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, on July 27, 2010 the Public Works & Community Development Department made available the construction plans and specifications for the 2010 Street Resurfacing Project for public bidding; and

**WHEREAS**, one addendum was issued to modify the construction plans and specifications; and

**WHEREAS**, on August 13, 2010, eight (8) bids were received and opened; and

**WHEREAS**, Team Ghilotti, Inc., of Petaluma, California was determined to be the bidder submitting the lowest responsive, responsible bid; and

**WHEREAS**, this project is categorically exempt pursuant to Section 15301 (c) of the CEQA guidelines.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the construction plans and specifications, accepts the bids for the 2010 Street Resurfacing Project, and awards the construction contract in the amount of \$194,929 to Team Ghilotti, Inc.

**BE IT FURTHER RESOLVED THAT** the City Manager is hereby authorized to sign the contract on behalf of the City, subject to approval by the City Attorney.

\*\*\*\*\*

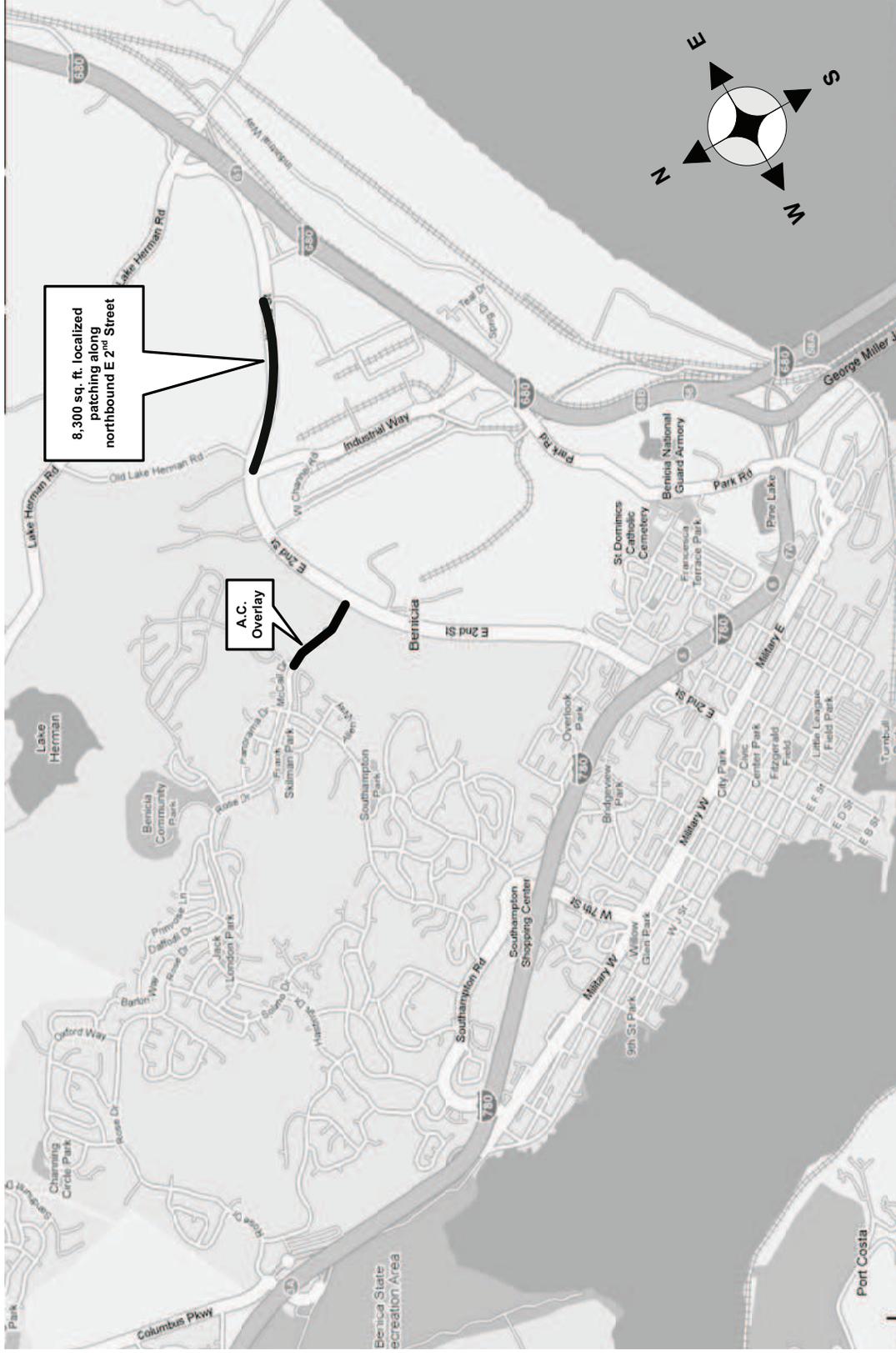
On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 7<sup>th</sup> day of September, 2010, and adopted by the following vote:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



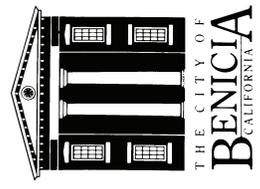
PUBLIC WORKS  
DEPARTMENT

# CITY OF BENICIA

## 2010 STREET RESURFACING PROJECT

PROJECT DATE August 2010 SHEET

REVISIONS	
NO.	DESCRIPTION





**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010**  
**ACTION ITEMS**

**DATE** : August 24, 2010

**TO** : City Manager

**FROM** : Economic Development Manager

**SUBJECT** : **QUARTERLY REPORT ON TOURISM MARKETING AND  
AMENDMENT TO CONTRACT WITH WOLF COMMUNICATIONS**

**RECOMMENDATION:**

Receive regular quarterly update on progress of tourism marketing program and, by motion, approve amendments to the contract's work plan to do more advertising campaign administration and related work.

**EXECUTIVE SUMMARY:**

In order to fund administration of the tourism advertising campaign and a supplemental ad during the holidays, without an increase in overall expenditures for tourism marketing, \$8805 is recommended to shift from the Marketing category of the contract to the Media Buy category. It is also recommended that the quarterly reports' due dates be pushed back by one week.

**BUDGET INFORMATION:**

The contract is already fully funded in 2010-11 and there is no change proposed to the overall cost.

**STRATEGIC PLAN:**

Strategic Issue 3: Strengthening Economic and Fiscal Conditions

- Strategy #1: Implement Tourism Plan
- Strategy #3: Retain and Attract Business

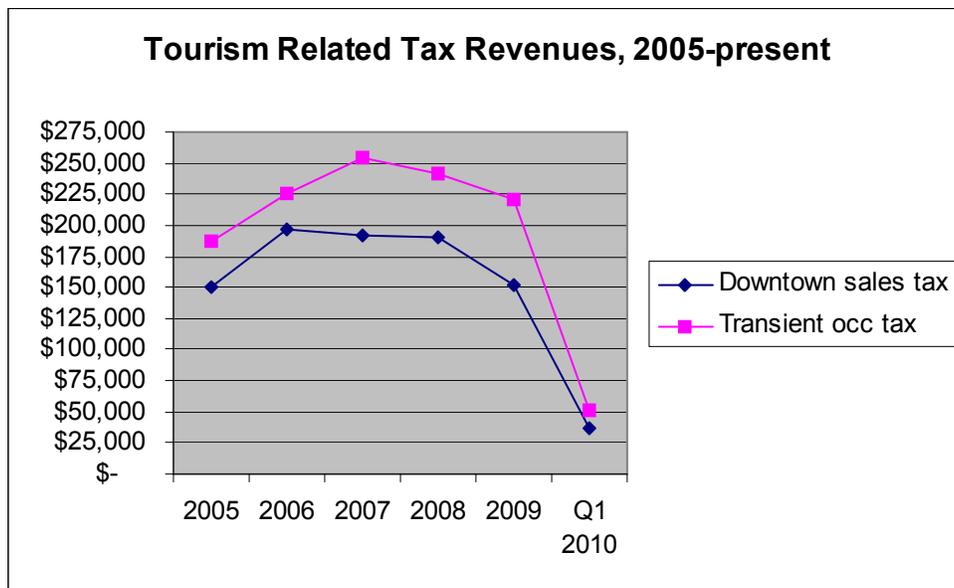
**BACKGROUND:**

Following the EDB's recommendation, the City Council approved a \$280,000 contract with Wolf Communications on October 20, 2009. The contract is divided into four categories: Marketing (\$148,000), City/Community/Public Liaison (\$31,000), Expenses (\$5,800) and Media Buy (\$95,200, of which \$10,000 was identified in the Advertising Plan for administration of the ad campaign).

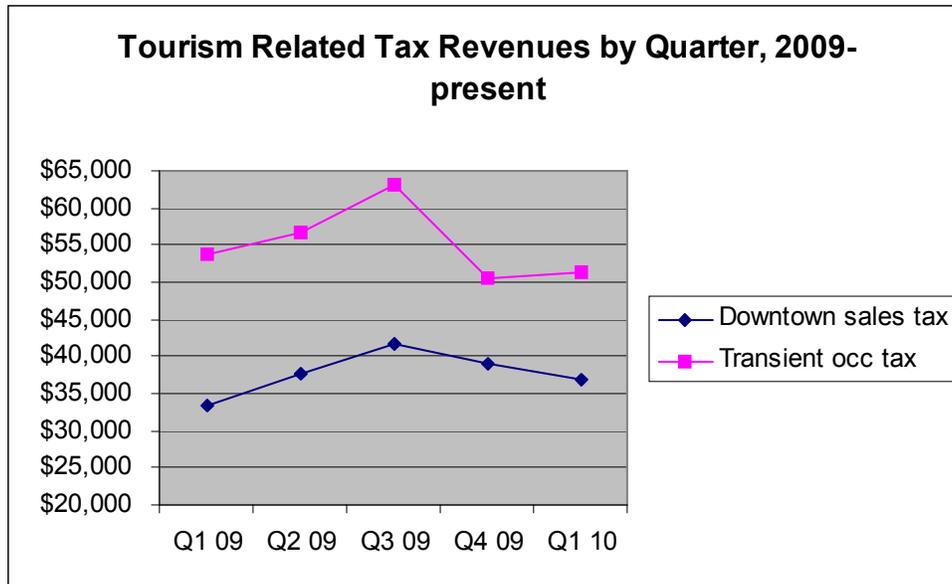
Since the last quarterly update to the Council in June, the advertising campaign has fully launched. It is detailed in the required quarterly written report

(attached), which was submitted on time in June. To date, invoices through July have been submitted for a total of \$174,000 in payments. This amount is 62% of the total allocated, \$280,000. The EDB reviews the invoices and staff's payment tracking worksheet on a monthly basis. As of July 31, the contract schedule is 45% complete, which lags the amount spent so far because of the start-up costs in creating the campaign. However, staff has asked the consultant to bring the two figures closer together over the next few invoices.

Tracking of sales tax downtown (as the area most affected by tourism) and transient occupancy tax (TOT) continues as a way to measure impact of the marketing campaign. Of course, neither of these measurements is wholly tourism dependent, so they must be taken as indicators rather than definitive answers. The data will be regularly updated as a way of tracking impact. The baseline chart below goes through the first quarter of 2010. Wolf Communications' contractual start date was October 21, 2009, early in the 4<sup>th</sup> quarter of 2009.



The broader perspective of this chart shows that 2009 was comparable to 2005 for downtown sales tax, and better than 2005 for TOT although both dropped compared to 2008. As previously noted in the June report, there were some losses of businesses downtown that help explain the sales tax drop. However, a five-quarter comparison provides another look.



The sales tax is improved from a year ago; however, TOT is down slightly from one year ago, which is surprising given the new hotel's opening late last year. It may indicate cannibalization in the market, which, if it's the case, will become more apparent in future quarters.

Managing the campaign as well as producing the print ads and the radio spots has taken more time than Wolf Communications initially projected, leading to spending more than the contract's original allocated amount for Media Buy administration. Wolf has requested a contract amendment to move \$7,000 from the Marketing category and add it to Media Buy for additional administration, which should fund approximately \$500 per month for the remaining life of the contract plus approximately \$1,000 in time that was already billed in June (but not paid, pending a contract amendment).

Also, staff recommends moving \$1,805 more from Marketing to Media Buy in order to fund a two-page cooperative ad in *Diablo Magazine* for the holidays. This would replace the currently planned quarter-page regular ad in December's *Diablo*. The current advertising plan is attached for reference.

Moving funds from Marketing means eliminating some work tasks in that category, as described below. Parentheses refer to sections in the contract's Exhibit A, which is attached for reference.

- delete tour operator outreach (A-4f,g)
- delete Twitter (A-1h)
- specify next collateral deliverable will be an update of Visitors Guide (A-2), and extend deadline to April 30, 2011
- change to quarterly (not monthly) newsletters, one for visitors and one for

stakeholders (A-6a)

- delete YouTube Benicia channel (A-1e)
- delete tour operator and journalist group "fam tours" (A-4e); however, individual orientation visits remain in the contract.

Finally, Wolf has requested one additional contract amendment, to move the due dates of the quarterly reports to within one week of the end of the quarter rather than the last day of the quarter (as the contract is currently written). This will allow the reports to cover the entire quarter's worth of work and results. On July 28, 2010, the Economic Development Board reviewed this proposal and recommended the Council approve it.

This report and proposed amendment do not address any potential contract reductions as a part of 2010-11 budget balancing. If approved, those would return to the Council at a future time as part of another amendment.

Attachments:

- ❑ Wolf Communications June Quarterly Report and Media Hits Report
- ❑ Amendment to Consulting Services Agreement with Wolf Communication
- ❑ Tourism Advertising Plan

**AMENDMENT TO AGREEMENT**

This Amendment of the Agreement, entered into this 7th day of September, 2010, by and between the City of Benicia, a municipal corporation ("CITY") and Wolf Communications, a California sole proprietor with its primary office located at 2245 Sunlit Ann Drive, Santa Rosa, California, 95403 (hereinafter "CONSULTANT"), is made with reference to the following:

**RECITALS:**

A. As of October 21, 2009, an agreement was entered into by and between CITY and CONSULTANT ("Agreement").

B. CITY and CONSULTANT desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

I. Exhibits A and B of the Agreement are replaced with the attached, modified as approved by the Benicia City Council on September 7, 2010.

II. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

WOLF COMMUNICATIONS

CITY OF BENICIA  
A Municipal Corporation

By: \_\_\_\_\_  
Jack Wolf Date  
President

By: \_\_\_\_\_  
James R. Erickson Date  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Heather C. Mc Laughlin  
City Attorney

06/30/03

**EXHIBIT A  
SCOPE OF WORK AND BUDGET**

A) Marketing

1) Online:

- a) Upgrade [www.VisitBenicia.org](http://www.VisitBenicia.org) to Drupal 6 CMS on a PHP/MySQL server hosted by Network Solutions or other hosting service (tbd). Website requirements are further detailed in Section D.
- b) Provide and input content (text and photos) for [www.VisitBenicia.org](http://www.VisitBenicia.org). (CITY has option of also providing some content.) A news section will be added and updated semi-monthly or more frequently. The news will include featured events, special profiles of local businesses/attractions, visitor-oriented specials, etc. A press section will be added as a journalist reference. Administer site and maintain it on the server. Refresh content weekly.

c) Create a Facebook fan page and link to it from VisitBenicia.org.

d) Enlist the assistance of other Benicia businesses/organizations in creating visitor-oriented Facebook pages to which VisitBenicia can be linked.

~~e) Produce visitor oriented videos and post on VisitBenicia and YouTube, on which a Benicia channel will be created.~~

f) Edit website (or develop new, linked site) to provide mobile phone Web functionality.

g) Write a Benicia tourism blog, to be updated no less than weekly, on VisitBenicia.org.

~~h) Post to Twitter (on existing Benicia tourism accounts) no less than twice per week.~~

2) ~~Develop/update collateral, including but not limited to an arts guide, restaurant guide, historical sites guide, shopping guide/business clusters catalogs, outdoor activities/waterfront guide, and an overall Visitors Guide that will be updated by April 30, 2011.~~ All collateral should be uploadable to the website and available as hard copies. The different collateral options will be prioritized based on Client and stakeholder needs and CONSULTANT's recommendations – not all listed need be completed within contract term. A master template will be created that all participating organizations can use.

3) Provide technical assistance to other tourist-serving organizations in Benicia regarding their marketing, events, and cooperative efforts. Technical assistance shall be limited to two hours per organization per month unless prior approval is obtained from CITY's project manager.

4) Publicity, including writing and distributing press releases, generating and placing feature stories with media outlets, outreach to local freelance writers, and tour operator outreach.

a) Develop digital press kit.

b) Prepare semiannual list of story ideas and outreach/placement targets for approval.

c) Augment tourism photo library.

d) Develop B-roll video for media use on request.

e) Develop media/selected journalist/tour operator ~~fan tours and~~ individual orientation visits.

~~f) Develop tour operator database.~~

~~g) Add tour operator section to VisitBenicia.org.~~

5) Review co-op and other opportunities with California Travel & Tourism Commission, and other tourism promotional opportunities, and make recommendations to Client and stakeholders. Implement as directed.

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6) Send ~~monthly~~ quarterly e-newsletter (via www.VisitBenicia.org) with a design consistent with the website and other collateral.

- a) ~~Produce quarterly versions of the newsletter~~ targeting tour operators, visitors, and stakeholders (merchants, residents, organizations).

**B) Client/Community/Public Liaison**

- 1) Respond to routine Client requests and community (Benicia citizens and groups) inquiries within two business days.
- 2) Attend Client meetings in person at least monthly, scheduled at mutual convenience.
- 3) Be available to attend up to two additional meetings of public bodies or community organizations in person in Benicia monthly by request (for example, City Council meetings). These may be evening or weekend meetings.
- 4) Establish dedicated "Benicia tourist information" phone line, either a toll free or 707 area code number, to be answered by a live person at least during normal business hours (9 A.M.-5 P.M.) Monday through Friday. Longer hours and/or additional days preferred.
  - a) Maintain caller database with request for email address and other contact information.
  - b) Mail and e-mail fulfillment as requested by callers.
- 5) Assist in coordination, including recommendations for improved and/or more consistent signage, collateral, branding, and customer service, of four "visitors centers" at existing tourist destinations – the Benicia Chamber of Commerce office, Benicia Main Street store, Benicia Historical Museum, and Arts Benicia gallery.
- 6) Serve as event clearinghouse, coordinating event schedules among the various organizations and businesses that put on events in Benicia.
  - a) Set up a master calendar through Google Calendar or similar, accessible to event planners.
  - b) Routinely check in with event planners to keep abreast of event plans, help avoid conflicts, and make sure their event details are correctly entered in VisitBenicia.org.
  - c) Recommend timing of events (to take advantage of seasonal shifts in tourism) and event promotions.
- 7) Support stakeholders and third-party consultant (to be determined later) in exploring formation of a Tourism Business Improvement District in 2010-11.

**C) Media Buys/Advertising**

- 1) Develop advertising plan, which may include direct mail, online ads, publications, TV/radio, and/or other, for Client's approval.
- 2) Develop creative content for Client's approval.
- 3) Implement advertising plan by placing ads in appropriate media.

**D) Website Requirements**

- 1) Implement the new design in a content management system (CMS) with the following minimum capabilities and features:
  - a. Centralized management of all web content and links,
  - b. The ability to upload and manage documents and media in various web-ready formats, including but not limited to: PDF, PPT, WMV, HTML, JPG, GIF, SWF, MPEG, AVI, and MOV formats,
  - c. The ability to perform "in context" editing in a WYSIWYG interface,
  - d. The ability to search website for content based on a word, phrase, date, or wildcard value,

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e. All published (publicly viewable) content will be ADA-compliant,

f. The CMS system shall run on a standard, commercially available database platform (such as Oracle, MySQL, Linux, etc.), and maintain all documents in their original format,

g. Ability to update multiple menus at the same time (when one is updated, linked ones are updated),

h. Ability to easily edit and log-in from web page,

i. Ability to easily link to City and third-party partner webpages,

j. Ability to post text links,

k. Ability to archive all website content automatically,

l. Ability to control delayed posting with notification of out-of-date items and or notice of expiration of items,

m. Ability to edit using "rich text",

n. Simple page administration management; use of wizards,

o. Auto updates for sitemaps and "breadcrumbs",

p. Ability for administrator to blog and site visitors to post comments subject to administrator review,

q. Traffic management system,

r. Photo gallery capacity,

s. Creation of new menus (when a new page is added, the drop down menu is updated).

2) In addition to the minimum capabilities and features identified in the preceding section, it is desirable but not required for the content management system to provide the following capabilities and features:

a. Ability to designate specific website areas for specific banners,

b. Ability to install flashing and/or rotating banners,

c. Ability to use new page designs to create related websites,

d. Ease in ability to place, change or move menus,

e. Allow content to rotate automatically.

3) The website will be viewable at a 1024x768 resolution or higher.

4) The site will be viewable and function correctly when loaded using modern browsers, for example but not limited to: Microsoft Internet Explorer 7, Google Chrome 2, Safari 2, and Mozilla Firefox 3.0 or higher.

5) Implementation of a logging function to maintain a record of administrative transactions by authenticated users is required.

6) A structured training session for City staff initially and at least annually thereafter.

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**EXHIBIT B**  
**SCHEDULE, MEASUREMENT METRICS, DELIVERABLES, AND RATES**

**First Report – Due By December 31, 2009:**

Submit semiannual list of story ideas and placement targets  
Facebook fan page created and linked to website  
Submit collateral recommendations  
Google Calendar (or similar) posted online

**Weekly Thereafter:**

Refresh [www.VisitBenicia.org](http://www.VisitBenicia.org) content, Twitter feed, and Facebook page in accordance with Exhibit A.

**Monthly/Quarterly Thereafter:**

Send e-newsletters in accordance with Exhibit A.

**Regular Reports - Quarterly<sup>1</sup> Thereafter – to Cover:**

Evaluation of key message delivery and brand positioning in media coverage  
Website hits, significant changes, and user/subscriber counts  
Online/social media work  
Advertising placed and evaluation of its effectiveness  
Media Hits (stories placed)  
Media in the Works (journalists contacted and tours given)  
Visitor center coordination and foot traffic  
Newsletter distribution, open rates, and click-throughs  
Calls received (from both the visitor line and from stakeholders/citizens) and any follow-up (pieces mailed, etc.)  
Technical assistance provided  
Event schedule  
TBID assistance (after July 2010)

**Special items outside of quarterly reports:**

By January 31, 2010:  
Pre-campaign visitor survey

By February 28, 2010:  
Submit advertising plan for approval (future revisions to be submitted as needed)  
Collateral design template complete

By April 30, 2010:  
First tourism video produced and posted  
B-roll produced and available

<sup>2</sup> Due March 31, 2010, June 30, 2010, September 30, 2010, December 31, 2010, March 31, 2011, and June 30, 2011.

<sup>1</sup> Due March 31, 2010, June 30, 2010, October 8, 2010, January 7, 2011, April 8, 2011, and June 30, 2011.

By June 30, 2010:

Submit semiannual list of story ideas and placement targets  
One new/updated collateral piece completed  
Stakeholder survey (covering awareness of and perceived effectiveness of marketing to date)

By December 31, 2010:

Submit semiannual list of story ideas and placement targets  
Second tourism video produced and posted  
Mobile phone-function website  
~~One new/updated collateral piece completed~~

By April 30, 2011:

Post-campaign visitor survey  
Analysis of pre- and post-campaign visitor surveys  
Analysis of TOT and sales tax trends (data to be supplied by City)  
Third tourism video produced and posted  
Stakeholder survey (covering awareness of and perceived effectiveness of marketing to date)  
Updated collateral piece (Visitors Guide) completed

By June 30, 2011:

Evaluate occupancy rates at the four hotels/B&Bs

Ongoing/On-Call:

Scope of Work Items A.1.c, A.3, A.4.c, A.4.e, A.5, B.1-4, B.5, B.6, B.8, C.2-3

**Hourly Rates:**

Jack Wolf: \$150  
Cheri Lieurance: \$105  
Kat Braunstein (approved subcontractor): \$95  
Associate: \$60  
Other Subcontractors TBD









## Benicia Quarterly Marketing Report

(April 1 through June 30, 2010)  
submitted by Wolf Communications on June 30, 2010

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## Summary

### Activities during Second Quarter, 2010

During the second quarter of 2010, Wolf Communications has concentrated on implementing some of the major elements of a long-term, multi-faceted marketing campaign:

- **Advertising campaign:** Launched a comprehensive advertising plan in June that encompasses magazine, online, and radio advertising, with elements of the campaign extending through May 2011.
- **Website redesign:** Moved ahead with redesign of the visitbenicia.org website and went live on a test site that stakeholders could review and comment on, with the site going live for public use very soon.
- **Social media:** Posted content and created Facebook ads that attracted an additional 325 fans to the Visit Benicia Facebook page (for a current total of approximately 925 as of June 26). Created a blog on the existing visitbenicia.org site.
- **Media outreach:** Wrote and distributed two press releases, one promoting the Artists' Open Studios event and another promoting the 25<sup>th</sup> anniversary celebration of the Benicia Historical Museum. Continued telephone pitches to area media regarding Benicia stories, including KGO radio. Mayor Patterson is scheduled to appear July 10 on John Hamilton's "On the Go" program. For a list of other Benicia stories, please see the "Media Hits" report.
- **Photo Shoots:** Conducted two more photo shoots to gather additional images for advertising, website, collateral materials and other uses.
- **Newsletters:** Created and distributed three visitor newsletters (April, May and June).
- **Collateral materials:** Produced, in time for distribution at the Solano County Fair, a full-color overview brochure promoting Benicia.
- **Stakeholder collaboration site:** Continued adding events to the calendar on the Wiggio site, monitored and responded to discussions among stakeholders and used the site to announce information of interest to stakeholders.
- **Tour operator outreach:** Added the names of tour operators who have expressed interest in Benicia to the visitor newsletter distribution list.
- **Visitor Phone Line:** Received and responded to approximately 14 calls to the visitor phone line.

### Tentative Tasks for Third Quarter, 2010

During the third quarter of 2010, Wolf Communications will:

- Fully promote the newly redesigned website after incorporating comments.
- Create a press kit.
- Continue to manage ongoing advertising and social media campaigns.
- Write and distribute at least two press releases on subjects such as what's new in Benicia, waterfront sight-seeing/recreational opportunities, and the variety of shopping options.
- Continue to pitch media and invite them on "familiarization" tours to learn more about Benicia's many newsworthy attractions.

Quarterly Marketing Report, April through June 2010

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## Advertising

During June 2010, Wolf Communications launched a comprehensive advertising campaign that included a mix of radio, magazine and online venues. The campaign schedule extends through May 2011.

- Print ads appeared in the June issues of *Sunset*, *Diablo*, and *San Francisco* magazines. Ads in *Oakland*, *Alameda* and *Inside Benicia* magazines will begin in July.
- Radio ads ran on KQIT, KCBS, and KGO, including live spots on "Dining Around with Gene Burns" and "On the Go" with John Hamilton.
- The online campaign included Benicia ads on Facebook, Google, various websites, e-blasts and other promotions.

### Radio Ads

We pre-produced two ads for KCBS and KQIT. A 60-second version includes "person-on-the-street" testimonials, and a 30-second spot, used for additional frequency, features an announcer voiceover talking about a Benicia getaway.

We wrote scripts for the hosts of KGO's "Dining Around" and "On the Go," then opted to have Burns and Hamilton read the spots live during their shows. We purchased five, 60-second ads, but they were very generous, and talked about Benicia for a total of nearly ten minutes.

Wolf Communications posted times on Wiggio informing members of the Benicia Stakeholders Group when radio ads were scheduled to air. The radio spots prompted a number of positive comments from stakeholders.

### Print Ads

One of the services offered in conjunction with ad placements in *Sunset* magazine is collection of the names and addresses of individuals who submitted requests for more information. To date, *Sunset* has provided the names of approximately 100 people who have requested further details about Benicia. Wolf Communications has added these names to the distribution list for the visitors' e-newsletter and will also send copies of the recently produced overview brochure.

### Preliminary Advertising Analysis

There was a 24% percent increase in website visits between May and June, which could have been driven by the advertising campaign. The average time each visitor spent on the site was up slightly from May to June, as was the number of pages per visit.

Potential increases in sales taxes collected in June aren't yet available. However, we've heard from stakeholders who report seeing new faces in their stores, and some visitors are saying they heard or saw the new Benicia ads. This was the first month of the campaign, and not all elements have begun. Ads in additional publications, as well as online promotions, are about to launch.

Quarterly Marketing Report, April through June 2010

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## Visitbenicia.org Website

### Site Redesign

Wolf Communications recently culminated redesign of the visitbenicia.org website by making available a live test site where stakeholders could review the new site before it is revealed to the public. We posted a link on the Wiggle site inviting stakeholders to take a look.

After a review period of approximately one week, Wolf Communications compiled a list of changes and requested improvements requested. At this writing, we're making the changes, and the site will go live to the public very soon.

### Current Website Traffic

The traffic statistics for the current website have increased over the past quarter. We expect that with public launch of the new site, these figures will increase significantly in the third quarter of 2011. Below are web traffic statistics for the second quarter of 2011, but also for January, to illustrate the growth in traffic since the beginning of the year.

Traffic Statistics	January	April	May	June
Visits	778	1,511	1,302	1,709
Pages per Visit	3.73	3.47	3.44	3.67
Bounce Rate	33.29%	34.48%	36.87%	33.59%
Average Time on Site	3:00	2:53	2:57	3:07
% New Visits	80.21%	79.22%	80.57%	80.11%

### Top Keywords/Terms

The top key words used by visitors to reach the website appear to be based on events, specific promotions and not surprisingly, the words "visit" and "Benicia." The term "Benicia Museum at the Cannel Barns" appears near the top of frequent searches in May and June, indicating the Benicia Historical Museum enjoys a fairly high visibility, possibly due to the 25<sup>th</sup> anniversary.

	April	May	June
#1	Hissy Fits benicia (32)	Visitbenicia.org (15)	Benicia Museum at the Cannel Barns (37)
#2	Benicia Ca (31)	Viva Benicia (15)	Visitbenicia.org (29)
#3	Frankenburger Benicia (17)	Benicia Museum at the Cannel Barns (13)	Visit Benicia (27)
#4	How to get to bay ridge trail in Benicia (17)	Benicia tourism (10)	Viva Benicia (16)
#5	Visit Benicia (17)	Visit Benicia (9)	Benicia Bay tourism (12)

## Traffic Sources

Traffic sources include referral sites (other websites that contain links to visitbenicia.org) and search engines. As you can see below, the City of Benicia's website continues to be the greatest source of referrals to visitbenicia.org, followed by Google searches.

The following represents the top 10 referral sources for the three-month period:  
All traffic sources sent 4,487 visits via 108 sources and mediums

Source/medium	Visits	Pages/Visit	Avg Time on Site	% New Visits	Bounce Rate
visitbenicia.org	4,487	3.52	00:02:58	80.10%	35.08%
google / organic	1,077	2.82	00:02:16	71.87%	46.34%
cityofbenicia.com / referral	834	3.90	00:03:00	78.28%	43.26%
beniciahistoricalmuseum.com / referral	383	4.41	00:03:37	79.53%	19.16%
yahoo / organic	285	3.40	00:02:30	61.47%	40.91%
bing / organic	193	2.79	00:02:20	56.24%	48.82%
facebook.com / referral	55	2.42	00:01:37	67.27%	45.45%
search / organic	39	3.13	00:01:57	62.31%	51.28%
apple.facebook.com / referral	26	1.92	00:01:28	87.50%	54.17%
app.facebook.com / referral	23	1.87	00:00:33	17.39%	52.17%

### Most Popular Content

As evidenced in the table below, among the most popular pages for visitbenicia.org during April, May and June (aside from the home page) are pages related to: the waterfront, events, shopping, restaurants, photos, history, day trips and art.

# Media Generated for Benicia

Wolf Communications, March - June 2010

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
Mercury News (San Jose)	N/A	3/10/10	449,763	\$142.00	\$1,242.50	8.75	"Dining Scene": overview of new restaurants opening in Benicia
Tri-Valley Herald (Pleasanton)	N/A	3/10/10	34,000	\$33.00	\$288.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
Contra Costa Times (Walnut Creek)	N/A	3/10/10	182,000	\$360.00	\$3,150.00	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
East County Times (Antioch)	N/A	3/10/10	33,000	\$33.00	\$288.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
West County Times (Pinole)	N/A	3/10/10	33,000	\$57.00	\$498.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
San Ramon Valley Times (Pleasanton)	N/A	3/10/10	42,000	\$33.00	\$288.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
Oakland Tribune	N/A	3/10/10	94,000	\$252.00	\$2,205.00	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
Alameda Times Star	N/A	3/10/10	7,300	\$252.00	\$2,205.00	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
Argus (Fremont)	N/A	3/10/10	32,400	\$125.00	\$1,093.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia
Hayward Daily Review	N/A	3/10/10	31,000	\$149.00	\$1,303.75	8.75 inches	"Dining Scene": overview of new restaurants opening in Benicia

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
Times-Herald (Vallejo)	Tony Burchyns	4/4/10	15,000	\$26.50	\$225.25	8.5 inches	"Benicia sending out the word on town"; description of advertising campaign
Daily Republic (Fairfield)	N/A	4/16/10	22,020	\$26.91	\$87.46	2.25 inches	"Benicia artists plan open studios." Mentions Arts Benicia Gallery.
Daily Republic (Fairfield)	N/A	4/16/10	22,020	\$26.91	\$40.37	1.5 inches	"Benicia Artists Open Studios." Mentions Arts Benicia Gallery.
Alameda Times Star	Ann Tatko - Peterson	4/18/10	7,300	\$252.00	\$567.00	2.25 inches	"Staycation Special: Free Open House." Mentions Benicia Historical Museum 25th anniversary open house.
Argus (Fremont)	Ann Tatko - Peterson	4/18/10	32,400	\$125.00	\$281.25	2.25 inches	"Staycation Special: Free Open House." Mentions Benicia Historical Museum 25th anniversary open house.
Marin Independent Journal	Ann Tatko - Peterson	4/18/10	41,100	\$155.00	\$348.75	2.25 inches	"Free Open House." Mentions Benicia Historical Museum 25th anniversary open house.
San Mateo Times	Ann Tatko - Peterson	4/18/10	39,376	\$140.00	\$315.00	2.25 inches	"Free Open House." Mentions Benicia Historical Museum 25th anniversary open house.
Daily Republic (Fairfield, CA)	N/A	4/23/10	22,020	\$26.91	\$13.46	.5 inch	Events: "Benicia Artists Open Studios." Mentions Arts Benicia Gallery.
Times-Herald (Vallejo)	Rich Freedman	4/23/10	15,800	\$26.50	\$735.38	27.75 inches	"Benicia's Brush with artistic heaven at Open Studios." Mentions around Benicia.

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
Alameda Times Star	Randy McMullen	4/30/2010	7,300	\$252.00	\$315.00	1.25 inches	"Preview Top 10. "Benicia Open Studios: Artists." Mentions Arts Benicia Gallery.
Contra Costa Times (Walnut Creek)	Randy McMullen	4/30/2010	182,000	\$360.00	\$450.00	1.25 inches	Preview Top 10. "Benicia Open Studios: Artists." Mentions Arts Benicia Gallery.
West County Times (Pinole, CA)	Randy McMullen	4/30/2010	33,000	\$57.00	\$71.25	1.25 inches	"Preview Top 10. Benicia Open Studios: Artists." Mentions Arts Benicia Gallery.
Alameda Times Star	Chrissa Ventrelle	4/30/2010	7,300	\$252.00	\$6,237.00	24.75 inches	Preview Dining Out. "Dine fine at Benicia's Lucca FR." Mentions Lucca FR.
Argus (Fremont)	Chrissa Ventrelle	4/30/2010	32,400	\$125.00	\$3,093.75	24.75 inches	Preview Dining Out. "Dine fine at Benicia's Lucca FR." Mentions Lucca FR.
Contra Costa Times (Walnut Creek)	Chrissa Ventrelle	4/30/2010	182,000	\$360.00	\$8,910.00	24.75 inches	"Preview Dining Out: Dine fine at Benicia's Lucca FR." Mentions Lucca FR.
West County Times (Pinole)	Chrissa Ventrelle	4/30/2010	33,000	\$57.00	\$1,410.75	24.75 inches	"Preview Dining Out: Dine fine at Benicia's Lucca FR." Mentions Lucca FR.
Daily Republic (Fairfield)	N/A	4/30/2010	22,020	\$26.91	\$87.46	3.25 inches	Events. "Benicia Artists Open Studios." Mentions Arts Benicia Gallery. "Garden Tour." Mentions Camellia Tea Room "Vive Benicia." Mentions First Street.
Reporter (Vacaville)	N/A	4/30/2010	19,500	\$35.85	\$35.85	1.0 inch	"Benicia Artists Open Studios." Mentions Historic Arsenal District.

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
San Francisco Chronicle (Sunday)	N/A	5/9/2010	241,000	\$122.80	\$92.10	.75 inch	"Benicia Historical Museum 25 Anniversary Open House": calendar listing
Times Herald (Vallejo)	N/A	5/25/2010	15,000	\$26.50	\$92.75	3.5 inches	"Marketers to discuss Benicia tourism strategies
Daily Republic (Fairfield)	N/A	6/4/2010	22,020	\$26.91	\$13.45	.5 inch	Events: "Viva Benicia!" Mentions First Street.
Times Herald (Vallejo)	Rich Freedman	6/4/2010	15,000	\$26.50	\$589.63	22.25 inches	"Benicia on the right path with Spenger Garden Music Series." Mentions Benicia Historical Museum.
Contra Costa Times (Walnut Creek)	N/A	6/4/2010	185,699	\$360.00	\$1,170.00	3.25 inches	Dining Scene: "A room with a view." Mentions Sailor Jack's.
West County Times (Pinole)	N/A	6/4/2010	33,000	\$57.00	\$185.25	3.25 inches	"Dining Scene: A room with a view." Mentions Sailor Jack's.
Argus (Fremont)	N/A	6/9/2010	32,400	\$125.00	\$406.25	3.25 inches	"Dining Scene: A room with a view." Mentions Sailor Jack's.
San Ramon Valley Times (Pleasanton)	N/A	6/9/2010	42,000	\$33.00	\$107.25	3.25 inches	Dining Scene: "A room with a view." Mentions Sailor Jack's.
Times-Herald (Vallejo)	N/A	6/12/2010	15,000	\$26.50	\$225.25	8.5 inches	"Benicia begins plugging itself on the airwaves": update on beginning of advertising campaign
Oakland Tribune	N/A	6/23/2010	94,000	\$252.00	\$819.00	3.25 inches	"Dining Scene: Benicia breakfast"
Contra Costa Times (Walnut Creek)	N/A	6/23/2010	33,000	\$360.00	\$1,170.00	3.25 inches	"Dining Scene: Benicia breakfast"
<b>TOTAL PRINT</b>					\$40,660.91		

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
<b>Electronic Media</b>							
InsideBayArea.com	N/A	3/10/2010	N/A	N/A	\$942.00	N/A	"Dining Scene": overview of new restaurants opening in Benicia
MercuryNews.com	N/A	3/10/2010	N/A	N/A	\$931.50	N/A	Dining Scene: overview of new restaurants opening in Benicia
MercuryNews.com	Ann Tatko-Peterson	4/18/2010	N/A	N/A	\$239.96	N/A	"Staycation Special: Free Open House." Mentions Benicia Historical Museum 25th anniversary open house.
InsideBayArea.com	Ann Tatko-Peterson	4/18/2010	N/A	N/A	\$210.93	N/A	"Free open house." Mentions Benicia Historical Museum, 25th anniversary.
Bar-stools-online.com	N/A	4/26/2010	N/A	N/A	N/A	N/A	"Review: Benicia's Lucca FR delivers eclectic menu and late hours." Mentions Lucca FR.
Californiaculinaryschoolblog.com	N/A	4/26/2010	N/A	N/A	N/A	N/A	"Review: Benicia's Lucca FR delivers eclectic menu and late hours." Mentions Lucca FR.
Minicheesecakes.biz	N/A	4/27/2010	N/A	N/A	N/A	N/A	"Review: Benicia's Lucca FR delivers eclectic menu and late hours." Mentions Lucca FR.
InsideBayArea.com	Chrissa Ventrelle	4/28/2010	N/A	N/A	N/A	N/A	"Review: Benicia's Lucca FR delivers eclectic menu and late hours." Mentions Lucca FR.

Media	Writer	Date	Circulation	Rate (in column inches, unless otherwise specified)	Ad Value	Size	Information
Squidist.com	N/A	4/28/2010	N/A	N/A	N/A	N/A	"Benicia Artists' Open Studio 2010." Mentions Arts Benicia Gallery.
HomeSection.com	N/A	4/30/2010	N/A	N/A	N/A	N/A	"Benicia Open Studios This Weekend." Mentions Arts Gallery.
Happenstand.com	N/A	5/1/2010	N/A	N/A	N/A	N/A	"Benicia Arts Open Studios." Mentions Arts Benicia.
Moreondesign.com	N/A	5/1/2010	N/A	N/A	N/A	N/A	"Benicia Artists' Open Studios 2010." Mentions Arts Benicia Gallery.
InsideBayArea.com	Jackie Burrell	6/3/2010	N/A	N/A	\$350.39	N/A	"A la Carte: New Benicia Restaurants." Mentions Sailor Jack's
ContraCostaTimes.com	Jackie Burrell	6/3/2010	N/A	N/A	\$877.50	N/A	"A la Carte: Berkeley's Dining Passport, Sailor Jack's." Mentions Sailor Jack's.
MercuryNews.com	Jackie Burrell	6/9/2010	N/A	N/A	\$346.12	N/A	"A la Carte: Berkeley's Dining Passport, Sailor Jack's." Mentions Sailor Jack's.
<b>TOTAL ELECTRONIC</b>				No standardized measurement of online ad value exists. So where there's a print version, we applied a value of 75% of the printed article.	\$3,898.40		
<b>TOTAL MEDIA VALUE</b>					<b>\$44,559.31</b>		



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010**  
**CONSENT CALENDAR**

**DATE** : August 23, 2010  
**TO** : City Manager  
**FROM** : Administrative Services Director  
**SUBJECT** : **AMENDMENT TO THE CALRECYCLE USED OIL PAYMENT PROGRAM RESOLUTION**

**RECOMMENDATION:**

Adopt an amendment to the resolution that authorized the submittal of a grant application made available through CalRecycle for FY 2010/2011 for the Used Oil Payment Program.

**EXECUTIVE SUMMARY:**

On July 6, 2010, Council approved Resolution No. 10-81, which referenced language that is no longer used by CalRecycle to refer to the Used Oil Payment Program (OPP). Under the California Oil Recycling Enhancement Act and CalRecycle, the City is authorized to apply for grant funds made available by CalRecycle. The previously approved resolution which allowed the City Manager to execute a grant application through CalRecycle on behalf of the City for Fiscal Year 2010– 2011 for the Used Oil Payment Program cannot be used by Calrecycle. The Resolution referred to the Oil Payment Program for FY 2010-2011, as Cycle 16 and that language must be amended to remove the Cycle 16 reference so that the application can continue to be processed by CalRecycle.

This year's application to the CalRecycle Oil Payment Program (OPP) for FY 2010/11 will provide funding for activities that reduce the amount of illegally disposed used oil, recycle used oil/used oil filters, reclaim used oil and to educate citizens and increase awareness of the program. The resolution amendment approved on this date will supersede Resolution 10-81.

**BUDGET IMPACT:**

There is no budget impact to the General Fund.

**GENERAL PLAN:**

Relevant General Plan Goals include:

- Overarching Goal of the General Plan: Sustainability

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies include:

- Strategic Issue 2: Protecting and Enhancing the Environment
  - Strategy: Pursue and adopt sustainable practices

Attachments:

- Proposed Resolution (Corrected)
- Resolution 10-81

**RESOLUTION NO. 10-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE CITY MANAGER TO FILE AN APPLICATION FOR THE CALRECYCLE OIL PAYMENT PROGRAM FOR FY 2010/11 WHICH PROVIDES FUNDING FOR ACTIVITIES THAT REDUCE THE AMOUNT OF ILLEGALLY DISPOSED USED OIL, RECYCLE USED OIL/USED OIL FILTERS, AND RECLAIM USED OIL**

**WHEREAS**, pursuant to Public Resources Code § 48690 the Department of Resources Recycling and Recovery (CalRecycle), formerly known as the California Integrated Waste Management Board, has established the Used Oil Payment Program (OPP) to make payments to qualifying jurisdictions for implementation of their used oil programs; and

**WHEREAS**, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

**WHEREAS**, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council authorizes the submittal of a Used Oil Payment Program application to CalRecycle.

**BE IT FURTHER RESOLVED** that the City Manager, or his designee, is hereby authorized and empowered to execute in the name of the City of Benicia all documents including, but not limited to, applications, agreements, annual reports including expenditure reports and amendments necessary to secure said payments to support our Used Oil Collection Program.

**BE IT FURTHER RESOLVED** that this authorization is effective until rescinded by the City Council of the City of Benicia.

**BE IT FURTHER RESOLVED THAT** Resolution No. 10-81 is hereby superseded.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 7<sup>th</sup> day of September, 2010 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

RESOLUTION NO. 10-81

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE CITY MANAGER TO FILE AN APPLICATION FOR CALRECYCLE FUND CYCLE 16 OIL PAYMENT PROGRAM FOR FY 2010/11 WHICH PROVIDES FUNDING FOR ACTIVITIES THAT REDUCE THE AMOUNT OF ILLEGALLY DISPOSED USED OIL, RECYCLE USED OIL/USED OIL FILTERS, AND RECLAIM USED OIL**

**WHEREAS**, pursuant to Public Resources Code § 48690 the Department of Resources Recycling and Recovery (CalRecycle), formerly known as the California Integrated Waste Management Board, has established the Used Oil Payment Program (OPP) to make payments to qualifying jurisdictions for implementation of their used oil programs; and

**WHEREAS**, in furtherance of this authority CalRecycle is required to establish procedures governing the administration of the Used Oil Payment Program; and

**WHEREAS**, CalRecycle's procedures for administering the Used Oil Payment Program require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the Used Oil Payment Program.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council authorizes the submittal of a Used Oil Payment Program application to CalRecycle.

**BE IT FURTHER RESOLVED** that the City Manager, or his designee, is hereby authorized and empowered to execute in the name of the City of Benicia all documents including, but not limited to, applications, agreements, annual reports including expenditure reports and amendments necessary to secure said payments to support our Used Oil Collection Program.

**BE IT FURTHER RESOLVED** that this authorization is effective until rescinded by the City Council of the City of Benicia.

\*\*\*\*\*

On motion of Council Member **Hughes**, seconded by Council Member **Ioakimedes**, 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 6<sup>th</sup> day of July, 2010 and adopted by the following vote:

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

Noes: None

Absent: None



Elizabeth Patterson, Mayor

ATTEST:



Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010  
CONSENT CALENDAR**

**DATE** : September 1, 2010

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **SECOND READING OF AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEAL CASE**

**RECOMMENDATION:**

Adopt the ordinance to modify and update the existing city inclusionary housing ordinance.

**EXECUTIVE SUMMARY:**

On August 17, 2010 City Council introduced an ordinance to amend the city's inclusionary housing ordinance in regard to its application to rental developments.

**BUDGET INFORMATION:**

There is no budget impact.

**GENERAL PLAN:**

Relevant general Plan Goals and Policies include:

- Goal #1: Improve the institutional framework and remove governmental constraints for providing affordable housing, to the extent feasible and the city' control.
  - Policy 1.03: Continue to review and revise as necessary, regulatory standards applicable to compliance with State housing law to remove significant governmental constraints.
- Goal #2: Promote the development of and adequate supply and mix of housing to meet existing and future housing needs.
  - Policy 2.01: Require affordable housing in residential developments under an "inclusionary" housing program and disperse affordable housing throughout the City to avoid concentration in any one part of the City.

- Policy 2.03: Seek appropriate private, local, state, and federal funding to implement housing programs for very low-, low- and moderate-income households.
- Goal #5: Ensure equal housing opportunities for all persons in Benicia regardless of race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source income.
  - Policy 5.02: Administer zoning and land use policies to facilitate the provision of housing without regard to race, religion, sex, marital status, ancestry, national origin, color, disability, family status, sexual orientation, or source of income.

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues include:

- Strategic Issue #5: Maintain and Enhance High Quality of Life by facilitating construction of affordable housing.

**BACKGROUND:**

The City of Benicia, in order to provide affordable housing in the community, adopted an Inclusionary Housing Ordinance in 2000 requiring that any new residential development of ten (10) or more units include 10% of the total number of market rate dwelling units in the development as units affordable to very low- and low-income households. This ordinance applied to development of for sale and rental housing units. The California Court of Appeal in *Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (“Palmer”) held that inclusionary requirements applied to rental housing violate the Costa-Hawkins Act, the state law governing rent control. The case only applies to rental housing. The Key impacts of Palmer include:

- A requirement for affordable rental housing in newly created rental developments receiving no assistance from the local government is no longer permitted;
- Rents may be limited if the developer/builder received either a financing contribution or a type of assistance specified in density bonus law (i.e., including regulatory relief) and agrees by contract to restrict the rents; and
- Affordable housing requirements imposed on for-sale housing are not affected by Palmer.

Communities cannot, therefore, impose affordable housing requirements on rental housing in the wake of Palmer. More specifically, communities cannot impose such requirements on a developer/builder who does not receive any

financial assistance or regulatory incentive of the type included in density bonus law. Developers/builders receiving financial assistance can still be required to provide affordable rental housing.

The existing Benicia inclusionary housing ordinance needs to be updated to reflect the Palmer case. The ordinance has been modified to reflect the provisions of Palmer as it pertains to rental and for-sale units. The Planning Commission reviewed this ordinance at their July 8, 2010 meeting and recommends its adoption.

Attachment:

- Proposed Ordinance



**CITY OF BENICIA**

**ORDINANCE NO. 10-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTIONS C. (DEFINITIONS), D. (GENERAL REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) AND E. (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO AMEND THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS**

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

**Section 1.**

Subsections C. (Definitions) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add a new definition to read as follows:

17.70.320    Inclusionary housing.

C.    Definitions.

“For-sale unit development” means a development project where units are sold to a buyer who takes title to the unit via a mortgage instrument.

**Section 2.**

Subsections D.1. and D 2. (General requirements for new residential developments) and E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code are amended to amend the application of the requirements to certain projects to read as follows:

D.    General requirements for new residential development.

1.    Any residential development of for-sale units where there are 10 or more units shall include 10 percent of the total number of market rate dwelling units within the development as units affordable to, and occupied, very-low- and low-income households, for a minimum of 30 years from the recordation of each resale control agreement or affordable rental restriction agreement, as the case may be, for the units. One-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, very-low-income households and one-half of the total number of inclusionary units within the development shall be designated as units affordable to, and occupied by, either very-low or low-income households. When the number of inclusionary units to be provided is an odd number

(i.e., 10 percent of 10 units is one), the odd-numbered unit shall be provided at a level affordable to a household with an income of not more than 60 percent of area median income. The city council may approve an alternative of equivalent value to satisfy all of part of the inclusionary requirement, including payment of in-lieu housing fees, dedication of developable land, or an alternative in-lieu contribution package.

2. For residential development of for-sale units of 10 or more units, building permits shall only be issued subsequent to the execution of a written agreement between the city and the developer or its designee which will assure compliance with the provisions of this section. Such agreement shall specify the timing of the construction of the inclusionary units and/or the provisions of the in-lieu alternative (payment of an in-lieu) fee, dedication of developable land, or an alternative in-lieu contribution package acceptable to the city council), the number of inclusionary units a appropriate price or rent levels, the term of affordability, provision for the city's income certification an screening of potential purchasers and/or renters of inclusionary units, a resale control agreement and/or affordable rental restriction agreement, if applicable, and such reasonable information as shall be required by the city for the purpose of determining the developer's compliance with this section.

All inclusionary units in a for-sale unit development and/or phases or a development shall be constructed concurrently with or prior to the construction of market rate units, unless the city council determines an alternative phasing schedule to facilitate affordable housing development and the developer enters into a written agreement setting forth terms for satisfaction of the inclusionary housing requirements. Each phase of a development shall include the same or greater proportion of inclusionary units as are required for the total development.

### **Section 3.**

Subsection E. (Inclusionary unit requirements for rental developments) of Section 17.70.320 (Inclusionary Housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding E.4. to amend the application of the requirements to certain projects to read as follows:

E. Inclusionary unit requirements for rental developments.

4. For residential development of for-rental units where there is no financial assistance from the city or a type of assistance specified in the city's density bonus law, the provisions cited in sections D.1-7 and E.1-3 shall not apply.

For residential development of for-rental units where the developer receives financial assistance from the city, or a density bonus or other regulatory relief and or the developer voluntarily agrees by contract to restrict rents as affordable according to the provisions found herein, sections D. and E. shall apply.

### **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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 17<sup>th</sup> day of August, 2010, and adopted at a regular meeting of the Council held on the 7<sup>th</sup> day of September 2010, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



**AGENDA ITEM  
CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010  
CONSENT CALENDAR**

**DATE** : September 1, 2010  
**TO** : City Council  
**FROM** : City Attorney  
**SUBJECT** : **CONTINUING THE APPOINTMENT OF THE INTERIM CITY  
MANAGER**

**RECOMMENDATION:**

Adopt the resolution approving an extension to the agreement with Jim Erickson for interim city manager services.

**EXECUTIVE SUMMARY:**

At the previous city council meeting the City Council appointed Jim Erickson as interim city manager. The term of the agreement is September 15, 2010 unless mutually extended by the parties. The parties desire to extend the agreement until October 15, 2010 or until a new city manager can be hired, if earlier. This action amends the agreement to extend the term.

**BUDGET INFORMATION:**

There is some small savings from this agreement. The agreement continues the 3% reduction to salary the City Manager previously agreed to. Although this position is an employee position, there is no cost for health and retirement benefits typical of an employee position per the agreement.

**GENERAL PLAN:**

N/A

**STRATEGIC PLAN:**

N/A

**BACKGROUND:**

Effective July 15, 2010, Jim Erickson retired as City Manager. He agreed to continue to provide city manager services on an interim basis until September

15, 2010. It was hoped that a new city manager would be on board by then. The agreement to provide the interim city manager services provided for an extension if both parties agree. The parties would like to extend the agreement until October 15, 2010 or until a new city manager is hired, if earlier.

The attached agreement provides for the same salary compensation as previously provided to the City Manager, including the 3% reduction. Rather than call out specific office hours, the agreement specifies the Interim City Manager will work an average of 40 hours per week. Necessary and reasonable expenses will be reimbursed. No health care coverage or retirement benefits are provided.

Attachments:

- Resolution
- Amendment Agreement
- Original Agreement

**RESOLUTION NO. 10-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
HIRING JIM ERICKSON AS THE INTERIM CITY MANAGER**

**WHEREAS**, Jim Erickson currently serves as the Interim City Manager for the City and has performed his duties in a praiseworthy and diligent manner; and

**WHEREAS**, the City Council desires to have Mr. Erickson continue to serve the City as Interim City Manager on an interim basis until a recruitment can be done and a new City Manager is hired; and

**WHEREAS**, Mr. Erickson is willing to serve until October 15, 2010 or until a mutually agreed upon date.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BENICIA** that an extension to the agreement hiring Jim Erickson as Interim City Manager, in an employee capacity, is hereby approved.

\*\*\*\*\*

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 7<sup>th</sup> day of September, 2010, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Elizabeth Patterson, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk



**AGREEMENT EXTENDING THE TIME  
FOR INTERIM CITY MANAGER SERVICES**

This Amendment of the Agreement, entered into this 8<sup>th</sup> day of September, 2010, by and between the City of Benicia, a municipal corporation (“CITY”) and Jim Erickson (“INTERIM CITY MANAGER”), is made with reference to the following:

RECITALS:

A. On July 16, 2010, an agreement was entered into by and between CITY and Jim Erickson, (“Agreement”).

B. CITY and INTERIM CITY MANAGER desire to modify the Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, it is mutually agreed by and between and undersigned parties as follows:

1. The first sentence of Paragraph 2 of the Agreement is modified to read as follows: “The services of Jim Erickson (“Interim City Manager”) shall commence on July 16, 2010 and shall continue until October 15, 2010 unless extended by mutual agreement or terminated by the hiring of a new city manager before October 15, 2010.”
2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this modification of Agreement to be executed on the day and year first above written.

CITY OF BENICIA

INTERIM CITY MANAGER

\_\_\_\_\_  
Elizabeth Patterson, Mayor

\_\_\_\_\_  
Jim Erickson

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Heather C. Mc Laughlin  
City Attorney

\_\_\_\_\_  
Lisa Wolfe  
City Clerk



## AGREEMENT FOR INTERIM CITY MANAGER SERVICES

This Employment Agreement for Interim City Manager Services is entered into effective July 16, 2010 between the City of Benicia ("City") and Jim Erickson.

WHEREAS, the City desires to hire Jim Erickson as its Interim City Manager;  
and

WHEREAS, Jim Erickson is qualified and willing to serve as the Interim City Manager.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

- 1. Scope of Services.** The City hereby hired Jim Erickson as its Interim City Manager to perform the duties of the City Manager as set forth in Sections 2.08.070 and 2.08.080 2.08 of the Benicia Municipal Code and such other duties as may be required of the City Manager by the City Council.
- 2. Time of Performance.** The services of Jim Erickson ("Interim City Manager") shall commence on July 16, 2010 and shall continue until September 15, 2010 unless extended by mutual agreement. It is agreed that the Interim City Manager shall hold regular office hours and shall attend day and night meetings, including City Council meetings, as necessary and proper for the scope of services. It is anticipated that the Interim City Manager will work an average of 40 hours per week but shall be entitled to take, without deduction from his compensation, regular city holidays off as well as 14 hours per month in lieu of vacation. An additional time off which reduced the Interim City Manager's hours below the 40 hour average shall be without pay.
- 3. Compensation.** The Interim City Manager shall receive compensation in the amount of \$16,310.55 per month (\$16,815 less 3%). Any necessary and reasonable expenses shall be reimbursed according to City policy. Training and education expenses shall not be considered necessary or reasonable except that expenses for Mayor's Conference Meetings, Division Meetings of the League of California Cities and similar local meetings where the Interim City Manager is representing the City are reimbursable.
- 4. Retired Employee.** It is understood that the Interim City Manager, in the performance of the work and services agreed to be performed, shall act as and be an employee of the City. The Interim City Manager shall, however, obtain no rights to retirement benefits or other benefits which accrue to City's employees except as those benefits are specified in this agreement, and the Interim City Manager hereby expressly waives any claim he may have to any such rights.
- 5. Termination.** The City Council may terminate this Agreement at any time without cause upon a three-fifth's (3/5) vote of the City Council. Upon termination, the Interim City Manager shall be entitled to compensation for services performed up to the effective

date of termination. The Interim City Manager may terminate this Agreement at any time without cause upon providing 30 days' written notice to the City Council.

**6. Entire Agreement.** This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

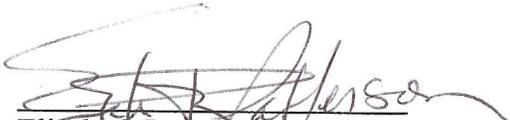
**7. Amendments.** This Agreement may be modified or amended only by a written document executed by both the Interim City Manager and the City and approved as to form by the City Attorney.

**8. Litigation Expenses and Attorneys' Fees.** If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF BENICIA

INTERIM CITY MANAGER

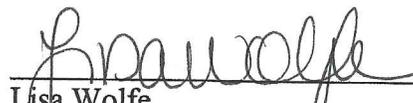
  
Elizabeth Patterson, Mayor

  
Jim Erickson

APPROVED AS TO FORM:

ATTEST:

  
Heather C. Mc Laughlin  
City Attorney

  
Lisa Wolfe  
City Clerk

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CITY OF BENICIA

INTERIM CITY MANAGER

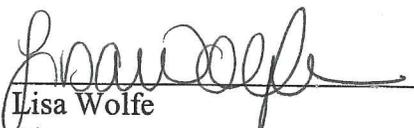
  
Elizabeth Patterson, Mayor

  
Jim Erickson

APPROVED AS TO FORM:

ATTEST:

  
Heather C. Mc Laughlin  
City Attorney

  
Lisa Wolfe  
City Clerk

**AGENDA ITEM**  
**CITY COUNCIL MEETING: SEPTEMBER 7, 2010**  
**INFORMATIONAL ITEM**

**DATE** : August 31, 2010

**TO** : Mayor & City Council

**FROM** : City Manager

**SUBJECT** : **UPDATE ON 2010-11 BUDGET BALANCING MEASURES**

**RECOMMENDATION:**

This is an informational report. There is no action necessary at this time.

**EXECUTIVE SUMMARY:**

At the August 24<sup>th</sup> study session, Council considered recommendations for balancing the 2010-11 budget, which currently has a projected shortfall approaching \$1.2 million. An overview of the process for gathering input from the community regarding balancing the City's budget was reviewed, including the results of an online survey and two community workshops. The process resulted in a list of 26 cost saving measures and 3 revenue measures that would offset the budget deficit by \$1,200,000 annually. The Council provided direction to staff regarding working with the various stakeholders and gathering additional suggestions for budget balancing measures. At the September 7<sup>th</sup> Council meeting, staff will provide Council with a brief update on progress made to this end and next steps.

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

**BACKGROUND:**

On June 1, 2010, the City Council directed the City Manager to develop recommendations that would balance the FY 2010-11 General Fund Budget in a way that would address the structural deficit this year and stabilize the delivery of services in the future. An inclusive process for addressing the structural deficit based on prioritizing services was initiated and the results of this process were reviewed at the August 24<sup>th</sup> budget study session. The process resulted in a list of

26 cost saving measures and 3 revenue measures that will offset the budget deficit by \$1,200,000 annually if all of the measures are approved by the City Council.

At the budget study session, in addition to the presentation from staff on the various measures, the City Council received input from the public. The Council then discussed the proposed measures, with particular focus on those noted below:

- ❑ Impacts associated with closing the pool for four months of the year
- ❑ Reductions in support to the Benicia Unified School District
- ❑ Impacts to human services grantees of reducing City grant funding
- ❑ Impacts to arts & culture grantees of reducing City grant funding
- ❑ Impact to employee groups of reductions in employee compensation

At the close of the study session, the Council directed staff to explore possible options for generating revenue, as well as working directly with stakeholders to discuss alternatives that would lessen the impact of proposed cuts. Listed below is a summary of the steps that have either already been initiated, or will be over the next week or so, in order to achieve this end:

- ❑ Pool Closure:
  - Staff is meeting with the groups affected by the proposed partial closure.
- ❑ Benicia Unified School District:
  - Staff met with the Superintendent of Schools on August 26<sup>th</sup> and will continue to work with the School District regarding the proposed cuts.
- ❑ Human Services:
  - The Human Services Board will meet on September 13<sup>th</sup> and will be discussing possible options for achieving the cost savings that is currently proposed via a reduction to human services grantees. Current grantees will also be invited to this meeting.
- ❑ Arts & Culture:
  - The Commission met on August 30<sup>th</sup> and discussed possible recommendation to the Council on alternative ways to generate the cost savings that is currently proposed via a reduction to arts grantees.
- ❑ Youth Action Coalition (YAC):
  - The YAC met on August 30<sup>th</sup> and discussed the proposed cuts, including the reduction in funding to the Second Step program, which is partially funded out of the YAC's budget.
- ❑ Employee Groups:

- The City Manager's office will be inviting employee group representatives to meet in order to discuss any additional ideas they may have for achieving the needed savings.

Staff will be returning to Council with an updated proposal regarding budget balancing measures on September 21<sup>st</sup>. The updated version will incorporate any feasible alternatives that are gained based on outreach to stakeholders.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010**  
**INFORMATIONAL ITEM**

**DATE** : July 18, 2010

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **PROPOSITION 19 THE REGULATE, CONTROL AND TAX CANNABIS ACT OF 2010**

**RECOMMENDATION:**

Informational report; no action requested. Staff recommends agendizing at a future meeting the adoption of a resolution opposing the proposition based on the information available at this time.

**EXECUTIVE SUMMARY:**

Proposition 19, also known as the Regulate, Control and Tax Cannabis Act of 2010, is a California ballot proposition which is on the November 2, 2010 California statewide ballot as an initiated state statute. Proposition 19, if approved by voters, will permit the possession and cultivation of marijuana throughout the state. It authorizes local governments, should they choose to do so, to enact their own regulatory and taxing laws with respect to marijuana. It does not authorize the state of California to impose any marijuana-specific taxes. It restricts the ability of employers to discipline employees for marijuana possession or use. Medical marijuana is permissible in California, due to the enactment of Proposition 215 in 1996.

**BUDGET INFORMATION:**

None at this time.

**GENERAL PLAN:**

N/A

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Goal 1.00: Protect Community Health and Safety
- Strategy 1.30: Protect neighborhoods from risks to health and safety

## **BACKGROUND:**

The Public Safety First Campaign has been formed to oppose Proposition 19, The Regulate, Control and Tax Cannabis Act of 2010. In summary, this initiative has several flaws which will impact communities and public safety, which are listed below:

1. A resident or "guest" of a property owner may use an entire vacant lot for marijuana cultivation, without the necessity of getting permission from anyone. (Section 11300(a)(ii) of the measure)
2. An apartment or condo complex having 50 units could dedicate 1250 square feet to marijuana cultivation even if some of the residents objected. (Section 11300(a)(ii) of the measure)
3. Entire warehouse operations involving cultivation and processing of marijuana could be operated without the necessity of getting permission from anyone. (Section 11300(a)(iv) of the measure)
4. The law does not provide for statewide regulation and oversight, instead, provides that each of the 400 plus cities and the 58 counties enact their own regulatory and tax provisions. This effectively creates over 450 marijuana nations. (Section 11301 of the measure)
5. The law permits city councils or boards of supervisors to permit marijuana cultivation in public parks and recreation areas. (Section 11300(a)(ii) of the measure)
6. The measure authorizes advertising of marijuana. (Section 11301(h) of the measure)
7. There is no prohibition against a local government licensing someone to cultivate, distribute or sell marijuana even if they have a criminal record – including a record for drug trafficking. (Section 11300 of the measure)
8. The only "marijuana taxes" that can be levied are those by local governments, (Section 11302(a)) and the law does not authorize any statewide marijuana specific taxes. (Section 11302(b)) In other words, the state cannot authorize any specific taxes on marijuana.
9. The law prohibits employers from disciplining employees who test positive for marijuana, or who are in possession of marijuana in the workplace. This prohibition applies to all employers. In other words, if a police officer tests positive for marijuana, he/she must still be permitted to go out on patrol. (Section 11304(c) of the measure).
10. It may be that the law is in violation of the federal Drug-Free Workplace Act of 1988. Since employees may test positive for marijuana and are permitted to possess marijuana while at work, California employers (and California institutions) may not be able to make the drug-free workplace affirmation required by federal law. This could jeopardize billions of dollars in federal funds, including federal funds received by small businesses,

businesses that contract with the federal government, and even the state of California.

**List of organizations opposing the initiative:**

Mothers Against Drunk Driving (MADD), along with every major state and national anti-drug abuse organization, the California District Attorneys Association, the California Peace Officer's Association, the California Chamber of Commerce, the California Bus Association, the California Police Chiefs Association, the California Narcotic Officers' Association and dozens of other civic, community and public safety organizations including: D.A.R.E. America, Los Angeles County Police Chiefs Association, Inland Valley Drug Free Community Coalition, Coalition for a Drug-Free California, Californians for Drug Free Youth.

**List of organizations supporting the initiative:**

The proponent that placed the initiative on the ballot is Richard Lee, founder of a pro-marijuana advocacy group called "Oaksterdam University" in Oakland, CA and the NAACP.

Attachments:

- ❑ Proposed Initiative Measure
- ❑ Marijuana Legalization Talking Points from California Police Chiefs Association
- ❑ Lovell Analysis
- ❑ Cooley Analysis



# LAW OFFICES OF JAMES WHEATON

CALIFORNIA BUILDING  
1736 FRANKLIN STREET, 9TH FLOOR  
OAKLAND, CALIFORNIA 94612

TEL: 510/208-4554  
FAX: 510/208-4562  
WHEATON@WELL.COM

27 July 2009

09-0024 Amdt. #/S

The Honorable Jerry Brown  
Attorney General of California  
ATTN: Mr. Neil Amos  
Initiative Coordinator  
Office of the Attorney General  
1300 I Street, 17<sup>th</sup> floor  
Sacramento, CA 95814  
916/445-4752

**RECEIVED**

AUG 04 2009

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

By Overnight courier

Re: Initiative Measure 09-0024: "Regulate, Control, Tax Cannabis"

Dear Mr. Amos:

Please find enclosed an amendment package for this proposed initiative measure.

The amendments are technical and nonsubstantive. They do not change the chief purposes or points of the measure.

For your convenience, a redlined copy showing the amendments is attached as Exhibit A. They are limited to pages 2, 3 and 5.

In addition, the complete text of the initiative as amended is attached as Exhibit B to this letter.

Last, I attach original signatures of the proponents approving and explaining the precise amendments. as Exhibit C.

Cordially,

James Wheaton

Enclosures: as noted

**X.A.2.5**

**The Regulate, Control and Tax Cannabis Act of 2010**

09 - 0024

Section 1: Name

This Act shall be known as the "Regulate, Control and Tax Cannabis Act of 2010."

Amdt. #1 S

Section 2: Findings, Intent and Purposes

This Act, adopted by the People of the State of California, makes the following Findings and Statement of Intent and Purpose:

A. Findings

1. California's laws criminalizing cannabis (marijuana) have failed and need to be reformed. Despite spending decades arresting millions of non-violent cannabis consumers, we have failed to control cannabis or reduce its availability.
2. According to surveys, roughly 100 million Americans (around 1/3 of the country's population) acknowledge that they have used cannabis, 15 million of those Americans having consumed cannabis in the last month. Cannabis consumption is simply a fact of life for a large percentage of Americans.
3. Despite having some of the strictest cannabis laws in the world, the United States has the largest number of cannabis consumers. The percentage of our citizens who consume cannabis is double that of the percentage of people who consume cannabis in the Netherlands, a country where the selling and adult possession of cannabis is allowed.
4. According to The National Research Council's recent study of the 11 U.S. states where cannabis is currently decriminalized, there is little apparent relationship between severity of sanctions and the rate of consumption.
5. Cannabis has fewer harmful effects than either alcohol or cigarettes, which are both legal for adult consumption. Cannabis is not physically addictive, does not have long term toxic effects on the body, and does not cause its consumers to become violent.
6. There is an estimated \$15 billion in illegal cannabis transactions in California each year. Taxing and regulating cannabis, like we do with alcohol and cigarettes, will generate

billions of dollars in annual revenues for California to fund what matters most to Californians: jobs, health care, schools and libraries, roads, and more.

7. California wastes millions of dollars a year targeting, arresting, trying, convicting, and imprisoning non-violent citizens for cannabis related offenses. This money would be better used to combat violent crimes and gangs.
8. The illegality of cannabis enables for the continuation of an out-of-control criminal market, which in turn spawns other illegal and often violent activities. Establishing legal, regulated sales outlets would put dangerous street dealers out of business.

B. Purposes

1. Reform California's cannabis laws in a way that will benefit our state.
2. Regulate cannabis like we do alcohol: Allow adults to possess and consume small amounts of cannabis.
3. Implement a legal regulatory framework to give California more control over the cultivation, processing, transportation, distribution, and sales of cannabis.
4. Implement a legal regulatory framework to better police and prevent access to and consumption of cannabis by minors in California.
5. Put dangerous, underground street dealers out of business, so their influence in our communities will fade.
6. Provide easier, safer access for patients who need cannabis for medical purposes.
7. Ensure that if a city decides not to tax and regulate the sale of cannabis, that buying and selling cannabis within that city's limits remain illegal, but that the city's citizens still have the right to possess and consume small amounts, except as permitted under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.
8. Ensure that if a city decides it does want to tax and regulate the buying and selling of cannabis (to and from adults only), that a strictly controlled legal system is implemented to oversee and regulate cultivation, distribution, and sales, and that the city will have control over how and how much cannabis can be bought and sold, except as permitted

under Health and Safety Sections 11362.5 and 11362.7 through 11362.9.

9. Tax and regulate cannabis to generate billions of dollars for our state and local governments to fund what matters most: jobs, healthcare, schools and libraries, parks, roads, transportation, and more.
10. Stop arresting thousands of non-violent cannabis consumers, freeing up police resources and saving millions of dollars each year, which could be used for apprehending truly dangerous criminals and keeping them locked up, and for other essential state needs that lack funding.
11. Allow the Legislature to adopt a statewide regulatory system for a commercial cannabis industry.
12. Make cannabis available for scientific, medical, industrial, and research purposes.
13. Permit California to fulfill the state's obligations under the United States Constitution to enact laws concerning health, morals, public welfare and safety within the State.
14. Permit the cultivation of small amounts of cannabis for personal consumption.

C. Intent

1. This Act is intended to limit the application and enforcement of state and local laws relating to possession, transportation, cultivation, consumption and sale of cannabis, including but not limited to the following, whether now existing or adopted in the future: Health and Safety Code sections 11014.5 and 11364.5 [relating to drug paraphernalia]; 11054 [relating to cannabis or tetrahydrocannabinols]; 11357 [relating to possession]; 11358 [relating to cultivation]; 11359 [possession for sale]; 11360 [relating to transportation and sales]; 11366 [relating to maintenance of places]; 11366.5 [relating to use of property]; 11370 [relating to punishment]; 11470 [relating to forfeiture]; 11479 [relating to seizure and destruction]; 11703 [relating to definitions regarding illegal substances]; 11705 [actions for use of illegal controlled substance]; Vehicle Code sections 23222 and 40000.15 [relating to possession].
2. This Act is not intended to affect the application or enforcement of the following state

laws relating to public health and safety or protection of children and others: Health and Safety Code sections 11357 [relating to possession on school grounds]; 11361 [relating to minors as amended herein]; 11379.6 [relating to chemical production]; 11532 [relating to loitering to commit a crime or acts not authorized by law]; Vehicle Code section 23152 [relating to driving while under the influence]; Penal Code section 272 [relating to contributing to the delinquency of a minor]; nor any law prohibiting use of controlled substances in the workplace or by specific persons whose jobs involve public safety.

### Section 3: Lawful Activities

Article 5 of Chapter 5 of Division 10 of the Health and Safety Code, commencing with section 11300 is added to read:

#### Section 11300: Personal Regulation and Controls

- (a) Notwithstanding any other provision of law, it is lawful and shall not be a public offense under California law for any person 21 years of age or older to:
- (i) Personally possess, process, share, or transport not more than one ounce of cannabis, solely for that individual's personal consumption, and not for sale.
  - (ii) Cultivate, on private property by the owner, lawful occupant, or other lawful resident or guest of the private property owner or lawful occupant, cannabis plants for personal consumption only, in an area of not more than twenty-five square feet per private residence or, in the absence of any residence, the parcel. Cultivation on leased or rented property may be subject to approval from the owner of the property. Provided that, nothing in this section shall permit unlawful or unlicensed cultivation of cannabis on any public lands.
  - (iii) Possess on the premises where grown the living and harvested plants and results of any harvest and processing of plants lawfully cultivated pursuant to section 11300(a)(ii), for personal consumption.
  - (iv) Possess objects, items, tools, equipment, products and materials associated with

activities permitted under this subsection.

- (b) “Personal consumption” shall include but is not limited to possession and consumption, in any form, of cannabis in a residence or other non-public place, and shall include licensed premises open to the public authorized to permit on-premises consumption of cannabis by a local government pursuant to section 11301.
- (c) “Personal consumption” shall not include, and nothing in this Act shall permit cannabis:
  - (i) possession for sale regardless of amount, except by a person who is licensed or permitted to do so under the terms of an ordinance adopted pursuant to section 11301;
  - (ii) consumption in public or in a public place;
  - (iii) consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator;
  - (iv) smoking cannabis in any space while minors are present.

#### Section 11301: Commercial Regulations and Controls

Notwithstanding any other provision of state or local law, a local government may adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

- (a) cultivation, processing, distribution, the safe and secure transportation, sale and possession for sale of cannabis, but only by persons and in amounts lawfully authorized;
- (b) retail sale of not more than one ounce per transaction, in licensed premises, to persons 21 years or older, for personal consumption and not for resale;
- (c) appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;
- (d) age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such licensed premises are 21 or older;
- (e) consumption of cannabis within licensed premises;

- (f) safe and secure transportation of cannabis from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption of cannabis;
- (g) prohibit and punish through civil fines or other remedies the possession, sale, possession for sale, cultivation, processing, or transportation of cannabis that was not obtained lawfully from a person pursuant to this section or section 11300;
- (h) appropriate controls on licensed premises for sale, cultivation, processing, or sale and on-premises consumption, of cannabis, including limits on zoning and land use, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;
- (i) appropriate environmental and public health controls to ensure that any licensed premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;
- (j) appropriate controls to restrict public displays, or public consumption of cannabis;
- (k) appropriate taxes or fees pursuant to section 11302;
- (l) such larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under section 11300(a) for personal possession and cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons authorized to do so under this section;
- (m) any other appropriate controls necessary for protection of the public health and welfare.

**Section 11302: Imposition and Collection of Taxes and Fees**

- (a) Any ordinance, regulation or other act adopted pursuant to section 11301 may include imposition of appropriate general, special or excise, transfer or transaction taxes, benefit assessments, or fees, on any activity authorized pursuant to such enactment, in order to permit the local government to raise revenue, or to recoup any direct or indirect costs associated with the authorized activity, or the permitting or licensing scheme, including

without limitation: administration; applications and issuance of licenses or permits; inspection of licensed premises and other enforcement of ordinances adopted under section 11301, including enforcement against unauthorized activities.

- (b) Any licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties or other financial responsibility imposed on all or similarly situated businesses, facilities or premises, including without limitation income taxes, business taxes, license fees, and property taxes, without regard to or identification of the business or items or services sold.

#### Section 11303: Seizure

- (a) Notwithstanding sections 11470 and 11479 of the Health and Safety Code or any other provision of law, no state or local law enforcement agency or official shall attempt to, threaten to, or in fact seize or destroy any cannabis plant, cannabis seeds or cannabis that is lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used in compliance with this Act or any local government ordinance, law or regulation adopted pursuant to this Act.

#### Section 11304: Effect of Act and Definitions

- (a) This Act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in dangerous activities such as driving, or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive.
- (b) Nothing in this Act shall be construed or interpreted to permit interstate or international transportation of cannabis. This Act shall be construed to permit a person to transport cannabis in a safe and secure manner from a licensed premises in one city or county to a licensed premises in another city or county pursuant to any ordinances adopted in such cities or counties, notwithstanding any other state law or the lack of any such ordinance

in the intervening cities or counties.

- (c) No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(d) Definitions

For purposes of this Act:

- (i) "Marijuana" and "cannabis" are interchangeable terms that mean all parts of the plant Genus Cannabis, whether growing or not; the resin extracted from any part of the plant; concentrated cannabis; edible products containing same; and every active compound, manufacture, derivative, or preparation of the plant, or resin.
- (ii) "One ounce" means 28.5 grams.
- (iii) For purposes of section 11300(a)(ii) "cannabis plant" means all parts of a living Cannabis plant.
- (iv) In determining whether an amount of cannabis is or is not in excess of the amounts permitted by this Act, the following shall apply:
- (a) only the active amount of the cannabis in an edible cannabis product shall be included;
- (b) living and harvested cannabis plants shall be assessed by square footage, not by weight in determining the amounts set forth in section 11300(a);
- (c) in a criminal proceeding a person accused of violating a limitation in this Act shall have the right to an affirmative defense that the cannabis was reasonably related to his or her personal consumption.
- (v) "residence" means a dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person or persons for residential purposes, and includes that portion of any structure intended for both

commercial and residential purposes.

- (vi) “local government” means a city, county, or city and county.
- (vii) “licensed premises” is any commercial business, facility, building, land or area that has a license, permit or is otherwise authorized to cultivate, process, transport, sell, or permit on-premises consumption, of cannabis pursuant to any ordinance or regulation adopted by a local government pursuant to section 11301, or any subsequently enacted state statute or regulation.

#### Section 4: Prohibition on Furnishing Marijuana to Minors

Section 11361 of the Health and Safety Code is amended to read:

##### Prohibition on Furnishing Marijuana to Minors

(a) Every person 18 years of age or over who hires, employs, or uses a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling any marijuana, who unlawfully sells, or offers to sell, any marijuana to a minor, or who furnishes, administers, or gives, or offers to furnish, administer, or give any marijuana to a minor under 14 years of age, or who induces a minor to use marijuana in violation of law shall be punished by imprisonment in the state prison for a period of three, five, or seven years.

(b) Every person 18 years of age or over who furnishes, administers, or gives, or offers to furnish, administer, or give, any marijuana to a minor 14 years of age or older shall be punished by imprisonment in the state prison for a period of three, four, or five years.

(c) Every person 21 years of age or over who knowingly furnishes, administers, or gives, or offers to furnish, administer or give, any marijuana to a person aged 18 years or older, but younger than 21 years of age, shall be punished by imprisonment in the county jail for a period of up to six months and be fined up to \$1,000 for each offense.

(d) In addition to the penalties above, any person who is licensed, permitted or authorized to perform any act pursuant to Section 11301, who while so licensed, permitted or authorized, negligently furnishes, administers, gives or sells, or offers to furnish, administer, give or sell, any

marijuana to any person younger than 21 years of age shall not be permitted to own, operate, be employed by, assist or enter any licensed premises authorized under Section 11301 for a period of one year.

#### Section 5: Amendment

Pursuant to Article 2, section 10(c) of the California Constitution, this Act may be amended either by a subsequent measure submitted to a vote of the People at a statewide election; or by statute validly passed by the Legislature and signed by the Governor, but only to further the purposes of the Act. Such permitted amendments include but are not limited to:

- (a) Amendments to the limitations in section 11300, which limitations are minimum thresholds and the Legislature may adopt less restrictive limitations.
- (b) Statutes and authorize regulations to further the purposes of the Act to establish a statewide regulatory system for a commercial cannabis industry that addresses some or all of the items referenced in Sections 11301 and 11302.
- (c) Laws to authorize the production of hemp or non-active cannabis for horticultural and industrial purposes.

#### Section 6: Severability

If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.



## Marijuana Legalization Talking Points

**Continued cuts to public safety will lessen ability to deal with impacts and secondary impacts of drug decriminalization and the resultant increase in crime and narco-trafficking:** It's important to understand that neither proposal has any tools in place to deal with the inevitable increase in criminal activity that will accompany legalization. Right now we have serious public safety and social problems caused by abuse of alcohol and abuse of pharmaceuticals. Abuse of alcohol and abuse of pharmaceuticals – both lawful products – place incalculable burdens on the criminal justice system. Given that reality, it is pertinent to ask how on earth things will get better by adding yet another mind-altering substance – marijuana – to the array of legal substances that interfere with a person's five senses?

**No net revenue as proposed:** Although proponents have argued that legalization will result in a revenue increase to the state, there is nothing to support that assertion. In fact, a recent RAND Corporation study of a bill that was identical to Assembly Bill 2254 concluded that potential revenue benefits to the state were illusory. More important, that same study suggested that the actual costs to the state from legalization would far exceed any speculative revenue benefit. As far as the ballot measure is concerned, it only provides for the imposition of local marijuana taxes, and does not even authorize the state to impose a marijuana tax. The Social and Societal harms caused by increased drug use, especially by youth will be incalculable and far outweigh any supposed revenue from taxation, which will likely be avoided by most dealers and users opting for the underground economy. This means that there the so-called budget benefit of the ballot measure will not materialize at all!

**Health studies confirm adverse impacts and addictive effects of marijuana:** The Deputy Director of the Office of Narcotics and Drug Control Policy under President Bush recently testified in Sacramento that studies have proven that marijuana does impair the development of the teenage brain. Additionally, over 80% of youth being treated for substance abuse are addicted to marijuana.

This is not the "dope" that Baby Boomers smoked in the 80's. The THC content is five times that of the past and has been clinically proven to be addictive. Smoking marijuana has more carcinogens and negative health impacts than smoking tobacco.

**Increased usage by children:** Experience has also taught us that marijuana legalization for adults will result in an inevitable increase in use among children. From 1978 through 1990, Alaskan law permitted adults to possess small amounts of marijuana – and use among children was measured at 51%. This was one of the reasons that Alaskan voters passed a ballot measure in 1990 that repealed Alaska's failed experiment.

**Increase in cartel/gang narco-trafficking:** Will legalization reduce the organized criminal activity associated with marijuana distribution? The available evidence suggests that it will not. The experience in Amsterdam provides an important canary in the coal mine: Since legalizing marijuana cafes in 1988, Amsterdam has gone from having three identified organized crime organizations to 93 today. That is one of the reasons that the Dutch government, in December 2008, has now embarked on a program to close marijuana cafes: in order to drive out organized crime.

In California, marijuana cultivation and distribution are largely in the hands of either Asian criminal combines, who control most of the indoor grow activity; or the Mexican drug cartels, who now control most illegal cultivation in the emerald triangle. These are violent and sophisticated organizations – the FBI estimates that over half of the 200 abductions that have taken place in southern California this year are attributable to the Mexican drug cartels. To suggest that legalization will somehow make these criminal combines go away is not only naïve, but contrary to the experiences of history. Serious analyses of the repeal of Prohibition has revealed that far from disappearing, the criminal combines engaged in bootlegging simply became "lawful" alcoholic beverage distributors in the various states. The Kefauver

Organized Crime hearings in the 1950's showed that from the base of their alcohol distribution businesses, organized crime came to corrode local and state governments throughout the United States.

Is there anyone who seriously believes that the Asian criminal combines or the Mexican drug cartels are going to be meekly "driven out of business" by marijuana legalization? Every experience of history suggests that it will only strengthen their hand. The contrary is true, which is the reason that Mexican President Felipe Calderon's Administration – an administration truly on the front lines of battling the Mexican Drug Cartels – has expressed dismay over laws in America that make marijuana more readily available. They see these trends as only emboldening the Cartels.

**Increase in associated crimes:** Marijuana legalization will cause increase of other crimes, as well. Legalization of marijuana will increase use – but use doesn't come for free. What is being suggested is legalization of marijuana – not grants of marijuana to low-income users. We in law enforcement can expect increases in the crimes that are typically associated with drug users attempting to finance their habit – auto burglaries, auto theft, identity theft, and other crimes against persons and property.

Additionally, as has been seen in the dangerous secondary impacts of marijuana dispensaries, increased drug dealing and trafficking will bring about more dangerous means of protecting the increased profits and activities. Cartel members have been known to carry guns, protect grow houses and open space grows with booby traps, and protect their "sales turf" with extortion and violence.

**Increase in drugged driving:** Another crime that we can expect to see exponentially increase is drugged driving. Even without marijuana legalization, this is a serious problem – a 2004 study of emergency room admissions from motor vehicle crashes revealed that more than half of the drivers admitted to a level-1 trauma center tested positive for drugs other than alcohol. This study, published in the *Traffic Injury Review*, was similar to numerous other studies. Significantly, when breakouts were done of the drugs that resulted in the DUI accident or arrest, the overwhelming majority of test samples showed marijuana in the blood system of the arrestee.

Legalization of marijuana will only result in an increased use of marijuana, with a corresponding increase in the drugged driving arrests. Unlike many countries in Western Europe, who provide that the presence of any level of illegal drug in a person's system is a driving violation, California has no statutory system in place to deter drugged driving. In fact, the Legislature rejected legislation in 2008 that would have adopted a western European per se standard. Drugged driving is a growing problem and marijuana is a major element of drugged driving; law enforcement has no real tools to combat drugged driving; surely no one can seriously suggest that legalization of marijuana will help with this problem?

**In summary:** Here's what we know: We already have serious problems created by abuse of legal mind-altering products; legalization of yet another mind-altering product will only add to the current level of problems; legalization not only will not deter organized criminal activity, it will probably increase it; crimes related to drug use will increase; increased "acceptance" will lead to increased use by children; and it will not bring tax revenue into the state to help balance the budget.



## California Police Chiefs Association Memorandum

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TO: ALL POLICE CHIEFS  
FROM: JOHN LOVELL  
SUBJECT: MARIJUANA INITIATIVE  
DATE: MARCH 17, 2010

The "Regulate, Control and Tax Cannabis Act of 2010"

Section 1 of the Act: The title of the act is classic Newspeak. The ballot measure doesn't regulate, control, or tax cannabis. Instead, it authorizes some 475 local jurisdictions, if they choose to, to develop their own regulatory schemes. As we will see from the actual text of those authorization provisions, the scope of that local regulation is unclear. Similarly, there is no mechanism for control of cannabis distribution; and, as for taxes, although the measure authorizes the various local jurisdictions to impose type of marijuana taxes, there is no such authorization for state marijuana taxes.

Section 2 of the Act: This section contains a series of findings, intent and purpose of the act. None of these provisions will be codified in the final act.

Section 3: Lawful Activities.

Section 11300, entitled "Personal Regulation and Controls" creates a series of provisions that have supremacy over all other California law ("notwithstanding any other provision of law. . .")

A person may possess, process, share or transport not more than one ounce of cannabis solely for that individual's personal consumption and not for sale.

A property owner, lawful occupant, or other lawful resident or guest may plant, for personal consumption only, in an area not more than twenty-five square feet per private residence, or in the absence of any residence, the entire parcel. It is unclear as to whether the property owner has actual veto power over cultivation on his/her land, since the initiative indicates that cultivation of leased or rental property "may" be subject to approval from the property owner. The initiative is silent on the circumstances when cultivation "may" be subject to approval from the property owner. Please also note that the law is silent as to whether the cultivation of 25 square feet per private residence must in fact be conducted on the land where the private residence is located.

What is clear is that local government cannot use zoning to restrict the cultivation in Section 11300. So long as the cultivator asserts that this cultivation is for personal consumption, they have a

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**X.A.2.19**

virtual unfettered right of cultivation. Thus, the owner of a vacant lot in a residential area may dedicate that entire parcel to marijuana cultivation. Moreover, although the measure contains the modifier “personal consumption”, it does not say WHOSE personal consumption. May I cultivate marijuana on my vacant lot for the “personal consumption” of my family? Of all of my friends? Of anyone who wishes to purchase from me? May I cultivate marijuana on behalf of those who pay a “leasing fee” for a portion of my harvest?

Section 11300 (a) (ii) appears to prohibit cultivation on public lands, but that prohibition is illusory, since the prohibition refers to “unlawful” or “unlicensed” cultivation on public lands. As we will see later on, in the discussion of local “regulation”, a local government can authorize cultivation in public parks within their jurisdiction.

Section 11300 (a) (iii) permits the possession of the living and harvested plants of any harvest and the processing of plants lawfully cultivation pursuant to Section 11300 (a) (ii). In reading this section, it is clear that the one ounce limit of Section 11300(a)(i) has been effectively overridden. Section 11300(a)(iii) has conferred on the cultivator to possess all of the harvest – considerably more than one ounce – so long as it’s for “personal consumption.” Again, the act is silent about whose personal consumption.

Section 11300(a) (iv) permits the possession of objects, items, tools, equipment, products and materials associated “with activities permitted under this subsection.” Does this mean that an individual may construct a warehouse on their vacant land; cultivate, harvest and process marijuana? It would appear to be the case.

Please note that Section 11300(a) in its entirety confers rights and privileges that are “notwithstanding any other provision of law.” This means that, irrespective of the “regulation” that may or may not be enacted by a local jurisdiction, there is an unrestricted right to possess, cultivate, process, virtually incalculable amounts of marijuana anywhere in the state. This right may not be abridged by local laws, nor, as we shall see later, may it be abridged by state law.

Section 11300(b) defines “personal consumption” as including BUT NOT BEING LIMITED TO possession and consumption in any form, of cannabis in a residence or other non-public place (a term that is not defined in the initiative). This section also indicates that personal consumption shall be permitted in those “licensed” premises that are open to the public and authorized for on-premises consumption by a local government pursuant to Section 11301.

Section 11300(c) contains the very first limitations in the act. It says what personal consumption is not:

Personal consumption is not possession for sale, UNLESS the person is licensed or permitted to possess for sale under the terms of an ordinance adopted pursuant to Section 11301.

Personal consumption is not consumption in public or in a public place (unless, of course, the local government has licensed such consumption under the terms of Section 11301).

Personal consumption is not consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator. Please note that this provision does NOT prohibit

personal consumption by passengers. Presumably, passengers in a vehicle, boat or aircraft could consume marijuana.

#### Section 11301: Commercial Regulations and Controls

This section conveys on local government the ability to adopt ordinances, regulations, or “other acts having the force of law” to “control, license, regulate, permit, or otherwise authorize, with conditions” the following:

Local governments are given the authority to regulate commercial cultivation, processing, distribution, transportation, and possession for sale of cannabis. There is no prohibition on persons having local licenses not having a criminal record, not is there any restriction on the distribution of marijuana. Can local governments authorize a licensee to sell throughout the state? Can they permit a licensee to sell cannabis via the internet? Through advertising in periodicals?

Local governments may permit the retail sale of not more than one ounce per transaction for personal use in “licensed premises.” Note that this is one ounce per transaction – so an unlimited amount of marijuana may be sold to a person who is on the licensed premises.

Local governments have authority to enact appropriate controls on commercial cultivation, transportation, sales and consumption to “strictly prohibit” access by persons under 21. It is not clear what controls are contemplated, and it must be kept in mind that the cultivation rights enumerated in Section 11300 are beyond the reach of local governments.

Local governments may enact age limits and controls to assure that all involved in the commercial operation of marijuana are 21 or older.

Local governments have the authority to license public premises for the consumption of marijuana. In effect, this measure proposes the creation of over 470 “mini-ABC’s” to license and regulate the on-premises sale of marijuana. There is no cost estimate of enforcement, but it will assuredly involve unknown personnel costs.

Local governments will have authority to regulate for “safe and secure transportation of marijuana from licensed premises for cultivation or processing, to licensed premises for sale or on-premises consumption. The scope of that authority is unclear: does it regulate transportation from cultivation/processing to consumption site irrespective of whether the second site is within the jurisdictional limits of that local government? Or does their authority stop at their jurisdiction’s border? Does this mean that marijuana may be transported for commercial purposes through jurisdictions that have declined to enact regulations? What if the adjacent jurisdictions have more restrictive regulations?

Local governments have authority to “prohibit and punish” through “civil fines or other remedies”, possession for sale, cultivation, processing, or transportation that was not obtained lawfully from a person pursuant to Section 11301 or Section 11300. Keeping in mind that the powers granted to marijuana users and cultivators pursuant to Section 11300 is without limitation of any other laws, the local authority to “prohibit and punish” only would seem to cover conduct in violation of Section 11301.

Local governments are given the power to use zoning and land use limitations with respect to licensed premises for sale, cultivation, processing or sale for on-premises consumption. They can limit size of the locations, limit hours of operation, occupancy and protect adjacent properties. Keep in mind that these powers are with respect to activity in Section 11301, NOT Section 11300. So you could have the circumstance where someone is cultivating marijuana in a residential area, adjacent to a school, pursuant to Section 11300 that is beyond the scope of local government's ability to regulate.

Local governments are also given the authority to regulate advertising of commercial marijuana enterprises. Whether or not they actually can exercise this authority constitutionally is a matter of doubt, since there are first amendment guarantees for commercial speech. In fact, the only reason the state can regulate advertising of alcohol is that they are given specific constitutional authority in the 21<sup>st</sup> amendment to the constitution to do so.

Although local governments are not permitted to encroach upon the entitlements conferred in Section 11300 of the Act, they ARE permitted to increase the lawful possession and/or cultivation amounts in that section. In other words, a local government may increase the amount an individual may possess in their jurisdiction beyond an ounce, may also increase the cultivation amounts, and may even permit cultivation in public parks.

Local governments are permitted to impose taxes and fees on marijuana pursuant to Section 11302. That section permits local governments to impose general, special or excise, transfer or transaction taxes, benefit assessments, or fees, on any activity authorized pursuant to Section 11301 (NOT 11300) in order to (a) raise revenue, (b) recoup any direct or indirect costs associated with the "authorized activity, or the permitting or licensing scheme".

Significantly, this ballot measure does NOT authorize the state to levy any specific marijuana taxes. Instead, "licensed premises" are only responsible for the payment of taxes to the states that are levied "without regard to or identification of the business or items or services sold." In other words, while the state can and does levy specific taxes on alcohol, gasoline, and tobacco, they are NOT authorized to levy specific taxes on marijuana.

Section 11303 relates to seizure. It provides that no state or local law enforcement agency may seize or destroy any marijuana plant, seeds or marijuana that is "lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used "in compliance with this Act, or ANY local government ordinance, law or regulation adopted pursuant to this Act". This section effectively assures that a marijuana operation that can claim any colorable authorization from any local government is beyond the reach of law enforcement. Under this provision, a drug cartel could obtain a license from a single jurisdiction in California, and have their entire operation placed beyond the reach of law enforcement.

Section 11304 deals with what the drafters call the "Effect of [the] Act and Definitions."

It provides that the act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in "dangerous activities such as driving," or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive." Presumably, this permits the bringing of marijuana onto the grounds of a pre-school or a day-care center.

(b) Of Section 11304 states that nothing in the Act shall be construed or interpreted to permit interstate or international transportation of marijuana. However, it also provides that the Act DOES permit the transportation of marijuana from a licensed premises in one city or county to a licensed premises in another city or county pursuant to any local ordinances in the second city or county. This transportation is permitted even if it requires access through a location that has not authorized, or even prohibits, transportation for sale.

Section 11304 (c) is an extremely troublesome one: It provides as follows:

“No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected”

Here’s what this means: An employee can test dirty for marijuana, can bring marijuana to work, can probably consume marijuana (at least in non-smokeable form) at the workplace with no consequence from the employer. We have created a ridiculous situation where an employer can send an employee home (or even terminate that employee) if they have liquor on their breath, but can do nothing about an employee who tests dirty for marijuana and is even in possession of marijuana at the workplace.

The right of an employer is limited to the ability “to address consumption” only where that consumption has ACTUALLY IMPAIRED the job performance of a specific employee. In other words, the employer cannot even take preventive measures where an employee has tested dirty for marijuana in their system. This ability to “address consumption” is ridiculously narrow and only permits after the fact accountability: The employer’s only recourse is to speak with the employee **after** the industrial accident has occurred.

The inevitable consequence of this provision (which was a clumsy attempt to overturn RAGINGWIRE) will be higher insurance rates and higher workers compensation rates for California employers. Employers can also look forward to increased liability exposure for torts committed by marijuana impaired employees. Put another way, the plaintiff’s bar, and juries, will be indifferent to the restrictions on employers caused by this section. It is significant that there is no language in Section 11304(c) that absolves employers from liability for any harm that may be caused.

Further, this section also makes it impossible for a California employer to be in compliance with the federal Drug-Free Workplace Act of 1988. As you know, the Drug-Free Workplace act provides that it is a condition precedent of receiving many federal contracts for the prospective contractor to be able to affirm that their workplace is drug-free. If this measure passes, no California employer will be able to bid with confidence on federal contracts – they will be unable to make this affirmation.

Provisions of the Drug-Free Workplace Act of 1988 also apply to grantees – including public agencies. Since Section 11304 (c) contains no exclusions for types of employers (imagine a firefighter who tests positive marijuana), recipients of federal grants – including the state of California itself, could find those grants distinctly at risk.

This provision also appears to prohibit probation or parole conditions that forbid an individual from consuming marijuana. In other words, one may have a probation or parole condition (for example in the case of driving under the influence), that prohibits use of alcohol or other drugs, but Section 11304(c) constrains the imposition of conditions forbidding marijuana use. In effect, Section 11304(c) accords a privileged status for marijuana.

Section 11304(d) contains definitions.

Section 11361(c) is an amendment to the Health and Safety Code which creates a new misdemeanor for a person over 21 who furnishes marijuana to a person who is 18, 19, or 20 years old. Whether or not this new crime will result in significant increases in court calendars, or in increased county jail commitments, remains to be seen. In any case, there will be additional costs associated with this provision.

Section 11361(d) places a maximum penalty on a licensee who furnishes marijuana to a person under 21 of a one year suspension of their license. This, of course, is a restriction on the regulatory authority of local governments.

Amendments to the initiative are permitted either by a subsequent statewide election or by a statute passed by the Legislature and signed by the Governor. Legislative statutes, however, may only be enacted to "further the purposes of the Act." The measure spells out the types of amendments that are within the purview of the Legislature:

- (a) The quantitative limits outlined in Section 11300 may be increased.
- (b) A statewide regulation of cannabis that furthers the purposes of the act may be enacted. Significantly, there is no authorization for a statewide taxing scheme for cannabis.
- (c) Laws to authorize the production of hemp are permitted.

Please note that a statewide regulation must "further the purposes of the act." Since one of the purposes of the act is local control, any statewide regulation could not abrogate the rights of the 470 plus local governments to continue with their own form of regulation.

## Did you know?

Smoking marijuana leads to permanent changes in the brain, similar to cocaine and heroin, and is particularly harmful to adolescents. The brain isn't fully developed until the mid 20's. (NIDA)

Marijuana potency has increased from 1/2% - 3% in the 1970's to an average of 10.4% and as high as 37% today. More people are in treatment for pot than all other drugs combined. (ONDCP)

Marijuana is not medicine. The term "medical marijuana" was created by NORML to give pot a good name and to convince voters to legalize pot. (DAMMADD website)

For every \$1 in tax revenues collected for alcohol and tobacco, the social costs are nearly \$9. Pot combines the harms of both and will be worse. (CASA - Shovelng Up)

Marijuana, like tobacco, doesn't kill by overdose, but almost all of the 3,200 young people who die monthly from drug overdose started with marijuana. (CDFC)

Overdose isn't the only cause of death and destruction. Marijuana can cause cancer, birth defects, mental illness, traffic accidents, and is a leading cause of all crime and welfare. (Voth, M.D.)

Marijuana has a devastating affect on memory, motivation, maturation, worker productivity and academic achievement. Pot contributes to the 33% national high school drop out rate, a \$470 billion cost.

Pot has 4 to 5 times the carcinogens of tobacco, and 433,000 Americans die annually from tobacco. (SAMSHA)

"If a kid gets to 21 without smoking, abusing alcohol or using drugs they are virtually certain never to do so." (Joseph Califano Jr, CASA)

Visit our website for more information!

[www.drugfreecalifornia.org](http://www.drugfreecalifornia.org)

## Join Us Against the Legalization of Marijuana.

The perception that marijuana is medicine and legal has reduced the perception of harm and increased use by young people.... **our future!**

Elect officials that understand that their most important responsibilities are protecting people and tax dollars and that neither is possible by legalizing marijuana for any reason.

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Oregonians Against Legalization of Marijuana

## Vote NO to Legalizing Marijuana for any Reason



### We are the future! and we say

## YES to life! NO to drugs!

COALITION FOR  
**DRUG FREE**  
CALIFORNIA

# Marjuana is a very dangerous drug...

## costs lives, tax dollars and harms kids ... our future!

Advocates of legalization lie about marijuana and expected outcomes of legalization. Pot diminishes productivity, stifles academic achievement, leads to crime and more traffic accidents than alcohol. It causes cancer, mental illness, birth defects and combines the harms of alcohol and tobacco.

Tobacco alone kills 433,000 Americans annually. Marijuana smoke contains many times more carcinogens, in addition to being an intoxicant. After all we have learned about the harms of ingesting smoke, why would we legalize another smoked product that is even more harmful?

Pot smokers, like to say marijuana is safer than alcohol. Hardly! Pot is fat soluble, stays in one's system up to 30 days, and impairs driving up to 24 hours after only one joint. The combined effect of pot and alcohol is worse than either drug alone.

## States do not have the right to legalize Marijuana.

Any state that attempts to legalize a Schedule I drug in defiance of federal law, invites and deserves federal criminal and economic sanctions. No state could legalize marijuana without impacting the health, safety and economic well being of all citizens.

## Marjuana won't make money! The social cost will be in billions.

For every \$1 collected in tax revenues from alcohol and tobacco the social costs are roughly \$9. California estimated legalization would increase the use by 40%, which would cause a spike in physical and mental health costs, crime, traffic accidents and education because of availability and lower cost. The social costs dwarf any potential revenues from taxation.

## Regulation and Control? Impossible!

Mexican cartels in the forest and thousands of home grow operations will be impossible to regulate, as they are now. A huge new bureaucracy will absorb the tax revenues, and social costs related to health, education, welfare, crime and traffic safety will soar. Legalizing pot won't control it, it will make these outcomes worse.

Pot causes paranoia and schizophrenia, particularly if smoking started as an adolescent.

No doubt it caused Bedell's shooting rampage and death at the Pentagon (Feb '09)

photo: John P. Bedell

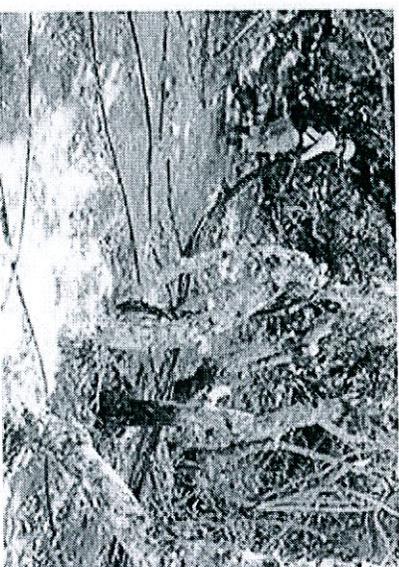


## 26.9% of seriously injured drivers test positive for pot

20% of all vehicle accidents are attributed to drugged driving, 8,600 people died in 2005 as a result of drugged driving, 580,000 people were injured and the cost in damages was \$33 billion. (stopdruggedriving.com)

## Pot plantations are ecological disasters

Mexican criminals have found it easier to grow marijuana in our national forests than risk importing it across the border. They use banned pesticides, chemicals and fertilizers that poison the earth, streams and wildlife. They kill deer, bear and other animals which could eat the crop, and shoot humans who stumble across them.

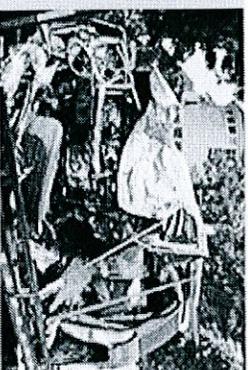


Growers surround plantations with rodent poison. As the rodents die, so die the hawks, eagles and other animals that eat them. They dam streams, killing everything below. At the end of the day, they leave their mess and sell the pesticide laden products to inflict harm on the smokers. Two lab samples in Long Beach showed pesticide levels **1400 times legal limits** for food.

## Increase in crime

Alcohol and drugs are factors in over 80% of crime, pot being the most prevalent drug. Robberies and murder have spiked with the increase in illegal dispensaries.

In 2006, marijuana was involved in 290,563 emergency room visits (SAMHSA). Today, more of those in treatment (60%) are there for marijuana than for any other drug.



Diane Schuler (Aug 4, 2009), impaired with alcohol and pot, drove wrong way on freeway, killing herself, 2 yr old daughter, 3 nieces and 3 men.



## The “Regulate, Control and Tax Cannabis Act of 2010”

Section 1 of the Act: The title of the act is classic Newspeak. The ballot measure doesn’t regulate, control, or tax cannabis. Instead, it authorizes some 475 local jurisdictions, if they choose to, to develop their own regulatory schemes. As we will see from the actual text of those authorization provisions, the scope of that local regulation is unclear. Similarly, there is no mechanism for control of cannabis distribution; and, as for taxes, although the measure authorizes the various local jurisdictions to impose types of marijuana taxes, there is no such authorization for state marijuana taxes.

Section 2 of the Act: This section contains a series of findings, intent and purpose of the act. None of these provisions will be codified in the final act.

### Section 3: Lawful Activities.

Section 11300, entitled “Personal Regulation and Controls” creates a series of provisions that have supremacy over all other California law (“notwithstanding any other provision of law. . .”

A person may possess, process, share or transport not more than one ounce of cannabis solely for that individual’s personal consumption and not for sale.

A property owner, lawful occupant, or other lawful resident or guest may plant, for personal consumption only, in an area not more than twenty-five square feet per private residence, or in the absence of any residence, the entire parcel. It is unclear as to whether the property owner has actual veto power over cultivation on his/her land, since the initiative indicates that cultivation of leased or rental property “may” be subject to approval from the property owner. The initiative is silent on the circumstances when cultivation “may” be subject to approval from the property owner. Please also note that the law is silent as to whether the cultivation of 25 square feet per private residence must in fact be conducted on the land where the private residence is located.

What is clear is that local government cannot use zoning to restrict the cultivation in Section 11300. So long as the cultivator asserts that this cultivation is for personal consumption, they have a virtual unfettered right of cultivation. Thus, the owner of a vacant lot in a residential area may dedicate that entire parcel to marijuana cultivation. Moreover, although the measure contains the modifier “personal consumption”, it does not say WHOSE personal consumption. May I cultivate marijuana on my vacant lot for the “personal consumption” of my family? Of all of my friends? Of anyone who wishes to purchase from me? May I cultivate marijuana on behalf of those who pay a “leasing fee” for a portion of my harvest?

Section 11300 (a) (ii) appears to prohibit cultivation on public lands, but that prohibition is illusory, since the prohibition refers to “unlawful” or “unlicensed” cultivation on public lands. As we will see later on, in the discussion of local “regulation”, a local government can authorize cultivation in public parks within their jurisdiction.

Section 11300 (a) (iii) permits the possession of the living and harvested plants of any harvest and the processing of plants lawfully cultivation pursuant to Section 11300 (a) (ii). In reading this section, it is clear that the one ounce limit of Section 11300(a)(i) has been effectively overridden. Section 11300(a)(iii) has conferred on the cultivator to possess all of the harvest – considerably more than one ounce – so long as it’s for “personal consumption.” Again, the act is silent about whose personal consumption.

Section 11300(a) (iv) permits the possession of objects, items, tools, equipment, products and materials associated “with activities permitted under this subsection.” Does this mean that an individual may construct a warehouse on their vacant land; cultivate, harvest and process marijuana? It would appear to be the case.

Please note that Section 11300(a) in its entirety confers rights and privileges that are “notwithstanding any other provision of law.” This means that, irrespective of the “regulation” that may or may not be enacted by a local jurisdiction, there is an unrestricted right to possess, cultivate, process, virtually incalculable amounts of marijuana anywhere in the state. This right may not be abridged by local laws, nor, as we shall see later, may it be abridged by state law.

Section 11300(b) defines “personal consumption” as including BUT NOT BEING LIMITED TO possession and consumption in any form, of cannabis in a residence or other non-public place (a term that is not defined in the initiative). This section also indicates that personal consumption shall be permitted in those “licensed” premises that are open to the public and authorized for on-premises consumption by a local government pursuant to Section 11301.

Section 11300(c) contains the very first limitations in the act. It says what personal consumption is not:

Personal consumption is not possession for sale, UNLESS the person is licensed or permitted to possess for sale under the terms of an ordinance adopted pursuant to Section 11301.

Personal consumption is not consumption in public or in a public place (unless, of course, the local government has licensed such consumption under the terms of Section 11301).

Personal consumption is not consumption by the operator of any vehicle, boat or aircraft while it is being operated, or that impairs the operator. Please note that this provision does NOT prohibit personal consumption by passengers. Presumably, passengers in a vehicle, boat or aircraft could consume marijuana.

Section 11301: Commercial Regulations and Controls

This section conveys on local government the ability to adopt ordinances, regulations, or “other acts having the force of law” to “control, license, regulate, permit, or otherwise authorize, with conditions” the following:

Local governments are given the authority to regulate commercial cultivation, processing, distribution, transportation, and possession for sale of cannabis. There is no prohibition on persons having local licenses not having a criminal record, nor is there any restriction on the distribution of marijuana. Can local governments authorize a licensee to sell throughout the state? Can they permit a licensee to sell cannabis via the internet? Through advertising in periodicals?

Local governments may permit the retail sale of not more than one ounce per transaction for personal use in “licensed premises.” Note that this is one ounce per transaction – so an unlimited amount of marijuana may be sold to a person who is on the licensed premises.

Local governments have authority to enact appropriate controls on commercial cultivation, transportation, sales and consumption to “strictly prohibit” access by persons under 21. It is not clear what controls are contemplated, and it must be kept in mind that the cultivation rights enumerated in Section 11300 are beyond the reach of local governments.

Local governments may enact age limits and controls to assure that all involved in the commercial operation of marijuana are 21 or older.

Local governments have the authority to license public premises for the consumption of marijuana. In effect, this measure proposes the creation of over 470 “mini-ABC’s” to license and regulate the on-premises sale of marijuana. There is no cost estimate of enforcement, but it will assuredly involve unknown personnel costs.

Local governments will have authority to regulate for “safe and secure transportation of marijuana from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption. The scope of that authority is unclear: does it regulate transportation from cultivation/processing to consumption site irrespective of whether the second site is within the jurisdictional limits of that local government? Or does their authority stop at their jurisdiction’s border? Does this mean that marijuana may be transported for commercial purposes through jurisdictions that have declined to enact regulations? What if the adjacent jurisdictions have more restrictive regulations?

Local governments have authority to “prohibit and punish” through “civil fines or other remedies”, possession for sale, cultivation, processing, or transportation that was not obtained lawfully from a person pursuant to Section 11301 or Section 11300. Keeping in mind that the powers granted to marijuana users and cultivators pursuant to Section 11300 is without limitation of any other laws, the local authority to “prohibit and punish” only would seem to cover conduct in violation of Section 11301.

Local governments are given the power to use zoning and land use limitations with respect to licensed premises for sale, cultivation, processing or sale for on-premises consumption. They can limit size of the locations, limit hours of operation, occupancy and protect adjacent properties. Keep in mind that these powers are with respect to activity in Section 11301, NOT Section 11300. So you could have the circumstance where someone is cultivating marijuana in a residential area, adjacent to a school, pursuant to Section 11300 that is beyond the scope of local government’s ability to regulate.

Local governments are also given the authority to regulate advertising of commercial marijuana enterprises. Whether or not they actually can exercise this authority constitutionally is a matter of doubt, since there are first amendment guarantees for commercial speech. In fact, the only reason the state can regulate advertising of alcohol is that they are given specific constitutional authority in the 21<sup>st</sup> amendment to the constitution to do so.

Although local governments are not permitted to encroach upon the entitlements conferred in Section 11300 of the Act, they ARE permitted to increase the lawful possession and/or cultivation amounts in that section. In other words, a local government may increase the amount an individual may possess in their jurisdiction beyond an ounce, may also increase the cultivation amounts, and may even permit cultivation in public parks.

Local governments are permitted to impose taxes and fees on marijuana pursuant to Section 11302. That section permits local governments to impose general, special or excise, transfer or transaction taxes, benefit assessments, or fees, on any activity authorized pursuant to Section 11301 (NOT 11300) in order to (a) raise revenue, (b) recoup any direct or indirect costs associated with the “authorized activity, or the permitting or licensing scheme”.

Significantly, this ballot measure does NOT authorize the state to levy any specific marijuana taxes. Instead, “licensed premises” are only responsible for the payment of taxes to the state that are levied “without regard to or identification of the business or items or services sold.” In other words, while the state can and does levy specific taxes on alcohol, gasoline, and tobacco, they are NOT authorized to levy specific taxes on marijuana.

Section 11303 relates to seizure. It provides that no state or local law enforcement agency may seize or destroy any marijuana plant, seeds or marijuana that is “lawfully cultivated, processed, transported, possessed, possessed for sale, sold or used “in compliance with this Act, or ANY local government ordinance, law or regulation adopted pursuant to this Act”. This section effectively assures that a marijuana operation that can claim any colorable authorization from any local government is beyond the reach of law enforcement. Under this provision, a drug cartel could obtain a license from a single jurisdiction in California, and have their entire operation placed beyond the reach of law enforcement.

Section 11304 deals with what the drafters call the “Effect of [the] Act and Definitions.”

It provides that the act shall not be construed to affect, limit or amend any statute that forbids impairment while engaging in “dangerous activities such as driving,” or that penalizes bringing cannabis to a school enrolling pupils in any grade from kindergarten through 12, inclusive.” Presumably, this permits the bringing of marijuana onto the grounds of a pre-school or a day-care center.

(b) of Section 11304 states that nothing in the Act shall be construed or interpreted to permit interstate or international transportation of marijuana. However, it also provides that the Act DOES permit the transportation of marijuana from a licensed premises in one city or county to a licensed premises in another city or county pursuant to any local ordinances in the second city or county. This

transportation is permitted even if it requires access through a location that has not authorized, or even prohibits, transportation for sale.

Section 11304 (c) is an extremely troublesome one: It provides as follows:

“No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected”

Here’s what this means: An employee can test dirty for marijuana, can bring marijuana to work, can probably consume marijuana (at least in non-smokeable form) at the workplace with no consequence from the employer. We have created a ridiculous situation where an employer can send an employee home (or even terminate that employee) if they have liquor on their breath, but can do nothing about an employee who tests dirty for marijuana and is even in possession of marijuana at the workplace.

The right of an employer is limited to the ability “to address consumption” only where that consumption has ACTUALLY IMPAIRED the job performance of a specific employee. In other words, the employer cannot even take preventive measures where an employee has tested dirty for marijuana in their system. This ability to “address consumption” is ridiculously narrow and only permits after the fact accountability: The employer’s only recourse is to speak with the employee **after** the industrial accident has occurred.

The inevitable consequence of this provision (which was a clumsy attempt to overturn RAGINGWIRE) will be higher insurance rates and higher workers compensation rates for California employers. Employers can also look forward to increased liability exposure for torts committed by marijuana impaired employees. Put another way, the plaintiff’s bar, and juries, will be indifferent to the restrictions on employers caused by this section. It is significant that there is no language in Section 11304(c) that absolves employers from liability for any harm that may be caused.

Further, this section also makes it impossible for a California employer to be in compliance with the federal Drug-Free Workplace Act of 1988. As you know, the Drug-Free Workplace act provides that it is a condition precedent of receiving many federal contracts for the prospective contractor to be able to affirm that their workplace is drug-free. If this measure passes, no California employer will be able to bid with confidence on federal contracts – they will be unable to make this affirmation.

Provisions of the Drug-Free Workplace Act of 1988 also apply to grantees – including public agencies. Since Section 11304 (c) contains no exclusions for types of employers (imagine a firefighter who tests positive marijuana), recipients of federal grants – including the state of California itself, could find those grants distinctly at risk.

This provision also appears to prohibit probation or parole conditions that forbid an individual from consuming marijuana. In other words, one may have a probation or parole condition (for example

in the case of driving under the influence), that prohibits use of alcohol or other drugs, but Section 11304(c) constrains the imposition of conditions forbidding marijuana use. In effect, Section 11304(c) accords a privileged status for marijuana.

Section 11304(d) contains definitions.

Section 11361(c) is an amendment to the Health and Safety Code which creates a new misdemeanor for a person over 21 who furnishes marijuana to a person who is 18, 19, or 20 years old. Whether or not this new crime will result in significant increases in court calendars, or in increased county jail commitments, remains to be seen. In any case, there will be additional costs associated with this provision.

Section 11361(d) places a maximum penalty on a licensee who furnishes marijuana to a person under 21 of a one year suspension of their license. This, of course, is a restriction on the regulatory authority of local governments.

Amendments to the initiative are permitted either by a subsequent statewide election or by a statute passed by the Legislature and signed by the Governor. Legislative statutes, however, may only be enacted to “further the purposes of the Act.” The measure spells out the types of amendments that are within the purview of the Legislature:

- (a) The quantitative limits outlined in Section 11300 may be increased.
- (b) A statewide regulation of cannabis that furthers the purposes of the act may be enacted. Significantly, there is no authorization for a statewide taxing scheme for cannabis.
- (c) Laws to authorize the production of hemp are permitted.

Please note that a statewide regulation must “further the purposes of the act.” Since one of the purposes of the act is local control, any statewide regulation could not abrogate the rights of the 470 plus local governments to continue with their own form of regulation.



STEVE COOLEY  
LOS ANGELES COUNTY DISTRICT ATTORNEY

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18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER  
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

April 19, 2010

**RE: INITIATIVE MEASURE 09-0024**

Dear Recipient:

I fully intend to inform the public of the dangers of this incredibly poorly written initiative.

I look forward to joining with many others in the fight against this initiative. I have every hope that the Attorney General will disallow the initiative's title and prepare an accurate summary. We need to work hard to defeat this fraud against the public.

Very truly yours,

A handwritten signature in black ink that reads "Steve Cooley". The signature is written in a cursive style with a large, looping flourish at the end.

STEVE COOLEY  
District Attorney

Attachment

ss



STEVE COOLEY  
LOS ANGELES COUNTY DISTRICT ATTORNEY

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18000 CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER  
210 WEST TEMPLE STREET LOS ANGELES, CA 90012-3210 (213) 974-3501

April 13, 2010

Honorable Edmund G. Brown, Jr.  
Attorney General of the State of California  
1300 I Street  
Sacramento, California 95814

Dear Honorable Brown:

**The Title and Summary of Initiative Measure 09-0024  
Are Misleading and Will Confuse Voters**

Initiative Measure 09-0024, "The Regulate, Control and Tax Cannabis Act of 2010" (hereafter "the Act"), impermissibly and unfairly misleads the public into believing that the Act accomplishes what its title denotes, namely, that it regulates, controls, and taxes cannabis. Quite to the contrary, the Act provides no framework for accomplishing these feats, but instead, delegates unfettered regulatory and enforcement responsibilities to local city and county governments. In addition to the Act's failure to build a statewide regulatory system, it is internally inconsistent; contains provisions that will limit the rights of property owners and employers; bars the State of California from taxing cannabis; and will conflict with the Federal Drug-Free Workplace Act of 1988 (hereafter "DFWA"), thereby precluding businesses from receiving billions of dollars in federal funding.

Further, the summary suggests that state and local governments will reap major tax and other fiscal benefits. This is simply not the case. The title of Initiative Measure 09-0024 inaccurately and deceptively masks the initiative's real effects. I ask that you reject the proposed Title and Summary.

"The Regulate, Control and Tax Cannabis Act of 2010" allows local governments to "adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize . . . cultivation, processing, distribution, . . . transportation, sale and possession for sale of cannabis and delegate regulatory responsibilities to local governments (§ 11301).

While local governments may impose taxes and fees on cannabis-related activities, the state government would be precluded from imposing any cannabis specific tax or fee (§ 11302).

Honorable Edmund G. Brown, Jr.  
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April 13, 2010

**A. The Act does not Control Cannabis**

In relevant part, the Act's nonbinding preamble provides that the Act is intended to accomplish the following:

Reform California's cannabis law in a way that will benefit the state[;]  
Regulate cannabis like [California law regulates] alcohol[;] Implement a  
legal regulatory framework to give California more control over  
cultivation, processing, transportation, distribution, and sale of cannabis[;]  
. . . Ensure that if a city decides it does want to tax and regulate the buying  
and selling of cannabis . . . that a strictly controlled legal system is  
implemented to oversee and regulate cultivation, distribution, and sales . . .  
.[;] Tax and regulate cannabis to generate billions of dollars for our state  
and local governments . . . [;] [and to] [a]llow the Legislature to adopt a  
statewide regulatory system for a commercial cannabis industry. (The Act,  
Section 2(B).)

The Act itself is completely at odds with the idea that it provides regulatory framework giving "California more control over [the] cultivation, processing, transportation, distribution, and sale of cannabis," (The Act, section 2(B)(3).) The Act creates no regulatory framework whatsoever as such responsibilities are delegated to the state's 478 cities and 58 counties. This local government "figure it out" approach creates confusion and misunderstanding, and actually limits state control over marijuana-related activities.

Moreover, this approach in no way "regulate[s] cannabis like alcohol." Alcohol is controlled by the extensive legal framework set forth in article XX, section 22 of the California Constitution and the Alcohol Beverage and Control Act (Bus. & Prof. Code, § 2300, et seq.). Under this framework, the state has "the exclusive right and power to license and regulate . . . alcoholic beverages within the State." (Cal. Const., Art XX, § 22.) Furthermore, it establishes the Department of Alcoholic Beverage Control (hereafter ABC) which is responsible for investigating and enforcing the provisions of the Alcohol Beverage and Control Act.

Thus, the Act's deference to local authorities regarding marijuana regulation is nothing like how alcohol is controlled in California. Furthermore, forcing local governments to promulgate comprehensive cannabis-related regulations will not only unduly burden local governments, but is also certain to lead to a chaotic and confusing result.

**B. The Act Deregulates and Eliminates Government Control of Cannabis**

Despite the Title’s reference to regulating cannabis, the Act is deregulatory in nature. Proposed section 11300 provides that a lawful occupant, lawful resident or guest may cultivate cannabis on private property for personal consumption. (§ 11300(a)(ii).) However, the area of cultivation may not exceed twenty-five square feet per private residence or, in the absence of any residence, the parcel. (§ 11300(a)(ii).) The Act defines “residence” as a “dwelling or structure, whether permanent or temporary, on private or public property, intended for occupation by a person . . . for residential purposes.” (§ 11304(d).)

Thus, the Act and more specifically the aforementioned provisions, do not limit or regulate cannabis cultivation but instead create an absolute right to cultivate marijuana on private property, and more troubling, creates the possibility that cultivation may in some circumstances be done on public lands. Further complicating matters, the proposal is ambiguous as to whether a property owner maintains the right to prohibit cultivation on his own land. Proposed section 11300, subsection (a), provides that “[c]ultivation on leased or rented property may be subject to approval from the owner of the property.” (§ 11300(a)(ii).) This provision does not state “shall be subject to approval,” and therefore, is unclear as to who determines if property owner approval is required.

In light of the foregoing, Initiative Measure 09-0024 does not control or regulate cannabis. It merely permits certain behavior associated with cannabis while preventing state or local control over such behavior. For example, state or local governments may not prevent cannabis cultivation on private property. Additionally, the Act lacks clarity as to whether a property owner may even prevent a land occupier, or even a “guests,” from cultivating on the owner’s property.

**C. The Act Does Not Permit the State of California to Tax Marijuana**

The proposed Title’s reference to taxing cannabis will mislead the public into believing that the Act authorizes a state marijuana tax.

Proposed section 11302, entitled “Imposition and Collection of Taxes and Fees,” permits local governments to tax cannabis-related activities in order to “raise revenue . . . or [] recoup any direct or indirect costs associated with the . . . activities permitted” by the Act. (§ 11302(a).) However, proposed section 11302, subsection (b), prohibits any marijuana-specific state tax. The proposal provides that:

[a]ny licensed premises shall be responsible for paying all federal, state and local taxes, fees, fines, penalties, or other financial responsibilities imposed on all or similarly situated businesses, facilities or premises . . .

Honorable Edmund G. Brown, Jr.  
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April 13, 2010

(§ 11302(b).) As such, the Act not only assigns the impossible task of devising a marijuana-related regulatory scheme to local governments, but the only tax benefit to the citizenry of the state will come in the form of local taxes meant to “recoup” costs associated with the newly legalized activities. This limited tax role is not apparent from the title of the Act as the Title implies, and the Act’s preamble explicitly provides, that the initiative is intended to tax and regulate cannabis to generate billions of dollars for our *state government* as well. (The Act, section 2(B)(9).)

**D. The Act Will Cost the State Billions in Federal Funding While Limiting Employers’ Rights to Maintain a Safe and Drug-Free Workplace**

The proposed Title of Initiative Measure 09-0024 incorrectly implies that California will benefit financially from its passage. Proposed section 11304, subsection (c), provides that:

No person shall be punished, fined, discriminated against, or be denied any right or privilege for lawfully engaging in any conduct permitted by this Act or authorized pursuant to Section 11301 of this Act. Provided however, that the existing right of an employer to address consumption that actually impairs job performance by an employee shall not be affected.

(§ 11304(c).) Since this provision protects all “conduct permitted by [the] Act,” a California employer will no longer be able to: screen job applicants for marijuana use; regulate any employee conduct related to the use, transportation, or cultivation of marijuana, unless the employer can prove job impairment; or choose to maintain a drug-free workplace consistent with federal law. Unlike the Act’s preamble, which provides that the “Act is not intended to affect . . . controlled substances in the workplace or by specific persons whose jobs involve public safety,” the language of Section 11304(c) is devoid of any such limitation.

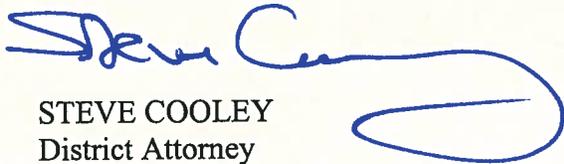
Furthermore, limiting an employer in this fashion will have devastating economic effects on California. The Federal Drug-Free Workplace Act of 1988 requires that all employers who receive government grants and contracts greater than \$100,000 maintain a drug-free workplace. (41 U.S.C. §§ 701-707.) Since proposed section 11304, subsection (c), would require grant recipients to violate the DFWA, it would preclude certain businesses, research institutions, and state and local governments from obtaining billions in federal funding. Additionally, proposed section 11304, subsection (c), would require employers to violate several federal mandates. For example, the U.S. Department of Transportation requires persons who operate airplanes, locomotives, trucks and buses to be removed from their respective jobs if they test positive for any narcotic.

Honorable Edmund G. Brown, Jr.  
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April 13, 2010

Therefore, the implication drawn from the proposed Title of Initiative Measure 09-0024, that California will benefit financially from its passage, is wrong and highly misleading.

The Title of Initiative Measure 09-0024 states that the Act will regulate, control, and tax cannabis. Instead, the proposal legalizes certain marijuana-related activities and entrusts the design, implementation, and enforcement of such regulations to overburdened local governments. The initiative also creates the implication that the state will benefit from taxing cannabis which is misleading and wrong. The Act explicitly prohibits a state marijuana tax and would deprive California of billions of dollars in federal funding because the Act requires employers to violate the federal DFWA. For all of these reasons, the Title and Summary of 09-0024 should not be approved.

Very truly yours,



STEVE COOLEY  
District Attorney

c: James Humes, Chief Deputy Attorney General  
Krystal Paris, Initiative Coordinator



City Manager's Office  
**MEMORANDUM**

**Date:** September 2, 2010  
**To:** Council Agenda Packet Recipients  
**From:** Anne Cardwell, Administrative Services Director  
**Re:** Additional Attachments to Item X-A-2 – Proposition 19 – The Regulate, Control and Tax Cannabis Act of 2010

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Following please find additional attachments that should be included with the Proposition 19 – The Regulate, Control and Tax Cannabis Act of 2010 Informational Report that is in the Council packet for September 7, 2010.

Thank you.

# YES ON 19

## CONTROL AND TAX CANNABIS

YesOn19.com

## Yes on Proposition 19 Ballot Argument

### Proposition 19: Common sense control of marijuana

Today, hundreds of millions of taxpayer dollars are spent enforcing the failed prohibition of marijuana (also known as "cannabis").

Currently marijuana is easier for kids to get than alcohol, because dealers don't require ID.

Prohibition has created a violent criminal market run by international drug cartels.

Police waste millions of taxpayer dollars targeting non-violent marijuana consumers, while thousands of violent crimes go unsolved.

And there is \$14 billion in marijuana sales every year in California, but our debt-ridden state gets nothing from it.

Marijuana prohibition has failed.

### We need a common sense approach to control and tax marijuana like alcohol.

Proposition 19 was carefully written to get marijuana under control.

Under Proposition 19, *only* adults 21 and over can possess up to one ounce of marijuana, to be consumed at home or licensed establishments. Medical marijuana patients' rights are preserved.

If we can control and tax alcohol, we can control and tax marijuana.

### Put strict safety controls on marijuana

Proposition 19 maintains strict criminal penalties for driving under the influence, increases penalties for providing marijuana to minors, and bans smoking it in public, on school grounds, and around minors.

Proposition 19 keeps workplaces safe by preserving the right of employers to maintain a drug-free workplace.

### Put police priorities where they belong

According to the FBI, in 2008 over 61,000 Californians were arrested for misdemeanor marijuana possession, while 60,000 violent crimes went unsolved. By ending arrests of non-violent marijuana consumers, police will save hundreds of millions of taxpayer dollars a year, and be able to focus on the real threat: violent crime.

Police, Sheriffs, and Judges support Proposition 19.

1776 Broadway, Oakland, CA 94612 • 510-268-9701

Yes on 19. Tax Cannabis 2010. Sponsored by S.K. Seymour LLC, a Medical Cannabis Provider, dba Oaksterdam University, a Cannabis Educator

# YES ON 19

## CONTROL AND TAX CANNABIS

YesOn19.com

### Help fight the drug cartels

Marijuana prohibition has created vicious drug cartels across our border. In 2008 alone, cartels murdered 6,290 civilians in Mexico -- more than all U.S. troops killed in Iraq and Afghanistan combined.

60 percent of drug cartel revenue comes from the illegal U.S. marijuana market.

By controlling marijuana, Proposition 19 will help cut off funding to the cartels.

### Generate billions in revenue to fund what matters

California faces historic deficits, which, if state government doesn't balance the budget, could lead to higher taxes and fees for the public, and more cuts to vital services. Meanwhile, there is \$14 billion in marijuana transactions every year in California, but we see none of the revenue that would come from taxing it.

Proposition 19 enables state and local governments to tax marijuana, so we can preserve vital services.

The State's tax collector, the Board of Equalization, says taxing marijuana would generate \$1.4 billion in annual revenue, which could fund jobs, healthcare, public safety, parks, roads, transportation, and more.

### Let's reform California's marijuana laws

Outlawing marijuana hasn't stopped 100 million Americans from trying it. But we *can* control it, make it harder for kids to get, weaken the cartels, focus police resources on violent crime, and generate billions in revenue and savings.

We need a common sense approach to control marijuana.

### YES on 19.

YesOn19.com

Joseph D. McNamara  
San Jose Police Chief (Ret.)

James P. Gray  
Orange County Superior Court Judge (Ret.)

Stephen Downing  
Deputy Chief, LAPD (Ret.)

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Yes on 19. Tax Cannabis 2010. Sponsored by S.K. Seymour LLC, a Medical Cannabis Provider, dba Oaksterdam University, a Cannabis Educator

**X.A.2.41**



Sitemap

Subject Areas

Products

Other Resources

Ballot/Initiatives

Care

Submitted July 15, 2010

## Proposition 19

# Changes California Law to Legalize Marijuana and Allow It to Be Regulated and Taxed. Initiative Statute.

### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact

- **Fiscal Impact:** Depending on federal, state, and local government actions, potential increased fee revenues in the hundreds of millions of dollars annually and potential correctional savings of tens of millions of dollars annually.

#### Yes/No Statement

A **YES** vote on this measure means: Individuals age 21 or older could, under state law, possess and cultivate limited amounts of marijuana for personal use. In addition, the state and local governments could regulate, and tax commercial marijuana-related activities under certain conditions. These activities would remain illegal under federal law.

A **NO** vote on this measure means: The possession and cultivation of marijuana for personal use and commercial marijuana-related activities would remain illegal under state law, unless allowed under the existing medical marijuana law.

## Background

**Federal Law.** Federal laws classify marijuana as an illegal substance and provide criminal penalties for activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

**State Law and Proposition 215.** Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is a misdemeanor punishable by a fine, while selling marijuana is a felony and may result in a prison sentence.

In November 1996, voters approved Proposition 215, which legalized the cultivation and possession of marijuana in California for medical purposes. The U.S. Supreme Court ruled in 2005, however, that federal authorities continue to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the U.S. Department of Justice announced in March 2009 that the current administration would not prosecute marijuana patients and providers whose actions are consistent with state medical marijuana laws.

## Proposal

This measure changes state law to (1) legalize the possession and cultivation of limited amounts of marijuana for personal use by individuals age 21 or older, and (2) authorize various commercial marijuana-related activities under certain conditions. Despite these changes to state law, these marijuana-related activities would continue to be prohibited under federal law. These federal prohibitions could still be enforced by federal agencies. It is not known to what extent the federal government would continue to enforce them. Currently, no other state law authorizes commercial marijuana-related activities for non-medical purposes.

### State Legalization of Marijuana Possession and Cultivation for Personal Use

Under the measure, persons age 21 or older generally may (1) possess, process, share or transport up to one ounce of marijuana; (2) cultivate marijuana on private property in an area up to 25 square feet per private residence or parcel; (3) possess harvested and living marijuana plants cultivated in such an area; and (4) possess any items or equipment associated with the above activities. The possession and cultivation of marijuana must be solely for an individual's personal consumption and not for sale to others, and consumption of marijuana would only be permitted in a residence or other "non-public place." (One exception is that marijuana can be sold and consumed in licensed establishments, as discussed below.) The state and local governments cannot authorize the possession and cultivation of larger amounts of marijuana.

State and local law enforcement agencies could not seize or destroy marijuana from persons in compliance with the measure. In addition, the measure states that no individual could be punished, fined, or discriminated against for engaging in any conduct permitted by the measure. However, it does specify that employers would retain their existing rights to address consumption of marijuana that impairs an employee's job performance.

This measure sets forth some limits on marijuana possession and cultivation for personal use. For example, smoking of marijuana in the presence of minors is not permitted. In addition, the measure would not change existing laws that prohibit driving under the influence of drugs or that prohibit possessing marijuana on grounds of elementary, middle, and high schools. Moreover, a person age 21 or older who knowingly gives marijuana to a person age 18 through 20 could be sent to county jail for up to six months and fined up to \$10,000 per offense. (The measure does not change existing criminal laws which impose penalties for adults who give marijuana to minors under the age of 18.)

### Authorization of Commercial Marijuana Activities

The measure allows local governments to authorize, regulate, and tax various commercial marijuana-related activities. As discussed below, the state also could authorize, regulate, and tax such activities.

**Regulation.** The measure allows local governments to adopt ordinances and regulations regarding commercial marijuana-related activities—including marijuana cultivation, processing, distribution, transportation, and sales. For example, local governments could license establishments that could sell marijuana to persons age 21 or older. Local governments could regulate the location, size, hours of operation, and signs and displays of such establishments. Individuals could transport marijuana from a licensed marijuana establishment in one locality to a licensed establishment in another locality, regardless of whether any localities in between are permitted to produce or sell commercial production and sale of marijuana. However, the measure does not permit the transportation of marijuana between California and another state or country. An individual who was licensed to sell marijuana in a commercial establishment and who negligently provided marijuana to a person under 21 would be banned from owning, operating, being employed by, assisting, or entering a licensed marijuana establishment for one year. Local governments could also impose additional penalties or civil fines on certain marijuana-related activities, such as for violation of a local ordinance limiting the hours of operation of a licensed marijuana establishment.

Whether or not local governments engaged in this regulation, the state could, on a statewide basis, regulate commercial production of marijuana. The state could also authorize the production of hemp, a type of plant that can be used to make products such as fabric and paper.

**Taxation.** The measure requires that licensed marijuana establishments pay all applicable federal, state, and local taxes and fees currently imposed on other similar businesses. In addition, the measure permits local governments to impose new general, excise, or transfer taxes, as well as benefit assessments and fees on authorized marijuana-related activities. The purpose of such charges would be to raise revenue for local governments and/or to offset any costs associated with marijuana regulation. In addition, the state could impose similar charges.

## Fiscal Effects

Many of the provisions in this measure permit, but do not require, the state and local governments to take certain actions related to the regulation and taxation of marijuana. Thus, it is uncertain to what extent the state and local governments would in fact undertake such actions. For example, it is unknown how many local governments would choose to license establishments that would grow or sell marijuana or impose an excise tax on such sales.

In addition, although the federal government announced in March 2009 that it would no longer prosecute marijuana patients and providers whose actions are consistent with Proposition 215, it has continued to enforce its prohibitions on non-medical marijuana-related activities. This means that the federal government could still prosecute individuals for activities that would be permitted under this measure. To the extent that the federal government continued to enforce its prohibitions on marijuana, it would have the effect of impeding the full implementation of the measure permitted by this measure under state law.

Thus, the revenue and expenditure impacts of this measure are subject to significant uncertainty.

## Impacts on State and Local Expenditures

**Reduction in State and Local Correctional Costs.** The measure could result in savings to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under county probation or state parole supervision. These savings could reach tens of millions of dollars annually. The county jail savings would be offset to the extent that jail beds required for marijuana offenders were used for other criminals who are now being released early because of jail space.

**Reduction in Court and Law Enforcement Costs.** The measure would result in a reduction in state and local costs for enforcement of marijuana-related offenses and the handling of related criminal cases in the court system. However, it is likely that the state and local governments would redirect their resources to other law enforcement and court activities.

**Other Fiscal Effects on State and Local Programs.** The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance abuse treatment and other medical services. This measure could also have fiscal effects on state and locally funded drug treatment programs for criminal offenders, such as drug courts. Moreover, the measure could potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a public registry that identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes.

## Impacts on State and Local Revenues

The state and local governments could receive additional revenues from taxes, assessments, and fees from marijuana-related activities allowed under this measure. If the commercial production and sale of marijuana

occurred in California, the state and local governments could receive revenues from a variety of source ways described below.

- **Existing Taxes.** Businesses producing and selling marijuana would be subject to the same taxes businesses. For instance, the state and local governments would receive sales tax revenues from of marijuana. Similarly, marijuana-related businesses with net income would pay income taxes to state. To the extent that this business activity pulled in spending from persons in other states, th would result in a net increase in taxable economic activity in the state.
- **New Taxes and Fees on Marijuana.** As described above, local governments are allowed to imp fees, and assessments on marijuana-related activities. Similarly, the state could impose taxes an these types of activities. (A portion of any new revenues from these sources would be offset by ir regulatory and enforcement costs related to the licensing and taxation of marijuana-related activ

As described earlier, both the enforcement decisions of the federal government and whether the state a governments choose to regulate and tax marijuana would affect the impact of this measure. It is also u how the legalization of some marijuana-related activities would affect its overall level of usage and pric in turn could affect the level of state or local revenues from these activities. Consequently, the magnitu additional revenues is difficult to estimate. To the extent that a commercial marijuana industry develop state, however, we estimate that the state and local governments could eventually collect hundreds of dollars annually in additional revenues.

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Please see the Secretary of State's website for the November 2, 2010 Official Voter Information Guide.



## Ballot Propositions

**[Note: This measure has been moved to the November 2012 election.] Safe, Clean, and Reliable Drinking Water Supply Act of 2010. SBX7 2 (Chapter 3, Statutes of 2009), Cogdill. Bond Measure.**

November 2, 2010 Proposition 18

**Summary**

**Changes California Law to Legalize Marijuana and Allow It to Be Regulated and Taxed. Initiative Statute.**

November 2, 2010 Proposition 19

**HTML PDF Summary**

**Redistricting of Congressional Districts. Initiative Constitutional Amendment.**

November 2, 2010 Proposition 20

**HTML PDF Summary**

**Establishes \$18 Annual Vehicle License Surcharge to Help Fund State Parks and Wildlife Programs and Grants Free Admission to All State Parks to Surcharged Vehicles. Initiative Statute.**

November 2, 2010 Proposition 21

**HTML PDF Summary**

**1 2 3**

**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - SEPTEMBER 7, 2010**  
**INFORMATIONAL ITEM**

**DATE** : August 31, 2010  
**TO** : City Manager  
**FROM** : Finance Director  
**SUBJECT** : **CONSIDERATION OF FINANCE AUDIT AND BUDGET  
COMMITTEE MISSION, DUTIES AND STRUCTURE**

**RECOMMENDATION:**

Consider recommendations from the Finance Audit and Budget Committee regarding their mission, duties and structure and provide comments.

**EXECUTIVE SUMMARY:**

The Benicia Finance Audit and Budget (FAB) Committee met on July 23, 2010 and authorized the Chairperson to draft a letter to the City Council requesting changes to their mission, duties and structure. Over the course of time, the Mayor and Council have appointed a very experienced committee membership with significant knowledge in the areas of Financial and Investment Planning, Banking and Investment Strategies, Budget Management, and Operations. The committee members feel their talents could be better utilized by modifying the current structure from committee to commission, adding one additional citizen member and moving two Council members to ex-officio status, and expanding the duties of the new commission to include an annual work program approved in advance by the Council. Staff will allocate available time to the annual work program, the balance of which will be conducted by ad hoc committees assigned by the FAB. If approved for implementation, staff will introduce an ordinance at a future Council meeting establishing the new commission.

**BUDGET INFORMATION:**

There is no budget impact at this time

**STRATEGIC PLAN:**

Relevant Strategic Plan Issues and Strategies:

- Strategic Issue #3: Strengthening Economic and Fiscal Conditions

## **BACKGROUND:**

The Benicia Finance Audit and Budget (FAB) Committee met on July 23, 2010 and authorized the Chairperson to draft a letter to the City Council requesting changes to their mission, duties and structure. The FAB is currently comprised of seven members, of which two are City Council members, one is the City Treasurer, and four are members of the public appointed by the City Council.

The FAB currently meets the fourth Friday of each month at 8 a.m. in the Commission Room and the staff liaison is the Finance Director and other Finance Department staff.

The changes recommended by the current committee members have been talked about over the past several months as their understanding of the City's financial structure has deepened and the need for budget reductions have increased due to the prolonged recession. The recommendations include changing the name to the Benicia Finance Commission (BFC), which requires approval via ordinance.

Staff had some concerns about the FAB's role in time-sensitive projects, such as budget recommendations, and also in the amount of time staff has available to research and report on the proposed annual work program. On August 27, 2010, the committee members discussed measures that would mitigate the time required of staff, including the introduction of special ad hoc committees comprised of citizen members that would research and develop preliminary reports to be further deliberated by the FAB. It is also suggested the renamed BFC would focus on reviewing and establishing policies and procedures that would guide staff and Council several months out into the future, much the same way the "Forward Planning Unit" functions in Community Development.

The attached letter from Dennis Lowry presents the current policy that guides the committee, along with the recommended changes along side in a separate column. In this way, it is easy to compare the current policy with the recommended changes. I am also listing them below in another format for the sake of further discussion.

### **Purpose**

Current Policy. The FAB hereby establishes an administrative policy to be followed by committee members in the accomplishment of City Council directives.

Proposed Policy. The purpose of the Benicia Finance Commission shall be advisory to the City Council and shall review financial issues that can be reasonably addressed by the City of Benicia. BFC shall meet with the City Council annually to prepare and approve a work program for the following year. Urgent issues may be authorized for study by the City Council at any regular Council meeting.

### **Mission Statement**

Current Policy. The Finance, Audit and Budget Committee shall act as the advisory body on the selection and reporting of the independent City Auditor, shall review the financial disbursements of the City to gauge compliance with established policies and procedures, shall advise the City Council on issues pertaining to the auditing of financial records, and shall research other issues assigned by the City Council.

Proposed Policy. The role of the Benicia Finance Commission is to provide citizen input to Council and staff regarding financial policy or process issues including Audits, Financial Budgets (short and long term), and monthly review of the Warrant Register. In addition, the BFC's role is to help promote citizen's participation and understanding regarding the financial condition of the City.

### **Duties**

Current Policy.

1. To advise the City Council on the selection of the independent City Auditor and the review of the Comprehensive Annual Financial Report.
2. To review a sampling of financial disbursements of the City to reasonably gauge compliance with established policies and procedures.
3. To review other projects as assigned by the City Council, such as:
  - a. Review effectiveness of financial policies, such as the Reserve Policy and Balanced Budget Policy.
  - b. Review financing alternatives for major projects.
  - c. Review financial plans to promote sustainability.
  - d. Review updates to the Long-Range Budget Forecasting Model.
  - e. Review updates to the Capital Improvement Program Model.

In order to improve the usefulness of the recurring reviews and special projects research performed by the FAB, the committee members are recommending better defining their role in the existing areas, as well as, expanding their role to include the following list, accentuated by the creation of annual work program that will be reviewed by the City Council: (Note: New items are underlined.)

### Proposed Policy.

- a. Annual review of independent auditor selection process with recommendation on which firm to use.
- b. Annual review of the Comprehensive Annual Financial Report with recommendations as appropriate.
- c. Annual review of the investment policy with recommendations as appropriate.
- d. Annual review of independent financial audit with recommendation as appropriate.
- e. Review of short-range financial projections and assumptions and make recommendations as appropriate on subjects such as:
  - Effectiveness of Reserve Policy
  - Effectiveness of Balanced Budget Policy
  - Financing alternatives for major projects
  - Financial plans to promote sustainability
  - Review of revenue projections
  - Review of unfunded liabilities
- f. Review of long-range financial projections and assumptions to determine long-term financial sustainability and make recommendations as appropriate
- g. Review updates to the Long-Range Budget Forecasting Budget Model and make recommendations as appropriate.
- h. Quarterly review of the City's Investments and make recommendations as appropriate.
- i. Monthly review of financial disbursements (Warrant Register Review Process) of the City to reasonably gauge compliance with established policies and procedures and make recommendations as appropriate.
- j. Monthly review of the City's General Ledger to monitor the City's performance against a stated budget and make recommendations as appropriate.
- k. Special projects as directed by the City Council, City Manager or Finance Director.
- l. Submit an annual work program to the Council for review and approval.
- m. Policy or budget recommendations shall be provided to the Council in either written or verbal format depending on the nature of the subject thereby allowing an opportunity to question or clarify the recommendation.

## **Structure**

### Current Policy.

1. The Committee shall be comprised of 4 members of the public, 2 Council Members and the City Treasurer.
2. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
3. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
4. Committee members shall elect the Chairperson, who will serve a one-year term, generally January through December.
5. Elected liaisons shall be allowed full discussion and voting privileges.
6. Staff reports shall accompany agenda items when appropriate.
7. Decisions on agenda items shall be by consensus unless otherwise directed by the Chairperson.
8. Minutes shall be recorded, approved and forwarded to the City Council.
9. The Committee shall meet the Friday following the first City Council meeting unless otherwise necessary.

### Proposed Policy.

- a. The Committee shall be comprised of 5 members of the public, 2 Council Members and the City Treasurer.
- b. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
- c. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
- d. Board members shall elect the Chairperson, who will serve a one-year term, generally July through June to coincide with the fiscal budget year.
- e. Elected liaisons shall be allowed full discussion privileges but shall not have voting privileges.
- f. Staff reports shall accompany agenda items when appropriate.
- g. Decisions shall be by majority vote.
- h. Minutes shall be recorded, approved and forwarded to the City Council.
- i. The Commission shall meet the 4th Friday of each month unless otherwise necessary.

### Attachments:

- ❑ Letter from Dennis Lowry, Chairperson, Benicia FAB
- ❑ Current Mission Duties and Structure Policy
- ❑ Memo from Jim Erickson on Finance, Audit and Budget Committee Role



August 5, 2010

Mayor Elizabeth Patterson  
250 East L Street  
Benicia, CA 94510

Dennis Lowry  
Chairman – Finance Audit Budget Committee  
828 Rose Drive  
Benicia, CA 94510

Re: Proposal to Modify Title & Duties of Finance Audit and Budget Committee

Madam Mayor,

The Appointed Citizen members of the Benicia FAB committee are in unanimous agreement that the role/scope of our committee is in need of review and/or revision. The City of Benicia is confronted with daunting issues impacting the General Budget, Short and Long Term Financial Budgeting and Investment Strategies and the long-term financial sustainability of this great city. It is noteworthy and commendable that public input has been solicited several times this year by the City Council and City Staff regarding the short and long-term budget issues.

The matter we bring to your attention is that not once in the past or present fiscal year has the FAB been asked by the City Council to provide input, advice or opinions on these critical budget issues. We believe a major contributor to the failure of the City Council to use the FAB resources is the present description of our task and duties. As Mayor, you have appointed a very experienced committee membership with significant knowledge in the areas of Financial and Investment Planning, Banking and Investment Strategies, Budget Management, and Operations. These skills coupled with a willingness to provide an outsider's view of how to address public issues is a powerful combination. We strongly believe the committee has much to contribute, if only asked.

Our present charter has two assigned Council members. We have raised numerous issues<sup>1</sup> over the past fiscal year but due to either the nature of the Council agenda scheduling committee reports to the last of Council meetings or due to the fact that time has not allowed committee reports to be heard, we have not observed any report from either Council member regarding FAB issues. As a Committee, we do not have a forum by which to report our issues or concerns directly to the Council so we are somewhat frustrated and do not feel we are fulfilling our commitment and desire to serve Benicia.

Therefore, we propose to change the definition of our committee beginning with our committee name and ending with clarity on the broadest scope of what we believe our

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<sup>1</sup> Creation and monthly review of Accrual Budgets, Decentralized Management of Budget, annotating pass through expenses on the Warrant Register, Elimination of Contract Labor where it makes sense, Holding Department Heads accountable for meeting or under-running original budgets, Cutting overtime, travel, meals and training, before reducing staff, Centralized Purchasing in accordance with existing Ordinances, Not adjusting budgets monthly to mask issues but requiring department heads to manage a reduced budget, Focus on under-running budgets instead of spending all within the budget by the end of the fiscal year, etc.

committee can and should do. Attachment A states our existing role on the left side of the document and on the right side are our recommendations thereby allowing a side-by-side comparison. These changes are not presented lightly and we clearly understand that our overall role is that of advice and counsel regarding financial issues. Here are a couple of examples of why we believe we need these changes.

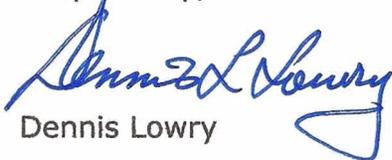
1. We really do not know what to call ourselves when we meet as a committee or with the general public. Our existing charter lists committee and board yet we do not know if either title should be used. Many citizens are familiar with the title of Commissioner therefore we wish to change the name of our committee to Benicia Finance Commission.
2. We wish to be looked upon as a resource for the City Council especially when the Council is wrestling with financial matters that impact City Staff. Today, the Council refers financial matters to City Staff for a recommendation that may or could impact that very staff. We believe that, at the very least, the council should also seek to receive input from a body that is not impacted by the recommendation as a way of balancing the facts leading to a final decision.

In addition to our name change we are proposing a more robust list of duties. There are three changes that warrant further explanation.

1. Recommendation 4g: We recommend moving from a consensus based Commission to a majority vote. The nature of the material we work on rarely results in unanimous support. Therefore, we agreed that majority vote would allow us to make timely recommendations to the Council.
2. Recommendation 4a: Because of the above, we recommend adding one additional member to our Commission. Because 75% of the general budget is compensation and benefits, it may be desirable to have a member of the Civil Service Commission to be a member of the Finance Commission.
3. Recommendation 4e: We reviewed a few finance commissions in and outside of California and observed that none of the assigned elected liaisons had voting rights. Upon inquiry as to why, we were told that since they cast the final vote regarding any recommendation as a council member it was unnecessary for them to vote on the initial recommendation. We support this rationale.

It may be beneficial for the Council to meet with our committee to discuss these proposed changes. We chose to waive the tradition of not meeting in the month of August and have set aside August 27<sup>th</sup> from 8am to 10 am for that very purpose. It would be our distinct pleasure to host this meeting if you so desire. In any event, please advise us of the next step to be taken regarding this request.

Respectfully,



Dennis Lowry

Cc: Councilmen Campbell, Hughes, Ioakimedes, and Vice-Mayor Schwartzman, City Manager, Director of Finance

PRESENT STRUCTURE	PROPOSED STRUCTURE
<p>Name: Benicia Finance Audit Budget Committee (FAB)</p> <p><b>I. Purpose</b></p> <p>The FAB Committee hereby establishes an administrative policy to be followed by committee members in the accomplishment of City Council directives.</p> <p><b>II. Mission Statement</b></p> <p>The Finance Audit &amp; Budget Committee shall act as the advisory body on the selection and reporting of the independent auditor shall review the financial disbursements of the City to gauge compliance with established policies and procedures, shall advise the City Council on issues pertaining to the auditing of financial records, and shall research other issues assigned by the City Council.</p> <p><b>III. Duties</b></p> <ol style="list-style-type: none"> <li>1. To advise the City Council on the selection of the independent City Auditor and the review of the Comprehensive Annual Financial Report.</li> <li>2. To review a sampling of financial disbursements of the City to reasonably gauge compliance with established policies and procedures.</li> <li>3. To review other projects as assigned by the City Council, such as: <ol style="list-style-type: none"> <li>a. Review effectiveness of financial policies, such as the Reserve Policy and Balanced Budget Policy.</li> <li>b. Review financing alternatives for major projects.</li> <li>c. Review financial plans to promote sustainability.</li> <li>d. Review updates to the Long-Range</li> </ol> </li> </ol>	<p>Name: Benicia Finance Commission (BFC)</p> <p><b>1. Purpose</b></p> <p>The purpose of the Benicia Finance Commission shall be advisory to the City Council and shall review financial issues that can be reasonably addressed by the City of Benicia. BFC shall meet with the City Council annually to prepare and approve a work program for the following year. Urgent issues may be authorized for study by the City Council at any regular Council meeting.</p> <p><b>2. Mission Statement</b></p> <p>The role of the Benicia Finance Commission is to provide citizen input to Council and staff regarding financial policy or process issues including Audits, Financial Budgets (short and long term), and monthly review of the Warrant Register. In addition, the BFC's role is to help promote citizen's participation and understanding regarding the financial condition of the City.</p> <p><b>3. Duties</b></p> <ol style="list-style-type: none"> <li>a. Annual review of independent auditor selection process with recommendation on which firm to use;</li> <li>b. Annual review of the Comprehensive Annual Financial Report with recommendations as appropriate;</li> <li>c. Annual review of the investment policy with recommendations as appropriate;</li> <li>d. Annual review of independent financial audit with recommendation as appropriate;</li> <li>e. Review of short-range financial projections and assumptions; make recommendations as appropriate on subjects such as: <ul style="list-style-type: none"> <li>• Effectiveness of Reserve Policy</li> <li>• Effectiveness of Balanced Budget Policy</li> <li>• Financing alternatives for major projects</li> <li>• Financial plans to promote sustainability</li> <li>• Review of revenue projections</li> <li>• Review of unfunded liabilities</li> </ul> </li> </ol>

Budget Forecasting Model.

e. Review updates to the Capital Improvement Program Model.

**IV. Structure**

1. The Committee shall be comprised of 4 members of the public, 2 Council Members and the City Treasurer.
2. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
3. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
4. Board members shall elect the Chairperson, who will serve a one-year term, generally January through December.
5. Elected liaisons shall be allowed full discussion and voting privileges.
6. Staff reports shall accompany agenda items when appropriate.
7. Decisions on agenda items shall be by consensus unless otherwise directed by the Chairperson.
8. Minutes shall be recorded, approved and forwarded to the City Council.
9. The Board shall meet the 4th Friday of each month unless otherwise necessary.

The Finance Audit & Budget Committee shall advise the City Council on matters of financial importance to ensure the accurate reporting and long range fiscal stability of the City.

Meetings: 4th Friday of each month at 8:00 am in the Commission Room.

Council Members: Alan Schwartzman and Tom Campbell.

**Staff Contact: Finance** Department - (707) 746-4225

- f. Review of long-range financial projections and assumptions to determine long-term financial sustainability; make recommendations as appropriate.
- g. Review updates to the Long-Range Budget Forecasting Budget Model; make recommendations as appropriate
- h. Quarterly review of the City's Investments; make recommendations as appropriate.
- i. Monthly review of financial disbursements (Warrant Register Review Process) of the City to reasonably gauge compliance with established policies and procedures. Make recommendations as appropriate;
- j. Monthly review of the City's General Ledger to monitor the City's performance against a stated budget and make recommendations as appropriate;
- k. Special projects as directed by the City Council, City Manager or Finance Director.
- l. Submit an annual work program to the Council for review and approval.
- m. Policy or budget recommendations shall be provided to the Council in either written or verbal format depending on the nature of the subject thereby allowing an opportunity to question or clarify the recommendation.

**4. Structure**

- a. The Committee shall be comprised of 5 members of the public, 2 Council Members and the City Treasurer.
- b. Appointed citizens shall be Benicia residents, business owners, or members of Benicia organizations.
- c. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
- d. Board members shall elect the Chairperson, who will serve a one-year term, generally July through June to coincide with the fiscal budget year.
- e. Elected liaisons shall be allowed full discussion privileges but shall not have voting privileges.
- f. Staff reports shall accompany agenda items when appropriate.
- g. Decisions shall be by majority vote.
- h. Minutes shall be recorded, approved and forwarded to the City Council.
- i. The Commission shall meet the

	<p>4th Friday of each month unless otherwise necessary.</p> <p>Meetings: 4<sup>th</sup> Friday of each month at 8:00 am in the Commission Room</p> <p>Council Members: Alan Schwartzman and Tom Campbell serve as Elected Liaisons.</p> <p>Staff Contact: Finance Department 707-746-4225</p>
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**FINANCE, AUDIT & BUDGET COMMITTEE**  
**MISSION, DUTIES AND STRUCTURE POLICY**  
*Amended November 7, 2008*

**I. Purpose**

The FAB hereby establishes an administrative policy to be followed by committee members in the accomplishment of City Council directives.

**II. Mission Statement**

The Finance, Audit and Budget Committee shall act as the advisory body on the selection and reporting of the independent City Auditor, shall review the financial disbursements of the City to gauge compliance with established policies and procedures, shall advise the City Council on issues pertaining to the auditing of financial records, and shall research other issues assigned by the City Council.

**III. Duties**

1. To advise the City Council on the selection of the independent City Auditor and the review of the Comprehensive Annual Financial Report.
2. To review a sampling of financial disbursements of the City to reasonably gauge compliance with established policies and procedures.
3. To review other projects as assigned by the City Council, such as:
  - a. Review effectiveness of financial policies, such as the Reserve Policy and Balanced Budget Policy.
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**IV. Structure**

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3. Members shall be appointed to 4-year terms, with 2 member terms expiring every 2 years.
4. Committee members shall elect the Chairperson, who will serve a one-year term, generally January through December.
5. Elected liaisons shall be allowed full discussion and voting privileges.
6. Staff reports shall accompany agenda items when appropriate.
7. Decisions on agenda items shall be by consensus unless otherwise directed by the Chairperson.
8. Minutes shall be recorded, approved and forwarded to the City Council.
9. The Committee shall meet the Friday following the first City Council meeting unless otherwise necessary.



To: Mayor and Council Members  
From: Jim Erickson  
Date: 09/01/10  
Subject: Finance, Audit and Budget Committee Role

The Finance, Audit and Budget Committee (FAB) non-elected members have presented recommendations to the Council to expand their role. Their report is on the September 7<sup>th</sup> Council agenda as an informational item. They would like Council comments and thoughts about the recommendations.

Staff has some concerns:

1. Establishment of a standing committee, or making significant change to the role of a standing committee, should not be taken lightly. Once changes are made, they are very difficult to undue, even if the changes become problematic.
2. The recommended changes have a likely heavy impact on staff time, from the expanded areas of responsibility to the addition of a committee member.
3. Some of the recommended changes seem to overlap processes already in place for administering the preparation of the budget and monitoring monthly department expenditures vs. appropriations. The overlap relates to duties of the Finance Director and the duties of the City Manager as defined in City Code.

Given the competing demands for staff and Council time for the next 60 days or so (employee negotiations, Budget Balancing, hiring new City Manager), the recommendations of the non-elected officials of the FAB Committee would be better considered some time after these matters are completed.



**REQUEST FOR ITEM ON COUNCIL AGENDA**

Requested by:

**Council Member Campbell**

Requested Council Meeting Date:

**September 7, 2010**

Agenda Item Name:

**Request to agendize Proposition 23 (the AB 32 Suspension measure)**

**I request that this issue be placed on a future Council agenda so that we can discuss.**

