

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
September 17, 2013

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 7:00 p.m.

II. CLOSED SESSION:

III. CONVENE OPEN SESSION:

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Mary Frances Kelly Poh led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

IV. ANNOUNCEMENTS/PROCLAMATIONS/ APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS

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

2. Openings on Boards and Commissions:

Arts and Culture Commission
1 unexpired term
Open until filled

Human Services Board
1 full term
Open until filled

Open Government Commission
1 full term
Open until filled

Community Sustainability Commission (Student Commissioner)
1 full term
Open until filled

3. Mayor's Office Hours

4. Benicia Arsenal Update

Verbal update from City Attorney

Status quo. Nothing new to report.

B. PROCLAMATIONS

C. APPOINTMENTS

D. PRESENTATIONS

1. TULA SISTER CITIES UPDATE

V. ADOPTION OF AGENDA:

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

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

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

B. PUBLIC COMMENT

1. Constance Beutel - Ms. Beutel invited Council and the public to attend the upcoming free Benicia Clean Tech Expo on 10/18-10/19.
2. Marilyn Bardet - Ms. Bardet invited Council and the public to the upcoming Art Auction at the Clocktower. She discussed concerns regarding the timing for the EIR/response to comments for the Valero Crude Rail Project.
3. Patty Gavin - Ms. Gavin discussed the upcoming Public Art Roundtable event hosted by the Arts & Culture Commission. She discussed a silent auction being hosted by the Arts & Culture Commission.
4. Mayor Patterson discussed the Leadership in Energy and Environmental Design (LEED) plaque ceremony for the LEED-CI Gold Benicia

Community Center.

VII. CONSENT CALENDAR:

Council pulled items VII.B and VII.D for discussion.

Council Member Strawbridge asked if the change to the minutes required the item to be pulled. Ms. Wolfe noted that it was a technical change, but provided copies for Council and the public to ensure transparency.

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted the Consent Calendar, as amended, on roll call by the following vote:

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

- A. APPROVAL OF THE MINUTES OF THE SEPTEMBER 3, 2013 CITY COUNCIL MEETING**

- B. INTRODUCTION AND FIRST READING OF THE ORDINANCE AMENDING CHAPTER 5.28 (PEDDLERS, SOLICITORS, AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE BY REPLACING IT IN ITS ENTIRETY**

Mayor Patterson discussed her desire to direct the City Attorney to address another issue regarding material being left on door steps. It creates litter and could alert people to the fact that people might not be home.

Public Comment:

None

Vice Mayor Campbell asked for clarification on whether Mayor Patterson's suggestion would apply to politicians during election season (it would not).

Council Member Schwartzman asked for clarification on whether the Mayor's request was part of the two-step process. Staff confirmed that this item would not require a lot of staff time.

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

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

- C. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED JUNE 30, 2013**
- D. SECOND READING AND ADOPTION OF AN ORDINANCE TO AMEND BENICIA MUNICIPAL CODE CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO BAN HOOKAH AND SMOKE LOUNGES, AND REGULATE ELECTRONIC CIGARETTES AS TOBACCO PRODUCTS, BY AMENDING SECTION 9.06.010 (DEFINITIONS) AND BY ADDING SECTION 9.06.120 (EXISTING TOBACCO SHOPS) AND SECTION 9.06.130 (PROHIBITION OF ALL SMOKE LOUNGES)**

Ordinance 13-10 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 9.06.010 (DEFINITIONS) OF CHAPTER 9.06 (SMOKING IN ENCLOSED PUBLIC PLACES) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) AND ADDING SECTION 9.06.120 (EXISTING TOBACCO SHOPS) AND SECTION 9.06.130 (PROHIBITION OF ALL SMOKE LOUNGES) TO TITLE 9 OF THE BENICIA MUNICIPAL CODE TO BAN HOOKAH AND SMOKE LOUNGES, AND REGULATE ELECTRONIC CIGARETTES AS TOBACCO PRODUCTS

Council Member Hughes discussed concern regarding proceeding with an ordinance when Council doesn't have all the facts. He was concerned about the issue of E-cigarettes.

Public Comment:

1. Anquanitte Ortega, Solano County Tobacco Education Coalition - Ms. Ortega spoke in support of the proposed ordinance.

Mayor Patterson discussed concern regarding the confusing information on this item. She asked Council to err on the side of protecting the public with regards to this item.

Council Member Schwartzman and Ms. Ortega discussed where minors are able to gain access to E-cigarettes (online and at kiosks). He was troubled by the easy access to E-cigarettes, as they contain nicotine.

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, Council adopted Ordinance 13-10, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell
Noes: Hughes, Strawbridge

- E. **SECOND READING AND ADOPTION OF AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

ORDINANCE 13-11 - AN ORDINANCE TO ADD SECTION 8.24.260 (OWNERSHIP OF REFUSE, GREEN WASTE, AND RECYCLABLES) TO CHAPTER 8.24 (REFUSE MATTER DISPOSAL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

- F. **APPROVE THE AMENDMENT TO THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BENICIA AND RENNE SLOAN HOLTZMAN SAKAI FOR FINANCIAL SERVICES**

RESOLUTION 13-85 - A RESOLUTION AMENDING THE CONTRACT WITH RENNE SLOAN HOLTZMAN SAKAI LLP FOR FINANCIAL SERVICES

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

VIII. BUSINESS ITEMS:

- A. **APPROVAL OF PROPOSED LEASE AGREEMENTS WITH CLEAR CHANNEL OUTDOOR FOR MODIFICATION AND OPERATION OF DIGITAL BILLBOARDS AT 3190 BAYSHORE ROAD AND 3300 PARK ROAD**

RESOLUTION 13-86 - A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF BENICIA AND CLEAR CHANNEL OUTDOOR, A DELAWARE CORPORATION, TO MODIFY EXISTING BILLBOARDS AT 3190 BAYSHORE ROAD AND 3300 PARK ROAD, BY REPLACING AND OPERATING NEW LED DIGITAL BILLBOARD STRUCTURES

Mario Giuliani, Economic Development Director, reviewed the staff report.

Public Comment:

1. Ellen Kolowich - Ms. Kolowich spoke in support of the proposed item. She discussed how electronic billboards were used in Boston to alert people of the bombings.
2. Dana Dean, Counsel for Clear Channel Outdoor - Ms. Dean spoke in support of the proposed item.
3. Leah Shellhorn - Ms. Shellhorn spoke in support of the proposed item.

Council Member Schwartzman and Clear Channel representatives discussed

how the boards would be used in the event of emergencies. They can be used to alert the public to many different types of emergencies.

Mayor Patterson discussed concerns regarding safety issues and long-term impacts with electronic billboards. If it passes, she would like to see the funds received from the billboard returned to the Industrial Park.

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted Resolution 13-86, on roll call by the following vote:

Ayes: Schwartzman, Campbell, Hughes, Strawbridge

Noes: Patterson

B. AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS

Heather McLaughlin, City Attorney, reviewed the staff report.

Council Member Strawbridge and Staff discussed how the proposed process would work. She was concerned there would not be a 'meeting of the minds.'

Council Member Schwartzman asked for clarification on how the process would work.

Council Member Hughes discussed support for oral comments at the Council meeting, and not published comments in the agenda.

Vice Mayor Campbell discussed support for the proposed language. He was still concerned about the embarrassment factor. It would make it harder to violate The Brown Act. He would prefer written comments in the agenda so the subcommittee's reasons for their recommendations were clear.

Council Member Hughes discussed concern regarding the possibility of embarrassing applicants. He would prefer to leave the process the way it is.

Mayor Patterson discussed the spirit of the intent of the current process. If this goes through, she would prefer written comments in the agenda.

Vice Mayor Campbell discussed the issue of The Brown Act, and the instance when the Mayor came into the interview room where the subcommittee was conducting interviews (where no candidates were present).

Council Member Schwartzman discussed support for oral comments at the Council meetings. Once the subcommittee recommends candidates, there should be no communication with the Mayor or Council until the meeting. With

the situation with the Mayor, it was a mistake to come across the hall, he did not believe it was intentional, and did not think she would ever do it again. With the current process, there is the feedback loop that seems to be The Brown Act issue, in addition to coming across the hall. That was why he was suggesting leaving the appointment process the way it currently is, but removing the feedback loop.

Council Member Hughes asked Ms. McLaughlin if she could ask The Brown Act experts if Council's current process was in violation. Ms. McLaughlin clarified that she had done that, and they said it was fine, until a time where Council is challenged (and they would lose the challenge).

Council Member Strawbridge proposed having the subcommittee meet, bring forward their choice of applicants, place the recommendations on the agenda for the entire Council, and then the Mayor could take that information and make her appointment. Staff clarified that the embarrassment factor could still be an issue.

Council Member Schwartzman did not feel the current appointment process was a violation. If Council is going to have a subcommittee format with any input at all, they need to be able to make recommendations. The question is what happens after the recommendations.

Vice Mayor Campbell discussed Council Member Strawbridge's suggestion. It would come close to taking away the appointment power of the mayor. He agreed with the City Attorney regarding the current process violating The Brown Act.

Council Member Hughes discussed his intrigue with Council Member Strawbridge's idea. He suggested identifying the subcommittee's recommended applicants on a staff report in the agenda. If Council has questions, they could ask them at the meeting, without a decision being made. At a subsequent meeting, the Mayor could then make an appointment. She would have all the information and would have heard Council's discussion.

Council Member Schwartzman and Ms. McLaughlin discussed what questions she posed to the other City Attorneys regarding the current process violating The Brown Act. Ms. McLaughlin stated she presented the current process to the group. She did not ask them if removing the feedback loop would make a difference. Ms. McLaughlin discussed The Brown Act and Council's current process. She noted that Council Member Strawbridge's suggestion would provide the public an opportunity to speak on the issue; however it would add more time to the appointment process.

Vice Mayor Campbell discussed the need to make the process more public. He was intrigued by Council Member Strawbridge's suggestion.

Mayor Patterson thought the process would become more politicized with Council Member Strawbridge's suggestion. She has learned a lot from the subcommittee. She would hate to lose that.

Council Member Hughes stated he could live with the current process, but was concerned about violating The Brown Act. He would like to continue this item until Staff can review the suggestions and options and make recommendations.

Mayor Patterson clarified there was a proposal by Council Member Schwartzman to keep the process the way it is currently, and get rid of the feedback, as well as Council Member Strawbridge's suggestion. She discussed consulting the Attorney General's previous decision regarding appointments when Steve Messina was Mayor. She was concerned Council Member Strawbridge's suggestion would usurp the Mayor's power to appoint.

Council Members Strawbridge and Schwartzman discussed concern regarding the two Council Members who are not on the subcommittee being uninformed regarding the reasons for the subcommittee's recommendations.

Council Members Campbell and Schwartzman discussed the issue with the current process and feedback.

Mayor Patterson asked Council to consider having a workshop to get a dialogue going with the public, and in the interim get a thoughtful response from the City Attorney on the suggested approaches.

Council Member Schwartzman was not in favor of a workshop. He supported continuing this item to take a look at the suggested changes.

Mayor Patterson clarified the choices were that Council did not seem to desire written comments, so they would be oral comments, and remove the feedback loop, and seek further thoughtful advice from the City Attorney.

Ms. McLaughlin confirmed she would bring several options forward for Council.

The item was continued to a future meeting.

Public Comment:

None

**C. MAYOR PATTERSON AND COUNCIL MEMBER STRAWBRIDGE
REQUEST TO AGENDIZE AN ITEM REGARDING FUNDING FOR
MEALS ON WHEELS**

Council Member Strawbridge reviewed the request.

Public Comment:

None

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

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge

Noes: (None)

**D. MAYOR PATTERSON'S REQUEST TO AGENDIZE ITEMS REGARDING
INCREASING LEGAL PROPERTY NOTIFICATION REQUIREMENTS
AND CREATING A FORMAL PUBLIC OUTREACH POLICY FOR
PENDING LAND USE AND DEVELOPMENT PROPOSALS**

Mayor Patterson reviewed the request.

Council discussed support for agendizing the discussion on increasing notification requirements from 300-500 feet. Council did not support creating a formal public outreach policy for pending land use and development proposals.

Public Comment:

None

On motion of Vice Mayor Campbell, seconded by Council Member Schwartzman, Council approved placing the issue of increasing the legal property notification requirements from 300-500 feet on a future agenda, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge

Noes: (None)

E. Council Member Committee Reports:

- 1. Mayor's Committee Meeting.(Mayor Patterson) Next Meeting Date:
December 18, 2013**
- 2. Association of Bay Area Governments**

(ABAG)<http://www.abag.ca.gov/>. (Mayor Patterson and Council Member Strawbridge)Next Meeting Date: TBD

- 3. Finance Committee. (Vice Mayor Campbell and Council Member Strawbridge)Next Meeting Date: September 27, 2013**
- 4. League of California Cities. (Mayor Patterson and Vice Mayor Campbell) Next Meeting Date: September 18-20, 2013**
- 5. School Liaison Committee. (Council Members Strawbridge and Council Member Hughes) Next Meeting Date: December 5, 2013**
- 6. Sky Valley Open Space Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: TBD**
- 7. Solano EDC Board of Directors. (Mayor Patterson and Council Member Strawbridge) Next Meeting Date: November 14, 2013**
- 8. Solano Transportation Authority (STA). <http://www.sta.ca.gov/> (Mayor Patterson, Council Member Hughes and Council Member Schwartzman) Next Meeting Date: October 9, 2013**
- 9. Solano Water Authority-Solano County Water Agency and Delta Committee. <http://www.scwa2.com/>(Mayor Patterson and Council Member Hughes) Next Meeting Date: October 10, 2013**
- 10. Traffic, Pedestrian and Bicycle Safety Committee. (Vice Mayor Campbell and Council Member Schwartzman) Next Meeting Date: October 17, 2013**
- 11. Tri-City and County Cooperative Planning Group. (Mayor Patterson and Council Member Strawbridge) Next Meeting Date: December 9, 2013**
- 12. Valero Community Advisory Panel (CAP). (Mayor Patterson and Council Member Hughes) Next Meeting Date: TBD**
- 13. Youth Action Coalition. (Mayor Patterson, Council Member Strawbridge and Council Member Hughes) Next Meeting Date: September 25, 2013**
- 14. ABAG-CAL FED Task Force-Bay Area Water Forum. <http://www.baywaterforum.org/> (Mayor Patterson)Next Meeting Date: TBD**
- 15. SOLTRANS Joint Powers Authority (Mayor Patterson, Council**

**Member Hughes and Council Member Schwartzman) Next Meeting
Date: September 19, 2013**

IX. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 9:00 p.m.