

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
SEPTEMBER 18, 2007

The special meeting of the City Council of the City of Benicia was called to order by Vice Mayor Schwartzman at 6:00 p.m. on Tuesday, September 18, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, and Vice Mayor Schwartzman

Absent: Mayor Messina

PLEDGE OF ALLEGIANCE:

Vice Mayor Schwartzman led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENT OF CLOSED SESSION:

Vice Mayor Schwartzman read the announcement of Closed Session.

OPPORTUNITY FOR PUBLIC COMMENT:

None

Vice Mayor Schwartzman announced that he received a call from Mayor Messina stating that he (Mayor Messina) had a conflict of interest with the first two Closed Session items. Vice Mayor Schwartzman chaired the first two items in Closed Session.

CLOSED SESSION:

- A. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**  
**(Subdivision (a) of Government Code Section 54956.9)**  
**Name of case: Friends of Old Town v. City of Benicia et al.**
  
- B. **CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**  
**(Subdivision (a) of Government Code Section 54956.9)**  
**Name of case: City of Benicia v. Nationwide et al.**
  
- C. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**  
**(Government Code Section 54957)**  
**Titles: City Manager**  
**City Attorney**

ADJOURNMENT:

Vice Mayor Schwartzman adjourned the meeting at 6:02 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
SEPTEMBER 18, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:01 p.m. on Tuesday, September 18, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to the Council Chambers per Section 4.04.030 of City of Benicia Ordinance No. 05-6 (Open Government Ordinance).

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Ms. McLaughlin reported that Council received information from staff and gave direction to staff on Closed Session items A and B.

Mayor Messina reported that Council discussed the contracts for City Manager and City Attorney. There are some technical issues that need to be addressed and brought back for discussion.

Openings on Boards and Commissions:

- Library Board of Trustees  
One full term to November 30, 2009 (Poet Laureate)
- Open Government Commission  
One full term to November 30, 2011
- Sky Valley Open Space Committee  
One unexpired term to September 30, 2010

APPOINTMENTS:

RESOLUTION 07-105 - A RESOLUTION CONFIRMING THE MAYOR'S  
APPOINTMENT OF RANDY RAMOS TO THE BENICIA HOUSING AUTHORITY  
TO AN UNEXPIRED TERM ENDING JUNE 30, 2011

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

RESOLUTION 07-106 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF DIANE EASTERWOOD TO THE HUMAN SERVICES AND ARTS BOARD TO AN UNEXPIRED TERM ENDING JUNE 30, 2009

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

RESOLUTION 07-107 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF LEE ANTHONY SYRACUSE TO THE PLANNING COMMISSION TO AN UNEXPIRED TERM ENDING SEPTEMBER 30, 2008

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

PRESENTATIONS:

State of California Approach to Climate Change:

Mr. Panama Bartholomy, State Energy Commission, reviewed a PowerPoint presentation titled 'State Climate Policy and Land Use' (hard copy on file).

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Marilyn Bardet – Ms. Bardet requested that the information presented regarding State Climate Policy and Land Use be put on the City's website. Ms. Bardet discussed the EIR for the Seeno Project and the DEIR for the Arsenal. She discussed the size of the Seeno project and the traffic impacts that would be associated with that project.
2. Jerome Page – Mr. Page discussed Benicia's attributes. He discussed the Seeno Project, traffic impacts, the impacts the project would have on the students at Robert Semple, and the Seeno EIR. He requested Council delay any action on the project.
3. Dirk Harburg – Mr. Harburg discussed his concerns with a high-speed car chase by the Benicia Police Department this past weekend. He was concerned about

safety issues with such high-speed chases. He questioned if the City had protocol on high-speed chases.

Mr. Erickson stated that the City had a policy on high-speed chases, which was consistent with ABAG (the City's insurance carrier) and State law. If Council wished, Staff could report back to Council on the particular incident in question.

Mayor Messina urged Mr. Harburg to contact the City Manager or Police Chief to discuss the issue further.

Council Member Whitney stated that the incident required further review and asked that Staff report back to Council with an update.

Council Member Patterson requested a copy of the written police report for review. She suggested the Traffic, Pedestrian and Bicycle Safety Committee review the incident.

4. William Dixon – Mr. Dixon discussed the issue of the old skate park at Willow Glen Park being shut down once the X-Park is opened. He spoke in opposition to the closing of the park.

Mayor Messina stated that the Parks, Recreation, and Cemetery Commission would discuss the issue. He urged concerned citizens to attend those meeting as well.

Council Member Patterson stated that she attended one of the Parks, Recreation, and Cemetery Commission meetings where neighbors voiced concerns with the park. She suggested they address some the neighbors' concerns at a Parks, Recreation, and Cemetery Commission meeting.

Mayor Messina asked Staff to send a copy of the Parks, Recreation, and Cemetery Commission's recommendations to Mr. Dixon.

5. Mike McCoy – Mr. McCoy discussed his application for a billboard in the Industrial Park. He wanted to update Council on the status. The application is nearly complete.
6. Bob Mutch – Mr. Mutch discussed Willow Glen Park. He acknowledged the concerns of the residents in the area, as well as the concerns of the skaters. Self-policing and self-enforcing the rules would set a good example now and in the future. He urged the concerned residents to talk to the kids about their concerns.
7. Dan Rogers – Mr. Rogers discussed the issue of population.
8. Council Member Whitney – Council Member Whitney announced an upcoming celebration for the ATOD Program on October 13, 2007. He urged people to attend.

CONSENT CALENDAR:

Council pulled items VII-A, VII-D, VII-F, VII-G, and VII-H.

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the Consent Calendar was adopted as amended, on roll call by the following vote:  
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

RESOLUTION 07-108 - A RESOLUTION AWARDDING A PURCHASE ORDER TO BUS WEST FOR ONE CUTAWAY BUS THROUGH THE STATE PROCUREMENT PROGRAM IN ACCORDANCE WITH FEDERAL TRANSIT ADMINISTRATION REGULATIONS

ORDINANCE 07-20 - AN ORDINANCE AMENDING SECTION 2.20.040 (CONDITIONS) AND ADDING SECTION 2.20.070 (CRIME AND DISHONESTY INSURANCE POLICY) OF CHAPTER 2.20 (OFFICERS' BONDS AND COMPENSATION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE

RESOLUTION 07-109 - A RESOLUTION ACCEPTING THE PROPOSAL FOR ALUM SLUDGE REMOVAL AT THE WATER TREATMENT PLANT, AWARDDING THE CONTRACT TO PFISTER EXCAVATION OF VALLEJO, CA, IN A NOT-TO-EXCEED AMOUNT OF \$150,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of Minutes of September 4, 2007:

Vice Mayor Schwartzman requested that the following language be added to page VII-A-9 – ‘Vice Mayor Schwartzman discussed what the parties could have done to address issues.’

Council Member Patterson requested the language ‘shall be’ be added to page VII-A-8.’

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the minutes of September 4, 2007 were adopted as amended, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Approval of the X-Park Rules and Regulations:

Public Comment:

1. Ben Cleveland – Mr. Cleveland discussed the issue of restricted access for BMX riders at the X-Park. It is an issue of public use. Both skating and BMX riding are evolving sports.

Mr. Erickson stated that there was still some 'sorting out' to do with regards to the schedule at the X-Park. Mr. Alvarez stated that Staff had consulted with other cities regarding schedules, usage, etc. Skateboarding and BMX riding could not be done at the same time at the X-Park.

Council discussed the issue of the schedule for skating and BMX riding at the X-Park, including restriction on hours, Sunday hours, adjusting the hours for BMX riders, monitoring the usage, and reporting back to Council on Staff's recommendations regarding the schedule.

Ms. McLaughlin clarified that the only thing Council was reviewing tonight were the rules and regulations for the X-Park, not the hours of use.

2. Bob Mutch – Mr. Mutch discussed the X-Park opening day celebration on October 6, 2007 at 10:00 a.m. He recommended adding a weekend day (Sunday) for BMX riders, as he feels the demand will be high.
3. Paul Winders – Mr. Winders discussed concerns with the rules and schedule for the X-Park. The City should experiment with shared use between BMX riders and skaters.
4. Marcus Gifford – Mr. Gifford discussed the hours of usage for BMS riders at the X-Park. BMX riders should be able to ride at the same time as skateboarders.

#### RESOLUTION 07-110 - A RESOLUTION APPROVING THE X-PARK RULES AND REGULATIONS

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the above Resolution was adopted (taking into account the comments and suggestions by Council), on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina

Noes: None

Mayor Messina clarified that the Parks, Recreation, and Cemetery Commission should review the above issues at three or six months. If there is anything that needs to be brought back to Council for review, Staff should do so.

#### Second reading of General Plan and Zoning Ordinance text and map amendments for Downtown Mixed Use Master Plan:

Mayor Messina and Vice Mayor Schwartzman recused themselves due to a conflict of interest. Council Member Whitney chaired this portion of the meeting.

#### Public Comment:

1. Dana Dean – Ms. Dean discussed the need for a specific zoning requirement for three properties on the waterfront in the town core. She requested the parking and garage addendum to that statement be removed.

Council Member Patterson discussed the issue of spot zoning, commercial development on the waterfront, and parking garages on the waterfront.

Council Member Hughes discussed the issue of spot zoning, garages, and parking.

Council Member Whitney discussed what would happen if the properties experienced a fire and how rebuilding would work.

Ms. McLaughlin stated that the ordinance could be adopted tonight and revisited once the new Council was in place, so more members could provide input, depending on who is elected to the City Council.

2. Brad Maclane – Mr. Maclane discussed State law regarding the 50% fire clause for rebuilding.
3. Jon Van Landschoot – Mr. Van Landschoot questioned whether the ordinance was lawful, and in violation of the EIR.
4. Marilyn Bardet – Ms. Bardet discussed the possibility of a sliding scale being used with regards to the Historic District and the non-historic homes going through the HPRC.
5. Donnell Rubay – Ms. Rubay discussed mitigation measures regarding harm to a historic resource complying with the Secretary of Interior Standards.

ORDINANCE 07- 21- AN ORDINANCE AMENDING THE GENERAL PLAN, AND MUNICIPAL CODE CHAPTER 17.28 (COMMERCIAL DISTRICTS), CHAPTER 17.46 (USE REGULATIONS SUMMARY), CHAPTER 17.48 (PROPERTY DEVELOPMENT REGULATIONS SUMMARY), SECTION 17.70.200 (OUTDOOR FACILITIES), CHAPTER 17.74 (OFF-STREET PARKING AND LOADING REGULATIONS), CHAPTER 17.108 (DESIGN REVIEW) AND ADDING CHAPTER 17.26 (MIXED USE DISTRICTS) OF THE BENICIA MUNICIPAL CODE TO UPDATE DEVELOPMENT STANDARDS AND REGULATIONS FOR THE DOWNTOWN MIXED USE MASTER PLAN

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Ordinance was adopted, on roll call by the following vote:

Ayes: Council Members Hughes, Patterson, and Whitney

Noes: None

Abstain: Vice Mayor Schwartzman and Mayor Messina

Amendment of the City Manager's Employment Agreement:

Continued

Amendment of the City Attorney's Employment Agreement:

Continued

PUBLIC HEARINGS:

Adopt changes to the Master Fee Schedule that includes service charges and development related fees and charges:

Rob Sousa, Finance Director, reviewed the staff report.

Public Hearing Opened

Public Comment:

1. Mike Ioakimedes – Mr. Ioakimedes stated that the increase in fees for public documents to a cost of \$1 per page seemed excessive.

Mr. Erickson clarified that the \$1 cost applied to special color copies only.

Public Hearing Closed

Council discussed the following issues: traffic impact fees, community development fees, and the importance of having true costs on the fee schedule,

RESOLUTION 07-111 - A RESOLUTION ADOPTING A MASTER FEE SCHEDULE THAT INCLUDES CHANGES IN DEPARTMENTAL FEE STRUCTURES, INCLUDING DEVELOPMENT RELATED FEES AND CHARGES

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Appeal of 221 First Street building permit (continued from September 4, 2007 City Council meeting):

Mayor Messina recused himself due to a conflict of interest.

Heather McLaughlin, City Attorney, stated that the parties involved had reached a settlement. She reviewed the Staff report.

Public Hearing Opened

Public Hearing Closed

Council discussed the following issues: riprap, gabion wall, the applicant's \$5,000 escrow account, potential downstream CEQA challenges, the State stockpiling rock material for the Delta, and the need to purchase the rock material as soon as possible.

RESOLUTION 07-112 - A RESOLUTION APPROVING THE PROPOSED SETTLEMENT OF THE 221 FIRST STREET APPEAL AND LITIGATION

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

Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney  
Noes: None  
Abstain: Mayor Messina

Public Comment:

1. Donnell Rubay – Ms. Rubay inquired if the settlement was a public document. Ms. McLaughlin confirmed copies of the settlement were on the back table in Council Chambers for the public's review.

Vice Mayor Schwartzman called for a 5-minute break at 9:25 p.m.  
The meeting resumed at 9:31 p.m.

ACTION ITEMS:

Approval of an Economic Development Strategy:

Mr. Duane Olivera, Vice Chair, Economic Development Board, introduced the item.

Amalia Lorentz, Economic Development Manager, reviewed a PowerPoint presentation (hard copy on file).

Council discussed the use permit process and using the 'carrot approach.'

Public Comment:

1. Marilyn Bardet – Ms. Bardet thanked Ms. Lorentz for her and the EDB's efforts. She discussed a letter from Abraham Lincoln.
2. Mike Ioakimedes – Mr. Ioakimedes commended Ms. Lorentz and the EDB for their efforts. He suggested wordsmithing the language with regards to the environmental component.

Council discussed the need to develop criteria for what is sustainable. Council Member Patterson stated that she liked the suggestion to include all historic districts.

Ms. Lorentz clarified that Council wanted Staff to add an appendix to elaborate on the General Plan goals that are decided by number, make it clear that the benefit of a jobs/housing balance has to do with the environmental impact, and to make clear that tourism encompasses the Historic Arsenal Area as well as Downtown.

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

Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Noes: None

Direction to staff on consideration of amendments to the City Council Rules of Procedure pertaining to chairing of commissions and serving on multiple commissions:

Jim Erickson, City Manager, reviewed the staff report.

Council discussed the current Council participation on committees, the appropriateness of Council Members chairing any of the boards, commissions, or committees, and the role of the chair of a board, commission, and committee.

Council's general consensus was to let the citizen's decide and have the first right of refusal.

Ms. McLaughlin recommended amending the bylaws of the committees to reflect the changes. She will make the changes and bring them back to Council.

Council discussed the issue of allowing citizens to serve on only one board or commission. Council's general consensus was to not make changes to this section.

Amendment of the City's California Environmental Quality Act (CEQA) Guidelines:  
Heather McLaughlin, City Attorney, reviewed the Staff report.

Council discussed the need to follow State law, continuing the item to consider the written comments submitted by two citizens, and the possibility of changing the language to state the City was 'consistent with State CEQA guidelines.

Staff reviewed the five steps of CEQA guidelines.

Council Member Patterson suggested giving direction to Staff to come back in a timely manner to look at alternatives on handling draft EIR's, hopefully in time for the Arsenal EIR process.

Mayor Messina stated that it might not be brought back at the next meeting, but it would be put in line.

Public Comment:

1. Marilyn Bardet – Ms. Bardet discussed the Planning Commission, Seeno, EIR's, and the need for more dialogue and public process. She was advocating for more authority for the Planning Commission in the process. She would like this issue to be on the next Council agenda.
2. Bob Craft – Mr. Craft requested a date be set for reconsideration of this issue.

Mr. Erickson asked Council to allow Staff to take this back to rework it. Having it on the next meeting would not be wise, as it would be rushed.

Council Member Patterson requested it be brought back to Council at the second meeting in October so the timing on the Arsenal would not be compromised.

Mr. Erickson requested Staff be allowed 60 days to bring this back to Council.

Mayor Messina suggested directing Staff that the Arsenal EIR must go to the Planning Commission for review and comment prior to being brought to Council.

Council Member Patterson suggested stating that within 60 days, the language would be available for action and consideration.

RESOLUTION 07-113 - A RESOLUTION AMENDING THE CITY'S CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES

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

Ayes: Council Members Hughes, Patterson, Schwartzman, and Whitney  
Noes: Mayor Messina

INFORMATIONAL ITEMS:

Reports from the City Manager:

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina) - Next Meeting Date: September 26, 2007
2. Association of Bay Area Governments (ABAG) (Mayor Messina) - Next Meeting Date: September 20, 2007
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: October 5, 2007
4. League of California Cities (Mayor Messina) - Next Meeting Date: TBD
5. School District Liaison (Council Members Whitney and Hughes) - Next Meeting Date: September 20, 2007
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) - Next Meeting Date: October 3, 2007
7. Solano EDC Board of Directors (Mayor Messina) - Next Meeting Date: September 27, 2007
8. Solano Transportation Authority (STA) (Mayor Messina) - Next Meeting Date: October 10, 2007
9. Solano Water Authority/Solano County Water Agency (Mayor Messina) - Next Meeting Date: October 11, 2007
10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) - Next Meeting Date: October 18, 2007
11. Tri-City and County Regional Parks and Open Space (Council Members Whitney and Patterson) - Next Meeting Date: October 10, 2007
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) - Next Meeting Date: TBD
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) - Next Meeting Date: September 19, 2007
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson) - Next Meeting Date: September 24, 2007

COMMENTS FROM COUNCIL MEMBERS:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 10:56 p.m.

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Lisa Wolfe, City Clerk