



**BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
October 01, 2013  
6:30 PM**

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

**I. CALL TO ORDER (6:30 PM):**

**II. CLOSED SESSION (6:30 PM):**

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**  
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9:  
(1 case regarding Community Development Block Grant Funds)

**III. CONVENE OPEN SESSION (7:00 PM):**

- A. ROLL CALL.**
- B. PLEDGE OF ALLEGIANCE.**
- 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/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:**

**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.**

**4. Benicia Arsenal Update**

Update from City Attorney

**B. PROCLAMATIONS.**

**1. In Recognition of Fire Prevention Week October 6-12, 2013**

**2. In Recognition of the Observance of Benicia Arbor Day on October 12, 2013**

**C. APPOINTMENTS.**

**1. Appointment of Sabrina Corley as the Youth Commissioner to the Parks, Recreation and Cemetery Commission.**

**2. Appointment of Council Member Christina Strawbridge to the City Council Appointment Subcommittee for a one-year term ending September 30, 2014.**

**D. PRESENTATIONS.**

- 1. Review of the New Economic Development Website:  
BeniciaBusiness.Com. (Economic Development Director)**

**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 THE MINUTES OF THE SEPTEMBER 17, 2013 CITY COUNCIL MEETING. (City Clerk).**

**B. SECOND READING AND ADOPTION 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. (City Attorney)**

The existing chapter of the Benicia Municipal Code (BMC) concerning the regulation of peddlers, solicitors, and canvassers needs to be updated so it is compliant with current law. The City Attorney's Office has researched the current legal issues relating to the regulation of peddlers, solicitors, and canvassers as well as reviewed other cities' municipal codes regarding such activity. As a result of this research, the proposed ordinance balances the

constitutional protection afforded to peddlers, solicitors, and canvassers with the City's interests in protecting the safety of residents and their right to privacy in their own residences. At the September 17, 2013 City Council Meeting, the Council introduced 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.

**Recommendation: Adopt the ordinance revising chapter 5.28 of Benicia Municipal Code to update the regulations regarding peddlers, solicitors, and canvassers in the City.**

**C. APPROVAL FOR AMENDMENT TO CONTRACT SERVICES AGREEMENT BETWEEN CITY OF BENICIA AND WOODRUFF, SPRADLIN, & SMART FOR OUTSIDE COUNCIL REGARDING VALERO CRUDE BY RAIL. (City Attorney)**

The City has contracted Bradley Hogin of Woodruff, Spradlin & Smart as outside council for the Valero Crude by Rail Project. This firm was selected based on Bradley Hogin's knowledge, experience, and qualifications in this area. The cost for services required for Valero Crude by Rail will exceed \$50,000. Staff is proposing that the Council approve an amendment to allow the project costs to exceed \$50,000.

**Recommendation: Approve, by motion, a contract amendment with Bradley R. Hogin of Woodruff, Spradlin, & Smart for outside council regarding Valero Crude by Rail, and authorizing the City Attorney to execute the contract amendment on behalf of the City.**

**D. SALE OF RETIRED POLICE SERVICES CANINE MIRCO. (Police Chief)**

On September 5, 2013, after approximately four and half years of service, police canine Mirco was retired from active service as a working police canine due to a medical condition. It has been the practice of the Department and an industry standard, to allow police officers to purchase their canine upon the canine's retirement.

**Recommendation: Adopt the resolution authorizing and directing the City Manager to sign a Bill of Sale for the sale of retired Police Services canine Mirco.**

**E. APPROVAL OF CONSULTANT CONTRACT AMENDMENT WITH MARK THOMAS & COMPANY FOR ENVIRONMENTAL AND 35% DESIGN PHASE OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT. (Public Works Director)**

The design of the Benicia Industrial Park Bus Hub Project is being fast tracked to fully utilize available grant funding. After conducting a thorough selection process, staff awarded a contract to Mark Thomas & Company (MT&C) for \$46,586 to allow a jump start on the design. This amendment for \$88,388 will increase the contract to the full grant amount of \$135K and fund the completion of the environmental & 35% design phase. The project was discussed at the June 18, 2013 Council meeting and authorization to proceed with the grant funding was provided at that time.

**Recommendation: Adopt a resolution approving a consultant contract amendment with Mark Thomas & Company in the amount of \$88,388 for the environmental & 35% design phase of the Benicia Industrial Park Bus Hub Project, and authorizing the City Manager to execute the amendment on behalf of the City.**

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

**VIII. BUSINESS ITEMS (7:30 PM):**

- A. **AMENDMENT OF THE MASTER FEE SCHEDULE TO ADD PROVISIONS FOR FULL-COST RECOVERY AND ADMINISTRATIVE OVERHEAD FOR SPECIFIED TYPES OF PLANNING PROJECTS AND RESPONSIBILITIES. (City Manager)**

The Community Development Department is requesting adoption of a full-cost recovery fee for the review of specified planning projects in the form of contract planning services. Contract planners will be used to supplement existing staff when the City does not have the resources to process complex land use development applications. The proposed resolution will amend the Master Fee Schedule to include contract planning services and the administrative overhead for those services.

**Recommendation: Adopt a resolution amending the City of Benicia Master Fee Schedule for the 2013-2014 Fiscal Year by adding a provision for full-cost recovery and administrative overhead for specified types of planning projects, responsibilities, and efforts.**

- B. **AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS. (City Attorney)**

At the September 3, 2013 meeting, the City Council discussed various ways to make the appointment process to City Boards, Commissions and Committees more transparent. The City Council agreed to modify the current procedure. At the September 17, 2013 meeting, the City Council further reviewed options and discussed whether subcommittee recommendations should be presented orally or in writing. No decision was made. This item presents a variety of options for the Council's consideration.

**Recommendation: Adopt the resolution amending the Rules of Procedure.**

**C. RECONSIDER THE CANCELLATION OF THE NOVEMBER 5, 2013 CITY COUNCIL MEETING. (City Manager).**

The 2013 City Council calendar of regular Council meetings for 2013 currently has the November 5, 2013 meeting as canceled due to it being election day. Given that due to subsequent changes to the schedule for local elections, there will not be any local elections occurring on that date, this item is being brought to the Council to either confirm this meeting should be canceled or decide to hold the meeting, and place it back on the schedule of regular 2013 meetings.

**Recommendation: Reconsider whether to cancel the November 5, 2013 City Council meeting and direct staff accordingly.**

**IX. ADJOURNMENT (9:30 PM):**

<b>Public Participation</b>
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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 or Special Needs**

In compliance with the Americans with Disabilities Act (ADA) and to accommodate any special needs, 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 the 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 Clerk's Office.





# PROCLAMATION

## IN RECOGNITION OF

# FIRE PREVENTION WEEK

**WHEREAS**, Fire Prevention Week was established to commemorate the Great Chicago Fire. The tragic 1871 conflagration that killed more than 250 people, left 100,000 homeless, destroyed more than 17,400 structures and burned more than 2,000 acres; and

**WHEREAS**, according to the National Archives, Fire Prevention Week is the longest running public health and safety observance on record; and

**WHEREAS**, the fire service endeavors to prevent fire and also prevent injuries and death as a result of fire; and

**WHEREAS**, the Benicia Fire Department promotes fire safety in the community, and has planned fire prevention programs for school-age children, guests, and residents of the City; and

**WHEREAS**, the Benicia Fire Department is dedicated to the safety of life, property, and the environment from the devastating effects of fire; and

**WHEREAS**, the week of October 6-12, 2013, has been identified as Fire Prevention Week by the President of the United States; and

**WHEREAS**, the National Fire Protection Association sponsors Fire Prevention Week in cooperation with local fire departments; and

**WHEREAS**, the theme of National Fire Prevention Week for 2013 is *Prevent Kitchen Fires*.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia, on behalf of the City Council, do hereby recognize the week of October 6-12, 2013, as Fire Prevention Week and call this observance to the attention of its citizens.

\_\_\_\_\_  
Elizabeth Patterson, Mayor  
October 1, 2013







# PROCLAMATION

## IN RECOGNITION OF THE OBSERVANCE OF BENICIA ARBOR DAY ON OCTOBER 12, 2013

**WHEREAS**, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

**WHEREAS**, the holiday called Arbor Day was first observed with the planting of more than a million trees in Nebraska; and

**WHEREAS**, Arbor Day is now observed at various times of the year throughout the nation and world; and

**WHEREAS**, trees provide many ecosystem services and can moderate the temperature, improve air quality, produce life-giving oxygen, reduce greenhouse gas emissions, mitigate stormwater impacts, and provide for wildlife; and

**WHEREAS**, trees are a renewable resource giving us paper products and wood for homes and businesses; and

**WHEREAS**, trees beautify our community, increase property values, reduce heating and cooling costs, and enhance the economic vitality of the business areas; and

**WHEREAS**, trees can be a source of joy and spiritual renewal.

**NOW, THEREFORE, BE IT RESOLVED THAT I**, Elizabeth Patterson, Mayor of the City of Benicia on behalf of the City Council, do hereby proclaim the week beginning Sunday, October 6 through Saturday, October 12 as Benicia Arbor Week, and Saturday, October 12, 2012 as Benicia Arbor Day.

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Elizabeth Patterson, Mayor  
October 1, 2013





**RESOLUTION NO. 13-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF SABRINA CORLEY AS THE YOUTH COMMISSIONER TO THE PARKS, RECREATION AND CEMETERY COMMISSION**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Sabrina Corley as the Youth Commissioner to the Parks, Recreation and Cemetery Commission for a one-year term by Mayor Patterson is hereby confirmed.

\* \* \* \* \*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 1st day of October 2013 and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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



Parks and Community Services  
**MEMORANDUM**

**DATE:** September 18, 2013

**TO:** Brad Kilger  
City Manager

**FROM:** Michael Dotson  
Director of Parks and Community Services

**SUBJECT: APPROVAL OF SABRINA CORLEY TO SERVE AS THE YOUTH COMMISSIONER TO THE PARKS, RECREATION AND CEMETERY COMMISSION**

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Per the Youth Commission By Laws, the Youth Commission shall elect from its membership a Chairperson to serve for a one (1) year term and recommend to the Mayor the appointment of the Chairperson to serve as a voting member on the Parks, Recreation & Cemetery Commission. On September 18, 2013 the Youth Commission elected Sabrina Corley chairperson for the 2013/14 Youth Commission term. Provided below is a bio on Sabrina Corley.

Sabrina began her senior year at Benicia High School this fall, where she is actively engaged in a myriad of academic courses, and extracurricular activity. Currently, Sabrina takes on another year of multiple AP and honors courses, in high hopes of attending Cal Poly next year as biology major with a premedical concentration. She also is serving her third year in leadership class as ASB Public Relations, in charge of the annual homecoming parade, employed by the City of Benicia as a recreation leader at Adventures Day Camp, captain of the varsity track team, president of one of the largest clubs on campus, and is starting her fourth year as a member of BYC.

During 2013, Sabrina led the annual Benicia High School Talent Show, implemented the new mural on the Panther Stage, served as secretary to BYC, earned her Gold Award for Girl Scouts, totaled 90 hours of service to her leadership class, served as ASB Secretary to the High School, all while maintaining a 4.5 GPA. In the time she has been in BYC, she has volunteered at Clock Tower dances, the princess project, and annual park cleanups and the tree lighting. Community service is a large part of Sabrina's life, and she would love to continue serving her community as BYC chair.

Sabrina is elated at the opportunity to expand and grow teenage involvement in her community, and has high hopes to reincarnate Senior Bingo, raise the attendance and quality of Clock Tower Dances, and start new, fresh projects to benefit Benicia and its citizens. She strives to make the 2013-2014 Benicia Youth Commission the most advantageous and innovative commission yet to come.

Please ask the Mayor to consider this nomination for the Council meeting scheduled for October 1, 2013.

**RESOLUTION NO. 13-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF COUNCIL MEMBER CHRISTINA STRAWBRIDGE TO A CITY COUNCIL APPOINTMENT SUBCOMMITTEE FOR A ONE-YEAR TERM ENDING SEPTEMBER 30, 2014**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Council Member Christina Strawbridge to a City Council Appointment Subcommittee by Mayor Patterson is hereby confirmed.

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The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 1<sup>st</sup> day of October 2013 and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

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

Attest:

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



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 when the Mayor came into the interview room where the subcommittee was conducting interviews.

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.

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 didn't feel that Mayor Patterson's actions were 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.

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - OCTOBER 1, 2013  
CONSENT CALENDAR**

**DATE** : September 18, 2013

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **SECOND READING AND ADOPTION 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**

**RECOMMENDATION:**

Adopt the ordinance revising chapter 5.28 of Benicia Municipal Code to update the regulations regarding peddlers, solicitors, and canvassers in the City.

**EXECUTIVE SUMMARY:**

The existing chapter of the Benicia Municipal Code (BMC) concerning the regulation of peddlers, solicitors, and canvassers needs to be updated so it is compliant with current law. The City Attorney's Office has researched the current legal issues relating to the regulation of peddlers, solicitors, and canvassers as well as reviewed other cities' municipal codes regarding such activity. As a result of this research, the proposed ordinance balances the constitutional protection afforded to peddlers, solicitors, and canvassers with the City's interests in protecting the safety of residents and their right to privacy in their own residences. At the September 17, 2013 City Council Meeting, the Council introduced 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.

**BUDGET INFORMATION:**

N/A

**GENERAL PLAN:**

Relevant General Plan provisions include:

Goal 4.6: Prevent and Reduce Crime in the Community

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

## Goal 1.00: Protecting Community Health and Safety

### **ENVIRONMENTAL ANALYSIS:**

Under CEQA Guidelines, Section 15061 (b)(3), the proposed ordinance is exempt from CEQA because the proposed ordinance will have no significant effect on the environment.

### **BACKGROUND:**

The City of Benicia initially adopted the existing regulations regarding peddlers, solicitors, and canvassers in 1972 and last updated the chapter in 1996. A representative from the ACLU contacted the City Attorney in May 2013 regarding the constitutionality of the existing chapter. The proposed ordinance is a comprehensive revision of the City's existing regulations for peddlers, solicitors, and canvassers. The purpose and intent of the proposed amendments to the BMC are to:

- (1) Be compliant with constitutional standards set forth in case law;
- (2) Update the existing permitting process to ease enforcement of this chapter; and
- (3) Protect the safety and privacy of City residents in their own residences, particularly at night.

To achieve these goals, the proposed ordinance establishes reasonable time, place, and manner restrictions on commercial and non-commercial speech of peddlers, solicitors, and canvassers and removes discrimination against non-residents. In addition to this, the proposed ordinance places responsibility of processing permit applications and issuing permits onto the Chief of the Benicia Police Department because fingerprinting and a background check must be performed for all permit applicants. These changes are proposed after reviewing case law and other cities' regulations, such as Moraga, Lafayette, Orinda, Danville, Fairfield, Vacaville, and Santa Rosa.

### **Legal Basis/Constitutional Constraints**

Peddlers, solicitors, and canvassers engage in activities recognized as protected speech under the First Amendment of the United States Constitution. Therefore, the acts of peddling, soliciting, and canvassing cannot be completely prohibited. However, the City can regulate such activities, taking into account that commercial activity and non-commercial activity are subject to different regulations. Under case law, commercial speech and non-commercial speech are granted different protections under the First Amendment.

The United States Supreme Court in the *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.* 425 U.S. 748, 96 S. Ct. 1817 (1976) ruled that commercial speech has limited First Amendment protections so long as the

speech only proposes a commercial transaction. In the *Central Hudson Gas and Electric Corp. v. Public Service Comm.*, 447 U.S. 557, 100 S. Ct. 2343 (1980), the United States Supreme Court set forth a four-part test for regulations on commercial speech: first, the commercial speech must not be false or misleading; second, the asserted government's interests must be substantial; third, the regulations must directly advance the asserted government's interests; and fourth, the regulations must not be more extensive than is necessary to serve those government's interests. The United States Supreme Court and other Federal Courts use this test when ruling on cases pertaining to commercial speech (see *Lorillard Tobacco Co. v. Reilly*, 218 F. 3d 30 (2001) and *United States v. United Foods, Inc.*, 533 U.S. 405 (2001)).

Non-commercial speech comprises many forms and regulations must be specific regarding this type of activity. A solicitor's or canvasser's non-commercial speech with the primary purpose of disseminating in any way an idea or viewpoint is protected under the First Amendment. Regulation of such activity must be narrowly tailored to serve substantial interests of the City and cannot require solicitors or canvassers to obtain a permit or register with the City (see *Watchtower Bible & Tract Society of New York, Inc., v. Village of Stratton*, 536 U.S. 150, 122 S. Ct. 2080 (2002)). Charitable solicitation falls under non-commercial speech and is also protected by the First Amendment. As such, regulation of non-commercial solicitation must be narrowly tailored to serve the City's interests and cannot significantly prohibit otherwise protected activities (see *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S. Ct. 826 (1980) and *Riley v. National Federation of the Blind of North Carolina Inc.*, 487 U.S. 781, 108 S. Ct. 2667 (1988)).

The proposed ordinance complies with the protection of commercial and non-commercial speech by:

(1) Allowing the free dissemination of information and charitable solicitation except at those residences with a posted sign prohibiting such activities; and

(2) Having a significant interest in protecting residents from crime and residents' privacy within their own homes.

Bona fide political and religious purposes are completely protected under the First Amendment and therefore cannot be regulated to the extent of charitable and commercial solicitation. Charitable solicitation must also be done through a non-profit organization as defined by section 501(c)(3) of the Internal Revenue Code. Section 501(c)(3) applies to organizations that are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and/or preventing cruelty to children or animals.

Under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and the Equal Protection Clause of Article 1, Section 7 of the California Constitution, regulations that treat residents differently than non-residents are unconstitutional. The United States Supreme Court has struck down numerous regulations that favor resident merchants over non-resident merchants in any way (see *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 114 S. Ct. 1677 (1994); *Oregon Waste Systems, Inc. v. Dept. of Environmental Quality of the State of Oregon*, 511 U.S. 93, 114 S. Ct. 1345 (1994); and *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 104 S. Ct. 3049 (1984)). Under current provisions, a non-resident or non-resident merchant would be required to post a bond in the amount of \$500. While the City would return the money providing that all conditions of the bond are met, the requirement of extra money from non-residents and non-resident merchants is constitutionally questionable. The proposed ordinance gives the same regulations and requirements for residents and non-residents alike by removing this section.

While the proposed ordinance is compliant with constitutional standards set forth in case law regarding solicitation, peddling, and canvassing, it also considerably lessens regulations of such activity within the City.

Attachment:

- Proposed Ordinance

**CITY OF BENICIA**

**ORDINANCE NO. 13-**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA 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**

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

**Section 1:**

Chapter 5.28 (Peddlers, Solicitors, and Canvassers) of Title 5 (Business Taxes, Licenses, and Regulations) of the Benicia Municipal Code is revised to read as follows:

**Chapter 5.28  
PEDDLERS, SOLICITORS AND CANVASSERS**

Sections:

- 5.28.010 Findings – Purpose.
- 5.28.020 Definitions.
- 5.28.030 Certain activity prohibited.
- 5.28.040 Exceptions.
- 5.28.050 Registration and permit requirements.
- 5.28.060 Application investigation.
- 5.28.070 Permit – Denial – Issuance.
- 5.28.080 Permit – Denial – Appeal.
- 5.28.090 Permit – Term – Renewal.
- 5.28.100 Permit – Revocation – Grounds.
- 5.28.110 Permit – Revocation – Appeal.
- 5.28.120 Identification requirements.
- 5.28.130 Effect on conflicting provisions.

**5.28.010 Findings – Purpose.**

The city council finds that the unregulated practice of solicitation, canvassing, and peddling can be a nuisance in that:

- A. If activity is carried on at night it may cause annoyance to residents and intrude into their privacy;
- B. The methods used by some of those engaged in the activity can cause apprehension in people solicited;

- C. The activity is one which can be used as a front or cover for gaining access to premises for the purpose of engaging in criminal activity;
- D. The nature of the activity permits those engaged in it to leave the city before they become widely known and enables them to avoid complying with the law; and
- E. Persons engaged in this activity may be nonresidents and with no fixed or permanent place of business and the regulation of them through the licensing for business does not give the city sufficient control to correct the abuses in this activity.

Based on these findings, the council concludes that the unregulated and uncontrolled activity of solicitation, canvassing, and peddling affects the welfare of the city and is a public nuisance. It is the purpose of this chapter to define the activity sought to be regulated; to impose upon those seeking to engage in it conditions and requirements which will permit the city to protect the welfare of its citizens, and to prevent intrusion into their privacy; and to regulate the activity to prevent abuses of it.

#### **5.28.020 Definitions.**

In this chapter, unless the context otherwise requires, the following terms shall be defined as follows:

- A. "Charitable solicitation" means the act of going from place to place for any reason in connection with a non-profit organization as defined by section 501(c)(3) of the Internal Revenue Code. The term does not include solicitation carried on for a bona fide political or religious purpose.
- B. "Peddler" means one who engages in the act of peddling.
- C. "Peddling" is the act of going from place to place, carrying or transporting goods of any kind and offering them for sale, or making sales and deliveries to purchasers. "Peddling" includes hawking.
- D. "Solicitation" or "canvassing" means the act of going from place to place in the city for the purpose of displaying or taking orders for the sale of goods for future delivery, or for services to be furnished.
- E. "Solicitor" or "canvasser" means a person who engages in the conduct of solicitation or canvassing.
- F. "Chief of police" refers to the chief of the Benicia police department or his or her authorized representative.

**5.28.030 Certain activity prohibited.**

No person may solicit, canvass, or peddle in the city:

A. Without a registration permit;

B. Before the hour of 9:00 a.m. PST of any day and after the hour of 6:00 p.m. PST or 8:00 p.m. PDT.

C. Upon the premises posted with a sign stating in substance that no solicitors, peddlers, canvassers, or littering are permitted.

**5.28.040 Exceptions.**

Section 5.28.030 (A) does not apply to a person who:

1. Solicits orders for products sold on an established route such as ice, bakery, water, or dairy products route;

2. Solicits orders from businesses on behalf of a wholesaler, jobber or manufacturer;

3. Solicits for a bona fide political or religious purpose;

4. Participates as a vendor in farmer's markets/street or community fairs and is duly licensed in accordance with the provisions of BMC 5.06.060 (B) or (C);

5. Is under 15 years of age;

6. Distributes handbills, pamphlets, circulars, or other informational materials door-to-door within the city, including commercial information disseminated in a way that does not involve face-to-face solicitation or peddling; or

7. Does charitable solicitation.

**5.28.050 Registration and permit requirements.**

A. Each person who desires to solicit, canvass or peddle in the city shall file with the chief of police a sworn registration application on a form furnished by the chief of police. The applicant shall give the following information:

1. Name and description;

2. Permanent home address and local address;

3. If employed, the name and address of the employer, together with credentials establishing the relationship;

4. A brief description of the nature of the business and the goods to be sold;

5. The length of time for which the permit is sought;
6. Three photographs and a letter of reference from each of three reliable citizens attesting to the applicant's good character sufficient to enable an investigator to evaluate his character and business responsibility;
7. Fingerprints of the applicant;
8. A statement as to whether the applicant has been convicted of a crime or violation of a local agency ordinance, and the nature of the offense and penalty imposed for it.

B. If the chief of police knows the applicant sufficiently to be able to evaluate the applicant's character and responsibility without the information from subsections (A)(6) and (A)(7) of this section, the chief of police need not require the applicant to furnish that information.

C. A one-time background security check fee that covers the cost of a Department of Justice records review, a Federal Bureau of Investigation (FBI) records review, and fingerprinting process, shall be charged to the applicant. The amount of this fee shall be established, and may be adjusted as necessary, by resolution of the city council of the city of Benicia.

**5.28.060 Application investigation.**

Upon receipt of an application, the chief of police shall make an investigation of the applicant's business and moral character.

**5.28.070 Permit – Denial – Issuance.**

A. The chief of police may deny an applicant a permit for soliciting, canvassing, or peddling on one or more of the following grounds:

1. Fraud, misrepresentation, or false statement contained in the application for registration permit;
2. Violation of any ordinance or regulation of the city;
3. Conviction of a crime or misdemeanor involving drugs, theft, trespassing, or are of a violent nature; or
4. Conducting the business of soliciting, canvassing or peddling in any other city in an unlawful manner or in a manner which is a breach of the peace or a nuisance or is a menace to the health, safety or general welfare of the public.
5. Unsatisfactory business responsibility or unsatisfactory character of applicant.

The chief of police shall notify the applicant of his decision in writing within 15 days after the application is filed. The decision is final 10 days from the date that notice of denial is given.

B. If the chief of police finds that the applicant's character or business responsibility, or both, is satisfactory, he or she shall approve the registration permit and recommend the issuance of a business license.

**5.28.080 Permit – Denial – Appeal.**

A person aggrieved by the decision of the chief of police may appeal the decision in accordance with Chapter 1.44 BMC.

**5.28.090 Permit – Term – Renewal.**

A. A registration permit authorizes the holder to engage in solicitation, canvassing, or peddling described in the application for a period of not more than one year. The chief of police may specify a shorter effective period.

B. A permit holder may renew the permit by filing an application for renewal upon a form prescribed by the chief of police.

**5.28.100 Permit – Revocation – Grounds.**

A. The chief of police may revoke the registration permit of a solicitor, canvasser, or peddler on one or more of the following grounds:

1. Fraud, misrepresentation, or false statement made in the course of solicitation, canvassing or peddling;
2. Fraud, misrepresentation, or false statement contained in the application for registration permit;
3. Violation of any ordinance or regulation of the city;
4. Conviction of a crime or misdemeanor involving drugs, theft, trespassing, or are of a violent nature; or
5. Conducting the business of soliciting, canvassing or peddling in an unlawful manner or in a manner which is a breach of the peace or a nuisance or is a menace to the health, safety or general welfare of the public.

B. The revocation takes effect three days after the chief of police mails notice of revocation to the applicant.

**5.28.110 Permit – Revocation – Appeal.**

A person aggrieved by the action of the chief of police in revoking a registered permit may appeal the action in accordance with Chapter 1.44 BMC. During the appeal, the

permit is suspended and the solicitor or peddler may not conduct his or her business in the city.

**5.28.120 Identification requirements.**

Each solicitor, canvasser and peddler shall wear an identification card issued by the chief of police while engaged in solicitation, canvassing or peddling. The card shall be affixed to the clothing so that it is easily visible. In addition, each solicitor, canvasser, or peddler shall carry the permit, and shall exhibit it at the request of any citizen.

**5.28.130 Effect on conflicting provisions.**

This chapter does not repeal, amend or modify the provisions of this code relating to business licenses. This chapter is a regulatory chapter and is not intended as a revenue raising measure. To the extent that BMC Chapters 5.04 and 5.06 conflict with or duplicate this chapter, BMC Chapters 5.04 and 5.06 hold controlling authority

\* \* \* \* \*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the September 17, 2013 and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of October, 2013 by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

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

**AGENDA ITEM  
CITY COUNCIL MEETING DATE - OCTOBER 1, 2013  
CONSENT CALENDAR**

**DATE** : September 13, 2013

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **APPROVAL FOR AMENDMENT TO CONTRACT SERVICES AGREEMENT BETWEEN CITY OF BENICIA AND WOODRUFF, SPRADLIN, & SMART FOR OUTSIDE COUNCIL REGARDING VALERO CRUDE BY RAIL**

**RECOMMENDATION:**

Approve, by motion, a contract amendment with Bradley R. Hogin of Woodruff, Spradlin, & Smart for outside council regarding Valero Crude by Rail, and authorizing the City Attorney to execute the contract amendment on behalf of the City.

**EXECUTIVE SUMMARY:**

The City has contracted Bradley Hogin of Woodruff, Spradlin & Smart as outside council for the Valero Crude by Rail Project. This firm was selected based on Bradley Hogin's knowledge, experience, and qualifications in this area. The cost for services required for Valero Crude by Rail will exceed \$50,000. Staff is proposing that the Council approve an amendment to allow the project costs to exceed \$50,000.

**STRATEGIC PLAN:**

N/A

**BUDGET INFORMATION:**

The work provided under this contract will exceed \$50,000.

**BACKGROUND:**

On July 10, 2013 the City of Benicia entered into an agreement with Bradley Hogin of Woodruff, Spradlin & Smart for services of outside council on the Valero Crude by Rail Project. The City sent out a request for proposals for outside council receiving twenty responses. From those responses staff then interviewed five law firms. Bradley Hogin was selected based on impressive qualifications and experience with legal cases in the field. Bradley Hogin's qualifications include experience with advising clients on the California Environmental Quality Act and state and federal laws regulating air quality, water quality, endangered

species, contaminated property, and historic resources. Bradley Hogin also litigates environmental and land use matters in state and federal courts. He has defended court challenges to a wide variety of development projects, including oil wells, oil refineries, power plants, large-scale commercial and residential development, and schools. He has also handled challenges to federal, state, and local environmental regulations in the areas of air quality, water quality, and oil production. Bradley Hogin also has substantial experience in counseling public agencies on CEQA compliance for public projects. Specific examples are attached in his Statement of Qualification.

Note that expertise and staffing resources required for these services do not exist in-house. The work performed by the firm to date has clearly demonstrated the expertise that is necessary to effectively provide the needed outside council to effectively move forward with this project.

This amendment provides for additional funding for consulting services in an amount that is likely to exceed \$50,000. It is unclear at this time the total cost of the services required, but the City Attorney will continue to monitor the progress and expenses of this project.

Attachment:

- Statement of Qualification for Bradley R. Hogin to City of Benicia

## **Statement of Qualifications for Bradley R. Hogin City of Benicia**

### **Summary**

Bradley Hogin practices environmental law, land use law, and public law. His clients include local government agencies and private companies. His practice includes both counseling and litigation.

Mr. Hogin regularly advises clients on the California Environmental Quality Act and state and federal laws regulating air quality, water quality, endangered species, contaminated property, and historic resources. Mr. Hogin also litigates environmental and land use matters in state and federal courts. He has defended court challenges to a wide variety of development projects, including oil wells, oil refineries, power plants, large-scale commercial and residential development, and schools. He has also handled challenges to federal, state, and local environmental regulations in the areas of air quality, water quality, and oil production.

Mr. Hogin is often tasked with handling controversial, high-profile projects. Among many other matters, he has advised and represented clients in connection with the following projects:

- Offshore oil platforms along the California coast;
- A 28-mile urban light rail project;
- The redevelopment of an urban, 1,600-acre former military base with commercial and residential uses;
- A pioneering project that recycles up to 128 million gallons of raw sewage per day into drinking water;
- A plan to expand the Burbank airport;
- Local and state-wide regulations governing the use of recycled sewage sludge, known as “biosolids,” for fertilizer;
- Ground-breaking California regulations governing the content of gasoline and other motor vehicle fuels;
- The Belmont Learning Center, later renamed the Vista Hermosa project, constructed on an abandoned oil field property in downtown Los Angeles;
- The redevelopment of the historic Ambassador Hotel site for a school project;
- A multiple species habitat conservation plan covering 27 endangered or potentially endangered species across 1.2 million acres in eastern Riverside County; and

- The use of emissions “offsets” maintained by the South Coast Air Quality Management District in its internal bank.

Mr. Hogin has argued environmental and land use cases before the California Supreme Court, the Ninth Circuit Court of Appeals, California Courts of Appeal, and many U.S. District Courts and California Superior Courts. His published decisions include *Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310 (2010); *Western States Petroleum Association v. Superior Court (Air Resources Board)*, 9 Cal.4th 559 (1995); *Natural Resources Defense Council v. South Coast Air Quality Management District*, 651 F.3d 1066 (9<sup>th</sup> Cir. 2011); *City of Los Angeles v. County of Kern*, 581 F.3d 841 (9th Cir. 2009); *Romoland School District v. South Coast Air Quality Management District*, 548 F.3d 738 (9th Cir. 2008); *Santa Barbara County Air Pollution Control District v. United States Environmental Protection Agency*, 31 F.3d 1179 (D.C. Cir. 1994); *Natural Resources Defense Council v. South Coast Air Quality Management District*, 694 F.Supp.2d 1092 (C.D. Cal. 2010); *Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019 (1997); and *KFC Western, Inc. v. Meghrig*, 23 Cal.App.4th 1167 (1994). The two California Supreme Court decisions, *Communities for a Better Environment* and *Western States Petroleum Association*, are widely viewed as two of the most important CEQA cases of the last twenty years.

Mr. Hogin serves as General Counsel to the Orange County Sanitation District, the sixth largest wastewater collection and treatment system in the United States. Mr. Hogin is Vice-Chair of the Legal Committee of the California Association of Sanitation Agencies. He is a former Chair of the Los Angeles County Bar Association’s Section of Environmental Law (2003-2004), and he was a member of the Section’s Executive Committee for ten years (1995 to 2005). Mr. Hogin has also served as Vice Chair of the American Bar Association’s Section of Natural Resources, Energy and Environmental Law (Marine Resources Committee, 1993-1997). Mr. Hogin has written and spoken extensively on environmental law subjects.

Mr. Hogin received his undergraduate degree from the University of California at Berkeley (A.B., 1984), where he graduated with high honors and was elected to Phi Beta Kappa. He received his law degree from the Washington College of Law at American University (J.D., 1988), where he served as the Senior Articles Editor of the *American University Law Review*.

## **I. Significant Litigation Matters**

Mr. Hogin has successfully litigated a variety of cases challenging compliance with CEQA and other environmental laws.

*Natural Resources Defense Council v. South Coast Air Quality Management District*. Mr. Hogin successfully defended a Clean Air Act citizen suit case brought by several environmental groups, including the Natural Resources Defense Council and Communities for a Better Environment. The suit alleged that the “emissions reduction credits” that the South Coast AQMD holds in an internal bank are invalid. The credits are used to satisfy the Clean Air Act’s requirement that nonattainment emissions from new and modified projects be “offset” with emissions reductions.

The AQMD routinely issues credits from the internal bank to businesses and public agencies because, although credits can be obtained on the open market, they have become prohibitively expensive. Some credits cost hundreds of thousands of dollars for a single pound per day of emissions. Thus, without access to the AQMD's internal credits, thousands of businesses and public agencies throughout Southern California would be unable to build new facilities or expand their existing facilities. The potential impact of the case was enormous, given that roughly half the population of the state resides within the AQMD's boundaries.

In a published opinion, the Ninth Circuit Court of Appeals upheld the District Court's dismissal of the action. *Natural Resources Defense Council v. South Coast Air Quality Management District*, 651 F.3d 1066 (9<sup>th</sup> Cir. 2011).

Communities for a Better Environment v. South Coast Air Quality Management District; Valdez et al v. South Coast Air Quality Management District. Mr. Hogin defended the South Coast Air Quality Management District ("SCAQMD") in a CEQA lawsuit brought by an environmental group and a union, *Communities for a Better Environment v. South Coast Air Quality Management District*, 48 Cal.4th 310 (2010). The case is the first "baseline" case to be decided by the Supreme Court, and is widely recognized as one of the most important CEQA cases of the last twenty years.

In *CBE*, the SCAQMD issued permits to construct and operate equipment at a major oil refinery based on a negative declaration. The petitioners challenged the negative declaration on numerous grounds, including the SCAQMD's use of permitted capacity as the baseline (regardless of whether the equipment happened to be operating at permitted capacity when CEQA review was performed). Mr. Hogin prevailed in trial court on all issues. The appellate court later reversed on the baseline. Mr. Hogin, however, filed a petition for review with the California Supreme Court. The petition was granted California Supreme Court. Mr. Hogin's achievement is obtaining review is quite significant, as the Supreme Court only grants review between 3.75% and 5% of the time. (California Practice Guide: Civil Appeals and Writs, Eisenberg, Horvitz, and Wiener, Chapter 13 Review By California Supreme Court, § 13:18.) Mr. Hogin argued the case before the Supreme Court.

Romoland School District v. South Coast Air Quality Management District. Mr. Hogin successfully defended SCAQMD in a federal court lawsuit brought a union, a school district, and environmental groups, *Romoland School District, et al., v. South Coast Air Quality Management District*, 548 F.3d 738 (9<sup>th</sup> Cir. 2008). The lawsuit alleged that SCAQMD violated the federal Clean Air Act, the approved State Implementation Plan, and the District's own rules in issuing permits to construct a new power plant in the Romoland area of Riverside County. The District Court granted a motion to dismiss, and the Ninth Circuit upheld the District Court ruling. Mr. Hogin argued the matter before the Ninth Circuit.

Natural Resources Defense Council v. South Coast Air Quality Management District. Mr. Hogin successfully defended SCAQMD in a state court CEQA lawsuit entitled *Natural Resources Defense Council, et al., v. South Coast Air Quality Management District*, Los Angeles

Superior Court, Case No. BS105728. The lawsuit alleged that SCAQMD failed to comply with CEQA in adopting Rule 1315 and approving certain amendments to Rule 1309.1 relating to priority reserve offsets for power plant operators. Mr. Hogin successfully obtained a dismissal of the case on the grounds of mootness, with no relief on the merits awarded to the plaintiffs.

City of Los Angeles, et al. v. Kern County. Mr. Hogin represented the Orange County Sanitation District in the federal court case *City of Los Angeles v. County of Kern*, 581 F.3d 841 (9th Cir. 2009). The case was brought in 2006 by a number of Southern California sanitation agencies, including the City of Los Angeles, the County Sanitation Districts of Los Angeles, and the Orange County Sanitation District. The lawsuit involves a Kern County initiative known as “Measure E.” Measure E banned the use of recycled sewage sludge known as “biosolids” for fertilizer on farms in the unincorporated areas of Kern County. Mr. Hogin, along with co-counsel representing other agencies, filed suit challenging Measure E on constitutional and other grounds.

County Sanitation Districts No. 2 v. Kern County. Mr. Hogin represents the Orange County Sanitation District in the CEQA case *County Sanitation Districts No. 2 v. Kern County*, Tulare County Superior Court, Case No. 189564. The case was originally brought in 2000 by a number of Southern California sanitation agencies, including the City of Los Angeles, the County Sanitation Districts of Los Angeles, and the Orange County Sanitation District. The case challenged Kern County’s ban on the use of “Class B” biosolids as fertilizer on CEQA grounds. Kern County filed a cross-complaint alleging that some of the individual sanitation agencies, including the Orange County Sanitation District, failed to comply with CEQA before approving contracts with Kern County biosolids operations. Ultimately, the appellate court ruled in favor of the plaintiffs on the complaint, and Kern County on the cross-complaint, requiring further CEQA review by all parties.

Sycamore Gardens Homeowners Association v. City of Tustin. Mr. Hogin successfully defended the City of Tustin in both the trial and appellate courts in the CEQA case *Sycamore Gardens Homeowners Association v. City of Tustin*, Fourth Appellate District, Case No. G034044 (May 6, 2005), Orange County Superior Court Case No. 03CC07516. In that case, a homeowners association filed a Petition for Writ of Mandate challenging the City’s approval of an EIR prepared for a Specific Plan project involving street widenings and other transportation improvements. The trial court denied the Petition, ruling for the City on all issues. In an unpublished opinion, the appellate court upheld the trial courts’ denial of the Petition.

Mitchell v. LAUSD. In 2002, Mr. Hogin successfully defended the Los Angeles Unified School District in the CEQA case *Mitchell v. LAUSD*, Los Angeles Superior Court, Case No. 074424. The petitioner in the case challenged the District’s preparation of two negative declarations for two separate new elementary school projects. The petitioner dismissed the case with prejudice on the eve of trial in exchange for LAUSD’s agreement to waive costs.

Kern County, et al. v. SWRCB. In 2001, Mr. Hogin successfully represented the California Association of Sanitation Agencies (“CASA”) in trial court in the CEQA case *Kern County, et al. v. State Water Resources Control Board*, Sacramento Superior Court, Case No. CS01315. In that case, Mr. Hogin defended an environmental impact report (“EIR”) prepared by

the State Water Resources Control Board and funded by CASA. The EIR analyzed the impacts of a General Order governing the land application of biosolids throughout the state. "Biosolids" consist of treated sewage sludge that is applied to land as a fertilizer and/or soil conditioner. The trial court rejected a broad attack on the EIR, denying two petitions for writ of mandate and ruling that the EIR complied in all respects with CEQA. On appeal, the appellate court upheld the trial court's ruling in all respects except one, ruling that the EIR should have included two additional alternatives. On remand, with input from Mr. Hogin on behalf of CASA, the SWRCB issued a revised EIR which was not challenged.

SAUSD v. City of Tustin. From 2000 to 2002, Mr. Hogin defended an EIR prepared under CEQA for the City of Tustin's Base Reuse Plan in *Santa Ana Unified School District v. City of Tustin*, Orange County Superior Court, Case No. 01CC02595. The City prepared the Reuse Plan for the Tustin Marine Corps Air Station, a former military base. The Plan covers commercial, residential and other development planned for the 1,602 acre former base. The case ultimately settled, along with a variety of related lawsuits, as part of a global settlement between the parties involving allocation of land on the former base property for public uses.

LAUSD v. City of Los Angeles. From 1993 to 1997, Mr. Hogin successfully prosecuted a legal challenge against the City of Los Angeles on behalf of the Los Angeles Unified School District ("LAUSD") under CEQA. The suit challenged the City's Warner Center Specific Plan that will allow 35.7 million square feet of concentrated commercial development in 1.5 square miles and divert the resulting traffic onto streets directly adjacent to Canoga Park High School and Parkman Middle School. When the suit was filed, the two schools had no air conditioning, such that classroom windows had to be left open in the heat of the San Fernando Valley. Under the Specific Plan, the streets immediately adjacent to the schools will be widened to a "major" highway and a "super-major" highway, thus creating substantial noise and air pollution that would impact students without air conditioning/filtration systems that allow windows to be closed. In a published decision, the appellate court ruled for the LAUSD on all issues, vacated the Warner Center Specific Plan and directed the City to reexamine school impacts in the EIR before proceeding with the Specific Plan. (*Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019 (1997).) On remand from the appellate court, Mr. Hogin was able to obtain the majority of LAUSD's attorneys' fees incurred from 1993 through 1997 from the City in settlement of a motion for attorneys' fees. Moreover, in the subsequent administrative EIR process before the City, Mr. Hogin was able to obtain for LAUSD a special developer fee under which LAUSD stands to collect \$1.3 million as reimbursement for air conditioning/filtration systems at the Warner Center area schools.

WSPA v. Air Resources Board. From 1992 to 1995, Mr. Hogin represented an oil industry trade association in what is generally considered to be one of the most important California Supreme Court CEQA decisions of the last twenty years, *Western States Petroleum Association v. Superior Court (Air Resources Board)*, 9 Cal.4th 559 (1995). In that case, Mr. Hogin filed a legal challenge against the California Air Resources Board ("ARB") over one aspect of the ARB's Low Emission Vehicle/Clean Fuel Rulemaking Program. The ARB's regulations favored alternative fuels over gasoline by allowing alternative-fueled vehicles to emit more pollutants than comparable vehicles fueled by gasoline. Mr. Hogin successfully appealed an evidentiary ruling to the appellate court prior to the hearing on the merits, resulting in the

decision *Western States Petroleum Association v. Superior Court (Air Resources Board)*, 21 Cal.App.4th 892 (1994). The California Supreme Court granted review and reversed the appellate court's evidentiary ruling. The case later settled prior to a hearing on the merits.

WSPA v. SBCAPCD. In 1994, Mr. Hogin filed a challenge to a local APCD regulation in *Western States Petroleum Association v. Santa Barbara County Air Pollution Control District*, Santa Barbara County Superior Court, Case No. SB 200700. This lawsuit concerned the interpretation and enforcement of Santa Barbara Air Pollution Control District ("SBAPCD") Rule 311, titled "Sulfur Content of Fuels," as applied to the flaring of waste gas by the Santa Barbara County Air Pollution Control District. The case involved onshore and offshore oil and gas projects subject to regulation by SBAPCD. The challenged rule regulated the emergency disposal of waste gas through flares when, due to process malfunctions, system vessels become dangerously over-pressurized.

Thompson v. SCAQMD. In 1994, Mr. Hogin filed an amicus brief on behalf of an oil industry trade association in support of the South Coast Air Quality Management District in *Thompson v. SCAQMD*, Los Angeles Superior Court, Case No. BS 026187. The lawsuit challenged the District's compliance with CEQA in approving air quality permits for refinery modifications relating to the Phase II reformulated gasoline regulations.

LAUSD v. Burbank Airport Authority. In 1993, Mr. Hogin filed a CEQA challenge on behalf of LAUSD against the Burbank-Glendale-Pasadena Airport Authority in *LAUSD v. Burbank-Glendale-Pasadena Airport Authority*, Los Angeles Superior Court, Case No. BS 022809. The suit challenged the Airport Authority's EIR prepared in connection with a proposed expansion project. LAUSD sought to obtain soundproofing for Glenwood Elementary School, located adjacent to one of the airport runways. After incurring only about \$23,000 in attorneys fees, Mr. Hogin negotiated a settlement with the Airport Authority whereby the School District received \$2.5 million in soundproofing measures for Glenwood Elementary school.

Environmental Defense Center v. EPA. In 1992, Mr. Hogin, on behalf of an oil industry trade association, filed a complaint in intervention in support of the U.S. EPA in the case *Environmental Defense Center v. United States Environmental Protection Agency*, United States District Court, Central District of California, Case No. 92-2708 WDK(JX). The Petitioner in that case sought to force EPA to promulgate the Outer Continental Shelf Air Regulations governing control of air emissions from offshore sources on the outer Continental Shelf ("OCS") before EPA had determined that the regulations were ready for adoption. The case settled prior to a hearing on the merits.

Unocal v. EPA. In 1992, Mr. Hogin filed an action in the Ninth Circuit under the federal Clean Air Act on behalf of an industry client in *Union Oil Company of California, et al. v. United States EPA*, United States Court of Appeals for the Ninth Circuit, Case No. 92-70727. That case sought to overturn a portion of the action taken by EPA in promulgating the OCS Air Regulations. The petition challenged that portion of the regulations which finally designated the Santa Barbara County Air Pollution Control District as the Corresponding Onshore Area ("COA") for certain offshore oil platforms. Under the regulations, the designated COA applied its onshore air regulations to sources located offshore on the federally owned OCS. The Petition alleged that EPA's decision to designate the Santa Barbara APCD rather than the neighboring

Ventura County Air Pollution Control District was invalid on both procedural and substantive grounds. In response to the Petition, EPA agreed to vacate its designation of SBAPCD as the COA, and reconsider the COA designation.

SBCAPCD v. Reilly. In *Santa Barbara Air Pollution Control District v. Reilly*, United States Court of Appeals for the District of Columbia Circuit, Case No. 92-1569, the SBAPCD filed a challenge to portions of the OCS Air Regulations. Representing an oil industry trade association, Mr. Hogin filed a motion to intervene on behalf of the U.S. EPA in defense of the challenged portions of the regulations. Ultimately, the Petitioner dismissed the case prior to a trial on the merits.

Citizens for a Healthy Environment v. EPA. In 1990, in *Citizens for a Healthy Environment v. Environmental Protection Agency*, United States District Court, Eastern District of California, Case No. CV-F 89-399 REC, Mr. Hogin represented an oil industry trade association in litigation over a State Implementation Plan. An environmental group filed the action seeking to require the U.S. EPA to promulgate a Federal Implementation Plan after disapproving two State Implementation Plans. Mr. Hogin's client intervened in the case in support of the U.S. EPA.

County of Ventura v. Oxnard Redevelopment Agency. In 1988 and 1989, Mr. Hogin helped defend a City's redevelopment plan from a lawsuit alleging violations of CEQA and many aspects of the Community Redevelopment law in *County of Ventura v. Oxnard Redevelopment Agency*. The case settled on the eve of trial.

Mobil v. City of Santa Fe Springs. In 1990, Mr. Hogin filed a legal challenge on behalf of a major oil company to excessive permit fees levied on onshore oil wells in *Mobil v. Santa Fe Springs*, Los Angeles Superior Court, Case No. C 745 095. The case raised issues under the California Constitution regarding the constitutionality of oil well fees. The case also raised administrative law issues under the arbitrary and capricious standard of review. The case settled prior to trial.

WOGA v. Sonoma. From 1990 to 1992, Mr. Hogin litigated a legal challenge on behalf of oil industry trade association against thirteen coastal cities and counties over requirement that onshore support facilities for offshore oil production be submitted to the electorate through the initiative process. The case, *Western Oil & Gas Association v. Sonoma County*, United States District Court, Central District of California, Case No. CV-87-05190-CBM (GHKx), raised issues under the federal constitution involving the due process clause, the commerce clause and the supremacy clause. The trade association dismissed the case prior to trial because its members decided not to pursue offshore oil production in the relevant areas.

## **II. Significant CEQA Counseling Matters.**

In addition to the litigation experience described above, Mr. Hogin has also substantial experience in counseling public agencies on CEQA compliance for public projects. This experience includes counseling on day-to-day compliance for routine projects, as well as much more difficult issues involving high profile and controversial projects. Mr. Hogin routinely

provides a wide variety of CEQA counseling to public agency clients. Mr. Hogin has counseled the Orange County Transportation Authority on freeway, rail, planning and bus base projects, counseled the Orange County Sanitation District on pipeline and sewage sludge disposal projects, counseled the Los Angeles Unified School District on the construction and operation of schools, children's centers, warehouses, and administrative offices, advised the South Coast Water District on development projects, and counseled cities on various development projects. Some of Mr. Hogin's major CEQA counseling projects are described below.

LAUSD New School Construction Program. From 2000 to 2004, Mr. Hogin counseled the Los Angeles Unified School District on the CEQA process for Phase I of its massive new school construction program. Phase I of the program involved approximately 150 new construction projects, including roughly 80 new schools and a variety of addition projects. Mr. Hogin contributed to the success of this program by providing expert CEQA advice, offering creative solutions to difficult problems, and expediting legal review of CEQA documents to meet critical funding deadlines. Mr. Hogin also advised LAUSD on preparation of a Program Environmental Impact Report for future phases of the new school construction program, which will involve some combination of new schools and additions to accommodate another 122,000 students. In 2006, this Program EIR received the "Environmental Award" given annually by the Los Angeles chapter of the American Planning Association.

Ambassador Hotel Project. From 2001 to 2004, Mr. Hogin counseled LAUSD on preparation of an EIR for Central L.A. Learning Center #1, a project to build three schools on the site of the former Ambassador Hotel. Although the Hotel closed in the late 1980's, the Hotel and its ancillary structures still stand. The Hotel property is considered a valuable historic resource because various world leaders, royalty, movie stars, singers, and other notables stayed, resided, and/or performed there. In addition, the Hotel was the site of many significant historic events, including the first ceremonies of both the Academy Awards and the Golden Globes, and the 1968 assassination of Robert Kennedy. LAUSD's proposal to demolish some or all of the existing Hotel buildings and construct schools on the property was and remains highly controversial. The Los Angeles Conservancy, an organization devoted to preserving historically significant sites, strongly opposed most of the options presented by LAUSD. Ultimately, in the fall of 2004, the LAUSD Board of Education selected a compromise proposal that would demolish the main hotel building and most ancillary structures, but save portions of the Hotel, including the Coconut Grove building. The EIR was challenged in court, but LAUSD prevailed on all issues.

Belmont Learning Center/Central L.A. HS #11. From 1999 to 2004, Mr. Hogin advised LAUSD on preparation of an Environmental Impact Report and other environmental issues relating to development of the Belmont Learning Center, later renamed Central L.A. High School #11 and Vista Hermosa Park. The Belmont Learning Center/Central L.A. HS #11 project involved particularly complex and high-profile issues relating to development of a school on an historic oil field property. The project was highly controversial, engendering strong opposition from a powerful union, politicians at the state and local level, community groups, and activists. Development of the site was complicated by the presence of oil field gases, including methane and hydrogen sulfide, and an earthquake fault discovered after many buildings were already built. In the spring of 2004, the LAUSD Board of Education ultimately approved

construction of a high school and park on the site. The high school and park have been constructed and are currently operating.

Centerline Urban Light Rail Project. From 1999 to 2005, Mr. Hogin counseled the Orange County Transportation Authority on CEQA compliance in preparation of an Environmental Impact Report (EIR)/Environmental Impact Statement for the Centerline light rail project. As originally planned, the project consisted of a 28-mile light rail line through central Orange County stretching from Fullerton to the Irvine Spectrum. The project was estimated to cost between \$1.4 billion and \$1.7 billion. The Centerline project was highly controversial due to environmental and cost considerations, and has generated opposition from cities, community groups, and the Orange County Register. Due to this opposition, the project was never constructed.

Tustin Marine Corps Air Station Reuse. From 1999 to 2001, Mr. Hogin counseled the City of Tustin on CEQA compliance, historical resources, and contaminated property issues in connection with the City's Reuse Plan for the Tustin Marine Corps Air Station, a former military base. The Plan covers commercial, residential and other development planned for the 1,602 acre former base. The Plan was highly controversial due to a high profile dispute with the Santa Ana Unified School District over allocation of base land for school district property.

Groundwater Replenishment System. From 1999 to the present, Mr. Hogin has counseled the Orange County Sanitation District on CEQA compliance and other issues in connection with the Groundwater Replenishment System, a joint project of the Sanitation District and the Orange County Water District. The Groundwater Replenishment System is a pioneering effort to recycle up to 128 million gallons per day of the Sanitation District's treated sewage into drinking water, and use it to replenish Orange County's drinking water aquifer. To date, the project has cost approximately \$600 million.

Costa Mesa South Coast Plaza Town Center and Other Projects. From 2000 to 2002, Mr. Hogin counseled the City of Costa Mesa on CEQA compliance and other land use issues in connection with a number of significant development projects in the City. Mr. Hogin counseled the City on the EIR for the South Coast Plaza Town Center project, a mixed-use office, commercial and entertainment project on 54 acres adjacent to South Coast Plaza. When complete, the Town Center will create a Theatre Arts district, adding office buildings, a hotel and a world-class symphony concert hall. Mr. Hogin has also counseled the City on environmental impact reports for the Home Ranch development project northwest of South Coast Plaza and the City's General Plan Amendment.



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - OCTOBER 1, 2013**  
**CONSENT CALENDAR**

**DATE** : September 24, 2013

**TO** : City Manager

**FROM** : Police Chief

**SUBJECT** : **SALE OF RETIRED POLICE SERVICES CANINE MIRCO**

**RECOMMENDATION:**

Adopt the resolution authorizing and directing the City Manager to sign a Bill of Sale for the sale of retired Police Services canine Mirco.

**EXECUTIVE SUMMARY:**

On September 5, 2013, after approximately four and half years of service, police canine Mirco was retired from active service as a working police canine due to a medical condition. It has been the practice of the Department and an industry standard, to allow police officers to purchase their canine upon the canine's retirement.

**BUDGET INFORMATION:**

The sale amount is \$1.00.

**GENERAL PLAN:**

N/A – there is not a relevant General Plan Goal that relates to this agenda item.

**STRATEGIC PLAN:**

N/A – there is not a relevant Strategic Plan Goal that relates to this agenda item.

**BACKGROUND:**

Police Services canine Mirco has been a working police dog for the Benicia Police Department, for approximately the past four and one and half years. Canine Mirco most recently worked with Officer Collins; however, the majority of canine Mirco's career was spent working with Officer Sylvester until Officer Sylvester's promotion to Sergeant. Canine Mirco lived with each respective officer when off duty.

It has been the practice of the Department to allow police officers to purchase their canine, kennel and personal items (leash, bowl, brush, etc.) as surplus property upon the canine's retirement. Sergeant Sylvester similarly wishes to purchase his former partner from the city. In return for allowing the purchase of

the canine, Sergeant Sylvester would agree to sign a release and hold harmless agreement, and continue to care for the canine in the manner in which it is accustomed.

Attachments:

- Resolution
- Bill of Sale

**RESOLUTION No.**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING AND DIRECTING THE CITY MANAGER TO SIGN A BILL OF  
SALE FOR THE SALE OF RETIRED POLICE SERVICES CANINE MIRCO**

**WHEREAS**, Police Services canine Mirco has been a working police dog for the Benicia Police Department, for the past 4 and a half years; and

**WHEREAS**, Police Services canine Mirco was retired on September 5, 2013, at the age of 6 years old from active service as a working police canine due to a medical condition; and

**WHEREAS**, it has been the practice of the Police Department to allow police officers to purchase their canine upon the canine's retirement.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Benicia adopts this resolution authorizing and directing the City Manager to sign a Bill of Sale for the sale of retired Police Services canine Mirco.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by \_\_\_\_\_, 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 1<sup>st</sup> day of October, 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

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



**BILL OF SALE, WAIVER OF LIABILITY, AND  
HOLD HARMLESS AGREEMENT FOR RETIRED CANINE**

The City of Benicia (“City”), in consideration of one dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and assign to DAMIEAN SYLVESTER (“Transferee”), his successors and assigns, the following retired City police service canine known as “MIRCO”, a six year old German Shepard (breed), together with all kennel and housing equipment installed at Transferee’s residence by City for the use of said canine.

The canine and kennel facility are transferred in “as is” condition for Transferee’s personal use.

It is understood that this canine was removed from police service because age, performance, or disability made such canine unqualified for further police purposes.

City, its City Council, boards, commissions, officers, agents, and employees (hereinafter collectively referred to as “Releasees”) shall have no liability for further care of said canine or for claims or suits, including claims for death or injury to persons, or loss of, or damage to, property, arising out of activities of, related to, said canine occurring after transfer of said canine to Transferee by City.

Transferee expressly agrees to defend, indemnify, and hold harmless Releasees from and against any and all liability, claims, demands, damages, losses, causes of actions, suits, or judgments of any kind whatsoever (including attorney’s fees and all costs and expenses incurred in connection therewith) by reason of injury to, or death of, any person or persons, or property damage, including loss of use thereof resulting from any act or omission to act by Release associated with said canine, effective upon transfer of ownership of said canine to Transferee.

The duty of Transferee to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein shall be constructed to require Transferee to indemnify Releasees against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

This release, waiver, and hold harmless agreement is binding upon Transferee, his/her heirs, executors, administrators, and assigns.

**CITY OF BENICIA**

**TRANSFEEEE**

\_\_\_\_\_  
Brad Kilger, City Manager

\_\_\_\_\_  
Damiean Sylvester

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Heather McLaughlin, City Attorney



**AGENDA ITEM  
CITY COUNCIL MEETING DATE - OCTOBER 1, 2013  
CONSENT CALENDAR**

**DATE** : September 18, 2013

**TO** : City Council

**FROM** : Public Works Director

**SUBJECT** : **APPROVAL OF CONSULTANT CONTRACT AMENDMENT WITH MARK THOMAS & COMPANY FOR ENVIRONMENTAL AND 35% DESIGN PHASE OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT**

**RECOMMENDATION:**

Adopt a resolution approving a consultant contract amendment with Mark Thomas & Company in the amount of \$88,388 for the environmental & 35% design phase of the Benicia Industrial Park Bus Hub Project, and authorizing the City Manager to execute the amendment on behalf of the City.

**EXECUTIVE SUMMARY:**

The design of the Benicia Industrial Park Bus Hub Project is being fast tracked to fully utilize available grant funding. After conducting a thorough selection process, staff awarded a contract to Mark Thomas & Company (MT&C) for \$46,586 to allow a jump start on the design. This amendment for \$88,388 will increase the contract to the full grant amount of \$135K and fund the completion of the environmental & 35% design phase. The project was discussed at the June 18, 2013 Council meeting and authorization to proceed with the grant funding was provided at that time.

**BUDGET INFORMATION:**

The proposed budget for the \$1.25M RM2 grant-funded project is outlined below:

**Grant Budget**

Proposed Budget (FY 2013/14)

Environmental & 35% Engineering

Design Contract with MT&C (staff approved).....	\$46,586
Design Contract Amendment ( <b>this request</b> ) .....	\$88,388

Sub-total .....\$134,974

Right of Way .....	\$350,000
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Final Design .....	\$90,000
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Construction.....	\$675,000
Grand Total (Approximate) & Available RM2 Grant Funding .....	<b>\$1,250,000</b>

In July, 2013 the Metropolitan Transportation Commission (MTC) allocated \$135K in Regional Measure 2 (RM2) funds from the \$1.25M earmarked for the project to complete the environmental and 35% design phase of this project. Per MTC's RM2 Program Delivery Strategy, all phases of this project need to have their funding allocated from the earmark by the end of March 2014 or risk losing funds.

This budget is a planning level estimate which will be refined during this phase of the project. The Solano Transportation Authority has committed to assisting the City in obtaining additional grant funding in the future should it be needed to complete the project.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- ❑ Overarching Goal of the General Plan: Sustainability
- ❑ Goal 2.17: Provide an efficient, reliable, and convenient transit system
- ❑ Goal 2.20: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit
- ❑ Goal 2.28: Improve and maintain public facilities and services

**STRATEGIC PLAN:**

Relevant Strategic Plan Issue and Strategies include:

- ❑ Strategic Issue #2: Protecting and Enhancing the Environment
  - Protect air quality/Pursue multiple mass transit opportunities
- ❑ Strategic Issue #4: Preserving and Enhancing Infrastructure
  - Strategy #1: Provide safe, functional, and complete streets
  - Strategy #2: Increase use of mass transit/Design and construct the Downtown Intermodal Facilities Project
- ❑ Strategic Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #1: Strengthen Benicia Industrial Park competitiveness

**ENVIRONMENTAL REVIEW:**

This project will undergo environmental review as part of this design phase.

**BACKGROUND:**

The existing bus stops on Park Road just south of Industrial Way have no parking or other transit-related amenities. This project will purchase the adjacent 1.0 acre gravel lot at the southeast corner of the intersection and construct a paved parking structure with 50+ stalls, bus pullouts, shelters, landscaping and lighting. The project may also include a vendor area, solar panels, electric charging stations, and restrooms.

The existing stop is served by Fairfield-Suisun Transit (FAST) Route 40, which travels down the I-680 corridor into Contra Costa and BART. SolTrans, the joint Benicia-Vallejo transit provider, has expressed an interest in serving the proposed facility in the future. The new bus hub will transport the industrial park work force from locations within the county and commuters into Contra Costa and BART.

The Benicia Industrial Park has been designated an employment Priority Development Area (PDA) under MTC's new One Bay Area Grant Program. The intent of this program is to invest in PDA's that are served by alternative modes of transportation in order to reduce greenhouse gas emissions and the need for costly freeway expansion projects. Constructing the bus hub project will strategically position the industrial park to compete for transportation-related grants in the future.

City staff previously met and solicited feedback from the Business Retention/Attraction Committee, the Benicia Industrial Park Association, and the Economic Development Board. The design will incorporate measures to address the concerns they expressed, including the effect the additional automobiles could have on truck traffic.

MTC has earmarked \$1.25M in RM2 for the bus hub and in July allocated \$135K for the environmental and 35% design phase of the project. Per MTC's RM2 Program Delivery Strategy, all phases of this project need to have their funding allocated by the end of March 2014 or risk losing funds. Recognizing the aggressive timeline necessary to complete the project, City staff conducted a thorough selection process and once the RM2 allocation occurred, awarded a \$46,586 consultant contract to Mark Thomas & Associates. The requested \$88,388 contract amendment would utilize the full \$135K allocated for this phase of the project and allow Mark Thomas and Company to complete the environmental and 35% design phase of the project. The right-of-way and final design phases are scheduled to occur in Fall and Winter with construction tentatively scheduled to begin next Spring. The project is scheduled to be completed in the Fall of 2014. The Solano Transportation Authority has committed to assisting the City in obtaining additional grant funding in the future

should it be needed to complete the project.

Attachments:

- ❑ Proposed Resolution
- ❑ Consultant Contract Amendment
- ❑ Exhibit A1 – Scope of Services
- ❑ Exhibit B1 – Amended Fee
- ❑ Project Schedule

**RESOLUTION NO. 13-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONSULTANT CONTRACT AMENDMENT WITH MARK THOMAS & COMPANY IN THE AMOUNT OF \$88,388 FOR THE ENVIRONMENTAL & 35% DESIGN PHASE OF THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT ON BEHALF OF THE CITY**

**WHEREAS**, at their June 18, 2013 meeting the Benicia City Council authorized staff to pursue \$135K in Regional Measure 2 grant funding from the Metropolitan Transportation Commission (MTC) for the environmental and 35% design phase of the Benicia Industrial Park Bus Hub Project; and

**WHEREAS**, MTC allocated the requested \$135K at their July 24, 2013 meeting; and

**WHEREAS**, after completing a thorough consultant selection process, and recognizing the aggressive timeline needed to complete the project, staff entered into a \$46,586 contract with Mark Thomas & Company (MT&C) to begin the design; and

**WHEREAS**, an \$88,388 contact amendment will fully utilize the grant funding allocated for 35% design and environmental review and is needed to complete this phase of the project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves a consultant contract amendment with Mark Thomas & Company in the amount of \$88,388 to complete the environmental and 35% design phase and authorizes the City Manager to sign the amendment on behalf of the City subject to approval and minor modifications 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 1<sup>st</sup> day of October 2013, and adopted by the following vote:

Ayes:  
Noes:  
Absent:

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

Attest:

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

Date: \_\_\_\_\_



**AMENDMENT TO AGREEMENT**

This Amendment of the Agreement, entered into this \_\_\_\_ day of October, 2013, by and between the City of Benicia, a municipal corporation (“CITY”) and Mark Thomas & Company, a California Corporation with its primary office located at 300 Oak Road, Suite 650, Walnut Creek, CA 94597 (“CONSULTANT”), is made with reference to the following:

RECITALS:

A. On August 22, 2013, an agreement was entered into by and between CITY and Mark Thomas & Company, (“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:

The Agreement is hereby modified to include Exhibit A1 for the scope of work and Exhibit B1 with regards to compensation.

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.

Mark Thomas & Company

City of Benicia, A Municipal Corporation

By \_\_\_\_\_  
Title

By \_\_\_\_\_  
Brad Kilger, City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



This amended scope of service supplements the initial scope of service for the Benicia Industrial Bus Hub project. This scope of service extends the duration of the services beyond the initial 3 months of the project to the full term of the preliminary engineering and environmental clearance phase of the project.

## SCOPE OF SERVICES

### TASK 0 PROJECT MANAGEMENT

#### 0.1 PROJECT MANAGEMENT AND COORDINATION

This task will include ongoing general project management, preparation of monthly progress reports, maintaining the project schedule and regular maintenance of project files. MTCO will update the baseline schedule noting any changes in milestones or deliverable dates as necessary. Updated project schedules will be provided to the City as necessary showing the critical path for the completion of the project. Project coordination will include communication with City staff, subconsultants, and other relevant parties. This task will include writing emails, conducting conference calls and preparing and sending project information to the City and other stakeholders.

#### 0.2 MEETINGS

This task includes attendance regular Project Development Team (PDT) coordination meetings, preparation of meeting agendas in consultation with the City's Project Manager, distribution of approved meeting agendas, arrangement of attendance of meeting participants, and preparation and distribution of meeting minutes with a recap of actions to be taken prior to the next meeting.

PDT meetings will be held with representatives of the City and the project team on a regular basis. It is anticipated that approximately three (3) PDT meetings will be required. In addition to PDT meetings, as outlined in Task 0.1 "Project Management and Coordination," Mark Thomas & Company (MTCO) will engage in more frequent communication via e-mail or telephone, as required, to keep the City's Project Manager up to date on the status of project issues and action items.

#### *Deliverables:*

- Meeting agendas and minutes (3 meetings)
- Periodic project schedule updates in Microsoft Project format
- A copy of all deliverables are available to the City in PDF format

### TASK 1 CONCEPTUAL DESIGN / 35% DESIGN

#### 1.2 CONCEPTUAL DESIGN

##### 1.2.2 Legal Descriptions and Plats

MTCO will prepare legal descriptions and plats for right of way acquisition required for the project. This scope assumes that MTCO will prepare up to three (3) plats and legal descriptions for the project. This scope assumes that the City will provide Preliminary Title Reports and vesting documents for each of the properties affected by the right of way acquisition.

The City will provide all appraisals, appraisal review, acquisition and relocation assistance services. Right of way acquisition services are not included with this scope of work. MTCO staff will, however, coordinate and provide support to the City for right of way acquisition activities (assumed 8 hours of staff time).

**Deliverables:**

- Draft Plat and Legal Descriptions (3 maximum – 2 copies each)
- Final Plat and Legal Descriptions (3 maximum – 2 copies each, wet signed originals)
- Right of Way acquisition Exhibits (as requested – 8 hours maximum)
- A copy of all deliverables are available to the City in PDF format

### 1.3 35% DESIGN

#### 1.3.1 Geotechnical Design Report

Prior to starting any field exploration work, Crawford & Associates, Inc. (CAInc) will collect the readily available geotechnical and geologic data for the project site and meet with the design team and review the preliminary plans, discuss the project design needs, goals, and schedule. CAInc will mark the boring locations for Underground Service Alert (USA), schedule the fieldwork, and obtain the required boring permit. CAInc will complete three (3) to four (4) borings to depths ranging from 5 to 50 feet deep within the planned parking lot, solar array, restroom, and shade structure locations. Our field engineer will direct the sampling and log the borings. At a minimum, CAInc will sample at 5-foot intervals and complete laboratory testing on these samples. The drilling contractor will advance the borings with a rubber-tired, truck-mounted drill rig using 6 to 8-inch diameter hollow and solid stem augers. Standard Penetration Testing (SPT) and California Modified sampling will be performed within the borings to obtain samples and blow count information. The borings will be backfilled according to the permit requirements.

CAInc will prepare a Geotechnical Design Report containing the following:

- Project description.
- Laboratory test results.
- CBC seismic design parameters.
- Liquefaction and seismic settlement potential (liquefaction or seismic settlement mitigation is not included in this scope of services).
- Foundation recommendations including type, minimum depth/width, allowable bearing capacity, lateral soil resistance, skin friction, and settlement estimates.
- Recommendations for grading and construction, including ground preparation, materials excavation, stability, and placement.
- Flexible and rigid pavement section recommendations based on TIs provided by the design team.
- Soil corrosion potential.
- Risk Management and Limitations.
- Vicinity Map.
- Site Plan with boring locations.
- Boring logs with Laboratory test results.

#### 1.3.2 Preliminary (35%) Design and Refinements

A preliminary design (35%) will be created based on the Conceptual Design Report as described in Task 1.2.4 above. Using this plan and input from the project stakeholders, MTCO will prepare the preliminary design layout and architectural features for the project and up to two (2) refinements of that design. The City shall provide concurrence on the final layout and structure designs selected for the project. Once the preliminary layout is confirmed by the City, MTCO will develop alignments, profiles and staging and traffic control plans as necessary. An opinion of probable costs with appropriate contingencies will be created based on this preferred alternative as well as an update to the project schedule.

### 1.3.3 Schematic Landscape Design

As a part of the MTCO team, Merrill Morris Partners (MMP) will prepare a schematic landscape design based on the project geometry, the City standards and specifications and comments from the project scoping sessions. The schematic plan will illustrate the size, character, and configuration of the landscape program elements with no detailed plant or irrigation design. This plan will be revised up to one time based upon City comments.

### 1.3.4 35% Technical Specifications

The MTCO team will prepare project technical specifications for the project. The site special provisions will follow Caltrans 2010 format and then modified as appropriate for City standards. It is assumed that the City will provide the boilerplate specifications. MTCO will review the City supplied boilerplate specifications and for conformity with project plans and special provisions.

### 1.3.5 Existing Utility Mapping

MTCO will send out utility request letters and collect existing utility maps from the known utility providers in the area. Once we have received the requested maps, MTCO will compile them and prepare an existing utility base file from which to work. An Existing Utility Map will show the existing site with existing utility facilities from record information superimposed on the proposed geometrics.

### 1.3.6 Potholing

Existing underground utilities will be potholed at critical locations within the project limits based on the Existing Utility Map. Potholes should be taken at locations where high risk utilities are present (gas and oil lines), where pavement is to be widened over shallow existing longitudinal utilities, and in areas where the site grade is modified above existing utilities. Additional utility potholing will be necessary during the final design phase once utility conflicts can be more accurately identified. This scope of services assumes that the engineering and surveying (assumes 2 days of field survey crew time) of the potholing locations will be completed by MTCO and the actual physical potholing will be completed by a subsurface utility locating firm and accounted for as a reimbursable expense. We have assumed up to **five (5)** potholes will be necessary at a price of \$750 per pothole. Pothole depths will be identified with offset hubs and estimated depths and locations will be surveyed after each utility is located during potholing.

#### ***Deliverables:***

- Draft Geotechnical Design Report (3 copies)
- Final Geotechnical Design Report (3 copies)
- 35% Design Report (12 draft copies, 2 signed final copies)
- 35% Opinion of Probable Costs
- Schematic Landscape Design Drawing (3 copies)
- 35% Technical Specifications (3 copies)
- Existing Utility Map (3 copies)
- Pothole location and depth log – (up to **5** potholes)
- A copy of all deliverables are available to the City in PDF format

## TASK 2 ENVIRONMENTAL PHASE

### 2.1 INITIAL STUDY / MITIGATED NEGATIVE DECLARATION

#### 2.1.3 Prepare and Submit Public Draft

Based on a consolidated set of comments from the City, Circlepoint will revise the Administrative Draft document and prepare a copy for distribution. Given the nature and location of this project, it appears that no state agencies would need to review the environmental document. Therefore, the draft IS/MND would not need to be transmitted to the State Clearinghouse and the review period could be just 20 days. Instead, the document would be transmitted to the Solano County Clerk as well as to any other individuals or organizations that have registered requests with the City of Benicia for copies of draft environmental documents.

#### 2.1.4 Prepare Responses to Comments, Revise IS and MMRP

Circlepoint will prepare draft responses to comments on the Initial Study. As the content and volume of comments cannot be anticipated, this task provides an allowance to develop responses to up to 6 individual comments received at the close of the public review period. Our drafts will also include any needed minor revisions to the Initial Study as well as a Mitigation Monitoring and Reporting Program (MMRP).

#### 2.1.5 Assistance with Noticing and Distribution

Circlepoint will prepare drafts of required CEQA noticing (notice of intent to adopt a negative declaration; notice of determination) for the City's signature and for distribution with the environmental documents. The Notice of Intent to adopt a Negative Declaration will be prepared to coincide with the Draft Initial Study. CEQA allows the City various methods to distribute this notice; Circlepoint assumes that any mailing would entail 50 or fewer addresses. As an optional task not included in this scope, we could assist with placing the notice in a newspaper. The Notice of Determination (NOD) is completed after the City has adopted the environmental document (the mitigated negative declaration). The NOD will need to be filed with the Solano County Clerk along with "de minimis" fees payable to the California Department of Fish and Wildlife (formerly the Department of Fish and Game). This scope assumes all fees, including filing fees will be paid by the City

### 2.2 INITIAL SITE ASSESSMENT

As a part of the MTCo team, CAInc will prepare the Initial Site Assessment (Phase 1 ESA). CAInc has performed a web search for the property utilizing the GeoTracker website which is maintained by the State Water Resources Control Board and is a database of known leaking underground storage tanks and other cleanup sites, land disposal sites, military sites, and other hazardous sites that are regulated facilities in California. The website shows active monitoring wells installed in the project vicinity and these particular wells monitor the presence of groundwater contamination due to the Valero refinery (formally Exxon) located northwest of the project site. The actual project site is not listed on the GeoTracker website as having historical contamination issues. To further evaluate the proposed site, CAInc will perform an Initial Site Assessment (Phase 1 ESA) and research additional state and federal environmental records using a commercial record check service.

CAInc will perform the following tasks to provide an Initial Site Assessment (Phase 1 ESA) for evidence of recognized environmental conditions (RECs) and/or potential RECs that may impact the proposed improvements:

- Review federal, state, and county records for indications of the use, misuse, or storage of hazardous and/or potentially hazardous materials on or near the site. The federal, state, and county database search will be provided by Environmental Data Resources, Inc., a professional record check service.
- Review historical aerial photographs for the property.
- Prepare a draft and final Initial Site Assessment (Phase 1 ESA) Report summarizing the findings of our review, historical photograph evaluation, and regulatory records review. We will address identified potential contamination and hazardous material impacts and provide recommendations for further investigation and analysis, if necessary.

**Deliverables:**

- Administrative Draft Initial Study (6 copies)
- Public Initial Study (6 copies)
- Draft Initial Site Assessment (Phase 1 ESA) (3 copies)
- Final Initial Site Assessment (Phase 1 ESA) (3 copies)
- A copy of all deliverables are available to the City in PDF format

**EXCLUSIONS**

The following items are excluded from this scope of work:

- Title Reports
- Final Design Services
- Bidding Services
- Construction Staking
- Construction Management and Inspection
- Storm Water Pollution Prevention Program
- Environmental Clearance beyond CEQA Clearance as defined above
- Permitting
- Hazardous Waste Testing and Analysis
- Hard Copy/Right of Way Record Maps
- Plat Maps and Legal Descriptions
- Corner Records



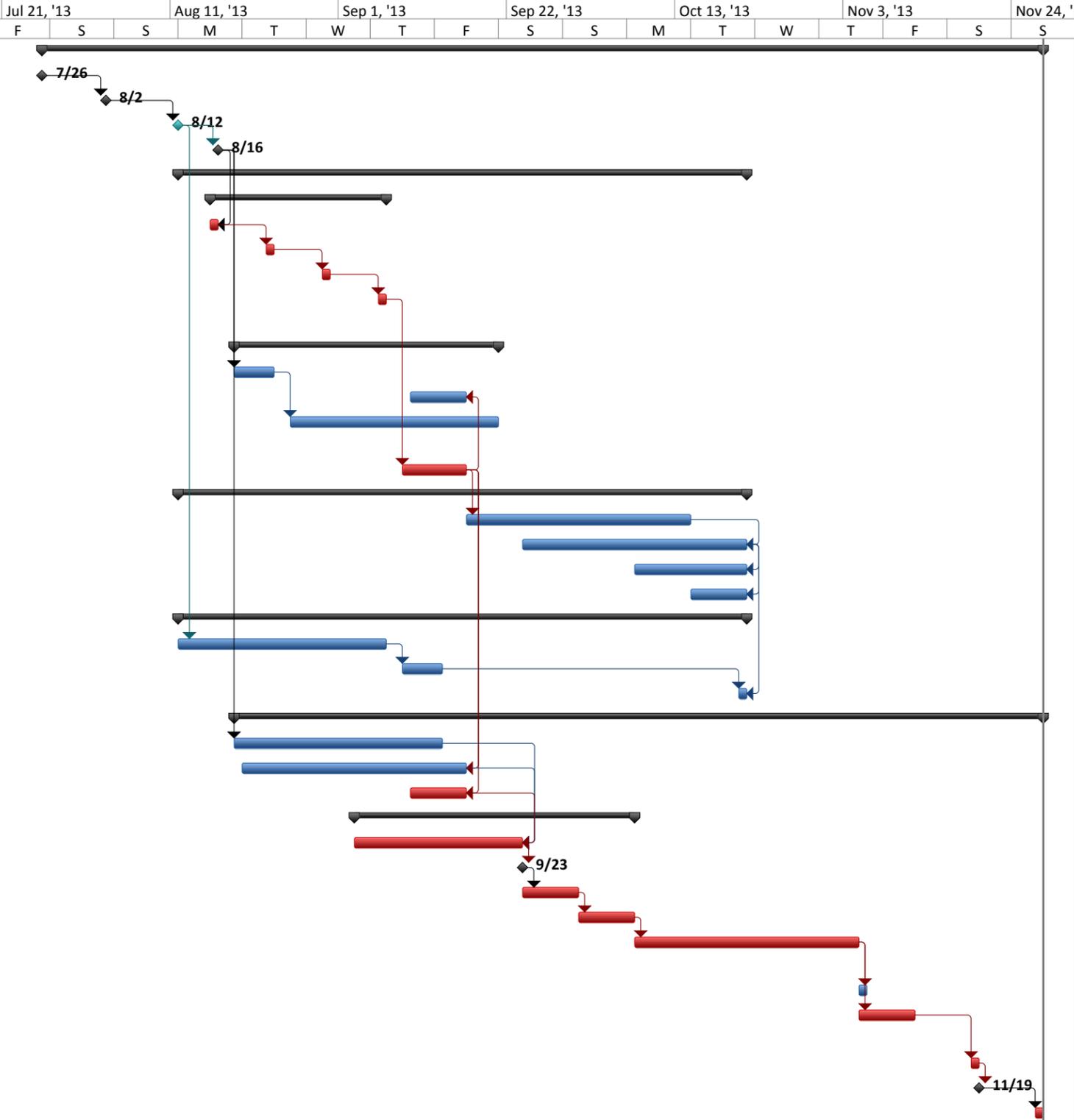
**CITY OF BENICIA  
INDUSTRIAL BUS HUB PROJECT  
AMENDED FEE  
MARK THOMAS & COMPANY, INC.**

TASK	S. Danaky PIC/ Project Manager \$205	S. O'Keefe Dep. Project Manager \$158	P. Price Transit Operations \$215	M. Brogan QA/QC Manager \$205	Project Engineer \$113	Tech Writer/ Eng I/ Drafter \$95	Survey Manager \$165	Survey Crew 2-Person \$226	Total Hours	Labor Cost	MTCO Expenses	MTCO Total	Merrill Morris Partners	Circle- point	W-Trans & Assoc.	TOTAL COST
<b>TASK 0 PROJECT MANAGEMENT</b>																
0.1 Project Management and Coordination	24								24	\$4,920		\$4,920				\$4,920
0.2 Meetings	4		4						10	\$1,882	\$500	\$2,382		\$2,520		\$4,902
<b>SUBTOTAL TASK 0</b>	<b>28</b>		<b>4</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>34</b>	<b>\$6,802</b>	<b>\$500</b>	<b>\$7,302</b>	<b>\$0</b>	<b>\$2,520</b>	<b>\$0</b>	<b>\$9,822</b>
<b>TASK 1 CONCEPTUAL DESIGN / 35% DESIGN</b>																
1.2 Conceptual Design																
1.2.1 - Legal Descriptions and Plats									8	\$1,320		\$1,320				\$1,320
1.2.4 - Conceptual Design Report	2	4	1		8	16			31	\$3,681		\$3,681				\$3,681
1.3 35% Design																
1.3.1 - Geotechnical Design Report									4	\$542		\$542				\$16,745
1.3.2 - Preliminary (35%) Design and Refinements	2	8	2		32	80			126	\$13,730		\$13,730				\$13,730
1.3.3 - Schematic Landscape Design									0	\$0		\$0	\$10,936			\$10,936
1.3.4 - 35% Technical Specifications	1	2				4			8	\$1,066		\$1,066	\$974			\$2,080
1.3.5 - Existing Utility Mapping									34	\$3,572		\$3,572				\$3,572
1.3.6 - Pot-holing									8	\$3,178	\$3,750	\$6,928				\$6,928
<b>SUBTOTAL TASK 1</b>	<b>5</b>	<b>19</b>	<b>3</b>		<b>3</b>	<b>58</b>	<b>8</b>	<b>8</b>	<b>232</b>	<b>\$27,129</b>	<b>\$3,750</b>	<b>\$30,879</b>	<b>\$11,910</b>	<b>\$0</b>	<b>\$0</b>	<b>\$58,992</b>
<b>TASK 2 ENVIRONMENTAL PHASE</b>																
2.1 Initial Study / Mitigated Negative Declaration																
2.1.3 - Prepare and Submit Public Draft	2								2	\$410		\$410		\$5,720		\$5,630
2.1.4 - Prepare Responses to Comments, Revise IS and MMRP									0	\$0		\$0		\$7,380		\$7,380
2.1.5 - Assistance with Noticing and Distribution									0	\$0		\$0		\$1,920		\$1,920
2.2 Initial Site Assessment	1								1	\$205	\$0	\$205			\$4,439	\$4,644
<b>SUBTOTAL TASK 2</b>	<b>3</b>	<b>0</b>	<b>0</b>		<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>\$615</b>	<b>\$0</b>	<b>\$615</b>	<b>\$0</b>	<b>\$14,520</b>	<b>\$0</b>	<b>\$19,574</b>
<b>SUBTOTAL HOURS</b>	<b>36</b>	<b>23</b>	<b>5</b>	<b>3</b>	<b>58</b>	<b>128</b>	<b>8</b>	<b>8</b>	<b>269</b>	<b>\$34,546</b>	<b>\$4,250</b>	<b>\$38,796</b>	<b>\$11,910</b>	<b>\$17,040</b>	<b>\$0</b>	<b>\$88,388</b>
<b>SUBTOTAL COST</b>	<b>\$7,380</b>	<b>\$3,634</b>	<b>\$1,075</b>	<b>\$615</b>	<b>\$6,554</b>	<b>\$12,160</b>	<b>\$1,320</b>	<b>\$1,808</b>								



## Benicia Industrial Bus Hub Project

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Jul 21, '13							Aug 11, '13		Sep 1, '13		Sep 22, '13		Oct 13, '13			Nov 3, '13		Nov 24, '13								
							F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S			
1		<b>Benicia Industrial Bus Hub Project</b>	<b>89 days</b>	<b>Fri 7/26/13</b>	<b>Wed 11/27/13</b>																												
2		MTCO Team Selected	0 days	Fri 7/26/13	Fri 7/26/13																												
3		MTCO Team Awarded Project	0 days	Fri 8/2/13	Fri 8/2/13	2FS+6 days																											
4		Benicia Issues Notice to Proceed	0 days	Mon 8/12/13	Mon 8/12/13	3FS+5 days																											
5		Kick-off Meeting	0 days	Fri 8/16/13	Fri 8/16/13	4FS+5 days																											
6		<b>Conceptual Design / 35% Design</b>	<b>51 days</b>	<b>Mon 8/12/13</b>	<b>Mon 10/21/13</b>																												
7		<b>Project Scoping</b>	<b>16 days</b>	<b>Fri 8/16/13</b>	<b>Fri 9/6/13</b>																												
8		City Staff Meeting	1 day	Fri 8/16/13	Fri 8/16/13	5FF																											
9		PDT Meeting	1 day	Fri 8/23/13	Fri 8/23/13	8FS+4 days																											
10		Benicia Industrial Park Association Meeting	1 day	Fri 8/30/13	Fri 8/30/13	9FS+4 days																											
11		Interested Industrial Park Groups (or other) Meeting	1 day	Fri 9/6/13	Fri 9/6/13	10FS+4 days																											
12		<b>Conceptual Design</b>	<b>25 days</b>	<b>Mon 8/19/13</b>	<b>Fri 9/20/13</b>																												
13		Establish Control and Prepare Land Net	5 days	Mon 8/19/13	Fri 8/23/13	5																											
14		Legal Description and Plats	5 days	Tue 9/10/13	Mon 9/16/13	16FF																											
15		Aerial Mapping and Topographic Design Surveys	20 days	Mon 8/26/13	Fri 9/20/13	13																											
16		Conceptual Design Report	6 days	Mon 9/9/13	Mon 9/16/13	11																											
17		<b>35% Design</b>	<b>51 days</b>	<b>Mon 8/12/13</b>	<b>Mon 10/21/13</b>																												
18		Geotechnical Design Report	20 days	Tue 9/17/13	Mon 10/14/13	16																											
19		Preliminary (35%) Design and Refinements	20 days	Tue 9/24/13	Mon 10/21/13	18FF+5 days																											
20		Schematic Landscape Design	10 days	Tue 10/8/13	Mon 10/21/13	19FF																											
21		35% Technical Specifications	5 days	Tue 10/15/13	Mon 10/21/13	19FF																											
22		<b>Existing Utility Mapping</b>	<b>51 days</b>	<b>Mon 8/12/13</b>	<b>Mon 10/21/13</b>																												
23		Utility Notificaitons/ Company Responses	20 days	Mon 8/12/13	Fri 9/6/13	4																											
24		Record Utility Mapping	5 days	Mon 9/9/13	Fri 9/13/13	23																											
25		Potholing	1 day	Mon 10/21/13	Mon 10/21/13	19FF,24																											
26		<b>Environmental Phase</b>	<b>73 days</b>	<b>Mon 8/19/13</b>	<b>Wed 11/27/13</b>																												
27		Traffic Study	20 days	Mon 8/19/13	Fri 9/13/13	5																											
28		Other Technical Studies	20 days	Tue 8/20/13	Mon 9/16/13	16FF																											
29		Initial Site Assessment (Phase 1)	5 days	Tue 9/10/13	Mon 9/16/13	16FF																											
30		<b>Prepare IS/MND</b>	<b>25 days</b>	<b>Tue 9/3/13</b>	<b>Mon 10/7/13</b>																												
31		Prepare Admin Draft IS/MND	15 days	Tue 9/3/13	Mon 9/23/13	27FF,28FF,29FF+5 days																											
32		Submit Admin Draft to City	0 days	Mon 9/23/13	Mon 9/23/13	31																											
33		City Staff Review IS/MND	5 days	Tue 9/24/13	Mon 9/30/13	32																											
34		Update IS/MND for Publication	5 days	Tue 10/1/13	Mon 10/7/13	33																											
35		Publish MND/ Start Public Circulation (Issue Notice of intent to adopt)	20 days	Tue 10/8/13	Mon 11/4/13	34																											
36		Benicia Transmits Comments to Circlepoint	1 day	Tue 11/5/13	Tue 11/5/13	35																											
37		CirclePoint prepares, Benicia reviews response To Comments (if comments received)	5 days	Tue 11/5/13	Mon 11/11/13	35																											
38		Benicia Holds Public Hearing on MND	1 day	Tue 11/19/13	Tue 11/19/13	37FS+5 days																											
		Council Approves MND	0 days	Tue 11/19/13	Tue 11/19/13	38																											
		Record NOD	1 day	Wed 11/27/13	Wed 11/27/13	39FS+5 days																											



V.I.E.17

Benicia  
ue 7/9/13

Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
Split		External Tasks		Inactive Summary		Manual Summary		Critical	
Milestone		External Milestone		Manual Task		Start-only		Critical Split	
Summary		Inactive Task		Duration-only		Finish-only		Progress	



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - OCTOBER 1, 2013**  
**BUSINESS ITEMS**

**DATE** : September 24, 113

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **AMENDMENT OF THE MASTER FEE SCHEDULE TO ADD PROVISIONS FOR FULL-COST RECOVERY AND ADMINISTRATIVE OVERHEAD FOR SPECIFIED TYPES OF PLANNING PROJECTS AND RESPONSIBILITIES**

**RECOMMENDATION:**

Adopt a resolution amending the City of Benicia Master Fee Schedule for the 2013-2014 Fiscal Year by adding a provision for full-cost recovery and administrative overhead for specified types of planning projects, responsibilities, and efforts.

**EXECUTIVE SUMMARY:**

The Community Development Department is requesting adoption of a full-cost recovery fee for the review of specified planning projects in the form of contract planning services. Contract planners will be used to supplement existing staff when the City does not have the resources to process complex land use development applications. The proposed resolution will amend the Master Fee Schedule to include contract planning services and the administrative overhead for those services.

**BUDGET INFORMATION:**

The proposed amendments to the Master Fee Schedule will allow for cost recovery of administrative staff time and contract planning costs incurred to review and process specified, exception-based development applications as described below.

**GENERAL PLAN:**

Relevant General Plan Goals and Policies include:

- GOAL 2.4: Ensure that development pays its own way.
  - POLICY 2.4.1: Ensure any new development to be fiscally and financially sound and pay its own way with respect to City and School District capital improvements.

- GOAL 2.5: Facilitate and encourage new uses and development which provide substantial and sustainable fiscal and economic benefits to the City and the community while maintaining health, safety, and quality of life.

**STRATEGIC PLAN:**

Relevant Strategic Plan Goals and Strategies:

- Strategy Issue #3: Strengthening Economic and Fiscal Conditions
  - Strategy #4: Manage City finances prudently.

**BACKGROUND:**

Currently there is a shortage of staffing in the Planning Division of the Community Development Department. This division handles all planning permit activity and legally mandated general plan elements, transportation and other regional planning efforts, and other activities. The division also provides the staff support to 4 commissions. Previously the division had five planning positions on staff, including the Community Development Director. At the present time the division consists of a Principal Planner, a contract Associate Planner and the City Manager serving as Community Development Director.

The current staff is having difficulty in managing routine daily activities. There currently are not sufficient staff resources to adequately handle major land use review projects such as the proposed Valero Crude by Rail without hampering or delaying the division's other activities such as providing public information and transportation and other regional planning needs. It is not currently financially feasible to hire an additional full-time planner at this time. Given that many of the activities that the Planning Division undertakes are time sensitive (given the state permit streamlining requirements), periodic and exceptional in nature, it is important that they be able to acquire additional professional staff resources quickly when needed.

**MECHANICS OF "ON CALL" CONTRACT PLANNING SERVICES**

Many communities have revised their Master Fee Schedules and established a list of pre-approved, "on call" professional contract planning firms to provide direct services when exception-based projects, such as annexations, general plan amendments, zoning changes, specific plans and projects requiring mitigated negative declaration or an Environmental Impact Report "EIR" pursuant to the California Environmental Quality Act "CEQA".

This approach enables communities to broaden the range of background and experience beyond what any one staff Planner typically has and provides access to a much greater range of expertise. Communities such as Moraga and Burlingame utilize this approach and have set their fees for major private development projects to cover the cost of this activity.

City staff will prepare a Request for Qualifications document that will be sent out to 15 - 20 contract planning firms. City staff will interview those meeting the qualification requirements and select 4-5 "on call" firms to assist city staff on an "as needed basis". While the goal is to acquire the services of professional planning firms with extensive expertise in CEQA, major project review and entitlement processing, it is realized that not every consultant will have expertise in every area. This is the reason for selecting several individuals and firms. When the work load, as described above, necessitates the use of contract planning services, the City will ask each interested, pre-approved entity to submit a time and materials, "not to exceed" proposal. City staff will select the most experienced and cost effective firm to provide the "on call" staff support for a given project. If it is a private development project, the applicant will be charged the cost to retain the consultant plus a 15% administrative fee.

**IMPLEMENTATION**

After adoption of the attached resolution, the City's Master Fee Schedule will be revised to require a private development application necessitating a mitigated negative declaration (pursuant to CEQA) or EIR, rezoning, general plan amendment, and/or specific plan, to pay a fee based upon the actual cost of retaining the services of one of the City's pre-approved consultants (including a 15% Administrative Fee).

City staff has discussed this concept with local organizations such as the Chamber of Commerce.

**Master Fee Schedule:**

The following fee adjustments to the Community Development Department service fees are recommended to become effective November 15, 2013:

Add permit fees to reflect consultant services:

	<u>Current</u>	<u>Proposed</u>
Contract Services**	-	Minimum \$2,000 initial deposit for contract cost
Administration of Consultant Services	-	15% of contract cost

\*\*Contract Services shall be used for private development application necessitating a mitigated negative declaration (pursuant to CEQA) or EIR, rezoning, general plan amendment, and/or specific plan

Attachments:

- Proposed Resolution
- Exhibit A – Master Fee Schedule Changes

**RESOLUTION NO. 13-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AND ADOPTING AMENDMENTS TO THE MASTER FEE SCHEDULE**

**WHEREAS**, the City Council, on June 28, 2011, adopted a budget for the 2013-14 fiscal year; and

**WHEREAS**, the Planning Division of the Community Development Department is responsible for handling all planning permit activity and legally mandated general plan elements, transportation and other regional planning efforts, and other activities; and

**WHEREAS**, currently there is a shortage of staffing in the Planning Division of the Community Development Department and in order to address the demands of increasing land use development activity, additional professional planning services are required; and

**WHEREAS**, the City Council has considered all information related to this matter, as presented at a public meeting of the City Council, including any supporting reports by City Staff, and any information provided during that public meeting.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the City Council hereby approves amendments to the Master Fee Schedule effective December 1, 2013 as provided in the attached 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 1<sup>st</sup> day of October, 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

ATTEST:

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

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

**EXHIBIT A:  
Master Fee Schedule Changes**

	<u>Current</u>	<u>Proposed</u>
Consultant Services**	-	Minimum initial \$2,000 deposit for contract cost
Administration of Consultant Services	-	20% of contract cost

\*\*Contract Planning Services shall be used for private development application necessitating a mitigated negative declaration (pursuant to CEQA) or EIR, rezoning, general plan amendment, and/or specific plan



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - OCTOBER 1, 2013**  
**BUSINESS ITEMS**

**DATE** : September 25, 2013

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **AMENDMENT OF THE COUNCIL'S RULES OF PROCEDURES REGARDING THE APPOINTMENT PROCESS**

**RECOMMENDATION:**

Adopt the resolution amending the Rules of Procedure.

**EXECUTIVE SUMMARY:**

At the September 3, 2013 meeting, the City Council discussed various ways to make the appointment process to City Boards, Commissions and Committees more transparent. The City Council agreed to modify the current procedure. At the September 17, 2013 meeting, the City Council further reviewed options and discussed whether subcommittee recommendations should be presented orally or in writing. No decision was made. This item presents a variety of options for the Council's consideration.

**BUDGET INFORMATION:**

N/A

**GENERAL PLAN:**

N/A

**STRATEGIC PLAN:**

N/A

**BACKGROUND:**

The Council's Rules of Procedure currently provide that a subcommittee of two council members interview applicants to various city boards, commissions and committees. The recommendations are then forwarded to the Mayor who then makes the appointment subject to the Council's confirmation of the appointment. This process lends itself to a potential Brown Act violation both in theory and in practice. Because the Brown Act prohibits the Council from developing a collective concurrence on a matter outside of a noticed meeting, the process of having two council members provide their input to the Mayor can result in a majority of the Council concurring or agreeing on an appointee prior

to a public meeting. This problem was noted previously and also resulted in a newspaper article. The article is attached.

Because of the potential Brown Act problems with the process and the difficulty the process creates for staff in trying to avoid a Brown Act violation, it is recommended that the City Council change the process. Below are the original suggestions made by the City Attorney at the September 3, 2013 meeting in addition to other possibilities. These processes should help avoid a Brown Act violation or a perception of a violation.

- First, the Mayor could make the appointments without review/input by any council member.
- Second, the Mayor and ONE other council member could interview the applicants and that one other council member could provide input to the Mayor.
- Third, the entire City Council could interview the applicants in public at an open and noticed meeting of the City Council.
- Fourth, the subcommittee could interview applicants and their recommendation would not be provided to the Mayor prior to making her choice for an appointee. (The September 17, 2013 proposal).

There are upsides and downsides to all of the proposals. Some of the factors the Council has been considering include the transparency to the public, fear that candidates may not want to interview in a public setting, politicization of the process, including Council members in the process, convenience for the applicants etc.

Again, Council has expressed concerns that this public process will intimidate applicants. Since all of the boards, commissions and committees meet in public, the ability to talk in public is a requirement in order to be an effective commissioner. The "fear factor" could be lessened if the interviews were held in the commission room or other room besides the Council Chamber. In fact, the experience of the other cities is that few members of the public show up for the interviews once the initial novelty wears off. Applicants may be asked to wait outside the room so they do not hear the answers of the first applicants (similar to how the interviews for treasurer were done).

The suggested procedure from the September 17, 2013 meeting retains the subcommittee format so potential appointees do not have to be interviewed in public. It provides a safe guard against a potential Brown Act violation by keeping the recommendation of the subcommittee away from any other Council members including the Mayor until the agenda is published. The recommendation of the subcommittee would be posted on the agenda.

## **VIII.B.2**

The decision must be made as to the procedures amendments desired to protect the City against violation of the Brown Act. Additionally, in the event that the subcommittee is retained, a final decision for written versus oral comments about the potential candidate from the subcommittee must be agreed upon.

As requested at the last Council meeting, the Attorney General Opinions on the subject are attached.

It was too complex to attach one document that would contain all the options so just the September 3<sup>rd</sup> and September 17<sup>th</sup> proposals are attached. Once a decision is made, the procedure will be incorporated into the full Rules of Procedure. Note that the September 17 version had the provisions for the process to take place at one meeting. At that meeting the Council discussed having the process take place over two meetings to allow the subcommittee's work to be a recommendation to the Mayor and instead of having the potential conflict between the subcommittee's recommendation and the Mayor's appointee.

**ATTACHMENTS:**

- Resolution
- Rules of Procedure Draft September 3, 2013
- Rules of Procedure Draft September 17, 2013
- San Ramon Procedures
- Escondido Procedures
- 2006 Attorney General Opinion
- 1998 Attorney General Opinion
- Newspaper Article from the Times Herald



**RESOLUTION NO. 13-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS BY AMENDING THE APPOINTMENT PROCESS**

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

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

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

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

**WHEREAS**, the City Council previously adopted Resolution No. 10-99 regarding the procedure for appointments to City Boards, Commissions and Committees; and

**WHEREAS**, the appointment process has been incorporated into the Rules of Procedure.

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

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

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

\*\*\*\*\*

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 1st day of October 2013, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

Date: \_\_\_\_\_

not already covered by other speakers, and must limit their presentation to five (5) minutes or the time established for speakers in accordance with Section III.E, if less.

7. Following the public portion of the hearing, the Presiding Officer shall declare the public portion of the hearing closed and the matter is then before the City Council for the Council portion of the hearing. Each Council Member shall be given an opportunity to speak to the subject without interruption. When the Council discussion has been concluded, the Council shall make its decision.

8. Spokespersons for the Proponent/Appellant and Opponent shall each have fifteen (15) minutes to present their case. The spokesperson for the Proponent/Appellant shall have five (5) minutes to present any rebuttal. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede any part of their allotted time to another speaker.

## **V. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS.**

### **A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS.**

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

### **B. MEMBERSHIP SELECTION.**

Unless otherwise specified by state law or the City Code, appointments shall be made by the following procedure:

~~1. A two member subcommittee appointed by the Mayor, which will rotate among council members with one new appointee each year, shall be appointed to interview applicants for all boards, commissions and committees, unless otherwise provided for by statute, ordinance or resolution. One member of the City Council subcommittee shall be appointed in January of each year and one member appointed in July of each year, each for a one year term.~~

~~2. Each term of the subcommittee will be filled by Council Members who did not serve on the committee during the prior term unless the Council Member is unable or unwilling to serve on the subcommittee.~~

~~3. The subcommittee shall interview the applicants using standardized questions for all applicants, particularized questions for the particular board or commission, and any other appropriate questions. The subcommittee shall recommend one applicant to the Mayor for each vacancy and the Mayor may make the appointment from the recommended applicant. The subcommittee shall provide comments to the~~

Mayor on why they recommended the applicant. If the Mayor finds the recommendation acceptable, the comments shall be included in the agenda packet as part of the paperwork for the appointment.

~~\_\_\_\_\_ 4. If the applicant is not acceptable to the Mayor, the subcommittee shall recommend an additional applicant until an appointment is made by the Mayor, which shall be subject to final approval by the Council. The City Clerk shall call for the vote in the following order: subcommittee members, remaining council members, and the mayor.~~

~~\_\_\_\_\_ 5. If, at any point during this process, only one qualified applicant is available, the subcommittee may choose to make a single recommendation.~~

~~\_\_\_\_\_ 6. If the subcommittee is unable to recommend applicants due to lack of qualified applicants, then the Mayor may elect to interview the available applicants and/or direct staff to conduct additional outreach efforts to fill the opening.~~

**OPTION 1:**

**# Except for appointment where any Council member may nominate an applicant (see #8 below), the Mayor shall put forth the name of the Mayor's appointee for a vote of the City Council.**

**OPTION 2:**

**# The City Council shall select a member who is not the Mayor to interview applicants for appointments. The Mayor and the selected Council member shall interview the applicants together.**

**## Except for appointment where any Council member may nominate an applicant (see #8 below), the Mayor shall put forth the name of the Mayor's appointee for a vote of the City Council.**

**OPTION 3:**

**# Applicants for appointments shall be interviewed by the City Council at an open and public meeting. Typically, the 4<sup>th</sup> Tuesday meeting shall be used for interviews unless a special meeting is called.**

**## Except for appointment where any Council member may nominate an applicant (see #8 below), the Mayor shall put forth the name of the Mayor's appointee for a vote of the City Council. The vote on the appointee shall occur at a meeting subsequent to the interview meeting so that the five (5) working day posting in #7 below can be met unless there was only one applicant for the position and the name was posted in accordance with #7 below.**

7. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.

8. For appointments to a board or commission where state law provides for appointment by the Council as a whole, any Council member may nominate a person for appointment. The Council shall then vote on the nominee at the following Council meeting.

9. If desired by the member, members of the Council ~~who are not on the subcommittee~~ may interview any or all of the applicants. These members shall use care not to violate the Brown Act by disclosing the information they learn from the interviews prior to the meeting where appointments are scheduled to be made.

#### C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS AND COMMISSIONS.

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

### **VI. RULES OF ORDER.**

#### A. QUORUM.

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

#### B. RIGHT TO THE FLOOR.

A Council Member shall not have the right to the floor without being recognized by the Presiding Officer, except upon a point of order. Council Members, including the Mayor, shall avoid interrupting any Member while speaking.

#### C. ORDINANCES, RESOLUTIONS AND MOTIONS – PRECEDENTS.

When any ordinance, resolution, or motion is properly brought before the Council and seconded by another Council Member, the council may discuss, debate, and offer other motions including a motion to amend or substitute. If a point of order, or a motion to



not already covered by other speakers, and must limit their presentation to five (5) minutes or the time established for speakers in accordance with Section III.E, if less.

7. Following the public portion of the hearing, the Presiding Officer shall declare the public portion of the hearing closed and the matter is then before the City Council for the Council portion of the hearing. Each Council Member shall be given an opportunity to speak to the subject without interruption. When the Council discussion has been concluded, the Council shall make its decision.

8. Spokespersons for the Proponent/Appellant and Opponent shall each have fifteen (15) minutes to present their case. The spokesperson for the Proponent/Appellant shall have five (5) minutes to present any rebuttal. Organized groups may choose a single spokesperson who may speak for the group. Speakers may not concede any part of their allotted time to another speaker.

## **V. CREATION OF COMMITTEES, BOARDS AND COMMISSIONS.**

### **A. CITIZEN COMMITTEES, BOARDS AND COMMISSIONS.**

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

### **B. MEMBERSHIP SELECTION.**

Unless otherwise specified by state law or the City Code, appointments shall be made by the following procedure:

1. A two-member subcommittee appointed by the Mayor, which will rotate among council members with one new appointee each year, shall be appointed to interview applicants for all boards, commissions and committees, unless otherwise provided for by statute, ordinance or resolution. One member of the City Council subcommittee shall be appointed in January of each year and one member appointed in July of each year, each for a one year term.

2. Each term of the subcommittee will be filled by Council Members who did not serve on the committee during the prior term unless the Council Member is unable or unwilling to serve on the subcommittee.

3. The subcommittee shall interview the applicants using standardized questions for all applicants, particularized questions for the particular board or commission, and any other appropriate questions. The subcommittee shall may recommend one applicant to the Mayor for each vacancy. ~~and the Mayor may make the appointment from the recommended applicant.~~ The subcommittee shall may provide

[oral or written] comments on the recommended applicant. comments to the Mayor on why they recommended the applicant. If the Mayor finds the recommendation acceptable, the comments shall be included in the agenda packet as part of the paperwork for the appointment. If the subcommittee provides a recommendation, the subcommittee's recommendation shall not be disclosed to the Mayor prior to the publication of the agenda. The agenda shall include a statement on whether the Mayor's appointee was or was not recommended by the subcommittee.

~~4. If the applicant is not acceptable to the Mayor, the subcommittee shall recommend an additional applicant until an appointment is made by the Mayor, which shall be subject to final approval by the Council. The City Clerk shall call for the vote in the following order: subcommittee members, remaining council members, and the mayor.~~

~~5. If, at any point during this process, only one qualified applicant is available, the subcommittee may choose to make a single recommendation.~~

~~6. If the subcommittee is unable to recommend applicants due to lack of qualified applicants, then the Mayor may elect to interview the available applicants and/or direct staff to conduct additional outreach efforts to fill the opening.~~

4. 7. The names of the proposed appointees shall be posted five (5) working days prior to the appointment being made.

5. 8. For appointments to a board or commission where state law provides for appointment by the Council as a whole, any Council member may nominate a person for appointment. The Council shall then vote on the nominee at the following Council meeting.

6. 9. If desired by the member, a members of the Council ~~who are not on the subcommittee~~ may interview any or all of the applicants. These members shall use care not to violate the Brown Act by disclosing the information they learn from the interviews prior to the meeting where appointments are scheduled to be made.

### C. REMOVAL OF MEMBERS OF COMMITTEES, BOARDS AND COMMISSIONS.

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

## VI. RULES OF ORDER.

# **BOARDS, COMMITTEES AND COMMISSIONS PROCEDURES**

The City of San Ramon has: two Commissions and nine Committees comprised of San Ramon residents; two Boards consisting of professionals qualified to provide design and appeal review; and one Teen Council consisting of students from the middle school and high schools serving the City of San Ramon. Residents of San Ramon also represent the City on Regional Agencies, and Contra Costa County Boards and Councils.

## **Directory**

A directory of current members of San Ramon Boards, Committees, and Commissions (BCC) is maintained by the City Clerk's Department. The directory is prepared and distributed annually to the City Manager, Councilmembers, Economic Development Department, and Administrative Services in August. Updates are made in the next year's draft and on the BCC master list, both located on the G drive.

## **Membership**

Board, Commission, and Advisory Committee members consist of residents over the age of 18. Each BCC has established Guidelines and By-Laws. Members may be reappointed to serve without term limits by following the application process. Resignations must be submitted in writing to the City Clerk and are effective when accepted by the Mayor. Members may be removed due to excessive absences or disqualifications and are notified in writing of their termination. Teen Council members are students in middle school and high school who attend a school serving the City of San Ramon. Teen Council liaisons are appointed to City commissions and committees.

## **Recruitment**

The City Clerk's Department is responsible for the recruitment of BCC members due to term expiration, resignation, removal, or death.

Current Board, Committee and Commission members are notified by letter approximately 6-8 weeks before their terms expire. An application and supplemental questionnaire (if applicable) are included with the notice should the member wish to be appointed to another term.

If a BCC member decides not to reapply, a letter thanking the member for their service is prepared for the Mayor's signature. In certain cases, an outgoing BCC member may be recognized at a City Council meeting. A certificate or proclamation may be given by the Mayor.

Advertising for commission vacancies include posting to the website and physical postings at the official City posting locations.

### **Interviews**

The recruitment time frame allows for needed interviews. (See the attachment to determine which entity interviews the various applicants.) All interviews are agendaized and noticed. If the interviews are held on a day other than a regular meeting date, a Special meeting notice is prepared and published to the web, posted at the five public locations, City Hall bulletin board and shadow box. All applicants are scheduled for interviews by phone. An appointment reminder call is made approximately 4 days prior to the interview. Agendas, interview schedules, and applications copies are sent to the interviewing body prior to the interview date. A staff member should be present to coordinate the interviews. Reserve needed conference rooms in advance for the interview day.

After the interviews are completed, a staff report is submitted for a City Council ~~or Redevelopment Agency~~ agenda by the respective department. If there are more candidates than available positions, the City Council conducts a ballot vote at the City Council meeting. Three ballots sets and three tally sheets are prepared. Voted ballots are collected after the meeting and stored in the Council or Redevelopment meeting file for that date. After the appointments are made, the Clerk's Department prepares letters of congratulations or regrets for the Mayor to sign for each applicant. *Applications for non-appointees are kept on active status for six months and added to the contacts list for future notification through the eSanRamon system.*

### **Oath of Office**

The City Clerk or designee administers the Oath of Office to the Commissioners and Councilmembers. Commission appointees are contacted to attend a City Council meeting to receive an Oath of Allegiance. The Clerk prepares a Certificate of Oath of Allegiance which is signed by the appointee after being sworn in. New Planning Commissioners and EDAC Committee members must file an entering office Form 700, a Form 700 annually, and a Form 700 upon leaving office with the City Clerk.

### **Web Updates**

The City Clerk's Department is responsible for BCC information including openings and member information on the City Website. Updates are made using Contribute and published to the City Website by sending an email to the Webmanager. Updates for appointments made by City Council action are done the Wednesday following the City Council meeting. Resignations from BCC are updated as they occur.

### **BCC Training and Orientation**

Notification is given of training session. All BCC members are invited. Training is conducted by the City Clerk using materials contained in the Training Manual.

## BCC ADVERTISING SCHEDULE

BCC	MEMBERS	TERM EXPIRATIONS		INTERVIEW		INTERVIEW BY	FINAL ACTION		ADVERTISE
		JANUARY	JANUARY	NOV/DEC	NOV/DEC		City-Council	Council-Vote	
EBAG	9	JANUARY	JANUARY	NOV/DEC	NOV/DEC	City-Council	Council-Vote	NOVEMBER	
LIBRARY	7	JANUARY	JANUARY	NOV/DEC	NOV/DEC	Parks Commission	Council Ratification	NOVEMBER	
Transportation AC	6	JANUARY	JANUARY	NOV/DEC	NOV/DEC	City Council	Council Vote	NOVEMBER	
Transportation Demand Management	5	JANUARY	JANUARY	NOV/DEC	NOV/DEC	City Council	Council Vote	NOVEMBER	
Architectural Review Board	3	FEBRUARY	FEBRUARY	NOV/DEC	NOV/DEC	Planning Director Appointed	Council Ratification	NOVEMBER	
Arts AC	9	APRIL	APRIL	MARCH	MARCH	Parks Commission	Council Ratification	FEBRUARY	
Senior AC	7	APRIL	APRIL	MARCH	MARCH	Parks Commission	Council Ratification	FEBRUARY	
Teen Council	21	JUNE	JUNE	APRIL	APRIL	Parks Commission	Council Ratification	FEBRUARY	
Parks Commission	7	JUNE	JUNE	MAY	MAY	City Council	Council Vote	APRIL	
Parks - Student Commissioner	1	JUNE	JUNE	MAY	MAY	City Council	Council Vote	APRIL/MAY	
Planning Comm.	5	JUNE	JUNE	MAY	MAY	City Council	Council Vote	APRIL	
Housing AC	5	JULY	JULY	MAY	MAY	Redevelopment Agency	RDA Vote	APRIL	
Poet Laureate	1	DEC	DEC	NOV	NOV	Park Commission	Council Ratification	OCT (EVEN YEARS)	
<b>County Term Expirations</b>									
CCTA CAC	1	June 2013	June 2013			Planning Comm/Transportation	Council Ratification	AS NEEDED	
CCC Vector Control	1	June 2012	June 2012			City Council	Council Vote	AS NEEDED	
CCC Library Comm	1	June 2013	June 2013			Parks Commission	Council Ratification	AS NEEDED	
CC Council on Aging	1	September 2013	September 2013			Parks Commission	Council Ratification	AS NEEDED	
CCCTA Access Svs	1	February 2012	February 2012			Planning Comm/Transportation	Council Ratification	AS NEEDED	



# CITY COUNCIL AGENDA

JUNE 11, 2013

WE PROVIDE EFFICIENT DELIVERY OF QUALITY PUBLIC SERVICES THAT ARE  
ESSENTIAL TO THOSE WHO LIVE AND WORK IN SAN RAMON.

---

Bill Clarkson, Mayor

David E. Hudson, Vice Mayor

Jim Livingstone, Councilmember • Phil O'Loane, Councilmember • Scott Perkins, Councilmember

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*Agenda Questions: Please call the City Clerk (925) 973-2539*

*Documents received after publication of this Agenda and considered by the City Council in its deliberation will be available for inspection in the City Clerk's office at 2222 Camino Ramon, San Ramon during normal business hours and in the red binder at the Council meeting.  
Public Comments will be taken on agenda items at the time that the item is called.*

San Ramon City Hall  
2222 Camino Ramon

SPECIAL MEETING – 6:00 P.M.

1. CALL TO ORDER/ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PUBLIC COMMENT
4. INTERVIEWS
  - 4.1 Contra Costa County Library Commission.
5. CITY COUNCIL APPOINTMENTS
  - 5.1 Contra Costa County Library Commission Appointment.
6. ADJOURNMENT

*I hereby certify the attached City Council agenda was posted 72 hours before the noted meeting:*

Patricia Edwards, City Clerk

Dated: June 6, 2013



... The Heart of San Diego North

<b>City Council</b>
<b>Government Links</b>
<b>Citizen Involvement</b>
Americans with Disabilities Act
<b>Boards &amp; Commissions</b>
Building Advisory & Appeals
Community Services
Historic Preservation
Independent Districting
Library Board of Trustees
Oversight Board
Personnel Board of Review
Planning Commission
Public Art Commission
Transportation & Safety
Vacancies
Volunteer / Intern Program

## Boards & Commissions

### General Information

The City of Escondido encourages citizens to take an active interest in their community. Eight (8) Boards and Commissions advise the City Council on policy issues before the Council makes its final decisions. Board and Commission members are a critical part of local government. You can make a difference in your community and take a leadership role by volunteering to serve on a board or commission!



### How to Apply

An [application form](#) is available online or you may call the City Clerk's office at 760-839-4617 to request a copy mailed to you.

Applications are active for two years when submitted during the regular recruitment period. Applications received after the regular recruitment period are active and will be considered for an unexpected vacancy until January of even numbered years.

### Appointment Process

The City Council ratifies the Mayor's selections for appointments to the boards and commissions. During January and February of even-numbered years, the City of Escondido solicits applications from persons interested in actively participating in local government. Interviews are conducted by the full Council and each application is carefully reviewed before an appointment is made. Terms of office expire on March 31 of even numbered years. Applications are accepted throughout the year, however, in case additional appointments need to be made due to resignations or other unforeseen circumstances. (Note: Because the Library Board of Trustees has 3-year terms, recruitment is conducted on a yearly basis due to staggered expiration of terms of office.)

### Tips on increasing your chances of being appointed

- Fill out a separate form for each board or commission in which you are interested. It is to your advantage to tailor each application to the specific board or commission for which you are applying. Emphasize different aspects of your background to match those needed for a particular board or commission.
- Emphasize your talents. Clearly indicate how your particular talents, skills, training, or experience will benefit the board or commission for which you wish to be considered. Be ready to discuss the skills or talent you would bring to a specific board or commission.
- Become familiar with the appropriate board or commission. Attend meetings, talk with board or commission members, or read documents they have developed to acquaint yourself with their work.

### Terms of Office

Most commissions/board terms of office are four-years. The exception is the Library Board of Trustees (3 years). There are no term limits.

### Residency Requirements to Serve

With very few exceptions (i.e., allowing persons that own a business in Escondido or have a certain expertise), applicants must live within the geographic boundaries of the City's General Plan. If you have a question of whether or not you qualify, contact the City Clerk's office at 760-839-4617.

### Qualifications

Commission requirements vary (for example, the Public Arts Commission encourages their membership to be involved in the arts; Historic Preservation requires representation from a variety of historic perspectives), but a genuine interest in the commission's mission and in serving the community are the principal requisites for service.

### Compensation

For the most part, serving on a board or commission is a volunteer position with no compensation. Only Planning Commission members receive a meeting stipend of \$100 due to the intensive time requirements and lengthy preparation for meetings. Commissioners may receive mileage or travel expense reimbursement if traveling outside Escondido on approved commission business.

### Time Requirements

The Planning Commission requires a number of hours for meetings and reviewing agenda materials or actual development sites. Other commissions have shorter meetings, but commissioners may find themselves involved in subcommi

at various times during the year. It's best to talk with city staff or another commissioner.

### Meeting Time and Place

Meeting locations can vary, but most are held in the City Council Chambers at City Hall. Most commissions meet once a month; Planning Commission meets twice a month.

### Staff Support

Each commission has a staff liaison designated to assist with the administrative work of the commission and to serve as the commission's link with other city staff.

### Personal Finances and Reporting Requirements

All public officials, include commissioners, must file annual conflict of interest forms with the City Clerk's office as required by State law. Those forms are public records which are available to the public upon request. The forms require disclosure of information about income, business and property interests in the community, gifts, and the like. As to income, officials are required to disclose sources, but not exact dollar amounts.

### Open Meeting Requirements for all Boards and Commissions

The Brown Act requires that all board and commission meetings be open to the public, be noticed, and be conducted according to a posted agenda. Also, members of the public must be given an opportunity to attend the meeting and comment on all agenda items and any other aspect of the commission's work. A quorum of commissioners cannot discuss their work, either as a group or serially, outside the public meeting setting. Complete Brown Act information is available from the City Clerk and City Attorney.

### Ethics Training

Recent legislation requires elected officials and appointees to have two hours of training every two years. The City Attorney's office offers this training to all Board and Commission members in compliance with the law.

### Board and Commission Defined

**Commissions** are advisory to the City Council, established by ordinance and are involved in programs and activities that advance the group's mission. In addition to their advisory capacity, certain commissions (e.g., Planning, Historic Preservation, etc.) have regulatory functions.

**Boards** (e.g., Personnel, Library, etc.) also have an advisory role but are charged as well by local or state law with administrative, regulatory or review authority.

### Additional Information

The City Clerk and staff in the department are happy to answer questions about commission service and to refer interested residents to commission staff liaisons or their departments for inquiries about specific boards/commissions. The City Clerk can be reached at 760-839-4617 or by [e-mail](#).

*Thank you for your interest in serving your community!*

### Boards and Commissions

[Building Advisory & Appeals Board](#)

[Agendas](#)

[Minutes](#)

[Community Services Commission](#)

[Agendas](#)

[Minutes](#)

[Historic Preservation Commission](#)

[Agendas](#)

[Minutes](#)

[Library Board of Trustees](#)

[Agendas](#)

[Minutes](#)

[Personnel Board of Review](#)

[Agendas](#)

[Minutes](#)

[Planning Commission](#)

[Agendas](#)

[Minutes](#)

[Staff Reports](#)

[Public Art Commission](#)

[Agendas](#)

[Minutes](#)

[Transportation & Community Safety Commission](#)

[Agendas](#)

[Minutes](#)

89 Ops. Cal. Atty. Gen. 178, 06 Cal. Daily Op. Serv. 7530, 2006 Daily Journal D.A.R. 10745, 2006 WL 2381605 (Cal.A.G.)

Office of the Attorney General  
State of California

Opinion No. 05-914

August 14, 2006

THE HONORABLE LOIS WOLK  
MEMBER OF THE STATE ASSEMBLY

THE HONORABLE LOIS WOLK, MEMBER OF THE STATE ASSEMBLY, has requested an opinion on the following question:

Does the appointing power of an elected **mayor** of a general law city extend to the **appointment** of the members of the city's planning commission?

#### CONCLUSION

The appointing power of an elected **mayor** of a general law city extends to the **appointment** of the members of the city's planning commission, but each **appointment** must have the approval of the city council.

#### ANALYSIS

As distinguished from a city operating under a city charter, a general law city has only those powers expressly granted to it by the Legislature, together with such powers that are necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation; a general law city may not act contrary to state statute. (See *Irwin v. City of Manhattan Beach* (1966) 65 Cal.2d 13, 20-21; *Martin v. Superior Court* (1991) 234 Cal.App.3d 1765, 1768; 81 Ops.Cal.Atty.Gen. 75, 76 (1998).) [Government Code section 34900\[FN1\]](#) permits the voters of a general law city to determine whether to have an elected mayor. In the context of a general law city that has an elected mayor, we are asked whether the members of the planning commission are to be appointed by the **mayor** or by the city council. We conclude that this **appointment** power rests with the city's elected **mayor**, but that the **mayor's** selections are subject to the approval of the city council.

Our analysis begins with section 40605, which generally directs the **mayor** of a general law city to make all **ap-**

**pointments** to city boards, commissions, and committees with the approval of the city council:

“In general law cities where the office of mayor is an elective office pursuant to Article 5 (commencing with [Section 34900](#)) of Chapter 7 of Part 1 of Division 2 of Title 4, the **mayor**, with the approval of the city council, shall make all **appointments** to boards, commissions, and committees unless otherwise specifically provided by statute.”

With specific regard to a city planning commission, subdivision (a) of section 65101 states:

“The legislative body may create one or more planning commissions each of which shall report directly to the legislative body. *The legislative body shall specify the membership of the commission or commissions.* In any event, each planning commission shall consist of at least five members, all of whom shall act in the public interest. If it creates more than one planning commission, the legislative body shall prescribe the issues, responsibilities, or geographic jurisdiction assigned to each commission. If a development project affects the jurisdiction of more than one planning commission, the legislative body shall designate the commission which shall hear the entire development project.”(Italics added.)

\*2 The “legislative body” of a general law city is its city council. (§§ 34000, 36501, subd. (a).) Does the directive in section 65101, subdivision (a), that “the legislative body shall specify the membership” of a planning commission make this statute an exception to the general mandate of section 40605 directing the **mayor**, with the approval of the city council, to make all **appointments** to city commissions? Has subdivision (a) of section 65101 “otherwise specifically provided” an alternative to the **mayor**-city council **appointment** process?

To answer this question, we apply well established principles of statutory construction. “When interpreting a statute our primary task is to determine the Legislature's intent. [Citation.]” ([Freedom Newspapers, Inc. v. Orange County Employees Retirement System\(1993\) 6 Cal.4th 821, 826.](#))“In determining intent, we look first to the language of the statute, giving effect to its ‘plain meaning.’ ” ([Kimmel v. Goland\(1990\) 51 Cal.3d 202, 208-209.](#))“Of course, we interpret a statute in context, examining other legislation on the same subject, to determine the Legislature's probable intent. [Citations.]” ([California Teachers Association v. Governing Bd. of Rialto Unified School Dist. \(1997\) 14 Cal.4th 627, 642.](#))

Applying these rules of construction, we find that the key word “specify,” as used in the context of section 65101, means something other than “appoint.” In related statutory schemes, the Legislature has distinguished between the two terms. For example, [Health and Safety Code section 101525, subdivision \(b\)](#), states in part:

“... The enabling ordinance shall specify the membership of the authority, the qualifications of members, the manner of appointment, selection, or removal of members, and their term of office, and any other matters that the board of supervisors deems necessary or convenient for the conduct of the authority's activities....”

Similarly, [Health and Safety Code section 101850, subdivision \(c\)](#) provides:

“A hospital authority established pursuant to this chapter shall be governed by a board that is appointed, both initially and continually, by the Board of Supervisors of the County of Alameda.... The enabling ordinance shall specify the membership of the hospital authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the hospital authority's activities.”

[Welfare and Institutions Code section 14087.31, subdivision \(c\)](#), states:

“The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and

any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. Members of the commission shall be appointed by the county board of supervisors....”

\*3 Other examples may be given of the Legislature's use of the term “specify” in a manner that is distinguished from its use of the term “appoint.” (See, e.g., [Welf. & Inst. Code, §§ 14087.38, subd. \(c\)](#); 14087.51, subd. (e); 14087.52, subd. (d); 14087.53, subd. (c); 14087.54, subd. (d).) In the context of these statutes, “specify” means “state precisely or in detail” (Webster's 3d New Internat. Dict. (2002) p. 2187) the number and status of the various members, whether regular members, alternate members, ex officio members, or the like.

In contrast, when the Legislature has intended to grant to a city council the power to appoint persons to a particular office, it has used such words as “appoint” or “select.” For example, section 36505 states:

“The city council shall appoint the chief of police. It may appoint a city attorney, a superintendent of streets, a civil engineer, and such other subordinate officers or employees as it deems necessary.”[\[FN2\]](#)

If the Legislature had intended to authorize city councils to appoint the individual members of a planning commission, rather than to approve all **appointments** made by the **mayor**, it could have easily done so by phrasing section 65101 in terms of “specify and appoint.” A legislative articulation of specific statutory authority in one respect indicates the absence of such authority in related respects. (See [Safer v. Superior Court \(1975\) 15 Cal.3d 230, 238;85 Ops.Cal.Atty.Gen. 181, 185 \(2002\)](#).)

Section 40605 generally directs the **mayor** of a general law city, with the approval of the city council, to make all **appointments** to city boards, commissions, and committees. It is a well known principle of statutory construction that “[e]xceptions to the general rule of a statute are to be strictly construed.” [\(City of Lafayette v. East Bay Mun. Utility Dist. \(1993\) 16 Cal.App.4th 1005, 1017.\)](#) Consistent with this principle, we find that the Legislature's use of the word “specify,” and not the word “appoint,” in section 65101 fails to meet the test of *specifically* providing for non-mayoral **appointments** of planning commission members as required by section 40605. Of course, section 40605 does not grant a **mayor** unfettered discretion in making commission **appointments**; instead, it requires the **mayor** to submit each of his or her designated appointees to the city council for its approval. ([81 Ops.Cal.Atty.Gen., supra, at p. 80.](#))

We conclude that the appointing power of an elected **mayor** of a general law city extends to the **appointment** of the members of the city's planning commission, but each **appointment** must have the approval of the city council [\[FN3\]](#)

Bill Lockyer  
Attorney General

Marc J. Nolan  
Deputy Attorney General

[\[FN1\]](#). All further references to the Government Code are by section number only.

[\[FN2\]](#). Other state statutes set forth precisely who is to “appoint” the members of various boards, commissions, and committees. (See, e.g., [Health & Saf. Code, § 40420](#) [South Coast Air Quality Management District]; [Pub. Resources Code, § 29735](#) [Delta Protection Commission]; Pub. Utilities Code, § 30201 [Southern California Rapid Transit

District].)

[FN3]. In [81 Ops.Cal.Atty.Gen. 75, supra](#), we described section 65101 as an example of a statute authorizing “a non-mayoral appointment for a city board, commission, or committee.” ([Id. at p. 78, fn. 3.](#)) That characterization, made only in passing, is inconsistent with the conclusion we reach herein, and it is therefore disapproved.

89 Ops. Cal. Atty. Gen. 178, 06 Cal. Daily Op. Serv. 7530, 2006 Daily Journal D.A.R. 10745, 2006 WL 2381605 (Cal.A.G.)

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C

81 Ops. Cal. Atty. Gen. 75, 1998 WL 59105 (Cal.A.G.)

Office of the Attorney General  
State of California

Opinion No. 97-1103

February 13, 1998

THE HONORABLE WILLIAM A. CRAVEN  
MEMBER OF THE CALIFORNIA STATE SENATE

THE HONORABLE WILLIAM A. CRAVEN, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following questions:

1. Does the **appointment** power of an elected **mayor** of a general law city extend to **appointments** (a) to regional boards, commissions, and committees, (b) that a city ordinance requires to be made by the city council, and (c) to subcommittees of the city council?
2. Does the city council have the authority to direct the mayor to appoint a particular person in any of the above-described circumstances?

#### CONCLUSIONS

1. Unless otherwise specifically provided by statute and subject to the approval of the city council, the **appointment** power of an elected **mayor** of a general law city extends to **appointments** (a) to regional boards, commissions, and committees, (b) that a city ordinance requires to be made by the city council, and (3) to subcommittees of the city council.
2. The city council does not have the authority to direct the mayor to appoint a particular person in any of the above-described circumstances.

#### ANALYSIS

The questions presented for analysis concern the authority of an elected **mayor** of a general law city to make **appointments** to boards, commissions, and committees in three specified situations. We are also asked whether, assuming the **mayor** has the authority to make the **appointments**, the city council may nonetheless direct the **mayor** to appoint a particular person in any of the given situations.

The governing statute applicable to our discussion is [Government Code section 40605](#), [\[FN1\]](#) which provides as follows:

“In general law cities where the office of mayor is an elective office pursuant to Article 5 (commencing with Section 34900) of Chapter 7 of Part 1 of Division 2 of Title 4, the **mayor**, with the approval of the city council, shall make all **appointments** to boards, commissions, and committees unless otherwise specifically provided by statute.” [\[FN2\]](#)

As distinguished from a city operating under a city charter, a general law city has only those powers expressly conferred upon it by the Legislature, together with such powers as are necessarily incident to those expressly granted or essential to the declared object and purposes of the municipal corporation. A general law city may not act contrary to state statute. (See [Irwin v. City of Manhattan Beach \(1966\) 65 Cal.2d 13, 20-21](#); [Martin v. Superior Court \(1991\) 234 Cal.App.3d 1765, 1768](#).)

The city council, which consists of five members (§ 36501, subd. (a)), is the legislative body of a general law city. (§ 34000.) “The city council shall appoint the chief of police” and “may appoint a city attorney, a superintendent of streets, a civil engineer, and such other subordinate officers or employees as it deems necessary.” (§ 36505.) The mayor is a member of the city council and has all of the powers and duties of a member of the council. (§ 34903.) The mayor is also president of the city council (§ 34002) and may be provided with compensation in addition to that which he receives as a councilman (§ 36516.1).

\*2 In analyzing the language of [section 40605](#), we are guided by the well established principles of statutory construction. “When interpreting a statute our primary task is to determine the Legislature’s intent.” ([Freedom Newspapers, Inc. v. Orange County Employees Retirement System \(1993\) 6 Cal.4th 821, 826](#).) “To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning.” ([DaFonte v. Up-Right, Inc. \(1992\) 2 Cal.4th 593, 601](#).) “Every word, phrase, and sentence in a statute should, if possible, be given significance. [Citation.]” ([Larson v. State Personnel Bd. \(1994\) 28 Cal.App.4th 265, 276-277](#).) “[C]ourts are no more at liberty to add provisions to what is therein declared in definite language than they are to disregard any of its express provisions.” [Citation.]” ([Wells Fargo Bank v. Superior Court \(1991\) 53 Cal.3d 1082, 1097](#).)

## 1. **Mayor's appointment** Power

### A. Regional Boards, Commissions and Committees

The first issue to be resolved is whether a **mayor's appointment** power under [section 40605](#) extends to **appointments** to regional boards, commissions, and committees. We conclude that it does.

Initially, we note that the mayoral appointment authority extends to “*all* appointments to boards, commissions, and committees . . . .” ([§ 40605](#); italics added.) There is no express limitation that would confine the power of appointment to bodies that are entirely within city government.

It has been suggested, however, that the statute’s phrase “[i]n general law cities” serves to confine the **mayor's appointment** power to bodies wholly within city government. We reject the suggestion, given the existence of chartered cities and their special powers; this language merely restricts [section 40605](#)’s application to general law cities and not

chartered cities.

It is to be observed that some regional boards, commissions, and committees do not have their members selected by mayoral appointments, as specified in various state statutes. (See, e.g., [Health & Saf. Code, § 40420](#) [South Coast Air Quality Management District]; [Pub. Resources Code, § 29735](#) [Delta Protection Commission]; Pub. Utilities Code, § 30201 [Southern California Rapid Transit District]; [Harb. & Nav. Code, § 16](#) [San Diego Unified Port District].<sup>[FN3]</sup>)

Somewhat unique is a joint powers agency established under the Joint Exercise of Powers Act (§§ 6500-6599.) The composition of an agency's governing body is controlled by the terms of the agreement. (§ 6508; see [78 Ops.Cal.Atty.Gen. 60, 65 \(1995\)](#); 57 Ops.Cal.Atty.Gen. 295, 301 (1974).) Assuming the agreement does not specify how the selection is to be made, [section 40605](#) requires the **mayor** to make the **appointment** subject to the approval of the city council.

We conclude that unless otherwise specifically provided by statute, the **appointment** power of an elected **mayor** of a general law city extends to **appointments** to regional boards, commissions, and committees, subject to the approval of the city council.

#### B. City Ordinance Provisions

\*3 The second issue to be resolved is whether a city ordinance constitutes a “statute” for purposes of [section 40605](#). If so, the **appointment** power of the **mayor** would yield to the terms of an ordinance as specified in [section 40605](#). We conclude that a city ordinance is not a statute as that term is used in [section 40605](#).

In [Pala Band of Mission Indians v. Board of Supervisors \(1997\) 54 Cal.App.4th 565, 580](#), the court concluded that the term “statute” could include local ordinances, depending upon the circumstances. The court observed:

“. . . [T]he term ‘statute’ does not unambiguously refer only to a state law. As reflected in the dictionary definitions, the commonly understood meaning of a ‘statute’ broadly extends to ‘law[s] enacted by the legislative branch of a government,’ without limiting the definition to the laws of a particular legislative body. (See Webster’s New Collegiate Dict. (9th ed. 1987) p. 1152.) While in legal terminology a statute generally means a state or federal law and an ordinance is used to specifically refer to a municipal or county law, a court must apply the ‘usual and ordinary’ meaning of words, rather than a technical construction.” (*Id.*, at p. 580.)

In [California Aviation Council v. City of Ceres \(1992\) 9 Cal.App.4th 1384, 1391](#), the court observed that the term “ordinance” could be considered a “statute”:

“‘Ordinance’ is defined as follows: ‘A rule established by authority; a permanent rule of action; a law or statute. In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation. An ordinance is the equivalent of a municipal statute, passed by the city council, or equivalent body, and governing matters not already covered by federal or state law. Ordinances commonly govern zoning, building, safety, etc. matters of municipality.’ (Black’s Law Dict. (5th ed. 1979) p. 989, col. 1.)”

On the other hand, the Legislature has on occasion expressly defined the term “statute” as excluding local ordinances. (See, e.g., § 811.8 [defining “statute” for purposes of claims and actions against public entities and employees as “an act adopted by the Legislature of this state or by the Congress of the United States, or a statewide initiative act”].)

If the term “statute” were to include ordinances, it would be a simple matter for a city council to enact an ordinance

that would negate [section 40605](#)'s mayoral appointment directive by placing the appointment power in its own hands. We believe, instead, that the Legislature intended to create a system of checks and balances by placing the **appointment** authority in the hands of the elected **mayor**, while giving the city council the right to reject mayoral **appointments**. This balancing system would be circumvented if a city council could, at any time, abrogate the **mayor's appointment** authority through the enactment of an ordinance. In order for the Legislature's vesting of **appointment** authority in the elected **mayor** to be given appropriate significance, we believe that [section 40605](#) must be construed as being unaffected by local ordinances.

\*4 We conclude that the **appointment** power of an elected **mayor** of a general law city extends to **appointments** that a city ordinance requires to be made by the city council.

### C. Subcommittees of the City Council

The third situation to be considered involves appointments to subcommittees of the city council. We take “subcommittees” to mean committees that consist solely of city council members and that are established for the purpose of facilitating the conduct of the city council's legislative business. Such committees would have no ability to act independently of the city council as a whole and would exist at the pleasure of the council to perform its functions in an efficient manner.

As previously concluded, “all” means “all.” Interpreting [section 40605](#) so as to allow the **mayor** to make all **appointments** to city council subcommittees would not substantially disrupt the conduct of legislative business, since each **appointment** must be approved by a majority of the council pursuant to the terms of the statute.

Unless a state statute otherwise specifically provides, the **appointment** power of an elected **mayor** of a general law city extends to **appointments** to subcommittees of the city council, subject to the approval of the council itself.

### 2. Authority of the City Council

The final issue to be resolved is whether a city council's approval authority, as specified in [section 40605](#), may be viewed as a grant of authority to direct the mayor to appoint a particular person to a board, commission, or committee. We conclude that [section 40605](#) may not be so construed.

Where [section 40605](#) applies, it is the **mayor's** prerogative to make the **appointment** and the city council's responsibility to approve or reject the **appointment**. [FN4] The city council may not dictate to the **mayor** who the appointee must be. The council's role under the statute begins and ends with approving or withholding approval of an **appointment** submitted to it by the **mayor**.

We conclude that unless otherwise specifically provided by statute, the city council of a general law city which has an elected mayor does not have the authority to direct the mayor to appoint a particular person to a board, commission, or committee.

Daniel E. Lungren  
Attorney General

Gregory Gonot  
Deputy Attorney General

[\[FN1\]](#) All references hereafter to the Government Code are by section number only.

[\[FN2\]](#) City voters may decide whether they wish to have an elected mayor. Section 34900 states:

“At any general municipal election, or at a special election held for that purpose, the city council may submit to the electors the question of whether electors shall thereafter elect a mayor and four city councilmen, and whether the mayor shall serve a two-year or four-year term. In cities presently having elected mayors, the city council may also submit to the electors the question of whether the mayor shall thereafter serve a two-year or a four-year term.”

[\[FN3\]](#) A state statute may also specifically provide for a non-mayoral appointment for a city board, commission, or committee. (See, e.g., § 65101 [city planning commission membership determined by city council].)

[\[FN4\]](#) In this respect, [section 40605](#) is similar to the “advice and consent” provision of the United States Constitution. (U.S. Const., art II, § 2(2); see [Board Of County Commissioners of the County of Bernalillo v. Padilla \(N.M. App. 1990\) 804 P. 2d 1097, 1106](#) [use of expression “with the approval” establishes advice and consent relationship].)

81 Ops. Cal. Atty. Gen. 75, 1998 WL 59105 (Cal.A.G.)

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## Expert: Benicia may be risking Brown Act violation

By Tony Burchyns/Times-Herald staff writer Vallejo Times Herald

Posted:

TimesHeraldOnline.com

BENICIA -- The city's process for appointing board members and commissioners could run afoul of the state's open meetings law, commonly known as the Brown Act, an expert says.

In July the City Council reviewed and revised the rules of procedure in question. They require a two-person council subcommittee to interview board and commission applicants and report recommendations to the mayor outside of a public meeting.

Such a practice may constitute an unlawful council meeting that involves a majority of the body's members, said Terry Francke, founder and general counsel for Californians Aware, a nonprofit open-government watchdog group.

"Even if the mayor rejects the recommendations, the effect is the same as a closed or serial meeting of the three, which could not be rescued from a Brown Act violation simply because a consensus was not reached."

Francke said the way for the council to avoid a Brown Act violation would be to have the committee make its report in an open and public meeting.

The council established the subcommittee in recent years in response to concerns about mayors having too much control over the appointment process.

State law gives elected mayors authority to make appointments, but councils have the power to confirm or deny them.

In April, a routine appointment sparked controversy when Mayor Elizabeth Patterson passed over the subcommittee's top choice for one of three open Planning Commission positions. The council then blocked Patterson's preferred candidate.

As a result of the log jam, the council revised the rules last week so that the committee is no longer charged with making ranked recommendations to the mayor. Instead, it will indicate a preferred candidate, whom the mayor may accept or reject.

If the mayor accepts the committee's recommendation, then that information would be shared with the rest of the council, and be made available to the public, City Attorney Heather Mc Laughlin said.

Mc Laughlin also expressed concern about the appearance of a potential Brown Act violation, but said sharing the subcommittee's report with the full council would mitigate that.

"The appointment process is an evolving process," Mc Laughlin added. "We may not be at the final solution yet."

Contact staff writer Tony Burchyns at [tburchyns@timesheraldonline.com](mailto:tburchyns@timesheraldonline.com) or (707) 553-6831. Follow him on Twitter @tburchyns.

**VIII.B.29**



**AGENDA ITEM**  
**CITY COUNCIL MEETING DATE - OCTOBER 1, 2013**  
**BUSINESS ITEM**

**DATE** : September 25, 2013

**TO** : City Council

**FROM** : City Manager

**SUBJECT** : **RECONSIDER CANCELLATION OF THE NOVEMBER 5, 2013 CITY COUNCIL MEETING**

**RECOMMENDATION:**

Reconsider whether to cancel the November 5, 2013 City Council meeting and direct staff accordingly.

**EXECUTIVE SUMMARY:**

The 2013 City Council calendar of regular Council meetings for 2013 currently has the November 5, 2013 meeting as canceled due to it being election day. Given that due to subsequent changes to the schedule for local elections, there will not be any local elections occurring on that date, this item is being brought to the Council to either confirm this meeting should be canceled or decide to hold the meeting, and place it back on the schedule of regular 2013 meetings.

**STRATEGIC PLAN:**

- N/A

**BACKGROUND:**

Per the City's Open Government Ordinance, the proposed schedule of regular meetings of the City Council for 2013 follows for Council review and approval. As reflected on the attached schedule, the a previously approved schedule for 2013 had the November 5<sup>th</sup> meeting as canceled, due to elections. Given that local elections will not be occurring on that date this year, the Council may wish to revisit the schedule and consider holding the November 5<sup>th</sup> Council meeting. This would allow for less disruption to the ordinary flow of city business.

Attachment:

- 2013 City Council Regular Meeting Calendar

# 2013 City Council Regular Meeting Calendar

First and third Tuesday council meetings are at 7 pm in Council Chambers, and the fourth Tuesday meetings begin at 6 pm.

This schedule does not include special City Council meetings, including study sessions. For information on upcoming special meetings, please visit the City's website at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) or contact the City Manager's Office at (707) 746-4200.

## January

- January 1<sup>st</sup> - New Year's Day - No Council Meeting
- January 15<sup>th</sup>
- January 22<sup>nd</sup>

## February

- February 5<sup>th</sup>
- February 19<sup>th</sup>
- February 26<sup>th</sup>

## March

- March 5<sup>th</sup>
- March 19<sup>th</sup>
- March 26<sup>th</sup>

## April

- April 2<sup>nd</sup>
- April 16<sup>th</sup>
- April 23<sup>rd</sup>

## May

- May 7<sup>th</sup>
- May 21<sup>st</sup>
- May 28<sup>th</sup>

## June

- June 4<sup>th</sup>
- June 18<sup>th</sup>
- June 25<sup>th</sup>

## **July**

- July 2<sup>nd</sup>**
- July 16<sup>th</sup>**
- July 23<sup>rd</sup>**

## **August**

- August 6<sup>th</sup> – No Council Meeting**
- August 20<sup>th</sup>**
- August 27<sup>th</sup>**

## **September**

- September 3<sup>rd</sup>**
- September 17<sup>th</sup>**
- September 24<sup>th</sup>**

## **October**

- October 1<sup>st</sup>**
- October 15<sup>th</sup>**
- October 22<sup>nd</sup>**

## **November**

- November 5<sup>th</sup> – Election Day – No Council Meeting**
- November 19<sup>th</sup>**
- November 26<sup>th</sup>**

## **December**

- December 3<sup>rd</sup>**
- December 17<sup>th</sup>**
- December 24<sup>th</sup> – Christmas Eve – No Council Meeting**

