

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
OCTOBER 4, 2005

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:49 p.m. on Tuesday, October 4, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

ANNOUNCEMENT OF CLOSED SESSION:

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

CLOSED SESSION:

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Initiation of litigation pursuant to subdivision (c) of Section 54956.9

Number of potential cases: 1

ADJOURNMENT:

Mayor Messina adjourned to Closed Session at 6:50 p.m.

CONVENE OPEN SESSION:

Mayor Messina convened the Open Session at 7:00 p.m.

FUNDAMENTAL RIGHTS:

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

ADOPTION OF AGENDA:

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

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

Noes: None

COMMUNICATIONS:

WRITTEN:

Various items of written correspondence were received by Council (on file with original agenda packet) from the public. Several items were received from the public within the past 72 hours.

PUBLIC COMMENT:

None

PUBLIC HEARINGS:

Conduct a Public Hearing to consider the application of Regency Cab to operate cab service within the City of Benicia:

Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Whitney asked for a few minutes to review the letters from the public that Council received in the past 72 hours.

Mayor Messina stated that Council should take a vote on whether to continue this item in order to review the additional material or take a few minutes to review it and proceed with the Public Hearing as planned.

Ms. McLaughlin reviewed the requirements of the Sunshine Ordinance with respect to additional materials received.

Council Member Campbell stated that at the last Council meeting, a citizen submitted 'substantial information' that caused the Poet Laureate agenda item to be delayed. After reviewing the 'substantial information' that was submitted, it was clear it was a bunch of trash. He suggested taking 5-10 minutes to review the information and continue with the Public Hearing.

Vice Mayor Patterson concurred with Council Member Campbell. She suggested taking 5 minutes to review the letters submitted to Council.

Mayor Messina confirmed that all materials submitted by the public within the past 72 hours were available on the back table in Council Chambers for the public to review.

Mayor Messina called for a 5-minute break at 7:08 p.m. so Council could review the additional materials.

The meeting resumed at 7:19 p.m.

Council Member Smith stated that he had an ex-parte conversation with Mr. Johnny Giri.

Council Member Campbell stated that he received a call from Linda Engelman regarding the Yellow Cab Company. He chose not to talk to anybody on this item.

Applicant:

Mr. Richard Chiozza, local business owner, speaking on behalf of Regency Cab – Mr. Chiozza stated that Regency Cab wants to do business in Benicia and if/when the application is issued, wish to take up residence in Benicia. His client (Regency Cab) wants to add two taxicabs to service Benicia. The applicant has been through the review/investigation process with the Benicia Police Department. They have been found

to be qualified and capable of doing business in Benicia. At a hearing on April 17, 2005, a business license was issued to Regency Cab (copy of license was provided to Council). The important thing to remember is that the process has already been established. He referenced a letter from Sandy Taylor (Vallejo City Cab) dated 10/3/2005 where she states, "based on the average number of calls, there is insufficient business to support a third cab company. So, as we agreed with you, we are in the process of permitting all of our fleet of thirteen cabs to increase the service to the City of Benicia as needed." If there is insufficient business, why are they increasing service to Benicia?

Council Member Campbell asked how Regency's small cab service would provide 24-hour service. Mr. Rand Rice, Regency Cab, reviewed the work schedule. Mr. Sousa stated that it was his understanding that currently, two of the drivers have been permitted and two have not completed the review process. Mr. Rice said that one of the two drivers in question has received his receipt and is still in review. The driver has never had a ticket or a criminal complaint. They were told the review process would take approximately two weeks. The remaining three drivers are fully permitted at this time.

Mr. Rand Rice stated that he was a former employee of Yellow Cab, and is currently an employee of Regency Cab. He has serviced Benicia for a long time. He is good at what he does (driving a taxicab). Regency Cab deserves a chance. There is room for all three companies.

Council Member Campbell asked Mr. Rice if Regency Cab had a business license prior to the advertised 'grand opening.' Mr. Rice verified that was correct.

Ms. McLaughlin reviewed the Business License and insurance procedures. She stated that the City only has insurance information covering two of the four drivers. Council reviewed the three cab drivers' permit numbers.

Mr. Chiozza referenced a letter written on September 28, 2005 by Mr. Michael Broad (Attorney for Yellow Cab) regarding the character of his clients. The information in the letter are allegations. The complaints have not been verified. It is a private matter. The comments with regard to his clients character borders on libelous.

Council Member Smith asked Staff if to date, Regency had ever been legally qualified to pick up passengers in Benicia. Ms. McLaughlin stated that as recently as the past weekend, Regency had all paperwork (insurance and permits) in for two of the four drivers. The remaining two drivers are not yet qualified to drive in Benicia. Mr. Sousa stated that they need to have the following items completed before they receive the final permit: 1) receive Council approval, 2) obtain business license, 3) permitting each individual driver (as well as insurance information for each driver), and 4) inspection of the vehicles to be used. Once all four items are completed, they could be cleared to operate in Benicia.

Council Member Whitney asked how many taxicabs Regency has to serve Benicia. Mr. Rice stated that they currently have two cabs that will be servicing only Benicia.

Public Hearing Opened.

Public Comment:

1. Mr. Randall Kelm – Mr. Kelm lives in Benicia and takes a cab every day. He does not drive. The new cab company provides fast service.
2. Mr. Michael Broad, Law Offices of Michael Broad (Counsel for Yellow Cab) – Mr. Broad discussed a flyer announcing a grand opening for Regency Cab that was faxed to him on 9/29. The flyer offers 10% off of service, which is illegal. He suggested Regency would not be able to provide 24-hour dispatch service. Regarding the complaints on service for Yellow Cab, they have investigated the complaints and found they were results of several drivers stacking calls. The drivers that were stacking calls are no longer working for Yellow Cab. He stated that he thinks Regency Cab has already started doing business in Benicia.

Council Member Campbell asked Mr. Broad what was wrong with healthy competition. Mr. Broad stated there was not enough ‘meat’ to make it a viable competition. It is a much smaller market than Vallejo.

Council Member Whitney asked Mr. Broad what Yellow Cab’s average response time was for Benicia. The average response time is 15-20 minutes. Mr. Andoh stated that at times, that could be true, but he has heard complaints from the public that, depending on the time of day, the response time could be up to 40 minutes.

3. Vivian Mallory – Ms. Mallory is an employee of Yellow Cab. She is a former employee of Mr. Harpreet Singh. She discussed prior business dealings with Mr. Singh when she used to work in the real estate business. She discussed prior financial problems she experienced while dealing with Mr. Singh. She opposes the issuance of Regency Cab’s permit in Benicia.
4. Dee Roten – Mr. Roten stated that Vallejo City Cab has eight licensed drivers that serve Benicia. They receive approximately 15 calls per day from Benicia. He stated that he understood Regency Cab would be servicing not only Benicia, but American Canyon as well. He stated that it was ironic that the very people that have applied to operate taxicab service in Benicia (Regency Cab) are the same individuals that were the cause of the complaints Yellow Cab received when they worked there. Those two drivers would not take calls to Benicia unless they were \$10.00 or higher.
5. Sandra Taylor – Ms. Taylor is an employee of Vallejo City Cab. She reviewed the way Vallejo City Cab operates its schedule. She stated that the cab drivers are losing money due to the high gas prices. There is no need for another taxicab service to service Benicia.

Council Member Smith asked if the same person owned Yellow Cab and Vallejo City Cab. Ms. Taylor stated that they were not. The two owners (not identified) approached the podium and verified separate, non-related individuals own them.

6. Mr. Chiozza stated that Regency Cab does not want to ‘take over’ all of the cab service to Benicia. Let’s have competition and give Regency the right to compete for the good of Benicia’s citizens.

Council Member Smith asked Mr. Chiozza what cities Regency would be operating in. Mr. Rice stated that at this time, they are only operating in Benicia. They do have a license to operate in American Canyon, but are not doing so at this time.

7. Jan Lucca – Mr. Lucca owns a bar in Benicia. Benicia needs more taxicab service. It is imperative there is a means for people to get home safely. There have been times when patrons have waited on First Street at 3:30 a.m. waiting for a cab. He hopes all the promises made tonight come true.

Public Hearing Closed.

Council Member Smith asked if the City of Benicia does a criminal background check on the cab drivers. Mr. Sousa stated that each individual driver must go through a criminal background check. Council Member Smith asked if Mr. Singh was one of the cab drivers that have applied for a permit. Mr. Rice stated that Mr. Singh is the applicant as well as a licensed driver.

Chief Trimble stated that he could not disclose any information regarding Mr. Singh’s background check, however, Mr. Singh passed his background check and received a permit.

Vice Mayor Patterson stated that at the last meeting when this item was discussed, it was said that better service would increase usage of the taxicab service. She asked Mr. Sousa if, after the issues that have come up recently and the allegations that have been made tonight, does Staff stand by their recommendation to allow Regency to operate in Benicia. Mr. Sousa stated that they have heard and understand the allegations that have been made. They rely on the background checks completed by the Benicia Police Department. Staff does not have a negative recommendation at this time.

Mayor Messina asked Chief Trimble what process the City goes through when determining a cab driver is suitable to operate in Benicia. Chief Trimble reviewed the background check process. They run fingerprints, check for arrests and convictions, and check driving records. Staff then writes a report. If Chief Trimble is satisfied with the information in the report, they move forward with the permit process. Ms. McLaughlin stated that for the carrier/owner permit there is nothing in the BMC that requires the City to go beyond the steps discussed with regard to the character, experience, and responsibility. For the drivers permit, they must submit recommendations on people that have known them for the past two years and that vouch for their sobriety, honesty, and good character. In terms of other businesses in town, similar steps must be taken for card room permit. Ms. McLaughlin stated that regarding discounts being offered on taxicab service, BMC prohibits charging rates other than the rates approved by Council.

RESOLUTION 05-155 - A RESOLUTION AUTHORIZING REGENCY CAB TO
BEGIN PROVIDING TAXICAB SERVICE WITHIN THE CITY OF BENICIA AND
THE EXECUTION OF THE BENICIA TAXI SCRIP PROGRAM AND SAFE RIDE
AGREEMENT

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

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

Noes: None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 8:19 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
OCTOBER 4, 2005

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 8:32 p.m. on Tuesday, October 4, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Announcement taken in Closed Session:

Heather McLaughlin, City Attorney, stated that Council authorized Staff to begin the process to initiate litigation.

Openings on Boards/Commissions:

There are currently five openings on the Open Government Commission.

There are two tenant openings on the Benicia Housing Board

There is one opening on the Library Board of Trustees

Vice Mayor Patterson asked Mayor Messina when Council could expect to have the appointments to the Open Government Commission. We are approaching three months without the appointments. Mayor Messina stated that the appointments would be made soon. Vice Mayor Patterson stated that ‘soon’ was not good enough. She has asked the same question the past three meetings. We owe it to the public to make the appointments.

APPOINTMENTS:

None

PRESENTATIONS:

Benicia Historical Museum – New Exhibit:

Ms. Ann Hansen introduced Ms. Anne Toxey and Mr. Patrick McMillan, who reviewed a slide show presentation on ‘An Interpretive Exhibit: California’s Great Inland Port.’ Mr. McMillan thanked all contributors that made this project possible.

Council Member Whitney congratulated Mr. McMillan and Ms. Toxey on an excellent job with the new exhibit. He encouraged the public to visit the Benicia Historical Museum. He encouraged the public to contribute both with their time and funds. The Benicia Historic Museum is a worthy cause. The City is working on making the necessary repairs to the floor and roof of the museum.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson noted that item IX-A would be continued to the next meeting, at the request of the Library Board of Trustees.

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

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

Noes: None

COMMUNICATIONS:

WRITTEN:

Various written items received by Council (on file).

PUBLIC COMMENT:

1. Council Member Campbell – Council Member Campbell discussed the events that took place at the 9/20/05 Council meeting regarding the proposed Poet Laureate position. The information Mr. Wood’s submitted was not ‘substantial information.’ He read an excerpt from the information Mr. Wood’s provided. He wondered if Mr. Wood’s read any of the information he submitted. This is not what the Sunshine Ordinance was intended. He will be voting for the Poet Laureate position, no strings attached. This was a cheesy stunt pulled by ‘some good old boys.’ Council’s job is to take care of City government, not put up with campaign goofballs.
2. Cynthia Herd – Ms. Herd thanked Council Member Smith for working on getting a restroom at Southampton Park. She commended Council Member Smith’s suggestion of using BUSD’s building for City uses.
3. Amy Fein – Ms. Fein spoke on behalf of the Benicia Fire Department. She is the wife of a firefighter. She discussed the firefighter’s current life insurance policy. The current life insurance policy for a firefighter is \$30,000. It is not enough.
4. Ramona Sollerborn – Ms. Sollerborn is an Emergency Room nurse. She is a member of the California Nurses Association (CNA). She asked Council to remember that a lack of experience could lead to the loss of life. CNA supports the efforts of the Benicia firefighters and they will keep coming back until the issue is settled.
5. Jason Fein – Mr. Fein stated that 13% of the BFD staff is in Southern California and have been there for a week (fighting wildfires). He discussed the current impasse the City and firefighters are at regarding contract negotiations. Currently

- 50% of the BFD staff is looking for other jobs. Morale continues to be low. During the last three recruitments, the number of qualified applicants was approximately 61/year. Approximately half of the applicants showed up for the first phase test. Out of 52 applicants in 2003, only one applicant was qualified. The City will be out of options in January, when there will be a mass exodus.
6. James Ensley – Mr. Ensley was a volunteer firefighter in Benicia before being hired as a full time firefighter. He cannot afford to live in Benicia. At the same time, he cannot afford to commute here at the current rate of pay. He is merely asking the City to pay the firefighters the average wages for the area.
 7. Greg Petersen – Mr. Petersen discussed a recent call two Benicia Firefighters made to aid a 38-year old female. Because of their knowledge and experience, her life was saved.
 8. Steve Booth – Mr. Booth stated that BFA has scheduled a mediation session for 10/12. He discussed the cookie cutter approach being taken with contracts and how it does not work for them. They are convinced the City is in fine financial shape. He asked what is going to change in the next 6-9 months that wouldn't allow them to make a decision today. They need more than the package that was offered at the last bargaining session. They would like to wrap this up at the next mediation session.
 9. Arlan Williams – Mr. Williams discussed a particular negotiator that is making the negotiation process difficult. The negotiation process is archaic at best. He is ashamed that the firefighters have to air their dirty laundry in front of the City Council. He has invested his career in Benicia. He lives in Benicia and his family lives here. He is a voting citizen. He asked that Council take the firefighters' issues into consideration.
 10. Mark Stevens – Mr. Stevens stated that he is a firefighter and resident of Benicia. He has been a firefighter for 26 years. It is a shame that our firefighters are applying at other stations. Council needs to do something about that.
 11. Sue Johnson – Ms. Johnson discussed her recent experience at the Spit. When she took her first walk around the renovated Spit, she only found two tiny pieces of fishing line on the ground. She was so pleased about that. Benicia Bait and Tackle has been picking up the fishing line, at the request of the Mayor. She thanked the Mayor for his efforts. She stated that she also saw a fisherman 'mopping up' his old fishing line. She stated that there needs to be more trashcans out there. Plastics and styrofoam react in the water.
 12. Kitty Griffin – Mr. Donald Dean read a prepared statement for Ms. Griffin (who could not attend) regarding the Arsenal mixed use project. For some time now, Ms. Griffin has urged the Council to address the task of what mixed use means in terms of individual land use decisions in the Arsenal, before any particular project approval is granted. There is strong and pointed justification for this in the General Plan. The Arsenal district clearly lies within two national historic districts. The Arsenal clearly demands special attention so that the potential for the most productive economic use for these districts will not be squandered. The two developments currently proposed for the Arsenal desperately need something in place against which to be measured. At the moment, previous zoning has no power and anything goes. It would be important to have half the membership of

- the proposed 20-member committee be composed of one member of the Chamber of Commerce, two members of the Economic Development Board, one Arsenal resident, two Arsenal land owners, two planning commissioners, two members of the HPRC, two other particular stakeholders, and the remaining ten others should be members at large with some previous interest in this topic. She urged Council to get something underway quickly.
13. Dee Swanhuysen, Bay Area Ridge Trail – Ms. Swanhuysen discussed the dedication of one mile of the Bay Area Ridge Trail in Benicia. She thanked Council Member Smith, Mike Alvarez, Dan Schiada, and Anne Cardwell for their efforts. She encouraged the public to attend the dedication ceremony on 10/29/05.
 14. Bonnie Silveria – Ms. Silveria suggested that future HPRC meetings be televised. It is important that all citizens are well informed. She is enthused about the possibility of an Arsenal Committee. The Committee needs to have a start/stop date. The committee will help get the conversation going regarding what needs to happen in the Arsenal.
 15. Jim Erickson – Mr. Erickson wanted to address negotiations with BFA. The negotiators are qualified and are doing a difficult job. It is troubling to hear the public comment regarding this issue. Staff is looking forward to the next mediation process. All the bargaining groups are important to the City. The Firefighter’s bargaining group is the only group that has not settled. He discussed the Employee Compensation Policy. One of the pillars of the policy is financial prudence. Staff would prefer to keep turnover in all departments, including the Fire Department, at a low rate.
 16. Steve Booth – Council agreed to hear Mr. Booth a second time. Mr. Booth stated that the positions that have been taken at the bargaining table have been represented as coming from Council. BFA has maintained a courteous and professional tone up to this point, but it is getting more difficult to do so as time goes on. BFA will go to the next mediation with a great deal of flexibility. He hopes negotiators come to the mediation session equipped with direction from Council that gives them the same flexibility.
 17. Tim Winfield – Mr. Winfield is a Captain with the Benicia Fire Department. One reason the other eight groups settled is because their increases brought them to the average pay/middle of the road. He asked that Council give the negotiators clear direction on what they expect so there can be dialogue.
 18. Richard Bortolazzo – Mr. Bortolazzo owns property in the lower Arsenal. A new moratorium is not needed because there is already one. There has been no new development in the lower Arsenal since the General Plan was adopted in 1999. He asked about the timing of the master planning projects. They seem to be following on the heels of a 5-unit residential subdivision that is being proposed for the corner of Park Road and Jefferson Street on a commercially zoned property. He wondered whether these would have been brought forward in view of the fact that Council has not done anything in six years to rezone the property to bring them in conformance with the General Plan. At the same time, the General Plan created a Downtown mixed-use district. This Council has also failed to rezone the properties in compliance with that zoning for six years. Fortunately, the Downtown area is much more viable and vibrant than the Arsenal is because the

properties out there are zoned commercial. The proposed 5-unit subdivision is planned development. The elements of the moratorium that Council created are: 1) you can't build commercial because the rents are too low, and 2) the zoning does not comply with the General Plan, so you have to use a planned development process, which is an expensive and difficult process. He discussed the current state of disrepair that both the Commandant's Residence and the Officer's Quarters are in. There are some in the community that value the Arsenal as a historical tourism asset. With the moratorium that Council has created, the Arsenal will continue to decline. The value to the community will continue to be forfeited.

19. Jon Van Landschoot – Mr. Van Landschoot discussed the issue of open government. Currently, there are six people that have been interviewed for the Open Government Commission, yet no one has been appointed. He discussed the 221 First Street Project. There were some flaws in the project (CEQA documents) that were discovered by a citizen. Would the public have found out about the error if it was not caught by that citizen? That is why we need an Open Government Commission. He discussed the Incline Place project and the fact that the neighbors did not receive any notice on the project. The mayor ought not to put personal interests or belief in front of the public. He stated that an election is coming up. Council Members Smith and Campbell are both for open government, while the other three candidates are not.
20. Stan Houston – Mr. Houston discussed the Arsenal. He stressed that Council should take a look at the area of the Clocktower to Park Road and down to Military East. The entire project should be looked at as one of the last remaining footprints of the City to create some type of sustainable economic engine. He would like to throw his name in the hat to participate in whatever commission that may be formed.
21. Council Member Smith stated that City management and Council value all City employees. It is the City's desire to reach an agreement with the Benicia Firefighters. The City has to do a one-year contract right now. The City hopes to achieve multi-year contracts with the groups next year. The City was able to reach one-year agreements with the other eight bargaining groups. The firefighters/paramedics are paid \$57,000 to \$76,000 per year, and their benefit packages are another \$19,000-\$25,000 per year. Many non-monetary issues are being discussed. It would be disingenuous and insincere of the City to negotiate on a separate tact with the firefighters than they did with the other bargaining groups. He then discussed the upcoming election and encouraged the citizens to educate themselves on propositions 74-78 that will be on the ballot because they are not good for working people.
He announced the following events:
 - 10/5 - Campaign Forum at City Hall (televised)
 - 10/6 – The Benicia Police Department and Public Works Department will be meeting with citizens to discuss the 4-way stop at West 10th and West L Street.
 - Farmers Market held every Thursday in October
 - 10/7 – First Fridays on First Street

- 10/8 – Campaign Forum at City Hall
 - 10/8 – Friends of the Library book sale
 - 10/10 – Blues Benefit Concert at the Majestic Theatre
 - 10/11 – Dedication of the new First Street Peninsula
 - 10/15 – Cemetery Tour hosted by the Historical Society
22. Mayor Messina disagreed with Council Member Smith’s comments on labor negotiations. We do not have to follow the cookie cutter approach. We have to look at the circumstances. He still adheres to the policy that Council set. We have enjoyed relative industrial harmony over the past five years. The current Council majority had an opportunity to do something different this year when the contracts expired. They chose a course of action. Council now has to live with the issues we have caused. He is not opposed to altering Council’s position in complying with the policy.
23. Vice Mayor Patterson stated that Council Member Smith and Mayor Messina were skating on the edge of a volcano. We have had this discussion in closed session. They have stepped over the bounds of what is accepted. We have a unanimous position of the Council. We should leave the negotiation to the people we pay.

Mayor Messina called for a 5-minute break at 10:01 p.m.
The meeting resumed at 10:07p.m.

CONSENT CALENDAR:

Council pulled items VII-C and VII-D

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

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

Noes: None

The minutes of September 20, 2005 were approved.

Council approved the amendments and additions to the Benicia Transit Short Range Transit Plan (SRTP) (continued from September 20, 2005 City Council Meeting).

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Adoption of the Solano Transportation Authority Countywide Bicycle Plan and Countywide Pedestrian Plan:

Council Member Smith requested this item be pulled so Mr. JB Davis, Chairman, Traffic, Pedestrian and Bicycle Safety Committee could discuss the plan.

Mr. Davis discussed the criteria for weighting and funding various projects in the County. One of the criteria being weighed is whether the City has an adopted pedestrian or bicycle plan. Adopting these plans puts us in a better position to receive money from various funding sources for the various pedestrian and bicycle projects that we have planned for Benicia.

RESOLUTION 05-156 - A RESOLUTION ADOPTING THE SOLANO TRANSPORTATION AUTHORITY COUNTYWIDE BICYCLE PLAN AND THE SOLANO TRANSPORTATION AUTHORITY COUNTYWIDE PEDESTRIAN PLAN AS BENICIA'S LOCAL TRANSPORTATION PLANS CONSISTENT WITH THE BENICIA GENERAL PLAN

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

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

Noes: None

Approval of lease agreement with Cingular Wireless for installation of communication facilities on City-owned property north of Lake Herman Road:

Vice Mayor Patterson pulled this item to discuss of the issue of the industrial-grade antenna, chain link fence, etc. that is proposed to be put in what is considered a scenic area in the City's Sphere of Influence. The use permit for this is in the County's jurisdiction. The CEQA done on this was a categorical exemption because it was construction of a small project. It might be subject to the County Scenic Roadway Element. She suggested continuing the item so Staff could look into the issues she brought up. She would like the issues brought up with the County. We ought to be vigilant about putting these 'blemishes' in scenic areas.

Council Member Smith asked Staff if this was related to the County Scenic Roadway Element. Mr. Schiada stated that it was his understanding this project was exempt. There are already antennas from Nextel in the area. This is just adding to what is already there. Council Member Smith stated that Vice Mayor Patterson has addressed some important issues and agreed the item should be continued to the next meeting.

Council Member Whitney stated that since there is an existing tower (Nextel) in the area, he does not see it as an impact that will mar the vistas. He offered a motion to approve the Resolution. Mayor Messina seconded the motion.

Vice Mayor Patterson stated that we don't have a map. Adding things on to an existing tower could mean significant change. There ought to be a procedure or process for taking concern regarding the aesthetics into consideration. It is a lack of information that forces her to vote against the item. Is it subject to the County Scenic Roadway Element? If so, was it an oversight? If so, it needs to be addressed by the County. The County needs to take into consideration that it is in our Sphere of Influence. We have concerns about the appearance and aesthetics. They can design these things so they are much less obtrusive.

It is strange architecture. Is it necessary to add another structure? That is all information we need to have.

Mayor Messina asked if continuing the item would cause any issues. Ms. McLaughlin stated that they are anxious to get this done, but continuing the item would be okay. Council Member Campbell stated that he was willing to hold off on this until Vice Mayor Patterson can get answers to her questions.

Vice Mayor Patterson stated that we do not have a good sense of how imposing the additional equipment will be.

Council Member Whitney withdrew his motion to allow more time for Staff to adequately research Vice Mayor Patterson's questions.

This item was continued to the next Council meeting.

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

Creation of the office of Benicia Poet Laureate – continued from September 20, 2005

City Council meeting:

A request was made from the Library Board of Trustees for additional time to review the information submitted by a citizen at the September 20, 2005 City Council meeting.

This item was continued to the October 18, 2005 City Council meeting.

Discussion of Arsenal Planning:

Discussion of proposed Arsenal Master Plan Committee – continued from September 20, 2005 City Council meeting:

Council Member Campbell reviewed the Staff report on this item. He wants to develop a consensus of what we want in the Arsenal, and what part of the Arsenal (upper, lower, and entire) we are talking about. Any sort of development out there runs the risk of spending huge amounts of money to do something and then facing a potential initiative or petition drive. He wants to appoint a reasonable group of people that have interest in this.

Mayor Messina asked Vice Mayor Patterson to review the next agenda item, as it would be awkward to discuss the agenda items separately.

Discussion of resolution creating a Comprehensive Arsenal Land Use and Design Task Force:

Vice Mayor Patterson reviewed the Staff report. She then reviewed a PowerPoint presentation on 'Form Base Code Compared to Master Plan' (hard copy on file).

Council Member Smith stated that this plan is already part of Council's work program and is on its list of priorities (it was ranked one of the top 47 goals). It was not included in the budget. Staff had estimated that the cost of implementing such a plan was

\$180,000-\$200,000. He asked Vice Mayor Patterson to clarify the statement about part of this already being budgeted.

Vice Mayor Patterson stated that design guidelines are in the priorities. Form Base Codes (FBC) address both uses and design. That is one of the reasons the FBC process moves more quickly than the zoning code process. Form Base Code is more definitive than Master Planning by basing the use on the design of the structure at a level of detail that the community wants. It is community driven in terms of detail. We have the design guidelines and the mixed-use zoning budgeted. We don't have to do mixed use zoning. We can bypass that and set that aside and use the Form Base Code approach, which will add more clarity than the Master Plan in the end.

Mr. Erickson stated that either proposal would require Staff support. The City is in the process of staffing the Community Development Department. He urged Council to consider that Staff would need professional assistance with either proposed approach, especially the Form Base Code approach.

Public Comment:

1. Donald Dean – Mr. Dean stated that he supports the Master Plan process. He is interested in preserving the integrity of the Arsenal. He wants to make sure Council considers preserving a unique historic area. Having some constructive community discussion would be of value at this point. He is not very familiar with Form Base Zoning. He asked Council to keep an open mind when considering what 'development' in the Arsenal means. He would like to see the discussion move forward.
2. Mark Kajjar – Mr. Kajjar is an architect and owns property in the Arsenal. He read two letters he wrote to Council on both agenda items relating to the Arsenal (hard copy on file and provided for the public).

Council Member Campbell stated that in his letters, Mr. Kajjar asked a lot of questions. He asked how Mr. Kajjar felt about spending a lot of time and money on a project just to have it trumped by a petition drive, which is ultimately what he (Council Member Campbell) is trying to defuse. Mr. Kajjar stated that he is not a developer. He is an architect. He came to this town because he thought it was a great place to do something meaningful. He is not sure the project he proposed is not acceptable to the community. They would like the opportunity for Council to see the project and go through the process, as he is not sure it would be mandated. It is a risk he is willing to take. There are so few developable parcels in the Arsenal that we are talking about small infill for the most part. The individual parcels can be looked at with a thoughtful eye through the process that we have where there is plenty of opportunity for public input. He is not sure we need to go through consensus building separate from that. Form Base Zoning has its problems. He recognized there has to be an overview.

Council Member Smith if they had shown their plans to the Friends of the Arsenal? Mr. Kajjar stated that they had shown the project to the historic community and he believed the Friends of the Arsenal were involved in that. They would be happy to show it to anyone else that Council recommended. He stated that they were hoping to submit the project by the mid to latter part of October 2005. They believe the project complies with the General Plan. The project is mostly residential.

3. Belinda Smith – Ms. Smith spoke on behalf of the Friends of the Arsenal. Their biggest concern is the ratio between historic and non-historic buildings in the Arsenal. There are guidelines and established ratios that should be used. There are national standards that deal with this. Cities can be stricter than the national standards with regard to the guidelines and ratios. Form Base Zoning is new but it has worked. Regarding historic preservation, it is something that is valued in Benicia. She urged Council to proceed with discussion on this issue and hopefully proceed with Form Base Zoning. Ms. Smith discussed the issue of building structures that replicate historic structures. That devalues the historic value of that type of architecture. Bringing in more contemporary architecture to historic areas can work. She has seen it in many areas of the United States.

Vice Mayor Patterson stated that Ms. Smith has previously talked to Council about the difficulty of using planned development zoning. She discussed the issue of the City's zoning not matching what the General Plan states. Staff's answer to this is the planned development. She asked Ms. Smith if she could see how the Form Base Code solves the problem. Ms. Smith states that she would like to see some standardization. Form Base Zoning can give the City some standardization. Everything is arbitrary right now. The public does not know what to respond to right now. Form Base Zoning would be easier on the public. Vice Mayor Patterson discussed the Secretary of Interior Standards. She asked Ms. Smith if she thought that Form Base Code as a way to incorporate the Secretary of Interior Standards so one would not have to go to so many different documents and codes. Ms. Smith did not know the answer to that question.

4. Jon Van Landschoot – Mr. Van Landschoot stated that talking to each other instead of at each other would be a good idea. Forming this group should be done sooner than later. Development in the Arsenal is possible. The Olson Project had a lot of community input and discussion and it helped the project go through. The project had a great outreach program. That project will be a great asset in the Downtown area. The proposed project in the Arsenal could be a good thing. He likes the idea of getting together, talking about it, and doing it in a time certain. Also, there have been some towns that have lost their historic certification because of various issues, including infill. Talking would be a great thing to do. He kind of likes Form Base Zoning because he likes the outcome. It could be a win-win situation.
5. Kathleen Olson – Ms. Olson passed out a color-coded map of the Arsenal. She stated that when she hears ideas, she prefers that a scope be defined. If we are going to use the 'Master Plan', she wants to make sure it is consistent with the General Plan's definition. The scope of all of the ideas discussed tonight has not

been defined. She wanted to make sure Council understands that she respects the process. However, the two previous processes (General Plan and update of the General Plan) took three years and involved plenty of public involvement. Then, in 2001 there was a series of meetings (charrettes). She asked where the documentation was for the charrettes that took place in 2001. Regarding Form Base Zoning, she was unclear who creates the forms. She hopes that while in the decision making process, Council defines the scope and quantifies what is trying to be resolved.

Vice Mayor Patterson's stated that the charrettes were funded and held by private citizens because at the time, the City was not interested. Mr. Van Landschoot stated that he had the documentation on the 2001 charrettes. Vice Mayor Patterson stated that the process is ripe for the Form Base Code application because we have done so much of the work.

6. Richard Bortolazzo – Mr. Bortolazzo stated that the historic ratios being discussed are code words for 'Richard, you can't use your property.' He stated that the Friends of the Arsenal should be called the Friends of the Vacant Lots. When he sat down with the Friends of the Arsenal, he asked them what he could do with his property, they responded 'nothing.' He is willing to get involved with the process, but if it ends up that he can't do anything with his property, it won't work for him. If the City wants to make it a historical district, he thinks they have to buy it. He has not consulted an attorney as of yet. He is not sure how it fits together, but he is willing to participate. If the City tells him he can't do anything with his property, he is stuck.

Mayor Messina asked Ms. McLaughlin what rules apply as of right now. Ms. McLaughlin stated that if someone submits a completed application, we would have to process it. Right now, the zoning conflicts with the General Plan. The project may need to have a zoning change.

Council Member Whitney had questions on what occurs when the zoning does not comply with the General Plan. If someone comes forward and wants to build on their property, and they get stalled (whether it is through an initiative or they are denied by the City) and they take it to court. Would a judge say that it has been six years and you (the City) have essentially put on a defacto moratorium by your inaction? Ms. McLaughlin stated that the City has so far not reached that point with any of the properties in question. There could be so many denials of applications that the property owner could be trying to develop his property, and if the City kept telling them 'no' that at some point the City would in effect be taking their property, denying the property owner of all economic use of the property.

Vice Mayor Patterson discussed case law when the zoning does not comply with the General Plan. The courts have ruled that zoning does not conform within as early as two years to six years after the adoption of the General Plan cannot be used. She has put her concerns in writing to Staff and provided the citations on that. She thinks that we are

increasingly unfair to the community, developers, citizens, etc. by not addressing the zoning situation.

Council Member Campbell stated that before spending a lot of money and staff time on this, Council should see if there is any agreement on their part.

Mr. Erickson stated that Mr. Golick attended a seminar on Form Base Zoning last week. We are looking at approximately \$200,000 to go to Form Base Zoning.

Mayor Messina stated that he is comfortable with the concept of Form Base Zoning. Regarding cost, the City has some economic uncertainty right now. It is always valuable to bring people together to discuss things. He asked Ms. McLaughlin if Council formed a committee for this issue, would the current appointment process be applied. She confirmed that was correct. Regarding time, he is concerned the City is being unfair to the property owners. He discussed the Intermodal Transportation Station (ITS) and its history. He suggested waiting to make a decision on this issue until the new Council is in place, so we don't start a process that will have to stop when the new Council arrives.

Council Member Smith addressed Ms. McLaughlin's comments on how to create a committee. Ms. McLaughlin clarified the nomination/appointment process. Council Member Smith stated that as good as the idea is, he has concerns about setting Staff on a course determined by Council's work program and priorities and then saying that although it was not originally funded, we want to fund it now. He is not in favor of such budget adjustments. He is in favor of forming the committee, but the expenses would have to be limited.

Vice Mayor Patterson proposed substituting the design guidelines task and the mixed-use task that were budgeted and that the Council ask Staff to come back with a recommendation on how to proceed. It should include the first phase, which is the community discussion. It is not fair to compare this to the ITS. The ITS was not consensus based. She suggested Staff recommend the composition of the committee. She suggested giving direction to staff with an idea on how to proceed (with a few options), recommend how to proceed with the composition of the task force, community discussions (2 or 3), and a recommendation on going out for proposals. Mr. Golick has a wealth of knowledge in this area. He has some ideas on how to pay for this. We are on a tight budget these days. We ought to give Staff an opportunity to come back with some suggestions on how this may work.

Council Member Whitney stated that there has been a lot of divisiveness on this issue. Some people's personal property rights are being trampled on. Some sort of dialogue is warranted. Form Base Zoning sounds like it might be a good fit for us. Mr. Golick stated that at the seminar on Form Base Zoning he went to, there seemed to be a consensus that the Arsenal is a prime area where Form Base Zoning could really work. Based on what he has heard, this would be a prime opportunity to put Form Base Zoning to work. Council Member Whitney stated that he is not on board with the current Council making the appointments; we should wait until the new Council is on board.

Vice Mayor Patterson stated that she is not in a rush to do the appointments Thirty days would be okay for getting information back from Staff.

Council Member Campbell stated that he is not willing to spend any money on this at all right now.

Council Member Smith stated that he wanted to put this into the context of Council's work priorities. The Arsenal Plan came out as 'unfunded.' Three other priorities were partially funded because it was felt that they could be done in-house as long as Council established sub priorities (#17 - developing sustainable criteria, #29 - revision/updating of the zoning ordinance, and #31 - review/update of the design guidelines). He is hoping that Council is establishing sub-priorities in those goals. The sub-priorities are 1) the Arsenal, 2) Form Base Code as they apply to the Arsenal, and 3) the necessity to retain the historical integrity and not lose the listing in the historical district.

Council Member Whitney stated that he was pleased Council does not want to rush out and spend money on this right now.

Mayor Messina stated that when the General Plan was done, the Arsenal was split up into three levels. Staff is trying to track down the specifics on that. Council is looking for Staff to digest Council's concerns and come up with some options at one of the November Council meetings.

- We don't want to spend much money (if any at all)
- Come back with recommendations on the best approach
- Consensus to be developed (two or three community meetings)
- May/May not develop Form Base Zoning

Review of Arsenal Planning and Government Code section 65858 – Moratorium:

No action taken.

At 12.19 p.m. Mayor Messina asked Staff if there were any items other than the Casa Vilarasa item (X-B) that needed to be addressed tonight. Mr. Erickson stated that the Bay Area Ridge Trail item (X-A) needed to be dealt with as well.

Council Member Whitney asked if either item (X-A or X-B) was an actual emergency and if they absolutely had to be dealt with this evening. Staff confirmed that X-B was an emergency, but X-A was not.

Vice Mayor Patterson suggested including item IX-C (Review of Arsenal Planning and Government Code section 65858 – Moratorium) in the Staff report that will be presented to Council at a future Council meeting, as it was not discussed tonight.

On motion of Vice Mayor Patterson, seconded by Council Member Smith, Council agreed to hear items X-A and X-B hear and continue remaining agenda items to the next Council meeting, on roll call by the following vote:

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

Noes: None

NEW BUSINESS:

Approval of the dedication of one mile of the Bay Area Ridge Trail in Benicia:

Jim Erickson, City Manager, reviewed the Staff report.

RESOLUTION 05-157 - A RESOLUTION APPROVING THE DEDICATION OF ONE MILE OF THE BAY AREA RIDGE TRAIL IN BENICIA ON OCTOBER 29, 2005

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

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

Noes: None

Approval of amendments to the Casa De Vilarrasa documents and increase the loan amount:

Heather McLaughlin, City Attorney, reviewed the Staff report.

RESOLUTION 05-158 - A RESOLUTION APPROVING AN AMENDMENT TO THE SETTLEMENT AGREEMENT AND TO THE LEASE AGREEMENTS WITH THE BENICIA HOUSING AUTHORITY FOR THE CASA DE VILARRASA PROJECT AND AUTHORIZING THE RECORDATION OF RELATED DOCUMENTS

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

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

Noes: None

Consideration of Council Member Campbell's recommendations regarding the FY 2005-06 and FY 2006-07 Budgets:

Continued

Discussion of Vice Mayor Patterson's proposed Grading Ordinance amendments:

Continued

REPORTS FROM CITY MANAGER:

Review of proposed Joint Use Agreements with Benicia Unified School District (BUSD) – continued from September 20, 2005 City Council meeting:

Continued

Discussion of policy for City assistance to disaster victims:

Continued

Policy for Noticing Planning and Building Applications:
Continued

REPORTS FROM CITY COUNCIL COMMITTEES:
None

ADJOURNMENT:
Mayor Messina adjourned the meeting at 12:27 a.m.

Lisa Wolfe, City Clerk