

October 5, 2004

The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office on the Friday afternoon before the Council meeting.

**MINUTES OF THE
REGULAR MEETING - CITY COUNCIL
OCTOBER 5, 2004**

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, October 5, 2004, 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.

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Mayor Messina announced openings on the following Commissions and Boards:

Planning Commission - 2 full terms to September 30, 2008

APPOINTMENTS:

RESOLUTION 04-148 - A RESOLUTION CONFIRMING THE MAYOR'S RE-APPOINTMENT OF CECILE KAZEMI TO THE HUMAN SERVICES FUND BOARD TO A FULL TERM ENDING JUNE 30, 2008

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

Noes: None

RESOLUTION 04-149 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF GARY MUNSTERMAN TO THE SKY VALLEY OPEN SPACE COMMITTEE FOR A TWO-YEAR TERM

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

Noes: None

RESOLUTION 04-150 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF JAMES MCKEEHAN TO THE SKY VALLEY OPEN SPACE COMMITTEE FOR A FOUR-YEAR TERM

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

Noes: None

RESOLUTION 04-151 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF SAMANTHA HANNAFIN AS YOUTH COMMISSION REPRESENTATIVE TO THE PARKS, RECREATION AND CEMETERY COMMISSION

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

Noes: None

PRESENTATIONS:

Update on Pure Committee Activities:

Brad MacLane, Committee Member presented the Report.

The Committee's consultant, CDM, has determined with a fair degree of confidence that the best method of treating the City's wastewater effluent to meet Valero's critical specifications is by using a micro filtration/reverse osmosis treatment procedure. The micro filtration/reverse osmosis process is expected to require a level of augmentation with respect to bringing ammonia concentrations down to an acceptable level. At this point, it is envisioned that this will be accomplished through a process of biological nitrification at the City's wastewater treatment plant. Further discussions among CDM, the City, and other parties will be required to determine the feasibility of this approach from the standpoints of treatment, operations, and space.

Equipment is in place for the small-scale toxicity tests needed to confirm the validity of work to date and to set the course for future design considerations. The tests should begin within the next few days. The bottom line objectives for the toxicity testing will be to determine whether current compliance fish species, used by the City and refinery, will survive in the resulting mix of brine and actual effluent. A third species will also be tested. Assisting in this treating and associated work are two BHS students who are on board and working.

The Committee continues to pursue other sources of funding. They have submitted a grant request to the EPA. Steve Dean is looking at other potential federal sources. In addition, a letter has been drafted to Congressman Miller outlining the project and its cooperative mosaic of local government, industry, and Benicia citizens. He will be asked to help the Committee spot and provide support for additional funding possibilities.

CDM has been asked to include clear presentations of all estimated costs in future presentations and papers dealing with design, other capital costs, and operations.

The requirements and components of an effective public outreach methodology continue to be discussed.

The Committee is looking forward to the appointment of an additional committee member. The next meeting is scheduled for 11/9/04.

Revitalization of the Solano County Fairgrounds:

Mr. Jason Keadjian, Consultant to The Mills Group, presented an update on the revitalization of the Solano County Fairgrounds. Details of the revitalization efforts are included in the reports on file with the original Agenda packet.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mayor Messina asked if there were any changes to the Agenda.

City Manager Jim Erickson stated that Staff had received a request from Vice Mayor Patterson to consider moving item IX-A (Sunshine Ordinance) earlier in the Agenda. Mr. Erickson suggested item IX-A immediately follow the Public Hearings.

Mayor Messina stated that he had a philosophical problem with moving items in the Agenda. It may not be fair to the public.

Council Member Smith stated that there were members of the audience that were there to hear this item, and suggested having IX-A immediately follow the Public Hearings.

Vice Mayor Patterson stated that this is a citizen's committee. The committee has been working on this item for a very long time. It is the first time the public will hear the fruits of their labors. It is important that they hear this item. The placement on the Agenda is unfortunate.

Council Member Smith made a motion to have Agenda item IX-A immediately follow the Public Hearings (VII).

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

Ayes: Council Members Campbell, Patterson, Smith and Whitney

Noes: Mayor Messina

COMMUNICATIONS:

WRITTEN:

PUBLIC COMMENT:

1. Cathy Ann Hewitt - Ms. Hewitt thanked Staff for their efforts on the Saturday, 10/2/04 meeting regarding the Waterfront. She felt that the meetings encouraged people. She hopes future meetings will be more expansive in discussing the total Waterfront. She also hopes there is more time for people to ask questions at future meetings. Ms. Hewitt announced that Wednesday, 10/6/04 is Walk to School Day.
2. Council Member Smith made the following announcements:
 - 10/9/04 -Beginning at 10:00 a.m., there will be an all day celebration called 'The Magic of Benicia'. There will be a magic show at the Majestic Theatre at 12:00 p.m.
 - 10/9/04 - Historic City Cemetery Tour. For information call 745-1822.
 - 10/9/04 - Friends of the Library will host their monthly book sale.
 - 10/15/04 - 'The Spot' dance club for middle school aged children will be at the Vet's Hall from 7:00 p.m. to 10:00 p.m.

- 10/16/04 - The League of Women Voters and the University Women will be co-hosting a political forum in City Council Chambers from 10:00 a.m. to 12:00 p.m.
 - 10/16/04 - There will be a political rally in the City Park gazebo from 1:00 to 3:30 p.m. Congressman George Miller will be the guest speaker.
 - 10/17/04 - BPAF will host a member's appreciation concert.
 - 10/17/04 - The Wedding Showcase will be held at the Marina Green.
 - 10/20/04 - Downtown Waterfront Development Workshop will be held from 7:00 p.m. to 9:00 p.m. at City Hall.
3. Kitty Griffin - Ms. Griffin asked if the 10/2/04 Downtown Waterfront Development Workshop will be re-broadcast. Staff confirmed that it would be, but did not have a specific date set. Council Member Smith requested that a press release be done so the public will know when it can be viewed.

CONSENT CALENDAR:

Mayor Messina asked if there were any items to be pulled from the Consent Calendar.

Mayor Messina stated that he had received requests to pull items VI-E and VI-F. Council Member Campbell requested item VI-I be pulled.

City Manager Jim Erickson discussed the resignation of Monique leConge, Library Director. Today will be the last day Ms. leConge will work for the Benicia Public Library. Mr. Erickson recognized her efforts over the past years. She will be sorely missed.

On motion of Council Member Smith, seconded by Vice Mayor Patterson, and unanimously approved, 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 21, 2004 were approved.

Denial of claim and referral to insurance carrier (Dodd) was approved.

ORDINANCE 04-12 - AN ORDINANCE AMENDING CHAPTER 5.04 (BUSINESS LICENSES) AND ADDING A NEW CHAPTER 5.06 (BUSINESS LICENSE TAX RATE METHODOLOGY) TO TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE TO REVISE AND CLARIFY BUSINESS LICENSE REQUIREMENTS

Approval of the License Extension Agreement with Ponder Environmental for the Fifth Street Pier. The proposed extension agreement will be in effect for the next 25 months.

RESOLUTION 04-152 - A RESOLUTION AUTHORIZING THE CITY MANAGER TO PARTICIPATE, OR AUTHORIZE A DESIGNEE TO PARTICIPATE, ON THE STEERING COMMITTEE COORDINATING THE MEMORANDUM OF UNDERSTANDING (MOU) FOR THE JOINT SOLANO EMERGENCY

COMMUNICATIONS ACTIVITIES (SECA)

RESOLUTION 04-153 - A RESOLUTION AMENDING THE 2004-2005 MUNICIPAL BUDGET

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Task Order for services to be provided by Cullen-Sherry Engineers to identify and describe the northwest boundary of the Community Park and prepare a topographical map of the same area. This information is necessary to determine the feasibility of the proposed Golf Education Center.

Vice Mayor Patterson stated that she pulled this item because she has concerns. There was a request by a private entity to have a survey done so they know where they can potentially develop a golf-training center that would not encroach on the urban growth boundary line. City Council had made an explicit direction not to extend any public funds to move the project forward. Her concern is that it this is a recommendation that the City share in the cost. Her second concern is that she has no certainty that the City could ever recover the costs as it is currently arranged. The City has a lot of needs for economic development. We need to spend all the money available on economic development that will have the biggest impact on our economy. She objects to having the City spend money on the survey when it is for private interests. She does not mind the survey being done, or having Staff assist in the survey. It is not appropriate for the City to shift in midstream and say that we will spend some of our public monies on the survey.

Council Member Smith stated that he concurs with Vice Mayor Patterson. He stated that the study is conditioned that the developer would pay half of the monies back to the City. Council Member Smith stated that they should bring half of the money to the table, and then talk to the City about matching what they have raised.

Public Comment:

- 1. Kitty Griffin - Ms. Griffin stated that boundary is between the Community Park and the Regional Park. She discussed Measure M (the one that applies to open space) and how it relates to this project. She agrees that it is strange to support private development with public money.**

Jim Erickson, City Manager, discussed the importance of knowing where the boundary line is. If we don't know this line, we may unwittingly encroach on it when working on future projects.

Vice Mayor Patterson asked Heather McLaughlin, City Attorney, to clarify the establishment of written metes and bounds vs. a physical survey. Ms. McLaughlin stated that she does not believe that we establish metes and bounds for urban growth measures.

Dan Schiada, Public Works Director, stated that he could not recall doing a specific metes and bounds description for Measure K. Ms. McLaughlin stated that she thought the measures followed existing lines laid out in the General Plan. Mayor Messina stated that it is possible that City Staff may have

done this.

Council Member Smith asked Staff to verify that the City does not have, in the Parks master plan, anything planned for this area of the Community Park. Mr. Alvarez stated that was correct.

Council Member Campbell stated that he is trying to figure out why we are doing this. Ms. McLaughlin stated that Measure M (the one that prohibits development of City-owned open space) would prohibit certain aspects of the golf education center from being developed in the City-owned property that is designated strictly as open space, not as parks. Council Member Campbell proposed that Council get more information on this item and bring it back. This could be a waste of money. Ms. McLaughlin referred to a memo in which she wrote that stated 'Lake Herman Regional Park is designated only for passive recreational activities, such as fishing, hiking, and picnicking. Golf related activities in this setting would seem to be inconsistent with passive recreational activities.'

Vice Mayor Patterson stated she would be happy not to have Council go forward at this time, because of the already committed City position on spending public funds on this. She believes there are policy issues the community needs to discuss.

Council Member Whitney stated that he believes there is value in finding out what the boundaries of the Community Park are.

Council Member Campbell suggested bringing this item back to the next meeting, when more information can be made available.

Approval of an extension of time to the Subdivision Improvement Agreements for the Southampton (Waters End) Units D-6 and D-7. The time extension is needed because of the time required to mitigate the military ordnance problems:

RESOLUTION 04-154 - A RESOLUTION AUTHORIZING AN AMENDMENT TO AND EXTENSION OF TIME ON THE SUBDIVISION IMPROVEMENT AGREEMENT FOR SOUTHAMPTON UNIT D-6 AND SOUTHAMPTON UNIT D-7 TO COMPLETE ALL PUBLIC IMPROVEMENTS BY SEPTEMBER 1, 2007

Council Member Smith stated that he pulled this item because it has not been decided what kind of equipment and facilities will be put in the park area for the development. We should get this nailed down while the developers are still requesting things from the City. He would like the Parks Commission to weigh in on this park site before the extension is granted.

Council Member Whitney asked the City Attorney what the ramifications would be for waiting. Ms. McLaughlin stated that there would be none. However, on the extension of the subdivision maps, Council does not have discretion to condition or change them.

Mr. Alvarez discussed the possibility of a half-court basketball and placement of a tennis court. The developer has expressed interest in either one. Council Member Smith stated he thought there was room for two courts, if the basketball court was sacrificed. Mr. Alvarez stated this would all be

discussed at the Parks Commission meeting. This will go to the Commission on 10/13, and they will bring it back to Council after that.

Mr. Erickson stated that it is not necessary to defer action on this item, or the McAllister Assessment District item (Agenda item VII-B). Council still has the authority or leverage if they wish, when the items come back to them, to ensure the park is consistent with the General Plan, and is appropriate for the community. The concern about the delay with the Assessment District is that there is concern that interest rates will rise. This would affect the cost of the District and the cost of homes that will be purchased. He recommended they take action on these items tonight.

Mr. Alvarez stated that Centex Homes would like to start construction drawings on the park ASAP. They are motivated and want to see the park built quickly.

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

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

Noes: Council Member Smith

Resolution supporting the Benicia Unified School District's Parcel Tax Ballot Measure (Measure S).

RESOLUTION 04-155 - A RESOLUTION SUPPORTING THE BENICIA UNIFIED SCHOOL DISTRICT'S PARCEL TAX BALLOT MEASURE ON THE NOVEMBER 2004 BALLOT

Council Member Campbell stated that the School District is doing something right for a change. He explained the process the District went through to get to this point. They have done a lot of things right on this issue. They have done a good job with fiscal responsibility before they ever went to the voters asking for money. He is hoping for a 5-0 vote on this item.

Public Comment:

1. Jeanne Steinman, Co-Chairperson for the Excellence in Education Project - Ms. Steinman stated that, in getting the BUSD fiscal house in order, they had to make some very painful cuts. The infrastructure has been gutted. The District only has two counselors at the High School, and none at the Middle School. There is no possibility the students will get the college and career counseling that they need. There is only one grounds keeper for the entire district. This will have a big impact on the City when the facilities start to decline. They are starting to see a decline in test scores. Now, they are perhaps going to cut another \$3.5 million dollars over the next two years. When the test scores declining, and the support programs for the teachers are cut, there will be a huge impact on student achievement. This will directly impact the City of Benicia in a negative way. This is a unique opportunity to turn this situation around. Measure S will bring approximately \$5 million dollars to the District over a 5-year period. Ms. Steinman stated that the EDB, Benicia Chamber of Commerce, several site councils and PTA's, many individual citizens, and a large component of the business community have officially endorsed it. Schools have a big impact on the quality of life in town. She asked Council to join the list of endorsement from community businesses and Civic leaders in town.

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

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

Noes: None

PUBLIC HEARINGS:

General Plan amendment and zoning change for 1422, 1430, and 1440 East Second Street. The project consists of three separate parcels totaling approximately two-thirds of an acre (29.130 sq. ft.). A mixed-use development is proposed on two of the three parcels; the third parcel will remain in its current use as a single-family residence. The mixed-use development consists of 4,343 sq. ft. of ground floor commercial and three dwelling units on the second floor consisting of 3,851 sq. ft.: Vice Mayor Patterson stated that she felt it important for her to interrupt, as Council had not seen the plan sets. She cannot imagine Council making a decision on this without having seen the plan sets. She suggested opening the Public Hearing and hearing from the public, but holding off on making any decisions.

Council Member Campbell excused himself due to a conflict of interest.

Mayor Messina suggested hearing the Staff report, then going back to address Vice Mayor Patterson's concerns.

Brenda Gillarde, Principal Planner, and Dan Schiada, Public Works Director, reviewed the Staff report on this item.

Proponent:

Mr. Luis Delgado, Architect on the project - Mr. Delgado discussed the history of the project. He stated that through planning, they were asked to hold some neighborhood meetings. Approximately 15 neighbors attended the meetings. All the neighbors were in favor of the project. There was only one issue with one of the neighbors. That neighbor wanted some reassurances regarding his privacy. Mr. Delgado stated that his concerns were addressed in the design of the project.

Vice Mayor Patterson asked to what extent did the proponent consider the gateway street entrance of East Second Street. Mr. Delgado stated that they worked with Planning on the architecture. Vice Mayor Patterson asked if Mr. Delgado had provided a streetscape frontage. He provided a prospective, but not a streetscape frontage.

Ms. Gillarde explained that the entryway is on East Second Street. There is a series of three porch-like structures where there will be an entrance into the building. It is a pedestrian friendly entrance, as well as something that is keeping in character with the residential nature of the area.

Council Member Smith asked Ms. Gillarde what the procedure would be when/if the time comes that the single-family residence that will remain as parcel C is to be developed. Ms. Gillarde stated that depending on what is proposed; the home could be used for an architect's office, accountant's office, etc. Depending on what is proposed, if it is not compliant with the standards and uses, they would

have to come back to the Planning Commission to amend the planned development. Council Member Smith stated that he was also concerned about the size. Ms. Gillarde stated that if something were proposed, outside the approved size, an additional CEQA evaluation would be required.

Vice Mayor Patterson stated that she had a number of detailed questions. It is not appropriate to ask them at this time. The reason the questions need to be asked is because Council did not have the information ahead of time. Her concern is the process. In order for Council to make an informed decision, they need to have all of the information. Vice Mayor Patterson proposed this item be continued, with the understanding that she would like to follow up with a series of questions that address some of the broader issues of East Second Street. She would like Staff to have ample opportunity to reply in a thoughtful way. She will provide her questions to Staff (verbally or in writing) and they will be addressed when the item is brought back to Council.

Public Comment:

1. Belinda Smith - Ms. Smith stated that the project in question is in her neighborhood. She is concerned about the project. It is a residential neighborhood. The possible traffic issues concern her. She would like to see this item continued so she has more time to look at the project.

Mayor Messina asked Mr. Delgado, the proponent, what harm delaying this item would cause the project. Mr. Delgado stated that delaying this item would not cause harm to the project. This item was continued to the next Council Meeting.

Mayor Messina called for a 5-minute break at 9:05 p.m.
The meeting resumed at 9:11 p.m.

Public Hearing to consider the creation of the Benicia McAllister Area (Waters End Residential Development) Assessment District Including:

Mayor Messina read a prepared statement explaining the Public Hearing process and ballot approval process.

Rob Sousa, Finance Director, reviewed the Staff report on this item. Mr. Sousa stated there is no organized opponent on this item. There is one landowner, who is in the audience tonight. The landowner has filed a petition with the City Clerk.

Council Member Campbell stated that he had a question on page VII-B-3 regarding the 2.5-acre neighborhood park. Mr. Sousa explained the 2.5 acres that is included in the subdivision is scheduled to be a park in the future. The developers have offered to build the park using their own funds. These will not be funds generated from the bond. The funds will not be reimbursed to the developer. Council Member Campbell asked if some of the money could be used for enhancement of the park that will be built. Mr. Sousa stated that would complicate the reimbursement process. The agreement that we have right now covers a number of improvements that will be built and constructed under prevailing wage laws. Mr. Alvarez added that the developer has not set financial limits of how far they will go. Mr. Sousa stated that under the plan at this point in time, the reimbursement from the bond

for the acquisition of the infrastructure is far less than the actual infrastructure cost. The estimate of the infrastructure is somewhere over \$15 million, and the bond is \$8.8 million. Council Member Campbell stated that the costs should match up, otherwise at some point down the road there will be a bill for a future Council to deal with.

Mark Pressman, Wolf Hanson Company, Bond Underwriter for the City. Mr. Pressman discussed the engineer's report. It excludes park improvement because the developers wanted to do the park with their own funds. Bond proceeds cannot go towards the park because it is excluded in the description of work where the proceeds can be used. The bond proceeds are limited to approximately \$8.8 million. Mr. Pressman stated that they have tried to maximize the size of the bond issue subject to the described wishes of the developer. The developer wants the annual levy to the property owner to be capped at approximately \$2,700 per year. If the size of the bond issue were increased further, they would go through the annual levy.

Council Member Smith stated that he would be more comfortable passing this after the Parks Commission has their hearing about the park, which will be on 10/15/04.

Vice Mayor Patterson asked Staff how the bond affects maintenance in the future. Ms. McLaughlin stated that the bond cover maintenance. It is only for the capital improvements. Maintenance would need to go through the regular General Fund. Mr. Alvarez stated that the units are in the residential area of the Landscaping and Lighting District.

Public Comment:

None

Mayor Messina made a final call for ballots. There were no additional ballots submitted.

Council Member Smith asked if Staff could relate any potential consequences of continuing this item for two weeks. Mr. Sousa stated that it would have a financial impact. Any further delay would cut into the cash flow savings that we are looking at.

Mr. Steve Casaleggio, Jones Hall Attorneys at Law. Jones Hall is the bond Council for these proceedings. Mr. Casaleggio stated that the District Council is considering now has two pieces to it. It has a new money component and a refunding component. A portion of this District is part of the old East Second/Rose Drive District. There is a piece of this district that will be used to refund the old East Second/Rose Drive bond that lives within it. If Council chooses to defer action, it will also defer the refunding of the East Second/Rose Drive bond. We would run the risk of higher interest rates.

Council Member Whitney stated that the bottom line is that we would risk the residents in this area paying higher fees.

Lisa Wolfe, City Clerk stated that there was one ballot received for this action. This ballot was in favor of the formation of the District.

Mayor Messina stated that we have to verify that the property owner has a majority of the value. Mr. Casaleggio stated that for purposes of creating this District tonight, the property owner represents the entirety of the voting strength, which is based on the dollars assessed. Council has what appears to be a 100% approval. Mr. Pressman stated there is a joint venture between Shea and Centex, and they are voting on behalf of that joint venture.

RESOLUTION 04-156 - A RESOLUTION ADOPTING ENGINEER'S REPORT, CONFIRMING THREE ASSESSMENTS, ORDERING THE WORK AND ACQUISITIONS AND DIRECTING ACTIONS WITH RESPECT THERETO

On motion of Council Member Whitney, 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

RESOLUTION 04-157 - A RESOLUTION AUTHORIZING ISSUANCE OF LIMITED OBLIGATION IMPROVEMENT BONDS

On motion of Council Member Whitney, 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

NEW BUSINESS:

Presentation of a proposed Ordinance adding a new Title 4 (Open Government) to the Benicia Municipal Code including provisions for improving public access to meetings and public records, establishing ethical standards and providing for an open government commission:

Vice Mayor Patterson stated that the Sunshine Ordinance was an idea that was put forth by Council Member Campbell. The intent of the citizens committee is to have a program that affirms and promotes and monitors a culture of open government, access to information, and ethics. The group met six times. It was a process that was collaborative. What became quite apparent is that; 1) there is no problem today with how our City government is working and how information is provided, and 2) there is certainly no question on Staff and Council's ethics. We are looking at things in the past that we do not want repeated in the future. The complex program is to provide the culture and to ensure in the future that you can always have that culture, regardless of what kind of Staff and Council we have.

Council Member Campbell stated that the one thing that local government does, and it is our job to have community input, and set up a structure where decisions are made in a crystal clear, transparent process. Right now is a good time to do this for the City. Council Member Campbell discussed the recent article in the Contra Costa Times on access to public information. He also discussed the recent request by a citizen for all information on consultants that the City uses. Staff provided the information in an accurate, concise and timely manner. Council Member Campbell discussed a prior Mayor making a verbal promise that he did not have the authority to make. He also discussed a prior

City Attorney, John Bohn, and some unethical decisions that he made. These are some examples of why he brought this issue forward. This is why we need to address this issue now, and why it should have been addressed in the past.

Heather McLaughlin, City Attorney, reviewed the Staff report on this item. She discussed the key points in the proposed ordinance. She stated that if Council decides to set up a workshop for this item, she would like to provide them with a side-by-side comparison to the Brown Act and the Public Records Act, and point out more details about the ordinance.

Ed Salzman spoke on behalf of the citizens group that helped draft the ordinance. This ordinance is a product of absolutely the most democratic process he has ever witnessed. Every meeting was well advertised, the public was invited to attend, and every person that showed up was given a chance to vote. The ordinance is a product of compromise. Overall it is a great start to an open and clean government ordinance for the City. Mr. Salzman stated that Staff had raised concerns with cost, appointees, and the Commission.

Belinda Smith spoke on behalf of the citizens group that helped draft the ordinance. Ms. Smith stated that there was a lot of give and take in the drafting of the ordinance. However, one thing that was unanimously agreed on was the overall goal and intent of the ordinance, which was to make it easier for people to access city government, so they could be informed and be involved in a more meaningful way. Ms. Smith stated that the City Attorney currently provides training on the Brown Act and the Public Information Act. The Commission is hoping that training on this ordinance can be added on to the existing training. The Committee will also assist in training individuals on the ordinance. The Commission would provide an annual report on the implementation and compliance of the ordinance, and refer any practical or policy problems to Council. Ms. Smith stated that if Council decides to carry the ordinance forward and set up a workshop, she hopes it will be productive. They hope that there will be some dialogue in the workshop that will actually lead to adoption in the future.

Ari Soglin spoke on behalf of the citizens group that helped draft the ordinance. Mr. Soglin stated that he agrees there have not been any overt problems in the City with regards to public access to information. But, there are inherent problems with the Brown Act and the Public Records Act that they hope the Sunshine Ordinance will address. One in particular is the advance notice requirement. Mr. Soglin discussed how the advance notice requirements in the proposed ordinance would improve the media's ability to report more thoroughly on issues. This would in turn allow citizens to make more educated decisions on whether to attend meetings, what questions to ask, etc. He stated that the Commission itself would be a critical component of this ordinance.

Council Member Campbell thanked everyone involved in the Sunshine Ordinance process.

Public Comment:

1. Luana Luther, League of Women Voters (Benicia) - Ms. Luther expressed the League's support for the proposed Sunshine Ordinance.

Mr. Erickson stated that he was impressed with the ethics portion of the ordinance. He stated that Staff is currently working in parallel with a lot of what is included in the proposed ordinance. He thinks the penalty aspects should be discussed further.

Council Member Smith stated that he is not comfortable proceeding with the ordinance until Staff can develop some estimates for time and possible monetary costs to implement it. Having read the text of the ordinance, he is satisfied that it is what he would like to see. However, he would like to see something on the financial impact it would have.

Council Member Whitney is looking forward to a robust discussion on the proposed ordinance at a future workshop.

Mayor Messina stated that we do not have problems with the issues addressed in the proposed ordinance. He discussed the current agenda packet process. He shares Council Member Smith's concerns with the lack of a financial impact report. He likes Ms. McLaughlin's suggestion of doing a side-by-side comparison of the proposed ordinance and the Brown Act. He stated that the public needs some time to sift through the concept of the proposed ordinance. He supports the idea of a workshop.

Vice Mayor Patterson stated that it is the timeliness of the workshop that matters. She admonished the Council Members to set a date for the workshop that is not six months from now. We currently have a personality dependant system now. State statutes govern us, but we did have lapse in the past, even with that statute. Right now, we are in good shape. This is like an insurance policy so we can have this culture made in law for future citizens to participate in government. She is comfortable with having discussion at a workshop. We need the ordinance and we need it in a trustful way, and a timely way. We owe it to the community to have the workshop done in a timely fashion.

Council decided to try and schedule a Saturday workshop, preferably after Election Day, sometime in November.

UNFINISHED BUSINESS:

Consideration and approval of the reassessment and refunding of the East Second Street/Rose Drive Assessment District Improvement Bonds:

Mr. Sousa reviewed the Staff report on this item.

RESOLUTION 04-158 - A RESOLUTION OF INTENTION TO LEVY REASSESSMENTS AND TO ISSUE REFUNDING BONDS UPON THE SECURITY THEREOF EAST SECOND STREET/ROSE DRIVE ASSESSMENT DISTRICT (REASSESSMENT AND REFUNDING OF 2004)

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

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

Noes: None

RESOLUTION 04-159 - A RESOLUTION ADOPTING THE REASSESSMENT REPORT, CONFIRMING AND ORDERING THE REASSESSMENT PURSUANT TO SUMMARY PROCEEDINGS AND DIRECTING RELATED ACTIONS - EAST SECOND STREET/ROSE DRIVE ASSESSMENT DISTRICT (REASSESSMENT AND REFUNDING OF 2004)

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

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

Noes: None

RESOLUTION 04-160 - A RESOLUTION AUTHORIZING THE ISSUANCE OF LIMITED OBLIGATION REFUNDING IMPROVEMENT BONDS AND RELATED ACTIONS - - EAST SECOND STREET/ROSE DRIVE ASSESSMENT DISTRICT (REASSESSMENT AND REFUNDING OF 2004)

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

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

Noes: None

Report from Administrator on sidewalk conditions at 733-739 First Street and Resolution directing Staff to notify the property owner to repair the sidewalk conditions at 733-739 First Street: Council Member Campbell and Mayor Messina excused themselves due to a conflict of interest. Vice Mayor Patterson chaired this portion of the meeting.

Dan Schiada, Public Works Director, reviewed the Staff report on this item.

Council Member Smith stated that he understands the property owner's basis of their argument is that they do not own the sidewalk. He asked if Staff could offer the rationale of why we ask property owners to participate in improving the sidewalks even when they don't own them. Mr. Schiada referred to the section of code that applies to this issue. He discussed the Joint Sidewalk Program. It is a way to encourage property owners to take advantage of the cost saving measure in order to comply with that section of the code. Mr. Erickson discussed the issue of the trees involved with this item. He stated that it is Staff's position not to remove any of the trees unless there is simply no other way around it.

RESOLUTION 04-161 - A RESOLUTION APPROVING RECOMMENDATIONS OF THE REPORT ON SIDEWALK CONDITIONS AT 733-739 FIRST STREET AND DIRECTING THE CITY ENGINEER TO SUBMIT THIS REPORT TO THE PLANNING COMMISSION FOR A PUBLIC HEARING ON THE MATTER

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

Ayes: Council Members Patterson, Smith, and Whitney.

Noes: None

Abstain: Council Member Campbell and Mayor Messina

REPORTS FROM CITY MANAGER:

Inflow and Infiltration Project update:

Mr. Schiada reviewed the Staff report on this item. We are expecting the project to be completed in January 2005, ahead of schedule. Mr. Schiada thanked the citizens for their patience with this project.

Marina Arbitration:

Karen Majors, Assistant City Manager stated that Staff received the results of the arbitration on 10/1/04. They did not have time to prepare a written report before tonight's meeting. Staff could provide Council with a complete report at the next Council meeting, or they could provide verbal highlights this evening. Mayor Messina asked to hear the highlights, and receive a written report at the next Council Meeting. Ms. Majors reviewed the claims submitted by Benicia Harbor Corporation (BHC). On the first claim (reimbursement of additional wages for dredging in 2001), it was found that the City does not owe BHC any additional monies related to that claim. On the second claim (that the City should reimburse BHC for the prevailing wage differential), BHC prevailed, in the dollar amount of \$15,000 + interest, for a total of \$18,000 plus change. On the final claim, BHC was given a 4-year rate increase schedule which is \$0.86 effective 1/1/2005, and a \$0.55 increase each subsequent January 1st through 2008.

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:41 p.m.

Lisa Wolfe, City Clerk