

**October 16, 2007  
BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
October 16, 2007  
7:00 P.M.**

**I. CALL TO ORDER:**

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

**C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**

**IV. ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/ PROCLAMATIONS:**

**A. ANNOUNCEMENTS:**

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

**2. Openings on Boards and Commissions:**

**Benicia Housing Authority Board of Commissioners:  
-Two terms to December 31, 2009 (Tenant Openings)**

**Sky Valley Open Space Committee:  
-Three unexpired terms to September 30, 2010**

**Library Board of Trustees  
-One full term to November 30, 2009 (Poet Laureate)**

**Open Government Commission  
-One full term to November 30, 2011**

**B. APPOINTMENTS:**

**C. PRESENTATIONS:**

**D. PROCLAMATIONS:**

1. [National Adoption Month](#) - November 2007

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN**

**B. PUBLIC COMMENT**

**VII. CONSENT CALENDAR:**

- A. Approval of Minutes of [October 2, 2007](#). (City Clerk)

B. Introduction of Ordinances to make minor changes to the [Open Government Ordinance](#). (City Attorney)

The Open Government Commission requested various changes to the Open Government Ordinance. The changes presented are to add a definition for "interrupt" and clarify the term "criticize", add additional required training of city employees and conform the gift limit to be the same as specified by the Political Reform Act. These changes were approved by the Open Government Commission at its August 28, 2007 meeting. There is no fiscal impact from these changes.

Recommendation: Introduce the three ordinances and make clarifying changes to the Open Government Ordinance in the following sections: Definitions (Section 4.04.050); Declaration of Open Government Awareness (Section 4.16.030); and Gifts (Section 4.16.110).

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

**VIII. PUBLIC HEARINGS:**

**IX. ACTION ITEMS:**

A. Adoption of a resolution authorizing emergency water line repair work on [Viewmont Street](#) south of Casa Grande Street. (Director of Public Works)

The Public Works Department entered into a contract with G.D. Nielson Construction, Inc. of Napa to perform emergency repair work on the water line and street section of Viewmont Street south of Casa Grande Street in response to a water line break that occurred on September 30, 2007. An emergency declaration by the City Manager authorized staff to

proceed ahead by hiring a contractor to perform the work without giving notice for bids. The work authorization, which is subject to a four-fifths vote approval by the City Council, allows G.D. Nielson to proceed with the completion of this emergency repair work. The City Council also needs to appropriate \$200,000 from the Water Enterprise undesignated fund reserves to pay for the estimated costs of the repair work.

**Recommendation:** Adopt the resolution (by four-fifths vote) authorizing the completion of emergency work to repair the water line and street pavement section on Viewmont Street south of Casa Grande Street; direct staff to submit a progress report at the next regularly scheduled City Council meeting.

**B. Authorization of appropriation from the General Fund Un-appropriated Reserve and award of Architectural Design Consultant Contract for [Mills Community Center](#) Improvement Project. (Parks and Community Services Director)**

The architectural consultant will create design and construction bid documents for the renovation and conversion of the Mills facility from a school to a Community Center. Design services will include overall design recommendations, configuration of existing interior partitions, including a new main reception area, administrative offices; appropriate lighting and mechanical work will also be recommended and bid documents will be prepared. Furthermore, additional funds are necessary to complete engineering and repair work. Staff is requesting authorization of an appropriation in the amount of \$150,000 from the General Fund Un-appropriated Reserve, which will be restored when the City Council approves the budget and funding plan for this project in early 2008. The appropriation of these funds will not jeopardize the 20% mandated reserve.

**Recommendation:** Adopt the resolutions authorizing the appropriation of \$150,000 from the General Fund Un-appropriated Reserve, accepting the proposal for architectural design for the Mills Community Center Improvement Project, awarding the agreement to Noll and Tam of Berkeley, California, in the amount of \$128,303 and authorizing the City Manager to sign the contract on behalf of the City.

**C. Consideration of a study session to review proposed [Tree Ordinance](#). (Parks and Community Services Director)**

In 2004 the Parks, Recreation and Cemetery Commission formed an ad hoc Tree Committee. The formation of this committee was initiated by the City Council's desires to review and update our tree policies. Following the formation of the Tree Committee, the City Council passed Resolution No. 05-76 that encouraged the preservation of trees and improved the manner and mechanisms in which the City facilitates that process. There is no fiscal impact from these changes.

**Recommendation:** Provide direction to staff to schedule a study session to review the Tree Ordinance.

**X. INFORMATIONAL ITEMS:**

**A. Reports from City Manager.**

**B. Council Member Committee Reports.**

**(Council Members serve on various internal and external committees on behalf of the City. Current agendas, minutes and meeting schedules, as available, from these various committees are included in the agenda packet. Oral reports by Council Members are made only by exception.)**

**1. Mayors' Committee Meeting (Mayor Messina)**

**Next Meeting Date: October 17, 2007**

**2. Association of Bay Area Governments (ABAG) (Mayor Messina)**

**Next Meeting Date: Fall General Assembly, Friday, October 26, 2007 at the Oakland Marriott City Center from 8:30am to 2:00pm**

**3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes)**

**Next Meeting Date: November 9, 2007**

**4. League of California Cities (Mayor Messina)**

**Next Meeting Date: TBD**

**5. School District Liaison (Council Members Whitney and Hughes)**

**Next Meeting Date: December 6, 2007**

**6. Sky Valley Area Open Space (Council Members Patterson and Whitney)**

**Next Meeting Date: November 7, 2007**

**7. Solano EDC Board of Directors (Mayor Messina)**

**Next Meeting Date: November 15, 2007**

**8. Solano Transportation Authority (STA) (Mayor Messina)**

**Next Meeting Date: December 12, 2007**

**9. Solano Water Authority/Solano County Water Agency (Mayor Messina)**

**Next Meeting Date: November 8, 2007**

**10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes)**

**Next Meeting Date: October 18, 2007**

11. Tri-City and County Regional Parks and Open Space (Council Member Whitney)

Next Meeting Date: December 10, 2007

12. Valero Community Advisory Panel (CAP) (Council Member Hughes)

Next Meeting Date: October 25, 2007

13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney)

Next Meeting Date: October 24, 2007

14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson)

Next Meeting Date: October 22, 2007

XI. COMMENTS FROM COUNCIL MEMBERS:

XII. ADJOURNMENT:

#### Public Participation

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 5 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

In compliance with the Americans with Disabilities Act (ADA), 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 this 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.

**/Agenda1016.07**

 [IV-D Proclamation.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Open Government.pdf](#)

 [IX-A Viewmont Repair.pdf](#)

 [IX-B Mills Center.pdf](#)

 [IX-C Tree Ordinance.pdf](#)



## PROCLAMATION NATIONAL ADOPTION MONTH

Today, there are 513,000 children in the United States foster care system. Approximately, 114,000 children in foster care are in need of adoptive homes.

This November marks the seventeenth annual National Adoption Month. Our task in Solano County Child Welfare Services Division is to find permanent homes for all of our children. Every child in America, every child in Solano County, California deserves a permanent, loving family, a home in which they can develop to their fullest potential.

For children who are unable to return to their biological families, adoption can provide this permanency.

**WHEREAS**, finding families is our goal for waiting children in Solano County, California.

**WHEREAS**, many of these children have special needs, such as physical, emotional and behavioral challenges.

**WHEREAS**, many of these children are brothers and sisters who want to grow up together.

**WHEREAS**, in 2006, 57 children in Solano County, California were adopted from foster care.

**WHEREAS**, in 2007, approximately 190 children from foster care in Solano County, California are awaiting loving, permanent families.

**WHEREAS**, every child deserves a place to call home.

**WHEREAS**, Solano County Child Welfare Services Division has established a Heart Gallery which will feature the children who wait for a forever family in Solano County, and

**WHEREAS**, there will be a formal unveiling of this gallery on November 15<sup>th</sup> 2007, at the Fairfield Center for the Creative Arts, after which the Heart Gallery will travel to all cities in the county during 2008.

**NOW, THEREFORE, BE IT RESOLVED THAT** I, Steve Messina, Mayor, of Benicia do hereby proclaim on October 16, 2007 that the month of November is officially National Adoption Month in Benicia.

National Adoption Month is an opportunity to spread awareness on behalf of the 114,000 of children in California who are waiting for a loving family.

In honor of National Adoption Month, I encourage the community, businesses, groups, schools, faith-based organizations, and families to help secure permanent, loving homes for each and every child in Benicia regardless of race, age, gender, health, emotional or behavioral challenge or past distress.

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Steve Messina, Mayor  
October 16, 2007

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
OCTOBER 2, 2007

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, October 2, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

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

CLOSED SESSION:

**A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
(Government Code Section 54957)**

**Titles: City Manager  
City Attorney**

**B. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED  
LITIGATION**

**(Significant exposure to litigation pursuant to subdivision (b) of Section  
54956.9)**

**One Claim: Barco**

ADJOURN TO CLOSED SESSION:

Mayor Messina adjourned the meeting to Closed Session at 6:01 p.m.

RECONVENE OPEN SESSION:

Mayor Messina reconvened the Open Session at 6:39 p.m.

## INFORMATIONAL ITEM:

### Top 12 Priority Projects Quarterly Review:

Jim Erickson, City Manager, and various department Directors reviewed a PowerPoint presentation (hard copy on file).

### Community Center:

Council discussed the windows, opening day (Fall as opposed to May), phasing the work, using the multipurpose room sooner, providing the community with an update on the project, master planning, outreach efforts with respect to the neighbors, neighbors' concerns with the issues of parking and noise, and the status of mold, termite, and asbestos.

Council Member Whitney requested copies of the reports certifying the mold, termite, and asbestos are no longer problems.

### X-Park:

No questions.

### Commandant's Residence:

Council discussed the estimate for the date the building would be ready for use, and the re-use study.

Council majority agreed that due to a time constraint, the remainder of the staff report would be continued until after the regular Council meeting.

## ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:59 p.m.

## RECONVENE SPECIAL MEETING:

Top 12 Priority Projects Quarterly Review (continued from the October 2, 2007 Special Meeting):

Mayor Messina reconvened the Special Meeting at 8:18 p.m.

Top 12 Priority Projects Quarterly Review (continued earlier in the evening):

### Benicia Business Park:

Council discussed the timing that this unit will be brought back for discussion (holiday – December). Council would like the issue be brought back for discussion sooner than later. Council Member Patterson would like Staff to try and have this issue brought back in November. If it cannot be brought back in November, she would like it continued until January 2008.

### Arsenal Specific Plan & Downtown Corridor Plan:

Council discussed a letter from the Department of Toxic Substance Control and LSA's ability to perform the physical preliminary assessment.

State Park Road Bike/Pedestrian Bridge:

Council and Staff discussed the issues of funding sources, Bordoni Project, cost of project, and rising construction costs.

Library Basement:

No questions.

Police Building Remodel:

No questions.

Fire Rescue Boat:

No questions.

Mayor Messina adjourned the meeting at 8:45 p.m.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
OCTOBER 2, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, October 2, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina  
Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Mayor Messina reported that Council made minor clarifications and technical changes to the contracts for the City Manager and City Attorney.

Heather McLaughlin, City Attorney reported that Council provided direction to Staff.

Openings on Boards and Commissions:

- Benicia Housing Authority Board of Commissioners:  
Two terms to December 31, 2009 (Tenant Openings)
- Sky Valley Open Space Committee:  
One unexpired term to September 30, 2010
- Library Board of Trustees  
One full term to November 30, 2009 (Poet Laureate)
- Open Government Commission  
One full term to November 30, 2011

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- Celebrating the 50<sup>th</sup> Anniversary of Monticello Dam.

ADOPTION OF AGENDA:

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

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

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Mike Kaplan – Mr. Kaplan discussed the 40<sup>th</sup> Anniversary Event for the Community Action Council on 10/12/07 at the Clocktower.
2. Curtis Hunt, Solano County – Mr. Hunt discussed the alcohol and drug rates in Solano County, spending issues, and invited citizens to ‘Solano County – Citizens Standing Together.’
3. Council Member Patterson – Council Member Patterson asked Staff when the Seeno Business Park EIR would be discussed, inquired about a schedule for the Arsenal EIR, and she discussed a letter from the Department of Toxic Substance Control.

Mr. Erickson stated that the Seeno EIR would not be discussed on 10/16 (as previously planned) – it would most likely be discussed in November or December. Council Member Patterson stated that Christmas time was not a good time for the discussion for the public. Mr. Erickson stated that the Planning Commission would tentatively discuss the Arsenal EIR on 12/13/07.

CONSENT CALENDAR:

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

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

Noes: None

The minutes of September 18, 2007 were approved.

Council approved Benicia’s Priority Transit Projects for Solano Transportation Authority’s 10-Year Transit Capital Plan.

RESOLUTION 07-114 - A RESOLUTION EXTENDING THE EMPLOYMENT AGREEMENT WITH JAMES R. ERICKSON UNTIL JUNE 30, 2009

RESOLUTION 07-115 - A RESOLUTION AMENDING THE EMPLOYMENT AGREEMENT WITH HEATHER MCLAUGHLIN

# DRAFT

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

(END OF CONSENT CALENDAR)

## PUBLIC HEARINGS:

None

## ACTION ITEMS:

Approval of a contract with the Placemaking Group for tourism branding:

Amalia Lorentz, Economic Development Manager, reviewed the staff report.

Council discussed the issues of a comprehensive plan, the work history of Mr. Erokan and Mr. Hamilton of The Placemaking Group, scope of services, times and days for interviewing people (per the scope of services), amenities, and public art.

Mr. Dennis Erokan, President, The Placemaking Group and Mr. Irvin Hamilton, Senior Vice President, The Placemaking Group, discussed the issues of the proposed plan being able to be implemented, the planning process, and the process for conducting interviews.

## Public Comment:

1. Bob Serrat – Mr. Serrat discussed the issue of branding, strengths and weaknesses of Benicia, trashy entrances and exits to Benicia, lack of suitable parking in the Downtown Area, East E Street lot, and the need to improve on those areas.

On motion of Council Member Whitney, seconded by Council Member Hughes, Council approved the contract with The Placemaking Group for tourism branding, on roll call by the following vote:

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

## Energy Efficiency Status and Options:

Amalia Lorentz, Economic Development Manager, reviewed the staff report.

Council discussed the issues of building and buying 'green', global warming, signing on to the U.S. Mayors' Agreement, the need for a baseline (so improvement could be measured), budgeting for the needed funds, making the City itself energy efficient, solarizing the City buildings, wind generators, incentives for homeowners to solarize or use wind generators, low-interest loan programs, the rising sea level, shrinking snow pack, looking at the heating and cooling of City buildings, using energy efficiency in the branding process, and possibly using some of the violation notice money (paid by Valero) towards the City's energy efficient fleet.

Mayor Messina directed Staff to take the initiatives proposed by Staff and bring this issue back to Council for an update in six months.

## Public Comment:

1. Kathy Kerridge – Ms. Kerridge discussed the issue of wind power.
2. Joseph Furnish – Mr. Furnish applauded the initiative by Staff on this issue. He currently has a photovoltaic system installed at his residence that works very well.

Council approved, by consensus, moving forward on a new lighting retrofit project at an estimated cost of \$71,000 funded through the California Energy Commission's low interest loan program, and directed Staff to pursue larger policy initiatives based on the options discussed.

## INFORMATIONAL ITEMS:

### Reports by City Manager:

Mr. Erickson discussed issues with ripples in the pavement caused by a broken water main on Casa Grande Street, and the need to quickly proceed with the repairs

Council and Staff discussed the age of the waterline, the age and condition of the sewer line in the same area, what funds would be used for the repair, possible financing sources for similar repairs that might happen in the future, and 'purple pipes.'

Council Member Patterson requested Staff bring the issue of installing 'purple pipes' a future meeting.

### Policy Calendar Review:

Jim Erickson, City Manager, reviewed the policy calendar.

Council discussed the issue of ferry service.

## COMMENTS FROM COUNCIL MEMBERS:

None

## ADJOURNMENT:

Mayor Messina adjourned the meeting at 8:18 p.m.

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 16, 2007  
CONSENT CALENDAR**

**DATE** : October 3, 2007

**TO** : City Council

**FROM** : City Attorney 

**SUBJECT:** **INTRODUCTION OF ORDINANCES TO MAKE MINOR  
CHANGES TO THE OPEN GOVERNMENT ORDINANCE**

**RECOMMENDATION:**

Introduce the three ordinances making clarifying changes to the Open Government Ordinance as follows:

1. Definitions (Section 4.04.050);
2. Declaration of Open Government Awareness (Section 4.16.030); and
3. Gifts (Section 4.16.110).

**EXECUTIVE SUMMARY:**

The Open Government Commission requested various changes to the Open Government Ordinance. The changes presented are to add a definition for "interrupt" and clarify the term "criticize", add additional required training of city employees and conform the gift limit to be the same as specified by the Political Reform Act. These changes were approved by the Open Government Commission at its August 28, 2007 meeting.

**BUDGET INFORMATION:**

There is no fiscal impact from these changes.

**BACKGROUND:**

The ordinance amending Section 4.04.050 adds a definition for the word "interrupt" as it relates to the right to interrupt under the Definition section, and also clarifies the term invalid criticism in the same section.

The ordinance amending Section 4.16.030 provides additional required training practices for city employees on the Open Government Ordinance.

The ordinance amending Section 4.16.110 conforms the gift limit to the amounts specified by the Political Reform Act.

## **PROPOSED ORDINANCES**

**CITY OF BENICIA**

**ORDINANCE NO. 07-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 4.04.050 (DEFINITIONS) OF CHAPTER 4.04 (IN GENERAL) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO CLARIFY THE FUNDAMENTAL RIGHTS**

**Section 1.** Section 4.04.050 (Definitions) of Chapter 4.04 (In General) of Title 4 (Open Government) of the Benicia Municipal Code is amended to add the following definitions:

“Interrupt” means to stand and raise one’s hand and, in accordance with Robert’s Rules of Order, wait for recognition by the presiding officer before speaking.

“Criticize” means to provide verbal or written critical comments, regarding the official actions or inactions, during public comment or by holding signs except to the extent that it becomes unduly disruptive.

**Section 2.**

**Severability.** If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, the foregoing  
seconded by Council Member \_\_\_\_\_, the foregoing  
ordinance was introduced at a regular meeting of the City Council on the \_\_\_\_\_<sup>TH</sup> day  
of \_\_\_\_\_, 2007, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

CITY OF BENICIA

ORDINANCE NO. 07-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 4.16.030 (DECLARATION OF OPEN GOVERNMENT AWARENESS) OF CHAPTER 4.16 (ETHICS) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO UPDATE THE LANGUAGE TO REFLECT CITY EMPLOYEE TRAINING PRACTICES**

**Section 1.** Section 4.16.030 (Declaration of Open Government Awareness) of Chapter 4.16 (Ethics) of Title 4 (Open Government) of the Benicia Municipal Code is amended to updated to reflect city employee training practices:

All employees who are required to fill out conflict of interest forms pursuant to the Political Reform Act and the city's Conflict of Interest Code and all public officials shall sign an annual statement stating that they have read the text of this Title, Open Government, and have attended or will attend when next offered, a training session on Open Government, to be held at least once annually. The statements shall be maintained by the city clerk's office and shall be available as public record. Annual training shall also be provided to city employees who regularly respond to requests for information by the public. All such trainings will be conducted by the City Attorney's office with the assistance of the Open Government Commission.

**Section 2.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the \_\_\_\_\_<sup>TH</sup> day of \_\_\_\_\_, 2007, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

CITY OF BENICIA

ORDINANCE NO. 07-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 4.16.110 (GIFTS) OF CHAPTER 4.16 (ETHICS) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO MAINTAIN CONSISTENCY WITH STATE REQUIREMENTS**

**Section 1.** Section 4.16.110 (Gifts) of Chapter 4.16 (Ethics) of Title 4 (Open Government) of the Benicia Municipal Code is amended to maintain consistency with state requirements:

~~In addition to~~ In conformance with the gift limits imposed by California Government Code Section 89503 and any subsequent amendments to that Section, no official or employee of the city shall accept any gift, reward, service or gratuity of any kind in excess of the amount set forth pursuant to the Political Reform Act per single source as defined by the Political Reform Act regulations in a calendar year by reason of their employment or office. ~~The open government commission may annual adjust by the consumer price index, the gift limit imposed by this Section.~~ The provisions of the Government Code Section 89503 and the related regulations shall be used to interpret the provisions of this Section.

**Section 2.**

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the \_\_\_\_\_<sup>TH</sup> day of \_\_\_\_\_, 2007, and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 16, 2007  
ACTION ITEM**

**DATE** : October 9, 2007

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **ADOPTION OF A RESOLUTION AUTHORIZING EMERGENCY WATER LINE REPAIR WORK ON VIEWMONT STREET SOUTH OF CASA GRANDE STREET**

**RECOMMENDATION:**

Adopt the resolution (by four-fifths vote) authorizing the completion of emergency work to repair the water line and street pavement section on Viewmont Street south of Casa Grande Street; direct staff to submit a progress report at the next regularly scheduled City Council meeting.

**EXECUTIVE SUMMARY:**

The Public Works Department entered into a contract with G.D. Nielson Construction, Inc. of Napa to perform emergency repair work on the water line and street section of Viewmont Street south of Casa Grande Street in response to a water line break that occurred on September 30, 2007. An emergency declaration by the City Manager authorized staff to proceed ahead by hiring a contractor to perform the work without giving notice for bids. The work authorization, which is subject to a four-fifths vote approval by the City Council, allows G.D. Nielson to proceed with the completion of this emergency repair work. The City Council also needs to appropriate \$200,000 from the Water Enterprise undesignated fund reserves to pay for the estimated costs of the repair work.

**BUDGET INFORMATION:**

The preliminary cost estimate to complete the repair work to the water line and street pavement section on Viewmont Street south of Casa Grande Street is \$200,000. Funds will need to be appropriated from the Water Enterprise undesignated fund reserves.

**BACKGROUND:**

On September 30<sup>th</sup>, the Public Works Maintenance Division responded to a call of a water line break on Viewmont Street south of Casa Grande Street. The city crews performed temporary repairs to stop the leak; however, permanent repairs need to be made to the water line. In addition, the leak caused significant damage to the street section along Viewmont Street

including washouts of the base material and heaving of the asphalt surface. A portion of the street has been closed off until permanent repairs can be completed.

Because of the immediate health and safety concerns the City Manager, in accordance with Section 3.09.050 of the Benicia Municipal Code, made a Declaration of Emergency to enable the Public Works Department to proceed in hiring a contractor to perform the emergency repair work without delays resulting from solicitation for competitive bids. The Director of Public Works has determined that an emergency exists which requires immediate corrective action to repair the water line and street section on Viewmont Street to eliminate public health and safety concerns including lack of water service, fire protection, and emergency vehicle access.

Three licensed contractors were contacted by the Public Works Maintenance Superintendent to provide their proposals to begin immediately on the permanent repairs to the water line and street section on Viewmont Street. Upon review of each contractor's cost proposals, work experience, and their availability to complete the work in a timely manner, the Public Works Department entered into a contract with GD Nielson Construction, Inc. of Napa to proceed immediately in completing the necessary work. Nielson began Monday, October 8 and water line replacement commenced October 9. All work is expected to be completed October 17. The adjacent sewer main is scheduled to be inspected for damage on October 10.

In accordance with State law and the Benicia Municipal Code, this matter requires a review by the City Council subsequent to the Declaration of Emergency. The City Council then needs to authorize the completion of the emergency repair work with a four-fifths vote approval. Staff will also provide an update on the progression of the work and the expenditures made to date at the next regularly scheduled City Council meeting.

Attachments:

- Proposed Resolution
- Declaration of Emergency for water line and street work on Viewmont Street south of Casa Grande Street

## **Proposed Resolution**

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING COMPLETION OF EMERGENCY WORK TO REPAIR THE  
WATER LINE AND STREET PAVEMENT SECTION ON VIEWMONT STREET  
SOUTH OF CASA GRANDE STREET**

**WHEREAS**, in accordance with Section 3.09.050 of the Benicia Municipal Code, the City Manager is authorized to declare an emergency and to take immediate action required by that emergency to procure the necessary equipment, services, and supplies to repair or replace a public facility without giving notice for bids to let contracts; and

**WHEREAS**, a water line break occurred on September 30, 2007, which resulted in damages to the water main and street section on Viewmont Street south of Casa Grande Street; and

**WHEREAS**, the Director of Public Works has determined that an emergency exists which requires immediate corrective action to repair the water line and street section on Viewmont Street to eliminate public health and safety concerns including lack of water service, fire protection, and emergency vehicle access; and

**WHEREAS**, the City Manager on October 2, 2007 issued a Declaration of Emergency to authorize the Director of Public Works to proceed with immediate corrective action to perform water line and street repairs to Viewmont Street south of Casa Grande Street; and

**WHEREAS**, the emergency repair work is proceeding on schedule with the total cost for this repair work estimated at \$200,000.

**NOW, THEREFORE, BE IT RESOLVED BY A FOUR-FIFTHS VOTE** of the City Council of the City of Benicia that:

1. The City Council finds, based upon substantial evidence provided at the meeting of the Council, that an emergency situation exists which will not permit a delay resulting from a solicitation for competitive bids, and that immediate action is necessary to repair the water line and street section on Viewmont Street south of Casa Grande Street to eliminate public health and safety concerns.
2. The City Council hereby authorizes the Director of Public Works to proceed with the necessary emergency repair work without preparation of formal plans and specifications and without giving notice to bids to let contracts on this work, in an amount currently estimated at \$200,000.
3. The City Council hereby directs City staff to submit a progress report regarding the repairs at the next regularly scheduled City Council meeting.

\*\*\*\*\*

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 16<sup>th</sup> day of October 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

## **Declaration of Emergency**



**DATE** : October 2, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works *AS*  
**SUBJECT** : **EMERGENCY WATER LINE REPAIR WORK ON VIEWMONT STREET SOUTH OF CASA GRANDE STREET**

**RECOMMENDATION:**

Sign the attached Declaration of Emergency to authorize the Director of Public Works to proceed with the immediate corrective action to perform repairs to the water line and street pavement section on Viewmont Street south of Casa Grande Street.

**BUDGET INFORMATION:**

The preliminary cost estimate to complete the repair work to the water line and street pavement section on Viewmont Street south of Casa Grande Street is \$200,000. Funds will need to be appropriated from the Water Enterprise undesignated fund reserves.

**BACKGROUND:**

On September 30<sup>th</sup>, the Public Works Maintenance Division responded to a call of a water line break on Viewmont Street south of Casa Grande Street. The city crews performed temporary repairs to stop the leak, however permanent repairs need to be made to the water line. In addition, the leak caused significant damage to the street section along Viewmont Street including washouts of the base material and heaving of the asphalt surface. A portion of the street has been closed off until permanent repairs can be completed.

It is necessary to move quickly to perform the repairs because of immediate health and safety concerns. The existing water line is in a deteriorated condition and highly susceptible to additional breaks resulting in shutdowns in water service to residential homes the area and the inability to provide adequate fire protection. Another water line break would also create further damages to the street and adjacent properties. The street section also requires immediate attention to repair the damages and to prevent "sinkhole" failures and subsurface damages to adjacent properties and the other underground utilities within this section of Viewmont Street.

The street repairs are also critical to restore full access into this neighborhood for residents and emergency vehicles. Therefore, in accordance with Section 3.09.050 of the Benicia Municipal Code, it is necessary for the City Manager to make a Declaration of Emergency so that the Public Works Department can proceed in hiring a contractor to perform the emergency repair work without delays resulting from solicitation for competitive bids.

Three licensed contractors were contacted by the Public Works Maintenance Superintendent to provide their proposals to begin immediately on the permanent repairs to the water line and street section on Viewmont Street. Upon approval of the Declaration of Emergency, the Public Works Department will proceed immediately with hiring a contractor(s) to complete the necessary work. In accordance with State law and the Benicia Municipal Code, this matter will then be brought to the City Council at the next available meeting (October 16<sup>th</sup>) for their formal review and approval. Staff will also provide an update on the progression of the work and the expenditures made to date.

Attachment: Declaration of Emergency for Water Line and Street Work on Viewmont Street  
South of Casa Grande Street.

cc: City Attorney  
Assistant Director of Public Works  
City Engineer

**DECLARATION OF EMERGENCY FOR WATER LINE AND STREET REPAIRS  
ON VIEWMONT STREET SOUTH OF CASA GRANDE STREET**

**WHEREAS**, in accordance with Section 3.09.050 of the Benicia Municipal Code, the City Manager is authorized to declare an emergency and to take immediate action required by that emergency to procure the necessary equipment, services, and supplies to repair or replace a public facility without giving notice for bids to let contracts; and

**WHEREAS**, a water line break occurred in September 30, 2007, which resulted in damages to the water main and street section on Viewmont Street south of Casa Grande Street; and

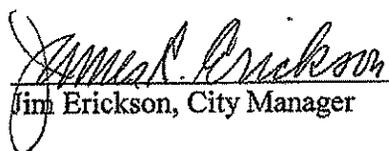
**WHEREAS**, the Director of Public Works has determined that an emergency exists which requires immediate corrective action to repair the water line and street section on Viewmont Street to eliminate public health and safety concerns including lack of water service, fire protection and emergency vehicle access; and

**WHEREAS**, the Director of Public Works is ready to proceed hiring a contractor(s) to perform this corrective work with preliminary costs estimated currently at \$200,000; and

**WHEREAS**, the Director of Public Works recommends that the City Manager make a Declaration of Emergency to authorize commencement of corrective work; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Manager as authorized by Section 3.09.050 of the Benicia Municipal Code declares:

1. That an emergency exists which requires immediate corrective action to repair the water line and street section on Viewmont Street south of Casa Grande Street to eliminate public health and safety concerns.
2. That the Director of Public Works is hereby authorized to proceed ahead with the necessary corrective work.
3. That this declaration of emergency shall be reviewed by the City Council at their next scheduled meeting of October 16, 2007, to confirm the emergency and authorize the continuation of the necessary corrective work.

  
Jim Erickson, City Manager

10/02/07  
Date

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 16, 2007  
ACTION ITEM**

**DATE** : September 24, 2007  
**TO** : City Manager  
**FROM** : Director of Parks and Community Services

**SUBJECT** : **AUTHORIZATION OF APPROPRIATION FROM THE GENERAL FUND UN-APPROPRIATED RESERVE AND AWARD OF ARCHITECTURAL DESIGN CONSULTANT CONTRACT FOR MILLS COMMUNITY CENTER IMPROVEMENT PROJECT**

**RECOMMENDATION:**

Adopt the resolutions authorizing the appropriation of \$150,000 from the General Fund Un-appropriated Reserve, accepting the proposal for architectural design for the Mills Community Center Improvement Project, awarding the agreement to Noll and Tam of Berkeley, California, in the amount of \$128,303 and authorizing the City Manager to sign the contract on behalf of the City.

**EXECUTIVE SUMMARY:**

The architectural consultant will create design and construction bid documents for the renovation and conversion of the Mills facility from a school to a Community Center. Design services will include overall design recommendations, configuration of existing interior partitions, including a new main reception area and administrative offices; appropriate lighting and mechanical work will also be recommended and bid documents will be prepared. Furthermore, additional funds are necessary to complete engineering and repair work. Presently, there are insufficient funds available in the Mills Reconstruction and Repair Account No. 049-9049-9520 to cover these proposed costs; however, staff is proposing borrowing from the General Fund Un-appropriated Reserve, which will be restored when the City Council approves the budget and funding plan for this project in early 2008.

**BUDGET INFORMATION:**

Staff has already exhausted \$690,000 from the Mills Reconstruction and Repair Account for work necessary to make the facility safe for occupancy. Staff is pleased to note that the vast majority of repair work has been completed but additional funds are required to finish this phase of the project. Moving forward, staff is requesting an appropriation of \$150,000 from the General Fund Un-appropriated Reserve Account. This advance will allow staff to hire a design architect and pay for remaining repair and engineering costs. The funds will be returned to the General Fund Reserve when the City Council approves the finalized project budget and funding plan in early 2008. It is staff's goal to have the design architect apply their expertise and cost estimation to our current draft budget. Their efforts will assist the City Council in determining

how much to borrow to fund this project. Therefore, staff is requesting authorization of an appropriation in the amount of \$150,00 from the General Fund Un-appropriated Reserve. The appropriation of these funds will not jeopardize the 20% mandated reserve.

## **BACKGROUND:**

On March 29, 2007 the City Council and Benicia Unified School District (BUSD), in a joint meeting, voted to enter into a lease agreement whereby the City of Benicia would lease the Mills facility from the BUSD for use as a community center. The lease agreement is for a term of forty years with two ten year options. The annual lease payment is \$120,000. A consumer price index (CPI) lease payment adjustment will go into effect after year six. The BUSD will also contribute \$25,000 for remedial repairs.

Since assuming possession of the building, City staff has completed a great amount of repair and restoration work to the facility. Both the flat and pitch roofs have been removed and replaced with new roofs. All the HVAC (heating, ventilation, air conditioning) units located on those roofs have been removed and replaced with new units. City Staff have completed the demolition of damaged areas due to water intrusion, mold and termites. A hygienist performed multiple inspections and the mold abatement for the building is near completion. Termite control has been applied to the building and is completed. During the demolition of the damaged areas, asbestos flooring was uncovered. The asbestos floor tiles have been removed and all asbestos abatement has been completed.

Staff has finalized a preliminary design for the construction of a parking lot, located on the east section of the facility grounds, (egress/ingress from East L Street). Further discussion of the designed parking lot will occur at a subsequent meeting when Staff will return with a final budget proposal.

To continue to move the project forward, it is necessary to bring in outside expertise for design work and cost estimation. Bringing in an architectural firm is the essential next step to develop a budget. The hiring of an architectural firm will develop the total build-out cost for the project, as well as provide potential phasing options based on available funding and uses. Following the architect's assessment and cost estimation, City Staff will present the City Council with a financial schedule and, if necessary, develop budget line items for phasing options, with the goal of bringing in the Scouts and recreation programs as soon as possible.

To facilitate this need, staff advertised for architectural services and on August 15, 2007, three bids were properly received and reviewed by City Staff. In reviewing the bids and interviewing the consultant applicants, Staff deemed all consultant firms to be responsible bidders; however, only Noll and Tam, and HMC Architects have extensive experience in the design and renovation of community centers. Moreover, it is Staff's assessment that Noll and Tam are the best qualified and best suited for the scope of work conceived for the Mills Community Center Improvement Project.

As seen in the chart below, the bid from Noll and Tam is not the lowest bid. Their bid exceeds the lowest bid, Mark Theime Architects, by \$28,551. The City has used Mark Theime Architects

in the past and is currently utilizing this firm for the Library Basement Project. Staff has a positive opinion of Mark Thieme Architects; nevertheless, Mark Thieme Architects' experience has primarily been commercial projects or public projects that are not on point to the specificity of a community center. On the other hand, Staff believes that Noll and Tam's experience and breadth of staff, with regards to designing a community center, significantly exceed the experience of the lowest bidder.

Noll and Tam, in the last eight years, have completed over 15 community center and civic building designs and/or renovations. They are presently working on over 10 such projects throughout the Bay Area. It is staff's judgment this length of experience and depth in talent will result in a superior product and offer the opportunities of cost savings throughout construction.

In evaluating the bid proposals, Staff took into consideration that the lease for the Mills facility is, for all intents and purposes, sixty years. This is the community's sole opportunity to have a facility that not only meets our current needs and realize the potential of future needs. To seize this rare opportunity staff deems the expenditure of an additional \$28,551 worthwhile and justified.

**Bid Results:**

<i>RANK</i>	<i>BIDDER'S NAME AND ADDRESS</i>	<i>Total BASE BID</i>	<i>[if used] Bid Alternate</i>	<i>Base Bid + Alternate</i>
1	Noll & Tam Architects	\$128,303		
2	Mark Thieme Architect	\$99,752		
3	HMC Architects	\$175,000		

Staff recommends that the consultant contract be awarded to Noll and Tam Architects.

**Attachments:**

- Proposed Resolution – Appropriation of Funds
- Proposed Resolution – Award of Consultant Contract
- Noll & Tam Portfolio for Mills Conversion

## Proposed Resolution

**RESOLUTION NO. 07-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING THE APPROPRIATION OF \$150,000 FROM THE GENERAL FUND  
RESERVE FOR THE PURPOSE OF CONTINUED RESTORATION WORK AND TO  
HIRE A DESIGN ARCHITECT FOR THE MILLS COMMUNITY CENTER  
IMPROVEMENT PROJECT**

**WHEREAS**, the City of Benicia's Mills Community Center Improvement Project requires additional funding to continue repair and renovation work; and

**WHEREAS**, additional funds are also necessary to hire a design architect to prepare architectural plans for the facility; and

**WHEREAS**, sufficient funds are available in the General Fund Un-appropriated Reserve Account to fund this appropriation; and

**WHEREAS**, funds appropriated from the General Fund Un-appropriated Reserve Account shall be applied to the Mills Reconstruction and Repair Account; and

**WHEREAS**, the advanced funds from the General Fund Un-appropriated Reserve Account will be returned upon City Council action approving the final budget for the Mills Community Center Improvement Project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby authorizes the City Manager to appropriate \$150,000 from the General Fund Un-appropriated Reserve Account to the Mills Reconstruction and Repair Account.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_ and 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 16<sup>th</sup> day of October, 2007, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

## Proposed Resolution

RESOLUTION NO. 07-\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BID FOR ARCHITECTURAL DESIGN SERVICES FOR THE MILLS COMMUNITY CENTER IMPROVEMENT PROJECT, AWARDING THE ARCHITECTURAL DESIGN CONSULTANT CONTRACT TO NOLL AND TAM OF BERKELEY, CALIFORNIA IN THE AMOUNT OF \$128,303, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSULTANT CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, a request for architectural design services for the Mills Community Center Improvement Project was advertised for construction bids and three bids were received by August 15, 2007; and

**WHEREAS**, Staff subsequently interviewed with consultants to do the project; and

**WHEREAS**, Noll and Tam of Berkeley, California has agreed to do the project and is a responsible architect; and

**WHEREAS**, sufficient funds are available in the project budget.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby awards the architectural design consultant contract, in the amount of \$128,303, to Noll and Tam, of Berkeley, California for the Mills Community Center Improvement Project.

**BE IT FURTHER RESOLVED THAT** the City Manager is hereby authorized to sign the consultant contract on behalf of the City, subject to approval by the City Attorney.

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_ and 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 16<sup>th</sup> day of October, 2007, and adopted by the following vote.

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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

**AGENDA ITEM  
CITY COUNCIL MEETING: OCTOBER 16, 2007  
ACTION ITEM**

**DATE** : October 1, 2007  
**TO** : City Manager  
**FROM** : Director of Parks and Community Services  
**SUBJECT** : **CONSIDERATION OF A STUDY SESSION TO REVIEW  
PROPOSED TREE ORDINANCE**

**RECOMMENDATION:**

Provide direction to Staff on scheduling a study session to review the Tree Ordinance.

**EXECUTIVE SUMMARY:**

In 2004 the Parks, Recreation and Cemetery Commission formed an ad hoc Tree Committee. The formation of this committee was initiated by the City Council's desires to review and update our tree policies. Following the formation of the Tree Committee, the City Council passed Resolution No. 05-76 that encouraged the preservation of trees and improved the manner and mechanisms in which the City facilitates that process.

**BACKGROUND:**

On April 11, 2007 the Parks, Recreation and Cemetery Commission unanimously recommended adoption of the proposed Tree Ordinance. The Commission also approved the Tree Preservation Standards of Review. The Tree Preservation Standards of Review are the guidelines used by staff to determine if a tree may be removed. The development of these standards are proscribed by the proposed ordinance but the actual standards are a separate document. At the June 13<sup>th</sup> Commission meeting, the Commission approved the fee schedule associated with the Tree Ordinance. Should the City Council move forward with adoption of the Tree Ordinance, approval of the recommend fee schedule must also occur by amendment to the Master Fee Resolution.

The proposed Tree Ordinance is based on the Tree Committee's review of the following ordinances and guidelines currently used by the City; adoption of the proposed Tree Ordinance will void the following:

- Street Tree Ordinance (Chapter 12.24 Benicia Municipal Code)

When or if the City Council adopts the proposed Tree Ordinance, staff will move forward to remove conflicting sections from our zoning code. Presently, Benicia Municipal Code, Chapter

17.70190 (H), Preservation of Mature Trees, addresses tree issues and will be in conflict with the proposed Tree Ordinance. The proposed Tree Ordinance has a supremacy clause to address potential conflicts of law. Nevertheless, it is beneficial to remove unnecessary sections.

Staff and the Tree Committee believe the proposed ordinance improves and enhances our current ordinance. The following is an accounting of some key improvements to the proposed ordinance. If the City Council desires to move forward with a study session, each of these points will be discussed in greater detail.

The proposed Tree Ordinance:

- Clarifies and distinguishes tree management and mitigation responsibilities between the Parks and Community Services Department and Community Development Department.
- Requires public notice (a posted sign on the tree) for City property and Street Trees that are being considered for removal.
- Allows any citizen to appeal the removal of a City property and Street Trees.
- All appeals go directly to the Parks, Recreation and Cemetery Commission.
- Establishes a Heritage Tree program and process.
- Establishes a Tree Committee.
- Establishes a Tree Fund.

A comparison between the City's current tree guidelines and the proposed Tree Ordinance is shown in Exhibit A.

The proposed ordinance also better defines the types of trees that require either a pruning or removal permit. In some instances the proposed permitting requirements are less stringent than the current guidelines, while others are more stringent. The way in which trees are evaluated for removal would also be clarified. The current guidelines are ambiguous and too subjective. The approved Tree Preservation Standards of Review establishes an objective test that provides a more uniform assessment of the guidelines. Furthermore, it is staff's judgment that the proposed ordinance will better streamline the City's permitting process and it is not foreseen that the proposed ordinance will strain staff resources.

Attachments:

- Tree Ordinance Comparison (Exhibit A)
- Proposed Tree Ordinance (Exhibit B)
- Tree Preservation Standards of Review (Exhibit C)
- Proposed Fee Structure, Parks, Recreation & Cemetery Commission Staff Report 6/13/07 (Exhibit D)
- Resolution No. 05-76 (Exhibit E)
- Current Codes and Guidelines (Exhibit F)

# **EXHIBIT A**

Current Ordinance

Proposed Ordinance

How are Removal Applicants Approved:

**(Use Tree Preservation Guidelines Established by Planning Commission)**

- ◆ Two Guidelines for Removal:
  - Health of the Tree
  - Location/Characteristics of the Tree
  
- ◆ Health of Tree Standards:
  - Is the tree's health harming other trees?
  - Is the tree's health terminal?
  - Will tree's health lead to catastrophic failure, i.e. limb falling on people or property?

(If yes to any above questions, then tree removal will be approved, if the condition cannot be mitigated)
  
- ◆ Location / Characteristics of Tree Standards:
  - Is the tree presently causing substantial damage to property?
  - Is the tree an imminent hazard to a people or property?

(If yes to above questions, then tree may be removed if the following questions do not apply)

  - Does the tree provide an aesthetic benefit to the immediate neighborhood?
  - Would tree removal deter the continued well being of other trees?
  - Is the tree historic or in an historic area?

**(Fast Track Approval for Single Family Residences)**

- ◆ Trees on the private property of single family residences, that are not heritage trees, shall be per se authorized for removal, provided that a completed permit application with fee is received by the Parks and Community Services Department. Notwithstanding this exception, street trees are subject to the tree preservation standards of review.

**(Use Tree Preservation Standards or Review)**

- ◆ A City Arborist shall perform the application review. In reviewing a tree removal application, the following test shall be applied.
  - 1) Does the condition or characteristic of the tree meet a guideline for removal?
    - a. If No, removal is denied.
    - b. If Yes, go to question 2.

Guidelines for Removal:

- A. The tree is unhealthy or dead
  - B. The tree is likely to have a catastrophic failure (i.e. fall over or drop a major limb)
  - C. The tree is threatening the health of other trees
  - D. The tree is a fire hazard
  - E. The tree is presently causing over \$500 in damage
  - F. The tree is or is likely to create a hazard to a household, structure or the general public
  - G. The tree constrains on reasonable use or development of the property
- 2) Can that condition or characteristic be reasonably mitigated? (If the mitigation measure exceeds 20% of the value of the tree or \$1,000, whichever is less, than that mitigation measure shall be deemed unreasonable; this determination of reasonableness shall not be exclusive. The City Arborist shall determine the value of the tree using a formula developed by the International Society of Arboriculture)
    - a. If No, go to question 3.
    - b. If Yes, removal is denied.
  
  - 3) Will removal result in any of the following:
    - Significant soil erosion
    - Impact the ability of other trees to survive
    - Significantly alter the aesthetics of the site or immediate vicinity; i.e. the characteristics of the tree, including size, shape, species or location which could cause its removal to be detrimental to the community.
    - Disturb the habitat of protected or endangered species
    - a. If No, removal is approved.
    - b. If Yes, can condition be mitigated?
      - If Yes, removal is approved.
      - If No, removal is denied.

Current Ordinance

Proposed Ordinance

Who May Appeal Decision

- ◆ Applicant may appeal staff decision.

- ◆ Applicant may appeal staff decision.
- ◆ For City Property Trees & Street Trees any person may appeal staff decision.

How are Decisions Appealed:

- ◆ First Appeal Hearing is before the Director of Parks & Community Services or designee.
- ◆ Second Appeal is before the Planning Commission.
  - Planning Comm. decision is final
  - Very rare for appellants to go before the Planning Commission.

- ◆ Appeal Hearing is before the Parks, Recreation & Cemetery Commission.
  - Commission decision is final

Public Notice of Tree Removals:

- ◆ No public notice.

- ◆ For City Property Trees & Street Trees, there is a seven (7) day public notice requirement to be posted on the tree designated for removal.

Heritage Tree Program:

- ◆ No heritage tree program.

- ◆ Creates heritage tree program.
- ◆ Tree may be nominated to the Parks, Recreation & Cemetery Commission, for recommendation. If approved, recommendation will be forwarded to City Council.
- ◆ Upon City Council Resolution, the tree shall be tagged and recorded.

Current Ordinance

Proposed Ordinance

# Comparison of Current Tree Guidelines to Proposed Tree Ordinance

## Current Ordinance

## Proposed Ordinance

### How is Ordinance Triggered:

- ◆ Permit requirement triggered when any tree has a diameter of 12 inches or more measured 24 inches above grade.
  - This triggers a permit requirement removal and pruning
- ◆ Pruning more than 35% of the canopy requires a permit.

- ◆ Removal permit requirement triggered when trees have a diameter of 8", 12" or 18", measured at 48" inches above soil level
  - City & Street Trees = 8"
  - CA Native Trees = 8"
  - Fruit Trees = 18"
  - All other Trees = 12"
- ◆ Pruning permit requirement triggered when a branch, root, limb of the following trees have a diameter greater than 3":
  - Street Trees
  - Heritage Trees
  - Designated Protected Trees

### Designation of Responsibilities

- ◆ The Director of Parks & Community Services enforces the Planning Commission Guidelines

- ◆ The Director of Parks & Community Services has overall responsibility for enforcement.
- ◆ The Director of Community Development oversees tree issues related to any Design Review or Planning Commission action.

### How are Pruning Applicants Approved

(Use Tree Preservation Guidelines Established by Planning Commission)

- ◆ Pruning approval is conditioned on health of the tree and tree location and characteristics. (Planning Commission Guidelines)

- ◆ Pruning approval is conditioned on the use of current Best Tree Pruning Management Practices.

### Tree Fund:

◆ No tree fund is proscribed.

- ◆ Creates Tree Fund for educational efforts, tree assistance & planting new trees.
  - Funded by tree replacement fees

### Tree Committee:

◆ No tree committee is proscribed.

- ◆ Tree Committee is created from a sub-committee of the Parks, Recreation & Cemetery Commission with addition of community members with tree expertise, appointed by the Parks, Recreation and Cemetery Commission.
- ◆ Tree Committee will create educational policy and have oversight of tree fund expenditures.

# **EXHIBIT B**

CITY OF BENICIA

ORDINANCE NO. 07-\_\_

**AN ORDINANCE OF THE CITY OF BENICIA REPEALING AND REPLACING CHAPTER 12.24 (STREET TREES) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE RELATING TO THE REGULATION OF TREES**

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

**Section 1.**

The contents of Chapter 12.24 (Street trees) of Title 12 (Streets, sidewalks, and public places) of the Benicia Municipal Code is hereby repealed in its entirety.

**Section 2.**

A new chapter, Chapter 12.24 (Trees and street trees) of the Benicia Municipal Code, is added to read as follows:

CHAPTER 12.24

TREES AND STREET TREES

Sections:

- 12.24.010 Purpose.
- 12.24.020 Definitions.
- 12.24.030 Protected trees.
- 12.24.040 Hazardous trees.
- 12.24.050 Heritage trees.
- 12.24.070 Designated protected trees.
- 12.24.080 Property development.
- 12.24.090 Protection of trees on property during construction
- 12.24.100 Tree pruning.
- 12.24.110 Permitting process.
- 12.24.120 Application requirements.
- 12.24.130 Standards of application review – tree removal.
- 12.24.140 Standards of application review – tree pruning.
- 12.24.150 Appeals.
- 12.24.160 Fees.
- 12.24.170 Tree replacement and mitigation.
- 12.24.180 Penalties.
- 12.24.190 Tree fund.
- 12.24.200 Administration – tree subcommittee.