

November 4, 2008 Regular Meeting

BENICIA CITY COUNCIL

REGULAR MEETING AGENDA

City Council Chambers

November 4, 2008

7:00 P.M.

Times set forth for the agenda items are estimates.

Items may be heard before or after the times designated.

I. CALL TO ORDER (7:00 P.M.):

II. CLOSED SESSION:

NONE

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:

Sky Valley Open Space Committee:

One unexpired term to September 30, 2010

Economic Development Board

One full term to July 31, 2012

Human Services & Arts Board

One unexpired term to July 31, 2009

Civil Service Commission

One full term to January 31, 2012

Sky Valley Open Space Committee

One full term to January 31, 2013

Planning Commission

Two full terms to January 31, 2013

Open Government Commission

One full term to January 31, 2013

Library Board of Trustees

Two full terms to January 31, 2012

3. Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's

Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting

times may be scheduled through the City Hall office at 746-4200.

B. APPOINTMENTS:

C. PRESENTATIONS:

D. PROCLAMATIONS:

V. ADOPTION OF AGENDA:

VI. OPPORTUNITY FOR PUBLIC COMMENT:

This portion of the meeting is reserved for persons wishing to address the Council on any matter not on the agenda that is within the subject matter jurisdiction of the City Council. State law prohibits the City Council from responding to or acting upon matters not listed on the agenda.

Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

A. WRITTEN COMMENT

B. PUBLIC COMMENT

VII. CONSENT CALENDAR (7:20 P.M.):

Items listed on the Consent Calendar are considered routine and will be enacted, approved or adopted by one motion unless a request for removal or explanation is received from a Council Member, staff or member of the public. Items removed from the Consent Calendar shall be considered immediately following the adoption of the Consent Calendar.

A. [Approval of Minutes of October 7, 2008 and October 21, 2008.](#)(City Clerk)

B. [Approval of an access and maintenance agreement and funding allocation request for the State Park Road Bike/Pedestrian Bridge Project.](#) (Public Works Director)

The State Park Road Bike/Pedestrian Bridge project links the Rose Drive/Columbus Parkway area with the Benicia State Recreation Area. To accomplish this, an access and maintenance agreement between the City and State is needed. Additionally, a portion of the project expenditures is eligible for reimbursement from the Metropolitan Transportation Commission. The estimated total cost of the project is \$4,395,000 and is fully funded with various state, federal and local funds.

Recommendation:

1) Adopt a resolution approving a grant of easement and maintenance agreement with the State of California for a trail connector from the State Park Road Bike/Pedestrian Bridge Project to the Benicia State Recreation Area; and

2) Adopt a resolution requesting the Metropolitan Transportation Commission allocate \$271,000 in Transportation Development Act (TDA) Article 3 pedestrian/bicycle funding for fiscal year 2008/2009 for the State Park Road Bike/Pedestrian Bridge Project.

C. [Approval to purchase three replacement blowers for the Wastewater Treatment Plant.](#) (Public Works Director)

This action authorizes the purchase of three high-energy efficient blowers for the Wastewater Treatment Plant to replace the existing, energy inefficient blowers. The total cost of the three blowers is \$265,341.81 and sufficient funds are available in the Wastewater Enterprise Fund. However, the City qualifies for an incentive program that is currently available through PG&E that will provide a minimum rebate of \$31,113, up to a maximum of \$62,510, which, in essence, would cover up to a quarter of the cost.

Recommendation: Adopt a resolution authorizing the purchase of three replacement Neuros turbo blowers for the Wastewater Treatment Plant from APG-Neuros Inc. in the amount of \$265,341.81.

D. Approval of Change Order and Fund Transfer to the Commanding Officer's Quarters Rehabilitation Project. (Parks and Community Services Director)

The Commanding Officer's Quarters Rehabilitation project is under construction and moving ahead of schedule. Presently, the contractor has an estimated completion date of March 2009. In September the City Council approved and affirmed \$156,772 of additional expenditures. An additional \$103,270 allocation from the contingency fund is necessary to address those issues listed in exhibit "A" of the proposed resolution, which include unforeseen structural issues discovered during construction. These appropriations will leave a contingency fund balance of only \$42,260. As a result, it is staff's assessment that additional funding will be needed to resolve future unforeseen matters. Therefore, staff is requesting an appropriation of \$100,000 from City Hall Non-Structural Improvements Project Facility Maintenance fund to be transferred to the Commanding Officer's Quarters Rehabilitation Project.

Recommendation: Adopt a resolution authorizing the Director of Parks & Community Service to execute, on behalf of the City, contract change orders with Pacific Coast Reconstruction & Building Inc. for the Commanding Officer's Quarters Rehabilitation project, affirming staff-authorized modification costs, appropriating \$103,270 from the project contingency for this project and transferring \$100,000 from City Hall Non-Structural Improvements Project Facility Maintenance fund to the Commandant's Rehabilitation Project fund.

E. Second reading and adoption of an ordinance amending Title 8 (Health and Safety) of the Municipal Code to add a new Chapter 8.46 (Foreclosed Properties). (City Attorney)

The proposed ordinance was introduced at the October 21, 2008 Council meeting. In response to the recently enacted Senate Bill ("SB") 1137 which is intended to lessen some of the negative effects of the foreclosure crisis, this ordinance seeks to authorize staff to impose the civil fines and penalties authorized by SB 1137.

Recommendation: Adopt the ordinance authorizing the City to issue civil fines and penalties of up to \$1,000 per day for failure to maintain foreclosed properties.

F. Review of investment report for the quarter ended June 2008.(Finance Director)

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Audit and Finance Committee has reviewed these reports and recommends acceptance. There is no effect on the City's budget.

Recommendation: Accept, by motion, the investment report for the quarter ended June 2008.

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

VIII. PUBLIC HEARINGS:

A public hearing should not exceed one hour in length. To maximize public participation, the council requests that speakers be concise and avoid repetition of the remarks of prior speakers. Instead, please simply state whether you agree with prior speakers.

IX. ACTION ITEMS (7:30 P.M.):

A. Approval of AT&T Permit Application and Review Process for U-Verse Service (Project Lightspeed). (Community Development Director & Public Works Director)

AT&T has submitted an application to install various system improvements citywide as part of their U-Verse service to provide upgraded communication facilities (including digital video) to the residents and businesses within Benicia. On September 2nd, the City Council reviewed this application and requested responses to concerns raised during the meeting including: need for service to the Industrial Park; graffiti removal program; notification requirements for affected property owners; and, verification on need for above-ground cabinets. Staff is recommending that the City Council approve the encroachment permit application process that will require AT&T to have each above-ground cabinet installation go through a public notification process and staff-level review and approval.

Recommendation: By motion, approve the permit application review and approval process for the installation of citywide upgraded communication facilities as part of AT&T's U-Verse service.

X. INFORMATIONAL ITEMS (8:15 P.M.):

A. Review of Voluntary Campaign Expenditure Limits. (City Attorney)

Over the past several years, the City Council has considered a variety of campaign related ordinances. The Council has adopted a Code of Fair Campaign Practices ordinance as well as a Campaign Disclosure in Candidate Elections ordinance. At one of the Council's priority setting sessions, the Council decided to agendaize whether to direct staff to draft additional campaign related ordinances. The ordinances could provide for voluntary recusal for actions involving contributors to a campaign, listing out subcontractors on disclosure statements and disclosing contributors for mass mailers.

Recommendation: Provide direction to staff on whether additional campaign related ordinances should be drafted.

B. Reports from City Manager

XI. COUNCIL MEMBER REPORTS (8:30 P.M.):

A. Request to agendaize a discussion of First Street sidewalk cleaning during the summer months by the Public Works Department. (Vice Mayor Campbell)

City ordinances do not allow trash to go into gutters or the hosing down of sidewalks to clean them. In an effort to keep the First Street sidewalks clean to promote tourism and commerce, and also as a public health issue, it is requested to write in an exemption to City ordinances 13.35.060 and 15.64.090 to allow the cleaning and hosing down of the First Street sidewalks by the Public Works Department once a month in July, August and September.

Recommendation: Consider agendaizing for a future City Council meeting.

XII. ADJOURNMENT (8:45 P.M.):

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-agendaized matters under public comment, and on agendaized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

Should you have material you wish to enter into the record, please submit it to the City Manager.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, 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.

Public Records

The agenda packet for this meeting is available at the City Manager's Office and the Benicia Public Library during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the City Manager's Office located at 250 East L Street, Benicia, or at the meeting held in the Council Chambers. If you wish to submit written information on an agenda item, please submit to the City Clerk as soon as possible so that it may be distributed to the City Council.

 [VII-A Minutes.pdf](#)

 [VII-B State Park Road.pdf](#)

 [VII-C WWTP Blowers.pdf](#)

 [VII-D Commanding Officer's Quarter Rehab.pdf](#)

 [VII-E Foreclosure Ordinance.pdf](#)

 [VII-F Investment Report.pdf](#)

 [IX-A Project Lightspeed.pdf](#)

 [X-A Voluntary Campaign Exp.pdf](#)

 [XI-A-Request to Agendize.pdf](#)

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
OCTOBER 7, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, October 7, 2008 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, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Patterson 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:

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
One unexpired term to September 30, 2010
- Economic Development Board
One full term to July 31, 2012
- Human Services & Arts Board
One unexpired term to July 31, 2009

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200.

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- Recognition of National Red Ribbon Week – October 21 – 27, 2008
- No Drugs Down the Drain! Week – October 4 - 11, 2008

ADOPTION OF AGENDA:

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Kathy Kerridge and Gene Daugherty – Mr. Daugherty and Ms. Kerridge discussed the issue of a sustainability commission. They would like the City to have a public forum to discuss such a commission.
2. Alan Shore – Mr. Shore discussed the change in quality and writing style of the Benicia Herald. He also discussed the issue of socially responsible business opportunities and venture capitalists.

CONSENT CALENDAR:

Council pulled item VII-G.

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

The Minutes of September 9, 2008 and September 16, 2008 were approved.

RESOLUTION 08-105 - A RESOLUTION RESCINDING THE CHEMICAL CONTRACT WITH SIERRA CHEMICAL COMPANY AND AWARDDING A CHEMICAL CONTRACT TO OLIN CHLOR ALKALI PRODUCTS TO FURNISH CHLORINE TO THE CITY OF BENICIA FOR THE TREATMENT OF WATER FOR THE REMAINDER OF FISCAL YEAR 2008/09 AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 08-106 - A RESOLUTION ACCEPTING THE BIDS FOR THE UNTREATED WATER TRANSMISSION LINE REPAIR PROJECT, AWARDDING THE CONSTRUCTION CONTRACT TO ARGONAUT CONSTRUCTORS OF SANTA ROSA, IN THE AMOUNT OF \$213,000, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

Council approved the denial of claim against the City by James Lewis and referral to insurance carrier.

Council approved the denial of claim against the City by Ronald King and referral to insurance carrier:

Council approved the denial of claim against the City by DeSilva Gates Construction and referral to insurance carrier:

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Second reading and adoption of an ordinance amending Title 9 (Public Peace, Morals and Welfare) to change the title of Chapter 9.28 from (Night Curfew) to (Youth Protection) and add Article 2 (Daytime Curfew) to Chapter 9.28 (Youth Protection) of the Benicia Municipal Code:

Vice Mayor Campbell inquired about performance criteria measurements.

Council and Staff discussed having detailed staff reports, coming back with a staff report detailing how performance criteria measurements would be handled, having Staff come back in one year to review the information, and how the ordinance would be enforced during the open campus lunch hour.

ORDINANCE 08-17 - AN ORDINANCE AMENDING TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) TO CHANGE THE TITLE OF CHAPTER 9.28 FROM (NIGHT CURFEW) TO (YOUTH PROTECTION) AND ADD ARTICLE 2 (DAYTIME CURFEW) TO CHAPTER 9.28 (YOUTH PROTECTION) OF THE BENICIA MUNICIPAL CODE

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

PUBLIC HEARINGS:

Vacation of a portion of the West K Street right-of-way adjacent to 1356 West K Street and land exchange benefiting the West 14th/K Street public access:

Dan Schiada, Public Works Director, reviewed the staff report.

Council and Staff discussed the public input process, the uniqueness of the property, and deed restrictions.

Public Hearing Opened

Public Comment:

1. Richard Bortolazzo, Applicant – Mr. Bortolazzo discussed the uniqueness of the land in question.

Public Hearing Closed

RESOLUTION 08-107 - A RESOLUTION ORDERING THE VACATION OF A PORTION OF WEST K STREET RIGHT-OF-WAY ADJACENT TO 1356 WEST K STREET

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

RESOLUTION 08-108 - A RESOLUTION APPROVING A LAND EXCHANGE WITH THE PROPERTY OWNER OF 1356 WEST K STREET BENEFITING THE WEST 14TH/K STREET PUBLIC ACCESS

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor
Patterson

Noes: None

Benicia Business Park Rezoning, Master Overlay, Vesting Tentative Map and Addendum (continued public hearing on traffic issues and action on the project by the City Council):
Mayor Patterson discussed procedures for public comment at public hearings, and Council's Code of Conduct.

Jim Erickson, City Manager, introduced the item.

Charlie Knox, Community Development Director, reviewed the staff report.

Dan Schiada, Public Works Director, reviewed a PowerPoint presentation titled 'Benicia Business Park Project Supplemental Transportation Assessment' (hard copy on file).

Heather McLaughlin, City Attorney, reviewed the rules for public comment. Public comment on this item was limited to comments on traffic, public comment on all other items was closed on 6/3/08, the public hearing portion of the item should be limited to one hour so Council could have ample time to deliberate, Council was not limited in what it could discuss, Council should discuss the entire project and addendum, rules for spokesperson comments, and the applicant's rebuttal time limit of five minutes.

Council and Staff discussed the issue of limiting public comment to discussion on the traffic study, and the relationship of traffic to air quality.

All Council Members disclosed ex-parte communications they had on this item.

Council and Staff discussed truck restrictions on East Second Street, the intersection at East Second Street and Military, the a.m. peak times, lead/lag and split phasing, midday peak traffic, construction period impacts, air pollutant impacts, the intersection at East Second Street and Military, having a roundabout, feasibility of installing a roundabout, and General Plan discussions on the issue in 1996.

Applicant:

Louis Parsons, Discovery Builders, Inc. stated that he received and reviewed the supplemental traffic report. They (Discovery Builders, Inc.) agree with the assessment. They realize there have been modified conditions. They understand the new mitigation measures that came about as a result of the traffic study. They feel the exercise has been helpful. He addressed the issue of AB 32, mitigation measures, TDM measures, carpool, van pool, free shuttle, transit center, traffic calming, etc. He discussed the concerns related to East Second Street and the intersections at I-780 - they looked at the augmented conditions, and understand and agree to all of that. City Staff has done a very sufficient job. Discovery Builders, Inc. does not have an issue with the conditions or mitigation measures as presented tonight.

Organized Groups:

Benicia First:

Mr. Steve Goetz, Benicia First, reviewed a PowerPoint Presentation (hard copy on file). Mr. Goetz discussed Benicia First's concerns relating to traffic and the project.

Vice Mayor Campbell asked Ms. McLaughlin if he had a conflict of interest with this item due to the location of his residence. Ms. McLaughlin stated that he should be fine.

Marilyn Bardet, Benicia First, discussed Benicia's zoning codes relating to the project relating to human health and environment. She referenced all documentation she submitted (copies on file). Ms. Bardet discussed traffic congestion, public health impacts, design flaws in the project plans, air quality impacts, the addendum being an insufficient level of review to address the concerns, severe traffic congestion problems, comparing the revised project to the original project, the revised project not meeting the spirit of AB 32, tailpipe and roadway emissions and the severe health impacts they have on people, and the fact that the conditions of approval cannot get at the fundamental flaw in the design.

Green Gateway:

Roger Straw, Green Gateway Group, urged a no vote on the project. He discussed concerns regarding traffic impacts, air quality impacts, green house gas reduction targets, traffic study does not address air quality, consideration of the health of the children at Robert Semple Elementary, the traffic that will occur during the mid-day peak hours, the fact that property owners might not go along with the widening of East Second Street, pedestrian safety when crossing the streets in the area, inadequate mitigation measures,

additional vehicles traveling on Lake Herman Road, proposed shuttle service not being the hybrid type as they had previously suggested, inviting smaller clean tech businesses into the area, and the fact that the Green Gateway Group is eager to build and have a project, but Council has to vote no tonight.

Mark Wolfe, Counsel, Green Gateway Group, lodged an objection to the comments being limited to the supplemental traffic study. He discussed concerns relating to the limitations on comments, the revised statement of overriding considerations, and the rules of the Brown Act.

Ms. McLaughlin discussed Council's ability to beef up the findings on the statement of overriding considerations if it approves the project (if the resolution is adopted).

Mr. Wolfe discussed the levels of service at East Second Street and Military, new significant impacts, the fact that the public has not had an opportunity to review and provide a meaningful critique of the analysis, the supplemental traffic study needs to be re-circulated in the form of a subsequent EIR, Council's ability to determine whether the benefits of the project are sufficiently well defined to justify suffering the environmental costs, the EIR, and CEQA requirements. He stated that the project imposes environmental impacts. It is not worth it. Council should not be afraid to make that decision.

Benicia Unified School District:

Janice Adams, Superintendent, Benicia Unified School District (BUSD), discussed concerns regarding the health and safety of the students at Robert Semple. She stated that BUSD's consultants reviewed the traffic study. She discussed their lack of time to review the study. She discussed the issue of traffic safety. BUSD felt that the project should not be approved due to the negative impacts of the increased traffic.

Rosie Switzer, BUSD School Board President, stated that the District's priority is the health and safety of the students. She stated that until an agreement is made to erase anything bad with air quality, sound quality, traffic problems, etc. Council should not approve the project. We need to put the youngest community members first.

Council Member Schwartzman asked what things needed to be in writing. President Switzer stated it was having the air filtration system connected to HVAC, replacing all windows with double paned glass, noise reduction (sound wall), safety for kids walking, safety for people driving, and upgrades to the pedestrian tunnel. She stated that BUSD had given a list to Discovery Builders, Inc. with its concerns; however, it had not yet received a response from them.

Andre Stewart, Trustee, BUSD School Board Trustee, discussed asthma issues possibly caused by living by the train tracks in Chicago, the issues of unintended consequences, the need to do it correctly to avoid future litigation, reduced attendance at school due to illness, and the difficulty the District will have with recruiting teachers to the site.

Public Hearing Opened

Public Comment:

1. Brooks Peddler - Mr. Peddler spoke in support of the project. He discussed various positive aspects of the project and what it would do for Benicia.
2. Sabina Yates – Ms. Yates spoke in opposition to the proposed project. She discussed her grandchildren attending Robert Semple, air pollution in the Robert Semple neighborhood.
3. Elaine Estrada – Ms. Estrada spoke in opposition to the proposed project. She discussed the issue of environmental health and safety, air pollution, traffic impacts in the area, overriding considerations, and AB 32. She urged Council to vote no on the project.
4. Alan Shore – Mr. Shore spoke in opposition to the proposed project. He collected 14 signatures from local merchants (copy on file). He discussed there being better options available that will incorporate the First Street merchants in the future, Benicia’s General Plan, and the effects the development would have on the First Street merchants.
5. Julie Chiodo – Ms. Chiodo spoke in opposition to the proposed project. She discussed the health and safety impacts the project would have on the kids at Semple.
6. Bill Cawley – Mr. Cawley spoke in favor of the proposed project.
7. Rod Cameron – Mr. Cameron spoke in favor of the proposed project. He discussed jobs, employment rates, traffic impacts, and the need to move forward.
8. Donald Dean – Mr. Dean discussed the project, conditions of approval, mitigation measures, air quality threshold, air quality impacts, land use changes and transportation changes that would reduce the greenhouse gas levels. He asked that all restrictions on public comment be withdrawn if this item is continued.
9. Steven Abrams - Mr. Abrams spoke in support of the proposed project. He discussed the accuracy of the traffic study.
10. David Lockwood – Mr. Lockwood discussed concerns regarding traffic impacts and pollution. He spoke in opposition to the proposed project.
11. Tony Johnson – Mr. Johnson spoke in opposition to the proposed project. Robert Semple Elementary is not prepared for the impacts of the project.
12. Phil Garrett – Mr. Garrett spoke in favor of the proposed project.

Council discussed reducing the time for public comment due to the late hour. Council decided not to formally reduce the time people are allowed to speak, but asked the public to keep their comments brief and to be courteous to others and the situation.

13. Brian Tulloch – Mr. Tulloch urged Council to act as stewards of the City. He discussed the need for balance.
14. Joe Kearns – Mr. Kearns spoke in opposition to the proposed project.
15. Jerome Page – Mr. Page spoke in opposition to the proposed project. He discussed how traffic would affect the children’s health, increased air pollution generated by idling cars, and AB 32.
16. Nicole Byrd, Greenbelt Alliance – Ms. Byrd spoke in opposition to the proposed project. She discussed the City’s General Plan.

17. Gary Dias – Mr. Dias spoke in opposition to the proposed project. If the school was not there and the project was approved, would counsel approve building a new school in the same location? He discussed the health and safety of the children.
18. Norma Fox – Ms. Fox spoke in opposition to the proposed project. She discussed the shuttle bus system at Lawrence Laboratory in Berkeley, and the health and safety issues the increased traffic would cause.
19. Dan Smith – Mr. Smith spoke in opposition to the proposed project. He discussed the consensus the community has seemed to reach, and the possibility of moving Robert Semple to the Mills site.
20. Keith Dias – Mr. Dias spoke in favor of the proposed project.
21. Bob Craft – Mr. Craft spoke in favor of a project, however, he was concerned about the impacts of increased traffic and pollution that will result from the proposed project.
22. Jon Van Landschoot – Mr. Van Landschoot spoke in opposition to the proposed project. He discussed concerns regarding the health and safety of the kids.

Public Hearing Closed

Rebuttal:

Ms. Kristina Lawson, Miller Starr Regalia, stated that the project was conceived 24 years ago. Her client agreed to all conditions of approval brought forward by the City. The EIR was certified in February 2008. That document contained the threshold of significance by which this project will be evaluated. The impacts identified in the supplemental traffic analysis are outside of the CEQA analysis. The impacts identified in the supplemental traffic analysis are outside of the CEQA process. It is not a CEQA document. Her client has responded to the information included in letters received by the City from both M. R. Wolfe & Associates and Miller Brown and Dannis. The information in the letters mirrors comments that have already been made throughout the process by various people. Her client has responded to those previous comments. They wanted to incorporate, by reference, the response to those previous comments.

Mayor Patterson called for a 5-minute break at 10:22 p.m.
The meeting was reconvened at 10:34 p.m.

Council and Staff discussed the traffic study and CEQA document, the study not being part of the CEQA documentation, additional impacts identified in traffic study, the addendum being a flawed process, the addendum being the appropriate document, that the supplemental traffic study was a project condition - not a CEQA condition, the addendum not being the appropriate document, changes between the 2007 and 2008 projects, the flawed process with the addendum, delays in the process, that the problem with the process has been the project, and that the 2007 project was rejected because it was not consistent with the City's General Plan.

Council asked applicant if they were willing to commit to the items listed by President Switzer to address BUSD's concerns. Sal Evola, Discovery Builders, Inc. stated that they were in preliminary discussions with BUSD. He does not have a problem with the items

as enhanced mitigation; however, where it got derailed was when he received a full needs assessment and analysis to Robert Semple which included kitchen equipment, painting, etc. What they are willing to commit to, in addition to the six items listed in the traffic study are funding for HVAC filtration upgrade, replacement of windows to address noise concerns, lighting improvements, miscellaneous improvements to the pedestrian tunnel, and miscellaneous sidewalk improvements to Hillcrest Avenue between East Second and East Third Streets.

Council and Staff discussed AB 32, air quality, cumulative impacts, case history relating to this situation, not trading traffic for human health and safety, the need to come up with something everyone can be happy with, the Attorney General's rules for greenhouse gasses, Mayor Patterson's grade for the project (C), the need for an A+ project, the need for grid or modified street pattern, mixed use, performance measures, phasing the project, green technology, creating a project that further minimizes the traffic, public transportation to and from the area, a landscaped sound wall, the issue of the project being in the works when Mills was closed, and the possibility of swapping the Mills and Robert Semple sites.

Council and Staff discussed concerns relating to traffic and transportation, the need for the overriding condition to position the City to deal with today's issues and future issues, getting away from having to deal with cars, having a community advisory panel (CAP) review the process, the need to have a shuttle service, the need for the shuttle service to be hybrid or electric busses, the need for the developer to be open to assisting the City in converting its diesel fleet to a clean fleet, the need for the developer to help fund a citywide transit study, how similar studies vary in findings, that there were various definitions for what an A+ project would be, not wanting to choose between dollars and health, having the establishment of the CAP as part of the project, adding the additional mitigation measures that the applicant agreed to (as stated by Mr. Evola) to the conditions of approval, various requirements of AB 32, addressing issues with trucks and delivery vehicles, low or zero emission vehicles, the need to promote ride sharing programs, car sharing programs, neighborhood electric vehicle program, having a bicycle pool, increasing the cost of driving and parking private vehicles, transportation center, the need to provide incentives, the need for a transportation assessment district, community facilities district, phasing, pads for green tech and bio tech, getting the applicant to agree they will not protest or sue over traffic impact fees, instituting an idling ordinance, determining the consequences of urban decay, having the applicant pay for independent urban decay study, having the recommendations binding as approved by the CAP, and the applicant paying the existing traffic impact fees, the flawed process, the tremendous opportunity for the community to develop itself and increase revenues, the need for the project to conform to the City's General Plan, rearranging the distribution of land use – retail and commercial - to make a huge impact on the traffic, the need for a significant difference in the site design of the project in order to make a significant difference in vehicle miles traveled, concerns regarding the project and economics, the City's criteria for the Master Plan, topography relating to the project – slopes over 10%, criteria for 'whenever possible', congestion management success, the need to ensure all the infrastructures are fulfilled through the community facilities district, the I-680 mitigation measures that have been identified not being on the MTC funding list, including the

addendum comments on the record of proceedings, lumen standards, and the financial impacts of asking the developer to pay the 2008 traffic impact fees as opposed to the 2002 fees (\$3.4 million).

Mr. Evola stated that he was okay with additional four mitigations for Robert Semple as previously stated on the record – in addition to the six mitigation measures that were listed in the supplemental traffic study. The CAP would be acceptable if it had oversight and make recommendation as to how the project complies with AB 32 now as well as into the future, implementation of the TDM Measures, and site planning. Regarding the comment about going after clean tech – that is already an existing condition of approval - #13. Discovery Builders' broker understands the conditions, mitigation measures, and goals of the project. Mr. Evola stated that he was committing to that. He believed that the issue of phasing flexibility is addressed in condition of approval #91. Regarding the shuttle service to Downtown - condition of approval #98 (k) provides for implementation of the TDM Plan. Discovery Builders, Inc. has to participate in and implement it. The only aspect that has been discussed that is not in the TDM Plan is the requirement that the shuttle be clean – either electric or natural gas. He did not have a problem with that. The issues of the revenue sharing agreement and converting existing busses to clean vehicles - that revenue sharing agreement is condition #207, which has been worked out with Staff. That can't be negotiated tonight. It has to come back to Council. However, they can advance the fees so there is no out of pocket cost to do the conversions. Regarding the traffic impact fees – the amount might not seem like a lot, but the City has gotten a lot out of this project, fire, police, etc. The project is already paying its own way. It is a zero out-of-pocket cost to the City for police, fire, public safety, etc.

Council and Staff discussed the issue of implementing a CAP.

Dana Dean discussed her experience in serving on the Valero CAP. The CAP has no authority to determine policy or affect the determinations of the Council. It only communicates with Council through the council member. Council would need to give the CAP some authority with the HPRC or another committee. It is not appropriate to make such a decision at 1:00 a.m. What has been discussed tonight does not approach what the BUSD thinks needs to be done regarding the project.

Verbatim Discussion (as requested by Council) disk #2 19:38 – 30:34:

Vice Mayor Campbell: Well, I think it's time to take a vote. You know, we've got a resolution here that is to, yours to deny, this one says to accept the Business Park, and so I'm going to make a motion to vote on this. A resolution of the City Council of the City of Benicia adopting the addendum to the Benicia Business Park Final Environmental Impact Report, adopting findings related to the project, and a Statement of Overriding Considerations, and approving the Mitigation Monitoring and Reporting Program for the project. And that's the one that has that we're accepting the unavoidable impacts and the one to accept the...

Mayor Patterson: That's at page 45?

Vice Mayor Campbell: Yes.

Council Member Hughes: Heather has the...

Mayor Patterson: City Attorney?

Heather McLaughlin: As I mentioned earlier this evening, we can beef up the findings for the Statement of Overriding Considerations if this is the resolution Council wants to adopt. There's been plenty of testimony, and certainly plenty of stuff in the record to support the findings, contrary to what some people have said tonight. But if you would like me to connect the dots, I can do that. Like, for Finding A, regarding jobs, the Addendum estimates that there are 5,000 new jobs, and these jobs are going to reduce the commute, and as has been mentioned, they're going to provide higher quality jobs with green tech, clean tech slant. The General Plan, if you will look on Table 4 of the draft Addendum, on page 17, it goes on for several pages on how the project is consistent with the General Plan, which is the governing body, the governing document for the City. As for item C, the tax bases and services, the previous EIR and economic study estimated that there would be \$40 million surplus funds after funding everything. Over a 25-year period, that number is going to be less, since the project is smaller, but it's still going to be substantial. And maybe more importantly, we're going to get the police, fire, and corp. yard things that have been mentioned earlier. So, that economic development aspect is pretty important. Hillside, creeks – the project has been redesigned to provide better hillside and creek preservation. I think, truly, even though they may not be as much as we want them to be, the conditions in this project really lead it to be on the cutting edge of what a green commercial and industrial project can be. As we noted earlier, we can't find a built project that would be as fabulous as this one, in terms of greenness and AB32 compliance. So, I think it will be an example for other cities on how to do something right. It provides plenty of trails and open space, recreational opportunities for the public that aren't currently available. The project provides that 60% of the land will be kept for open space, including the buffering of development from Lake Herman views. The retail leakage noted in the EIR of \$28 million, (that's the Final EIR) will be captured, and will result in sales tax revenue, jobs, and reduced vehicle miles. The alternative modes of transportation included in Condition 98, and some of the other ones, including funding public transit, bikeways, and other things, are a good thing that we would not get otherwise. And, I think that's just a quick summary of some of the benefits the project will give us if Council chooses to approve it. And those items should be included in the overriding considerations.

Mayor Patterson: Okay, when we have a second, we can discuss that if necessary. Is there a second to the motion?

Council Member Hughes: Can I get a clarification?

Mayor Patterson: On the motion?

Council Member Hughes: On the motion. So, you're taking the Staff's recommendation to approve the project. But, I want to make sure that it includes the additional conditions that the applicant committed to tonight.

Vice Mayor Campbell: Actually...Okay, we will do that.

Council Member Hughes: Okay, I will second then.

Heather McLaughlin: Or, should those conditions really be in the next resolution, because that's the resolution with the Conditions of Approval. I think the conditions that they've talked about...

Council Member Hughes: Yeah, that's fine. I second the motion.

Mayor Patterson: Okay, again, then can we restate the motion please? City Clerk?

Lisa Wolfe: (inaudible)

Mayor Patterson: Well, the resolution of the City Council of the City of Benicia, adopting the Addendum to the Benicia Business Park Final Environmental Impact Report, adopting findings related to the project, and a Statement of Overriding considerations, and approving the Mitigation Monitoring Program. So, we actually would discuss what you just presented orally.

Heather McLaughlin: Yes, please.

Mayor Patterson: And then, the conditions would go, what's the page number in the packet for the next...

Vice Mayor Campbell: Page 45.

Mayor Patterson: Yeah, I've got page 45, but...

Heather McLaughlin: Page 45 is the actual resolution itself. Page 47 is where the findings begin. But the Overriding Considerations is on...

Mayor Patterson: Well, I will vote against this because, as I have said, I don't consider the Addendum as the appropriate approach to this project, because it is a new project. And I certainly don't agree that...

Council Member Hughes: Excuse me, but a point of order. We have a motion and a second? Are we not going to take roll?

Mayor Patterson: Yes, we do, and I'm discussing how I would vote.

Council Member Schwartzman: Well, we're open for discussion.

Mayor Patterson: And, well, I have tried to have why I voted on the record, and I have not succeeded in doing that, thank you. Therefore, I'm making it clear at the beginning why I'm going to vote the way I am, so it's in the record. And, that I don't agree with all the statements in the Overriding Findings. Many of the benefits are the results of the

project, and they would be subject to mitigation. And, I do agree with the idea that we want to have jobs, but I have no certainty that these jobs are going to benefit Benicia. And we're operating off of an economic study that was done in the early 2005, if I remember correctly. And you all might have noticed that our economy is not the same as it was in 2005. At the very least, we should take a look at what that means. So there's just a host of things which could be remedied, by the way, and hope springs eternal, that perhaps, by denying this, we can actually get to the project that we want.

Council Member Ioakimedes: I have a question for the City Attorney. The motion that's on the floor right now, is the resolution that is on page B45? There will be another motion for the one on page B47?

Heather McLaughlin: No. There will be another motion if you approve B45, to approve the resolution that's on page 183. The part that's on 47, and the part that's exhibit B, which is on page 110, will be included as part of the resolutions, so you don't need a separate action on those.

Council Member Ioakimedes: But if there's a vote to deny, then there isn't any subsequent vote, is there?

Heather McLaughlin: Right.

Council Member Ioakimedes: Okay. Thank you.

Council Member Schwartzman: Thanks, Mayor. Okay, so I just heard from the developer that the developer would agree to a whole bunch of conditions that improve the project, I think, dramatically. And, are we going to have an opportunity, if by chance the first one passes, an opportunity to ask the developer for some more conditions? Or, are we done?

Heather McLaughlin: No, you can ask the developer for conditions or for clarification before you go on to the next resolution.

Council Member Schwartzman: Okay, so if the one we've got on the table now passes, we can go back to the table and think about other conditions. If the one that we have on the table now fails, we don't go any further, we're done. Is that the way I understand it?

Heather McLaughlin: Well, then I would suggest that we do a resolution of denial. You all could direct me to go back, using the model from June 3rd, with the findings or whatever you came up with.

Council Member Schwartzman: Okay, well, I just think we're getting pretty close to being able to get a bunch of stuff done. I just heard the developer agree to a lot of things, and I think there's maybe a few other conditions we can get in there, which are pretty much... The whole idea of a CAP... We haven't had a chance to discuss the CAP, what that would be, if there's teeth, or anything else. When could we do that?

Mayor Patterson: Well, you... The discussion on the conditions would come after the vote.

Council Member Schwartzman: But only if it passes.

Mayor Patterson. Right. But if it's a fatally flawed environmental process...

Council Member Schwartzman: It's okay. I understand. That's a difference. Well, I don't feel that it's fatally flawed as far as that's concerned. I would like to support this one so we can get at the conditions, okay, and really beef this up, and get pretty much everything we've been asking for. So, that's the direction I'm going.

Mayor Patterson: Okay, any further discussion? Call for the vote please? Ms. Wolfe?

Lisa Wolfe: Council Member Campbell?

Council Members Campbell: No.

Lisa Wolfe: Hughes:

Council Member Hughes: Yes

Lisa Wolfe: Ioakimedes?

Council Member Ioakimedes: No.

Lisa Wolfe: Schwartzman?

Council Member Schwartzman: Yes.

Lisa Wolfe: And Mayor Patterson?

Mayor Patterson: No.

Heather McLaughlin: Alright, so since you didn't approve...

Mayor Patterson: So, we give direction to Staff to prepare a resolution of denial for the 'Approving a Vesting Tentative Map, Master Plan Overlay, and rezoning for the Benicia Business Park Project, with conditions.'

Heather McLaughlin: Yes, the works.

Mayor Patterson: Thank you. Anything else on our agenda?

Council Member Schwartzman: I don't think so.

Mayor Patterson: Without objection, we are adjourned.

RESOLUTION 08- - A RESOLUTION ADOPTING THE ADDENDUM TO THE BENICIA BUSINESS PARK FINAL ENVIRONMENTAL IMPACT REPORT (EIR), ADOPTING FINDINGS RELATED TO THE PROJECT, AND A STATEMENT OF OVERRIDING CONSIDERATIONS, AND APPROVING THE MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PROJECT

On motion of Vice Mayor Campbell, seconded by Council Member Hughes, the above Resolution was not adopted, on roll call by the following vote:

Ayes: Council Members Hughes and Schwartzman

Noes: Council Members Campbell, Ioakimedes, and Mayor Patterson

ACTION ITEMS:

None

INFORMATIONAL ITEMS:

None

COUNCIL MEMBER REPORTS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 1:16 a.m. on 10/8/08

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
OCTOBER 21, 2008

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 5:31 p.m. on Tuesday, October 21, 2008, 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, Ioakimedes, Schwartzman, and Mayor Patterson
Absent: Vice Mayor Campbell

PLEDGE OF ALLEGIANCE:

Mayor Patterson 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:

WRITTEN:

None

PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Heather McLaughlin, City Attorney, read the announcement of Closed Session.

CLOSED SESSION:

- A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9
Number of potential cases: 1 – Maingate Homeowners Association
- B. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION (Subdivision (a) of Government Code Section 54956.9)**
Name of cases: Hamill v. City
- C. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**

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

Number of potential cases: 1

ADJOURN TO CLOSED SESSION:

Mayor Patterson adjourned the meeting to Closed Session at 5:33 p.m.

RECONVENE OPEN SESSION:

Mayor Patterson reconvened the Open Session at 6:36 p.m.

INFORMATIONAL ITEMS:

Update on Priority Projects and Policy Issues:

Jim Erickson, City Manager, introduced the staff report. Due to time constraints, staff would only review the projects that Council and the public would be most interested. Staff reviewed a PowerPoint presentation (copy on file).

Commandant's Residence Restoration:

Council and Staff discussed the appropriated funds from the State, when the Commandant's Residence would be ready for use (with tenant improvements) – sometime between March-June 2009.

Regional Transit Ferry Service to Downtown:

Council and Staff discussed when the workshops would be held to discuss the details of the park/parking, and the allocation of the \$3 million funding for the Regional Transit Ferry Service to Downtown

State Park Road Bike/Pedestrian Bridge Project:

No comments.

Benicia Community Center:

Council and Staff discussed the current costs for the project (approximately \$700,000), and the current internal configuration of the building.

Climate Action Plan:

Council discussed the Cal Poly students joining the team.

BHS Traffic Signal Project:

No comments.

Library Basement Project:

Council and Staff discussed the current status of the project funds.

Policy Calendar:

Council and Staff discussed the current status of the discussions on the Cultural Arts Commission, possible conflicts with various meetings scheduled on 11/18/08, pushing the discussion on the Formula Business Regulations until January 2009, keeping the

agenda light on 11/4/08 due to the Presidential Election being held that night, and clarification on items designated as 'nominated.'

ANNOUNCEMENTS:

Actions taken in Closed Session:

Heather McLaughlin, City Attorney stated that Council gave direction to Staff to settle the Maingate claim and the Hamill lawsuit, and received information from Staff on a case.

ADJOURNMENT:

Mayor Patterson adjourned the special meeting at 6:58 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
OCTOBER 21, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:02 p.m. on Tuesday, October 21, 2008 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, Ioakimedes, Schwartzman, and Mayor Patterson
Absent: Vice Mayor Campbell

PLEDGE OF ALLEGIANCE:

Lisa Wolfe 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:

Actions taken in Closed Session:

Heather McLaughlin, City Attorney stated that Council gave direction to Staff to settle the Maingate claim and the Hamill lawsuit, and received information from Staff on a case.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
One unexpired term to September 30, 2010
- Economic Development Board
One full term to July 31, 2012
- Human Services & Arts Board
One unexpired term to July 31, 2009

Council and Staff discussed the appointment process, the joint interview process, the independent evaluation process, and agendaizing the appointment evaluation process for discussion so that the public could participate.

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office of City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4210 or by email acardwell@ci.benicia.ca.us.

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- Recognition of Arbor Day and Tree City USA Qualification Event

PUBLIC COMMENT:

1. Roger Straw – Mr. Straw lodged a formal objection to the agenda as presented, as it was not in keeping with the record of the last Council meeting, as well as it was in violation of Council's Rules and Procedures. He discussed concerns regarding item IX-A. He requested item IX-A, alternative #2, corresponding to resolutions #2 and #3 in the staff report be stricken from the agenda, and that when Council considers staff's recommendation to continue the item, that it amend the language of Staff's recommendation to make no reference at this time of further review of the defeated project. Mr. Straw and Ms. Street submitted documents to Council for review (copy on file.).

Ms. McLaughlin briefly discussed item IX-A. She stated that it was her belief that the item was legally sufficient. Council could take any one of the items if it wanted to. Council did not need to do a motion to reconsider.

2. Janice Adams, Superintendent, Benicia Unified School District (BUSD) - Superintendent Adams stated that BUSD's attorney submitted a letter to council objecting to item IX-A (copy on file in City Attorney's office). She discussed BUSD's concerns regarding the item being placed on the agenda. In the event the item is continued, BUSD urged Council to reject the project.

Ms. McLaughlin discussed the motion that was made on the project at the last meeting. Council did not vote reject the addendum. The motion that was made was to adopt the addendum, and the motion failed. There was never a motion to reject the addendum.

Superintendent Adams stated that it was BUSD's understanding that the motion was to deny the addendum.

Mr. Erickson clarified that there was not a motion to deny or reject the addendum. There was a motion to approve, and that motion failed. Council has the benefit of any of the options listed in the staff report.

3. Marilyn Bardet – Ms. Bardet discussed how Council requests for reconsiderations are handled. She discussed the issue (via email) with Ms. McLaughlin.
4. Susan Street – Ms. Street inquired about Council's understanding of the vote on the resolution and the direction to staff to create a resolution to deny the addendum.

ADOPTION OF AGENDA:

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

Ayes: Council Members Hughes, Ioakimedes, and Schwartzman

Noes: Mayor Patterson

Absent: Vice Mayor Campbell

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Ann Hansen – Ms. Hansen discussed the Mayor’s Conference that was held at the Benicia Historical Museum. She discussed the sandstone report that was completed for the museum.
2. Phyllis Wika – Ms. Wika submitted various photographs (copies on file) of a portion of sidewalk on Columbus Parkway that had overgrown vegetation that poses a safety concern.
3. Mary Wika – Ms. Wika discussed a letter she received by Carquinez Companies regarding a problem with a lift station near her business, her lawsuit regarding the Rose Center project, and concerns regarding the sewer line and lift station with the Rose Center Project. Staff will get back to Ms. Wika and report back to Council in a timely manner.
4. Karen Posey – Ms. Posey discussed various safety issues around the Rose Center Project, and deaths and injuries that have occurred in the area.
5. Jeanine Seeds – Ms. Seeds discussed Ms. Wika’s husband’s expertise with sewer lines, and concerns regarding decisions made by the City’s planning department,
6. Jon Van Landschoot – Mr. Van Landschoot discussed civic morals and civic morale, proposed adult entertainment businesses in the City, and the upcoming special Planning Commission meeting regarding the issue.
7. Kimble Goodman – Mr. Goodman discussed the Solano County Bike Plan. Council discussed looking into putting that item on a future agenda.

CONSENT CALENDAR:

Council pulled items VII-A and VII-E.

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

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Absent: Vice Mayor Campbell

RESOLUTION 08-109 - A RESOLUTION AMENDING THE CITY’S CONFLICT OF INTEREST CODE

Council approved the denial of claim against the City by Karen Edwards.

Council approved the denial of claim against the City by Bradley Smalley/State Farm Insurance.

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of Minutes of October 7, 2008:

Mayor Patterson listed various minor corrections to the minutes.

Council discussed the action that was taken on item IX-A and the conversations leading up to the vote on that item. Council requested the minutes be revised to include the verbatim discussion on item IX-A from the point the motion was made by Vice Mayor Campbell until the roll was called for that motion.

It was motioned by Council Member Schwartzman, seconded by Council Member Ioakimedes, to continue the Minutes of October 7, 2008 to the next meeting with suggested edits. Council approved continuing the minutes, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Absent: Vice Mayor Campbell

Award of architectural design/process consultant contract for a reuse study for Commandant's residence project:

Public Comment:

1. Belinda Smith – Ms. Smith stated that the Commandant's Residence was a restaurant, it is not that structure. The correct terminology is the Commanding Officer's Quarters, not residence. She would like to see the name changed to Commanding Officer's Quarters.

Staff will check to see what the correct name is and make sure the City uses the correct title.

RESOLUTION 08-110 - A RESOLUTION ACCEPTING THE PROPOSAL FOR REUSE STUDY SERVICES FOR THE COMMANDANT'S RESIDENCE PROJECT, AWARDING THE REUSE STUDY CONSULTANT CONTRACT TO CAREY AND CO. INC., OF SAN FRANCISCO, CALIFORNIA IN THE AMOUNT OF \$24,935, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSULTANT CONTRACT ON BEHALF OF THE CITY

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

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Absent: Vice Mayor Campbell

PUBLIC HEARINGS:

Lower Arsenal Mixed Use Specific Plan and EIR:

Jim Erickson, City Manager, suggested opening the public hearing, and continuing it, because the findings for the certification of the EIR were not made available in the agenda packet, nor were they available tonight. The findings are a critical part of the review process. Since there would be two public hearings on this item, he requested the public not repeat their comments at both hearings. The public hearing would be continued to possibly 11/4, 11/18, or 12/2. Council discussed concerns about having the public hearing on the same night as the Benicia Business Park Project. –

Charlie Knox, Community Development Director, reviewed the staff report.

Council and Staff discussed the recommended prohibition that would be in place until the historic update was done, the possibility of property owners having a process of assessment that could be approved by Planning, concerns regarding the confusing scenarios listed in the staff report, form based zoning, and the City's current zoning.

Adam Weinstein, Project Manager, LSA Associates, reviewed a PowerPoint presentation titled 'Lower Arsenal Mixed Use Specific Plan Final EIR' (copy on file).

Council and Staff discussed the purpose of the Specific Plan, Program EIR, Specific Plan EIR, the Department of Toxic Substance Control doing a detailed, comprehensive site investigation, the site investigation and the health risk assessment done by the Army Corp of Engineers, the feasibility study that will be done by the Army Corp of Engineers some time in the future, the issue of property owners doing phase II soils investigations, and Staff's expectation that no one in the area in question would need to do another EIR.

Public Hearing Opened

Public Comment:

1. Mark Hajjar – Mr. Hajjar spoke in favor of the proposed Lower Arsenal Mixed Use Specific Plan and EIR. Mr. Hajjar suggested various changes to the plan.
2. Marilyn Bardet – Ms. Bardet spoke in opposition to the proposed Lower Arsenal Mixed Use Specific Plan and EIR. She discussed concerns regarding the EIR and proposed plan. She submitted a letter detailing her concerns (copy on file).
3. Richard Bortolazzo – Mr. Bortolazzo discussed how long he has owned the property in the Arsenal, how long it has taken the City to move forward with this issue, the fact that there is a phase II on the Jefferson Ridge, the inappropriateness of the City asking a private property owner to maintain a national district, the project he brought forward in 2001, and the City's need to recognize the need for some private investment in the Arsenal.
4. Jim Triplett, Port of Benicia – Mr. Triplett spoke in opposition to the proposed Lower Arsenal Mixed Use Specific Plan and EIR.

5. Dana Dean – Ms. Dean spoke in opposition to the Lower Arsenal Mixed Use Specific Plan and EIR. She spoke in favor of continuing this item to a future meeting.
6. Chris Howe – Mr. Howe spoke in favor of continuing this item until sometime in January 2009.
7. Belinda Smith – Ms. Smith spoke in opposition to the proposed Lower Arsenal Mixed Use Specific Plan and EIR.
8. Reed Robbins – Ms. Robbins spoke in opposition to the proposed Lower Arsenal Mixed Use Specific Plan and EIR.

Mayor Patterson directed Staff that the process not be exhaustive. It should be somewhat informative, additional conflict resolution approach, it would be useful to see the alternatives to the 50+ year issue that was discussed earlier, it would be extremely useful to have the minutes and the DVD of the Planning Commission, include maps in the packet, as well as being displayed for the public, notify Council (via email) where they can find all of the comments on the FEIR that have been submitted, she is looking forward to the finding on the EIR for reasons not to select the environmentally superior project pursuant to Government Resources Code 21000, and ensure all Council members have a copy of the Conservation Plan.

All Council Members disclosed ex parte communications. Council encouraged the two sides (residential and industrial) to work together, bringing this item back for discussion on 11/18/08, or the first meeting in December, and using the second tier approach to problem solving and conflict resolution.

Public Hearing Continued

Mayor Patterson called for a 5-minute break at 9:28 p.m.
The meeting resumed at 9:34 p.m.

ACTION ITEMS:

Benicia Business Park Rezoning, Master Plan Overlay, Vesting Tentative Map and Addendum:

Mayor Patterson clarified the public comment process for this item. The public could comment on the resolutions and the action that has been suggested by Staff.

Jim Erickson stated that the staff report was toward a continuance. Staff's view is that the field is somewhat open. Staff wants a continuance to have a process where the issues rise up to a level of discussion. He envisioned a facilitated process in the next month, possibly 11/18/08. There are a few issues that we need to continue to work out. Some of them are big. There might be some sort of resolution to those. The project has required a tremendous amount of time, money, and effort. This project fulfills the vision of the General Plan. The plan calls for light industrial in that area. His responsibility is to consider the health of the environment and the economic stability of the City. The city's tax base is basically used up on existing services and contracts. He would like to create the ability to maintain what the City has without tax increases and cutbacks. Before the City goes back to the drawing board, it should look at what it has, what it agrees on, etc.

Charlie Knox, Community Development Director, discussed the Statement of Overriding Consideration, BAAQMD'd low threshold, other industrial projects that don't need a Statement of Overriding Consideration, concerns regarding Robert Semple School, and continuing the item so Council could work out the remaining issues.

Council Member Schwartzman stated that he was not ready to take a vote at the last meeting. He discussed LEED certified industrial projects, and the economics of the proposed project. He expressed support for continuing the item.

Council Member Hughes stated that he reviewed the DVD from the 10/7/08 Council meeting. The failed motion (from 10/7/08) does not put any closure to the issue. He discussed Council's desire to see a project, the amount of time invested in this issue so far, items in the addendum being beneficial to the community, and not wanting to take the risk of taking all of that off of the table. He expressed support for continuing the item.

Public Comment:

1. Rosie Switzer, President, BUSD Board of Trustees – President Switzer read excerpts from the letter BUSD's legal counsel submitted to the City stating concerns regarding this item (copy on file in City Attorney's office).
2. Brian Harkins – Mr. Harkins discussed the problems with the City's process. He discussed BUSD's elimination of bussing, reducing emissions, relocating the students at Robert Semple back to the Mills site, and the need for leadership on the Council to develop mitigation measures for projects.
3. Sue Johnson – Ms. Johnson discussed concerns regarding the item being brought back for discussion. She spoke in favor of rejecting the addendum and project.
4. Marilyn Bardet – Ms. Bardet discussed the lack of a resolution to deny, with findings. She discussed her desire for the developer to bring forward a project that included all of the things that were listed in the conditions of approval that are subject to CEQA, that a CAP is not sufficient to oversee such a huge undertaking such as this, her disappointment in City staff, and concerns about the air quality around Robert Semple.
5. Roger Straw – Mr. Straw spoke in favor of continuing this item so it could be discussed. Staff should bring back a legally prepared resolution to deny the project.
6. Susan Street – Ms. Street stated that she was speaking for Jane Van Der Werf. She read a prepared statement. Ms. Street spoke in favor of a resolution denying the project.
7. Jim Kushera – Mr. Kushera expressed concern about proper procedure. He spoke in favor of a resolution denying the project.
8. Donald Dean – Mr. Dean discussed proper procedure for staff reports and Council agendas. He spoke in favor of a resolution denying the project.
9. Jon Van Landschoot – Mr. Van Landschoot spoke in favor of a resolution denying the project.
10. Greg Snyder – Mr. Snyder discussed the current state of the economy. He spoke in favor of a resolution denying the project.

Mayor Patterson discussed her concern with the process, the clear intent of the vote (taken on 10/7/08), Staff's competency, the remarkable civil process that has taken place, expanding the City's tax base, the future need to reduce green house gasses to 1990 levels, her anger over the process, the process diminishing Council's authority, and the need for the City to have sustainable economic development.

Mayor Patterson discussed the intent of the resolution to deny the addendum (the intent was, as directed to Staff, to prepare a resolution to deny the project), the intention to have the applicant be denied without prejudice, her attempt to reach some accord with Staff, her understanding that there was a vote to deny the addendum – and that there would be a subsequent vote to deny the project, her desire to sit down with developer to come up with a site plan that reduces vehicle miles traveled and a development agreement, the need to have a facilitated process, and the reasons the Addendum doesn't work. She expressed her desire to go forward and fulfill the intent of the vote (to deny the addendum), adopt the resolution that Council still does not have, and then continue the item beyond 11/18/08, and embrace the idea that the project be redesigned.

Council Member Ioakimedes disclosed ex parte communications. He discussed the need for a developer agreement (to protect both sides), his refusal to choose between money and public health, his frustration with the piece meal information Council has received, not wanting to take action on this item until Vice Mayor Campbell is present, and the need to figure out a way to make this work. He asked that if this is brought back for discussion, that Staff give council latitude in talking about more than just denying the project.

Council Member Hughes discussed Council's ability to remain respectful of each other during the process, and his belief after the vote taken on 10/7/08 that Council was still going to have to come back and take action on this item - as failure of a motion was not a formal action on Council's part. He expressed support for continuing discussions, but not for denying the project.

Mayor Patterson discussed her hope that a developer would form a partnership with Seeno – one who understood what the City wanted. She would like to have a motion that reaffirms the no vote on the addendum and make sure we have a resolution for action denying the addendum on 11/18/08, recognizing that there may be continuation of the project for a negotiated/facilitated conversation.

Council Members Schwartzman and Ioakimedes discussed whether or not there could be a viable project and stay within the air quality threshold.

Council Member Schwartzman stated that he wanted to make a motion to deny the project.

Staff and Council discussed the need to identify findings on the inadequacy of the addendum and the denial of the project.

Council Member Schwartzman made a motion to adopt the resolution rejecting the addendum to the Benicia Business Park Final Environmental Impact Report (EIR), proposed findings related to the project, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program and denying the Vesting Tentative Map, Master Plan Overlay, and rezoning for the Benicia Business Park Project.

Ms. McLaughlin clarified that Council needed majority action on the vote.

Mayor Patterson clarified that she supported a resolution to deny the Addendum, continue the meeting to a future date, without taking action on the Vesting Tentative Map, Master Plan, and rezoning.

Council Member Ioakimedes clarified that Mayor Patterson was suggesting Council deny the Addendum, and Council Member Schwartzman was suggesting council deny the project. He would prefer it if all Council Members were present for the vote.

Council discussed what would happen if there were a 2-2 vote. There needed to be a majority vote.

Mayor Patterson suggested adopting a resolution rejecting the addendum to the Benicia Business Park Final Environmental Impact Report (EIR), Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program.

Council Member Schwartzman retracted his motion, which was approved by Ms. McLaughlin.

Council Member Schwartzman stated that he wanted to make a motion that Council not take action on anything tonight, and continue the meeting to 11/18/08, keep the dialogue open with the developer, get the community involved with the developer, and see if we can hammer out those last details – they are big issues – maybe a development agreement is or is not a part of it, maybe changing it to a grid pattern is or is not the answer, maybe a dispersion of commercial throughout the project will or will not go, maybe not having cul-de-sacs will or will not go, maybe we should or should not swap Mills with Robert Semple, and maybe all of that should be on the table

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved continuing the meeting to the 11/18/08 Council meeting, follow the recommendation of the City Manager to have a facilitated discussion with the developer to see if we can reach a final conclusion that will make the bulk of the community comfortable, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None
Absent: Vice Mayor Campbell

On motion of Council Member Schwartzman, seconded by Mayor Patterson, at 11:27 p.m., Council approved hearing the remaining agenda items, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Absent: Vice Mayor Campbell

Introduction of an ordinance amending Title 8 (Health and Safety) of the Benicia Municipal Code to add a new Chapter 8.46 (Foreclosed Properties):

Heather McLaughlin reviewed the Staff report.

Public Comment:

1. Rick Ernst – Mr. Ernst inquired about the proposed fines

Council and Staff discussed the issue of ‘failure to maintain’ as listed in the proposed ordinance.

ORDINANCE 08- - AN ORDINANCE ADDING CHAPTER 8.46 (FORECLOSED PROPERTIES) TO TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE

On motion of Council Member Schwartzman, seconded by Council Member Ioakimedes, Council approved the Introduction and First Reading of the above Ordinance, on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Absent: Vice Mayor Campbell

INFORMATIONAL ITEMS:

Reports from City Manager:

None

Council Member Committee Reports:

1. Mayor’s Committee Meeting - (Mayor Patterson) - Next Meeting Date: November 19, 2008
2. Association of Bay Area Governments (ABAG) - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: October 24, 2008 – Fall General Assembly
3. Audit & Finance Committee - (Vice Mayor Campbell & Council Member Schwartzman) - Next Meeting Date: November 7, 2008
4. League of California Cities - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: November 19, 2008 – Legislative Briefings
5. School Liaison Committee - (Council Members Ioakimedes & Hughes) - Next Meeting Date: November 13, 2008
6. Sky Valley Open Space Committee – (Vice Mayor Campbell & Council Member Ioakimedes) - Next Meeting Date: February 4, 2009

DRAFT

7. Solano EDC Board of Directors - (Mayor Patterson & Council Member Ioakimedes) - Next Meeting Date: December 11, 2008
8. Solano Transportation Authority (STA) - (Mayor Patterson & Council Member Schwartzman) - Next Meeting Date: November 12, 2008 – Annual STA Awards Ceremony
9. Solano Water Authority/Solano County Water Agency and Delta Committee - (Mayor Patterson & Vice Mayor Campbell) - Next Meeting Date: November 13, 2008
10. Traffic, Pedestrian and Bicycle Safety Committee - (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: November 6, 2008
11. Tri-City and County Regional Parks and Open Space – (Vice Mayor Campbell & Council Member Hughes) - Next Meeting Date: To be determined.
12. Valero Community Advisory Panel (CAP) - (Council Member Hughes) - Next Meeting Date: To be determined.
13. Youth Action Task Force - (Council Members Ioakimedes & Schwartzman) - Next Meeting Date: October 22, 2008
14. ABAG/CAL FED Task Force/Bay Area Water Forum - (Mayor Patterson) - Next Meeting Date: November 24, 2008

COUNCIL MEMBER REPORTS:

None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:36 p.m.

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
CONSENT CALENDAR**

DATE : October 15, 2008
TO : City Manager
FROM : Director of Public Works *cut*
SUBJECT : **STATE PARK ROAD BIKE/PEDESTRIAN BRIDGE PROJECT –
APPROVAL OF AN ACCESS AND MAINTENANCE
AGREEMENT AND FUNDING ALLOCATION REQUEST**

RECOMMENDATION:

Adopt the following:

- 1) A resolution approving a grant of easement and maintenance agreement with the State of California for a trail connector from the State Park Road Bike/Pedestrian Bridge Project to the Benicia State Recreation Area.
- 2) A resolution requesting the Metropolitan Transportation Commission allocate \$271,000 in Transportation Development Act (TDA) Article 3 pedestrian/bicycle funding for fiscal year 2008/2009 for the State Park Road Bike/Pedestrian Bridge Project.

EXECUTIVE SUMMARY:

The State Park Road Bike/Pedestrian Bridge project links the Rose Drive/Columbus Parkway area with the Benicia State Recreation Area. To accomplish this, an access and maintenance agreement between the City and State is needed. Additionally, a portion of the project expenditures is eligible for reimbursement from the Metropolitan Transportation Commission. The estimated total cost of the project is \$4,395,000 and is fully funded with various state, federal and local funds.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community and Environmental Health and Safety
 - Strategy 1.10: Maintain air quality (top ten priority)
- Goal 4.00: Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.10: Provide a balanced street system to serve automobiles, pedestrians, bicycles, and transit (G.P. Goal #2.20)

- Strategy 4.20: Maintain and improve existing parks and recreation programs
- Strategy 4.30: Maintain and enhance Benicia’s historic character
- Strategy 4.40: Improve and maintain facilities and infrastructures
- Goal 5:00: Enhance Community Appearance
 - Strategy 5.10: Promote quality design in new construction and remodeling
 - Strategy 5.20: Enhance City gateways

The State Park Road Bike/Pedestrian Bridge project is included on the City Council’s list of Top Ten Priorities.

BUDGET INFORMATION:

The proposed State Park Road Bike/Pedestrian Bridge Project budget is outlined below:

Revenues

Federal-Aid Funds:

Congestion Management and Air Quality grant	\$671,000
<u>Solano Transp. Authority Transp. For Liveable Communities</u>	<u>\$1,000,000</u>
Total Federal Aid Funds	\$1,671,000

Non-Federal Matching Funds:

Transportation Development Act (TDA) Article 3	\$481,000
Traffic Mitigation Fund	\$1,492,000
SF Bay Ridge Trail grant	\$242,000
Delta Conservancy grant	\$60,000
<u>Proposition 1B</u>	<u>\$449,000</u>
Total Local Funds	\$2,724,000

Total Revenues\$4,395,000

Estimated Expenditures

Engineering and Environmental	\$757,000
Construction Engineering	\$437,000
Construction Contingency	\$291,000
<u>Construction</u>	<u>\$2,910,000</u>
Total Estimated Expenditures	\$4,395,000

BACKGROUND:

Agreement with the State of California Department of Parks and Recreation

The State Park Road Bike/Pedestrian Bridge Project will construct a 1,040-foot long bicycle/pedestrian pathway along State Park Road over I-780, linking Columbus Parkway with the Benicia State Recreation Area. A short, 44-foot-long trail connector is proposed to link the new pathway to the existing trail system within the recreation area.

Due to budget constraints, the State of California Department of Parks and Recreation is not able to participate in the cost to construct or maintain this new trail section. Considering the size of the trail segment relative to the scale and cost of the new bridge project, it is in the best interest of the public to incorporate its construction with our project. A document entitled "Agreement and Grant of Easement – Public Roadway" has been prepared that allows the City to construct the trail connector and maintain it within the Benicia State Recreation Area and grants the City an easement for this purpose. Staff recommends adoption of the resolution approving this agreement to allow the project to proceed according to schedule.

Transportation Development Act (TDA) Article 3 Allocation Request

TDA Article 3 funds are derived from .25 cent of the 7.375 cent sales tax and are awarded on a competitive basis to qualifying bicycle and pedestrian projects. The Metropolitan Transportation Commission (MTC) allocates TDA Article 3 funds in Solano County based upon the recommendation of the Solano Transportation Authority (STA). The STA is recommending the City receive \$271,000 in TDA Article 3 funds for the State Park Road Bike/Pedestrian Bridge Project. To receive this funding and be eligible for reimbursement for expenditures incurred in the 2008/2009 fiscal year, a resolution must be adopted requesting the MTC allocate the funding. The adopted resolution will then be forwarded to STA for submission to MTC as part of a countywide coordinated TDA Article 3 claim.

The City has been very successful obtaining TDA Article 3 funding in the past. To date, \$210,000 in TDA Article 3 funding has been spent to complete the preliminary engineering phase of this project. In the future, City staff will continue to apply for grants and other non-local, competitive funding sources for this project, which currently totals \$2.5 million or 55% of the total estimated project cost.

Attachments:

- Proposed Resolution: approving a grant of easement and maintenance agreement with the State of California Department of Parks and Recreation
 - Exhibit 1 – "Agreement and Grant of Easement – Public Roadway"
- Proposed Resolution: requesting the Metropolitan Transportation Commission allocate \$271,000 in Transportation Development Act (TDA) Article 3 funding for the State Park Road Bike/Pedestrian Bridge Project.
 - Attachments A and B
- Location Map: Bike/Pedestrian Trail Connector

Resolution Approving a Grant of
Easement and Maintenance Agreement
with the State of California Department
of Parks and Recreation

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A GRANT OF EASEMENT AND MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA FOR A TRAIL CONNECTOR FROM THE STATE PARK ROAD BIKE/PEDESTRIAN BRIDGE PROJECT TO THE BENICIA STATE RECREATION AREA

WHEREAS, the State Park Road Bike/Pedestrian Bridge Project will construct a 1,040 foot long bicycle/pedestrian pathway alongside State Park Road over I-780, linking Columbus Parkway with the Benicia State Recreation Area; and

WHEREAS, as part of this project a 44-foot-long trail connector will be constructed within the Benicia State Recreation Area linking the new pathway to the existing trail system; and

WHEREAS, the State of California Department of Parks and Recreation, citing budget constraints, is unable to participate in the construction or maintenance cost of said trail connector; and

WHEREAS, a document entitled "Agreement and Grant of Easement – Public Roadway," attached as Exhibit 1, grants an access and maintenance easement to the City for the trail connector; and

WHEREAS, execution of this agreement is a necessary step to complete the right-of-way phase of the project, which must occur in a timely manner so as to not jeopardize the approximately \$1.7 million in federal-aid grant funding.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby approves the "Agreement and Grant of Easement – Public Roadway" with the State of California Department of Parks and Recreation and authorizes the City Manager to sign the agreement on behalf of the City, subject to approval by the City Attorney.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to file a certified copy of this resolution and fully-executed agreement with the Solano County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of November, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

WHEN RECORDED MAIL TO

[
City of Benicia
250 East L Street
Benicia, CA 94510
]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT AND GRANT OF EASEMENT

Agency: Department of Parks and Recreation

PUBLIC ROADWAY

Project: State Park Road Bicycle/Pedestrian Bridge

File: Park unit- year-00x [3]

Assessor Parcel No.: 0079-020-140, Solano County

For valuable consideration, this AGREEMENT AND GRANT OF EASEMENT is made and entered into by and between the STATE OF CALIFORNIA, acting by and through the DEPARTMENT OF PARKS AND RECREATION hereinafter called State, and the City of Benicia, a municipal corporation, hereinafter called Grantee.

State, pursuant to the provisions of Public Resources Code Section 5012 hereby grants unto Grantee, its successors and assigns forever beginning on the date of recordation of this instrument, an easement to locate, relocate, construct, reconstruct, alter, use, maintain, inspect, repair and remove public roadway deemed necessary therefor by Grantee, over, on, under and across that certain real property situated in the City of Benicia, County of Solano, State of California, as described in the attached Exhibit "A", consisting of three (3) pages, and by this reference made a part hereof.

THE PROVISIONS ON THE FOLLOWING TWO (2) PAGES HEREOF CONSTITUTE A PART OF THIS AGREEMENT

Dated _____

GRANTEE: **City of Benicia**

GRANTOR:
STATE OF CALIFORNIA
Department of Parks and Recreation

(notarized signature)

(notarized signature)

By _____
Name: Stephen R. Lehman, Deputy Director
Title: Acquisition and Development

By _____
Name:
Title:

I hereby certify that all conditions for exemption have been complied with and this document is exempt from the Department of General Services approval.

By: _____
Name: Stephen R. Lehman, Deputy Director
Title: Acquisition and Development

PROVIDED, this Grant of Easement is subject to the following terms and conditions:

1. This Grant is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect said real property and the use of the word "Grant" herein shall not be construed as a covenant against the existence of any thereof.
2. Grantee waives all claims against State, its officers, agents, and employees for loss or damage caused by, arising out of, or in any way connected with the exercise of this Easement, and Grantee agrees to protect, save harmless, indemnify, and defend State, its officers, agents and employees, from any and all loss, damage or liability, including, without limitation, all legal fees, expert witness or consultant fees and expenses related to the response to, settlement of, or defense of any claims or liability, which may be suffered or incurred by State, its officers, agents and employees caused by, arising out of, or in any way connected with exercise by Grantee of the rights hereby granted, except those arising out of the sole negligence of State. Grantee will, further, cause such indemnification and waiver of claims in favor of the State to be inserted in each contract for the provision of services which will cause the exercise of the rights granted herein by such contractors.
3. State reserves the right to use said real property in any manner, provided such use does not unreasonably interfere with Grantee's rights hereunder.
4. State reserves the right to require Grantee, at State expense, to remove and relocate all improvements placed by Grantee upon said real property, upon determination by State that the same interfere with future development of State's property. Within 180 days after State's written notice and demand for removal and relocation of the improvements, Grantee shall remove and relocate the improvements to a feasible location on the property of State, as designated by State, and State shall furnish Grantee with an easement in such new location, on the same terms and conditions as herein stated, all without cost to Grantee, and Grantee hereupon shall reconvey to State the easement herein granted.
5. This Easement shall terminate in the event Grantee fails for a continuous period of 18 months to use this Easement for the purposes herein granted. Upon such termination, Grantee shall forthwith upon service of written demand, deliver to State a quitclaim deed, to its right, title and interest hereunder, and shall, on State request, without cost to State, and within 90 days from written demand by State, remove all property placed by or for Grantee upon said real property and restore said premises as nearly as possible to the same condition they were in prior to the execution of this Easement. In the event Grantee should fail to restore the premises in accordance with such request, State may do so at the risk of Grantee, and all costs of such removal and restoration shall be paid by Grantee upon demand.
6. Grantee understands that said Easement is within the Bencia State Recreation Area, a state park, and Grantee agrees to abide by certain regulations and restrictions concerning Grantee's access to said Easement:
 - a. Except in the case of emergencies, prior to any entry upon said land for any of the purposes herein set forth, Grantee shall notify State by written or oral notice to the authorities in charge of said park.
 - b. Grantee shall restrict travel to such roads or routes within said park as said authorities in charge may reasonably designate.
 - c. Use of said roads or routes by Grantee shall be restricted to that use reasonably necessary in connection with the construction, operation, maintenance and repair of said PUBLIC ROADWAY.
 - d. Grantee shall not consent to the use of any of said roads or routes by members of the public without approval of State.

7. In making any excavation on said property of State, Grantee shall make all excavation activities available to the State archaeologist for observation and monitoring. During excavation the State archaeological monitor may observe and report to the State on all excavation. State archaeological monitor shall be empowered to stop construction activities in the event the monitor determines that significant cultural resource values are being disturbed. In the event that significant cultural resource values are being disturbed, all work within thirty feet (30') of the find shall be immediately halted.

Should Grantee or its contractors find any cultural or historical resources in the absence of a State archaeologist, Grantee covenants to halt all work within thirty feet (30') of the find and immediately notify the State Park Archaeologist or State Park Ranger. Grantee further covenants that work shall not resume in the area of the find until authorized by the State Park Archaeologist. Should human bone or bones of questionable appearance be disturbed during excavation, Grantee agrees to halt ALL excavation until the County Coroner and a representative of the local Native American community have examined the remains and determined redisposition. The archaeological conditions shall comply with State Parks directives, Public Resources Code §5024 and §5097 which outlines procedures should Native American remains be found. Work shall not resume in the area of the find until authorized by the State Park Archaeologist.

The contractor shall provide a work schedule to State so that the State archaeological monitor can arrange to be on site on the necessary days; Grantee agrees to include the State archaeologist in any preconstruction meetings with the prime or subcontractors. The archaeologist should be provided at least two weeks advanced notice of the start date.

8. This Agreement and Grant of Easement will be governed and construed by the laws of the State of California.
9. If any party brings an action to enforce or interpret the terms of this Agreement and Grant of Easement or to declare rights under this Agreement and Grant of Easement, including any action in bankruptcy court, and together with the appeal of any such action, the prevailing party will be entitled to its reasonable attorneys' fees and costs as fixed by the court.

OPTIONAL PROVISIONS:

The rights conveyed by this non-exclusive easement are as follows:

- A. To layout, mark, construct, maintain, and repair a multi-purpose, non-motorized path within the easement;
- B. To make minor topographical changes within the Easement for the necessity and convenience of constructing the path;
- C. To establish and maintain appropriate signage and striping within the Easement marking the path and providing directions or other appropriate information in connection with the path;

The obligations conveyed are as follows:

- A. City shall maintain the path.

Exhibit 'A'

LEGAL DESCRIPTION

A NON-EXCLUSIVE PUBLIC PEDESTRIAN AND BIKE PATH EASEMENT OVER ALL THAT REAL PROPERTY IN THE CITY OF BENICIA, COUNTY OF SOLANO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PUBLIC PEDESTRIAN AND BIKE PATH EASEMENT

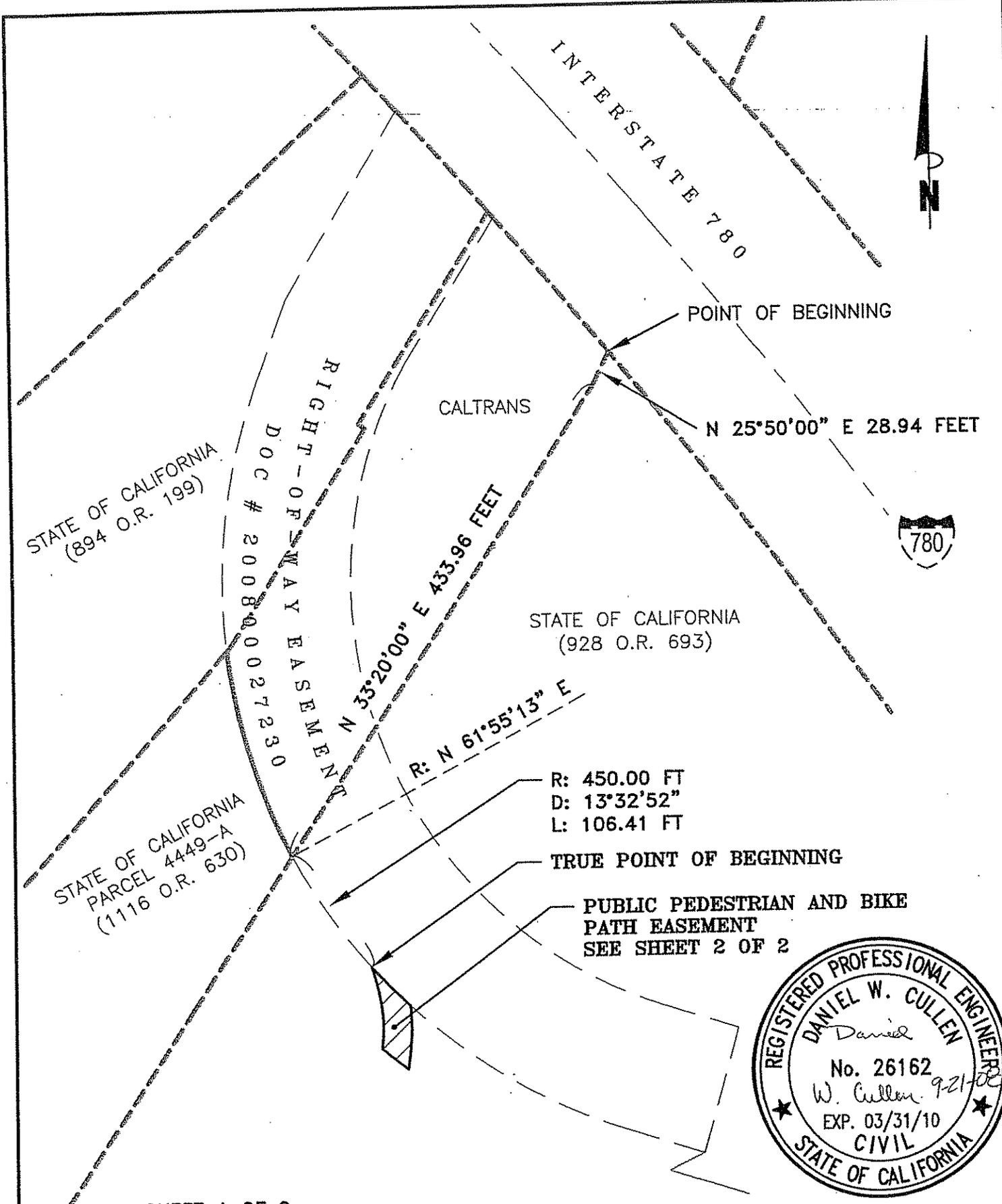
A portion of the Parcel of land described in the Deed from Antonio Lavezzo to State of California, dated January 11, 1957, recorded in Book 928 of Official Records at page 693, Solano County Recorders Office, more particularly described as:

Beginning at the northwesterly most corner of above described Parcel of land; being a point on the southwesterly right of way of Interstate 780; thence departing from said right-of-way along the westerly line of said parcel South 25°50'00" West 28.94 feet; thence South 33°20'00" West 433.96 feet to a point on the southerly boundary of the land described in the Quitclaim Deed from Solano County to the City of Benicia, recorded April 4, 2008 as Document Number 200800027230, Solano County Records Office, being a point on a curve concave to the northeast whose radial bears North 61°55'13" East with a radius 450.00 feet; thence southerly along said curve 106.41 feet through a central angle of 13°32'52" to the TRUE POINT OF BEGINNING of this Public Pathway & Access Easement; thence continuing southeasterly along said curve 42.34 feet through a central angle of 5°23'28" to the beginning of a curve concave to the west whose radial bears South 83°26'19" West with a radius of 152.00 feet; thence southerly along said curve 35.94 feet through a central angle of 13°32'44"; thence South 6°59'04" West 13.80 feet; thence North 50°54'49" West 25.97 feet to the beginning of a curve concave to the west whose radial bears North 83°00'56" West having a radius of 130.00 feet; thence northerly long said curve 53.72 feet through a central angle of 23°40'38"; thence North 16°41'35" West 10.76 feet to the True Point of Beginning.

Containing 1,220.53 square feet, more or less.

See Plat Map Sheets 1 & 2, attached hereto and made a part hereof.





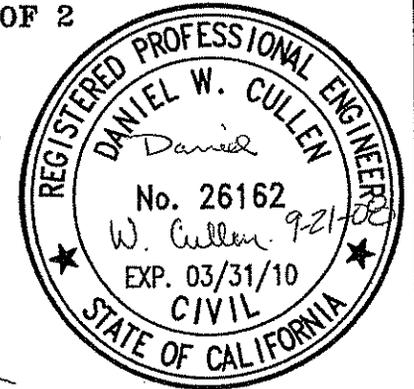
SHEET 1 OF 2

Exhibit 'A'
PLAT MAP
PUBLIC PEDESTRIAN AND BIKE
PATH EASEMENT



1090 Adams Street, Suite A - P.O. Box 59
 Benicia, California 94510
 (707) 745-3219 Fax (707) 745-9436 csa-engineers.com

Cullen-Sherry
 & Associates, Inc.
 Civil Engineering - Surveying



SCALE:	1"=100'
DATE:	09/21/2008
DRAWN BY:	RAS
CHECKED BY:	DWC
PROJECT NO:	07146

VII-B-C

TRUE POINT OF BEGINNING

N 16°41'35" W
10.76 FT

R: N 48°22'21" E

RIGHT-OF-WAY EASEMENT
DOC# 200800027230

R: 450.00 FT
D: 5°23'28"
L: 42.34 FT

R: 130.00 FT
D: 23°40'38"
L: 53.72 FT

R: S 83°26'19" W

**PUBLIC
PEDESTRIAN AND BIKE
PATH EASEMENT**

STATE OF CALIFORNIA
(928 O.R. 693)

R: 152.00 FT
D: 13°32'44"
L: 35.94 FT

R: N 83°00'56" W

N 50°54'49" W
25.97 FT

N 6°59'04" E
13.80 FT



SHEET 2 OF 2

**Exhibit 'A'
PLAT MAP
PUBLIC PEDESTRIAN AND BIKE
PATH EASEMENT**



1090 Adams Street, Suite A - P.O. Box 58
Benicia, California 94510
(707) 745-3219 Fax (707) 745-9438 csa-engineers.com

Cullen-Sherry
& Associates, Inc.
Civil Engineering - Surveying

VII-B-12

SCALE: 1"=100'
DATE: 09/21/2008
DRAWN BY: RAS
CHECKED BY: DWC
PROJECT NO: 07146

Resolution Requesting the Metropolitan
Transportation Commission allocate
\$271,000 in Transportation Development
Act Article 3 Funding for the State Park
Road Bike/Pedestrian Bridge Project

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION
ALLOCATE \$271,000 IN TRANSPORTATION DEVELOPMENT ACT ARTICLE 3
PEDESTRIAN/BICYCLE FUNDING FOR THE STATE PARK ROAD
BIKE/PEDESTRIAN BRIDGE PROJECT FOR FISCAL YEAR 2008/2009**

WHEREAS, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No. 875, Revised, entitled "Transportation Development Act, Article 3, Pedestrian/Bicycle Projects," which delineates procedures and criteria for submission of requests for the allocation of "TDA Article 3" funding; and

WHEREAS, MTC Resolution No. 875, revised, requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the City of Benicia desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the projects described in Attachment B to this resolution, which are for the exclusive benefit and/or use of pedestrians and/or bicyclists.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia declares it is eligible to request an allocation of TDA Article 3 funds, pursuant to Section 99234 of the Public Utilities Code.

BE IT FURTHER RESOLVED by the City Council of the City of Benicia that there is no pending or threatened litigation that might adversely affect the project or projects described in Attachment B to this Resolution, or that might impair the ability of the City of Benicia to carry out the project.

BE IT FURTHER RESOLVED the City Council of the City of Benicia attests to the accuracy of and approves the statements in Attachment A to this resolution.

BE IT FURTHER RESOLVED by the City Council of the City of Benicia that a certified copy of this Resolution and its attachments, including any minor modifications required, and any accompanying supporting materials shall be forwarded by the Director of Public Works to the Solano Transportation Authority for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

* * * * *

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of November, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

ATTACHMENT A

Findings

1. That the City of Benicia is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the City of Benicia legally impeded from undertaking the project(s) described in "Attachment B" of this Resolution.
2. That the City of Benicia has committed adequate staffing resources to complete the project(s) described on Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the City of Benicia within the prior five fiscal years.
8. **That the project(s) described in Attachment B which are bicycle projects have been included in a detailed bicycle circulation element included in an adopted general plan, or included in an adopted comprehensive bikeway plan (such as outlined in Section 2377 of the California Bikeways Act, Streets and Highways Code section 2370 et seq.).**
9. That any project described in Attachment B that is a "Class I Bikeway," meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B are ready to commence implementation during the fiscal year of the requested allocation.
11. That the City of Benicia agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

ATTACHMENT B

TDA Article 3 Project Application Form

Fiscal Year of this Claim: 2008/2009 **Applicant:** City of Benicia
Contact Person: Michael Throne, City Engineer
Mailing Address: 250 East L Street, Benicia 94510
E-Mail Address: Michael.Throne@ci.benicia.ca.us **Telephone:** 707 746-4240
Secondary Contact (in event of primary not available): Mike Roberts, Senior Civil Engineer
E-Mail Address: mroberts@ci.benicia.ca.us **Telephone:** 707 746-4240
Short Title Description of Project: State Park Road Bike/Pedestrian Bridge
Amount of Claim: \$271,000

Functional Description of Project:

Construct a Class I bicycle, pedestrian and equestrian bridge, and path facility alongside State Park Road from Rose Center over Interstate 780 into the Benicia State Recreation Area.

Financial Plan:

List the project elements for which TDA funding is being requested (e.g., planning, environmental, engineering, right-of-way, construction, construction management, contingency). Use the table below to show the project budget. Include prior and proposed future funding of the project. If the project is a segment of a larger project, include prior and proposed funding sources for the other segments (make certain the use of the currently requested funding is made clear in the "Project Elements" section below, and include any other clarifying information on the next page).

Project Elements: Construction and Construction Administration from March 1, 2009 through June 30, 2010

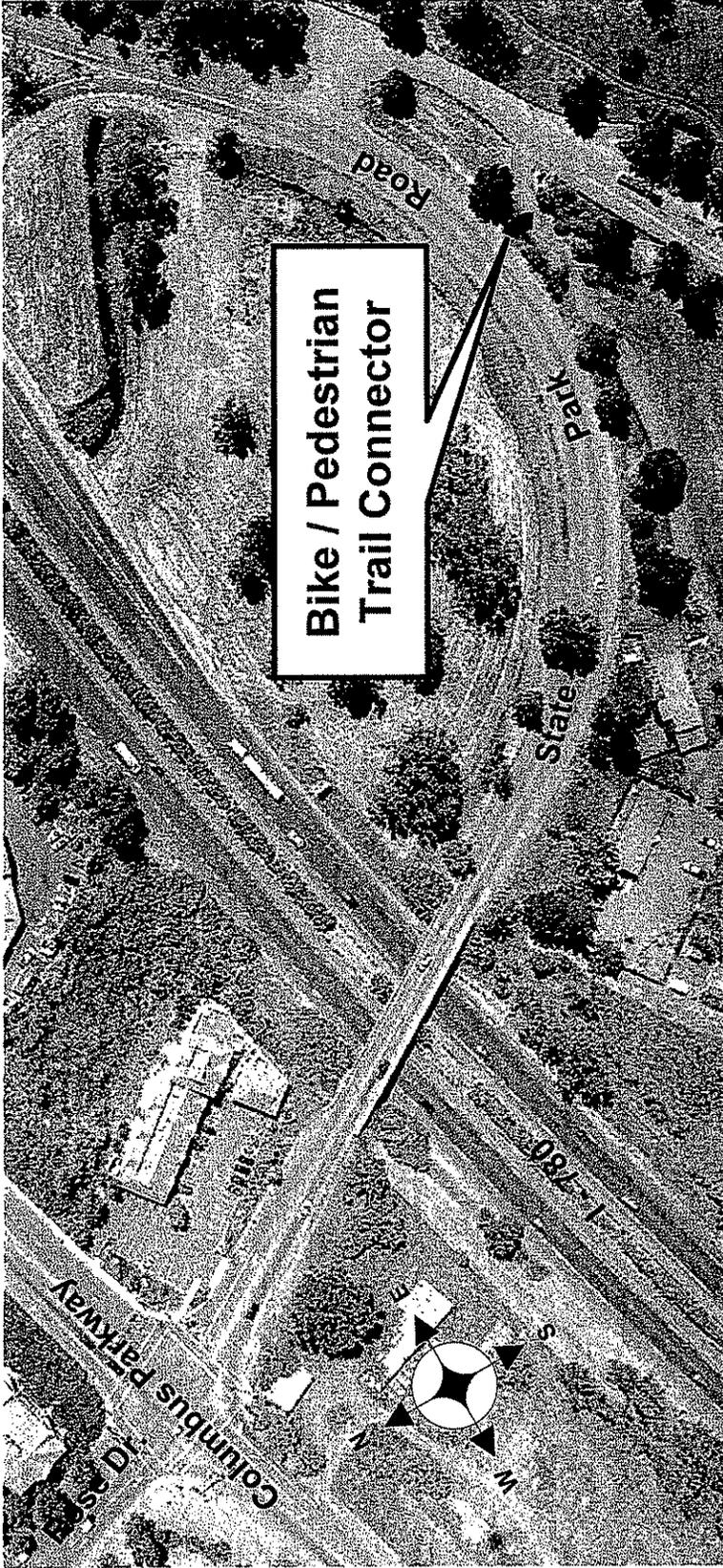
Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3	210	271			481
list all other sources:					
1. CMAQ		671			671
2. STA TLC		1,000			1,000
3. Bay Trail		242			242
4. Delta Trail		60			60
5. Prop 1B	449				1,492
3. Local	546	945			853
4. TBD					
Totals	1,205	3,190			4,395

Amounts shown in thousands of dollars

Project Eligibility:	YES?/NO?
A. Has the project been approved by the claimant's governing body? (If "NO," on the next page provide the approximate date approval is anticipated).	Yes
B. Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on the next page. Project previously received allocations totaling \$210,000.	Yes
C. For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual?	Yes
D. Has the project been reviewed by a Bicycle Advisory Committee? (If "NO," provide an explanation on the next page).	Yes
E. Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (If "NO"	Yes

provide and explanation on the next page; and note that MTC cannot allocate funds to a project which lacks environmental clearance). CEQA cleared August 2002	
F. Will the project be completed within the three fiscal year time period (including the fiscal year of funding) after which the allocation expires? Enter the anticipated completion date of project (month and year) 6-2010	Yes
G. Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency? (If an agency other than the Claimant is to maintain the facility provide its name:) Freeway agreement with Caltrans District 04	Yes

Location Map: Benicia State Park
Bike/Pedestrian Trail Connector



PUBLIC WORKS
DEPARTMENT

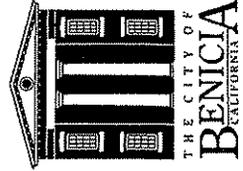
CITY OF BENICIA

Bike / Pedestrian Trail Connector

SHEET
Exhibit 2

DATE
October 2008

PROJECT
State Park Road Bike/Pedestrian
Bridge and Path



REVISIONS		
NO.	DESCRIPTION	DATE

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
CONSENT CALENDAR**

DATE : October 20, 2008
TO : City Manager
FROM : Director of Public Works 
SUBJECT : **PURCHASE OF THREE REPLACEMENT BLOWERS FOR THE
WASTEWATER TREATMENT PLANT**

RECOMMENDATION:

Adopt a resolution authorizing the purchase of three replacement Neuros turbo blowers for the Wastewater Treatment Plant from APG-Neuros Inc. in the amount of \$265,341.81.

EXECUTIVE SUMMARY:

This action authorizes the purchase of three high-energy efficient blowers for the Wastewater Treatment Plant to replace the existing, energy inefficient blowers. The total cost of the three blowers is \$265,341.81 and sufficient funds are available in the Wastewater Enterprise Fund. However, the City qualifies for an incentive program that is currently available through PG&E that will provide a minimum rebate of \$31,113, up to a maximum of \$62,510, which, in essence, would cover up to a quarter of the cost.

STRATEGIC PLAN:

- Goal 1.00: Protect Community and Environmental Health and Safety
 - Strategy 1.10: Maintain air quality (Top Ten Priority)
- Goal 4.00: Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.40: Improve and maintain facilities and infrastructures

This action authorizes the purchase of replacement equipment for the Wastewater Treatment Plant. The new equipment will be high energy efficient, will meet the City's operational needs and will reduce greenhouse gases.

BUDGET INFORMATION:

The total cost of the three blowers is \$265,341.81. However, the City qualifies for an incentive program that will provide a minimum rebate of \$31,113, up to a maximum of \$62,510, which, in essence, would cover up to a quarter of the cost. Sufficient funds are available in Account No. 516-8357-9960 (Wastewater System Replacement.)

SUMMARY:

The aeration system at the City's Wastewater Treatment Plant (WWTP) provides oxygen to microorganisms that breakdown the wastewater. The aeration system consists of three 125 hp blowers that are not energy efficient and are the biggest energy consumers, by far, of all the equipment at the WWTP. One or two blowers are in operation 24 hours a day, 7 days a week with a third serving as a back up. One blower is broken, which means there is no back up at this time. And the other two blowers are nearing the end of their useful life.

APG-Neuros Inc. manufactures a high efficiency 75 hp variable speed centrifugal turbo blower that will meet the needs of the WWTP. Due to advanced design technology, the Neuros blowers are the most efficient among the same class of blowers. The impeller is very efficient as Neuros designed it based on their over ten years' experience in aeronautical and industrial compressor development. The high-speed motor is cooled by blower suction air, so no additional fan for motor cooling is necessary (no additional power consumption.) The blowers are oil-free, thus eliminating the need to change oils or liquids. Further, they have much lower noise and vibration level, which provides for a more comfortable working environment.

This purchase qualifies for the Ecos Air Compressed Air Program that is currently available. Ecos Air is under contract with PG&E to offer incentives to agencies that purchase compressed air systems that save energy. The financial incentive is \$0.10/kilowatt hour (kWh) per kWh saved. Ecos Air conducts verification monitoring to confirm the purchase is a benefit. They fill out all the necessary paperwork on the agency's behalf and file for the PG&E rebate, all at no cost to the agency.

APG-Neuros sent one blower to the WWTP for a free 30-day trial. During the trial period, WWTP staff determined that the Neuros blower meets their operational needs and Ecos Air determined that the City qualifies for the incentive program. Ecos Air monitored the energy usage of the new, trial blower and the existing blowers for one week. Ecos Air determined that the City would recognize energy savings of up to 625,100 kWh/year, which would save up to \$54,772/year. This would cut the aeration system's energy usage and cost by more than half! Based on the energy savings stated above, the incentive of \$0.10/kWh translates into a rebate of up to \$62,510, which, in essence, would cover up to a quarter of the cost of the three blowers.

With these new blowers, the City will realize substantial energy savings, thereby reducing greenhouse gas emissions. One Neuros blower will reduce the City's greenhouse gas emissions by 124.6 metric tons of carbon dioxide equivalents. When two of the new blowers are running simultaneously, the City will save 249.2 metric tons of carbon dioxide equivalents. One blower is equivalent to taking 22.8 passenger cars off the road for one year and two blowers are equal to 45.6.

City staff contacted two references and both agencies highly recommended the Neuros blowers. Ecos Air confirmed with a third agency that they are satisfied with the blower performance as well. These high efficiency blowers are energy efficient, which will help the City reduce its greenhouse gas emissions. Further, now is an opportune time to purchase these blowers due to the PG&E incentive that is currently available.

APG-Neuros Inc. is the only manufacturer of Neuros Turbo Blowers in North America; therefore this is a sole source purchase. No other brand or manufacturer makes a comparable blower as APG-Neuros uses advanced design technology to make their blowers the most efficient among the same class of blowers. In accordance with Benicia Municipal Code Section 3.08.090C, City staff does not need to follow bid procedures when the commodity can only be obtained via sole source procurement. Staff, therefore, recommends purchasing three Neuros Turbo blowers for the Wastewater Treatment Plant from APG-Neuros Inc. in the amount of \$265,341.81.

cc: City Attorney
Assistant Director of Public Works
Wastewater Treatment Plant Superintendent

Attachment:

- Proposed Resolution

PROPOSED RESOLUTION

RESOLUTION NO. 08-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA
AUTHORIZING THE PURCHASE OF THREE REPLACEMENT NEUROS TURBO
BLOWERS FOR THE WASTEWATER TREATMENT PLANT FROM APG-NEUROS
INC. IN THE AMOUNT OF \$265,341.81**

WHEREAS, one of the existing blowers at the Wastewater Treatment Plant is broken and the other two are nearing the end of their useful life; and

WHEREAS, now is an opportune time to purchase replacement blowers as the City qualifies for an incentive program that is currently available through PG&E that will provide a minimum rebate of \$31,113, up to a maximum of \$62,510, which, in essence, would cover up to a quarter of the cost; and

WHEREAS, no other brand or manufacturer makes a comparable blower as APG-Neuros uses advanced design technology to make their blowers the most efficient among the same class of blowers; and

WHEREAS, APG-Neuros Inc. is the only manufacturer in North America for Neuros Turbo blowers; therefore, this purchase must be sole-sourced; and

WHEREAS, in accordance with Benicia Municipal Code Section 3.08.090C, City staff does not need to follow bid procedures when the commodity can only be obtained via sole source procurement.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves the sole source purchase of three replacement Neuros Turbo blowers for the Wastewater Treatment Plant from APG-Neuros Inc. in the amount of \$265,341.81.

On motion of Council Member _____, seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of November, 2008, and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

ATTEST:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
CONSENT CALENDAR**

DATE : October 22, 2008
TO : City Manager
FROM : Director of Parks & Community Service
SUBJECT : **APPROVAL OF CHANGE ORDER AND FUND TRANSFER TO
THE COMMANDING OFFICER'S QUARTERS
REHABILITATION PROJECT**

RECOMMENDATION:

Adopt a resolution authorizing the Director of Parks & Community Service to execute, on behalf of the City, contract change orders with Pacific Coast Reconstruction & Building Inc. for the Commanding Officer's Quarters Rehabilitation project, affirming staff-authorized modification costs, appropriating \$103,270 from the project contingency for this project and transferring \$100,000 from City Hall Non-Structural Improvements Project Facility Maintenance fund to the Commandant's Rehabilitation Project fund.

EXECUTIVE SUMMARY:

The Commanding Officer's Quarters Rehabilitation project is under construction and moving ahead of schedule. Presently, the contractor has an estimated completion date of March 2009.

In September the City Council approved and affirmed \$156,772 of additional expenditures. An additional \$103,270 allocation from the contingency fund is necessary to address those issues listed in exhibit "A" of the proposed resolution, which include unforeseen structural issues discovered during construction.

These appropriations will leave a contingency fund balance of only \$42,260. As a result, it is staff's assessment that additional funding will be needed to resolve future unforeseen matters. Therefore, staff is requesting an appropriation of \$100,000 from City Hall Non-Structural Improvements Project Facility Maintenance fund to be transferred to the Commanding Officer's Quarters Rehabilitation Project.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 4.00: Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.30: Maintain and enhance Benicia's historic character

- Goal 5.00: Enhance Community Appearance
 - Strategy 5.10: Promote quality design in new construction and remodeling
- Goal 9.00: Promote Arts, Culture, Continuous Learning and Historic Preservation
 - Strategy 9.20: Maintain and enhance Benicia’s historic character

BUDGET INFORMATION:

The Commanding Officer’s Quarters Rehabilitation project (Account No. 047-9020-9255) has the following FY 2008/2009 budget:

Project Budget

FY 2008/2009 Adopted Budget	\$2,914,687
Prior Year Carryover from FY 2007/08.....	\$10,834
Project Contingency	\$291,468
Additional Project Contingency Requested (3.4% increase)	\$100,000
Total Project Budget.....	\$3,316,989

A summary of the construction expenditures is outlined below:

Project Expenditures

Construction Contract	\$2,914,687
Project-related expenditures (Hazmat, PG&E, engineering, affirmed 9/2/08).....	\$19,691
Contract change order (approved at 9/2/08 City Council meeting)	\$137,081
Proposed change order (See exhibit A, List 1)	\$42,266
Modification Work (see exhibit A, List 2).....	\$61,004
Total Contingency Expenditures (as of 9/2/08)	\$156,772
Total Contingency Expenditures with pending approval.....	\$260,042
Total Contingency Fund Balance (with carryover added).....	\$42,260
Total Contingency Fund Balance (with \$100,000 fund transfer).....	\$142,260

BACKGROUND:

On May 20, 2008, the Benicia City Council awarded Pacific Coast Reconstruction Building Inc. a contract for the Commanding Officer’s Quarters Rehabilitation project.

To remain on schedule, it is recommended that Council approve the contract changes shown on Exhibit A. List 1 from Exhibit A details fifteen changes needed to be performed by the contractor, including such things as excavation of additional heavy rock for the elevator vault, brick infill, finishes to conceal fire sprinkler system, and additional support beams.

List 2 details a modification that staff deemed necessary to satisfactorily complete the project. Additional testing was required for structural anchors and welds on structural steel. Services were also needed to replace existing sewer lines, that had failed in multiple locations.

With these changes, a balance of \$42,260 will remain in the contingency fund. Unfortunately, staff is aware that before the project is completed it will be necessary to install in new water meter at of a cost of approximately \$36,000. Furthermore, staff anticipates, because of the historic nature of the building, that additional funds will be necessary to address other unforeseen issues. For these reasons, staff is requesting an additional \$100,000 be transferred to the project's contingency fund. These funds would be transferred from an account originally dedicated for improvements at City Hall, primarily window replacement. Should the balance of the contingency not be expended staff is recommending installation of some landscaping on the Commanding Officer's Quarters grounds and a transfer back to the City Hall improvement account.

Attachments:

- Proposed Resolution
- Exhibit A

Proposed Resolution

RESOLUTION NO. 08-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE DIRECTOR OF PARKS & COMMUNITY SERVICE TO EXECUTE, ON BEHALF OF THE CITY, CONTRACT CHANGE ORDERS WITH PACIFIC COAST RECONSTRUCTION & BUILDING INC. FOR THE COMMANDING OFFICER'S QUARTERS REHABILITATION PROJECT, AFFIRMING STAFF-AUTHORIZED MODIFICATION COSTS, APPROPRIATING \$103,270 FROM THE PROJECT CONTINGENCY AND TRANSFERRING \$100,000 FROM CITY HALL NON-STRUCTURAL IMPROVEMENTS PROJECT FACILITY MAINTENANCE FUND TO THE COMMANDING OFFICER'S QUARTERS REHABILITATION PROJECT FUND.

WHEREAS, on May 20, 2008, the City Council awarded Pacific Coast reconstruction & Building Inc. the construction contract for the Commanding Officer's Quarters Rehabilitation Project; and

WHEREAS, during construction various contract change orders and modifications are necessary due to unforeseen structural damage to the facility, and other modifications needed to accommodate the new work; and

WHEREAS, an appropriation of \$103,270 is required from the project contingency; and

WHEREAS, sufficient funds are available in the Commandant's Rehabilitation Project fund (Account No. 047-9020-9255) to make this appropriation; and

WHEREAS, additional contingency funds, totaling \$100,000, are necessary to complete the project; and

WHEREAS, sufficient funds are available in City Hall Non-Structural Improvements Project Facility Maintenance fund to transfer to the Commandant's Rehabilitation Project fund.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the Director of Parks & Community Service to execute on behalf of the City those contract change orders and other modifications with Pacific Coast Reconstruction & Building Inc. for the Commanding Officer's Quarters Rehabilitation Project described in the attached Summary of Contract Changes Exhibit A (List 1) in the amount of \$42,266.

BE IT FURTHER RESOLVED the City Council of the City of Benicia affirms the approval of staff-authorized modifications described in the attached Exhibit A (List 2), in the amount of \$61,004.

BE IT FURTHER RESOLVED that the City Council of the City of Benicia appropriates \$103,270 from the construction contingency.

BE IT FURTHER RESOLVED that the City Council of the City of Benicia transfer \$100,000 from City Hall Non-Structural Improvements Project Facility Maintenance fund to the Commanding Officer's Quarters Rehabilitation Project (Account No. 047-9020-9255).

On motion of Council Member, _____ seconded by Council Member _____, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 4th day of November, 2008 and adopted by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

EXHIBIT A—SUMMARY OF CONTRACT CHANGES

REFERENCE	DESCRIPTION	AMOUNT
LIST 1— CONTRACT CHANGES APPROVED BY THIS RESOLUTION		
CCO 1.1	On going asbestos testing secure samples 197, 178, 163	\$6,044.00
CCO 4.0	Add metal Simpson L 90 straps to 36 rafters	\$999.00
CCO 7.0	Elevator excavation, encountered heavy rock (blue granite)	\$4,978.00
CCO 11.0	Remove secondary floor system to install structural wall ties	\$6,459.00
CCO 14.0	Install additional support beam @ line B & C 1 st floor	\$1,921.00
CCO 16.0	Re-frame & slope roof of all bay windows T & M	\$4,097.00
CCO 17.0	Brick infill in room 107 after none historic feature was removed	\$1,714.00
CCO 20.0	Modify sprinkler heads to be concealed in mansion	\$2,740.00
CCO 23.0	Dry rotted joist replacement T & M	\$3,425.00
CCO 25.0	Rework fire sprinkler system to conceal main line in mansion	\$1,934.00
CCO 26.0	Rework fire system to conceal secondary lines at the main porch	\$1,262.00
CCO 28.0	Add chase to elevator shaft to conceal sprinkler pipe	\$5,098.00
CCO 29.0	Install air gap & tap primer to condensate line for heating unit. Per California building code.	\$1,595.00
Contract Changes Approved by This Resolution		\$42,266.00

LIST 2— CHANGES APPROVED BY STAFF AND AFFIRMED BY THIS RESOLUTION		
Testing	Consolidated testing, on going pull tests of structural anchors. Testing on going of concrete, testing of welds on structural steel.	\$6,616.00
Service	Replace existing sewer line. Existing line is broken in three locations. Tap existing water main and install double detector check valves for new fire protection system. Tap existing water main and add new 2" in domestic service to building w/ back flow.	\$35,250.00
CCO 18.0	Install 26 roof attic vent per building code	\$2,529.00
CCO 24.0	Structural repair of floor joist in room 202 inc. dry rot replacement over main porch	\$16,609.00
Total Changes Approved by Staff and Affirmed by This Resolution		\$61,004.00

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
CONSENT CALENDAR**

DATE : October 24, 2008

TO : City Council

FROM : City Attorney

SUBJECT : **SECOND READING AND ADOPTION OF AN ORDINANCE
AMENDING TITLE 8 (HEALTH AND SAFETY) OF THE
MUNICIPAL CODE TO ADD A NEW CHAPTER 8.46
(FORECLOSED PROPERTIES)**

RECOMMENDATION:

Adopt the ordinance authorizing the City to issue civil fines and penalties of up to \$1,000 per day for failure to maintain foreclosed properties.

EXECUTIVE SUMMARY:

The proposed ordinance was introduced at the October 21, 2008 Council meeting. In response to the recently enacted Senate Bill ("SB") 1137 which is intended to lessen some of the negative effects of the foreclosure crisis, this ordinance seeks to authorize staff to impose the civil fines and penalties authorized by SB 1137.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 1.00: Protect Community and Environmental Health and Safety
 - Strategy 1.30: Protect neighborhoods from risks to health and safety

BUDGET INFORMATION:

Unknown at this time.

BACKGROUND:

Among other provisions, SB 1137 requires that until January 1, 2013, a legal owner must "maintain vacant residential property purchased at a foreclosure sale or acquired by that owner through foreclosure under a mortgage or deed of trust."

Attachments:

- Draft Ordinance

DRAFT ORDINANCE

CITY OF BENICIA

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA
TO ADDING CHAPTER 8.46 (FORECLOSED PROPERTIES) TO TITLE 8
(HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

WHEREAS, Title 8 of the Benicia Municipal Code (the "Municipal Code") was enacted in order to provide a just, equitable and practicable method for preventing, discouraging and/or abating certain conditions which endanger the life, limb, health, property, safety or welfare of the general public and to provide City staff with precise enforcement regulations that can be effectively applied and administered in a fair, expedient, and cost efficient manner; and

WHEREAS, the State of California recently enacted Senate Bill. No. 1137, which authorizes governmental entities to impose civil fines and penalties for failure of property owners who take title to vacant residential property foreclosure to maintain their property up to \$1,000 per day for a violation; and

WHEREAS, the City Council desires to amend Title 8 (Health and Safety) to authorize staff to impose the civil fines and penalties authorized by Senate Bill No. 1137, which has been codified as California Civil Code Section 2929.3, in order to further promote the goals of Title 8 (Health and Safety) of the Benicia Municipal Code.

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

Section 1.

Title 8 (Health and Safety) of the Benicia Municipal Code is amended by adding a new Chapter 8.46 (Foreclosed Properties) to read as follows:

Chapter 8.46

FORECLOSED PROPERTIES

Section:

8.46.010 Foreclosed properties.

8.46.010 Foreclosed properties.

A. The city may issue civil fines and penalties of up to \$1,000 per day, pursuant to the procedures set forth in California Civil Code Section 2929.3, against the legal owner of vacant residential property purchased at a foreclosure

sale or acquired by that owner through foreclosure under a mortgage or deed of trust who fails to maintain such vacant residential property so long as California Civil Code remains in effect.

B. Appeals of Notices of Failure to Maintain Foreclosed Property and Orders to Correct Violations or the civil fines and penalties imposed pursuant to this section may be appealed in the same manner and within the same time limitations as appeals of Notices of Administrative Penalty and Orders to Abate as fully set forth in Chapter 8.06.

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 21st day of October, 2008, and adopted at a regular meeting of the Council held on the 4th day of November, 2008, by the following vote:

Ayes:

Noes:

Absent:

Elizabeth Patterson, Mayor

Attest:

Lisa Wolfe, City Clerk

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
CONSENT CALENDAR**

DATE : May 1, 2008
TO : City Manager
FROM : Finance Director
SUBJECT : **REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT
FOR THE QUARTER ENDED JUNE 2008**

RECOMMENDATION:

Accept, by motion, the investment report for the quarter ended June 2008.

EXECUTIVE SUMMARY:

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Audit and Finance Committee has reviewed these reports and recommends acceptance.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 8.00: Build Organizational Quality and Capacity
 - Strategy 8.20: Measure and track service performance

BUDGET INFORMATION:

There is no effect on the City's budget.

BACKGROUND:

The City's investment portfolio consists of cash balances in checking accounts (less outstanding checks), Local Agency Investment Fund, treasury bills, federal agency notes and trustee accounts which manage the installment payments and reserves for bonds issued by the City.

The City has adequate investments to meet its expenditure requirements for the next six months. In addition, the City's investment portfolio is in compliance with Government Code Sections 53600 et seq. and the City's Investment Policy. The Audit and Finance Committee has reviewed these reports and recommends acceptance.

The attached schedules identify the City's investments by maturity date, investment type, custodian of investment and cost. The market value information is provided by Union Bank and California State Controller's Office for the LAIF investments.

Attachment:

- Investment Report for June 2008.

**INVESTMENT REPORT FOR
THE QUARTER ENDED JUNE 2008**

**City of Benicia
Investment Report
As of June 30, 2008**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Par Value	Cost of Investment	Current Market Value
On Demand							
L.A.I.F.	L.A.I.F.			3.110%	\$ 22,170,348.94	\$ 22,170,348.94	\$ 22,169,245.28
Checking	Bank of America			0.750%	718,220.29	718,220.29	718,220.29
Money Market	WestAmerica Bank			0.100%	0.33	0.33	0.33
Money Market	Union Bank			1.940%	346,493.12	346,493.12	346,493.12
Money Market	Union Bank			1.940%	247,121.26	247,121.26	247,121.26
Subtotal					23,482,183.94	23,482,183.94	23,481,080.28
Up to 6 Months							
US Obligation	FHLB	2-Feb-06	12-Sep-08	4.610%	500,000.00	497,300.00	502,030.00
US Obligation	FFCB	27-Feb-06	10-Oct-08	4.230%	1,000,000.00	983,240.00	1,004,690.00
US Obligation	FNMA	31-Jan-06	15-Oct-08	4.470%	1,500,000.00	1,490,478.00	1,508,910.00
US Obligation	U.S. Treasury	31-Jan-07	30-Nov-08	4.570%	1,000,000.00	993,906.25	1,010,940.00
Subtotal					4,000,000.00	3,964,924.25	4,026,570.00
6 Months to 1 Year							
US Obligation	FHLMC	29-Mar-06	12-Jan-09	3.850%	1,250,000.00	1,212,975.00	1,257,425.00
US Obligation	FNMA	31-Jan-06	15-Feb-09	3.240%	1,500,000.00	1,436,589.00	1,503,750.00
US Obligation	FHLMC	17-Apr-07	5-Mar-09	4.690%	750,000.00	746,885.25	759,607.50
US Obligation	FNMA	17-Apr-07	9-Mar-09	4.260%	750,000.00	740,331.75	757,500.00
US Obligation	FHLMC	5-Jun-07	24-Apr-09	4.680%	1,000,000.00	991,952.00	1,015,310.00
US Obligation	FHLB	8-Dec-06	15-May-09	5.260%	1,000,000.00	1,013,980.00	1,021,250.00
US Obligation	FHLMC	9-Aug-06	21-May-09	5.140%	980,000.00	981,991.36	1,000,221.15
US Obligation	FHLMC	18-Mar-08	21-May-09	5.140%	750,000.00	778,139.25	765,468.75
US Obligation	FNMA	20-Jun-07	15-Jun-09	6.170%	550,000.00	561,569.80	568,733.00
Subtotal					8,530,000.00	8,464,413.41	8,649,265.40
1 Year to 2 Years							
US Obligation	U.S. Treasury	23-Aug-06	15-Aug-09	4.750%	500,000.00	501,210.94	513,360.00
US Obligation	FFCB	6-Oct-06	21-Sep-09	4.880%	1,000,000.00	1,003,740.00	1,025,000.00
US Obligation	U.S. Treasury	30-Nov-06	15-Nov-09	4.490%	500,000.00	500,781.25	515,315.00
US Obligation	FNMA	27-Mar-08	15-Dec-09	4.520%	1,250,000.00	1,298,675.00	1,279,300.00
US Obligation	U.S. Treasury	3-Apr-07	15-Feb-10	4.590%	500,000.00	502,812.50	517,850.00
US Obligation	FNMA	15-May-08	12-May-10	4.050%	1,000,000.00	1,019,994.00	1,017,500.00
US Obligation	FNMA	29-May-08	28-May-10	3.500%	1,000,000.00	998,280.00	1,000,940.00
US Obligation	FHLB	23-Aug-06	11-Jun-10	5.060%	500,000.00	502,590.00	518,905.00
US Obligation	FHLB	29-Aug-07	11-Jun-10	5.060%	1,250,000.00	1,267,018.00	1,297,262.50
Subtotal					7,500,000.00	7,595,101.69	7,685,432.50

**City of Benicia
Investment Report
As of June 30, 2008**

Type of Investment	Name of Issuer	Purchase Date	Maturity Date	Current Yield	Par Value	Cost of Investment	Current Market Value		
2 Years to 3 Years									
US Obligation	FHLMC	16-Jan-07	16-Aug-10	4.720%	500,000.00	497,190.00	516,450.00		
US Obligation	FHLB	11-Mar-08	1-Sep-10	4.830%	1,000,000.00	1,059,102.00	1,035,000.00		
US Obligation	FHLMC	30-Nov-06	8-Dec-10	4.610%	500,000.00	499,370.00	515,625.00		
US Obligation	FFCB	18-Jan-08	18-Jan-11	3.490%	1,000,000.00	1,009,340.00	1,001,560.00		
US Obligation	FHLMC	17-Dec-07	24-Feb-11	4.060%	750,000.00	752,227.50	762,420.00		
US Obligation	FNMA	25-Mar-08	25-Feb-11	3.230%	1,250,000.00	1,250,000.00	1,242,575.00		
US Obligation	FNMA	1-Apr-08	1-Apr-11	3.060%	1,000,000.00	999,750.00	981,880.00		
US Obligation	FNMA	18-Apr-08	15-Apr-11	4.930%	965,000.00	1,022,186.87	1,003,600.00		
US Obligation	FFCB	11-May-07	25-Apr-11	4.640%	500,000.00	498,780.00	516,875.00		
US Obligation	FNMA	25-Jul-06	19-May-11	5.510%	500,000.00	499,218.75	510,000.00		
US Obligation	FHLB	15-May-08	20-May-11	2.690%	1,000,000.00	979,335.00	974,690.00		
US Obligation	FNMA	16-Jun-08	10-Jun-11	3.750%	500,000.00	492,105.00	500,470.00		
	Subtotal				9,465,000.00	9,558,605.12	9,561,145.00		
3 Years to 5 Years									
US Obligation	FFCB	3-Apr-07	8-Dec-11	4.540%	500,000.00	495,205.00	509,375.00		
US Obligation	FHLMC	17-Sep-07	5-Mar-12	4.620%	1,000,000.00	1,003,890.00	1,028,440.00		
US Obligation	FHLMC	11-May-07	3-Apr-12	5.180%	500,000.00	499,820.00	506,285.00		
US Obligation	FNMA	4-Oct-07	18-May-12	4.720%	750,000.00	756,780.00	775,312.50		
US Obligation	FFCB	25-Sep-07	1-Aug-12	5.010%	500,000.00	509,923.50	524,065.00		
	Subtotal				3,250,000.00	3,265,618.50	3,343,477.50		
Total (before fiscal agent accounts)							\$ 56,227,183.94	\$ 56,330,846.91	\$ 56,746,970.68
Fiscal Agent Accounts							60,882.93	60,882.93	
TOTAL INVESTMENT PORTFOLIO							\$ 56,391,729.84	\$ 56,807,853.61	
WEIGHTED AVERAGE MATURITY OF THE INVESTMENT PORTFOLIO							1.89	Years	

Total (before fiscal agent accounts)

Fiscal Agent Accounts

TOTAL INVESTMENT PORTFOLIO

WEIGHTED AVERAGE MATURITY OF THE INVESTMENT PORTFOLIO

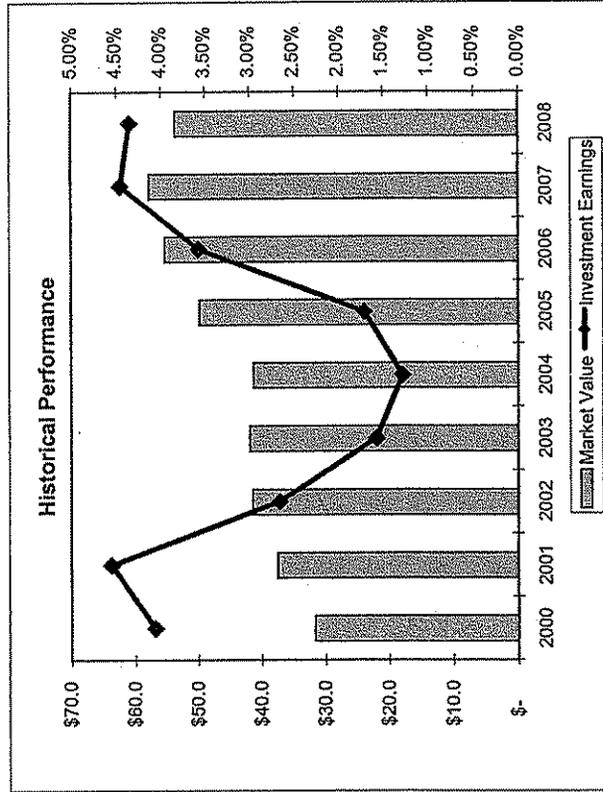
The City of Benicia complies with Government Code Sections 53600 et seq. and the City's Investment Policy. The source of market value is Union Bank of California. The City has the ability to meet expenditure requirements for the next six months. This report, to the best of my knowledge, is accurate representation of the City of Benicia's investments.

R. Sousa _____ Date
 Robert Sousa, Director of Finance 10/02/08

**City of Benicia
Historical Portfolio Comparison**

Market Value (Millions)					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2000	\$ 28.4	\$ 31.2	\$ 31.8	\$ 35.1	\$ 31.6
2001	33.0	36.7	37.7	42.8	37.5
2002	39.3	41.5	40.3	44.6	41.4
2003	39.7	43.4	39.5	44.8	41.8
2004	39.3	42.8	41.1	41.8	41.3
2005	38.7	53.8	50.0	56.6	49.8
2006	46.9	54.9	55.1	64.3	55.3
2007	57.4	59.3	54.4	60.1	57.8
2008	51.9	54.7	51.4	56.8	53.7

Investment Earnings					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2000	3.53%	4.17%	4.15%	4.41%	4.06%
2001	4.76%	4.82%	4.58%	4.07%	4.55%
2002	3.62%	2.72%	2.27%	2.01%	2.66%
2003	1.90%	1.61%	1.41%	1.34%	1.57%
2004	1.38%	1.28%	1.24%	1.20%	1.28%
2005	1.31%	1.43%	1.74%	2.33%	1.70%
2006	2.52%	3.76%	3.84%	4.16%	3.57%
2007	4.34%	4.44%	4.46%	4.57%	4.45%
2008	4.56%	4.48%	4.20%	4.15%	4.35%



Investment Earnings - Dollars					
Fiscal Year / Quarter	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual Average
2008	319,769.25	789,398.11	474,719.57	731,456.95	\$ 578,835.97

**AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
ACTION ITEM**

DATE: October 27, 2008

TO: City Manager

FROM: Director of Public Works
Community Development Director
City Attorney

SUBJECT: **APPROVAL OF AT&T PERMIT APPLICATION AND REVIEW
PROCESS FOR U-VERSE SERVICE (PROJECT LIGHTSPEED)**

RECOMMENDATION:

By motion, approve the permit application review and approval process for the installation of citywide upgraded communication facilities as part of AT&T's U-Verse service.

EXECUTIVE SUMMARY:

AT&T has submitted an application to install various system improvements citywide as part of their U-Verse service to provide upgraded communication facilities (including digital video) to the residents and businesses within Benicia. On September 2nd, the City Council reviewed this application and requested responses to concerns raised during the meeting including: need for service to the Industrial Park; graffiti removal program; notification requirements for affected property owners; and, verification on need for above-ground cabinets. Staff is recommending that the City Council approve the encroachment permit application process that will require AT&T to have each above-ground cabinet installation go through a public notification process and staff-level review and approval.

STRATEGIC PLAN:

- Goal 4:00: Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.40: Improve and maintain facilities and infrastructures

This action approves the process for AT&T to upgrade the citywide communication facilities to residents and businesses.

BUDGET INFORMATION:

AT&T will be installing system improvements at no cost to the City. They will be required to pay the City a 5% statewide franchise fee on video service revenues, which will provide the City with

additional revenues that could eventually be \$40,000 per year. The City will also collect the standard permit, plan check and inspection fees for each encroachment permit application.

ENVIRONMENTAL REVIEW:

The California Environmental Quality Act (CEQA) Guidelines Section 15300.1 exempts ministerial projects from the application of CEQA. The issuance of the encroachment permits is a ministerial action. In addition, CEQA Guidelines Section 15303 exempts new construction of small structures including the installation of small new equipment.

BACKGROUND:

At their September 2, 2008 meeting, the City Council reviewed AT&T's Project Lightspeed application to install new utility system improvements as part of their U-Verse service to provide upgraded communication facilities to the residents and businesses of Benicia. This project requires distribution system upgrades that include the installation of approximately 60 new above-ground cabinets at selected locations throughout town. For the Southamptton area and other newer areas of town, the cabinets typically will be located within public utility easements on private property behind the back of the sidewalks. For the older parts of town, the cabinets will typically be located within the street right-of-way. This work requires the issuance of an encroachment permit from the Public Works Department.

Staff did identify noise and visual impact issues with AT&T's application that were addressed in their application and are summarized in the September 2nd council report. Additional comments were made at this council meeting and at Council's request, AT&T provided responses (copy attached) which are summarized below:

1. What can AT&T provide to the Benicia Industrial Park as part of U-Verse to improve service now? *AT&T will assess the broadband needs and concerns within the Industrial Park by working with BIPA and the city to review current solutions available and determine needs for the future.*
2. What is AT&T's response program to address graffiti on the cabinets? *The new cabinets will be coated with graffiti-resistant coating. AT&T works on a daily basis to keep all their equipment free from graffiti and has a rapid-response graffiti program by calling their 866-243-6122 dispatch number.*
3. What is AT&T's advance notification procedure to property owners affected by the new installations? *AT&T will implement a 21-day advance notice procedure as requested by the City and will work with the owners to live up to their mission of zero complaint calls to the City on this project.*
4. Why can't AT&T install below ground vaults? *AT&T has provided information that indicates that undergrounding of these facilities would not be practical since they would be large vaults that would not fit within walkway areas and would still require above ground*

structures for ventilation that would be almost as large as the above-ground cabinets themselves.

Staff recommends that AT&T have a process for their cabinet installations that they can use with residents as they proceed with installation of these improvements citywide to assist with a consistent approach in the review and approval process. Initially, there are 10 locations that AT&T is requesting approval of the installation of above-ground cabinets. Listed below is the recommended procedure to be followed for this initial application and for future applications on the remaining locations.

U-Verse service Permit Application Review and Approval Process

1. Encroachment permit application shall be submitted to the Director of Public Works with a location map identifying work locations. The application shall also include at a minimum:
 - a. Detailed plans for each cabinet installation and related work.
 - b. Photos showing cabinet superimposed onto existing location.
 - c. Applicable visual and noise screening measures (grading, retaining structures, wood fencing, lattice screens, paint colors, and/or landscaping) to properly screen the cabinets from the view of the public and adjacent properties, if any.
 - d. Noise information about the equipment to be installed.
 - e. Copy of confirmation that the requesting property owner has agreed to maintain plantings. AT&T will warranty plantings for 6 months from the date of installation.
 - f. Payment of permit application fees.

2. Staff supports AT&T's efforts to consult with each affected property owner, where requested, to obtain approval on cabinet placement, screening and ongoing maintenance of screening and/or landscaping. Written notices will be sent with delivery confirmation by AT&T to property owners within 300 feet of each proposed cabinet. In most cases, the permit will be issued within 21 days of the mailing of the notice. Consequently, written confirmation from AT&T shall be provided during the application process.

3. The Public Works Department will review the application and may require additional installation improvement plans as part of the encroachment permit as determined by the City Engineer. The application shall require the payment of all permit fees in accordance with the Municipal Code.

4. The Community Development Department will review the encroachment permit application concerning zoning regulations. The approved application with conditions of approval shall be forwarded to the Public Works Department to issue the encroachment permit

Attachments:

- AT&T Response to Questions dated October 8, 2008
- AT&T U-Verse City Council Report for September 2, 2008 Meeting

AT&T U-Verse Response to Questions
dated October 8, 2008

Dan Schiada - AT&T U-Verse

From: "RAY, TIM (ATTSI)" <tr5753@att.com>
To: <Dan.Schiada@ci.benicia.ca.us>
Date: 10/8/2008 6:46:16 PM
Subject: AT&T U-Verse
CC: "ALUMS, RHUENETTE (ATTSI)" <ra5361@att.com>

Dan....as requested.

1. What can AT&T provide to the Benicia Industrial Park as part of U-Verse to improve service now?

AT&T will assess the broadband needs and concerns within the Benicia Business Park by:

- Meeting with City staff and obtain a current list of all businesses within the BBP.
- Have our Business Development team assess the broadband needs and concerns within the BBP.
- Use a survey instrument developed and approved by the City Manager.
- Conduct the assessment process during the week of October 6, 2008 with a 20 person AT&T management team.
- Conduct data and assessment review with the Benicia Industrial Park Association (BIPA).
- Share data collected with City Council at the October 21, 2008 meeting.
- Review the assessment with AT&T management and evaluate the potential for additional solutions
- Most importantly broadband solutions that are currently available at the Park will be communicated to the businesses that are in the BBP.

**2. What is AT&T's response program to address graffiti on the cabinets?
Within 24-48 hours?**

- Policy Attached

3. What is AT&T 's advance notification procedure? Sample letter gives 30-90 days notice, but procedure allows installation after only 10 days notice. 21 days suggested, but please confirm.

- 21 days is not a problem and we can adjust the procedure...AT&T is committed to working with all residents and living up to our mission of "zero" calls to City Hall on Lightspeed installations and notice is an important part of that mission.

IX-A-5

4. Why can't AT&T install below ground vaults, since one is being installed within Concord? Will there still be above ground fixtures for venting, etc and if so, how large in comparison to cabinet itself?

- See Attached

Tim Ray | AT&T California | Executive Director - External Affairs
1215 K Street, Suite 1110, Sacramento, CA 95814
* 916 341 3466 Office * 916 524 9799 Cell * 916 446 6574 Fax

From: Dan Schiada [mailto:Dan.Schiada@ci.benicia.ca.us]
Sent: Wednesday, October 08, 2008 5:48 PM
To: ALUMS, RHUENETTE (ATTSI)
Cc: Charlie Knox; Heather McLaughlin; Jim Erickson
Subject: AT&T U-Verse

Rhuenette, per our discussion earlier today, you indicated that AT&T is ready to proceed with review of your Project Lightspeed/U-Verse application at the October 21st Benicia Council Meeting and do not want to postpone this date. With that in mind, you will need to provide AT&T's written responses to me by no later than 10am Friday, October 10th on the following concerns raised by the City Council at their meeting on September 2nd:

1. What can AT&T provide to the Benicia Industrial Park as part of U-Verse to improve service now?
2. What is AT&T's response program to address graffiti on the cabinets? Within 24-48 hours?
3. What is AT&T's advance notification procedure? Sample letter gives 30-90 days notice, but procedure allows installation after only 10 days notice. 21 days suggested, but please confirm.
4. Why can't AT&T install below ground vaults, since one is being installed within Concord? Will there still be above ground fixtures for venting, etc and if so, how large in comparison to cabinet itself?

If you have any questions, just call or email. Thanks.

IX-A-6



Graffiti Removal

At AT&T, we take pride in the quality and reliability of the communication services we provide residential and business customers. That same is true for the condition and appearance of our network equipment.

- Our Lightspeed cabinets are coated with a graffiti-resistant finish.
- We work hard on a daily basis to keep our equipment free of any graffiti.

➤ Proactive Graffiti Removal

- During the course of our normal network maintenance, AT&T technicians will proactively remove any graffiti found on our equipment.

➤ Reactive Graffiti Removal

- AT&T has implemented a rapid-response graffiti clean-up system for California communities dispatching service personnel, as needed, to clean graffiti off its cabinets.
- Upon receiving a complaint regarding graffiti on one of its cabinets, AT&T will remove any graffiti in compliance with City ordinances.
- Newly installed cabinets may feature an identification sticker with a phone number to contact us should a city have an issue with a piece of our network equipment. Residents may also use this number to report graffiti on all AT&T cabinets.
- In addition, AT&T has established a separate email system for municipalities to report graffiti on AT&T cabinets.

 **Call us**

866-243-6122

 **Email us**

graffiti@att.com

Property of



**IF THIS BOX NEEDS
ATTENTION
Please Call: 866-243-6122**

Include "Graffiti Clean Up Request" in subject line along with the address and other relevant information about the cabinet

IX-A-7

LIGHTSPEED TECHNOLOGY GENERALLY NEEDS TO BE IN SURFACE-MOUNTED CABINETS

The City of Benicia has asked for information why AT&T cannot place its Lightspeed cabinets underground. As we have mentioned, there are major technical and practical reasons why this technology cannot generally be placed underground. These issues are discussed in turn below.

AT&T currently has some Controlled Environmental Vaults (CEVs) that can be used to deploy the Lightspeed technology. Where CEVs exist, have sufficient space available for Lightspeed equipment, and are in sufficient proximity to residential customers for the technology to work, AT&T will place Lightspeed equipment in CEVs. To the extent that City officials have heard that AT&T placed Lightspeed equipment underground, it only could have been in these existing CEVs.

Technical Requirements

The Lightspeed technology consists of high speed electronic circuitry needed to light the fiber-optics and convert the fiber signal to a bandwidth that can be transmitted over copper to residences. This circuitry needs to be kept free from moisture, condensation, and heat in order to function reliably. As such, if it were to be placed underground, it needs to be in a controlled environmental environment, free from moisture and excessive temperature extremes. It also needs to be available for regular access to technicians for routine maintenance and repair, which requires a large buried structure – large enough for a technician to safely enter and work in. Just like you could not bury your personal computer in your backyard and expect it to function (at least not for long), AT&T cannot simply bury the cabinet with this technology underground.

Second, the Lightspeed technology needs to be placed in close proximity to residential customers. In order to use the existing copper distribution network, and maintain sufficient signal speed and quality, the fiber connection has to be within several thousand feet of residences. As a result, the fiber needs to be connected to the copper distribution in close proximity to the existing Serving Area Interfaces (SAIs). To place Lightspeed equipment in CEVs that are sufficiently proximate to customers would require dozens CEVs throughout the City – approximately one CEV in each location where a Lightspeed cabinet would have been placed; or, one for each upgraded SAI location in the City.

Practical Requirements

Given the need for a controlled environment and technician access, any underground structure needs to be extremely large – the dimensions of AT&T's CEVs are typically measure 16' x 10' x 6'. Generally, such a large area is not available in the Public Rights of Way in residential neighborhoods. In addition, CEVs are so large they might block use of Public Right of Way by other utilities in areas where they are installed. The access point for an underground vault would most likely extend into the road portion of the right of way creating significant safety concerns.

In addition, CEVs have a significant above-ground structure, one that often is almost as large as the Lightspeed cabinet itself. This above-ground structure provides a couple different things. First, it provides a hatch that technicians use to climb down into the CEV to access the equipment. In addition, the CEV requires above-ground ventilation. Ordinarily, this hatch/ventilation structure rises a minimum of 2-3 feet, and is a minimum of 4 ½ feet by 2 ½ feet. Thus, even if AT&T could use CEVs instead of cabinets, the CEVs would require above-ground structures almost as large as the Lightspeed cabinets themselves.

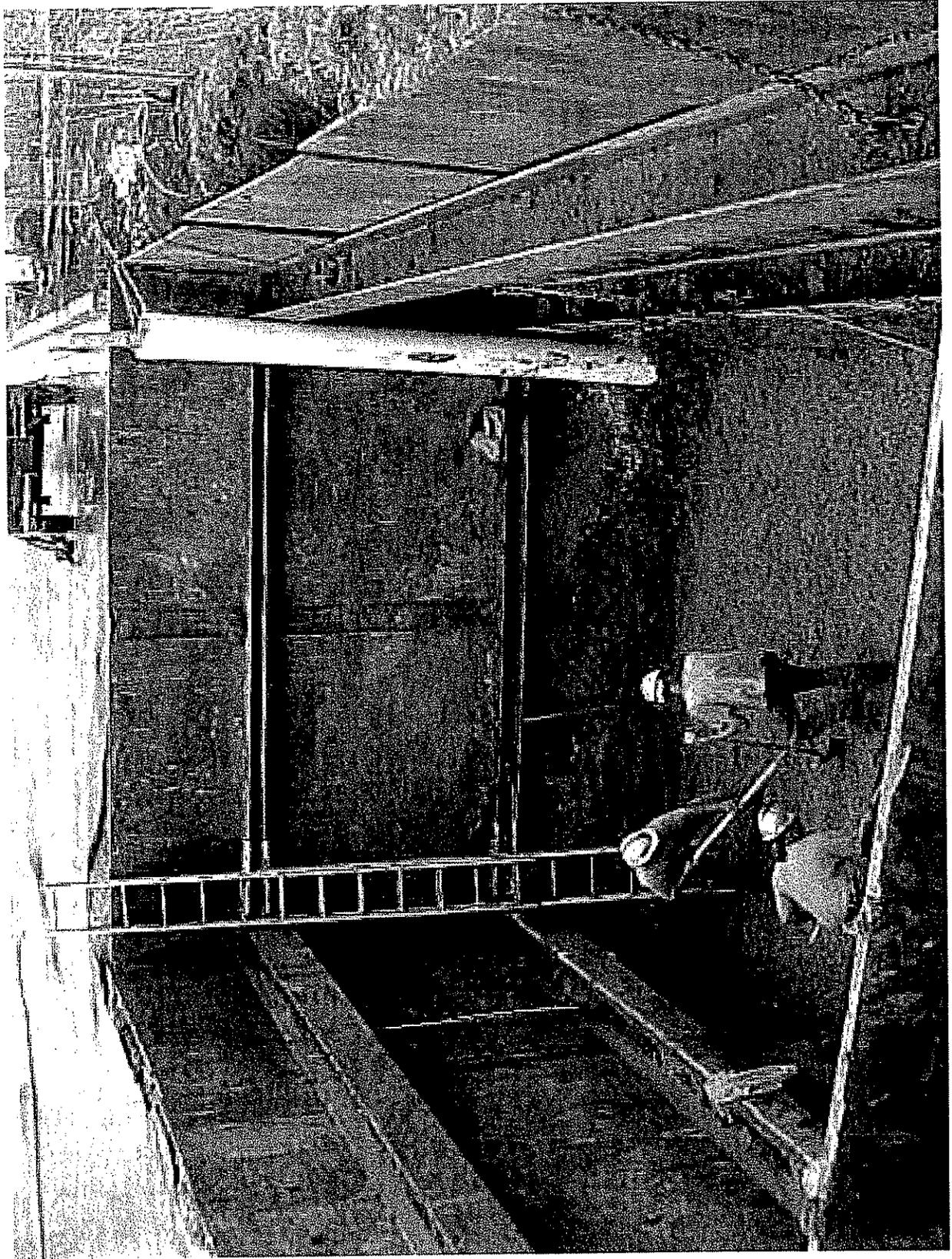
Third, the amount of power and air conditioning required to maintain the environmental conditions within such a vault is substantially greater than the power to maintain the environment within a Lightspeed cabinet. CEVs require their own air conditioning system, which is substantially larger and noisier than fans in the Lightspeed cabinets.

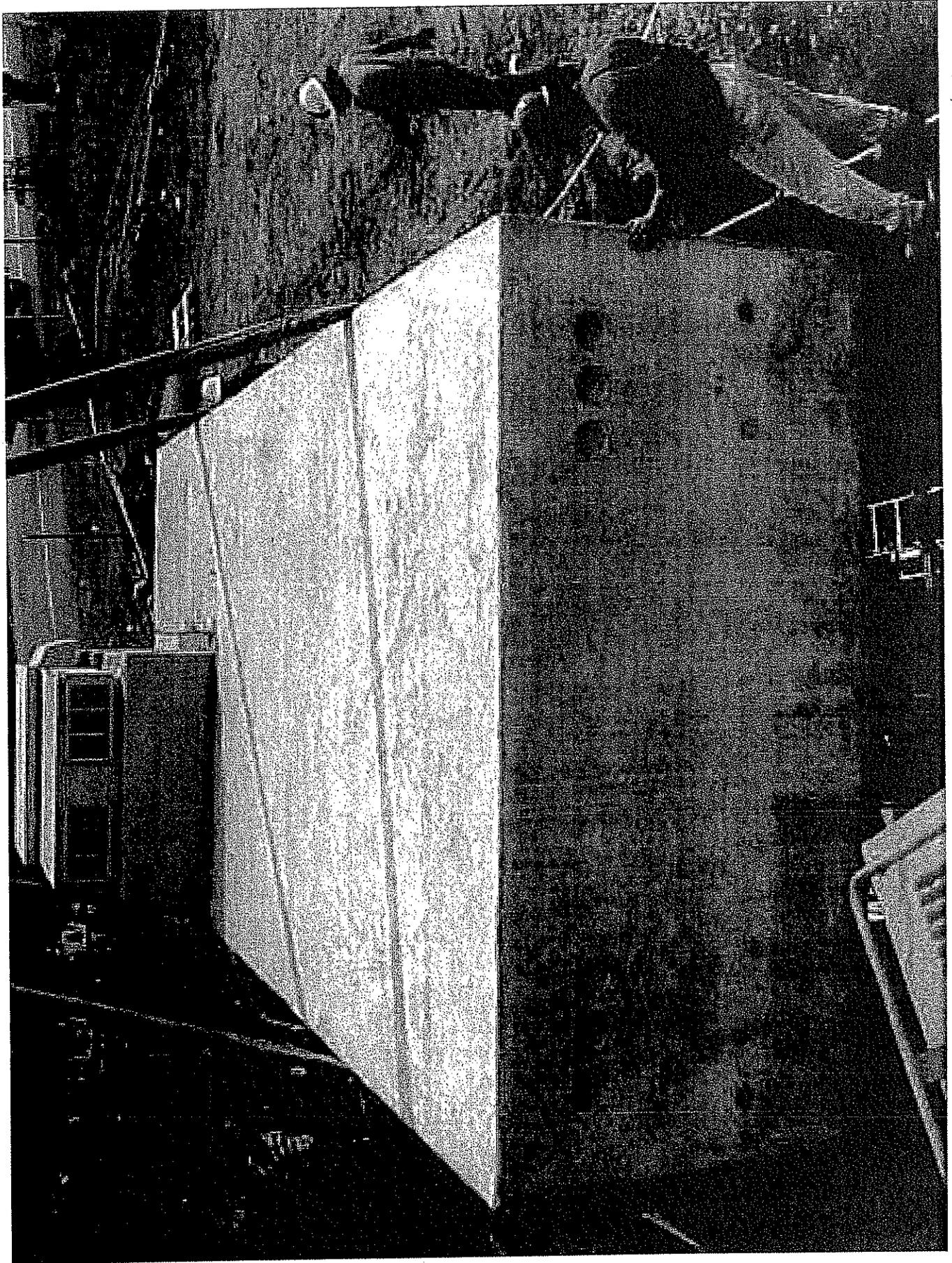
Finally, placing a CEV in close proximity to any residential neighborhood would involve substantial and extended disruption. As can be seen in the photos not only does a CEV require extremely large excavation, but it also requires large equipment and traffic disruption to deliver and install the vault.

As a result of these practical considerations, AT&T has traditionally not placed CEVs in close proximity to residential neighborhoods, where the Lightspeed equipment must be deployed

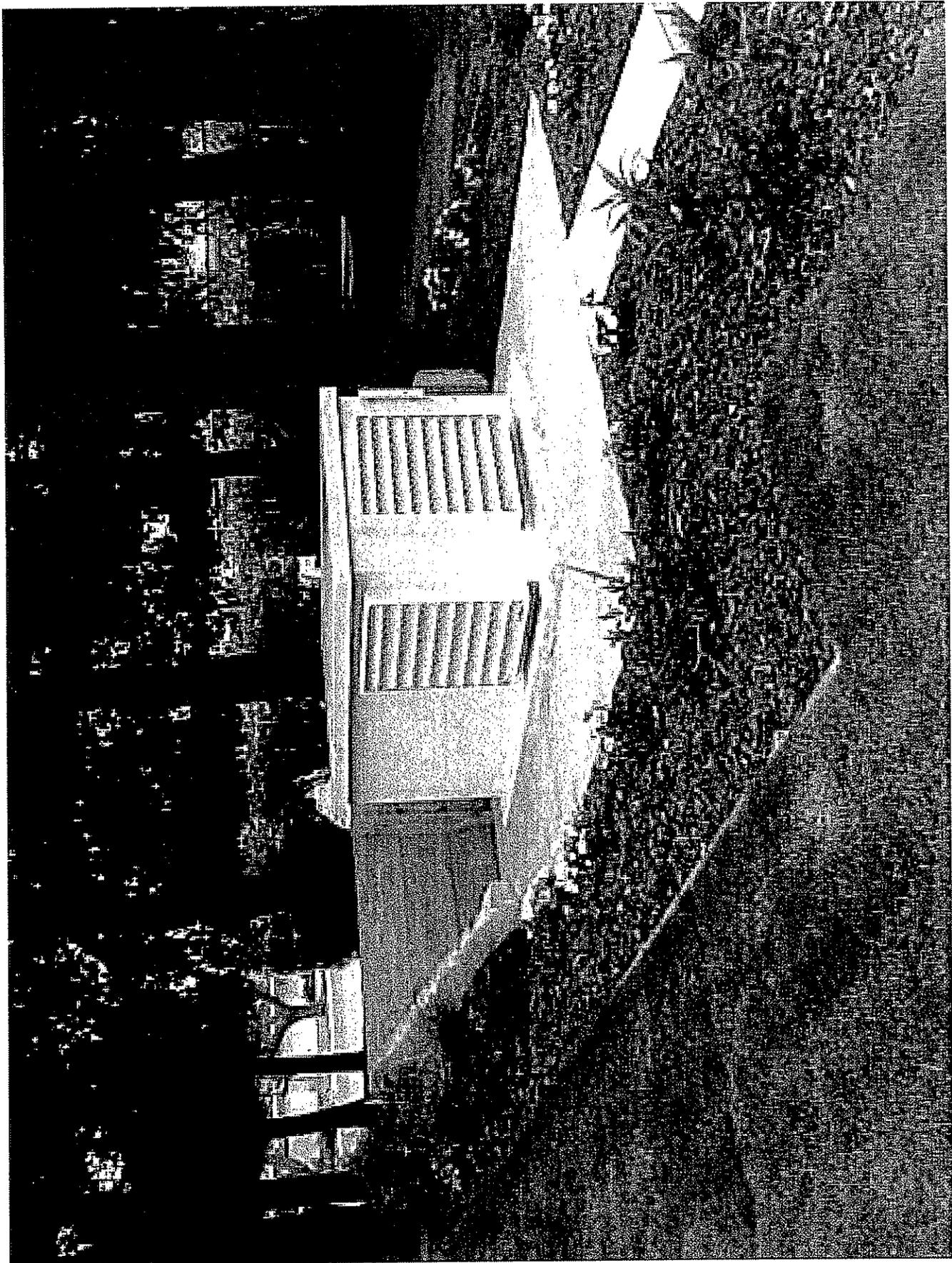
Controlled Environmental Vault

San Francisco, Bay Area, Pacific Bell.





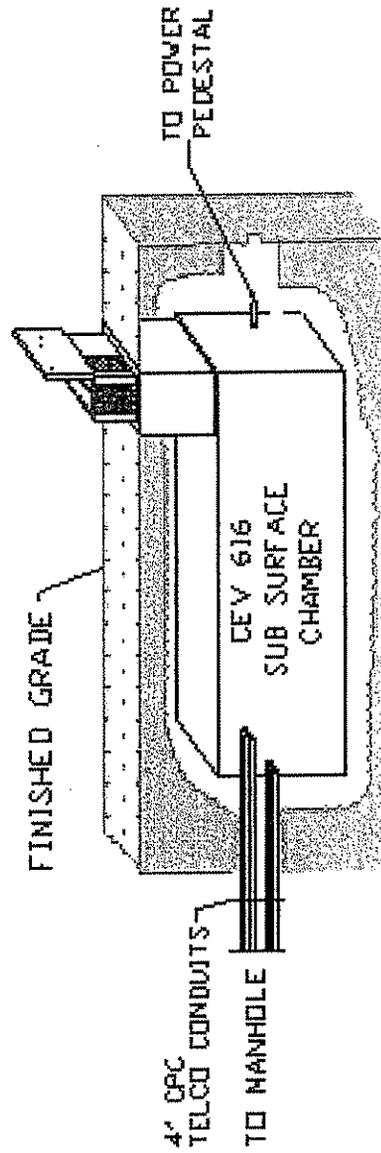
IX-A-11



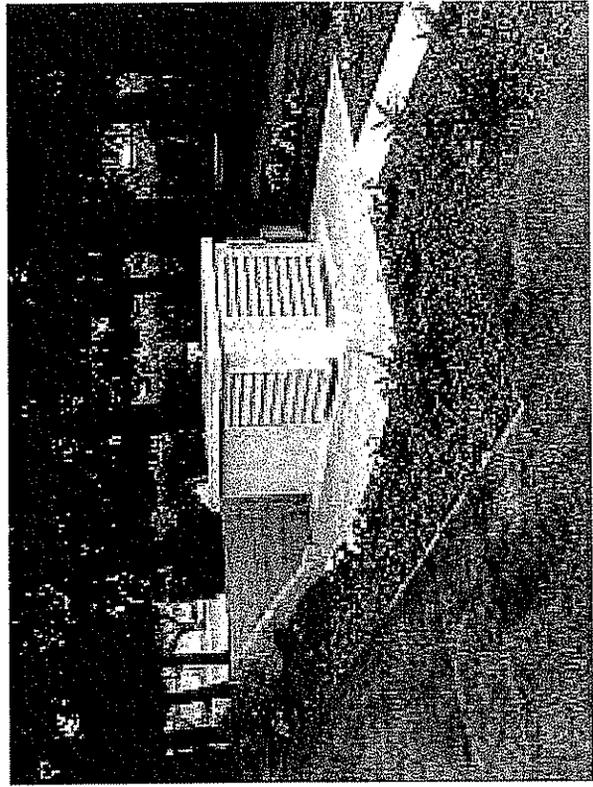
IX-A-12

CEV Dimensions

(Extends voice & data services beyond limits of Central Office)



Above ground only



AT&T U-Verse City Council Report from
the September 2, 2008 Meeting

**AGENDA ITEM
CITY COUNCIL MEETING: SEPTEMBER 2, 2008
ACTION ITEM**

DATE : August 27, 2008

TO : City Manager

FROM : Community Development Director
Director of Public Works

SUBJECT : **APPROVAL OF AT&T PERMIT APPLICATION REVIEW AND APPROVAL PROCESS FOR PROJECT LIGHTSPEED TO PROVIDE U-VERSE SERVICE**

RECOMMENDATION:

By motion, approve the permit application review and approval process for the installation of citywide upgraded communication facilities as part of AT&T's U-Verse service.

EXECUTIVE SUMMARY:

AT&T has submitted an application to install various system improvements citywide as part of their U-Verse service to provide upgraded communication facilities to the residents and businesses within Benicia. The request includes the installation of approximately 60 above-ground service cabinets at selected locations throughout town. Staff is recommending that the City Council approve the permit application process that will require AT&T to have each above-ground cabinet location go through staff level approval for an encroachment permit. The systemwide facilities will be required to pay the 5% statewide franchise fee to the City.

BUDGET INFORMATION:

AT&T will be installing system improvements at no cost to the City. They will be required to pay the City a 5% statewide franchise fee on video service revenues, as defined in the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), which will provide additional revenues which could eventually be \$40,000 per year. The City will also collect the standard permit, plan check and inspection fees for each encroachment permit application to install one or more of these cabinets.

ENVIRONMENTAL REVIEW:

California Environmental Quality Act ("CEQA") Guidelines Section 15300.1 exempts ministerial projects from the application of CEQA. The issuance of the encroachment permits is

a ministerial action. In addition, CEQA Guidelines Section 15303 exempts new construction of small structures including installation of small new equipment.

BACKGROUND:

AT&T's video franchise service is called U-Verse. Project Lightspeed is the network upgrades to make the U-Verse service possible. U-Verse is designed to provide residential service based upon upgrading the conduit with which it provides television, broadband and telephone services to fiber. It is thought that the service will provide competition to the satellite dish companies as well as the cable company.

Late last year, City staff met with representatives from AT&T to review their proposal to install upgraded communication facilities throughout their service area. AT&T would like to proceed with work in Benicia as soon as possible. In fact, they have submitted applications for permits with the expectation that staff could do some of the initial review while the Council considers the matter.

This project requires distribution system upgrades that include installation of approximately 60 new above-ground cabinets at selected locations throughout town. For the Southamptton area and other newer areas of town, the cabinets typically will be located within public utility easements on private property behind the back of the sidewalks. For the older parts of town, the cabinets will typically be located within the street right-of-way. This work requires the issuance of an encroachment permit from the Public Works Department.

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA), enacted by AB 2987 and effective January 1, 2007, created a new State video franchise process that replaces the local franchise process. AT&T filed for, and was granted, a statewide video franchise. Under DIVCA, cities are limited in what they can require of AT&T (or other operators). For example, franchise fees are limited to the percentage that the existing cable company pays the city. Public Education and Government ("P.E.G.") fees are similarly limited to what the existing company pays. DIVCA provides a cap to the franchise fee and P.E.G. fees as well.

Benicia's franchise with Comcast gives the City a franchise fee of 5% of gross annual revenues per year. The City receives \$0.25 per subscriber per month as a P.E.G. fee. This fee is given to the City in two lump sums of \$40,000 or on a quarterly basis. Thus, the City will receive from AT&T 5% as the franchise fee and \$0.25 per subscriber per month with a payment plan to be determined. DIVCA also requires that the new company carry the same number of P.E.G. channels as the current cable provider. This means AT&T will be required to carry two P.E.G. channels. These channels will have similar picture and sound qualities to the commercial channels.

DIVCA requires the city to "allow the holder of a state franchise under this division to install, construct, and maintain a network within public rights-of-way under the same time, place, and

manner as the provisions governing telephone corporations under applicable state and federal law....” Typically, this work is done under an encroachment permit. Staff expressed concerns to AT&T about their proposal to install above-ground cabinets.

Staff considers the AT&T cabinets to be in conflict with the Benicia Municipal Code Section 17.70.230, which requires all new utility facilities to be placed underground.¹ AT&T has advised staff that it is not feasible to underground the cabinets and the ordinance does not apply to this project. Please see the attached letter.

These cabinets will create visual and noise impacts due to the temperature-controlled fan systems required for each cabinet. Staff requested that AT&T address these concerns as part of their application submittal. Attached to this report is their application dated October 15, 2007, which includes the following backup information:

1. Attachment A – Justification for Surface-Mounted Cabinets. The technology utilized for this project needs to be kept free from moisture, condensation, and heat in order to function properly. The use of below-ground cabinets would require a very large underground structure (sample pictures attached) which would still require an above-ground venting system to provide the climate control necessary for the vault. The end result would be an above-ground fixture almost as large as the above-ground cabinet alternative.
2. Attachment B – Cabinet Footprints and Acoustical Performance. The information provided shows the alternative cabinets ranging in size from 48-inches tall with widths ranging from 21-inches to 41-inches and lengths ranging from 43-inches to 50-inches. These cabinets will definitely be noticeable, creating a visual impact. If the cabinets are well placed, they may not be noticed much after placement. The cabinets will also generate noise levels reaching 55 decibels at a distance of 5 feet from the cabinet. These noise levels are peak noise levels when temperatures are very high. These noise levels exceed, for very limited periods of time, the ambient levels set forth in the Benicia Municipal Code and the General Plan. Both the visual and noise impacts will need to be addressed by AT&T. The City received a response on the noise levels in a letter from AT&T to the City Attorney dated February 1, 2008. Further explanation from AT&T will be provided at the meeting if deserved.
3. Attachment C – AT&T Customer Notification. AT&T will comply with this notification process.
4. Attachment D – Cabinet Screening Process. AT&T will consider installation where the adjacent property owner agrees to perform all ongoing maintenance (except that landscaping that dies within six months of installation will be replaced by AT&T).
4. Attachment E – Cabinet Details and Sample Installations (photo of sample cabinet detail attached). The permit applications for the first 10 locations are not attached; they will be reviewed as part of the permit application process.

¹ 17.70.230 Underground utilities.

All electrical, telephone, CATV, and similar distribution lines providing direct service to a development site shall be installed underground within the site. Off-site utilities along a project frontage for all new commercial, multifamily, or industrial development shall be undergrounded, unless a deferral is granted by the planning commission for those projects over which it has approval authority, or by the design review commission for those projects over which it has approval authority, or by the community development director for those projects over which the director has approval authority, in accordance with the deferral requirements of BMC 16.36.020(G)(2).

Because of undergrounding concerns, staff considers it necessary for AT&T, as the project applicant, to go through a general public review and approval process to properly address the visual and noise impacts that may be created with these improvements. AT&T has committed to mitigating any noise and visual impacts on a case-by-case basis. Although AT&T will work with staff to place the cabinets in suitable locations, some residents may be unhappy with the locations.

DIVCA provides AT&T the right to locate the cabinets in the right-of-way subject only to reasonable time, place and manner regulations. To minimize complaints, staff recommends that AT&T have a process for their cabinet installations that they can use with residents as they proceed with installation of these improvements citywide to assist with a consistent approach in the review and approval process. Initially, there are 10 locations that AT&T is requesting approval of the installation of above-ground cabinets. Listed below is the recommended procedure to be followed for this initial application and for future applications on the remaining locations.

U-Verse service Permit Application Review and Approval Process

1. Encroachment permit application shall be submitted to the Director of Public Works with a location map identifying work locations. The application shall also include at a minimum:
 - a. Detailed plans for each cabinet installation and related work.
 - b. Photos showing cabinet superimposed onto existing location.
 - c. Applicable visual and noise screening measures (grading, retaining structures, wood fencing, lattice screens, paint colors, and/or landscaping) to properly screen the cabinets from the view of the public and adjacent properties, if any.
 - d. Noise information about the equipment to be installed.
 - e. Copy of confirmation that the requesting property owner has agreed to maintain plantings. AT&T will warranty plantings for 6 months from the date of installation.
 - f. Payment of permit application fees.
2. Staff supports AT&T's efforts to consult with each affected property owner, where requested, to obtain approval on cabinet placement, screening and ongoing maintenance of screening and/or landscaping. Written notices will be sent with delivery confirmation by AT&T to property owners within 300 feet of each proposed cabinet. In most cases, the permit will be issued within 10 days of the mailing of the notice. Consequently, written confirmation from AT&T shall be provided during the application process.
3. The Public Works Department will review the application and may require additional installation improvement plans as part of the encroachment permit as determined by the City Engineer. The application shall require the payment of all permit fees in accordance with the Municipal Code.
4. The Community Development Department will review the encroachment permit application concerning zoning regulations. The approved application with conditions of approval shall be forwarded to the Public Works Department to issue the encroachment permit.

cc: City Attorney
City Engineer

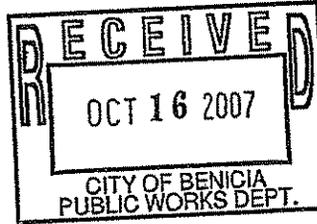
Attachments:

- Letter from AT&T dated October 15, 2007 regarding U-Verse service
 - Attachment A – Justification for Surface Mounted Cabinets
 - Attachment B – Cabinet Footprints and Acoustical Performance
 - Attachment C – AT&T Customer Notification
 - Attachment D – Cabinet Screening Process
 - Attachment E – Cabinet Details and Sample Installations
- Letter from AT&T dated August 26, 2008 regarding Undergrounding
- Memo from Director of Public Works dated 6/19/08 reviewing AT&T's 6/17 information on noise
- Noise Regulations, Chapter 8.20 of the Benicia Municipal Code
- Stationary Noise Standards from the Benicia General Plan

**Letter from AT&T dated October 15,
2007 regarding U-Verse service**



Rhuenette L. Alums
Area Director
AT&T
867 W. Napa Street
Sonoma, CA 95476



October 15, 2007

Dan Schiada
Director of Public Works
City of Benicia
250 East L Street
Benicia, CA 94510

Dan,

As follow-up to various communications held between AT&T and City of Benicia representatives, I've enclosed information that I believe addresses the questions and concerns raised during our exchanges. The areas of interest include:

1. Undergrounding of AT&T Lightspeed cabinets
2. Acoustics (noise)
3. Customer contact process
4. Screening of video cabinets
5. Sample encroachment permit applications

I've provided feedback in the form of several attachments. The primary reason is that many pictures have been included as a method for ensuring further clarification. If indeed there are other issues that require further explanation, please let me know. AT&T is interested in starting the installation process as quickly as possible.

Sincerely,

Rhuenette L. Alums

Attachments:

- A. and A1. Undergrounding statement with pictures
- B. Acoustics
- C. Customer Contact process
- D. Screening of video cabinets
- E. Sample encroachment permit applications with pictures

Cc: Robert Keating, Wil Mendiola, John DiBene

IX-A-21

Attachment A – Justification for Surface Mounted Cabinets

ATTACHMENT (A)

LIGHTSPEED TECHNOLOGY GENERALLY NEEDS TO BE IN SURFACE-MOUNTED CABINETRY

The City of Benicia has asked for information regarding AT&T's placement of its Lightspeed cabinets underground.

As an initial matter, we understand there has been some confusion about whether, and under what circumstances, the Lightspeed technology will be put underground. AT&T currently has some Controlled Environmental Vaults (CEVs) in place throughout the state of California that can be used to deploy the Lightspeed technology. Where CEVs currently exist, have sufficient space available for Lightspeed equipment, and are in sufficient proximity to residential customers for the technology to work, AT&T will place Lightspeed equipment in CEVs. Specifically, in the city of Benicia, AT&T has no CEV in place or plans for future installations. Pictures of a CEV installation are attached for your information.

As we have briefly mentioned during previous discussions, there are technical, practical, and economic reasons why this technology cannot generally be placed underground. These issues are discussed in turn below.

Technical Requirements

The Lightspeed technology consists of high speed electronic circuitry needed to light the fiber-optics and convert the fiber signal to a bandwidth that can be transmitted over copper to residences. This circuitry needs to be kept free from moisture, condensation, and heat in order to function reliably. As such, if it were to be placed underground, it needs to be in a controlled environmental environment, free from moisture and excessive temperature extremes. It also needs to be available for regular access to technicians for routine maintenance and repair, which requires a large buried structure – large enough for a technician to safely enter and work in. Just like you could not bury your personal computer in your backyard and expect it to function (at least not for long); AT&T cannot simply bury the cabinet with this technology underground.

Second, the Lightspeed technology needs to be placed in close proximity to residential customers. In order to use the existing copper distribution network, and maintain sufficient signal speed and quality, the fiber connection has to be within several thousand feet of residences. As a result, the fiber needs to be connected to the copper distribution in close proximity to the existing Serving Area Interfaces (SAIs). To place Lightspeed equipment in CEVs that are sufficiently proximate to customers would require dozens of CEVs throughout the City – approximately one CEV in each location where a Lightspeed cabinet would have been placed; or, one for each upgraded SAI location in the City.

Practical Requirements

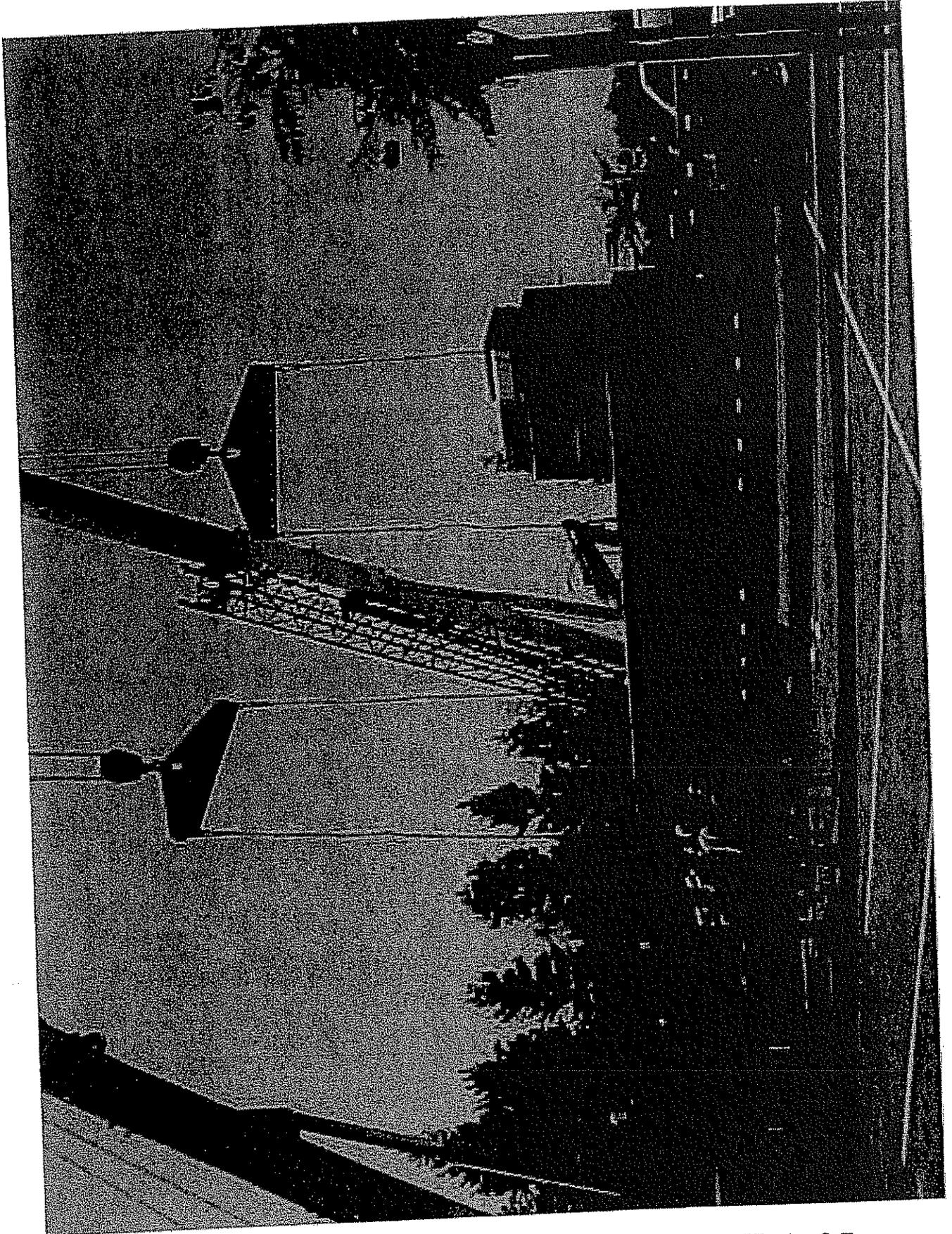
Given the need for a controlled environment and technician access, any underground structure needs to be extremely large – the dimensions of AT&T's CEVs are typically measure 16' x 10' x 6'. See <http://www.gsuc.net/index10.html> for pictures of the excavation and installation required for a CEV. Generally, such a large area is not available in the Public Rights of Way in residential neighborhoods. In addition, CEVs is so large that it might block use of Public Right of Way by other utilities in areas where they are installed. The access point for an underground vault would most likely extend into the road portion of the right of way creating significant safety concerns.

In addition, CEVs usually have a significant above-ground structure, one that often is almost as large as the Lightspeed cabinet itself. This above-ground structure provides a couple different things. First, it provides a hatch that technicians use to climb down into the CEV to access the equipment. In addition, the CEV requires above-ground ventilation. Ordinarily, this hatch/ventilation structure rises a minimum of 2-3 feet, and is a minimum of 4 ½ feet by 2 ½ feet. Thus, even if AT&T could use CEVs instead of cabinets, the CEVs would require above-ground structures almost as large as the Lightspeed cabinets themselves.

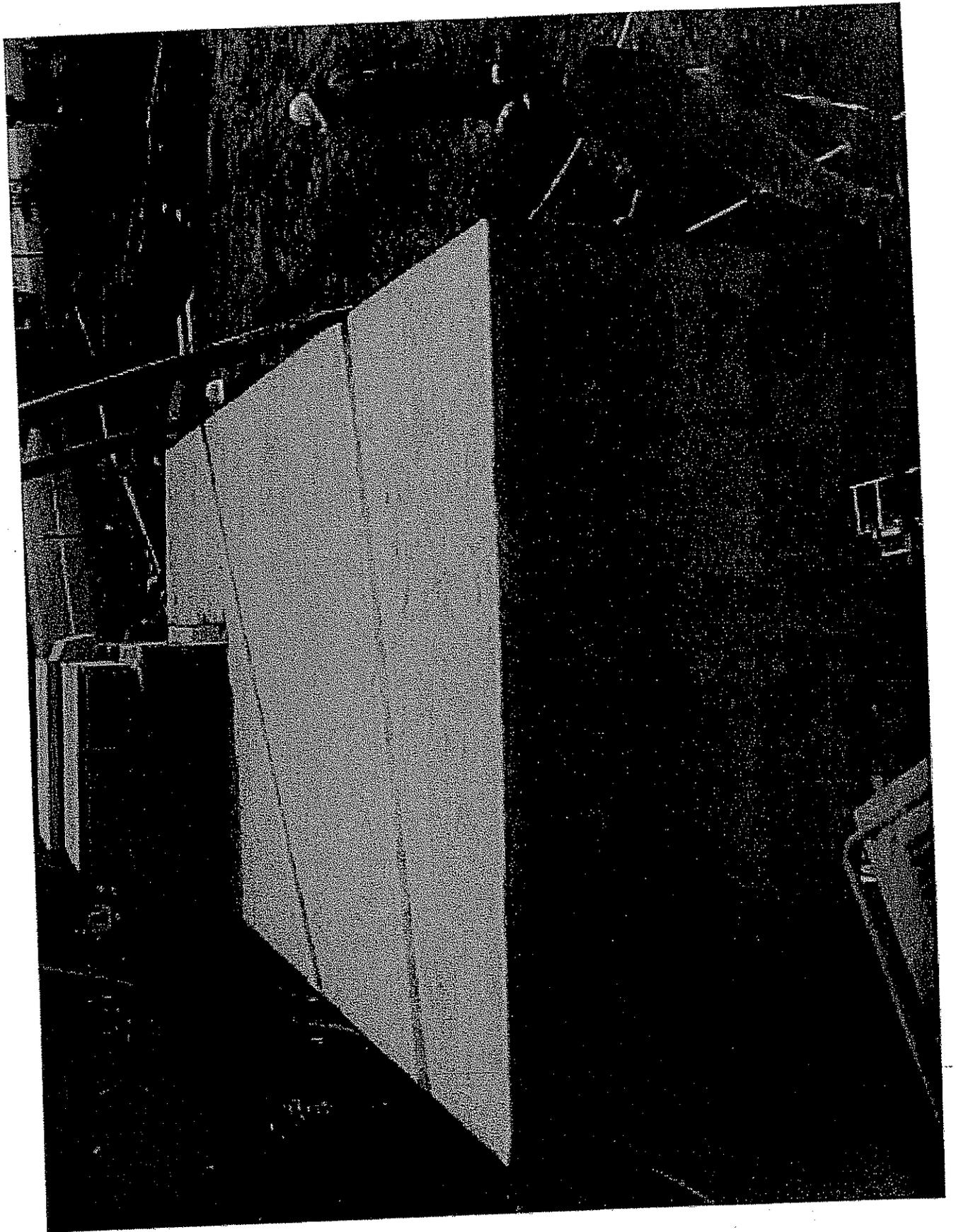
Third, the amount of power and air conditioning required to maintain the environmental conditions within such a vault is substantially greater than the power to maintain the environment within a Lightspeed cabinet. CEVs require their own air conditioning system, which is substantially larger and noisier than fans in the Lightspeed cabinets.

Finally, placing a CEV in close proximity to any residential neighborhood would involve substantial and extended disruption. As can be seen in the photos attached and on <http://www.gsuc.net/index10.html>, not only does a CEV require extremely large excavation, but it also requires large equipment and traffic disruption to deliver and install the vault.

As a result of these practical considerations, AT&T has traditionally not placed CEVs in close proximity to residential neighborhoods, where the Lightspeed equipment must be deployed



IX-A-25

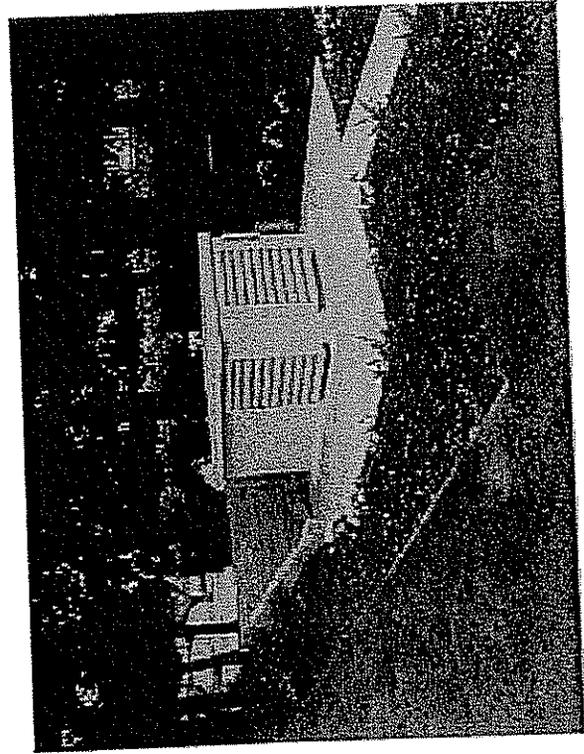
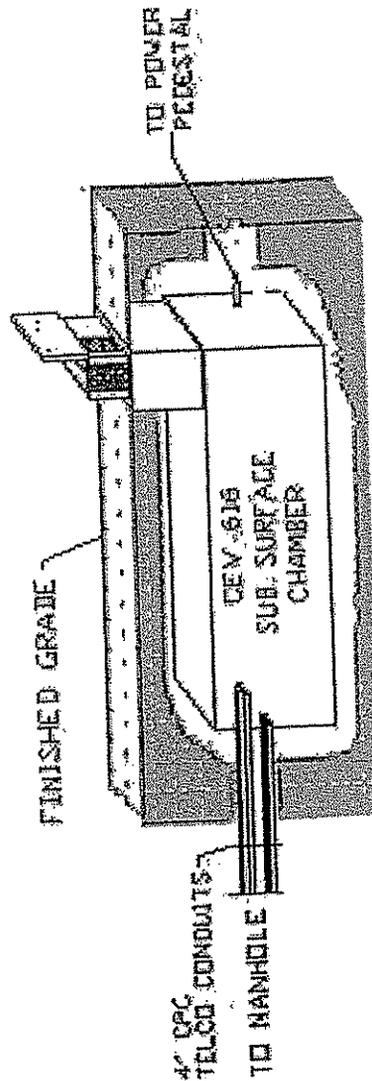


IX-A-26

CEV Dimensions

(Extends voice & data services beyond limits of Central Office)

Above ground only

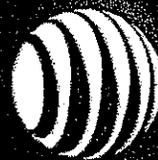


Attachment B – Cabinet Footprints and Acoustical Performance

AT&T Uverse

Lightspeed Cabinets

Cabinet Footprints and Acoustical Performance
20 July 2007



at&t

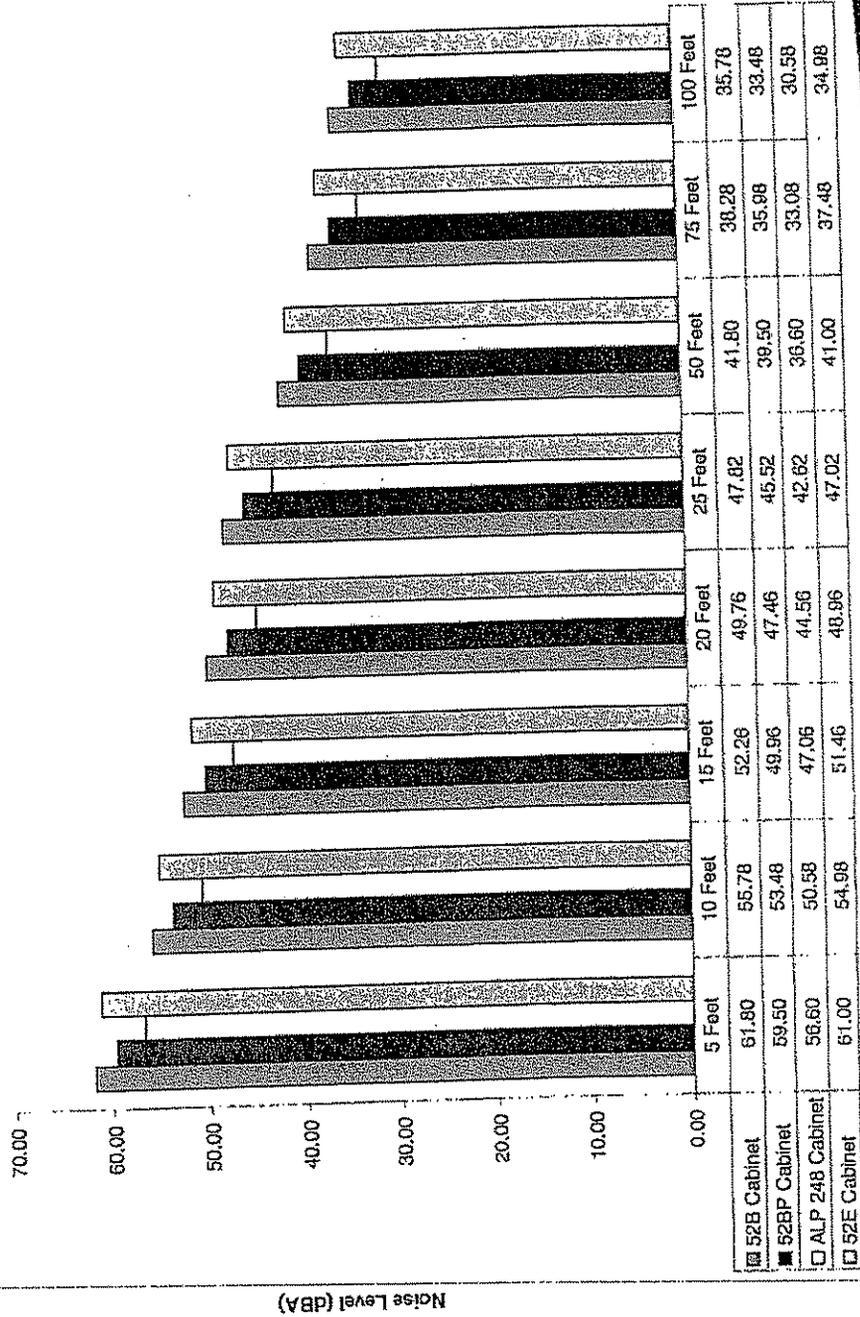
Cabinet Dimensions

Cabinet	Length (in)	Width (in)	Height (in)	Color	Cabinet Mountings
52BP	43	21	48	Tan or Green	Earth Anchor, Pad or Pole
52B	43	21	63	Tan or Green	Earth Anchor, Pad or Pole
Low Profile - 248LP	50	26	48	Tan or Green	Earth Anchor, Pad or Pole
52E	43	41	63	Tan or Green	Pad

AT&T is specifying use of the ALP-248C
 Low Profile Cabinet for the City of Benicia

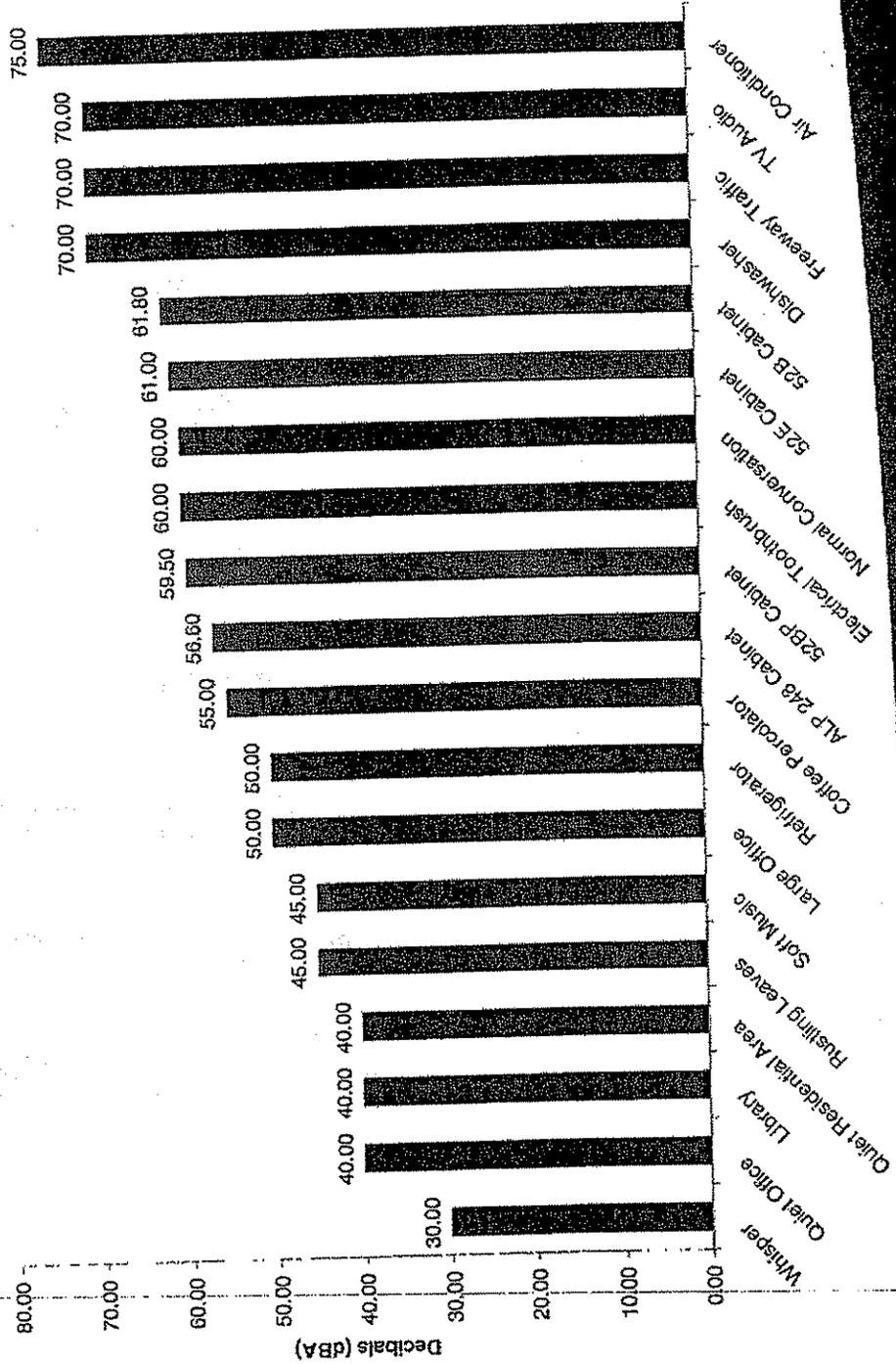
Lightspeed Cabinet Acousticals at Varying Distances

Lightspeed Cabinets Operating at Loudest Condition



Lightspeed Cabinets and Common Community Noises

Lightspeed Cabinets in Comparison to Common Community Noises (Measured at 5')



Attachment C – AT&T Customer Notification

ATTACHMENT C – CUSTOMER NOTIFICATION

General Customer Notification Process

1. AT&T engineers survey an area targeted for implementation of AT&T Lightspeed with consideration for a location in the public right-of-way with proximity to the existing neighborhood SAI (Serving Area Interface) cross-connect locations, obtrusiveness to homeowners, and physical limitations of the streets, sidewalks and parkways. During this survey an attempt is made to contact the affected property owners. If the property owners are available we will discuss our intention and work with them to select an amenable site.
2. After permit drawings are prepared, AT&T writes letters to homeowners (see ATTACHED SAMPLE LETTER) and tenants in the immediate area of the planned Lightspeed cabinet location, with “before and future” pictures” and local contact information, and will again attempt a face-to-face contact with those immediately affected by the installation of the node.
3. Upon receipt of a phone call or notice from a resident with concern about the cabinet placement, the AT&T representative will arrange a face-to-face meeting with the resident to strive to accommodate them through changes to the proposed implementation.
4. Every effort is taken to accommodate affected residents. If an accommodation cannot be reached, AT&T will work with representatives (if necessary) from the City of Benicia to resolve the issue with the resident.
5. Once a power path is approved by PG&E , AT&T will notify all property owners affected by the construction of Power-To-The-Node cabinet. Our process of notification is to knock on doors to attempt a face-to-face contact in order to explain our work and schedule. We will leave a business card and a copy of the (attached) letter. If the property owners are not available during our field notification we will leave a letter and business card on the door step and follow up with a letter in the mail.
6. In both cases we attempt to make every effort to notify the property owner and property tenant.



October 16, 2007

Suzanne Peddler
1600 Salvador St.
Benicia, CA 94510

RE: APN: 0036-214-070-000

Dear Suzanne Peddler,

The purpose of this letter is to notify you of AT&T California's proposal to place an above-ground cabinet, associated conduits and boxes adjacent to, or in close proximity to *your property*. The new facility will be placed within an *existing road right-of-way or public utility easement*. (See attachment)

These new facilities will allow AT&T to provide state-of-the art telecommunication services to the surrounding area. This project is currently in the final design stages. The tentative location for the cabinet is as shown on the attachment, so any concerns should be addressed to us immediately. The tentative construction should start within the next 30 to 90 days. Construction completion is generally within 7 to 10 working days.

Upon completion of the work all areas affected by such work will be returned to their original or better condition. If you have any questions for AT&T Inc. about this project, please contact me, **Bob Keating at 707-258-3740, anytime, but as soon as possible**. Or e-mail to bk6599@att.com. If we do not hear from you, AT&T will assume your acceptance of the proposed placement.

Thank you,

Sincerely,

A handwritten signature in cursive script that reads "Bob Keating".

Bob Keating
Manager, OSP Engineering

Attachment

Attachment D – Cabinet Screening Process

ATTACHMENT D - SCREENING

▶ Video cabinets *Landscaping/Screening*

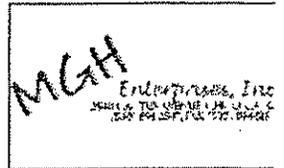
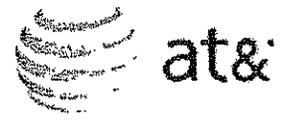
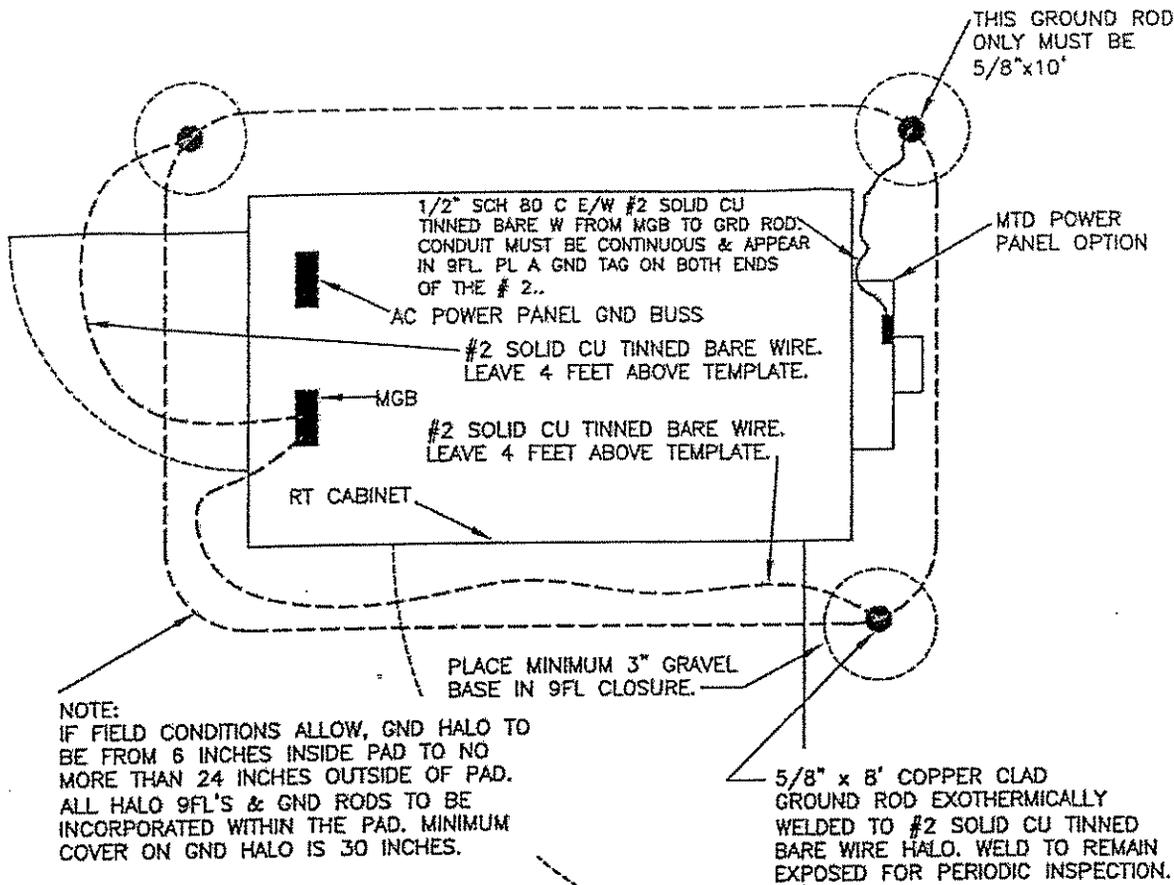
When we're finished installing the cabinet, we restore the site to the same or better condition as when we first found it, including reseeding or sodding nearby landscaping where necessary.

Here's how AT&T will work with property owners to address any visual concerns:

- In the event a property owner (or adjacent property owner) raises a concern about the proposed placement of a Lightspeed cabinet; AT&T will work to resolve the issue with the property owner.
- Where the property owner's concern cannot be addressed solely by placement, and screening is necessary in order to resolve the concern, AT&T will consider installing organic vegetation on the traffic-side of the Lightspeed cabinet.
- Organic vegetation will need to be maintained by the property owner although AT&T will replace any vegetation that dies within six months of the Lightspeed cabinet installation.

Attachment E – Cabinet Details and Sample Installations

GROUND GRID TYPICAL
WHEN INTEGRATED POWER PANEL ON ALP 248C IS USED.



SITE ADDRESS:
380 BROWN ST.
VACAVILLE, CA. 95688

WORK SAFELY

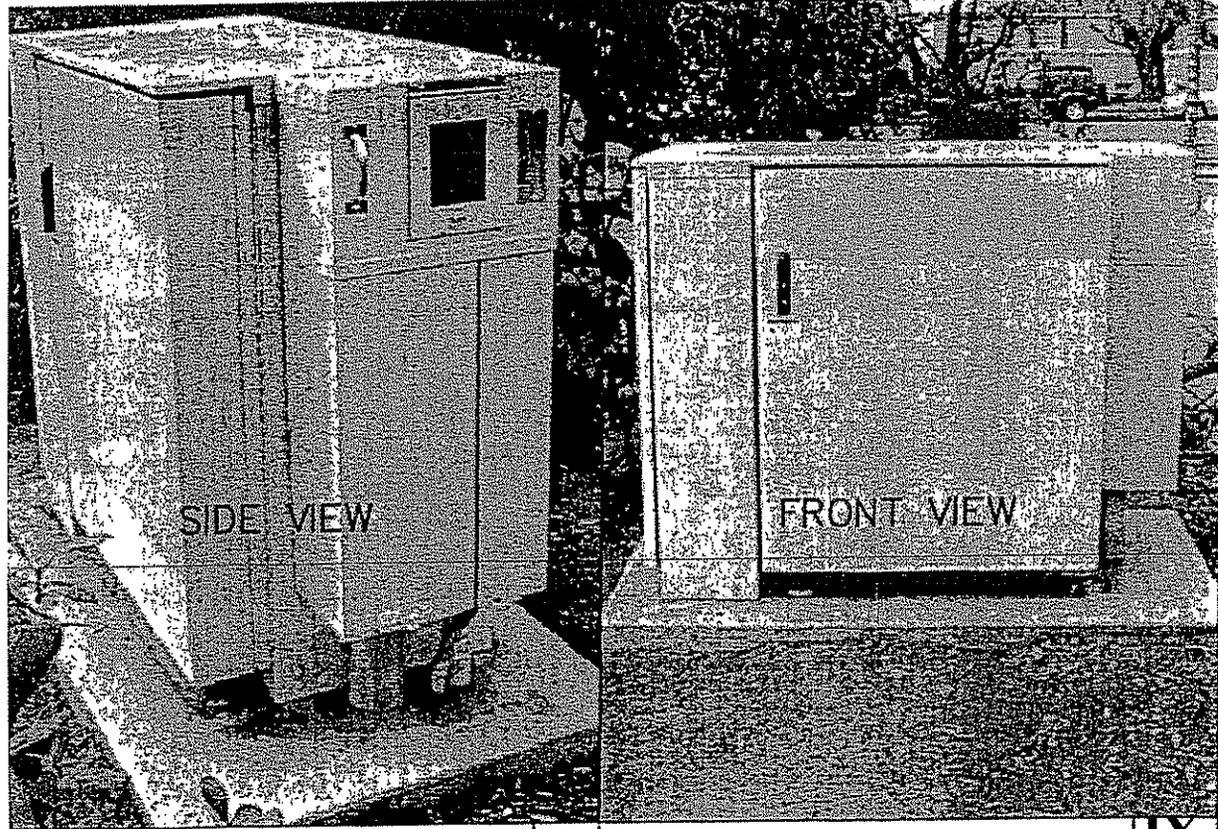
CONSTRUCTION ZONE HARD HAT REQUIRE USE APPROVED TRAFFIC & PEDESTRIAN CONTROL IN ALL PUBLIC AREAS. CORRECT C.O. 12B VIOLATIONS OBSERVE COMPLY WITH ALL GOVERNMENTAL AGENCY REGULATIONS & SPECIFICATIONS.

CAUTION
HIGH VOLTAGE
UNDERFEET/OVERHEAD
SEE SP SECTION
620-101-900PT

CALL U.S.A.
1-800-227-2600
BEFORE DIGGING

TBM# 433.D4
SEQ # 3114-6570 CNDT# N/A
LIG# N/A ARCM# 474
DAR# 113050 CLL# VCVLEA

GROUND GRID FOR INTEGRATED PWR APPLICATION SCALE: N.T.S. 4



A 8/24/07 ISSUED REVIEW & UTILITY NO. DATE DESCRIPTION

**METER PEDESTAL
INSTALLATION
AND
EQUIPMENT CABINET**

GEO/CO: TC75
EXCHANGE: VACAVILLE
ENGR: W. MENDIGLIA TEL 258-37
ENGR ARC: Y05DLD20
TYPE OF CONST
LIGHTSPEED
FO/EST NO: 6089420
OWC OF DESIGN
MGH INFORMATION:
DRAWN BY: DC DESIGNED BY: AT&T
CHECKED BY: TAG APPROVED BY: MSI
DATE: 8-24-07
SCALE: AS NOTED

TYPICAL GROUND GRIDS
PHOTOS ALP 248C

**Letter from AT&T dated August 26, 2008
regarding Undergrounding**



JOHN DI BENE
General Attorney
Legal Department

AT&T Services, Inc.
2600 Camino Ramon
Room 2W954
San Ramon, California
94583

925.823.9410 Phone
925.867.3869 Fax
john.di.bene@att.com

August 26, 2008

VIA ELECTRONIC AND UNITED STATES MAIL

Heather McLaughlin
City Attorney
City of Benicia
250 East L Street
Benicia, CA 94510

Re: Municipal Code 17.70.230 & AT&T's "Lightspeed" Network Upgrade

Dear Heather:

TI write concerning Benicia Municipal Code Section 17.70.230 as it relates to AT&T's "Lightspeed" network upgrade. Lightspeed is AT&T's latest initiative to upgrade its telecommunications network infrastructure. With Lightspeed, AT&T will extend fiber-optic transmission facilities closer to residential neighborhoods, allowing Internet Protocol (IP)-based services such as IP TV. . Lightspeed requires new utility cabinets in City rights-of-way that pair with existing copper-connect cabinets already in the City. AT&T has advised staff that it is not feasible to underground the Lightspeed cabinets and technology. City staff, however, has expressed concern that Section 17.70.230 may require that such permits be placed underground. This letter explains AT&T's position regarding whether Section 17.70.230 can or should be interpreted to require undergrounding of Lightspeed technology.

Section 17.70.230 does not require AT&T to install any of its new facilities underground, including Lightspeed cabinets, for two reasons.

First, AT&T notes that Section 17.70.230 does not purport to require the undergrounding of any facilities, let alone AT&T's new Lightspeed cabinets, except in new development sites in the construction process. Section 17.70.230 provides:

All electrical, telephone, CATV, and similar distribution lines providing direct service to a *development site* shall be installed

underground within the site. Off-site utilities along a project frontage for all *new commercial, multifamily, or industrial development* shall be undergrounded, unless a deferral is granted by the planning commission for those projects over which it has approval authority, or by the design review commission for those projects over which it has approval authority, or by the community development director for those projects over which the director has approval authority, in accordance with the deferral requirements of BMC 16.36.020(G)(2).” (emphasis added).

Thus, by its own terms, the provision applies only to facilities in new developments. It does not, however, govern facilities in previously developed parts of the City. Moreover, as confirmation of its limited applicability to only certain areas, Section 17.70.230 cross-references Section 16.36.20(G)(2), which addresses the improvements a subdivider is required to construct when developing a new subdivision. At most, Section 17.70.230 requires the undergrounding of facilities in new development areas.¹

Second, AT&T questions the legality of any undergrounding requirement, no matter whether it is limited to new development areas pursuant to Section 17.70.230 or it applies more broadly. Such an undergrounding requirement conflicts with California and federal law, particularly to the extent it would obstruct AT&T’s right to upgrade its network within the City by placing new facilities in the public right of way (“PROW”).

The particular facilities that appear to cause the City concern—cabinets that will house critical network components—play an integral role in AT&T’s initiative to enhance its network. These improvements will increase the bandwidth AT&T can deliver to residents of the City and will allow AT&T to offer new and improved broadband services such as higher-speed Internet access, Voice Over Internet Protocol, and several new Internet Protocol-based (“IP-based”) services, including IP-video services. To implement the upgrade, AT&T must construct new facilities, and the deployment of equipment cabinets in the PROW is integral to this process: they are necessary to hold and protect the fiber and electronics that will make AT&T’s upgraded network possible.

State and federal law prohibit an application of Section 17.70.230 that would require AT&T to underground these facilities in new development areas or otherwise.

California law (the Public Utilities Code) affords AT&T a strong right to construct its facilities in the PROW. The Code’s provisions control because AT&T operates both as a “telephone

¹ Staff earlier expressed concern that Section 12.36 of the City’s municipal code could require undergrounding Lightspeed cabinets. As AT&T explained, Section 12.36 “by its plain terms is limited to the undergrounding of aerial facilities. See Section 12.36.080 (stating that the purpose of Chapter 12.36 is “to provide for the orderly removal of existing *overhead facilities* and the construction of new underground facilities”) (emphasis added); 12.36.350 and 12.36.351 (prohibiting the maintenance and construction of *overhead facilities*). Furthermore, even if Section 12.36 were to govern surface mounted facilities, such as the cabinets, AT&T’s Lightspeed cabinets fall under the exception in 12.36.020(D), because they are “equipment appurtenant to underground facilities;” more specifically, the cabinets are “pedestal-mounted terminal box[es with] . . . [power] meter cabinet[s].”

corporation,” as that term is used by Section 7901 of the Public Utilities Codes (“Section 7901”), and a “video service provider,” as defined by the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”) (Public Utilities Code Sections 5800 *et seq.*). Accordingly, it enjoys a vested right under Section 7901 to construct “telephone lines” and “necessary fixtures” “along and upon any public road.” As the holder of a state video franchise, it also possesses the right “to install, construct, and maintain a network within public rights-of-way” under the same terms and conditions that apply to AT&T as a “telephone corporation” under Section 7901. DIVCA § 5885(a). Furthermore, federal law (Section 253) guarantees AT&T the right to be free from any local regulation that “impedes the provision of ‘telecommunications service,’” *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 491 (2002), or that “include[s] . . . features that, in combination, have the effect of prohibiting the provision of telecommunication services.” *City of Auburn v. Qwest Corp.*, 260 F.3d 1160, 1176 (9th Cir. 2001);

AT&T’s rights as a telephone corporation under Section 7901 to enter and use the PROW have long been upheld by the California courts. *See, e.g., County of Los Angeles v. Southern Cal. Tel. Co.* 32 Cal.2d 378, 385 (1948) (Section 7901 provides “vested rights which the constitutions, both state and federal, protect.”); *Williams Communs. v. City of Riverside*, 114 Cal.App.4th 642, 648 (2003) (“telephone companies have the right to use the public highways to install their facilities”). Similarly, the preemptive language of Section 253 is “‘virtually absolute’ in restricting municipalities to a ‘very limited and proscribed role in the regulation of telecommunications.’” *Qwest Communs., Inc. v. City of Berkeley*, 433 F.3d 1253, 1256 (9th Cir. 2006).

The City’s ability to curtail these rights is limited. Section 7901.1 grants the City the ability to impose “reasonable control as to the time, place and manner in which roads . . . are accessed.” *See also* 47 U.S.C. § 253(c). Section 5885(a) of DIVCA incorporates by reference the City’s existing Section 7901.1 authority to impose “reasonable” time, place, and manner restrictions on a video service provider.

Any blanket undergrounding requirement, such as that for new developments set forth in Section 17.70.230, violates AT&T’s rights and exceeds the City’s PROW powers because, for the technological, economic, and practical reasons explained below, AT&T cannot underground the innovative facilities it has designed to provide new and enhanced services, including its U-Verse video service, to the residents of Benicia. The infeasibility of placing its facilities below grade makes any undergrounding requirement an effective prohibition on AT&T’s ability to provide telecommunication services. Such a prohibition is not, as a matter of law, a reasonable time, place, and manner restriction, and is therefore a clear violation of Section 7901.1; nor is such a prohibition consistent with the City’s right to manage the PROW under Section 253. *Cf. 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 501 (1996) (complete prohibitions, unlike restrictions on time, place, or manner “are particularly dangerous” because they close off all alternative channels).

The Lightspeed network upgrade will build upon earlier network expansions, allowing AT&T to employ Internet protocol as the universal platform for new services. They include high speed Internet service, VoIP, and our U-verse TV entertainment service for our residential customers. To provide these new services, AT&T must install new electronics, which are needed to light the

fiber-optics and convert the fiber signal to a bandwidth that can be transmitted over our existing copper distribution network to the neighborhood homes.

These electronics must be suitably protected from the elements, and must be paired with, and placed in close proximity to, an existing Service Area Interface ("SAI") cabinet (the copper cross-connect box) in order to make the necessary fiber/copper connection. The above-ground, network upgrade cabinets provide the necessary shelter from the elements, contain a power supply and allow for cooling and ventilation, and can generally be placed near an existing SAI with relative ease.

In certain limited circumstances, AT&T may place its facilities underground in a controlled environment vault ("CEV"). There are a few instances where this will be possible: there must be a preexisting CEV, it must have available space, and it must be in close proximity to an existing SAI. Moreover, it is not technologically, practically, or economically feasible to construct new CEVs to house the critical components of this network-upgrade. For example, a CEV requires the excavation of 20 feet (as opposed to 3-4 feet with an network-upgrade cabinet) and includes a hatch structure for technician access, power, and ventilation that is larger than the proposed network-upgrade cabinets. Placement of facilities in a CEV may also be impossible because of a number of other factors, including the positioning of other facilities in the necessary spot (such as sewer and water lines), the risk of water intrusion, and the lengthy disruption to streets, sidewalks, and other utility services that may be necessary to construct the materially larger CEVs.

Thus, in the vast majority of instances, no technology exists that would allow AT&T to place the cabinets below grade in a feasible manner. The combination of the technological, economic, and practical constraints described above makes undergrounding impossible. Consequently, Section 17.70.230's undergrounding requirement for facilities in new developments—and indeed any such blanket undergrounding requirement—is unlawful because it constitutes an effective impediment to and a material limitation on the deployment of AT&T's network-upgrade facilities. What ultimately amounts to a complete prohibition cannot be understood to constitute a "reasonable" time, place, and manner restriction, and it violates Section 7901, DIVCA, and Section 253 of the federal Telecommunications Act.

* * *

In sum, AT&T believes that, even by its own terms, Section 17.70.230 does not apply to the vast majority of AT&T's proposed Lightspeed cabinets, which would be installed in established areas of the City, not in new development areas that are under construction. Moreover, any attempt by the City to mandate that AT&T underground its Lightspeed cabinets, whether in new development areas or otherwise, would be unlawful because any regulation compelling AT&T to underground such facilities violates state and federal law.

Ultimately, enforcement of Section 17.70.230 against AT&T will only harm Benicia residents by delaying their access to enhanced services and a new competitive choice. Such a result serves no one's interests. If you would like to discuss this matter further, please let us know and we will be happy to arrange a mutually convenient time.

Sincerely,

John di Bene

Dan Schiada - Fwd: AT&T Lightspeed - Acoustical Information For New (*48 Series) Cabinets

From: Heather McLaughlin
To: Anne Cardwell; Charlie Knox; Jim Erickson
Date: 6/17/2008 5:18 PM
Subject: Fwd: AT&T Lightspeed - Acoustical Information For New (*48 Series) Cabinets
CC: Dan Schiada

Haven't reviewed yet, but it also has a request for a study session...

>>> "DI BENE, JOHN (Legal)" <jd3235@att.com> 6/17/2008 5:00 PM >>>
Heather & Don - attached is the latest sound data from factory testing on the '48 series cabinets, the cabinets we will be installing in Benicia. I think you'll find that, in addition to all being 48" high, they are slightly quieter than the 52 series cabinets. Sorry it took so long to get this out - we had the data, but it took awhile to get it into an approved form. I'd like to schedule a time for me and Tejas Antani from our network group to talk through this data and the rest of the outstanding issues that you want to address in your staff report sometime next week, if that would be convenient. Also, I understand that from Rhuenette's meeting with the Mayor, we're looking at trying to do a workshop next month (our folks would like to propose July 27th as the workshop date, if we can make such a request). Thanks, John.

<<48 Series Cabinets Acoustics June2008.ppt>>

U-verse Outside Plant (OSP) Cabinet Acoustics - *48 Series

Solar Loading	Cabinet	Surrounding Temp	Sound Level (dbA) in 5' Increments from VRAD										
			5	10'	15'	20'	25'	30'	35'	40'	45'	50'	
Full	ALP148U	90°F	55	49	45	43	41	39	38	37	36	35	
Full	ALP148U	80°F	55	49	45	43	41	39	38	37	36	35	
Full	ALP148U	70°F	45	39	35	33	31	29	28	27	26	25	
Full	ALP148U	60°F	45	39	35	33	31	29	28	27	26	25	
Full	ALP148U	40°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP148U	14°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP248U	90°F	55	49	45	43	41	39	38	37	36	35	
Full	ALP248U	80°F	55	49	45	43	41	39	38	37	36	35	
Full	ALP248U	70°F	46	40	36	34	32	30	29	28	27	26	
Full	ALP248U	60°F	45	39	35	33	31	29	28	27	26	25	
Full	ALP248U	40°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP248U	14°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP448US	90°F	51	45	41	39	37	35	34	33	32	31	
Full	ALP448US	80°F	49	43	39	37	35	33	32	31	30	29	
Full	ALP448US	70°F	46	40	36	34	32	30	29	28	27	26	
Full	ALP448US	60°F	45	39	35	33	31	29	28	27	26	25	
Full	ALP448US	40°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP448US	14°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP448UQ	90°F	51	45	41	39	37	35	34	33	32	31	
Full	ALP448UQ	80°F	49	43	39	37	35	33	32	31	30	29	
Full	ALP448UQ	70°F	46	40	36	34	32	30	29	28	27	26	
Full	ALP448UQ	60°F	45	39	35	33	31	29	28	27	26	25	
Full	ALP448UQ	40°F	44	38	34	32	30	28	27	26	25	24	
Full	ALP448UQ	14°F	44	38	34	32	30	28	27	26	25	24	



Acoustical Performance Fan Contribution

ALP-248:

These cabinets have a more sophisticated scheme because of the use of variable speed fans. Keep in mind that when we reference a fan at "half-speed", this represents 55-60% of max speed, "near full speed" represents 92% of max speed, and our course "full speed" represents 100% of max speed.

- At external ambient conditions of 32° F, traditionally, all fans will be off.
- At external ambient conditions of 50° F, traditionally, the Internal Loop Fans will be on, running at half-speed.
- At external ambient conditions of 79° F, traditionally, both the Internal and External Loop Fans will be on, running at half-speed.
- At external ambient conditions of 97° F, traditionally, both the Internal and External Loop Fans will be on, running at near full speed.
- At external ambient conditions of 115° F, traditionally, both the Internal and External Loop Fans will be on, running at full speed.

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U-verse Outside Plant (OSP) Cabinet Conducted and Radiated Emissions

AT&T will deploy, in certain numbers, cabinets and enclosures for U-verse. All U-verse VRAD variants have tested in terms of the Conducted and Radiated Emissions requirements listed in FCC 47 CFR, CH1, 10/1/97 Edition Part 15 Subpart B for Class A Emissions.

To the right are the requirements for compliance to the FCC Radiated and Conducted electric field emissions providing testing occurs in an FCC approved 10 meter Open Area Test Site (OATS) and 3 meter Anechoic Chamber.

Radiated emissions compliance was verified through measurement of electric field strength over the frequency range listed above.

All U-verse VRAD variants are compliant with the Radiated Emissions requirements for Electric Fields as defined in FCC 47 CFR, CH1, 10/1/97 Edition Part 15 Subpart B for Class A Emissions. No mitigation required.

<p>The field strength of radiated emissions from the end user terminal (EUT) as determined at a distance as 10 meters, shall not exceed the following amplitudes at the associated frequency listed at right:</p>	<p>Radiated Emission Limits *30 – 88 MHz, 39.1 dBμV/m limit *88 – 216 MHz, 43.5 dBμV/m limit *216 – 960 MHz, 46.4 dBμV/m limit *960 – 1000 MHz, 49.5 dBμV/m limit</p>
<p>Conducted emissions from the EUT into low-voltage ac public utility power lines shall not exceed the levels of voltage amplitudes at the associated frequency listed at right:</p>	<p>Conducted Emissions *45 – 1.7 MHz, 60.1 dBμV limit *1.7 – 30 MHz, 69.5 dBμV limit</p>

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**Memo from Director of Public Works,
dated June 19, 2008, on noise issues**



Public Works Department
Clean Water / Safe Streets

MEMORANDUM

DATE: June 19, 2008

TO: Heather McLaughlin, City Attorney
Charlie Knox, Community Development Director

FROM: Dan Schiada, Director of Public Works 

SUBJECT: AT&T LIGHTSPEED CABINETS - UPDATED NOISE DATA

I received the updated noise data via email earlier this week on the proposed AT&T Lightspeed cabinets. This data, submitted by AT&T's attorney John DiBene, is summarized below:

1. AT&T will only install the 48" series cabinets in Benicia. They are slightly quieter than the cabinets previously proposed. Attached is the decibel level summary sheet.
2. The data indicates that noise levels 5 feet away from the cabinet will reach 55 decibel levels when temperatures reach or exceed 80 degrees. Data was requested for noise levels at the cabinet, but were not provided. Previous correspondence from John DiBene suggested to add another 5 decibels to each figure to replicate noise levels closer than 5 feet from the cabinet.
3. The City's noise standards are as follows:
 - a. Per the Benicia Municipal Code
 - Residential (quiet suburban) - 45 decibels (10pm to 7am)
50 decibels (7pm to 10pm)
55 decibels (7am to 7pm)
 - Commercial (quiet suburban) - 55 decibels (10pm to 7am)
- 60 decibels (7am to 10pm)
 - Industrial (quiet suburban) - 70 to 75 decibels (anytime)
 - b. Per the General Plan
 - Res (& other sensitive areas) - 50 decibels (tonal noises @ day)
- 45 decibels (tonal noises @ night)

- c. Please note that quiet suburban is the midrange category in the BMC. The more sensitive “very quiet” category would reduce the decibel level standards by 5.

When reviewing the data above, there are still occurrences when these cabinets will exceed the City’s noise standards. These are listed below:

For noise levels at the cabinet, an increase of 5 to the decibel summary table as suggested previously by AT&T would provide readings of:

- a. 60 decibels - temperatures of 90 degrees and greater
- b. 55 decibels – temperatures of 80 degrees and greater
- c. 50 decibels – temperatures of 70 degrees and greater

When comparing these readings to our standards listed above, we see that these new cabinets will exceed the City’s General Plan noise limits for residential areas during all times day and night when temperatures are 80 degrees or higher and exceed nighttime standards (10pm to 7am) when temperatures are 70 degrees or greater.

The new cabinets will exceed the City’s BMC noise limits for residential areas during all times day and night when temperatures are 90 degrees or greater, exceed evening and nighttime standards (7pm to 7am) for temperatures 80 degrees or greater, and exceed nighttime standards (10pm to 7am) for temperatures 70 degrees or greater.

The new cabinets will also exceed the City’s BMC noise limits for commercial areas during nighttime hours (10pm to 7am) when temperatures are 90 degrees or higher.

For noise levels at a distance of 5 feet from the cabinet would provide readings of:

- a. 55 decibels – temperatures of 90 degrees and greater
- b. 50 decibels – temperatures of 80 degrees and greater
- c. 45 decibels – temperatures of 70 degrees and greater

When comparing these readings to our standards, the new cabinets will exceed the City’s General Plan noise limits for residential areas during all times day and night when temperatures are 90 degrees or higher and exceed nighttime standards (10pm to 7am) when temperatures are 80 degrees or higher.

The new cabinets will also exceed the City’s BMC noise limits for residential areas during evening and nighttime hours (7pm to 7am) when temperatures are 90 degrees or greater and exceed nighttime standards (10pm to 7am) when temperatures are 80 degrees or higher.

In summary:

The new information provided by AT&T still indicates that their proposed cabinets for Project Lightspeed will exceed the City’s noise level standards for residential areas categorized as quiet suburban at the times listed above. It should be noted that these cabinets will NOT exceed the

City's noise levels for commercial and industrial areas except for the unlikely occurrence of 90 degree or higher nighttime temperatures. In light of this information, AT&T should consider initiating their Project Lightspeed project in the Benicia Industrial Park or within the commercial areas of town first to stay in compliance with our noise standards. Once installed, the noise levels of the new cabinets could be verified in the field to determine what additional mitigation measures would need to be applied to address the noise level problems.

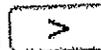
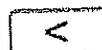
Cc: Chris Tomasik, Assistant Director of Public Works
Michael Throne, City Engineer

Attachments:

AT&T Revised Noise Information on 48 Series Cabinets
Benicia Municipal Code Noise Regulations (Chapter 8.20)
Benicia General Plan Excerpt from Noise Section

**Noise Regulations, Chapter 8.20 of the
Benicia Municipal Code**

TOC



Chapter 8.20

NOISE REGULATIONS¹

Sections:

- 8.20.010 Declaration of policy.
- 8.20.020 Definitions.
- 8.20.030 Sound-amplifying equipment – Purpose of provisions.
- 8.20.040 Sound-amplifying equipment – Registration – Required.
- 8.20.050 Sound-amplifying equipment – Registration – Statement filing and approval.
- 8.20.060 Sound-amplifying equipment – Registration – Fee.
- 8.20.070 Sound-amplifying equipment – Appeal from disapproval.
- 8.20.080 Sound-amplifying equipment – Use regulations.
- 8.20.090 Radios, television sets and similar devices.
- 8.20.100 Hawkers and peddlers.
- 8.20.110 Drums – Use restricted.
- 8.20.120 Schools, hospitals and churches.
- 8.20.130 Animals and fowl.
- 8.20.140 Machinery, equipment, fans and air conditioning.
- 8.20.150 Construction of buildings and projects.
- 8.20.160 Vehicle repairs.
- 8.20.170 Motor-driven vehicles.
- 8.20.180 Sound level measurement criteria.
- 8.20.190 Ambient base noise level.
- 8.20.200 Excessive noise prohibited.
- 8.20.210 Petition for temporary relief from regulations.
- 8.20.220 Repealed.
- 8.20.230 Violation – Additional remedy.

8.20.010 Declaration of policy.

It is declared to be the policy of the city to prohibit unnecessary, excessive and annoying noises from all sources subject to its police power. At certain levels noises are detrimental to the health and welfare of the citizenry and in the public interests shall be systematically proscribed. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-101).

8.20.020 Definitions.

As used in this chapter, unless the context otherwise clearly indicates, the words and phrases used in this chapter are defined as follows:

A. "Ambient noise" means the all-encompassing noise associated with a given environment, being usually a composite of sounds from any sources near and far. For the purpose of this chapter, ambient noise level is the level obtained when the noise level is averaged over a period of 15 minutes without inclusion of noise from isolated identifiable sources, at the location and time of day near that at which a comparison is to be made.

B. "Commercial purpose" means and includes the use, operation or maintenance of any sound-amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.

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C. "Decibel" means a unit of level when the base of the logarithm is the tenth root of 10 and the quantities concerned are proportional to power.

D. "Emergency work" means work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from an imminent exposure to danger, or work by private or public utilities when restoring utility service.

E. "Frequency" of a function periodic in time means the reciprocal of the primitive period. The unit is the hertz and shall be specified.

F. "Hertz" means the complete sequence of values of a periodic quantity which occurs during a period.

G. "Microbar" means a unit of pressure commonly used in acoustics and is equal to one dyne per square centimeter.

H. "Motor vehicles" includes, but is not limited to, mini-bikes and go-carts.

I. "Noncommercial purpose" means the use, operation or maintenance of any sound equipment for other than a commercial purpose. "Noncommercial purpose" means and includes, but is not limited to, philanthropic, political, patriotic and charitable purposes.

J. "Period" of a periodic quantity means the smallest increment of time for which the function repeats itself.

K. "Periodic quantity" means oscillating quantity, the values of which recur for equal increments of time.

L. "Person" means a person, firm, association, copartnership, joint venture, corporation, or any entity public or private in nature.

M. "Sound-amplifying equipment" means any machine or device for the amplification of the human voice, music, or any other sound. "Sound-amplifying equipment" shall not include standard automobile radios when used and heard only by the occupants of the vehicle in which the automobile radio is installed. "Sound-amplifying equipment," as used in this chapter, shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any vehicle used only for traffic safety purposes.

N. "Sound level" or "noise level," in decibels (dB), is the sound measured with the "A" weighting and slow response by a sound level meter.

O. "Sound level meter" means an instrument including a microphone, an amplifier, an output meter, and frequency weighting networks for the measurement of sound levels which satisfies the pertinent requirements in American Standard Specifications for sound level meters S1.4-1971 or the most recent revision thereof.

P. "Sound truck" means any motor vehicle, or any other vehicle regardless of motive power, whether in motion or stationary, having mounted thereon or attached thereto any sound-amplifying equipment. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-102).

8.20.030 Sound-amplifying equipment – Purpose of provisions.

The council enacts this legislation for the sole purpose of securing and promoting the public health, comfort, safety and welfare of its citizenry. While recognizing that the use of sound-amplifying equipment is protected by the constitutional rights of freedom of speech and assembly, the council nevertheless feels obligated to reasonably regulate corrective constitutional rights of the citizens of this community to privacy and freedom from public nuisance of loud and unnecessary noise. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-501).

8.20.040 Sound-amplifying equipment – Registration – Required.

It is unlawful for any person, other than personnel of law enforcement or governmental agencies, to install, use or operate within the city a loudspeaker or sound-amplifying equipment in a fixed or movable position or mounted upon any sound truck for the purposes of giving instructions, directions, talks, addresses, lectures, or transmitting music to any person or assemblages of persons in or upon any street, alley, sidewalk, park, place or public property without first filing a registration statement and obtaining approval thereof as set forth in BMC 8.20.050 through 8.20.080. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-502).

8.20.050 Sound-amplifying equipment – Registration – Statement filing and approval.

A. Every user of sound-amplifying equipment shall file a registration statement with the city manager or his designee 15 days prior to the date on which the sound-amplifying equipment is intended to be used,

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which statement shall contain the following information:

1. The name, address and telephone number of both the owner and user of the sound-amplifying equipment;
2. The maximum sound-producing power of the sound-amplifying equipment which shall include the wattage to be used, the volume in decibels of sound which will be produced, and the approximate distance for which sound will be audible from the sound-amplifying equipment;
3. The license and motor number if a sound truck is to be used;
4. A general description of the sound-amplifying equipment which is to be used; and
5. Whether the sound-amplifying equipment will be used for commercial or noncommercial purposes.

B. The city manager, or his designee, shall return to the applicant an approved certified copy of the registration statement unless he finds that:

1. The conditions of the motor vehicle movement are such that in the opinion of the city manager, use of the equipment would constitute a detriment to traffic safety; or
2. The conditions of pedestrian movement are such that use of the equipment would constitute a detriment to traffic safety; or
3. The registration statement required reveals that the applicant would violate the provisions set forth in BMC 8.20.080 or any other provisions of this code.

C. In the event the registration statement is disapproved, the city manager or his designee shall enforce upon the statement his reasons for disapproval and return it forthwith to the applicant. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-503).

8.20.060 Sound-amplifying equipment – Registration – Fee.

Prior to the issuance of the registration statement, a fee in the amount of \$25.00 per day, or any portion thereof, shall be paid to the city, if the loudspeaker or sound-amplifying equipment is to be used for commercial purposes. No fee shall be required for the operation of a loudspeaker or sound-amplifying equipment for noncommercial purposes. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-505).

8.20.070 Sound-amplifying equipment – Appeal from disapproval.

Any person aggrieved by disapproval of a registration statement may appeal the disapproval to the city council within 10 days. The appeal shall be filed with the city clerk and placed on the next regular council meeting agenda for review. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-504).

8.20.080 Sound-amplifying equipment – Use regulations.

The commercial and noncommercial use of sound-amplifying equipment shall be subject to the following regulations:

- A. The only sounds permitted shall be either music or human speech, or both.
- B. The operation of sound-amplifying equipment shall only occur between the hours of 9:00 a.m. and 8:00 p.m. each day except on Sundays and legal holidays. No operation of sound-amplifying equipment for commercial purposes shall be permitted on Sundays or legal holidays. The operation of sound-amplifying equipment for noncommercial purposes on Sundays and legal holidays shall only occur between the hours of 9:00 a.m. and 9:00 p.m.

C. Sound levels emanating from sound-amplifying equipment shall not exceed 15 decibels above the ambient base noise level.

D. Notwithstanding the provisions of subsection (C) of this section, sound-amplifying equipment shall not be operated within 200 feet of churches, schools, hospitals, or city or county buildings unless specifically authorized by the city manager or his designee.

E. In any event, the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing, or a nuisance to reasonable persons of normal sensitiveness within the area of audibility. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-506).

8.20.090 Radios, television sets and similar devices.

A. Use Restricted. It is unlawful for any person within any residential zone of the city to use or operate any radio receiving set, musical instrument, phonograph, television set, or other machine or device for the producing or reproducing of sound between the hours of 10:00 p.m. of one day and 7:00 a.m. of the following day in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any

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reasonable person of normal sensitiveness residing in the area.

B. Prima Facie Violation. Any noise level exceeding the ambient base level at the property line of any property or, if a condominium or apartment house, within any adjoining apartment, by more than five decibels shall be deemed to be prima facie evidence of a violation of the provisions of this section. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-201).

8.20.100 Hawkers and peddlers.

It is unlawful for any person within the city to sell anything by outcry within any area of the city zoned for residential uses. The provisions of this section shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at licensed sporting events, parades, fairs, circuses and other similar licensed public entertainment events. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-202).

8.20.110 Drums – Use restricted.

It is unlawful for any person to use any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the city. This section shall not apply to any person who is a participant in a school band or duly licensed parade or who has been otherwise duly authorized to engage in such conduct. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-203).

8.20.120 Schools, hospitals and churches.

It is unlawful for any person to create any noise on any street, sidewalk or public place adjacent to any school, institution of learning or church while the same is in use, or adjacent to any acute hospital, which noise unreasonably interferes with the workings of such institution or which disturbs or unduly annoys patients in the hospital, provided conspicuous signs are displayed in such street, sidewalk or public place indicating the presence of a school, church or hospital. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-204).

8.20.130 Animals and fowl.

No person shall keep or maintain, or permit the keeping of, upon any premises owned, occupied or controlled by such person any animal or fowl otherwise permitted to be kept which, by any sound, cry or behavior shall cause annoyance or discomfort to a reasonable person of normal sensitiveness in any residential neighborhood. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-205).

8.20.140 Machinery, equipment, fans and air conditioning.

It is unlawful for any person to operate any machinery, equipment, pump, fan, air conditioning apparatus, or similar mechanical device in any manner so as to create any noise which would cause the noise level at the property line of any property to exceed the ambient base noise level by more than five decibels. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-206).

8.20.150 Construction of buildings and projects.

It is unlawful for any person within a residential zone, or within a radius of 500 feet therefrom, to operate equipment or perform any outside construction or repair work on buildings, structures, or projects or to operate any pile driver, power shovel, pneumatic hammer, derrick, power hoist, or any other construction type device between the hours of 10:00 p.m. of any one day and 7:00 a.m. of the next day in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance unless beforehand a permit therefor has been duly obtained from the city manager or his designee. No permit shall be required to perform emergency work as defined in BMC 8.20.020. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-301).

8.20.160 Vehicle repairs.

It is unlawful for any person within any residential area of the city to repair, rebuild, or test any motor vehicle between the hours of 10:00 p.m. of one day and 7:00 a.m. of the next day in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-401).

8.20.170 Motor-driven vehicles.

It is unlawful for any person to operate any motor-driven vehicle within the city in such a manner that a reasonable person of normal sensitiveness residing in the area is caused discomfort or annoyance;

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provided, however, any such vehicle which is operated upon any public highway, street, or right-of-way shall be excluded from the provisions of this section. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-402).

8.20.180 Sound level measurement criteria.

Any sound level measurement made pursuant to the provisions of this chapter shall be measured with a sound level meter using the "A" weighting. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-103).

8.20.190 Ambient base noise level.

Where the ambient noise level is less than designated in this section the respective noise level in this section shall govern.

		Sound Level A, decibels		
		Community Environment Classification		
Zone		Very Quiet (rural, suburban)	Quiet (suburban)	Slightly noisy (suburban, urban)
R1 and R2	10:00 p.m. to 7:00 a.m.	40	45	50
R1 and R2	7:00 p.m. to 10:00 p.m.	45	50	55
R1 and R2	7:00 a.m. to 7:00 p.m.	50	55	60
R3 and R4	10:00 p.m. to 7:00 a.m.	45	50	55
R3 and R4	7:00 a.m. to 10:00 p.m.	50	55	60
Commercial	10:00 p.m. to 7:00 a.m.		55	60
Commercial	7:00 a.m. to 10:00 p.m.		60	65
M1	anytime		70	70
M2	anytime		75	75

(Ord. 77-2 N.S. § 1, 1977; prior code § 12-104).

8.20.200 Excessive noise prohibited.

A. Notwithstanding any other provision of this chapter, and in addition thereto, it shall be unlawful for any person to wilfully make or continue, or cause to be made or continued, any loud, unnecessary, or unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.

B. The standards which shall be considered in determining whether a violation of the provisions of this section exists shall include, but not be limited to, the following:

1. The level of the noise;
2. The intensity of the noise;
3. Whether the nature of the noise is usual or unusual;
4. Whether the origin of the noise is natural or unnatural;
5. The level and intensity of the background noise, if any;
6. The proximity of the noise to residential sleeping facilities;
7. The nature and zoning of the area within which the noise emanates;
8. The density of the inhabitation of the area within which the noise emanates;
9. The time of day or night the noise occurs;

10. The duration of the noise;
11. Whether the noise is recurrent, intermittent, or constant; and
12. Whether the noise is produced by a commercial or noncommercial activity. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-601).

8.20.210 Petition for temporary relief from regulations.

Any person may petition the city council for temporary relief from provisions of this chapter by written request directed to the city clerk. The city council shall hear such petition at the next regular city council meeting not less than five days after the filing of said request. Upon hearing all the evidence, the city council may grant temporary relief from the provisions of this chapter upon such terms and conditions as the council may see fit if the council finds that the temporary relief does not endanger the health, welfare or safety of the residents of the city. The temporary relief may not exceed 30 days in duration. The applicant for relief may not exceed the provisions of this chapter until such time as the permit of the city has been issued. The decision of the city council shall be final. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-701).

8.20.220 Violation – Penalty.

Repealed by Ord. 03-9. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-105).

8.20.230 Violation – Additional remedy.

As an additional remedy, the operation or maintenance of any device, instrument, vehicle, or machinery in violation of any provision of this chapter, which operation or maintenance causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area, shall be deemed and is declared to be, a public nuisance and may be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction. (Ord. 77-2 N.S. § 1, 1977; prior code § 12-106).

For statutory provisions on noise control, see Health and Safety Code § 46000 et seq.

Stationary Noise Standards from the Benicia General Plan

STATIONARY NOISE SOURCES

Table 4-4 provides specific performance standards for determining the compatibility of proposed noise-sensitive land uses with stationary noise sources. The performance standards are for new noise-sensitive developments which may be affected by an existing stationary noise source. The performance standards also apply to new developments that include a stationary noise source which may affect an existing noise-sensitive development.

The intent of these performance standards is both to prevent new noise sources from encroaching on existing noise-sensitive developments and to prevent new noise-sensitive developments from encroaching on existing uses.

Noise sources evaluated relative to the performance standards in Table 4-4 should be considered with respect to their standard daily or weekly operating conditions. Noise sources may produce unusual noise levels due to temporary equipment malfunction, or unusual atmospheric conditions. Noise levels associated with these infrequent conditions are exempt from the performance standards contained in Table 4-4. In addition, the performance standards are not to be applied to safety signals or warning devices. In the event an acoustical study is required of an applicant, refer to Appendix I: "Requirements for an Acoustical Analysis."

Table 4-4. Noise Level Performance Standards for Noise-Sensitive Land Uses Which May Be Affected by Stationary Noise Sources

Land Use	Exterior Hourly L_{eq} dB		Interior Hourly L_{eq} dB	
	Daytime	Nighttime	Daytime	Nighttime
	7 a.m. to 10 p.m.	10 p.m. to 7 a.m.	7 a.m. to 10 p.m.	10 p.m. to 7 a.m.
Residential	55	50	40	35
Transient Lodging	55	50	40	35
Hospitals	—	—	40	35
Nursing Homes	55	50	40	35
Theaters, Auditoriums	—	—	35	35
Churches	55	50	40	40
Schools	55	50	45	45
Libraries	55	50	45	45

Stationary noise sources include industrial operations, outdoor recreation facilities, HVAC units, loading docks, etc.

The above standards may be adjusted upwards to allow for an increase in the existing ambient hourly L_{eq} caused by a proposed project. An increase of less than 3dB is permitted, even if the standards in Table 4-4 are exceeded; an increase of 3dB or greater constitutes a significant environmental impact, unless the increase does not cause the standards in Table 4-4 to be exceeded.

The noise level standards contained above shall be applied to a typical hour of operation. When a peak hour of operation is expected to occur consistently during daily or weekly operations, the standards shall also be applied to those operations.

Each of the noise standards specified above shall be lowered by five dB for tonal noises (humming, high-pitched tones, speech music, or recurring impulsive noises). This lowering of the standard does not apply to residential units established in conjunction with industrial or commercial caretaker dwellings. (See Glossary for definition of tonal noise).

The City may choose to apply the noise level performance standards at designated outdoor activity areas, in lieu of the property line.

The above standards do not apply to safety signals or warning devices.

For noise sources that occur on an infrequent basis and are considered to be safety equipment (such as flaring or pressure relief valves), a maximum noise level of 75 dB is acceptable, as measured from the receiver's property line. Noise levels which are projected to exceed this maximum are considered a significant environmental impact.

Where outdoor activity areas do not exist and/or are not expected to be affected, the City may choose to only apply the interior noise level criteria. For example, in the case of single family residences which do not have second story patios or outdoor activity areas, the City may choose to only apply an interior noise level standard at the second story interior spaces.

4. COMMUNITY NOISE GOALS, POLICIES, AND PROGRAMS



- GOAL 4.23:** Reduce or eliminate the effects of excessive noise.
- POLICY 4.23.1:** Evaluate the compatibility of proposed projects with respect to existing and future transportation noise levels by utilizing Tables 4-3 and 4-4.
- Program 4.23.A:* Investigate and implement techniques to reduce traffic noise.
- POLICY 4.23.2:** Use noise dampening building standards, site design, landscaping, and setbacks instead of sound walls, wherever possible.
- POLICY 4.23.3:** Use available techniques such as building insulation, berms, building design and orientation, buffer yards, and staggered operating hours to minimize noise at the source.
- POLICY 4.23.4:** Control development of noise-sensitive land uses in areas exposed to existing or projected noise which exceed the levels specified in Tables 4-3 and 4-4 unless the project includes specific, effective mitigation measures to reduce interior and exterior noise levels to those specified in Tables 4-3 and 4-4.
- Program 4.23.B:* Investigate conditioning construction of live/work units with a requirement to record a "notice of special restrictions" which would acknowledge the noisy nature of existing adjacent industrial uses.
- POLICY 4.23.5:** Accommodate roadway improvement projects for build-out of the General Plan by recognizing that existing noise-sensitive uses may be exposed to increased noise levels from roadway repairs, increased traffic, and increased travel speeds. When it is not practical to reduce traffic noise levels to those in Table 4-4, the following criteria will be used as a test of significance for the environmental review of roadway improvement projects:
- (a) Where existing noise levels are less than 60 dB L_{dn} at the outdoor activity area of a noise-sensitive use, a 5 dB L_{dn} increase in noise levels due to a roadway improvement project will be considered significant;
 - (b) Where existing noise levels range between 60 and 65 dB L_{dn} at the outdoor activity area of a noise-sensitive use, a 3 dB L_{dn} increase in noise levels due to a roadway improvement project will be considered significant; and
 - (c) Where existing noise levels are greater than 65 dB L_{dn} at the outdoor activity area of a noise-sensitive use, a 1.5 dB L_{dn}

- increase in noise levels due to a roadway improvement project will be considered significant.
- Program 4.23.C:* If needed, revise the City's noise ordinance and consider incorporating the noise level performance standards in Table 4-4.
- POLICY 4.23.6:** Attempt to reduce noise in areas already highly impacted by excessive noise.
- Program 4.23.D:* Identify sources of noise in the community (such as flight patterns, construction noise, traffic, railroads, industrial, and amplified sound). Develop measures to reduce excessive noise to acceptable levels.

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 4, 2008
INFORMATIONAL ITEMS

DATE : October 18, 2008
TO : City Council
FROM : City Attorney
SUBJECT : **REVIEW OF VOLUNTARY CAMPAIGN EXPENDITURE
LIMITS – POLICY CALENDAR ITEM**

RECOMMENDATION:

Provide direction to staff on whether additional campaign related ordinances should be drafted.

EXECUTIVE SUMMARY:

Over the past several years, the City Council has considered a variety of campaign related ordinances. The Council has adopted a Code of Fair Campaign Practices ordinance as well as a Campaign Disclosure in Candidate Elections ordinance. At one of the Council's priority setting sessions, the Council decided to agendize whether to direct staff to draft additional campaign related ordinances. The ordinances could provide for voluntary recusal for actions involving contributors to a campaign, listing out subcontractors on disclosure statements and disclosing contributors for mass mailers.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

None.

BUDGET INFORMATION:

It is unclear at this point what budget impact there would be.

BACKGROUND:

Vice Mayor Campbell has requested the Council consider campaign ordinances to provide:

1. A limitation on contribution amounts (\$500 per election cycle for monetary contributions and/or \$500 for non-monetary contributions).

2. "A pledge by a candidate that they will voluntarily recuse themselves on any City Council vote where the decision involved someone/company who has given them \$1000 or more for a campaign or campaigns (cumulative total).
3. It is no longer sufficient to just list the vendor a candidate pays such as a consultant, but to now list the sub vendors. After the audit we all went through it appears that is what we were supposed to do anyway according to the Board of Equalization.
4. With respect to both issue mass mailers and campaign/political mailers I want the contribution source listed down to \$99 and expenditure for each mailer listed down to \$99. Also I want these numbers reported to the City within 48 hours after the mailing is posted."

Vice Mayor Campbell would also like a \$100/day fine for each separate violation until the reporting requirements have been complied with.

I have attached sample ordinances from Oakland, San Jose, Berkeley, Albany and Walnut Creek. The following is a brief table to identify where the ordinances have similar provisions to those requested. The Section notation refers to the first main section where the concept is discussed.

	Oakland	San Jose	Berkeley	Albany	Walnut Creek
Contribution limits	Section 3.12.050	Section 12.06.210	Section 2.12.415	Section 7-3	Section 12-1.103
Recusal for actions involving Contributors	Section 3.12.310	-	-		
Vendors and Sub-Vendors	-	-	Section 2.12.315	Section 7-5	Section 12-1.106
Identification of Contributors to Mailers	Section 3.12.230	Section 12.06.1010	Sections 2.12.272 & 2.12.330		

It is worth noting that all of the cities except for Walnut Creek are charter cities and so have more authority over local elections by virtue of their charter. More research would have to be done to see if other non-charter cities have similar provisions.

Attachments:

- Oakland Ordinance
- San Jose Ordinance
- Berkeley Ordinance
- Albany Ordinance
- Walnut Creek Ordinance

OAKLAND ORDINANCE

Title 3 MUNICIPAL ELECTIONS

Chapter 3.12 THE CITY OF OAKLAND CAMPAIGN REFORM ACT*

Article I Findings and Purpose

3.12.010 Title.

3.12.020 Findings and declarations.

3.12.030 Purpose of this Act.

Article II Definitions

3.12.040 Interpretation of this Act.

Article III Contribution Limitations

3.12.050 Limitations on contributions from persons.

3.12.060 Limitations on contributions from broad-based political committees.

3.12.070 Return of contributions.

3.12.080 Aggregation of payments.

3.12.090 Loans.

3.12.100 Family contributions.

3.12.110 One campaign committee and one checking account per candidate for city office.

3.12.120 Money received by city officials and candidates treated as contributions, income or gifts.

3.12.130 Identification of contributor required.

3.12.140 Contractors doing business with the city of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District prohibited from making contributions.

3.12.150 Officeholder fund.

3.12.160 Allowance for donation of office space.

3.12.170 Legal expense funds.

3.12.180 Volunteer services exemption.

Article IV Expenditure Ceilings

3.12.190 Expenditure ceilings.

3.12.200 Amount of expenditure ceilings.

3.12.210 Time periods for expenditures.

3.12.220 Expenditure ceilings lifted.

Article V Independent Expenditures

3.12.230 Independent expenditures for mass mailings, state mailings or other campaign materials.

Article VI Agency Responsibility

3.12.240 Duties of the Public Ethics Commission.

3.12.250 Duties of the City Clerk.

Article VII Enforcement

3.12.260 Public Ethics Commission as enforcing body.

3.12.270 Criminal misdemeanor actions.

3.12.280 Enforcement actions.

3.12.290 Injunctive relief.

3.12.300 Cost of litigation.

3.12.310 Disqualification.

Article VIII Miscellaneous Provisions

3.12.320 Applicability of other laws.

3.12.330 Severability.

* Editor's Note: Per Ord. 11969, passed March 18, 1997, effective January 1, 1997, except to acts occurring on or before December 31, 1996, Chapter 3.12, the Oakland Campaign Reform Act, is suspended pending further legislative action by ordinance, by the Oakland City Council in response to pending legal challenges to Proposition 208, the California Political Reform Act of 1996. Chapter 3.12 will be automatically reinstated without legislative action by the Oakland City Council if Proposition 208 is enjoined in its entirety.
Prior ordinance history: Ords. 11612, 11874, 12043 and 12075.

Article I Findings and Purpose

3.12.010 Title.

This chapter shall be known as the city of Oakland Campaign Reform Act, hereinafter "the Act." (Ord. 12158 (part), 1999)

3.12.020 Findings and declarations.

The Oakland City Council finds and declares each of the following:

- A. Monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.
- B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process.
- C. Candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.
- D. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.
- E. Officeholders are responding to high campaign costs by raising larger amounts of money. This fundraising distracts them from important public matters, encourages contributions, which may have a corrupting influence, and gives incumbents an overwhelming and patently unfair fundraising advantage over potential challengers.
- F. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing. (Ord. 12158 (part), 1999)

3.12.030 Purpose of this Act.

The purpose of this Act is to accomplish the following:

- A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.
- B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.
- C. To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.
- D. To reduce the advantage of incumbents and thus encourage competition for elective office.
- E. To allow candidates and officeholders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.
- F. To ensure that serious candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns.
- G. To help restore public trust in governmental and electoral institutions. (Ord. 12158 (part), 1999)

Article II Definitions

3.12.040 Interpretation of this Act.

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections 81000 et seq., as they appear in 1998 shall govern the interpretation of this Act.

"Broad-based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five or more candidates.

"City offices" for the purposes of this Act include: Mayor, City Attorney, City Auditor, City

Councilmembers and School Board Directors.

"Election" means any primary or general election held in the city of Oakland for city office. Primary and general elections are separate elections for purposes of this Act. The primary election period shall extend from January 1st of the first year of an election cycle up to and including March 30th of the fourth year of the election cycle, and the general election period shall extend from April 1st of the fourth year of the election cycle up to and including December 31st of the fourth year of the election cycle.

"Election cycle" means a four-year period preceding a term of office as defined by the Oakland City Charter, beginning on January 1st, and ending on December 31st of the fourth year thereafter.

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

Qualified Campaign Expenditure.

1. "Qualified campaign expenditure" for candidates means and includes all of the following:

a. Any expenditure made by a candidate, officeholder or committee controlled by the candidate or officeholder, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for city office.

b. A nonmonetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or officeholder.

2. "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for political purposes.

"Redevelopment Agency" means the Oakland Redevelopment Agency. (Ord. 12158 (part), 1999)

Article III Contribution Limitations

3.12.050 Limitations on contributions from persons.

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one hundred dollars (\$100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars (\$500.00) from any person for each election.

C. Any person who makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsections A.

D. This section is not intended to prohibit or regulate contributions to persons or broad based political committees for the purpose of influencing elections for offices other than city offices.

E. Upon the effective date of the ordinance codified in this section, persons making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a person has separately accounted for such contributions and expenditures for such elections for city office, contributors to that person may contribute more than the amount set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.

F. Candidates for city office shall not be held responsible for violations of this provision by any person.

G. Beginning January 1, 2001, the City Clerk shall once annually, on a calendar year basis, increase the contribution limitation amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be rounded to the nearest one hundred (100). The City Clerk shall publish the contribution limitation amounts no later than February 1st of each year. (Ord. 12260 § 1 (part), 2000; Ord. 12207 § 2, 2000; Ord. 12197 (part), 1999; Ord. 12158 (part), 1999)

3.12.060 Limitations on contributions from broad-based political committees.

A. No broad-based political committee shall make to any candidate for city office and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no broad-based political committee shall make to any candidate for city office and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than one thousand dollars (\$1,000.00) for each election.

C. Any broad-based political committee that makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsection A of this section.

D. This section is not intended to prohibit or regulate contributions to persons or broad-based political committees for the purpose of influencing elections for offices other than city offices.

E. Upon the effective date of the ordinance codified in this section, a broad-based political committee making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a broad-based political committee has separately accounted for such contributions and expenditures for such elections for city office, contributors to that broad-based political committee may contribute more than the amounts set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.

F. Candidates for city office shall not be held responsible for violations of this provision by any broad-based political committee.

G. Beginning January 1, 2001, the City Clerk shall once annually, on a calendar year basis, increase the contribution limitation amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be rounded to the nearest one hundred (100). The City Clerk shall publish the contribution limitation amounts no later than February 1st of each year. (Ord. 12260 § 1 (part), 2000; Ord. 12207 § 2, 2000; Ord. 12197 (part), 1999; Ord. 12158 (part), 1999)

3.12.070 Return of contributions.

A contribution shall not be considered received if it is not negotiated, deposited, or utilized, and in addition it is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be reported. In the case of a late contribution as defined in Government Code Section 82036, it shall not be deemed received if it is returned to the contributor within forty-eight (48) hours of receipt. (Ord. 12158 (part), 1999)

3.12.080 Aggregation of payments.

For purposes of the contribution limitations enumerated in this Act, the following shall apply:

A. All payments made by a person, committee or broad-based political committee whose contributions or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person, committee or broad based political committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person, committee or broad based political committee.

B. Two or more entities shall be treated as one person when any of the following circumstances apply:

1. The entities share the majority of members of their boards of directors.
2. The entities share two or more officers.
3. The entities are owned or controlled by the same majority shareholder or shareholders.
4. The entities are in a parent-subsidiary relationship.

C. An individual and any general or limited partnership in which the individual has more than a fifty (50) percent share, or an individual and any corporation in which the individual owns a controlling interest (more than fifty (50) percent), shall be treated as one person.

D. No committee and no broad-based political committee which supports or opposes a candidate for

office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee or broad-based political committee shall act in concert with, or solicit or make contributions on behalf of, any other committee or broad-based political committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on which a candidate or candidates receive contributions. (Ord. 12158 (part), 1999)

3.12.090 Loans.

A. A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Act.

B. Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee campaign statement on which the loan is first reported.

C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Act.

D. Other than loans pursuant to subsection C of this section, extensions of credit in excess of one thousand five hundred dollars (\$1,500.00) for a period of more than ninety (90) days are subject to the contribution limitations of this Act, unless the candidate can demonstrate good faith evidence of an intent to repay through a set payment schedule which is being adhered to through repayment of the extension of credit on a regular basis. (Ord. 12158 (part), 1999)

3.12.100 Family contributions.

A. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

B. Contributions by children under eighteen (18) years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent). (Ord. 12158 (part), 1999)

3.12.110 One campaign committee and one checking account per candidate for city office.

A candidate for city office shall have no more than one campaign committee and one checking account for the city office being sought, out of which all expenditures for that office shall be made. This section should not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts. (Ord. 12158 (part), 1999)

3.12.120 Money received by city officials and candidates treated as contributions, income or gifts.

Any funds received by any elected city official or candidate running in the jurisdiction or any committee controlled by such an official or candidate shall be considered either a campaign contribution, income or a gift. All campaign contributions received by such persons shall be subject to the provisions of this Act unless such campaign contributions are used exclusively for elections held outside the jurisdiction. All income and gifts shall be subject to the disqualification provisions of the Political Reform Act, Government Code Sections 87100 et seq. (Ord. 12158 (part), 1999)

3.12.130 Identification of contributor required.

No contribution of one hundred dollars (\$100.00) or more shall be deposited into a campaign checking account of a candidate for city office unless the name, address, occupation, and employer of the contributor is on file in the records of the recipient of the contribution. (Ord. 12158 (part), 1999)

3.12.140 Contractors doing business with the city of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District prohibited

from making contributions.

A. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the city for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the city or for selling any land or building to the city or for purchasing any land or building from the city whenever the value of such transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

B. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Redevelopment Agency for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the Redevelopment Agency or for selling any land or building to the Redevelopment Agency or for purchasing any land or building from the Redevelopment Agency, whenever the value of such transaction would require approval by the Redevelopment Agency, shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

C. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Oakland School District, for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the School District or for selling any land or building to the School District or for purchasing any land or building from the School District whenever the value of such transaction would require approval the School Board, shall make any contribution to a School Board member, candidate for School Board Directors or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.

D. "Services" means and includes labor, professional services, consulting services, or a combination of services and materials, supplies, commodities and equipment which shall include public works projects.

E. For contributions to city officers other than School Board Directors, transactions that require approval by the City Council or Redevelopment Agency include but are not limited to:

1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars (\$15,000.00).
2. Contracts for the procurement of services exceeding fifty thousand dollars (\$50,000.00), other than contracts for professional or consulting services.
3. Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding fifty thousand dollars (\$50,000.00).
4. Contracts for the sale of any building or land to or from the city or the Redevelopment Agency.
5. Amendments to contracts described in subsections (E)(1), (2), (3), and (4) of this section.

F. For contributions to School Board Directors, transactions that require approval by the School Board include but are not limited to:

1. Professional services and consulting contracts exceeding twenty-five thousand dollars (\$25,000.00), including personal service agreements.
2. Contracts requiring School Board approval under Public Contract Code Section 20111.
3. Construction contracts exceeding twenty-five thousand dollars (\$25,000.00) whether or not they are subject to the provisions of the Public Contract Code.
4. Contracts for the sale of any building or land to or from the School District.
5. Amendments to contracts described in subsections (F)(1), (2), (3), and (4) of this section.

G. "Commencement of negotiations" for city contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed city officer or employee or when any elected or appointed city officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

H. "Commencement of negotiations" for Redevelopment Agency contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed Redevelopment Agency officer or employee or when any elected or appointed Redevelopment Agency officer or employee formally proposes submission of a bid, proposal,

qualifications or contract amendment from a contractor or contractor's agent.

I. "Commencement of negotiations" for Oakland School District contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed School District officer or employee or when any elected or appointed School District officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.

J. "Commencement of negotiations" does not include unsolicited receipt of proposal or contract information or documents related to them, requests to be placed on mailing lists or routine inquiries for information about a particular contract, request for proposal or any information or documents relating to them or attendance at an informational meeting.

K. "Completion of negotiations" occurs when the city, the Redevelopment Agency or the School District executes the contract or amendment.

L. "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by an appointed or elected City officer, Redevelopment Agency officer, City employee or Redevelopment Agency employee or an appointed or elected School District officer or employee.

M. The Oakland City Manager shall be responsible for implementing procedures for City of Oakland and Redevelopment Agency contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name

Date

Signature

The signed and dated statement must be received and filed by the City Clerk at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The City Clerk shall keep an updated list of current contractors available for inspection.

N. The Oakland Superintendent of Schools shall be responsible for implementing procedures for Oakland School District contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name

Date

Signature

The signed and dated statement must be received and filed with the School District at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The School District shall keep an updated list of current contractors available for inspection.

O. A person who contracts with the City, the Redevelopment Agency or the School District for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City,

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the Redevelopment Agency or the School District, or for selling any land or building to the City, the Redevelopment Agency or the School District or for purchasing any land or building from the Redevelopment Agency or the School District, whenever the value of such transaction would require approval by the City Council, the Redevelopment Agency or the School Board, and who violates subsection A of this section, shall be subject to the enforcement provisions of Article VII of this Act.

P. Elected city officeholders, candidates for city office and their controlled committees shall include a notice on all campaign fundraising materials equivalent to eight point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC § 3.12.140, paragraphs A., B., and C.).

(Ord. 12158 (part), 1999)

3.12.150 Officeholder fund.

A. Every elected city officeholder shall be permitted to establish one officeholder expense fund. All contributions deposited into the officeholder expense fund shall be deemed to be held in trust for expenses associated with holding the office currently held by the elected city officer. Contributions to the officeholder fund must be made by a separate check or other separate written instrument. Single contributions may not be divided between the officeholder fund and any other candidate committee. For District Councilmembers, City Auditor and School Board Directors total contributions to an officeholder fund shall not exceed twenty-five thousand dollars (\$25,000.00) per year in office. For Councilmember-At-Large and City Attorney, total contributions to an officeholder fund shall not exceed thirty thousand dollars (\$30,000.00) per year in office. For the office of the Mayor, total contributions to an officeholder fund shall not exceed fifty thousand dollars (\$50,000.00) per year in office.

B. Expenditures from an officeholder fund may be made for any political, governmental or other lawful purpose, but may not be used for any of the purposes prohibited in subsection (C)(1) through (5) of this section. Such allowable expenditures shall include, but are not limited to the following categories:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder expense fund;
2. Expenditures for office equipment, furnishings and office supplies;
3. Expenditures for office rent;
4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;
5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;
6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;
7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) such other person designated by the officeholder who is authorized to perform such government duties, or a member of such person's household accompanying the person on such travel;
8. Expenditures for meals and entertainment directly preceding, during or following a governmental or legislative activity;
9. Expenditures for donations to tax-exempt educational institutions or tax exempt charitable, civic or service organizations, including the purchase of tickets to charitable or civic events, where no substantial part of the proceeds will have a material financial effect on the elected officer, any member of his or her immediate family, or his or her committee treasurer;
10. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;
11. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;
12. Expenditures for advertisements in programs, books, testimonials, souvenir books, or other publications if the advertisement does not support or oppose the nominations or election of a candidate for city, county, regional, state or federal elective office;

13. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, school district-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council, Mayor, or School Board;
 14. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;
 15. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions;
 16. Expenditures for accounting, professional and administrative services provided to the officeholder fund;
 17. Expenditures for ballot measures.
- C. Officeholder expense funds shall not be used for the following:
1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office;
 2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;
 3. Membership in any athletic, social, fraternal, veteran or religious organization;
 4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;
 5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.
- D. No funds may be transferred from the officeholder fund of an elected city officeholder to any other candidate committee.
- E. Annual contributions received by or made to the officeholder fund shall be subject to the contribution limitations of Article III of this Act.
- F. Expenditures made from the officeholder fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act. (Ord. 12158 (part), 1999)

3.12.160 Allowance for donation of office space.

- A. Donation of office space for use by city officeholders in furtherance of their duties and responsibilities by a person or broad based political committee shall not be considered a campaign contribution subject to the provisions of this Act, provided that:
1. The donation is made to the City and accepted pursuant to Oakland City Charter Section 1203 for use by the Mayor, City Councilmembers, City Attorney or City Auditor or in the case of School Board Directors, the donation is made to the Oakland Unified School District; and
 2. The name, address, employer, and occupation of the donor, and the current market value of the donated office space, are provided to the City Clerk.
- B. Use of office space donated pursuant to this section by a city officeholder shall not be considered a "qualified campaign expenditure" pursuant to Section 3.12.040 of this Act. (Ord. 12158 (part), 1999)

3.12.170 Legal expense funds.

- A. An elected city officeholder or candidate for city office may receive contributions for a separate legal expense fund, for deposit into a separate account, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or administrative action or actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or officeholder's governmental activities and duties. Contributions to the legal expense fund must be earmarked by the contributor for contribution to the fund at the time the contribution is made. All funds contributed to an officeholder or candidate for legal expense fund must be deposited into the officeholder's appropriate campaign bank account prior to being deposited into the legal expense fund. The legal expense fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account, which shall be established only for the legal expense fund.
- B. Contributions received by or made to the legal expense fund shall not be subject to the contribution limitations of Article III of this Act.
- C. Expenditures made from the legal expense fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act. (Ord. 12158 (part), 1999)

3.12.180 Volunteer services exemption.

Volunteer personal services, and payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, are not contributions or expenditures subject to this Act. (Ord. 12158 (part), 1999)

Article IV Expenditure Ceilings**3.12.190 Expenditure ceilings.**

All candidates for city office who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Sections 3.12.050C and 3.12.060C of this Act. Before accepting any contributions at the higher contribution limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the City Clerk on a form approved for such purpose indicating acceptance of the expenditure ceiling. Said statement shall be filed no later than the time for filing for candidacy with the City Clerk. This statement will be made public. (Ord. 12158 (part), 1999)

3.12.200 Amount of expenditure ceilings.

A candidate for office of Mayor who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding seventy cents (\$.70) per resident for each election in which the candidate is seeking elective office. A candidate for other citywide offices who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding fifty cents (\$.50) per resident for each election in which the candidate is seeking office. A candidate for District City Councilmember who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding one dollar and fifty cents (\$1.50) per resident in the electoral district for each election in which the candidate is seeking elective office. A candidate for School Board Director who voluntarily agrees to expenditure ceilings shall not make qualified campaign expenditures exceeding one dollar (\$1.00) per resident for each election in the electoral district for each election for which the candidate is seeking office. Residency of each electoral district shall be determined by the latest decennial census population figures available for that district.

Beginning in 1999, the City Clerk shall once annually on a calendar year basis increase the expenditure ceiling amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the expenditure ceiling amounts shall not exceed the CPI increase, using 1998 as the index year. The increase shall be rounded to the nearest thousand. The City Clerk shall publish the expenditure ceiling amounts no later than February 1st of each year. (Ord. 12197 (part), 1999; Ord. 12158 (part), 1999)

3.12.210 Time periods for expenditures.

For purposes of the expenditure ceilings, qualified campaign expenditures made at any time on or before March 31st of the election year shall be considered primary election expenditures, and qualified campaign expenditures made from April 1st until December 31st of the election year shall be considered general election expenditures. However, in the event that payments are made but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period in which they are used. Payments for goods or services used in both time periods shall be prorated. (Ord. 12158 (part), 1999)

3.12.220 Expenditure ceilings lifted.

If a candidate declines to accept expenditure ceilings and receives contributions or make qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if an independent expenditure committee in the aggregate spends more than fifteen thousand dollars (\$15,000.00) on a District City Council or School Board election or seventy thousand dollars (\$70,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable

expenditure ceiling shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050C and 3.12.060C of this Act. The independent expenditure committee amounts of fifteen thousand dollars (\$15,000.00) and seventy thousand dollars (\$70,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.180 of this chapter. (Ord. 12158 (part), 1999)

Article V Independent Expenditures

3.12.230 Independent expenditures for mass mailings, state mailings or other campaign materials.

Any person who makes independent expenditures for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate for city office shall place the following statement on the mailing in typeface of no smaller than fourteen points:

**Notice to Voters
(Required by the City of Oakland)**

This mailing is not authorized or approved by any City candidate or election official.
It is paid for by

(name)

(address, city, state)

Total cost of this mailing is:

(amount)

(Ord. 12158 (part), 1999)

Article VI Agency Responsibility

3.12.240 Duties of the Public Ethics Commission.

The Public Ethics Commission shall:
A. Oversee compliance with the Act.
B. Propose necessary regulations in furtherance of this Act subject to City Council approval. (Ord. 12158 (part), 1999)

3.12.250 Duties of the City Clerk.

The City Clerk shall prescribe the necessary forms for filing the appropriate statements. (Ord. 12158 (part), 1999)

Article VII Enforcement

3.12.260 Public Ethics Commission as enforcing body.

The Public Ethics Commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the Public Ethics Commission, the commission shall promptly advise in writing the City Attorney and the appropriate prosecuting enforcement agency. (Ord. 12158 (part), 1999)

3.12.270 Criminal misdemeanor actions.

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Any person who knowingly or willfully violates Articles III, IV, or V of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of the Act, or who knowingly or willfully aids and abets any other person in violation of any provision of this Act, shall be liable under the provisions of this section. Prosecution for violation of any provision of this Act shall be commenced within four years after the date on which the violation occurred. (Ord. 12158 (part), 1999)

3.12.280 Enforcement actions.

- A. Any person who intentionally or negligently violates Articles III, IV or V of this Act is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission General Rules of Procedure.
- B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.
- C. Any person alleging a violation of Articles III, IV or V of this Act shall first file with the Public Ethics Commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The Commission shall respond within ninety (90) days after receipt of the complaint indicating whether there is probable cause to conduct a hearing and whether mediation will be undertaken.
- D. If mediation is not undertaken, if any party refuses mediation, or if mediation is unsuccessful in resolving the issues raised in the complaint, the Commission may within ninety (90) days thereafter convene a hearing. The Commission has full authority to settle any action filed by or on behalf of the Commission in the interest of justice.
- E. If the Commission determines a violation has occurred, the Commission is hereby authorized to administer appropriate penalties and fines not to exceed three times the amount of the unlawful contribution or expenditure.
- F. No complaint alleging a violation of any provision of this Act shall be filed more than two years after the date the violation occurred. (Ord. 12158 (part), 1999)

3.12.290 Injunctive relief.

The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act. (Ord. 12158 (part), 1999)

3.12.300 Cost of litigation.

The court may award to a complainant or respondent who prevails in any action for injunctive relief, his or her costs of litigation, including reasonable attorney's fees. (Ord. 12158 (part), 1999)

3.12.310 Disqualification.

In addition to any other penalties prescribed by law, if an official receives a contribution in violation of Sections 3.12.050 and 3.12.060, the official shall not be permitted to make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the contributor has a financial interest. The provisions of Government Code Sections 87100 et seq. and the regulations of the Fair Political Practices Commission shall apply to interpretations of this section. (Ord. 12158 (part), 1999)

Article VIII Miscellaneous Provisions

3.12.320 Applicability of other laws.

Nothing in this Act shall exempt any person from applicable provisions of any other laws of this state or jurisdiction. (Ord. 12158 (part), 1999)

3.12.330 Severability.

If any provision of this Act, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable. (Ord. 12158 (part), 1999)

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SAN JOSE ORDINANCE

City of San Jose

Chapter 12.06 MUNICIPAL CAMPAIGN AND OFFICEHOLDER CONTRIBUTIONS

Parts:

- 1 Definitions
- 2 Campaign Contributions
- 3 Independent Committees
- 4 Transfer of Funds
- 5 Voluntary Spending Limits Program
- 6 Special Municipal Elections
- 7 Debt Retirement, and Surplus Campaign Funds
- 8 Officeholder Accounts
- 9 Campaign Disclosure
- 10 Campaign Communications

Part 1 DEFINITIONS

Sections:

- 12.06.010 Definitions.
- 12.06.020 Business entity.
- 12.06.030 Candidate.
- 12.06.040 Committee.
- 12.06.050 Contribution.
- 12.06.060 Controlled committee.
- 12.06.080 Election.
- 12.06.110 Fair political practices commission.
- 12.06.120 Independent committee.
- 12.06.130 Independent expenditure.
- 12.06.150 Reserved.
- 12.06.160 Person.
- 12.06.170 Political reform act.
- 12.06.180 Statement of intention to be a candidate.

12.06.010 Definitions.

The following definitions used in this chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000 et seq.) and the regulations of the California Fair Political Practices Commission, as amended.

(Ords. 24466, 24577, 25257, 26440, 27291.)

12.06.020 Business entity.

"Business entity" shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Ords. 24499, 24577, 25257, 26440.)

12.06.030 Candidate.

"Candidate" shall mean an individual who:

- A. Is listed on the ballot; or
- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective City office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- D. Has filed a form "statement of intention" to be a candidate with the city clerk.

(Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

12.06.040 Committee.

"Committee" shall mean any person who, directly or indirectly, receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters in a municipal election for or against the nomination or election of one or more candidates if:

- A. Contributions received total one thousand dollars or more in any calendar year; or
- B. Independent expenditures total one thousand dollars or more in a calendar year; or
- C. Contributions made to or at the behest of candidates and committees total ten thousand dollars or more in a calendar year.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.050 Contribution.

A. "Contribution" shall mean:

1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

2. An expenditure benefiting a candidate or committee made at the behest of a candidate, committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.

B. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if

such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.

C. The payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends any of his or her compensated time rendering services for political purposes related to a city candidate or committee is a contribution or an expenditure if:

1. The employee renders services at the request or direction of the employer; or
2. The employee, with the consent of the employer, is relieved of any normal working responsibilities related to his or her employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.

D. Payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, or independent expenditures made by independent committees are not deemed to be contributions for purposes of this chapter.

(Ords. 24499, 24577, 25257, 26440, 28280.)

12.06.060 Controlled committee.

"Controlled committee" shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent, or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee.

(Ords. 24499, 24577, 25257, 26440.)

12.06.080 Election.

"Election" shall mean any regularly scheduled municipal or special municipal election. Recall elections are not considered elections for purposes of this chapter.

(Ords. 24499, 24577, 25257, 26440.)

12.06.110 Fair political practices commission.

"Fair political practices commission" is the body charged with administering the Political Reform Act and adopting implementing regulations.

(Ords. 24499, 24577, 25257, 26440.)

12.06.120 Independent committee.

"Independent committee" shall mean all committees other than controlled committees.

(Ords. 24499, 24577, 25257, 26440.)

12.06.130 Independent expenditure.

A. "Independent expenditure" shall mean an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or committee. An expenditure that is made to or at the behest of a candidate or controlled committee is not an "independent expenditure".

B. Any expenditure in aid or in opposition to a council or mayoral candidate which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this chapter.

(Ords. 24499, 24577, 25257, 26440, 27291.)

12.06.150 Reserved.

Editor's note: Ord. No. 28213, § 1, adopted January 8, 2008, repealed § 12.06.150, which pertained to officeholder contributions.

12.06.160 Person.

"Person," for purposes of this chapter, shall include an individual, business entity, foundation, organization, committee or association, nonprofit corporation, and any other organization or group of people acting in concert.

(Ords. 24499, 24577, 25257, 26440.)

12.06.170 Political reform act.

"Political reform act" is Government Code Section 81000 et seq., as amended.

(Ords. 24499, 24577, 25257, 26440.)

12.06.180 Statement of intention to be a candidate.

The form "statement of intention" is a written statement, filed with city clerk in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective city office.

(Ords. 24499, 24577, 25257, 25525, 26440, 28213.)

Part 2 CAMPAIGN CONTRIBUTIONS

Sections:

- 12.06.200 Intent and purpose.
- 12.06.210 Campaign contribution limitations.
- 12.06.220 Applicability to agents.
- 12.06.230 Anonymous contributions.
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- 12.06.240 Contributions through other persons prohibited.
- 12.06.250 Contributions by certain business entities prohibited.
- 12.06.260 Prohibited contributions - Cardrooms.

12.06.270 Contribution limitations to city council candidates.

12.06.280 Contribution limitations to mayoral candidates.

12.06.290 Campaign contribution collection period.

12.06.295 Deposit of personal funds into campaign bank accounts.

12.06.200 Intent and purpose.

It is the intent of the city council of the City of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

(Ords. 24499, 24577, 25257, 26440.)

12.06.210 Campaign contribution limitations.

A. The total campaign contribution made by any person to any councilmember, council candidate and any controlled committee of that candidate may not exceed:

1. One hundred dollars for the primary election;
2. One hundred dollars for the general election, if any;
3. One hundred dollars for any special election.

B. The total campaign contribution made by any person to any mayor, mayoral candidate and any controlled committee of the candidate may not exceed:

1. Two hundred fifty dollars for the primary election;
2. Two hundred fifty dollars for the general election, if any;
3. Two hundred fifty dollars for any special election.

C. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 shall apply in lieu of subsection A. and B.

(Ords. 24499, 24577, 24845, 25257, 25445, 26440.)

12.06.220 Applicability to agents.

A. "Agent" shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate, or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans and needs.

B. The prohibitions and requirements of this chapter applicable to a candidate shall also apply to the candidate's agent.

(Ords. 24499, 24577, 25257, 26440, 27291.)

12.06.230 Anonymous contributions.

A. No person shall make nor shall any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of or opposition to a candidacy.

B. All anonymous contributions shall be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 24499, 24577, 25257, 26440.)

12.06.235 Information needed prior to deposit.

No contribution of any amount shall be deposited into a campaign account unless the name, address, occupation and employer of the contributor is on file in the written records of the candidate receiving the contribution.

(Ords. 25257, 26440.)

12.06.240 Contributions through other persons prohibited.

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

A. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.

B. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.250 Contributions by certain business entities prohibited.

Except as otherwise provided in this chapter, contributions by business entities shall be defined and limited in accordance with the Political Reform Act as amended.

(Ords. 24499, 24577, 25257, 25447, 26440, 28280.)

12.06.260 Prohibited contributions - Cardrooms.

A. No cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer shall make any contribution under this chapter.

B. Cardroom and cardroom owner are as defined in Section 6.22.020 of Title 6 of this Code.

C. A key management employee of a cardroom is any person who has the authority to hire or

fire other employees.

(Ords. 24499, 24577, 25257, 26440.)

12.06.270 Contribution limitations to city council candidates.

No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution in aid of and/or opposition to the nomination or election of a candidate for city council which will cause the total amount contributed by such person to the candidate and any controlled committee of such candidate to exceed one hundred dollars per election, except as provided in Part 5 of this chapter.

(Ords. 24499, 24577, 25257, 25445, 26440.)

12.06.280 Contribution limitations to mayoral candidates.

No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution in aid of and/or opposition to the nomination or election of a candidate for mayor which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate to exceed two hundred fifty dollars per election, except as provided in Part 5 of this chapter.

(Ords. 24499, 24577, 25257, 25445, 26440.)

12.06.290 Campaign contribution collection period.

A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period.

B. The campaign contribution period for the primary municipal election for council or mayor shall:

1. Begin on the one hundred eightieth (180th) day before the primary municipal election.
2. End at midnight on the seventeenth (17th) day prior to the primary municipal election.

C. The campaign contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the day after the primary municipal election for that office.
2. End at midnight on the seventeenth (17th) day prior to a run-off municipal election for that office.

D. Any contribution which is received outside of the campaign contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five (5) business days.

(Ords. 24499, 24577, 25257, 25525, 25942, 26440, 28213.)

12.06.295 Deposit of personal funds into campaign bank accounts.

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by subsection A. must be reported, on a form provided by the city clerk, on or before the date of the next pre-election statement which must be filed after the funds are deposited into the campaign bank account.

C. No candidate may deposit personal funds into his or her campaign bank account during the period beginning seven days prior to election day.

D. No candidate shall make loans to his or her own campaign or campaign committee where the outstanding total, at any one point in time, is more than twenty thousand dollars. Nothing in this chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign.

(Ords. 24499, 24577, 25257, 26440.)

Part 3 INDEPENDENT COMMITTEES

Sections:

12.06.310 Contribution limitations to independent committees.

12.06.320 Contributions and expenditures by independent committees.

12.06.330 Contribution period for independent committees.

12.06.310 Contribution limitations to independent committees.

A. No person shall make nor shall any person accept any contribution to or on behalf of an independent committee expending funds or making contributions in aid of and/or opposition to the nomination or election of a candidate for city council or mayor which will cause the total amount contributed by such person to such independent committee to exceed two hundred fifty dollars per election.

B. Independent committees contributing to election campaigns in addition to City of San José council or mayoral campaigns shall segregate contributions received and contributions or expenditures made for the purpose of influencing such San José elections from all other contributions or expenditures. Where an independent committee has segregated such contributions and expenditures for such city elections, contributors to that committee may contribute more than two hundred fifty dollars so long as no portion of the contribution in excess of two hundred fifty dollars is used to influence San José council or mayoral elections.

C. This section is not intended to prohibit or regulate contributions to independent committees to the extent such contributions are used on behalf of or in opposition to candidates for offices other than mayoral or council offices of the City of San José.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.320 Contributions and expenditures by independent committees.

A. Independent committees are "persons" for purposes of the contribution limitations to city council and mayoral candidates. Any expenditure by an independent committee in aid of or in opposition to a council or mayoral candidate which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this chapter.

B. Each independent committee making contributions or independent expenditures in a council

or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 12.06.910. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 24499, 24577, 25257, 26440.)

12.06.330 Contribution period for independent committees.

Contributions to independent committees for the purpose of supporting or opposing candidates for city office shall be subject to the campaign collection period set forth in Section 12.06.290.

(Ords. 25447, 26440.)

Part 4 TRANSFER OF FUNDS

Sections:

12.06.410 Prohibition on transfer of funds.

12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.

12.06.430 Reserved.

12.06.410 Prohibition on transfer of funds.

A. The transfer of any city campaign funds to any other person's city campaign fund is prohibited.

B. The transfer of any city campaign contribution to any other candidate's noncity campaign fund is prohibited.

(Ords. 24499, 24577, 25257, 26440, 28212.)

12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.

A. No contribution collected for any city campaign fund may be transferred to another campaign fund of the candidate, unless a written disclosure appeared on all materials printed by the campaign committee during the campaign, which informed potential donors that such contributions are subject to being transferred to the candidate's own city and noncity campaigns, at any time, at the discretion of the candidate.

B. The disclosure required by this section shall consist of the following statement in fourteen point type: Any contribution to this campaign may be transferred to this candidate's campaign for reelection or another city or noncity campaign at (name of the candidate's) sole discretion.

(Ords. 24499, 24577, 25257, 25447, 26440.)

12.06.430 Reserved.

Editor's note: Ord. No. 28213, § 3, adopted January 8, 2008, repealed § 12.06.430, which pertained to transfer of city officeholder funds.

Part 5 VOLUNTARY SPENDING LIMITS PROGRAM

Sections:

- 12.06.500 Voluntary campaign expenditure limits program.
- 12.06.510 Voluntary campaign expenditure limits.
- 12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.
- 12.06.530 Expenditure limits.
- 12.06.540 Campaign contribution limits.
- 12.06.550 Notification to voters.
- 12.06.560 Expenditure limits tripled.

12.06.500 Voluntary campaign expenditure limits program.

Each candidate participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of the provisions of this chapter.

(Ords. 25445, 26440.)

12.06.510 Voluntary campaign expenditure limits.

A. Each candidate must file an expenditure ceiling statement with the city clerk indicating whether or not he or she will participate in the voluntary campaign expenditure limits program before accepting or receiving any campaign contributions.

B. Each candidate who has filed an expenditure ceiling statement indicating participation in the program shall be subject to the expenditure limits set forth in Section 12.06.530.

C. Any candidate who declined to accept the expenditure ceiling statement in Section 12.06.530 but who, nevertheless, did not exceed the voluntary expenditure limits in the primary election or special primary election may file an amendment to the expenditure ceiling statement, accepting participation in the voluntary campaign expenditure limits program for the general or special run-off election, within fourteen days following the primary or special primary election and receive all the benefits of the program specified in this chapter.

D. Expenditures for purposes of the expenditure limits shall include in-kind or non-monetary contributions.

(Ords. 25445, 25942, 26440.)

12.06.520 Voluntary campaign expenditure limits - Transfers of campaign funds.

A. Campaign funds collected for the primary municipal election or collected for the run-off municipal election by candidates who voluntarily participate in the voluntary campaign expenditure limits program shall not be transferred to any ballot measure committee.

B. Campaign funds collected for the primary municipal election by candidates who voluntarily participate in the voluntary campaign expenditure program shall not be transferred to the candidate's run-off municipal election campaign. Remaining campaign funds after the primary municipal election shall be deemed to be surplus campaign funds and shall be distributed in accordance with the provisions of this chapter.

(Ords. 26024, 26440.)

12.06.530 Expenditure limits.

A. The expenditure limits shall be set at:

1. Seventy five cents per resident of the city for candidates for the office of mayor; and
 2. One dollar per resident of the district for candidates for council office.
- B. The city council shall adopt an expenditure limits resolution, in advance of each election cycle, specifying the expenditure limits. The expenditure limits shall be based on census data supplied by the director of the department of planning, building and code enforcement for the city and each council district and adjusted by the percentage increase in residents as determined by population data provided by the state of California, department of finance, city/county population estimates.
- C. No candidate who files an expenditure ceiling statement participating in the voluntary campaign expenditure limits program shall make any campaign expenditure above the limits set forth in the expenditure limits resolution.
- D. The city council shall review the amount of the expenditure limits set forth in subsection A. above, nine months in advance of each election, to determine if any change is warranted.

(Ords. 25445, 25942, 26440.)

12.06.540 Campaign contribution limits.

Candidates who participate in the voluntary campaign expenditure limits program shall be entitled to collect contributions in the following amounts:

- A. The total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than two hundred fifty dollars in the aggregate.
- B. The total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate shall not exceed a total of more than five hundred dollars in the aggregate.

(Ords. 25445, 26440.)

12.06.550 Notification to voters.

The ballot, ballot pamphlet and sample ballot shall prominently designate those candidates who participate in the program.

(Ords. 25445, 26440.)

12.06.560 Expenditure limits tripled.

Notwithstanding Section 12.06.530.

- A. If a candidate who is not participating in the voluntary campaign expenditure limits program receives contributions, has cash on hand, or makes qualified expenditures equal to seventy-five percent or more of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.
- B. If an independent expenditure committee(s) spend in the aggregate, in support or opposition to a candidate, more than fifty percent of the expenditure limits set forth in the expenditure limits resolution adopted pursuant to this part, the expenditure limit shall be tripled.

(Ords. 25445, 26440.)

Part 6 SPECIAL MUNICIPAL ELECTIONS

Sections:

- 12.06.600 Special municipal elections.
- 12.06.610 Campaign contribution collection period - Campaign disclosure.
- 12.06.620 Voluntary campaign expenditure limits program - Special election.

12.06.600 Special municipal elections.

- A. Except as otherwise provided by this Part 6, the provisions of Chapter 12.06 shall apply to special municipal elections. Part 6 of Chapter 12.06 shall only apply to special municipal elections which do not exceed a six-month period from the call of the special municipal election to the date of a special municipal run-off election if any.
- B. The prohibition on transfers of any city campaign funds to any other person's city campaign fund in Section 12.06.410 shall apply to any special municipal election.
- C. The prohibition on transfers of any city campaign funds to any other candidate's noncity campaign fund in Section 12.06.410 shall apply to any special municipal election.
- D. The disclosure requirements for transfers of city campaign funds to a candidate's own city and noncity campaign in Section 12.06.420 shall apply to any special municipal election.

(Ords. 26239, 26440, 28212.)

12.06.610 Campaign contribution collection period - Campaign disclosure.

- A. The campaign contribution collection periods for the special municipal election and a special municipal runoff election shall:
 - 1. Begin on the date that the special municipal election is set by the city council and begin the day after the special municipal election for any runoff election.
 - 2. End at midnight on the seventh day prior to the election and the seventh day prior to any runoff election.
- B. Each candidate and each committee shall file, as a public record with the city clerk, cumulative itemized campaign statements completed on campaign statement forms required to be filed by the regulations of the fair political practices commission by no later than the fifth day prior to the special municipal election and the fifth day prior to any special municipal runoff election.

(Ords. 26239, 26440, 28213.)

12.06.620 Voluntary campaign expenditure limits program - Special election.

- A. Unless otherwise provided in this Part 6, each candidate in any special municipal election participating in the voluntary campaign expenditure limits program shall comply with and receive all the benefits of this chapter.
- B. Campaign funds collected for a special municipal election by candidates including those candidates participating in the voluntary campaign expenditure limits program may be

transferred to the candidate's special municipal run-off election campaign.
(Ords. 26239, 26440.)

Part 7 DEBT RETIREMENT, AND SURPLUS CAMPAIGN FUNDS

Sections:

- 12.06.710 Deadline for debt retirement.
- 12.06.720 Surplus campaign funds.

12.06.710 Deadline for debt retirement.

- A. No money can be collected for debt retirement after the end of the campaign contribution collection period as set forth in Section 12.06.290.
- B. A candidate must retire all campaign-related debts, including loans, within six months after the date of the election.
- C. A campaign-related debt, including any loan, which remains unpaid more than six months after the election is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.
- D. It is a violation of this section to forgive all or part of a loan or debt which is owed to the person by a candidate and which exceeds the applicable contribution limitations. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the monies owed and such efforts have proved unsuccessful. In such case, a candidate is not exonerated from violations of this chapter if an outstanding loan or debt exceeds the contribution limitations.

(Ords. 24499, 24577, 25257, 26440.)

12.06.720 Surplus campaign funds.

Any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act, shall be deemed to be surplus campaign funds. Within ninety (90) days after withdrawal, defeat, or election to office, the surplus campaign funds shall be returned to the contributors on a pro rata basis, or turned over to the general fund.

(Ords. 25257, 26440, 28212.)

Part 8 OFFICEHOLDER ACCOUNTS*

***Editor's note:** Ord. No. 28212, § 6, adopted January 8, 2008, repealed Part 8, §§ 12.06.810--12.06.890, which pertained to officeholder accounts. Section 8 of said Ordinance 28212 enacted a new Part 8, § 12.06.810, effective July 1, 2008.

Sections:

- 12.06.810 Officeholder account prohibited.

12.06.810 Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

(Ord. 28212.)

12.06.820–12.06.890 Reserved.

Part 9 CAMPAIGN DISCLOSURE

Sections:

12.06.910 Statements and reporting requirements.

12.06.920 Duties of the city clerk.

12.06.930 Disclosure of post-election payment agreements.

12.06.910 Statements and reporting requirements.

A. Each candidate and each committee, except committees whose sole purpose is to support or oppose a ballot measure, shall file, as a public record with the city clerk, cumulative itemized reports at the times specified herein showing the total amounts of contributions accepted and expenditures made. The required statements may be completed on campaign statement forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of this chapter.

B. The listing of contributions shall include all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars.

C. The first and second campaign statements shall be filed at the times prescribed for pre-election statements by the Political Reform Act. The second statement shall in addition include all contributions accepted through the end of campaign contribution collection period specified in Section 12.06.290.

D. Thereafter, semi-annual statements shall be filed in the form and at the times required by the regulations of the fair political practices commission.

(Ords. 24499, 24577, 24733, 25257, 26440.)

12.06.920 Duties of the city clerk.

A. The city clerk shall, five days prior to the election, prepare a report to be published in the San José Mercury News. The report shall contain the total contributions and expenditures for each of the candidates and for each independent committee. The clerk shall cause the report to be published two days prior to the election.

B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk shall notify the ethics board.

(Ords. 24499, 24577, 25257, 26440.)

12.06.930 Disclosure of post-election payment agreements.

A. A candidate or his or her controlled committee must disclose, on a form provided by the city clerk, any campaign-related agreements entered into by the candidate or controlled committee which provide for post-election payments. Such agreements include, but are not limited to, contingency payment or "bonus" payment plans offered by campaign consultants and agreements with persons who will receive compensation after the election for campaign services performed prior to the election.

B. A post-election payment agreement must be reported on or before the filing date of the next preelection statement which must be filed after the agreement is entered into.

(Ords. 24499, 24577, 25257, 26440.)

Part 10 CAMPAIGN COMMUNICATIONS

Sections:

- 12.06.1000 Disclosure requirements for candidate mass mailings.
- 12.06.1010 Disclosure requirements - Independent expenditures for mass mailings.
- 12.06.1020 Disclosure requirements - Campaign advertisements.
- 12.06.1030 Disclosure requirements - Recorded telephone messages.

12.06.1000 Disclosure requirements for candidate mass mailings.

A. In addition to the requirements set forth in California Government Code Section 84305, any candidate or committee for city elective office that pays for a mass mailing with funds raised for the candidate's campaign must print, display or incorporate the following words in not less than twelve-point type and in a color or print which contrasts with the background so as to be easily legible anywhere within the communication or mailing: "Paid for by" immediately followed by the name, address and city of that candidate or committee. A post office box may be stated in lieu of a street address if the candidate's address is a matter of public record with the city clerk. If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall also be included. If an acronym is used to specify a committee name, the full name of any sponsoring organization of the committee must be included in the campaign communication disclosure required by this section.

B. For the purposes of this Part 10, "mass mailing" will be defined as set forth in the California Political Reform Act (Gov. Code Sections 81000 et seq.), provided that the mass mailing advocates for or against one (1) or more candidates for city elective office.

C. The requirements set forth in this Part 10 do not apply to member communications distributed by an organization that is not a political party provided that such communications do not constitute general public advertising such as, but not limited to, broadcasting, billboards, and newspaper advertisements.

(Ord. 28213.)

12.06.1010 Disclosure requirements - Independent expenditures for mass mailings.

Any person who makes independent expenditures for a mass mailing which support or oppose any candidate for city elective office must place the following statement on the mailing in typeface no

smaller than twelve (12) points:

Notice to Voters

(Required by the City of San José)

This mailing is not authorized or approved by

any candidate for City office

or by any election official. It is paid for by

(name and committee identification number).

(address, city, state).

Total cost of this mailing is (amount).

(Ord. 28213.)

12.06.1020 Disclosure requirements - Campaign advertisements.

A. Any campaign advertisement that urges support for or opposition to one (1) or more candidates for city elective office must include a disclosure statement identifying the person who paid for the advertisement. Such disclosure statement must, at a minimum, contain the following words, "paid for by _____ insert the name of the person who paid for the communication)" and appear at least once on the advertisement.

1. Any disclosure statement required by this section to be in printed form must be printed in a type and color so as to be easily legible to the intended public. Such disclosure statement must be printed in at least twelve-point type and in a color or print that contrasts with the background so as to be easily legible to the intended public.

2. Any disclosure statement required by this section to be in spoken form must be spoken at the same volume and speed as the rest of the communication so as to be clearly audible and understood by the intended public and otherwise appropriately conveyed for the hearing impaired.

B. For purposes of this section, the term "campaign advertisement" means:

1. More than two hundred (200) substantially similar pieces of campaign literature distributed within a calendar month, including but not limited to mailers, flyers, facsimiles, pamphlets, and door hangers;

2. Posters, yard or street signs, billboards, and similar items;

3. Television, cable, satellite and radio broadcasts; and

4. Newspaper, magazine, and similar advertisements.

(Ord. 28213.)

12.06.1030 Disclosure requirements - Recorded telephone messages.

A. Any recorded telephone message distributed to five hundred (500) or more individuals or

households must include the following statement: "paid for by _____ (insert name of person who paid for the recorded telephone message)." Statements required pursuant to this section must be audible and played at the same volume and speed as the rest of the recorded telephone message.

B. Any person paying for a recorded telephone message must maintain a transcript of the message and a record of the distributed calls for each message.

(Ord. 28213.)

BERKELEY ORDINANCE

ELECTION REFORM ACT*

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- 2.12.470 Violation--Candidate's office forfeited when.
- 2.12.475 Violation--Candidacy terminated when.

- 2.12.480 **Violation--Persons ineligible for candidacy--Time limit.**
- 2.12.485 **Late filing penalties.**

*The City Attorney has determined that certain uncodified provisions are unconstitutional. See *Citizens for Jobs and Energy v. Fair Political Practices Comm.* (1976) 16 Cal. 3d 671. The City Attorney has determined that Ord. 4700-NS § 602 applies only to ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Citizens Against Rent Control v. City of Berkeley* (1981) 454 US 290.) The City Attorney has also determined that Ord. 4700-NS § 605 applies only to candidate campaigns and ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Pacific Gas and Electric v. City of Berkeley*, (1976) 60 Cal. App. 3d 123). The City Attorney has determined that Ord. 4700-NS § 517, as modified by Ord. 5895-N.S. § 1, is unconstitutional; see *Meyer v. Grant* (1988) 486 U.S. 414, *Buckley v. American Constitutional Law Foundation* (1999) 525 U.S. 182.

Article 1. General Provisions

Section 2.12.005 Title for citation.

This chapter shall be known and may be cited as the "Berkeley Election Reform Act of 1974." (Ord. 4700-NS § 100, 1974)

Section 2.12.010 Findings.

The people find and declare as follows:

- A. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.
- B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.
- C. Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions.
- D. The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate.
- E. Previous laws regulating campaign practices have suffered from inadequate enforcement. (Ord. 4700-NS § 101, 1974)

Section 2.12.015 Purpose.

The people have enacted the ordinance codified in this chapter to accomplish the following purposes:

- A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
- C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced. (Ord. 4700-NS § 102, 1974)

Section 2.12.020 Liberal construction.

This chapter should be liberally construed to accomplish its purposes. (Ord. 4700-NS § 103, 1974)

Section 2.12.025 Reports and statements--Signature and verification requirements.

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury. (Ord. 4700-NS § 104, 1974)

Section 2.12.030 Reports and statements--Filed where.

Reports or statements filed under this chapter shall be filed with the City Clerk. (Ord. 4700-NS § 105, 1974)

Section 2.12.035 Reports and statements--Filing fees prohibited.

No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared. (Ord. 4700-NS § 106, 1974)

Section 2.12.040 Statements--Public inspection requirements.

Campaign statements are to be open for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. (Ord. 4700-NS § 107, 1974)

Section 2.12.045 Preservation from date of filing.

All reports, statements and information filed with the City Clerk shall be preserved for at least four years from the date upon which it was required to be filed under the terms of this chapter. (Ord. 5895-NS § 1, 1988; Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 108, 1974)

Section 2.12.050 Reports and statements--City Clerk responsibilities.

With respect to reports or statements filed with him or her pursuant to this chapter, the City Clerk shall:

- A. Supply the necessary forms and manuals prescribed by the commission;
- B. Notify in advance all candidates and known committees of the dates campaign statements are required;
- C. Report apparent violations of this chapter to the appropriate agencies; and
- D. Complete and maintain a current list of all reports and statements filed with his or her office. (Ord. 4700-NS § 109, 1974)

Section 2.12.051 Amendment or repeal of chapter.

This chapter may be amended or repealed by the procedures set forth in this section. If any portion of subsection A is declared invalid, subsection B shall be the exclusive means of amending or repealing this chapter.

A. This chapter may be amended to further its purpose by ordinance passed by a vote of the City Council of not less than two-thirds vote of its membership, following a public hearing, if at least thirty days prior to passage the amendment has been approved by the Berkeley Fair Campaign Practices Commission by not less than two-thirds vote of its membership, and has been distributed to the news media and to every person regularly receiving communications from the commission.

B. This chapter may be amended or repealed by initiative approval of the voters of the City of Berkeley. (Ord. 5895-NS § 2, 1988)

Section 2.12.055 Items of value--Report requirements.

Whenever in this chapter the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement. (Ord. 4700-NS § 110, 1974)

Section 2.12.060 Applicability--Severability.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable. (Ord. 4700-NS § 111, 1974)

Section 2.12.065 Publication of contributions prior to elections.

The City shall publish in one or more newspapers at least once in the seven days before each municipal election a list of all persons contributing fifty dollars or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the second pre-election statements. The City shall direct publication in such newspaper or newspapers as are best suited to reach the largest number of Berkeley residents in a cost-effective manner. (Ord. 6513-NS § 1, 1999; Ord. 5895-NS § 1, 1988; Ord. 4946-NS, 1976; Ord. 4700-NS § 112, 1974)

Article 2. Definitions

Section 2.12.070 Interpretation.

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the interpretation of this chapter. (Ord. 4700-NS § 200, 1974)

Section 2.12.075 Adjusting an amount for cost of living changes.

"Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index as last computed in accordance with State of California Government Code, Section 82001. (Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 201, 1974)

Section 2.12.080 Campaign statement.

"Campaign statement" means an itemized report which is prepared on a form prescribed by the commission and which provides the information required by Sections 2.12.245 through 2.12.325. (Ord. 4700-NS § 202, 1974)

Section 2.12.085 Candidate.

"Candidate," for the purposes of this chapter, means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure. (Ord. 4700-NS § 203, 1974)

Section 2.12.090 Commission.

"Commission" means the Berkeley Fair Campaign Practices Commission. (Ord. 4700-NS § 204, 1974)

Section 2.12.095 Committee.

"Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than two hundred fifty dollars in a calendar year or makes expenditures exceeding more than two hundred fifty dollars in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 205, 1974)

Section 2.12.100 Contribution.

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 206, 1974)

Section 2.12.105 Controlled committee.

"Controlled committee" means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 5895-NS § 2, 1988)

Section 2.12.110 Cumulative amount.

"Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since June 4, 1974. (Ord. 4700-NS § 208, 1974)

Section 2.12.115 Elected officer.

"Elected officer" means any person who holds an elective officer or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Ord. 4700-NS § 209, 1974)

Section 2.12.120 Election.

"Election" means any primary, general, special or runoff election held in the City, including an initiative,

referendum or recall election. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 210, 1974)

Section 2.12.125 Elective office.

"Elective office" means any elective office as defined in the Berkeley City Charter. (Ord. 4700-NS § 211, 1974)

Section 2.12.130 Expenditure.

"Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party. (Ord. 4700-NS § 212, 1974)

Section 2.12.135 Filer.

"Filer" means any person filing or required to file any statement or report under this chapter. (Ord. 4700-NS § 213, 1974)

Section 2.12.140 Independent committee.

"Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 4700-NS § 214, 1974)

Section 2.12.142 Independent expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Ord. 6096-NS § 2 (part), 1991)

Section 2.12.145 Late contribution.

"Late contribution" means any contribution of one hundred dollars or more received after the closing date of the last campaign statement required to be filed prior to an election. (Ord. 4700-NS § 215, 1974)

Section 2.12.150 Mass mailing.

"Mass mailing" means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry. (Ord. 4700-NS § 216, 1974)

Section 2.12.155 Measure.

"Measure" means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot. (Ord. 4700-NS § 217, 1974)

Section 2.12.160 Period covered.

"Period covered" by a statement or report required to be filed by this chapter means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on June 4, 1974. Nothing herein shall exempt any person from disclosing transactions which occurred prior to June 4, 1974 according to the law then in effect. (Ord. 4700-NS § 218, 1974)

Section 2.12.165 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Ord. 4700-NS § 219, 1974)

Article 3. Fair Campaign Practices Commission

Section 2.12.170 Established--Number of members.

There is established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The commission shall have nine members, including the chairperson. (Ord. 4700-NS § 300, 1974)

Section 2.12.175 Term--Appointments and reappointments.

Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed. (Ord. 4700-NS § 301, 1974)

Section 2.12.180 Quorum.

A majority of the appointed members shall constitute a quorum. (Ord. 4700-NS § 302, 1974)

Section 2.12.185 Election of chairperson.

The commission shall elect its own chairperson. (Ord. 4700-NS § 303, 1974)

Section 2.12.186 Vice-chairperson.

The commission shall elect a vice-chairperson who shall serve the same term of office as the chairperson and who shall assume the powers of the chairperson in his or her absence. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.190 Vacancy filling.

Vacancies on the commission shall be filled, within thirty days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board. (Ord. 4700-NS § 304, 1974)

Section 2.12.195 Members--Qualifications and restrictions.

Each member of the commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organization or participate in or contribute to a Berkeley municipal election campaign. No member of the commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections. (Ord. 4700-NS § 305, 1974)

Section 2.12.196 Avoidance of political conflict of interest.

In addition to the limitations imposed on members of the commission by Section 2.12.195, each member of the commission shall use his or her best efforts to be independent of and impartial in relation to any person during the time such person is the subject of an investigation by or proceeding before the commission. Such persons include elected officers, current and previous candidates, and committees, as well as any officers or employees of such persons. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.200 Staff powers and duties.

The commission shall have a staff which shall act in accordance with commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the commission in the performance of its duties. (Ord. 4700-NS § 306, 1974)

Section 2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. (Ord. 4700-NS § 307, 1974)

Section 2.12.210 Rules and regulations--Authority.

The commission may adopt, amend and rescind rules and regulations to carry out the purposes of this chapter, and to govern the procedures of the commission. (Ord. 4700-NS § 308, 1974)

Section 2.12.215 Additional duties.

The commission shall, in addition to its other duties:

- A. Prescribe forms for reports, statements, notices and other documents required by this chapter;
- B. Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this chapter, and explaining the duties of persons and committees under this chapter;
- C. Provide assistance to agencies and public officials in administering the provisions of this chapter;
- D. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this chapter. (Ord. 4700-NS § 309, 1974)

Section 2.12.220 Opinions.

Any person may request the commission to issue an opinion with respect to his or her duties under this chapter. The commission shall issue the opinion within fourteen days. No person who acts in good faith of an opinion issued to him or her by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen days. (Ord. 4700-NS § 310, 1974)

Section 2.12.225 Investigation authority and procedures.

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this chapter. Within seven days after the receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, which the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. (Ord. 4700-NS § 311, 1974)

Section 2.12.227 Subpoena--Testimony under oath.

After the commission has made a finding of probable cause of a violation of the Berkeley Election Reform Act (BERA) or this chapter, in any investigation or hearing conducted by the commission, the commission

may:

- A. Subpoena witnesses, take testimony under oath and require the production of records by subpoena; and
- B. Issue orders requiring any person believed to have information relevant to matters under examination to submit written answers under penalty of perjury to written questions, and specify a reasonable date by which such answers must be submitted. (Ord. 5574-NS § 2 (part), 1983)

Section 2.12.230 Notice and hearing on violations.

After the commission determines there is probable cause for believing that a provision of this chapter has been violated and makes a good faith effort to give reasonable notice to the person or persons involved in the allegation, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 312, 1974)

Section 2.12.235 Judicial review of actions.

Any person may seek judicial review of any action of the commission. (Ord. 4700-NS § 313, 1974)

Section 2.12.240 Meetings to be open to the public.

All meetings of the commission shall be open to the public. (Ord. 4700-NS § 314, 1974)

Article 4. Disclosure Requirements and Procedures

Section 2.12.245 Campaign treasurer--Appointment required--Powers and duties.

A. Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.

B. No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.

C. All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly," as used in this section, means not later than five days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received less than five days before the closing date. All contributions shall be separated from and may not be commingled with any personal funds of the recipient or any other person. (Ord. 4700-NS § 400, 1974)

Section 2.12.250 Campaign expenditure and contribution account--Establishment required--Procedure for use.

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee in a bank located in Alameda County. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. Where a candidate or a committee is permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint

checking account for the candidate and the committee.

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the contribution checking account by paying the remaining balance in the checking account to the candidate or committee for his or her or its use in any lawful manner within ninety days after the date of election, unless upon good cause an extension is granted by the commission.

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

F. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply. (Ord. 6859-NS § 1, 2005; Ord. 5895-NS § 1, 1988; Ord. 4947-NS §§ 1, 2, 1976; Ord. 4733-NS § 1, 1974; Ord. 4700-NS, § 401, 1974)

Section 2.12.255 Statement of organization--Committee required to file.

A. Subject to the exception in Section 2.12.255(B), every committee under Section 2.12.095 of this chapter shall file with the City Clerk a statement of organization within ten days after it is formed as a committee.

B. Every committee that forms during the period between the closing date of the last pre-election statement and the election shall file with the City Clerk, by hand delivery or by such means as the commission may prescribe, a statement of organization no later than the close of the next business day.

C. The date on which a committee formed, and not the date on which the committee filed its statement of organization, shall determine the committee's obligation to file the campaign statements and late contribution reports required by this chapter. All committees, whether formed before or after the date of the final pre-election statement, but before the date of an election, are subject to late contribution reporting requirements. (Ord. 5895 § 1, 1988; Ord. 4700-NS § 402, 1974)

Section 2.12.260 Statement of organization--Information required.

The statement of organization required by Section 2.12.255 shall include:

- A. The name, street address and telephone number, if any, of the committee;
- B. The name, street address and telephone number of each candidate, if any, with which the committee is affiliated or connected;
- C. The full name, street address and telephone number, if any, of the treasurer and other principal officer;
- D. The full name and office sought by each candidate and the title and ballot number if any, of each measure, which the committee supports or opposes;
- E. A statement of whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly;
- F. The disposition of surplus funds which will be made in the event of dissolution;
- G. The account number and name of the bank at which the campaign checking account, required by Section 2.12.250(A), is maintained; if the information required by this section is unavailable at the time of filing, the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- H. The cash on hand at the time of filing the statement of organization;
- I. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 403, 1974)

Section 2.12.265 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change. (Ord. 4700-NS § 404, 1974)

Section 2.12.270 Campaign statement--Filing requirements.

A. Each candidate and each committee shall file no fewer than two campaign statements prior to an election, excluding run-off elections, and one campaign statement following the election, excluding run-off elections. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. The semi-annual campaign statement that is filed pursuant to state law following an election shall serve as the post-campaign statement required by this section. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

B. Each candidate and committee involved in a run-off election, and each committee supporting or opposing a candidate participating in a run-off election, shall file one campaign statement prior to the run-off election in addition to any other campaign statements required by this section and one campaign statement following the run-off election. The semi-annual statement that is filed pursuant to state law following a run-off election shall serve as the post-campaign statement required by this section. The campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law does not establish the filing dates for campaign statements in run-off elections, the commission shall set the necessary filing dates.

C. 1. Notwithstanding subsections A and B of this section, a candidate or officeholder who plans to receive contributions of less than two hundred fifty dollars and who plans to make expenditures of less than two hundred fifty dollars in a calendar year may file a short form campaign statement for that calendar year as prescribed by state laws and regulations. The period covered by the short form is the calendar year. No other campaign statements must be filed by a candidate or officeholder who has filed a short form campaign statement for activity in the calendar year unless the candidate receives two hundred fifty dollars or more in expenditures.

2. During the six months prior to an election in which the candidate or officeholder is being voted upon, a candidate or officeholder who files a short form campaign statement and subsequently receives contributions totaling two hundred fifty dollars or more or makes expenditures totaling two hundred fifty dollars or more during the calendar year shall send written notification to the City Clerk, and each candidate or officeholder contending for the same office, as follows:

- a. The notification shall be sent within forty-eight hours of receiving contributions totaling two hundred fifty dollars or more or making expenditures of two hundred fifty dollars or more;
- b. The notification shall include the name and address of the candidate or officeholder, the elective

office for which the short form campaign statement was filed, the date of the election, and the date contributions totaling two hundred fifty dollars or more were received or expenditures totaling two hundred fifty dollars or more were made;

c. The notification shall be sent by telegram, guaranteed overnight delivery, personal delivery, or facsimile transmission. (Ord. 6329-NS § 2, 1996; Ord. 4700-NS § 410, 1974)

Section 2.12.272 Slate mailer organizations' reporting requirements.

A. Slate mailer means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

B. For the purposes of this chapter, a slate mailer organization shall be defined as an organization which meets the definition of California Government Code Section 82048.4.

C. A slate mailer organization which produces one or more slate mailers supporting or opposing inter alia any candidate for Berkeley elective office or any Berkeley measure shall file one copy of its campaign reports with the City Clerk. Campaign reports are those reports slate mailer organizations are required to file pursuant to California Government Code Sections 84218, 84219, 84220 and 84221. (Ord. 6096-NS § 2 (part), 1991)

Section 2.12.275 Campaign statement--Verification.

A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that he or she has made reasonable inquiry into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section 2.12.025. (Ord. 4700-NS § 411, 1974)

Section 2.12.280 Campaign statement--Information required.

Each campaign statement required by this article shall contain the following information:

A. Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals;

B. The total amount of contributions received during the period covered by the campaign statement from persons who have given fifty dollars or more;

C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;

D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;

E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;

F. The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

G. The full name of each person from whom a contribution or contributions totalling fifty dollars or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;

H. The full name and street address of each person to whom an expenditure or expenditures totalling

fifty dollars or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

I. In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

J. The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

K. In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 412, 1974)

Section 2.12.285 Campaign statement--Candidate statement in lieu permitted when.

Whenever any provision of this chapter requires the filing of a campaign statement by a candidate or committee, a statement signed under penalty of perjury may be filed in lieu thereof that to the best of his or her knowledge not more than two hundred dollars has been received or expended. (Ord. 4945-NS § 1 (part), 1976: Ord. 4700-NS § 413, 1974)

Section 2.12.290 Campaign statement--Consolidation permitted when.

Two or more committees which act jointly in support of or in opposition to any candidate or measure may file consolidated campaign statements under this chapter. (Ord. 4700-NS § 414, 1974)

Section 2.12.295 Report of late contributions.

All candidates and committees, including committees qualified under Section 2.12.095 but prior to filing required statements under Section 2.12.255 of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports may be by any written means of communication, and do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 415, 1974)

Section 2.12.300 Contributions--Written instrument required when.

All monetary contributions of fifty dollars or more shall be made by written instrument containing the name of the donor and the name of the payee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 420, 1974)

Section 2.12.305 Contributions--From persons using other than legal name prohibited.

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes. (Ord. 4700-NS § 421, 1974)

Section 2.12.310 Contributions--By persons on behalf of other persons prohibited.

No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person. (Ord. 4700-NS § 422, 1974)

Section 2.12.315 Expenditures--Report requirements--Scope.

No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this chapter. (Ord. 4700-NS § 423, 1974)

Section 2.12.320 Anonymous contributions--Restrictions--Payment to City required when.

No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totalling more than fifty dollars in a calendar year. An anonymous contribution of more than fifty dollars shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the general fund of the City. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 424, 1974)

Section 2.12.325 Mass mailings--Copies to commission.

A copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the commission. Such copies sent to the commission shall be public record. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 425, 1974)

Section 2.12.330 Mass mailings by independent expenditure.

When a mass mailing which supports or opposes any candidate for Berkeley elective office or the qualification, passage or defeat of a ballot measure is paid for by independent expenditures a completed statement in the following form must appear on the envelope and on each page or fold of the mass mailing in no less than 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter in the mailing:

NOTICE TO VOTERS
(Required by City of Berkeley)

This mailing is not authorized or approved by any City of Berkeley election official, candidate for elective office or campaign committee.

It is paid for by

(Name)

(Address, City, State)

(Ord. 6096-NS § 2 (part), 1991)

Article 5. Expenditure Limitations

Section 2.12.405 Measures--Compensation for petition circulation--Disclosure.

If compensation is received by any person for obtaining signatures or for the circulation of petitions to place a measure on the ballot, the terms of such compensation shall be clear and visible on the signature sheet of the petition. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 517, 1974)

Article 6. Limitations on Contributions

Section 2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 5895 § 1, 1988; Ord. 4700-NS § 600, 1974)

Section 2.12.435 Excess amounts--Payment to City Auditor required.

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the general fund of the City. (Ord. 4700-NS § 604, 1974)

Section 2.12.440 Contributions from certain organizations and business entities prohibited.

No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution. (Ord. 6096-NS § 1, 1991; Ord. 4701-NS § 1 (part), 1974; Ord. 4700-NS § 605, 1974)

Article 7. Enforcement--Penalties For Violation

Section 2.12.445 Complaints--Filing, investigation and commission action.

Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the commission. If the commission determines that there is reason to believe a violation of this chapter has occurred, it shall make an investigation. If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this chapter. (Ord. 4700-NS § 710, 1974)

Section 2.12.450 Actions for compliance--Who is authorized to institute.

Any resident of the City who believes that a violation of this chapter has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 4700-NS § 711, 1974)

Section 2.12.455 Actions for compliance--Procedure required and commission authority.

Before instituting an action pursuant to Section 2.12.450, a person must file a written request with the commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the commission is dismissed without prejudice. If the commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter. (Ord. 4700-NS § 712, 1974)

Section 2.12.460 Violation--Deemed misdemeanor--Penalty.

Any person who knowingly or wilfully violates any provision of this chapter is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly, or unlawfully contributed, expended, gave or received. (Ord. 4700-NS § 700, 1974)

Section 2.12.465 Actions for compliance--Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section 2.12.450, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the general fund of the City. In an action brought by the commission or the City Attorney, the entire amount recovered shall be paid to the general fund of the City. (Ord. 4700-NS § 701, 1974)

Section 2.12.470 Violation--Candidate's office forfeited when.

If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office. (Ord. 4700-NS § 702, 1974)

Section 2.12.475 Violation--Candidacy terminated when.

If a candidate receives a final judgment of conviction of this chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election. (Ord. 4700-NS § 703, 1974)

Section 2.12.480 Violation--Persons ineligible for candidacy--Time limit.

No person convicted of a violation of this chapter shall be a candidate for City elective office for a period of four years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section. (Ord. 4948-NS (part), 1976; Ord. 4700-NS § 704, 1974)

Section 2.12.485 Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections 2.12.270 or 2.12.295 of this chapter and who files such report or reports after the deadlines imposed in these sections, shall, in addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section 91013, which is incorporated herein. (Ord. 6096-NS, § 2 (part), 1991)

ALBANY ORDINANCE

CHAPTER VII CITY OF ALBANY CAMPAIGN FINANCE REFORM ACT OF 1996

7-1 TITLE.

This Chapter shall be known as the "City of Albany Campaign Finance Reform Act of 1996." (Ord. #08-10, §1)

7-1.1 Findings and Declarations.

The people find and declare each of the following:

a. Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

b. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger proportions of their campaign funds from interest groups with a specific financial stake in matters before the City Council. This has caused the public perception that votes are improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process.

c. Candidates are raising less money in small contributions and more in large individual and organization contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.

(Ord. #08-10, §1)

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7-1.2 Intent of This Act.

- a. To limit the amount of money that may be contributed to each candidate for public office by any individual or organization in any election;
- b. To limit the amount of money that each candidate will spend in the course of an election campaign, by voluntary agreement; and
- c. To provide sufficient incentives to elicit voluntary commitments from candidates that they will limit campaign expenditures.
- d. This law is enacted in accordance with the terms of Section 5 of Article XI of the Constitution of the State of California and pursuant to the police powers of the Charter of the City of Albany.

(Ord. #08-10, §1)

7-2 INTERPRETATION OF THIS ACT.

Unless otherwise specified, the definitions set forth in Government Code Sections 82000 et seq. shall govern the interpretation of this Act, except that, for the purposes of this chapter, the word "contribution" shall be interpreted to include loans to candidates and campaigns. (Ord. #08-10, §1)

7-3 LIMITATIONS ON CONTRIBUTIONS.

- a. It is unlawful for a candidate, committee supporting or opposing a candidate, or person acting on behalf of a candidate or committee to solicit or accept from any other person a contribution which will cause the total amount contributed by that other person in support of or opposition to a

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candidate to exceed one hundred (\$100.00) dollars for any single election.

b. It is unlawful for any person to make to any candidate or committee supporting or opposing a candidate a contribution that will cause the total amount contributed by that person in support of or opposition to a candidate to exceed one hundred (\$100.00) dollars for any single election, except as provided for candidates who agree to the expenditure limit ceiling.

c. Nothing in this section is intended to limit the amount of his or her own money or property that a candidate may contribute to, including loan to, or expend on behalf of candidate's own campaign.

d. The contribution limits contained in Section 7-3b. apply to the total contributions of a person to a candidate.

e. Total anonymous contributions to a candidate or committee, which exceed in the aggregate two hundred (\$200.00) dollars with respect to a single election shall not be used by the candidate or committee for whom it was intended. To the extent that total anonymous contributions exceed two hundred (\$200.00) dollars, the excess shall be paid promptly from available campaign funds, if any, to the City Clerk and made payable to the City Treasurer for deposit in the General Fund of the City.

f. For the purposes of this Chapter, "person" means any individual, firm, partnership, joint venture, syndicate, business trust, personal trust, family trust, company, corporation, association, proprietorship, sole proprietorship, committee, labor union, or any other organization or group of person acting in concert.

(Ord. #08-10, §1)

7-4 OBLIGATION TO RETURN CONTRIBUTIONS.

a. If a candidate, committee, or committee treasurer is offered a contribution the acceptance of which would constitute a violation of this Chapter, the candidate, committee or committee treasurer shall refuse the offer.

b. If a candidate, committee, or committee treasurer receives a monetary contribution the acceptance of which would constitute a violation of this Chapter, neither the candidate, committee, nor committee treasurer shall be subject to any penalty for receipt of that contribution if the candidate, committee, or committee treasurer:

1. Does not deposit the contribution into the campaign contribution checking account;
and,

2. Returns the contribution within twenty (20) business days of the calendar day the contribution was received.

c. If a candidate, committee, or committee treasurer deposits into the campaign contribution checking account a monetary contribution the acceptance of which constitutes a violation of this Chapter, the candidate, committee, or committee treasurer shall within ten (10) calendar days of the date of the candidate's, committee's or committee treasurer's discovery of the violation provide in writing to the City Clerk all facts pertaining to the contribution, including but not limited to:

1. A copy of any check(s), draft(s) or other instrument(s) by which the contribution was made; and

2. If made in cash, a report of the amount and denominations of currency tendered and a legible photocopy of the bank deposit slip; and

3. If by wire or other electronic fund transfer, a legible printout or photocopy of the transaction; and

4. A report of the means of tender, delivery or confirmation of the contribution (e.g., U.S. Postal Service or private mail, courier service, in person, etc.); and

5. A report of the full name and street address of the contributor.

d. The candidate or committee treasurer shall promptly deliver from available funds, if any, an amount equal to any monetary contribution constituting a violation of this Chapter that is deposited into the campaign contribution checking account to the City Clerk and made payable to the City Treasurer. The City Treasurer shall deposit any contribution or equivalent amount he or she receives under Section 7-4 into the City's General Fund.

(Ord. #08-10, §1)

7-5 PAYMENT AND DISCLOSURE OF PAYMENT FOR GOODS AND SERVICES.

a. An expenditure is made on the date the payment is made or the date that the candidate or committee receives the goods or services, whichever is earlier.

b. Every candidate and committee shall disclose expenditures in the same time and manner required by California Government Code Section 84211. An expenditure which has been incurred but not paid during a reporting period shall be disclosed as an accrued expense.

c. Each candidate or treasurer of a controlled committee that supports or opposes a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

d. The treasurer of a committee that makes independent expenditures in support of or in opposition to a candidate shall pay, or cause to be paid, each vendor upon receipt of the vendor's goods or services in whole or in part.

e. In addition to any of other laws requiring disclosure, disclosure of payments for goods and services shall be filed with the City Clerk seven (7) days before the date of the election.

(Ord. #08-10, §1)

7-6 VOLUNTARY AGREEMENT TO EXPENDITURE CEILING.

Each candidate for office, at the time of filing his or her nomination papers, shall file a statement of acceptance or rejection of a campaign expenditure ceiling, stating that the total campaign expenditures by the candidate and the controlled committee of such candidate will not exceed a limit equal to seventy (\$0.70) cents per registered voter, as of the most recent presidential election, the amount rounded to the nearest one hundred (\$100.00) dollars and indexed for inflation. (Ord. #08-10, §1)

7-7 INCENTIVES FOR AGREEMENT TO EXPENDITURE CEILING.

Each candidate for office filing a statement of acceptance of the campaign expenditure ceiling and agreement not to accept more than twenty-five (25%) percent of her/his campaign funds from persons residing in communities other than Albany, California shall not be subject to the obligations in Section 7-5 and the restrictions in Section 7-3 and shall be subject to the following restrictions:

a. *Contribution Limit.* No person shall make to the candidate and the controlled committee of such a candidate, and the candidate and the candidate's controlled committee shall not accept from each such person, a contribution or contributions totaling more than two hundred fifty (\$250.00) dollars for each election in which the candidate is on the ballot or is a write-in candidate.

(Ord. #08-10, §1)

7-8 DUTIES OF THE LOCAL FILING OFFICER.

The City Administrator shall assign duties, as appropriate, for the implementation of this Chapter, including but not limited to the following:

a. Adjustment of the expenditure ceilings and contribution limitations in January of even-numbered years to reflect any increase or decrease in the Consumer Price Index and in the number of registered voters in the City of Albany. Such adjustments in dollar figures shall be rounded off to the nearest hundred for the limitations on contributions and the expenditure ceiling.

b. Prescription of the necessary forms for filing the appropriate statements.

(Ord. #08-10, §1)

7-9 CRIMINAL MISDEMEANOR ACTIONS.

Any person who violates any provision of this Act is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this Act, or who aids and abets any other individual in the violation of any provision of this Act, shall be liable under the provisions of this section. Prosecution for violation of any provision of this Act shall be commenced within four (4) years after the date on which the violation occurred. (Ord. #08-10, §1)

7-10 APPLICABILITY OF OTHER LAWS.

Nothing in this Act shall exempt any person from applicable provisions of any other laws of this State or jurisdiction, except this act shall supersede Government Code Section 85300. (Ord. #08-10, §1)

WALNUT CREEK ORDINANCE

TITLE 12. ELECTIONS.

CHAPTER 1. CAMPAIGN DISCLOSURE AND CONTRIBUTION LIMITS

CHAPTER 1. CAMPAIGN DISCLOSURE AND CONTRIBUTION LIMITS

Sec. 12-1.101. Purpose.

The purpose of this chapter is to reduce the actual and perceived influence of contributions on elected officials by limiting the amount of campaign contributions and to further the City's goal of an informed electorate by supplementing the campaign disclosure requirements and related regulations set forth in the Political Reform Act of 1974. (§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1851-A, eff. 12/15/94)

Sec. 12-1.102. Definitions.

As used in this Chapter:

a. **Campaign statement** means an itemized statement prepared in duplicate by a Candidate and by the treasurer of each committee, showing, in addition to matters required by law, the following information: the name, complete mailing address, occupation and place of employment, and business address if self-employed, of any person who paid, loaned, contributed or otherwise furnished twenty-five dollars or more, or its equivalent, to the Candidate or treasurer for the Candidate, or to each Committee as defined in (d) below, for the use of such Candidate or such treasurer, directly or indirectly in aid of the Candidate's election, or for qualification, passage or defeat of any measure, and the amount, in detail, of such money or its equivalent each such person paid, loaned, contributed or otherwise furnished. This definition also modifies "Contents of a Campaign Statement," codified at Government Code §84211, with regard to additional City requirements.

b. **Candidate** means a candidate for an elected City office.

c. **City election** means any municipal election in the City of Walnut Creek, including elections to fill public offices, elections on measures, and initiative, referendum and recall elections.

d. **Committee** means any committee, entity, person or group of persons aiding or opposing, directly or indirectly, any Candidate, City measure or committee, for election purposes, whether or not originally organized for election purposes. Notwithstanding the foregoing, for the purposes of all filing requirements pursuant to Sections 12-1.105 - 12-1.107, Committee shall only mean a Candidate's controlled committee or a committee formed or existing primarily to support or oppose a Candidate or to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in the City, or a City general purpose committee active only in the City.

e. **Election period** means as follows:

1. The Election Period for a Candidate shall be that period of time commencing on the fifty-eighth day following the date that the office seat sought by that Candidate was filled by election and

extending to the close of the fifth day before the next election date for that office seat.

2. The Election Period for a Controlled Committee which is controlled by a single Candidate shall be the same as the Election Period for that Candidate.

3. The Election Period for a Controlled Committee which is controlled by more than one Candidate shall be, for each election, that period of time commencing three years and ten months prior to the election at which any one of such candidates is seeking office and extending to the close of the fifth day before that election. The Election Period in this situation may overlap other election periods.

f. *Political Reform Act* means the Political Reform Act of 1974 and all amendments to it.

g. All other words and terms shall have the meanings ascribed to them by the definitions set forth in the Political Reform Act. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.103. Contribution Limitations.

a. No contribution shall be accepted by any Candidate or Controlled Committee except during an election period.

b. No person or Committee shall, during an election period, make any contribution or cumulative contributions which exceed the maximum amount of one hundred dollars (\$100) to, nor shall any such contribution be accepted by, any Candidate or Controlled Committee.

c. The prohibitions stated in subsections (a) and (b) above shall not apply to contributions made or received by a Committee which has never made a contribution to any Candidate and which does not exist in part to make contributions to one or more Candidates.

d. The one hundred dollar (\$100) limit specified in subsection (b) above shall be adjusted in February of each year commencing in 1996 for changes in the consumer price index for the San Francisco Bay Area, CPI-U rounded to the nearest \$5.

e. The prohibitions stated in subsections (a) and (b) above shall apply to expenditures made by a Committee (other than a Controlled Committee) at the behest of a Candidate as well as to any other type of contribution.

f. No contribution of twenty-five dollars (\$25.00) or more shall be made or received in cash. The foregoing provision shall be interpreted according to the standards set forth in Government Code Section 84300.

g. No contribution of twenty-five dollars (\$25.00) or more other than an in-kind contribution shall be made unless by written instrument containing the name of the donor and the name of the payee.

h. The value of all in-kind contributions of twenty-five dollars (\$25.00) or more shall be reported in writing to the recipient upon the request in writing of the recipient.

i. No person shall make an anonymous contribution or contributions to a Candidate, Committee or any other person totaling twenty-five dollars (\$25.00) or more in a calendar year. An anonymous contribution of twenty-five dollars (\$25.00) or more shall not be kept by the intended recipient but

instead shall be paid to the City's Administrative Services Director for deposit in the general fund of the City except as otherwise provided at §84304 of the Act. No Candidate shall accept more than a total of fifty dollars (\$50.00) in anonymous contributions. Any excess amount shall be paid to the City's Administrative Services Director for deposit in the general fund of the City.

j. Any Candidate or Committee who accepts contributions in excess of the limitations set forth in this section may, within 30 days after receipt of such excess contribution, return the excess amount to the contributor without penalty.

k. The contribution limitations of this section shall apply to the aggregate contributions made by related entities to related committees. As used in this section, the term related entities includes: (I) Individuals who make contributions from personal funds and who also direct and control contributions made from other funds; (ii) Business entities in a parent-subsidary relationship and business entities with the same controlling owner (more than 50%), unless the entities act completely independently in their decisions to make contributions; and (iii) Entities where the same person or a majority of the same persons in fact directs and controls the contributions each entity makes. As used in this section, the term related committees means a candidate and any committee(s) controlled by that candidate. (*§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.104. Cash Expenditures.

No expenditure of twenty-five dollars (\$25.00) or more shall be made in cash. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.105. Supplemental Disclosure Requirements for Independent Expenditures.

Every independent expenditure report filed in connection with a City Election shall contain the following information, in addition to the information required by Government Code §84203.5.

a. The total amount of expenditures related to the Candidate or measure during the period covered by the report made to persons who have received less than twenty-five dollars (\$25.00);

b. The total amount of expenditures related to the Candidate or measure during the period covered by the report made to persons who have received twenty-five dollars (\$25.00) or more;

c. For each person to whom an expenditure of twenty-five dollars (\$25.00) or more related to the Candidate or measure has been made during the period covered by the report and for each person who has provided consideration for an expenditure of twenty-five dollars (\$25.00) or more during the period covered by the report:

1. His or her full name;

2. His or her street address;

3. If the person is a committee, the name of the committee, the number assigned to the committee by the Secretary of State, or if no number has been assigned, the full name and street address of the treasurer of the committee.

4. The amount of the expenditure;

5. A brief description of the consideration for which each such expenditure was made and the value of the consideration if less than the total amount of the expenditure; and

6. The cumulative amount of expenditures to such person. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.106. Supplemental Disclosure Requirements for Campaign Statements.

Every campaign statement filed in connection with a City election shall contain the following information, in addition to the information required by Government Code Sec. 84211:

a. The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of twenty-five dollars (\$25.00) or more.

b. The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of less than twenty-five dollars (\$25.00).

c. If the cumulative amount of contributions (including loans) received from a person is twenty-five dollars (\$25.00) or more and a contribution or loan (even if less than \$25.00) has been received from that person during the period covered by the campaign statement:

1. His or her full name;

2. His or her street address;

3. His or her occupation;

4. The name of his or her employer or if self-employed, name of business and business address;

5. The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan; and

6. The cumulative amount of contributions.

d. The total amount of expenditures made during the period covered by the campaign statement to persons who have received twenty-five dollars (\$25.00) or more.

e. The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than twenty-five dollars (\$25.00).

f. For each person to whom an expenditure of twenty-five dollars (\$25.00) or more has been made during the period covered by the campaign statement:

1. His or her full name;

2. His or her street address;

3. The amount of each expenditure;

4. A brief description of the consideration for which each expenditure was made;

5. In case of an expenditure which is a contribution, the date of the contribution, the cumulative amount of contributions made to a Candidate, elected officer or Committee, the full name of the Candidate and the office and district for which he or she seeks nomination or election. In the case of a contribution in support of or opposition to a measure, the number or letter of the measure and the jurisdiction in which the measure or Candidate is voted upon; and

6. The information required in paragraphs (1) through (4) above, for each person, if different from the payee, who has provided consideration for an expenditure of twenty-five dollars (\$25.00) or more during the period covered by the campaign statement.

g. For purposes of subdivisions d, e, and f, only, the terms "expenditure" or "expenditures" means any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

h. In a campaign statement filed by a committee supporting or opposing more than one Candidate or measure, the amount of expenditures of twenty-five dollars (\$25.00) or more for or against each Candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures of twenty-five dollars (\$25.00) or more for or against each such Candidate or measure.

i. If the campaign statement is filed in connection with the qualification of a measure, it shall contain the information required by paragraphs (1) through (4) of subdivision (f) for each person who has directly, indirectly or through an intermediary received payments cumulatively totaling twenty-five dollars (\$25.00) or more for circulation of petitions to qualify a measure for the ballot. (*§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.107. Campaign Statement Filing Dates.

a. All Candidates and Committees shall file Campaign Statements no later than the dates, and covering the periods, prescribed by the State Political Reform Act for pre-election statements.

b. In addition to the Campaign Statements described in subsection (a), all Candidates and Committees shall file a final pre-election Campaign Statement no later than four days prior to the election. This statement shall be for the period closing five days prior to the election. This statement shall be filed with the City Clerk only by personal delivery during regular business hours on the fourth day prior to the election or by guaranteed overnight delivery deposited no later than the fifth day prior to the election. This statement may not be filed by first-class mail or any other method not specified above.

c. In addition to the Campaign Statements described in subsections (a) and (b), all Candidates and Committees shall file a post-election Campaign Statement sixty-five (65) days after the election, or in the case of a successful Candidate, not later than the day preceding the day on which he or she takes office. The statement shall close seven days prior to the filing deadline. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.108. Informational Meeting.

The City Clerk and City Attorney shall invite all qualified Candidates for City office to a meeting, in the two weeks following the close of the nomination period for City office, to inform Candidates of the provisions of this title. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.109 Enforcement.

a. In addition to other duties required by law, the City Clerk shall monitor all statements, filed pursuant to this title. The City Clerk shall:

1. Determine whether the required statements have been filed with the City Clerk;
 2. Determine the timeliness of filing;
 3. Determine whether the statements conform on their face with the requirements of this title;
- and
4. Determine if any reported contributions exceed the allowable maximums established by this title.

b. If the City Clerk, in the course of reviewing statements as required by subsection a, finds an apparent violation, the City Clerk shall notify the Candidate or Committee in writing.

c. The Candidate or Committee may correct any mistake made in the preparation of any statement within five days after receipt of the notice from the City Clerk.

d. The City Clerk shall report to the City Attorney any apparent violations of this ordinance which have not been corrected or cannot be corrected by the Candidate or Committee.

e. The City Clerk shall compile and maintain for five years a list of statements or portions of statements which the City Clerk is required to review. Each list shall be indexed by the Candidate's or Committee's name. (*§1, Ord. 1851-A, eff. 12/15/94; and § 1, Ord. 2053 eff. 8/18/2006*)

Sec. 12-1.110. Penalties.

a. Criminal Penalties. Any person who violates any provision of this chapter shall be guilty of a misdemeanor or an infraction.

1. If charged as an infraction, the penalty upon conviction of such person shall be a fine as set forth in section 1-2.01 of this Code.

2. If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the county jail for a period not to exceed six months, or by a fine not exceeding \$1,000, or by both such fine and imprisonment.

b. Civil Penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable to the City for a civil penalty of no more than \$1,000 or the amount of the unlawful contribution, if any, or the amount which was not properly disclosed, if any, whichever is greater.

c. Cumulative Remedies. The foregoing remedies shall be deemed non-exclusive, cumulative and in addition to any other remedy the City may have at law or in equity. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.111 Regulations.

The City Clerk is authorized to adopt regulations and forms necessary or desirable to interpret and carry out the provisions of this title. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.112. Severance Clause.

Should any part of this ordinance be held invalid, it shall be severable and shall not affect the validity of the remaining parts. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.113. Amendments.

This chapter may be amended to make it consistent with the state Political Reform Act only by a 2/3 vote of the entire City Council. Notwithstanding the foregoing, the additional Campaign Statements required by Sections 12-1.107, the contribution limit established in Section 12-1.103, the \$25 reporting requirements and the prohibition against accepting contributions except during an election period, may only be amended by a vote of the electorate. (*§1, Ord. 1851-A, eff. 12/15/94*)

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TITLE 12. ELECTIONS.

CHAPTER 1. CAMPAIGN DISCLOSURE AND CONTRIBUTION LIMITS

CHAPTER 1. CAMPAIGN DISCLOSURE AND CONTRIBUTION LIMITS

Sec. 12-1.101. Purpose.

The purpose of this chapter is to reduce the actual and perceived influence of contributions on elected officials by limiting the amount of campaign contributions and to further the City's goal of an informed electorate by supplementing the campaign disclosure requirements and related regulations set forth in the Political Reform Act of 1974. (§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1851-A, eff. 12/15/94)

Sec. 12-1.102. Definitions.

As used in this Chapter:

- a. **Campaign statement** means an itemized statement prepared in duplicate by a Candidate and by the treasurer of each committee, showing, in addition to matters required by law, the following information: the name, complete mailing address, occupation and place of employment, and business address if self-employed, of any person who paid, loaned, contributed or otherwise furnished twenty-five dollars or more, or its equivalent, to the Candidate or treasurer for the Candidate, or to each Committee as defined in (d) below, for the use of such Candidate or such treasurer, directly or indirectly in aid of the Candidate's election, or for qualification, passage or defeat of any measure, and the amount, in detail, of such money or its equivalent each such person paid, loaned, contributed or otherwise furnished. This definition also modifies "Contents of a Campaign Statement," codified at Government Code §84211, with regard to additional City requirements.
- b. **Candidate** means a candidate for an elected City office.
- c. **City election** means any municipal election in the City of Walnut Creek, including elections to fill public offices, elections on measures, and initiative, referendum and recall elections.
- d. **Committee** means any committee, entity, person or group of persons aiding or opposing, directly or indirectly, any Candidate, City measure or committee, for election purposes, whether or not originally organized for election purposes. Notwithstanding the foregoing, for the purposes of all filing requirements pursuant to Sections 12-1.105 - 12-1.107, Committee shall only mean a Candidate's controlled committee or a committee formed or existing primarily to support or oppose a Candidate or to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in the City, or a City general purpose committee active only in the City.
- e. **Election period** means as follows:
 1. The Election Period for a Candidate shall be that period of time commencing on the fifty-eighth day following the date that the office seat sought by that Candidate was filled by election and

extending to the close of the fifth day before the next election date for that office seat.

2. The Election Period for a Controlled Committee which is controlled by a single Candidate shall be the same as the Election Period for that Candidate.

3. The Election Period for a Controlled Committee which is controlled by more than one Candidate shall be, for each election, that period of time commencing three years and ten months prior to the election at which any one of such candidates is seeking office and extending to the close of the fifth day before that election. The Election Period in this situation may overlap other election periods.

f. *Political Reform Act* means the Political Reform Act of 1974 and all amendments to it.

g. All other words and terms shall have the meanings ascribed to them by the definitions set forth in the Political Reform Act. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.103. Contribution Limitations.

a. No contribution shall be accepted by any Candidate or Controlled Committee except during an election period.

b. No person or Committee shall, during an election period, make any contribution or cumulative contributions which exceed the maximum amount of one hundred dollars (\$100) to, nor shall any such contribution be accepted by, any Candidate or Controlled Committee.

c. The prohibitions stated in subsections (a) and (b) above shall not apply to contributions made or received by a Committee which has never made a contribution to any Candidate and which does not exist in part to make contributions to one or more Candidates.

d. The one hundred dollar (\$100) limit specified in subsection (b) above shall be adjusted in February of each year commencing in 1996 for changes in the consumer price index for the San Francisco Bay Area, CPI-U rounded to the nearest \$5.

e. The prohibitions stated in subsections (a) and (b) above shall apply to expenditures made by a Committee (other than a Controlled Committee) at the behest of a Candidate as well as to any other type of contribution.

f. No contribution of twenty-five dollars (\$25.00) or more shall be made or received in cash. The foregoing provision shall be interpreted according to the standards set forth in Government Code Section 84300.

g. No contribution of twenty-five dollars (\$25.00) or more other than an in-kind contribution shall be made unless by written instrument containing the name of the donor and the name of the payee.

h. The value of all in-kind contributions of twenty-five dollars (\$25.00) or more shall be reported in writing to the recipient upon the request in writing of the recipient.

i. No person shall make an anonymous contribution or contributions to a Candidate, Committee or any other person totaling twenty-five dollars (\$25.00) or more in a calendar year. An anonymous contribution of twenty-five dollars (\$25.00) or more shall not be kept by the intended recipient but

instead shall be paid to the City's Administrative Services Director for deposit in the general fund of the City except as otherwise provided at §84304 of the Act. No Candidate shall accept more than a total of fifty dollars (\$50.00) in anonymous contributions. Any excess amount shall be paid to the City's Administrative Services Director for deposit in the general fund of the City.

j. Any Candidate or Committee who accepts contributions in excess of the limitations set forth in this section may, within 30 days after receipt of such excess contribution, return the excess amount to the contributor without penalty.

k. The contribution limitations of this section shall apply to the aggregate contributions made by related entities to related committees. As used in this section, the term related entities includes: (i) Individuals who make contributions from personal funds and who also direct and control contributions made from other funds; (ii) Business entities in a parent-subsidiary relationship and business entities with the same controlling owner (more than 50%), unless the entities act completely independently in their decisions to make contributions; and (iii) Entities where the same person or a majority of the same persons in fact directs and controls the contributions each entity makes. As used in this section, the term related committees means a candidate and any committee(s) controlled by that candidate. (*§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.104. Cash Expenditures.

No expenditure of twenty-five dollars (\$25.00) or more shall be made in cash. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.105. Supplemental Disclosure Requirements for Independent Expenditures.

Every independent expenditure report filed in connection with a City Election shall contain the following information, in addition to the information required by Government Code §84203.5.

a. The total amount of expenditures related to the Candidate or measure during the period covered by the report made to persons who have received less than twenty-five dollars (\$25.00);

b. The total amount of expenditures related to the Candidate or measure during the period covered by the report made to persons who have received twenty-five dollars (\$25.00) or more;

c. For each person to whom an expenditure of twenty-five dollars (\$25.00) or more related to the Candidate or measure has been made during the period covered by the report and for each person who has provided consideration for an expenditure of twenty-five dollars (\$25.00) or more during the period covered by the report:

1. His or her full name;

2. His or her street address;

3. If the person is a committee, the name of the committee, the number assigned to the committee by the Secretary of State, or if no number has been assigned, the full name and street address of the treasurer of the committee.

4. The amount of the expenditure;

5. A brief description of the consideration for which each such expenditure was made and the value of the consideration if less than the total amount of the expenditure; and

6. The cumulative amount of expenditures to such person. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.106. Supplemental Disclosure Requirements for Campaign Statements.

Every campaign statement filed in connection with a City election shall contain the following information, in addition to the information required by Government Code Sec. 84211:

a. The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of twenty-five dollars (\$25.00) or more.

b. The total amount of contributions received during the period covered by the campaign statement from persons who have given a cumulative amount of less than twenty-five dollars (\$25.00).

c. If the cumulative amount of contributions (including loans) received from a person is twenty-five dollars (\$25.00) or more and a contribution or loan (even if less than \$25.00) has been received from that person during the period covered by the campaign statement:

1. His or her full name;
2. His or her street address;
3. His or her occupation;
4. The name of his or her employer or if self-employed, name of business and business address;
5. The date and amount received for each contribution received during the period covered by the campaign statement and if the contribution is a loan, the interest rate for the loan; and
6. The cumulative amount of contributions.

d. The total amount of expenditures made during the period covered by the campaign statement to persons who have received twenty-five dollars (\$25.00) or more.

e. The total amount of expenditures made during the period covered by the campaign statement to persons who have received less than twenty-five dollars (\$25.00).

f. For each person to whom an expenditure of twenty-five dollars (\$25.00) or more has been made during the period covered by the campaign statement:

1. His or her full name;
2. His or her street address;
3. The amount of each expenditure;
4. A brief description of the consideration for which each expenditure was made;

5. In case of an expenditure which is a contribution, the date of the contribution, the cumulative amount of contributions made to a Candidate, elected officer or Committee, the full name of the Candidate and the office and district for which he or she seeks nomination or election. In the case of a contribution in support of or opposition to a measure, the number or letter of the measure and the jurisdiction in which the measure or Candidate is voted upon; and

6. The information required in paragraphs (1) through (4) above, for each person, if different from the payee, who has provided consideration for an expenditure of twenty-five dollars (\$25.00) or more during the period covered by the campaign statement.

g. For purposes of subdivisions d, e, and f, only, the terms "expenditure" or "expenditures" means any individual payment or accrued expense, unless it is clear from surrounding circumstances that a series of payments or accrued expenses are for a single service or product.

h. In a campaign statement filed by a committee supporting or opposing more than one Candidate or measure, the amount of expenditures of twenty-five dollars (\$25.00) or more for or against each Candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures of twenty-five dollars (\$25.00) or more for or against each such Candidate or measure.

i. If the campaign statement is filed in connection with the qualification of a measure, it shall contain the information required by paragraphs (1) through (4) of subdivision (f) for each person who has directly, indirectly or through an intermediary received payments cumulatively totaling twenty-five dollars (\$25.00) or more for circulation of petitions to qualify a measure for the ballot. (*§1, Ord. 1625, eff. July 18, 1985; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.107. Campaign Statement Filing Dates.

a. All Candidates and Committees shall file Campaign Statements no later than the dates, and covering the periods, prescribed by the State Political Reform Act for pre-election statements.

b. In addition to the Campaign Statements described in subsection (a), all Candidates and Committees shall file a final pre-election Campaign Statement no later than four days prior to the election. This statement shall be for the period closing five days prior to the election. This statement shall be filed with the City Clerk only by personal delivery during regular business hours on the fourth day prior to the election or by guaranteed overnight delivery deposited no later than the fifth day prior to the election. This statement may not be filed by first-class mail or any other method not specified above.

c. In addition to the Campaign Statements described in subsections (a) and (b), all Candidates and Committees shall file a post-election Campaign Statement sixty-five (65) days after the election, or in the case of a successful Candidate, not later than the day preceding the day on which he or she takes office. The statement shall close seven days prior to the filing deadline. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.108. Informational Meeting.

The City Clerk and City Attorney shall invite all qualified Candidates for City office to a meeting, in the two weeks following the close of the nomination period for City office, to inform Candidates of the provisions of this title. (*§1, Ord. 1625, eff. July 18, 1985; §1, Ord. 1667, eff. July 2, 1986; and by §1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.109 Enforcement.

a. In addition to other duties required by law, the City Clerk shall monitor all statements, filed pursuant to this title. The City Clerk shall:

1. Determine whether the required statements have been filed with the City Clerk;
2. Determine the timeliness of filing;
3. Determine whether the statements conform on their face with the requirements of this title;
and
4. Determine if any reported contributions exceed the allowable maximums established by this title.

b. If the City Clerk, in the course of reviewing statements as required by subsection a, finds an apparent violation, the City Clerk shall notify the Candidate or Committee in writing.

c. The Candidate or Committee may correct any mistake made in the preparation of any statement within five days after receipt of the notice from the City Clerk.

d. The City Clerk shall report to the City Attorney any apparent violations of this ordinance which have not been corrected or cannot be corrected by the Candidate or Committee.

e. The City Clerk shall compile and maintain for five years a list of statements or portions of statements which the City Clerk is required to review. Each list shall be indexed by the Candidate's or Committee's name. (*§1, Ord. 1851-A, eff. 12/15/94; and § 1, Ord. 2053 eff. 8/18/2006*)

Sec. 12-1.110. Penalties.

a. Criminal Penalties. Any person who violates any provision of this chapter shall be guilty of a misdemeanor or an infraction.

1. If charged as an infraction, the penalty upon conviction of such person shall be a fine as set forth in section 1-2.01 of this Code.
2. If charged as a misdemeanor, the penalty upon conviction of such person shall be imprisonment in the county jail for a period not to exceed six months, or by a fine not exceeding \$1,000, or by both such fine and imprisonment.

b. Civil Penalties. Any person who intentionally or negligently violates any provision of this chapter shall be liable to the City for a civil penalty of no more than \$1,000 or the amount of the unlawful contribution, if any, or the amount which was not properly disclosed, if any, whichever is greater.

c. Cumulative Remedies. The foregoing remedies shall be deemed non-exclusive, cumulative and in addition to any other remedy the City may have at law or in equity. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.111 Regulations.

The City Clerk is authorized to adopt regulations and forms necessary or desirable to interpret and carry out the provisions of this title. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.112. Severance Clause.

Should any part of this ordinance be held invalid, it shall be severable and shall not affect the validity of the remaining parts. (*§1, Ord. 1851-A, eff. 12/15/94*)

Sec. 12-1.113. Amendments.

This chapter may be amended to make it consistent with the state Political Reform Act only by a 2/3 vote of the entire City Council. Notwithstanding the foregoing, the additional Campaign Statements required by Sections 12-1.107, the contribution limit established in Section 12-1.103, the \$25 reporting requirements and the prohibition against accepting contributions except during an election period, may only be amended by a vote of the electorate. (*§1, Ord. 1851-A, eff. 12/15/94*)

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CITY COUNCIL MEMBER

REQUEST FOR ITEM ON COUNCIL AGENDA

Please submit this request by the Friday preceding the agenda packet distribution day, or 12 calendar days prior to the meeting. (For example, for a Council meeting on March 21st, please submit the request by March 10th.)

Requested by:

Vice Mayor Campbell

Requested Council Meeting Date:

November 4, 2008

While every effort will be made to include your item on the requested date, please note that depending on the number of items already on an agenda, it may be placed on the subsequent meeting date.

Agenda Item Name:

Request to agendize a discussion of First Street sidewalk cleaning during the summer months by the Public Works Department

Description of Item (i.e., the text that will go on the agenda as the middle paragraph, between the title and recommendation):

City ordinances do not allow trash to go into gutters or the hosing down of sidewalks to clean them. In an effort to keep the First Street sidewalks clean to promote tourism and commerce, and also as a public health issue, it is requested to write in an exemption to City ordinances 13.35.060 and 15.64.090 to allow the cleaning and hosing down of the First Street sidewalks by the Public Works Department once a month in July, August and September.

If you would like any attachments regarding your item included in the packet, please note them below and forward them via email to acardwell@ci.benicia.ca.us, if possible, along with this completed form. If attachment(s) are not available via email, please describe the attachment(s) desired and any information you may have on where to locate (website, etc.) so they can be included in the packet.

A copy of this completed form will be included in the packet, followed by any attachments you note above. Thank you!

Request to amend First Street sidewalk cleaning

Benicia is in the process of spending several thousand dollars to develop a comprehensive tourism plan. I believe one of the first things tourists appreciate is cleanliness. After the winter and spring rains the sidewalks on First Street become progressively more dirty. Most of the First Street merchants do not have access to outside water faucets to hose down the sidewalks. There are also two City ordinances that do not allow trash to go into gutters or the hosing down of sidewalks to clean them. However, I believe keeping the First Street sidewalks clean is important to promote tourism and commerce, and also as a public health issue. As such I am requesting the City Council write in an exemption to City ordinances 13.35.060 and 15.64.090 to allow the cleaning and hosing down of the First Street sidewalks by the City Public Works once a month in July, August, and September, or to come up with another way that the City fulfills its responsibility to keep the First Street sidewalks clean during the summer months when tourism is at its peak.

A handwritten signature in black ink, appearing to read "Tom Lynch". The signature is written in a cursive, flowing style.