

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
NOVEMBER 4, 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, November 4, 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:

Police Chief Spagnoli led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

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

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson stated that there was an issue with item X-A. There an apparent inconsistency between the title and the material that it covers.

Mr. Steven Mattas, Special Council, stated that the Brown Act requires Council to advise public of the general nature of the item. The title is one item and the substance is another item. If Council wishes to engage in a discussion about expenditure limits, which is within the scope of what the public thought would be on the agenda. Council could carry the whole item forward to another meeting if it wished, and have it agendized so that it encompasses the whole scope of what Council wants to discuss.

Vice Mayor Campbell discussed the vote that was read at the 4/15/08 meeting. It reads 'additions to, and including recusal and financial disclosure.' The way the motion was listed, does not preclude from talking about any other topic Council might want to talk about.

Council Member Hughes referenced Council's discussion that took place on this item in February 2008. Contributions and expenditures were talked about separately. The expenditure item got enough votes and the contributions item did not. It is clear that it was intended to be dropped from the priority list. The issue has been discussed several times.

Mayor Patterson suggested agendizing the item as the contents that would be discussed. That way, the public could participate. There was low attendance tonight due to the election. Council ought to engage the public on this discussion.

Council Member Hughes clarified that Council had already engaged the public. Council decided to drop the contribution issue via a majority vote. Nothing has changed since then. He could understand (having a discussion on) the expenditure issue, but not the contribution issue.

Vice Mayor Campbell discussed how other cities have had two contribution limits.

Council Member Schwartzman discussed his desire not to get into a debate tonight, the lack of information in the report regarding the expenditure issue, the substance in the report not matching the title, previous votes taken on the issue, and Council's ability to talk about the expenditure issue at another meeting.

Mayor Patterson directed Mr. Mattas to work with Staff to title the item as review of voluntary campaign expenditure limits, with approaches that include examples from

Oakland (as suggested by Campbell). She would need a motion to continue this item for proper listing.

Council discussed whether Council Members were able to provide input on the specific direction to Staff, Mayor Patterson's desire for Council to work collegially on this so it could move forward, Council Member Schwartzman's suggestion that the Mayor direct Staff to talk about expenditures without adding anything else in there, Mayor Patterson's thought that it is prudent to say that there is an approach that deals with expenditures and also discusses contributions, the need to follow the two-step process, not discussing this issue unless it has enough votes, and clarification on the intent of the proposed ordinance.

Council agreed to continue this item to a future meeting.

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

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

Noes: Council Member Schwartzman

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

PUBLIC COMMENT:

1. Vice Mayor Campbell – Vice Mayor Campbell discussed concerns regarding the process for the subcommittee interviews for board and commission appointments. He was not sure why Council needed to agendize this issue again.
2. Rick Ernst – Mr. Ernst discussed the upcoming Planning Commission meeting where the adult business ordinance will be discussed. The meeting will be on 11/6/08.

CONSENT CALENDAR:

Council pulled items 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 Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

The Minutes of October 7, 2008 and October 21, 2008 were approved.

RESOLUTION 08-111 - 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

RESOLUTION 08-112 - A RESOLUTION 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

RESOLUTION 08-113 - 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

RESOLUTION 08-114 - 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 AND TRANSFERRING \$100,000 FROM CITY HALL NON-STRUCTURAL IMPROVEMENTS PROJECT FACILITY MAINTENANCE FUND TO THE COMMANDING OFFICER'S QUARTERS REHABILITATION PROJECT FUND

Council approved the investment report for the quarter ended June 2008.

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 8 (Health and Safety) of the Municipal Code to add a new Chapter 8.46 (Foreclosed Properties):

Council Member Schwartzman discussed the need for more teeth and clarity in the ordinance.

Council and Staff discussed whether or not the suggested changes would require this item to be re-introduced as a new ordinance, the process for the proposed fines, the need to get this ordinance right, the need to close any possible loopholes, that the ordinance implements the state law provisions, how some cities have expanded on the state law provisions, registration requirements, how some cities have expanded the regulations, the process for imposing fines, and the registration process.

Council and Staff discussed reintroducing the ordinance on 11/18/08, the possibility that there could be a lot of public testimony on the item, the 11/18/08 agenda being full, the possibility of adding registration requirements and putting it back on the consent calendar, Council Member Schwartzman's offer to gather information on this and get it to Staff so they could do a concise report and reintroduce it on 11/18, and possibly adding a few other things he could do to make the ordinance stronger.

Mayor Patterson directed Staff to look at the registration and utilities issues, and bring it back for reintroduction on 11/18/08.

Public Comment:

1. Rick Ernst – Mr. Ernst discussed the current process for foreclosed properties. He also discussed trustee sales.

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, Council approved continuing this item to the 11/18/08 Council meeting, on roll call by the following vote:

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

Noes: None

PUBLIC HEARINGS:

None

ACTION ITEMS:

Approval of AT&T Permit Application and Review Process for U-Verse Service (Project Lightspeed:

Dan Schiada, Public Works Director, reviewed the staff report. He reviewed the questions submitted to AT&T via email (copy on file).

Council Member Hughes and Staff discussed what discretion the City had with allowing AT&T to install cabinets, current State regulations regarding the installation of such equipment, AT&T's right to place the facilities, the need to provide the possibility for use, what staff has proposed being within the scope of Council's authority, but a prohibition would not be within Council's authority.

Council Member Ioakimedes disclosed ex parte communications. He discussed aerial facilities, above ground facilities, and current Benicia Municipal Code relating to the proposed project.

Applicant:

Will Rigney, Director of External Affairs, AT&T, discussed the benefits of the Lightspeed Initiative Project. He discussed the broadband needs of the Benicia Industrial Park. AT&T completed a comprehensive survey on the Benicia Industrial Park and conveyed results to the City, BIPA, and the Benicia Chamber of Commerce. Mr. Rigney discussed the process and highlights of the survey.

Council, Staff, and Mr. Rigney discussed communications AT&T has had with Chamber and BIPA, as well as others, and the fact that Council did not receive the map showing the locations of the 60 boxes. It was clarified that AT&T provided City Staff with the map, but the map was not forwarded to Council. Staff will ensure Council receives copies of the map in question. Council disclosed ex parte communications on this issue, the cost

of installing T1 lines, the need for a better level of comfort on zero compliance, and AT&T's customer notification process.

Public Comment:

1. Susan McKane – Ms. McKane spoke in support of the proposed permit application.
2. Mike Hogan – Mr. Hogan spoke in support of the proposed permit application.
3. Eldon Peterson – Mr. Peterson spoke in opposition to the proposed permit application. He discussed concerns regarding the cost of T1 lines in the Benicia Industrial Park, and concerns regarding the survey AT&T completed in the Benicia Industrial Park. He requested this item be continued to a future meeting so more information could be gathered.
4. Kevin Cullen – Mr. Cullen spoke in opposition to the proposed permit application. He discussed his desire for requiring AT&T to integrate the new boxes into the local landscape.
5. Rick Ernst – Mr. Ernst discussed having the local AT&T representative's contact information being supplied to the Benicia Chamber of Commerce, questions on the provisions in the contract regarding use permits, and concerns regarding DSL service in the Benicia Industrial Park. He would like this item continued for further information.

Mayor Patterson and Staff discussed the CEQA issue regarding the Historic District, the noise issue, solutions and mitigation measures that could be utilized that are not in the report, questions on under grounding the equipment, the assertion that AT&T's legal staff made regarding the application of the City's ordinance and the need for the City to have a carefully written response to that, painting the cabinets, and having a condition of the project for the demolition and removal of the cabinets in the event that technology changes.

Mayor Patterson and Staff discussed the economic development for the Benicia Industrial Park, and the need for the highest level of technology service. Mayor Patterson would like Staff to work with AT&T to come up with some strategy, and come back to Council. It might be that AT&T provides some technical assistance or some implementation for that. She would like Staff to have that conversation before this comes back. She discussed the Streamline Act, and the need to act on the encroachment permit in a timely manner. The City needs to approve the process before it formalizes the applications.

Council Member Schwartzman and Staff discussed the amount of boxes that would be going in the Historic District (no answer at this time), and the availability of local government access channels with the proposed changes. He would like more information on how we can help businesses in the Benicia Industrial Park.

Council Member Ioakimedes and Staff discussed the community's susceptibility to accommodate the new technology, and the need to be proactive to deal with this issue in the future.

Mr. Erickson discussed Staff's recommendation for approval of this process, the issue of a needs assessment and master plan for service in the Benicia Industrial Park, having that go beyond AT&T (it should apply to all service providers), and that the business park service should not tie into the proposed application.

Council Member Hughes discussed the benefits of technology, competition being good, and the need to remember that tonight is about the process, not the end game.

Vice Mayor Campbell suggested trying out ten boxes to see how it goes.

On motion of Council Member Schwartzman, seconded by Vice Mayor Campbell, Council continued this item to a future meeting, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

INFORMATIONAL ITEMS:

Review of Voluntary Campaign Expenditure Limits:

Continued

COUNCIL MEMBER REPORTS:

Request to agendaize a discussion of First Street sidewalk cleaning during the summer months by the Public Works Department:

Due to a conflict of interest, Council Members Campbell, Ioakimedes, and Schwartzman drew cards to see who would be allowed to participate in the discussion. Vice Mayor Campbell drew the highest card. Council Members Ioakimedes and Schwartzman recused themselves.

Vice Mayor Campbell reviewed the Council report.

Public Comment:

Eldon Peterson – Mr. Peterson discussed inquires he made to various vendors on this issue. He spoke in favor of the City cleaning the sidewalks during the summer months. Main Street was looking at vendors for this issue. They will submit a report on their findings to the City in a month.

On motion of Vice Mayor Campbell, seconded by Council Member Hughes, Council approved bringing this item back for discussion at a future meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, and Mayor Patterson

Noes: None

Abstain: Council Members Ioakimedes and Schwartzman

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 9:20 p.m.

Lisa Wolfe, City Clerk