



**BENICIA PLANNING COMMISSION  
CITY COUNCIL CHAMBERS**

**SPECIAL MEETING MINUTES**

**Wednesday, November 5, 2008**

**7:00 P.M.**

**I. OPENING OF MEETING**

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, and Chair Railsback  
Absent: Commissioner Brad Thomas

Staff Present: Damon Golubics, Principal Planner  
Rhonda Corey, Senior Administrative Clerk  
Deborah Fox, Contract Attorney

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

**II. AGENDA CHANGES AND DISCUSSION**

None.

**III. OPPORTUNITY FOR PUBLIC COMMENT**

- A. WRITTEN**  
Written comments received related to the public hearing item were distributed to the Commission and copies were available to the public.

- B. PUBLIC COMMENT**  
None.

**IV. CONSENT CALENDAR**

On motion of Commissioner Sherry, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse, and Chair Railsback  
Noes: None  
Absent: Commissioner Thomas  
Abstain: None

**A. Approval of Agenda**

**V. REGULAR AGENDA ITEMS**

**A. ZONING TEXT AMENDMENT TO AMEND TITLE 5 AND TITLE 17 BY ADDING A NEW CHAPTER 17.102 (ADULT BUSINESSES) AND NEW CHAPTER 5.45 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO THE BENICIA MUNICIPAL CODE**

Zoning Text Amendment  
City Wide

**PROPOSAL:**

The proposed ordinance would update the Benicia Municipal Code provisions regarding adult entertainment by updating Chapter 5.44 and adding a new Chapter 5.45 in Title 5 (Business Taxes, Licenses and Regulations) to regulate the licensing and operational standards for adult businesses. It will also, as part of a zoning text amendment, add a new Chapter 17.102 (Adult Businesses) and amend Sections 17.28.020 (CC, CO, CG, and CW districts – Land use regulations) and 17.32.020 (IL, IG, IW and IP districts – Land use regulations).

**Recommendation:** Provide direction to City Council on amendments of Title 5 and Title 17 of the Benicia Municipal Code regarding adult businesses.

Damon Golubics gave a presentation on the proposed revised draft ordinance

Debra Fox gave a presentation explaining existing case law that prohibits the City from denying adult businesses in designated appropriate areas of town. She clarified the restrictions that could be applied to deter applicants from opening this type of business in the City of Benicia. She advised that the proposed ordinance is a state of the art ordinance covering a variety of possible adult businesses. Binders were made available for public view containing case law and extensive research done to draft the proposed ordinance. Direction was given to the Planning Commission to pass the item on to the City Council.

Commissioner Bortolazzo asked whether anyone has applied to open an adult business yet. Damon advised that no applications have been received. A prospective applicant, Mr. Amatrone, made an inquiry.

Commissioners had questions for Debra Fox about restrictions that could be incorporated in the ordinance to further restrict the operations of the business. Commissioners also

needed clarification of the fact that they cannot deny the ability of adult businesses to open up in Benicia.

Debra Fox advised Commissioners that they could not deny the opening of such a business, only restrict them through the proposed ordinance.

Chair Railsback stated that the city is doing its best to protect our community with a well-crafted ordinance that would make it more difficult for an adult business to open.

Public hearing was opened.

The majority of speakers stated that they came to the meeting with the impression that they could stop the business from opening by showing up at the meeting and voicing their opinions against the ordinance. They expressed their sadness and disappointment in their opinions not making a difference.

Glenn Goldstein-584 Lori-Read the United States Constitution and doesn't agree that it protects filth like this. Called on church groups to patronize the business and encouraged citizens of the community to videotape patrons to embarrass them. Suggested a civilian patrol.

Julia Ecker-421 Larkin-Had no solutions to suggest. Is worried about the impact on the community. Concerned about the Police Department handling all of the issues that may be secondary effects. Hopes the community will work together.

James West-98 Carlisle-Thanked Deborah Fox for her hard work in helping to protect our city. Asked if the number of patrons could be limited. Suggested widening parking spaces. Hopes that citizen complaints will be taken seriously by the Police Department. Mr. West addressed the prospective applicant stating that there is no demand for this type of business and that importing demand from other areas due to highway access is asking for trouble. Feels this type of business is corrosive with respect to women.

Lynn Lokey-174 East H-Appalled, frightened and angry that counsel is defending this business. Offered no solutions Stated she is outraged and apologized for inappropriately directing her anger toward Debra for her personal attack. Concerned about morals and standards staying the same in Benicia. Suggested making fees too expensive to deter applicants. Stated that any business owner of an adult business should expect every mother in the city will be at their doorstep everyday.

Shelley Paden-45 Vista Grande-Spent the past 21 days since the first meeting on this ordinance talking to people to get them to show up to express opposition to the ordinance. She was very upset due to the fact that she mistakenly thought that the resolution would not be passed if enough people showed up to oppose it. She also gave others she spoke with the same information. Wrote a speech and said she did not need to read it now that she knows that the city cannot stop businesses of this type to open up. Said she was saddened by this fact She has spoken to approximately 300 people who also oppose the ordinance.

Maria Teresa Matthews-575 Cooper-Thanked staff and counsel for hard work done to put together the proposed resolution. She is hoping the community will rally to convey to the business owner that an adult business is not wanted here. She requests that the City of Benicia take the strongest position possible.

Karen LaRiviere-318 Dale Ct-Thought she came to vote for or against the ordinance being proposed and was upset that meeting was not for that purpose. Appreciates the efforts of Deborah Fox and requests strong restrictions.

Andrew Murphy-677 Robinson Way-Stated that case law exists because people have been against these types of establishments. Asked if there was a possibility of rezoning. Commissioner Healy advised him that all laws must be followed in good faith while honoring citizens. Healy also stated that the city cannot zone its way out of the problem. Murphy questioned whether or not we could establish mini parks near areas where the business could be opened. Requested a broader distance than 300 ft from parks or schools.

Debby Skall 560 First-Was disappointed that everyone who showed up thought their opposition of the ordinance would matter. Questioned whether citizens who oppose may be able to pay to enter such a business and fill all seats in the business so no other patrons may enter. Deborah Fox stated she could not encourage citizens to picket or protest in any way. It is not possible to make it more costly to operate. Staff and counsel are trying to make a very thoughtful and legally defensible ordinance. Chair Railsback said that he shares in her frustration but must protect the city legally.

Tyson Jones-563 Primrose-Is new to the community and chose Benicia due to family values. Suggested limiting hours of operation and touching between patrons and performers. Chair Railsback responded stating that these issues are already addressed in the proposed ordinance. Jones asked if the ordinance could be revised as laws change. Deborah Fox stated that it could be revised if found to be constitutionally sound. She further advised that lap dancing carries no first amendment protection.

Kelly White-2092 Casa Grande-Thought she was here to voice opposition and is disappointed. Likes the town the way it is. Moved here for her children due to schools and the atmosphere in Benicia. She was concerned about the impact on the Police Department and wondered if they could handle the extra activity. Doesn't understand how a business could just start operating if denied. Debra responded that if the city has an unconstitutional ordinance, anything could open anywhere.

John Cosimedes- Supports staff recommendation to revise the ordinance. Was concerned about crimes that may occur in limousines in the parking lot. States he googled the prospective applicant Robert Amatrone and found that he owns Mobster Limousine Transportation in Concord and is concerned that he may be transporting customers to the business via his service. Believes provisions in the ordinance are strong and will deter adult businesses from opening in Benicia. Feels that it would be a good faith move for an adult business owner to understand community concerns, history and how vigilant citizens of this community are. Wants to let the applicant know that there will be no

protection from mothers and children picketing or videotaping patrons, which may end up on YouTube. Suggested sending in grandmothers and Nuns to police the business.

Kelly Patchin-256 Essex Way-Happy about the proposed restrictions. Asked about any cities that have fought and won to keep adult businesses from opening and asked if citizens of the community should hire their own attorney. Asked what citizens could do to stop this and what other options may exist. Suggested delaying the process as a deterrent. Deborah Fox advised that there has not been any success in trying to fight the opening of adult businesses. Federal law says that cities have no choice. Chair Railsback advised that there is a time limit to respond to an application.

Ken Maffeo-847 Rose-Expressed frustration about thinking he was coming to the meeting to oppose the business and is disappointed that citizens cannot fight the opening of adult businesses. Said he will let other community members know about the situation.

John Lawson-652 Rose-Asked why the applicant wouldn't have opened the business since an ordinance does not currently exist. Deborah Fox said that an ordinance already exists as well as a moratorium on adult businesses that is due to expire next year. Dislikes the fact that adult businesses can open even if the community doesn't want it. Feels that most of the patrons will be residents from other cities. Asked Deborah Fox if citizens could take pictures of vehicles and license plates. Debra Fox could not legally advise anyone to do that.

Ken Paulk-298 East S-Moved to Benicia a few years ago and chose Benicia because of the low crime rate. Requested a definition of a juice bar as opposed to a liquor bar. Chair Railsback responded to the question, stating a juice bar does not allow any type of alcohol on the premises. Patrons cannot bring in their own alcohol.

Jasmine Powell-Has been a Benicia citizen for 35 years and loves this town. Wants to know if the 300 ft buffer from schools and parks could be increased to a greater distance. She questioned if the buffer could include churches and the Benicia Industrial Park. States she is a business owner and has not had to be concerned about excess traffic or security issues that the business could create.

Flint Christensen-652 Rose- Stated that not one person has said that the ordinance is great. Suggested making it more difficult for the business to open. Feels that it is reasonable to explore further and take more time, regardless of a lawsuit. Wants the approval of a resolution delayed as much as possible with the maximum revisions possible.

Deborah Fox suggested that the matter be turned over to the City Council for approval with a 30-day time frame until adoption of the ordinance.

Commissioner Bortolazzo suggested acting expeditiously due to the expiration of the moratorium next year.

Darin Judd-496 McCall- Applauded the efforts of staff in crafting the ordinance so well. Has experience in dealing with the issue and believes that efforts by counsel have been

excellent. Addressed the issues of environmental, traffic and parking impact. Asked if an EIR may be necessary due to the proximity of wetlands. The report would be very costly. A traffic study may also be necessary which would create mitigation fees for traffic impact, Police Officer response and extra traffic lights and signs. Asked if on-site parking is sufficient and suggested that off site parking not be allowed. He feels that it could be very costly for an applicant to provide enough parking. Suggested bonded security.

Darrin Reading-1432 O'Hare-Asked everyone to pray about it. Suggested a "members only" club requiring a city permit for members.

Kim Boufay-Voiced her concern about transfer of liquor licenses if another business has one at the address prior. Was concerned about alcohol consumption in limousines while patrons are en-route to the establishment. Asked counsel if we are modeling our ordinance after other cities that have successfully kept adult businesses from opening. Deborah Fox said that it is modeled after successful cities.

Jon Van Landschoot-Pleased to see a large turnout for the meeting tonight. Thanked Commissioners for their efforts. Asked if it is possible to restrict the evening hours of operation to midnight and the parking lot cleared by the Police Department one half hour after closing. Suggested very bright lights in the parking lot and video surveillance. Also suggested that patrons not be allowed to sit in their vehicles in the parking lot for more than 5 minutes. Agrees with the idea of an EIR. Asked if security personnel would be relative to the occupancy limit. Suggested security be present at all times. Inquired about the possibility of progressive fines for noise and light pollution, litter, citations and other violations. Chair Railsback stated that there would be fines with progressive action for violations of all types. Stated that the citizens should file a lawsuit for first amendment rights.

Five minute break at 9:12 pm. Reconvened at 9:21 pm.

Commissioner Sherry asked why a revision was not made to the ordinance addressing the issue of the proximity to bars and liquor stores. Deborah Fox stated that counsel has not yet explored the restriction, as it is not routinely done. She does believe that it makes sense. Commissioner Sherry expressed concern about traffic into establishments selling alcohol. Asked if the 300 ft distance can be increased. Damon Golubics feels it is a good idea and Deborah Fox advised that most ordinances have a 500 ft distance. She also advised that she will do a map for the City Council showing a 300 ft buffer and another map with a 500 ft buffer. Deborah Fox directed Commissioners to move forward with a recommendation to Council to approve a 500 ft buffer.

Chair Railsback asked if a 10 ft distance between performers and patrons is possible. Debra said that 6ft is standard and defensible.

Commissioner Ernst addressed issues limiting juice bars so they can only have topless entertainment. Deborah Fox said that they could not be limited. Commissioner Ernst asked if a traffic study could be required. Chair Railsback stated that a study would have to wait until a specific site was applied for. He questioned using bonded security. Debra

Fox said that the requirement could be added. Commissioner Ernst questioned if the ordinance has strong enough language to cover ordinance violations and enforcement of penalties up to and including revocation of the business license. Deborah Fox advised that several provisions are already in place in the report.

Commissioner Healy expressed concern about violence toward women. Suggested broader coverage screening of all employees of the business. Stated that interactions between patrons and waitresses have not been addressed. Suggested a separate entrance and exit for employees with security in place at the door.

Commissioner Ernst thanked counsel for hard work in crafting the ordinance. He said he is not happy with the situation and it appears that the community agrees. He hopes that the community will work to find options to deter prospective applicants. Deborah Fox stated that any new ideas or concerns should be directed to City Attorney, Heather McLaughlin. Deborah Fox advised that the Police Department has been involved extensively in the ongoing process.

On the motion of Commissioner Sherry, seconded by Commissioner Ernst the following resolution was approved and forwarded to the City Council by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse and Chair  
Railsback

Noes: None

Absent: Commissioner Thomas

Abstain: None

**RESOLUTION NO. 08-10 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO CHAPTER 5.44 (ADULT BUSINESSES) AND ADDING CHAPTER 5.45 (ADULT BUSINESS PERFORMER LICENSE) IN TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO REGULATE THE LICENSING AND OPERATIONAL STANDARDS FOR ADULT BUSINESSES AND AMENDING SECTION 17.28.020 (CC, CO, CG and CW DISTRICTS- LAND USE REGULATIONS) AND SECTION 17.32.020 (IL, IG, IW and IP DISTRICTS- LAND USE REGULATIONS) AND ADDING CHAPTER 17.102 (ADULT BUSINESSES) IN TITLE 17 (ZONING) TO REGULATE THE LOCATIONS OF ADULT BUSINESSES**

**VI. COMMUNICATIONS FROM STAFF**

Damon Golubics reminded Commissioners and public that the next Planning Commission meeting would be held on Thursday November 13, 2008 at 5:30 pm. One item is on the agenda for a use permit for live entertainment and alcohol. The meeting will then adjourn and reconvene at the Senior Center where a Climate Action Plan Workshop will be conducted to begin at 6:30 pm Damon Golubics also stated that Planning Commission meeting rules will be discussed at the December meeting.

**VII. COMMUNICATIONS FROM COMMISSIONERS**

Chair Railsback thanked staff and counsel for their hard work and citizens for their large turnout.

Commissioner Ernst requested that a reminder be given to Commissioners and citizens regarding Del Lacey's retirement party at the Clocktower at 5:30 pm on Saturday November 8<sup>th</sup>. Del is retiring after 35 years serving the City of Benicia.

**VIII. ADJOURNMENT**

Chair Railsback adjourned the meeting at 10:00 pm