

**November 6, 2007  
BENICIA CITY COUNCIL  
REGULAR MEETING AGENDA**

**City Council Chambers  
November 6, 2007  
7:00 P.M.**

**I. CALL TO ORDER:**

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

**B. PLEDGE OF ALLEGIANCE**

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

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

**A. ANNOUNCEMENTS:**

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

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

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

**Sky Valley Open Space Committee:  
-One unexpired term to September 30, 2010**

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

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

**B. APPOINTMENTS:**

**1. Benicia Housing Authority**

**-One unexpired term to December 31, 2009: [Atiba Murphy](#)**

**2. Benicia Housing Author**

**-One unexpired term to December 31, 2009: [Richard Sprankle](#)**

**C. PRESENTATIONS:**

1. **Library Basement Project Review (Library Director)**

Staff and the project architect will make a presentation on the library basement project design.

**D. PROCLAMATIONS:**

1. **Welcoming Benicia High School Exchange Students**
2. **California Law Enforcement Records and Support Personnel Day – November 7, 2007**
3. **Lung Cancer Awareness Month – November 2007**

**V. ADOPTION OF AGENDA:**

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN**

**B. PUBLIC COMMENT**

**VII. CONSENT CALENDAR:**

- A. [Approval of Minutes of October 16, 2007.](#) (City Clerk)**

- B. [Denial of the claim against the City by Nancy Johnson and referral to insurance carrier.](#) (City Attorney)**

This claim involves damage to a mobile home awning that occurred when a baseball from Fitzgerald Field hit the awning. The claim was tendered to the organization using the field at the time.

**Recommendation: Deny the claim against the City by Nancy Johnson.**

- C. [Denial of the claim against the City by E. Lundburg and referral to insurance carrier.](#) (City Attorney)**

Ms. Lundburg's injury was caused when a baseball and baseball glove were tossed over the Fitzgerald Field fence. The claim was tendered to the organization using the field at the time.

**Recommendation: Deny the claim against the City by E. Lundburg.**

- D. Denial of the claim(s) against the City by the family and estate of Colene Maiden and referral to insurance carrier. (City Attorney)**

Colene Maiden was crossing the intersection at Columbus Parkway and Rose Drive when she was struck by an automobile. She subsequently died from the injuries she sustained. There is no evidence that this accident was caused by any negligence on the part of the city. Eyewitnesses saw Ms. Maiden step into the crosswalk when the light was red.

Recommendation: Deny the claim(s) against the City by the family and the Estate of Colene Maiden.

1. [Jim Maiden](#)
2. [John Maiden](#)
3. [Theresa Maricich](#)
4. [Melissa Kizer](#)

E. [Introduction of ordinances to amend the Municipal Code provisions regarding appeals.](#) (City Attorney)

Earlier this year the City Council adopted a uniform process for appeals. The proposed ordinances will delete or amend inconsistent provisions of the Code. There is no budget impact.

Recommendation: Introduce the ordinances amending the Benicia Municipal Code regarding appeals.

F. [Second reading of ordinances to make minor changes to the Open Government Ordinance.](#) (City Attorney)

The above ordinances were introduced at the October 16, 2007 Council meeting. The Open Government Commission requested these changes to add a definition for "interrupt" and clarify the term "criticize", add additional required training of city employees and conform the gift limit to be the same as specified by the Political Reform Act.

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

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

G. [Acceptance of the Door Renovation Project at the Water and Wastewater Treatment Plants.](#) (Director of Public Works)

The Door Renovation Project is part of the ongoing security enhancements at the water and wastewater treatment plants and consists of modifying or replacing a total of 24 doors. This project was necessary in order to accommodate an access control system, which, along with an intrusion detection system, will be the next phase of the security enhancements at the

plants. During construction it became apparent that additional work to install panic hardware in compliance with Uniform Building Code standards was necessary. Two contract change orders (one for each location) were issued for an additional cost of \$10,282.65 (approximately 18% of the total project). The final construction cost is \$68,461.68. This project was budgeted and funded from the Water and Wastewater Enterprise Funds. Formal acceptance of the work by the City Council is now required.

**Recommendation:** Adopt a Resolution accepting the Door Renovation Project at the Water and Wastewater Treatment Plants as complete, including Change Orders, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**H. [Adoption of the Benicia portion of the countywide Safe Routes to School Plan.](#) (Director of Public Works)**

The City was the first agency in Solano County to develop a safe routes to school plan with the Solano Transportation Authority. The draft Benicia SR2S plan, which was the subject of many public meetings and “walkabouts” hosted by the City and Benicia Unified School District, is ready for adoption and implementation. Adopting the Benicia portion of the countywide plan will make our projects eligible for future state and federal funding. There is no budget impact.

**Recommendation:** Adopt a resolution:

1. Forwarding the projects and programs in the Benicia Safe Routes to School (SR2S) Plan to the Solano Transportation Authority (STA) for incorporation into the Countywide SR2S Plan; and
2. Appointing the Traffic Pedestrian and Bicycle Safety (TPBS) Committee to develop updates to the Benicia SR2S Plan and the City Council/School Board Liaison Committee to review and recommend said updates for approval to the School Board and City Council; and
3. Adopting the Benicia SR2S Plan as a guiding document for the TPBS Committee and the City Council/School Board Liaison Committee.

**I. [Acceptance of the Park Road Bike Lane Project including Change Order No. 1.](#) (Director of Public Works)**

The Park Road Bike Lane Project constructed bike lanes on Park Road from Adams Street to Oak Road. It will provide a connector route from Martinez to downtown Benicia once the new bike path on the Benicia-Martinez Bridge is completed. Formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor. The final construction cost is \$382,575.00, which includes \$33,480.00 for Contract Change Order No.1 to cover the cost for adjustments to final construction quantities. The project was funded by a federal grant, local gas tax funds, and City capital improvement funds. The project was completed under budget.

**Recommendation:** Adopt a resolution accepting the Park Road Bike Lane Project as complete, including Change Order No. 1, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**J. [Acceptance of the Robert Semple Safe Routes to School Project including Change Orders.](#) (Director of Public Works)**

This project installed missing sections of sidewalk and handicap ramps in the vicinity of Robert Semple Elementary School, enhancing safety for children walking to school. Formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor. The final construction cost of this grant-funded project is \$119,527.25, which includes Contract Change Order No. 1 for \$20,000 to expand the limits of work and Contract Change Order No. 2 for \$10,752 to cover the cost for final construction quantities. The project was completed under budget and on schedule.

**Recommendation:** Adopt a resolution accepting the Robert Semple Safe Routes to School Project as complete, including Change Order Nos. 1 and 2, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**K. [Adoption of a resolution authorizing submittal of a Bay Area Air Quality Management District Climate Protection Grant application and adoption of a Resolution approving ICLEI – Local Governments for Sustainability membership and Cities for Climate Protection Campaign participation.](#) (Economic Development Manager)**

Reducing our organization's energy consumption and carbon footprint while improving the community's air quality is a Strategic Plan Top 12 Priority for 2007-09. Joining ICLEI will provide access to a toolkit of successful climate protection strategies, and submitting the BAAQMD grant application is intended to secure financial support for our efforts in developing an emissions inventory and climate action plan. The membership cost is \$600.

**Recommendation:** Approve two resolutions related to energy efficiency and reducing our carbon footprint that will: 1) authorize submitting a Bay Area Air Quality Management District (BAAQMD) climate protection grant application, and 2) approve joining ICLEI-Local Governments for Sustainability, an international climate protection non-profit that runs the Cities for Climate Protection Campaign.

**L. [Emergency Water Main Repair Work on Viewmont Street South of Casa Grande Street—Final Report.](#) (Director of Public Works)**

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

proceed ahead by hiring a contractor to perform the work without giving notice for bids. At their October 16, 2007 meeting, Council authorized continuation of this emergency work and an appropriation of \$200,000. Work began October 8th and was completed October 29th at a total cost of \$109,000. The remaining \$91,000 will be returned to the Water Enterprise undesignated fund reserves.

**Recommendation:** Adopt the resolution (by four-fifths vote) authorizing the termination of the Declaration of Emergency, accepting the completion of the emergency work to repair the water main and street pavement section on Viewmont Street south of Casa Grande Street, and authorizing an appropriation of \$109,000 from the Water Enterprise Fund Reserves.

**M. [Cancellation of the January 1, 2008 City Council Meeting.](#)(City Manager)**

The first City Council meeting of January 2008 falls on a holiday. It is recommended that the January 1st meeting be cancelled.

**Recommendation:** City Council authorize, by motion, cancellation of the January 1, 2008 City Council meeting.

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

**VIII. PUBLIC HEARINGS:**

**IX. ACTION ITEMS:**

**A. [Approve Sublease Agreements between the City of Benicia and the Girl Scouts of Northern California and Benicia Lions Club \(sponsoring agent for Benicia Boy Scouts\).](#) (Parks and Community Services Director)**

The sublease agreements between the City and the respective scouting organizations establish a landlord-tenant relationship for a period of 40 years with two 10-year extensions, for designated property at the Mills Community Center. There is an annual rental rate of one dollar. The organizations' gift of funds from Valero Energy Corporation, in the amount of \$200,000, shall be paid to the City of Benicia. In consideration of this payment, the City shall perform improvements specified in the agreements.

**Recommendation:** Adopt the proposed Resolution authorizing the City Manager sign long-term sublease agreements between the City of Benicia and the Girl Scouts of Northern California and Benicia Lions Club, which is the sponsoring agent of the Benicia Boy Scouts.

**B. [Introduction of an ordinance amending various sections in Title 18 \(Signs\) and adding a new section 18.24.015 \(Billboards/ Nonaccessory Signs\) to prohibit future billboards and nonaccessory signs citywide and deleting Chapter 18.32 \(Freeway Advertising Displays\) of the](#)**

[Benicia Municipal Code and Determination of the effect of the changes on a pending application.](#)

On May 1, 2007, the City Council enacted a 45-day moratorium to prohibit any new billboards within the City while the City considered appropriate regulations for billboards or nonaccessory signs. On June 5, 2007, the Council extended the billboard moratorium for an additional 10 months and 15 days to prevent the issuance of any permits for new billboards. Pursuant to Council direction, the City Attorney's office has drafted the attached ordinance that would prohibit any future billboards or nonaccessory signs to be placed anywhere in the City of Benicia. The ordinance would *not* impact any currently existing billboards or nonaccessory signs in Benicia as State law protects them from removal.

**Recommendation:** Introduce the ordinance to prohibit future billboards and nonaccessory signs in the City of Benicia based on the findings set forth in the ordinance. Determine whether the pending completed application should be allowed to proceed.

**X. INFORMATIONAL ITEMS:**

A. Reports from City Manager.

**XI. COMMENTS FROM COUNCIL MEMBERS:**

**XII. ADJOURNMENT:**

**Public Participation**

The Benicia City Council welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The City Council allows speakers to speak on non-agendized matters under public comment, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the City Council.

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

**Disabled Access**

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Anne Cardwell, the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**Meeting Procedures**

All items listed on this agenda are for Council discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the City Council.

Pursuant to Government Code Section 65009, if you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council at, or prior to, the public hearing. You may also be limited by the ninety (90) day statute of limitations in which to challenge in court certain administrative decisions and orders (Code of Civil Procedure 1094.6) to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

The decision of the City Council is final as of the date of its decision unless judicial review is initiated pursuant to California Code of Civil Procedures Section 1094.5. Any such petition for judicial review is subject to the provisions of California Code of Civil Procedure Section 1094.6.

 [IV-B-1 Murphy Appointment.pdf](#)

 [IV-B-2 Sprankle Appointment.pdf](#)

 [VII-A Minutes.pdf](#)

 [VII-B Johnson Claim.pdf](#)

 [VII-C Lundburg Claim.pdf](#)

 [VII-D Maiden Claim-1.pdf](#)

 [VII-D Maiden Claim-2.pdf](#)

 [VII-D Maiden Claim-3.pdf](#)

 [VII-D Maiden Claim-4.pdf](#)

 [VII-E Appeals Ord.pdf](#)

 [VII-F Open Govt Ord.pdf](#)

 [VII-G Door Reno Project.pdf](#)

 [VII-H County Safe Routes.pdf](#)

 [VII-I Park Road Bike Lane.pdf](#)

 [VII-J Robert Semple Safe Routes.pdf](#)

 [VII-K Climate Protection Grant.pdf](#)

 [VII-L Water Main Repair.pdf](#)

 [VII-M Meeting Cancellation.pdf](#)

 [IX-A Scout Lease.pdf](#)

 [IX-B Billboards.pdf](#)

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF ATIBA MURPHY TO THE  
BENICIA HOUSING AUTHORITY TO AN UNEXPIRED TERM ENDING DECEMBER  
31, 2009.**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Atiba Murphy to the Housing Authority by Mayor Messina is hereby confirmed.

\*\*\*\*\*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 6<sup>th</sup> day of November 2007 and adopted by the following vote:

Ayes:

Noes:

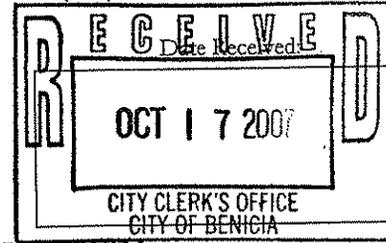
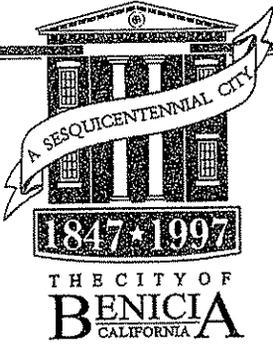
Absent:

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

Attest:

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

# **APPLICATION**



**BOARD, COMMITTEE AND COMMISSION APPLICATION**

*It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest. (Resolution No. 04-9, Exhibit A, Section IV.A)*

Board, Committee or Commission: Housing Authority Board

Name: Atiba Murphy

Address: 91 Riverview Terrace #101

Home Ph: 707-745-2871 Work Ph: \_\_\_\_\_

E-mail: \_\_\_\_\_ FAX: 707-745-2673

Job Title: Partsman Employer: Amports Inc.

Employer Address Benicia, CA

Do you reside in Benicia?  Yes  No If so, how long? 8 years

Please indicate any particular times/days that you are unavailable for meetings:  
M-F 8:00 AM to 5:00 PM

Please submit a statement on a separate sheet that includes the following:

- Your education (please include name of institution(s) and discipline(s) studied) and prior governmental and nongovernmental experience.
- Include any city/county/state committees or commissions you have served on. Please describe its function, where, when and for how long did you serve.
- Include any community groups or organizations you are or were affiliated with, as well as any office you hold or previously held.
- Why you desire to serve-- your own goals and objectives for your term of office.

Applicant Signature: Atiba A. Murphy Date: 10/17/07

Please return completed applications to the City Clerk's Office at 250 East L Street, Benicia  
- Applications may also be faxed to 707-747-8120 -

Please note that your completed application is a public document that may be included in a  
City Council Meeting Agenda Packet.

It will also be available to members of the public upon request.

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF RICHARD SPRANKLE TO THE  
BENICIA HOUSING AUTHORITY TO AN UNEXPIRED TERM ENDING DECEMBER  
31, 2009.**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Richard Sprankle to the Housing Authority by Mayor Messina is hereby confirmed.

\*\*\*\*\*

The above Resolution was approved by roll call by the City Council of the City of Benicia at a regular meeting of said Council held on the 6<sup>th</sup> day of November 2007 and adopted by the following vote:

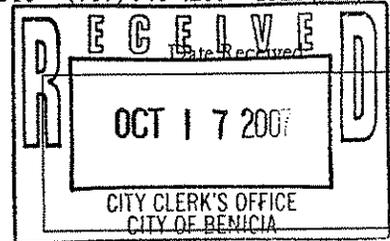
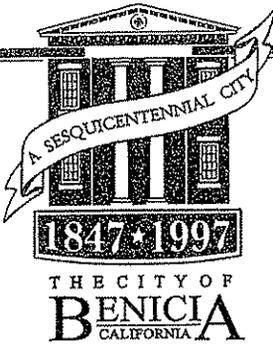
Ayes:  
Noes:  
Absent:

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

Attest:

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

# **APPLICATION**



**BOARD, COMMITTEE AND COMMISSION APPLICATION**

*It is the intent of the City Council to have Boards, Commissions or Committees composed of people from all geographical, social, environmental and economic sectors of the community and to avoid potential conflicts of interest. (Resolution No. 04-9, Exhibit A, Section IV.A)*

Board, Committee or Commission: Housing Authority Board  
Name: Richard Spaulke  
Address: 1618 Bay View Ct  
Home Ph: 907-745-9142 Work Ph: \_\_\_\_\_  
E-mail: \_\_\_\_\_ FAX: \_\_\_\_\_  
Job Title: \_\_\_\_\_ Employer: \_\_\_\_\_  
Employer Address: Retired

Do you reside in Benicia?  Yes  No If so, how long? 58 yrs

Please indicate any particular times/days that you are unavailable for meetings:  
\_\_\_\_\_  
\_\_\_\_\_

Please submit a statement on a separate sheet that includes the following:

- Your education (please include name of institution(s) and discipline(s) studied) and prior governmental and nongovernmental experience.
- Include any city/county/state committees or commissions you have served on. Please describe its function, where, when and for how long did you serve.
- Include any community groups or organizations you are or were affiliated with, as well as any office you hold or previously held.
- Why you desire to serve— your own goals and objectives for your term of office.

Applicant Signature: Richard Spaulke Date: 10/15/07

Please return completed applications to the City Clerk's Office at 250 East L Street, Benicia  
- Applications may also be faxed to 707-747-8120 -  
Please note that your completed application is a public document that may be included in a  
City Council Meeting Agenda Packet.  
It will also be available to members of the public upon request.

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
OCTOBER 16, 2007

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:00 p.m. on Tuesday, October 16, 2007, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

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

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

- National Adoption Month – November 2007

ADOPTION OF AGENDA:

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

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

OPPORTUNITY FOR PUBLIC COMMENT:  
WRITTEN:

PUBLIC COMMENT:

1. Council Member Whitney – Council Member Whitney discussed issues he has been experiencing on the campaign trail. He has heard a lot of serious concerns regarding Measure S. Originally, he understood the Measure to be revenue neutral. There is a potential to create a windfall for the City. He is no longer in support of Measure S, as he believes there would be a tax increase. He invited citizens to join him in opposing Measure S.
2. Council Member Patterson – Council Member Patterson asked Staff to address the statement regarding Measure S being a tax increase, as suggested by Council Member Whitney.

Mayor Messina stated that this item was not on the agenda. Council Member Whitney used his public comment time to state his opinion. Mayor Messina did not think it was appropriate to get into a discussion over the comments.

Mr. Erickson stated that it was Staff's opinion that Measure S would not create a windfall for the City and it would not be a tax increase for the citizens. There is language in the measure that states that Council has the right and privilege to decrease the tax rate in several circumstances. If the measure raises more money than the City was originally taking in, Staff would recommend Council take action to decrease the tax so there was true revenue neutrality.

Council Member Patterson discussed Measure S. Measure S is revenue neutral. It does not raise taxes, and it gives the City a fair playing field with the telecommunications businesses. The quality of what we want is at stake. It is up to the citizens to decide what they want.

3. Vice Mayor Schwartzman stated that the City would be hosting an informational session on Measure S at the Benicia Public Library, and encouraged citizens to attend.
4. Steve Goetz – Mr. Goetz discussed concerns with the proposed Benicia Business Park. He read a letter to Council from Benicia First into the record (hard copy on file).
5. Jerome Page – Mr. Page stated that he was a member of Benicia First. He discussed concerns with the proposed Benicia Business Park.
6. Susan Street – Ms. Street read a flyer that was sent out by Benicia First regarding the proposed Benicia Business Park.
7. Marilyn Bardet – Ms. Bardet discussed concerns with the timing when the Benicia Business Park would be discussed by Council. She discussed concerns with the proposed Benicia Business Park project. She urged Council to postpone discussions on this item until the first part of 2008.

8. Sabina Yates – Ms. Yates discussed a big box evaluator website. She discussed concerns with the proposed Benicia Business Park Project.
9. Jan Lucca – Mr. Lucca discussed concerns with the current taxi service in Benicia. He suggested changes to the current regulations. The current cab companies are not performing as required.

Vice Mayor Schwartzman wondered if some of the recent DUI's were related to the taxi issues. Mr. Lucca was certain that at least one of the recent DUI's were related to the lack of taxi service. Mayor Messina asked Staff to put the taxi issue on an early Council agenda, if not the next Council agenda.

10. Brent Street – Mr. Street discussed concerns with the proposed Fire Rescue Boat.
11. John Furtado – Mr. Furtado discussed the City's new website, the issue of broadcasting Council meetings, and possibly Board and Commission meetings on youtube.com, the proposed tourism branding, and the possibility of using Cal Poly students to help Staff with the tourism branding.

Council Member Patterson asked Staff to post the tourism branding workshop dates and times on the City's website and newspaper. She asked Staff what the status was of having the Council meetings play on the City's website. Mr. Erickson stated that the City was moving in that direction. Additional equipment would be required to make that happen.

12. John Van Landschoot – Mr. Van Landschoot discussed the issue of open space. He discussed actions taken by past and present council members with regards to open space.
13. Joe Kearns – Mr. Kearns discussed concerns with the proposed Fire Rescue Boat, sports in Benicia, and the community access channel.

#### CONSENT CALENDAR:

Council pulled items VII-B.

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

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

The Minutes of October 2, 2007 were approved.

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

(END OF CONSENT CALENDAR)

#### Council took the following actions:

Introduction of Ordinances to make minor changes to the Open Government Ordinance:

Council Member Patterson asked Staff to clarify section 4.08.090.

# DRAFT

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 4.04.050 (DEFINITIONS) OF CHAPTER 4.04 (IN GENERAL) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO CLARIFY THE FUNDAMENTAL RIGHTS

On motion of Council Member Patterson, seconded by Council Member Whitney, the above Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

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

Noes: None

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 4.16.030 (DECLARATION OF OPEN GOVERNMENT AWARENESS) OF CHAPTER 4.16 (ETHICS) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO UPDATE THE LANGUAGE TO REFLECT CITY EMPLOYEE TRAINING PRACTICES

On motion of Council Member Patterson, seconded by Council Member Whitney, the above Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

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

Noes: None

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 4.16.110 (GIFTS) OF CHAPTER 4.16 (ETHICS) OF TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE TO MAINTAIN CONSISTENCY WITH STATE REQUIREMENTS

On motion of Council Member Patterson, seconded by Council Member Whitney, the above Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

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

Noes: None

PUBLIC HEARINGS:

None

ACTION ITEMS:

Adoption of a resolution authorizing emergency water line repair work on Viewmont Street south of Casa Grande Street:

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

Council and Staff discussed the fact that this repair was an anomaly, the current inspection program, and funding for the repair. Staff will provide Council with a report on the current inspection program.

RESOLUTION 07-116 - A RESOLUTION AUTHORIZING COMPLETION OF EMERGENCY WORK TO REPAIR THE WATER LINE AND STREET PAVEMENT SECTION ON VIEWMONT STREET SOUTH OF CASA GRANDE STREET

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

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

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, Council approved the appropriation of \$200,000 from the Water Enterprise undesignated fund reserves to pay for the estimated costs of the repair work, on roll call by the following vote:

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

Authorization of appropriation from the General Fund Un-appropriated Reserve and award of Architectural Design Consultant Contract for Mills Community Center Improvement Project:

Mike Dotson, Assistant Director, Parks and Community Services, reviewed the staff report.

Council and Staff discussed the City's savings for using in-house staff for some of the work, current status of the project, alternative entrance, community meetings regarding the project, cost of remediation, City Staff hours spent on project, current budget reserve, funds at risk if Measure S does not pass, Valero property tax dollars, certificates of participation, budget surplus, contacting various organizations in the community to participate in the community meetings, and long-term planning for the community center.

Public Comment:

1. Mark Hall – Mr. Hall discussed the rules in the current proposal, traffic issues, and the need for the City to get the details right the first time.
2. Marilyn Bardet – Ms. Bardet discussed the issues of parking, and adding an additional wing in the cement foundation where the portables used to be.
3. Christi Tenret – Ms. Tenret discussed the importance of the neighbors' concerns being heard. She appreciated being included in the neighborhood discussions.

Council discussed concerns with the proposed funding for the contract, contacting Valero to request payment on the property tax settlement, and possibly authorizing \$80,000 to get the architecture work started.

Mr. Erickson suggested Staff report to Council in a few weeks on the issue of the Valero property tax settlement agreement. Staff was confident that the City would receive payment from Valero in the near future.

Council Member Hughes suggested proceeding with the architectural contract as proposed.

RESOLUTION 07-117 - A RESOLUTION AUTHORIZING THE APPROPRIATION OF \$80,000 FROM THE GENERAL FUND RESERVE FOR THE PURPOSE OF CONTINUED RESTORATION WORK AND TO HIRE A DESIGN ARCHITECT FOR THE MILLS COMMUNITY CENTER IMPROVEMENT PROJECT

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Resolution was approved as amended, on roll call by the following vote:

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

Noes: Mayor Messina

RESOLUTION 07-118 - A RESOLUTION ACCEPTING THE BID FOR ARCHITECTURAL DESIGN SERVICES FOR THE MILLS COMMUNITY CENTER IMPROVEMENT PROJECT, AWARDING THE ARCHITECTURAL DESIGN CONSULTANT CONTRACT TO NOLL AND TAM OF BERKELEY, CALIFORNIA IN THE AMOUNT OF \$128,303, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSULTANT CONTRACT ON BEHALF OF THE CITY

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

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

Noes: Mayor Messina

Mayor Messina called for a 5-minute break at 9:08 p.m.

The meeting resumed at 9:15 p.m.

Consideration of a study session to review proposed Tree Ordinance:

Mario Giuliani, Management Analyst, Parks and Community Services, reviewed the staff report.

Public Comment:

1. Allison Fleck, Chairman, Tree Committee – Ms. Fleck discussed what the Tree Committee had been working on. The Tree Committee would like Council to hold a study session to review the proposed Tree Ordinance.
2. Steve Goetz, Member, Tree Committee – Mr. Goetz thanked Council and Staff for their support.

Council Member Patterson asked the Tree Committee how they felt the study session should be noticed. The Tree Committee members stated that the wider the noticing the better. The committee would like the notice published in the newspaper and on the City's website.

Mayor Messina suggested posting the staff report, ordinance, and notice on the City's website.

# DRAFT

Mr. Erickson suggested scheduling the study session as soon as possible.

Council directed Staff to provide at least two weeks notice for the study session, and follow through on all of the other outreach suggestions.

## INFORMATIONAL ITEMS:

### Reports from the City Manager:

#### Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina) - Next Meeting Date: October 17, 2007
2. Association of Bay Area Governments (ABAG) (Mayor Messina) - Next Meeting Date: Fall General Assembly, Friday, October 26, 2007 at the Oakland Marriott City Center from 8:30 a.m. to 2:00 p.m.
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: November 9, 2007
4. League of California Cities (Mayor Messina) - Next Meeting Date: TBD
5. School District Liaison (Council Members Whitney and Hughes) - Next Meeting Date: December 6, 2007
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) - Next Meeting Date: November 7, 2007
7. Solano EDC Board of Directors (Mayor Messina) - Next Meeting Date: November 15, 2007
8. Solano Transportation Authority (STA) (Mayor Messina) - Next Meeting Date: December 12, 2007
9. Solano Water Authority/Solano County Water Agency (Mayor Messina) - Next Meeting Date: November 8, 2007
10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) - Next Meeting Date: October 18, 2007
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney) - Next Meeting Date: December 10, 2007
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) - Next Meeting Date: October 25, 2007
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) - Next Meeting Date: October 24, 2007
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson) - Next Meeting Date: October 22, 2007

## COMMENTS FROM COUNCIL MEMBERS:

None

## ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:31 p.m.

**AGENDA ITEM**  
**CITY COUNCIL MEETING: NOVEMBER 6, 2007**  
**CONSENT CALENDAR**

**DATE** : October 5, 2007  
**TO** : City Council  
**FROM** : City Attorney   
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY NANCY JOHNSON AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by Nancy Johnson.

**EXECUTIVE SUMMARY:**

This claim involves damage to a mobile home awning that occurred when a baseball from Fitzgerald Field hit the awning. The claim was tendered to the organization using the field at the time.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

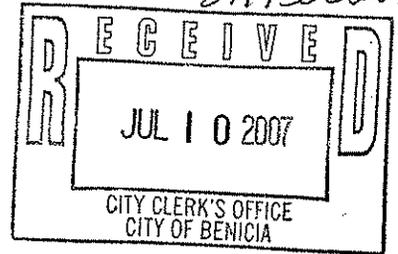
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

# **ATTACHMENT**

In Person



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

- 1. CLAIMANT'S NAME (Print): Nancy Johnson
- 2. CLAIMANT'S ADDRESS: 300 E H Street Space 16 Benicia CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)
- HOME PHONE: 707-748-1042 <sup>cell</sup> WORK PHONE: 707-738-9706
- 3. AMOUNT OF CLAIM: \$ \_\_\_\_\_ (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case \_\_\_\_\_  
 Unlimited Civil Case \_\_\_\_\_

- 4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

~~Nancy Johnson~~  
 (Name)  
 \_\_\_\_\_  
 (Street or P.O. Box Number, City, State, Zip Code)

- 5. DATE OF INCIDENT: 6-27-07 TIME OF INCIDENT: 5:00pm Approx  
 LOCATION OF INCIDENT: The awning covering the front porch

6. Describe the incident or accident including your reason for believing that the City is liable for your damages: I was outside and heard a loud bang - Saw the baseball roll off my awning. Dent in the awning.

7. Describe all damages which you believe you have incurred as a result of the incident:  
There is a dent in my awning - (Brand New House)

8. Names of public employee(s) causing the damages you are claiming:  
It was a baseball team using Fitzgerald Field.

Nancy Johnson \_\_\_\_\_ 7-10-07  
 Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

**AGENDA ITEM**  
**CITY COUNCIL MEETING: NOVEMBER 6, 2007**  
**CONSENT CALENDAR**

**DATE** : October 5, 2007  
**TO** : City Council  
**FROM** : City Attorney  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY E. LUNDBURG AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by E. Lundburg.

**EXECUTIVE SUMMARY:**

Ms. Lundburg's injury was caused when a baseball and baseball glove were tossed over the Fitzgerald Field fence. The claim was tendered to the organization using the field at the time.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

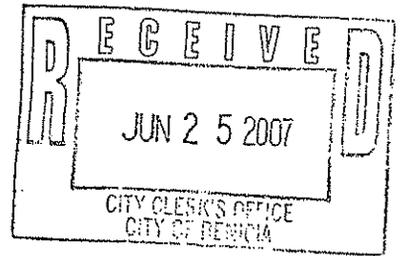
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

# **ATTACHMENT**

CLAIM AGAINST THE CITY OF BENICIA



Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): E. LUNDBERG

2. CLAIMANT'S ADDRESS: 926 E 4th  
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: 707 747 0138 WORK PHONE: \_\_\_\_\_

3. AMOUNT OF CLAIM: \$ \_\_\_\_\_ (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case \_\_\_\_\_  
Unlimited Civil Case \_\_\_\_\_

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: 6/23/07 TIME OF INCIDENT: ~7 PM

LOCATION OF INCIDENT: E. H ST sidewalk at Ball Pen & 2nd. Fitzgerald field

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:  
walking on sidewalk East Bound - hit in face w/ Baseball & glove

7. Describe all damages which you believe you have incurred as a result of the incident:  
left eye - broken nose - swelling left brow  
Overwhelming Pain

8. Names of public employee(s) causing the damages you are claiming:

E. Lundberg \_\_\_\_\_ 6/23/07  
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 25, 2007  
**TO** : City Council  
**FROM** : City Attorney *[Signature]*  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY JIM MAIDEN  
AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by Jim Maiden.

**EXECUTIVE SUMMARY:**

Mr. Maiden is the son of Colene Maiden who was crossing the intersection at Columbus Parkway and Rose Drive, and was struck by an automobile. She subsequently died from the injuries she sustained. There is no evidence that this accident was caused by any negligence on the part of the city. Eyewitnesses saw Ms. Maiden step into the crosswalk when the light was red.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

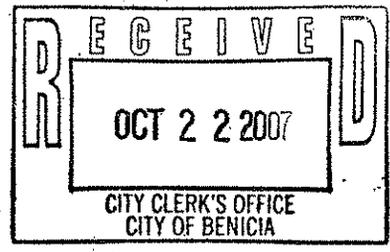
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

# **ATTACHMENT**

*Hand Delivered*



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

- 1. CLAIMANT'S NAME (Print): Jim Maiden
- 2. CLAIMANT'S ADDRESS: 2204 Eunice, Albert Lea, MN 56007  
(Street or P.O. Box Number, City, State, Zip Code)
- HOME PHONE: (507) 377-1223 WORK PHONE: \_\_\_\_\_
- 3. AMOUNT OF CLAIM: \$ 1,000,000.00 (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:  
 Limited Civil Case \_\_\_\_\_  
 Unlimited Civil Case Solano County Superior Court, Unlimited Jurisdiction

- 4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):  
R. Nicholas Haney, Attorney at Law  
 (Name)  
903 First St., Benicia, CA 94510  
 (Street or P.O. Box Number, City, State, Zip Code)

- 5. DATE OF INCIDENT: April 23, 2007 TIME OF INCIDENT: 12:00 Noon  
 LOCATION OF INCIDENT: Intersection of Columbus Parkway & Rose Dr., Benic

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:  
See Attachment #6

7. Describe all damages which you believe you have incurred as a result of the incident:  
See Attachment #7

8. Names of public employee(s) causing the damages you are claiming:

Benicia Public Works Department

*R. Nicholas Haney* \_\_\_\_\_ 10/22/07  
 Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

## CLAIM AGAINST THE CITY OF BENICIA

### ATTACHMENT #6

Claimant, Jim Maiden, is the son and heir of Colene Maiden, who was killed as a result of an automobile/pedestrian accident, which occurred at the intersection of Columbus Parkway and Rose Drive on April 23, 2007. Colene Maiden, an elderly woman, attempted to cross Rose Drive from west to east on the south side of the intersection. There was construction being performed at said intersection, which presented a dangerous condition for said decedent, which (a) required that she walk onto the street and not on the sidewalk; (b) that made it difficult, if not impossible, for her to push the pedestrian button because it was located in an inaccessible area; and (c) the light sequence at said intersection did not allow sufficient time to cross Rose Drive in the crosswalk on a green light.

**CLAIM AGAINST THE CITY OF BENICIA**

**ATTACHMENT #7**

Loss of services, advice, training, love, companionship, comfort, affection, society, solace and moral support. Further claims include funeral and burial expenses.

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 25, 2007  
**TO** : City Council  
**FROM** : City Attorney *[Signature]*  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY JOHN MAIDEN AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by John Maiden.

**EXECUTIVE SUMMARY:**

Mr. Maiden is the son of Colene Maiden who was crossing the intersection at Columbus Parkway and Rose Drive, and was struck by an automobile. She subsequently died from the injuries she sustained. There is no evidence that this accident was caused by any negligence on the part of the city. Eyewitnesses saw Ms. Maiden step into the crosswalk when the light was red.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

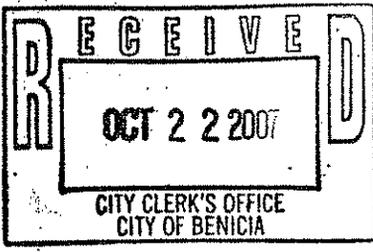
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

# **ATTACHMENT**

*Handwritten scribble*



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): John Maiden

2. CLAIMANT'S ADDRESS: 2930 Mangulr Ave., Corona, CA 92882  
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: (951) 833-2755 WORK PHONE: \_\_\_\_\_

3. AMOUNT OF CLAIM: \$ 1,000,000.00 (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case \_\_\_\_\_  
Unlimited Civil Case Solano County Superior Court, Unlimited  
Jurisdiction

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

R. Nicholas Haney, Attorney at Law  
(Name)  
903 First St., Benicia, CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: April 23, 2007 TIME OF INCIDENT: 12:00 Noon

LOCATION OF INCIDENT: Intersection of Columbus Parkway & Rose Dr., Benic

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:

See Attachment #6

7. Describe all damages which you believe you have incurred as a result of the incident:

See Attachment #7

8. Names of public employee(s) causing the damages you are claiming:

Benicia Public Works Department

*R. Nicholas Haney* 10/22/07  
Signature of Claimant Date

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

## CLAIM AGAINST THE CITY OF BENICIA

### ATTACHMENT #6

Claimant, John Maiden, is the son and heir of Colene Maiden, who was killed as a result of an automobile/pedestrian accident, which occurred at the intersection of Columbus Parkway and Rose Drive on April 23, 2007. Colene Maiden, an elderly woman, attempted to cross Rose Drive from west to east on the south side of the intersection. There was construction being performed at said intersection, which presented a dangerous condition for said decedent, which (a) required that she walk onto the street and not on the sidewalk; (b) that made it difficult, if not impossible, for her to push the pedestrian button because it was located in an inaccessible area; and (c) the light sequence at said intersection did not allow sufficient time to cross Rose Drive in the crosswalk on a green light.

**CLAIM AGAINST THE CITY OF BENICIA**

**ATTACHMENT #7**

Loss of services, advice, training, love, companionship, comfort, affection, society, solace and moral support. Further claims include funeral and burial expenses.

**AGENDA ITEM**  
**CITY COUNCIL MEETING: NOVEMBER 6, 2007**  
**CONSENT CALENDAR**

**DATE** : October 25, 2007  
**TO** : City Council  
**FROM** : City Attorney *[Signature]*  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY THERESA MARICICH AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by Theresa Maricich.

**EXECUTIVE SUMMARY:**

Ms. Maricich is the daughter of Colene Maiden who was crossing the intersection at Columbus Parkway and Rose Drive, and was struck by an automobile. She subsequently died from the injuries she sustained. There is no evidence that this accident was caused by any negligence on the part of the city. Eyewitnesses saw Ms. Maiden step into the crosswalk when the light was red.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

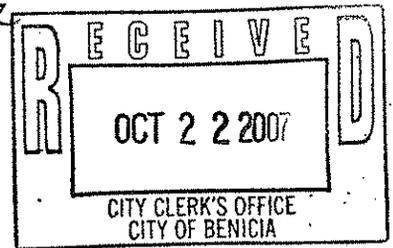
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

**ATTACHMENT**

Hand Delivered



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): - Theresa Maricich

2. CLAIMANT'S ADDRESS: 1100 Church St., Benicia, CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: (707) 747-5591 WORK PHONE: \_\_\_\_\_

3. AMOUNT OF CLAIM: \$ 1,000,000.00 (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case

Unlimited Civil Case Solano County Superior Court, Unlimited Jurisdiction

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

R. Nicholas Haney, Attorney at Law  
(Name)  
903 First St., Benicia, CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: April 23, 2007 TIME OF INCIDENT: 12:00 Noon

LOCATION OF INCIDENT: Intersection of Columbus Parkway & Rose Dr., Benicia

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:

See Attachment #6

7. Describe all damages which you believe you have incurred as a result of the incident:

See Attachment #7

8. Names of public employee(s) causing the damages you are claiming:

Benicia Public Works Department

Signature of Claimant

R. Nicholas Haney

Date

10/22/07

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

## CLAIM AGAINST THE CITY OF BENICIA

### ATTACHMENT #6

Claimant, Theresa Maricich, is the daughter and heir of Colene Maiden, who was killed as a result of an automobile/pedestrian accident, which occurred at the intersection of Columbus Parkway and Rose Drive on April 23, 2007. Colene Maiden, an elderly woman, attempted to cross Rose Drive from west to east on the south side of the intersection. There was construction being performed at said intersection, which presented a dangerous condition for said decedent, which (a) required that she walk onto the street and not on the sidewalk; (b) that made it difficult, if not impossible, for her to push the pedestrian button because it was located in an inaccessible area; and (c) the light sequence at said intersection did not allow sufficient time to cross Rose Drive in the crosswalk on a green light.

**CLAIM AGAINST THE CITY OF BENICIA**

**ATTACHMENT #7**

Loss of services, advice, training, love, companionship, comfort, affection, society, solace and moral support. Further claims include funeral and burial expenses.

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 25, 2007  
**TO** : City Council  
**FROM** : City Attorney *L*  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY THE ESTATE  
OF COLENE MAIDEN BY AND THROUGH MELISSA KIZER  
AND REFERRAL TO INSURANCE CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by Melissa Kizer.

**EXECUTIVE SUMMARY:**

Ms. Kizer is the administrator, personal representative and daughter of Colene Maiden who was crossing the intersection at Columbus Parkway and Rose Drive, and was struck by an automobile. She subsequently died from the injuries she sustained. There is no evidence that this accident was caused by any negligence on the part of the city. Eyewitnesses saw Ms. Maiden step into the crosswalk when the light was red.

**BUDGET INFORMATION:**

The amount of the claim is unknown.

**BACKGROUND:**

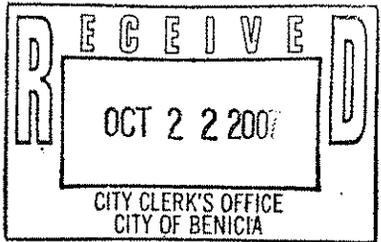
Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 3 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form. A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney.

Attachment:

- Copy of Claim Filed Against City

# **ATTACHMENT**

*Handwritten note:* Maria Recor



CLAIM AGAINST THE CITY OF BENICIA

Please return to the City Clerk, 250 East L Street, Benicia, CA 94510

Complete the following, adding additional sheets as necessary.

1. CLAIMANT'S NAME (Print): Estate of Colene Maiden, by and through Melissa Kizer, Administrator and Personal Representative

2. CLAIMANT'S ADDRESS: c/o Theresa Maricich, 1100 Church St., Benicia, CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)

HOME PHONE: (707) 747-5591 WORK PHONE: \_\_\_\_\_

3. AMOUNT OF CLAIM: \$ 1,000,000.00 (Attach copies of bills/estimates)

If amount claimed is more than \$10,000, indicate where jurisdiction rests:

Limited Civil Case \_\_\_\_\_  
Unlimited Civil Case Solano County Superior Court, Unlimited Jurisdiction

4. Address to which notices are to be sent, if different from lines 1 and 2 (Print):

R. Nicholas Haney, Attorney at Law  
(Name)  
903 First St., Benicia, CA 94510  
(Street or P.O. Box Number, City, State, Zip Code)

5. DATE OF INCIDENT: April 23, 2007 TIME OF INCIDENT: 12:00 Noon

LOCATION OF INCIDENT: Intersection of Columbus Pkwy. & Rose Dr., Benicia

6. Describe the incident or accident including your reason for believing that the City is liable for your damages:

See Attachment #6

7. Describe all damages which you believe you have incurred as a result of the incident: Medical expenses of \$260,000.00 from John Muir Hospital, Medic Ambulance of \$1,100.00, and decedent's pain, suffering and disfigurement in the amount of \$740,000.00.

8. Names of public employee(s) causing the damages you are claiming:

Benicia Public Works Department

R. Nicholas Haney \_\_\_\_\_  
Signature of Claimant Date 10/22/07

Any person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.

Note: YOU must file a claim in compliance with Government Code Section 911.2.

(revised 12/18/02)

## CLAIM AGAINST THE CITY OF BENICIA

### ATTACHMENT #6

Claimant, Estate of Colene Maiden, by and through Melissa Kizer, who is the Administrator and Personal Representative of Colene Maiden, who was killed as a result of an automobile/pedestrian accident, which occurred at the intersection of Columbus Parkway and Rose Drive on April 23, 2007. Colene Maiden, an elderly woman, attempted to cross Rose Drive from west to east on the south side of the intersection. There was construction being performed at said intersection, which presented a dangerous condition for said decedent, which (a) required that she walk onto the street and not on the sidewalk; (b) that made it difficult, if not impossible, for her to push the pedestrian button because it was located in an inaccessible area; and (c) the light sequence at said intersection did not allow sufficient time to cross Rose Drive in the crosswalk on a green light.

**CLAIM AGAINST THE CITY OF BENICIA**

**ATTACHMENT #7**

Loss of services, advice, training, love, companionship, comfort, affection, society, solace and moral support. Further claims include funeral and burial expenses.

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 18, 2007  
**TO** : City Council  
**FROM** : City Attorney  
**SUBJECT** : **INTRODUCTION OF ORDINANCES TO AMEND THE  
MUNICIPAL CODE PROVISIONS REGARDING APPEALS**

**RECOMMENDATION:**

Introduce the ordinances amending the Benicia Municipal Code regarding appeals.

**EXECUTIVE SUMMARY:**

Earlier this year the City Council adopted a uniform process for appeals. The proposed ordinances will delete or amend inconsistent provisions of the Code.

**BUDGET INFORMATION:**

There is no budget impact.

**BACKGROUND:**

Effective May 31, 2007, Chapter 1.44 of the Benicia Municipal Code provides for a uniform system of appeals. Previously, the differing times to file appeals and the different people or bodies hearing the appeals made the appeal process confusing for appellants, applicants and staff.

This is the second step in the process to make the City's appeal process more uniform. The attached ordinances amend or delete provisions of the Municipal Code that conflict with the new Chapter 1.44. In addition, Chapter 1.44 has been amended to provide:

1. The time for hearing the appeal may be extended if the applicant(s) and appellant(s) agree. This allows time for settlement talks if appropriate.
2. The fact that the appellate body will review the record and hear testimony of the appellant, the applicant, and any other interested party.
3. The decision making body may affirm, modify, or reverse, in whole or in part, the original decision.
4. A copy of the decision shall be mailed to the applicant, the appellant, and any other party requesting such notice.

It is expected that these amendments will make the City's appeal process more uniform. This will help eliminate confusion on when an appeal must be filed and who hears an appeal.

Attachments:

- Proposed Ordinances

## **PROPOSED ORDINANCES**

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 1.44.040 (PROCEDURE FOR APPEAL) OF CHAPTER 1.44 (APPEALS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE BY ADDING NEW SUBSECTIONS**

**Section 1.** Section 1.44.040 (Procedure for appeal) of Chapter 1.44 (Appeals) of Title 1 (General Provisions) of the Benicia Municipal Code is amended by adding new subsections to read as follows:

F. The time limits in this section may be extended if the applicant(s) and appellant(s) agree.

G. At the hearing, the appellate body shall review the record and hear testimony of the appellant, the applicant, and any other interested party. Any interested party may appear in person or by agent or attorney to provide testimony.

H. After the hearing, the appellate body shall affirm, modify, or reverse, in whole or in part, the original decision and may make such order, requirement, decision or determination as is appropriate. A copy of the decision shall be mailed to the applicant, the appellant, and any other party requesting such notice.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 3.24.120 (APPEAL) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 3.24.120 (Appeal) of Chapter 3.24 (Transient Occupancy Tax) of Title 3 (Revenue and Finance) of the Benicia Municipal Code is amended to read as follows:

An operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the council in accordance with Chapter 1.44. Any amount found to be due shall be immediately due and payable upon the service of notice.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.04.290 (REVOCATION OR SUSPENSION - PROCEDURE) OF CHAPTER 5.04 (BUSINESS LICENSES) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 5.04.290 (Revocation or suspension – procedure) of Chapter 5.04 (Business Licenses) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

A. Authority of Administrator. The collector shall give the licensee written notice of the grounds for revocation or suspension. The notice shall specify a time and place of hearing, and shall be given at least five days before the time of the hearing. The licensee shall show cause why his license should not be revoked or suspended.

B. Appeal to Council. The licensee may appeal the decision of the administrator to the council in accordance with Chapter 1.44.

C. Failure to Appeal. If the licensee does not appeal, the decision of the administrator is final and conclusive on expiration of the time fixed for appeal.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B OF SECTION 5.08.080 (SUSPENSION AND REVOCATION OF LICENSE), SUBSECTION E OF SECTION 5.08.140 (ISSUANCE OF WORK PERMITS FOR EMPLOYEES), SECTION 5.08.170 (PERMITTED GAMES DESIGNATED), AND SUBSECTION C OF SECTION 5.08.230 (EXCLUSION OR EJECTION OF INDIVIDUALS FROM CARD ROOMS) OF CHAPTER 5.08 (CARD ROOMS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection B of Section 5.08.080 (Suspension and revocation of license) of Chapter 5.08 (Card Rooms) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

B. The chief of police may immediately suspend or revoke a card room license or a work permit upon determining that any of the grounds listed in subsection (A) of this section exist. The chief of police shall give written notice to the licensee/permittee that the license/permit has been revoked and that the licensee/permittee may appeal that decision to the city council in accordance with Chapter 1.44

**Section 2.** Subsection E of Section 5.08.140 (Issuance of work permits for employees) of Chapter 5.08 (Card Rooms) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

E. The chief of police shall, within 30 days, determine whether the application contains false statements knowingly made, or whether the applicant is unfit to be employed by a card room because of prior criminal convictions in the last 10 years of or involving lotteries, gambling, larceny, usury, perjury, bribery, extortion, bookmaking, fraud, narcotics or controlled substances (except for the history of convictions for marijuana offenses, which shall only be applied to those occurring in the last two years), prostitution, pimping, pandering, robbery, burglary, money laundering, the California Control of Profits of Organized Crime Act (Penal Code Section 186 et seq.), the Federal RICO provisions, or similar crimes involving moral turpitude or who, upon arrest and prosecution for any of the above crimes, is found guilty of or enters a plea of nolo contendere to a lesser and included offense. If such determination is made, the chief of police shall notify the prospective employee and licensee that the application has not been approved and the reasons therefore in writing. Such determinations shall be subject to appeal to the city council of the city in accordance with the appeal procedures set forth in Chapter 1.44.

**Section 3.** Section 5.08.170 (Permitted games designated) of Chapter 5.08 (Card Rooms) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

Only the games of five card draw poker, five card lowball draw poker, seven card stud poker, Texas hold'em poker, double hand poker, crazy pineapple, or Omaha, and no other game or games shall be played or permitted to be played in a licensed card room. Additional games may be played if the applicant: (1) submits the game for approval to the Department of Justice and receives approval; and (2) receives approval from the chief of police. The chief of police may condition approval of the game in order to protect public welfare and promote integrity of the game. The chief of police's approval or denial of the game may be appealed to the city council in accordance with Chapter 1.44. All games of chance are hereby prohibited.

**Section 4.** Subsection C of Section 5.08.230 (Exclusion or ejection of individuals from card rooms) of Chapter 5.08 (Card Rooms) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

C. If, upon the hearing, the chief of police determines that the exclusion or ejection should not apply to the applicant, all card rooms licensed by the city shall be notified in writing of such determination. If the determination is that the exclusion or ejection was proper, the chief of police shall inform the applicant and card room of that determination in writing. Such determination shall be subject to appeal to the city council of the city in accordance with the appeal procedures set forth in Chapter 1.44.

**Section 5.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.24.070 (APPEAL) OF CHAPTER 5.24 (JEWELRY AUCTIONS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 5.24.070 (Appeal) of Chapter 5.24 (Jewelry Auctions) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

Any applicant or applicants dissatisfied with the action of the license collector not to grant a permit or for the revocation of a permit may appeal to the city council in accordance with Chapter 1.44. Upon such hearing the city council may sustain, suspend or overrule the decision of the license collector and its decision shall be final and conclusive. Pending the hearing before the council, the decision of the license collector shall remain in full force and effect and any reversal thereof by the city council shall not be retroactive but shall take effect as of the date of the council's decision.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.28.100 (PERMIT – DENIAL – APPEAL) AND SECTION 5.28.120 (PERMIT – REVOCATION - APPEAL) OF CHAPTER 5.28 (PEDDLERS, SOLICITORS AND CANVASSERS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 5.28.100 (Permit – Denial – appeal) of Chapter 5.28 (Peddlers, Solicitors and Canvassers) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

A person aggrieved by the decision of the tax collector may appeal the decision in accordance with Chapter 1.44.

**Section 2.** Section 5.28.120 (Permit – Revocation – Appeal) of Chapter 5.28 (Peddlers, Solicitors and Canvassers) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

A person aggrieved by the action of the tax collector in revoking a registered permit may appeal the action in accordance with Chapter 1.44. During the appeal, the permit is suspended and the solicitor or peddler may not conduct his or her business in the city.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.36.050 (EXEMPTIONS – FILING OF CLAIM) AND SECTION 5.36.100 (APPEALS) OF CHAPTER 5.36 (CONSTRUCTION OF STRUCTURES) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 5.36.050 (Exemptions – Filing of claim) of Chapter 5.36 (Construction of Structures) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

A claim for exclusion or exemption must be made in writing and submitted to the building official at the time the person applies for a building permit. If the building official determines that an exclusion or exemption applies, he or she shall issue the building permit without collecting the license tax as provided in this chapter.

**Section 2.** Section 5.36.100 (Appeals) of Chapter 5.36 (Construction of Structures) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

Any person dissatisfied with any decision rendered pursuant to this chapter may appeal the decision in accordance with Chapter 1.44. The determination by the city council shall be made within 15 days after receiving said appeal.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B (HEARING) OF SECTION 5.38.090 (FEE ADJUSTMENTS) OF CHAPTER 5.38 (TRAFFIC IMPACT MITIGATION) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection B of Section 5.38.090 (Fee adjustments) of Chapter 5.38 (Traffic Impact Mitigation) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

B. Hearing. An applicant may appeal the decision of the public works director in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 5.48.090 (APPEALS) OF CHAPTER 5.48 (MOTION PICTURES PRODUCTION, TELEVISION PRODUCTION AND COMMERCIAL STILL PHOTOGRAPHY) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 5.48.090 (Appeals) of Chapter 5.48 (Motion Pictures Production, Television Production and Commercial Still Photography) of Title 5 (Business Taxes, Licenses and Regulations) of the Benicia Municipal Code is amended to read as follows:

The permit applicant or permittee may appeal a permit denial, revocation, suspension, permit condition, insurance/fees requirement or the decision not to waive a deadline set forth in the policy. Such appeal shall be in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 8.08.050 (APPEAL FROM NOTICE) OF CHAPTER 8.08 (WEEDS AND RUBBISH) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 8.08.050 (Appeal from notice) of Chapter 8.08 (Weeds and Rubbish) of Title 8 (Health and Safety) of the Benicia Municipal Code is amended to read as follows:

Within 10 business days from the time of posting of the notice required pursuant to BMC 8.08.040, or within 10 business days from the date of the service of certified mail, whichever is later, the owner of, or any person interested in, the property, land, or lot affected by such notice may appeal to the fire chief, in accordance with Chapter 1.44, from the requirements thereof. Such appeal shall be in writing and shall be filed with the city clerk. The fire chief shall hold a meeting with the person appealing and the fire chief shall proceed to hear and pass upon such appeal. The decision thereon shall be final and conclusive.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 8.20.070 (SOUND-AMPLIFYING EQUIPMENT – APPEAL FROM DISAPPROVAL) OF CHAPTER 8.20 (NOISE REGULATIONS) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 8.20.070 (Sound-amplifying equipment – appeal from disapproval) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is amended to read as follows:

Any person aggrieved by disapproval of a registration statement may appeal the disapproval to the city council pursuant to Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**CITY OF BENICIA**

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 8.28.080 (APPEALS) OF CHAPTER 8.28 (FIRE PREVENTION AND LIFE SAFETY CODE) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 8.28.080 (Appeals) of Chapter 8.28 (Fire Prevention and Life Safety Code) of Title 8 (Health and Safety) of the Benicia Municipal Code is amended to read as follows:

Whenever the fire chief disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the code do not apply or that the true intent and meaning of the code have been misconstrued or wrongly interpreted, the applicant may appeal the decision of the fire chief to the fire code appeals board in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B OF SECTION 8.38.100 (ABATEMENT AT OWNER'S EXPENSE - HEARING) OF CHAPTER 8.38 (GRAFFITI CONTROL) OF TITLE 8 (HEALTH AND SAFETY) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection B of Section 8.38.100 (Abatement at owner's expense - hearing) of Chapter 8.38 (Graffiti Control) of Title 8 (Health and Safety) of the Benicia Municipal Code is amended to read as follows:

B. At the hearing, the administrative hearing officer shall render a decision, in writing, upholding or denying the requirement of abatement. If the requirement is upheld, the decision shall contain an order to abate and a deadline for abatement, and shall be served on the person requesting the hearing by U.S. mail. The decision of the administrative hearing officer may be appealed to the city council pursuant to Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 9.20.040 (APPEAL – DENIAL OF RENEWAL, SUSPENSION OR REVOCATION OF PERMIT) OF CHAPTER 9.20 (FORTUNETELLING) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 9.20.040 (Appeal – denial of renewal, suspension or revocation of permit) of Chapter 9.20 (Fortunetelling) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code is amended to read as follows:

Upon written notification of the denial of an application for renewal of a permit, or upon suspension or revocation of said permit, the holder of said permit may appeal said denial, suspension or revocation in accordance with the provisions of Chapter 1.44. The filing of a notice of appeal shall not suspend said denial, suspension or revocation. If no appeal is filed, the decision of the chief of police shall be final.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION C OF SECTION 9.44.070 (SUSPENSION OF POLICE RESPONSE) OF CHAPTER 9.44 (ALARM SYSTEMS) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection C of Section 9.44.070 (Abatement at owner's expense - hearing) of Chapter 9.44 (Graffiti Control) of Title 9 (Public Peace, Morals and Welfare) of the Benicia Municipal Code is amended to read as follows:

C. A decision suspending police alarm response may be appealed by filing written notice of appeal in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING  
SUBSECTION A OF SECTION 10.44.130 (APPEALS) OF CHAPTER 10.44  
(ABANDONED, WRECKED, DISMANTLED OR INOPERATIVE VEHICLES) OF TITLE  
10 (VEHICLES AND TRAFFIC) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 10.44.130 (Appeals) of Chapter 10.44 (Abandoned, Wrecked, Dismantled or Inoperative Vehicles) of Title 10 (Vehicles and Traffic) of the Benicia Municipal Code is amended to read as follows:

A. Any interested party may appeal the decision of the police chief pursuant to Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION D OF SECTION 12.12.060 (PERMITS AND FEES) OF CHAPTER 12.12 (ENCROACHMENTS) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection D of Section 12.12.060 (Permits and fees) of Chapter 12.12 (Encroachments) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code is amended to read as follows:

D. Actions on Applications. Applications may be approved, conditionally approved or denied. The director of public works may use up to two working days to field check existing conditions related to the permit prior to issuance. Where the director of public works finds that the application is in accordance with the requirements of this chapter, he shall issue a permit for the use or encroachment, attaching such conditions as he may deem necessary for the health, safety and welfare of the public and for the protection of the city. If the director of public works finds the application is in conflict with the provisions of this chapter, he shall deny the permit, giving the reasons for said denial.

If any applicant is dissatisfied with the decision of the director of public works, said applicant may appeal the decision in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**CITY OF BENICIA**

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION D OF SECTION 12.24.150 (APPEALS) OF CHAPTER 12.24 (STREET TREES) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 12.24.150 (Appeals) of Chapter 12.24 (Street Trees) of Title 12 (Streets, Sidewalks and Public Places) of the Benicia Municipal Code is amended to read as follows:

Any person aggrieved by any act or determination of the director in the exercise of the authority herein granted shall have the right of appeal to the city council pursuant to Chapter 1.44 whose decision, after public hearing of the matter, shall be final and conclusive.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 13.28.090 (ENFORCEMENT – CIVIL REMEDIES) OF CHAPTER 13.28 (CONTROL OF BACKFLOW AND CROSS-CONNECTION TO CITY WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 13.28.090 (Enforcement – civil remedies) of Chapter 13.28 (Control of Backflow and Cross-Connection to City Water System) of Title 13 (Public Services) of the Benicia Municipal Code is amended to read as follows:

Notwithstanding any other section of this chapter, any customer or tenant who is found to have violated any provision of this chapter, or orders issued hereunder, shall be fined in an amount not to exceed \$500.00 per violation. Such assessments may be billed directly to the person or added to the customer's cross-connection program charge and the director shall have such other collection remedies as are available to collect other service charges. Unpaid charges, fees, or fines shall constitute a lien against the customer's property. Customers or tenants desiring to dispute such enforcement actions (limited to orders or fines) must file a request to the director to reconsider the fine or the applicable enforcement action within 10 days of being notified of the action. The director shall reconvene a hearing on the matter within 15 days of receiving the request from the customer or tenant. If the customer is still aggrieved by the director's decision after reconsideration of the matter, the customer or tenant shall have the right to appeal to the city manager. If the customer is still aggrieved by the city manager's decision, the customer or tenant shall have the right to appeal to the council, pursuant to Chapter 1.44, at a regularly scheduled meeting of the council to show cause why a proposed enforcement action should not be taken.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 13.52.045 (DECISION BY PUBLIC WORKS DIRECTOR - APPEAL) OF CHAPTER 13.52 (RATES AND CHARGES) OF TITLE 13 (PUBLIC SERVICES) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 13.52.045 (Decision by public works director - appeal) of Chapter 13.52 (Rates and Charges) of Title 13 (Public Services) of the Benicia Municipal Code is amended to read as follows:

Decisions of the public works director may be appealed to the city council in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 15.28.170 (APPEAL PROCEDURES) OF CHAPTER 15.28 (GRADING AND EROSION CONTROL) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 15.28.170 (Appeal procedures) of Chapter 15.28 (Grading and Erosion Control) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

Any person under this chapter who may be dissatisfied with the action of the city engineer on the application may file an appeal in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION A OF SECTION 15.36.190 (APPEAL - PROCEDURE) OF CHAPTER 15.36 (MOVING BUILDINGS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 15.36.190 (Appeal - procedure) of Chapter 15.36 (Moving Buildings) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

A. If the building official denies the relocation permit for any reason, he shall notify the applicant of this fact. The applicant may appeal to the board of appeals by filing a written appeal in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**CITY OF BENICIA**

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION K OF SECTION 15.52.010 (VARIANCE - GENERAL) OF CHAPTER 15.52 (VARIANCES) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 15.52.010 (Variance - general) of Chapter 15.52 (Variances) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

K. Decisions of the building department board of appeals may be appealed to the city council by any person adversely affected by such decision by filing a written notice of appeal in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 15.56.010 (APPEALS TO THE BUILDING DEPARTMENT BOARD OF APPEALS) AND SECTION 15.56.020 (APPEALS TO THE CITY COUNCIL) OF CHAPTER 15.56 (APPEALS) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 15.56.010 (Appeals to the building department board of appeals) of Chapter 15.56 (Appeals) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

Any interested person may appeal an alleged error in any requirement, decision or determination of the floodplain administrator hereunder to the building department board of appeals by filing a written notice of appeal, stating the grounds thereof, in accordance with Chapter 1.44.

**Section 2.** Section 15.56.020 (Appeals to the City Council) of Chapter 15.56 (Appeals) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

Any interested person may appeal a decision made by the building department board of appeals to the city council by filing a written notice of appeal, stating the grounds thereof, in accordance with Chapter 1.44.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION A OF SECTION 15.64.220 (REMEDIES NOT EXCLUSIVE) OF CHAPTER 15.64 (STORM WATER MANAGEMENT AND DISCHARGE CONTROL) OF TITLE 15 (BUILDINGS AND CONSTRUCTION) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 15.64.200 (Remedies not exclusive) of Chapter 15.64 (Storm Water Management and Discharge Control) of Title 15 (Buildings and Construction) of the Benicia Municipal Code is amended to read as follows:

A. Appeal. Any person, firm, corporation or organization required to perform monitoring, analyses, reporting and/or corrective activities by an authorized enforcement officer who is aggrieved by the decision of the authorized enforcement officer may appeal such decision to the city engineer within 10 days following the effective date of the decision by writing the city engineer in accordance with Chapter 1.44. Upon receipt of such request, the city engineer shall request a report and recommendation from the authorized enforcement officer and shall set the matter for hearing at the earliest practical date. At said hearing, the city engineer may hear additional evidence, and may reject, affirm or modify the authorized enforcement officer's decision. Said decision shall be final unless appealed further in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION K(4) OF SECTION 16.20.060 (PRELIMINARY SUBMITTAL FOR CITY APPROVAL) OF CHAPTER 16.20 (FINAL SUBDIVISION MAPS – FIVE OR MORE PARCELS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection K(4) of Section 16.20.060 (Preliminary submittal for city approval) of Chapter 16.20 (Final Subdivision Maps – Five or More Parcels) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

4. Appeals. The subdivider or any interested person adversely affected by the city attorney's or other city officer's action under subsection (K)(2) of this section may file an appeal in writing pursuant to Chapter 1.44;

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION A OF SECTION 16.24.060 (APPEALS OF COMMUNITY DEVELOPMENT DIRECTOR ACTION) AND SECTION 16.24.070 (EXPIRATION AND EXTENSIONS) OF CHAPTER 16.24 (SUBDIVISIONS OF FOUR OR FEWER PARCELS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 16.24.060 (Appeals of community development director action) of Chapter 16.24 (Subdivisions of Four or Fewer Parcels) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

A. The subdivider or any interested person adversely affected by the community development director's action under BMC 16.24.040 may file a written appeal in accordance with Chapter 1.44. Within 10 days following the conclusion of the hearing, the planning commission shall render its decision. The planning commission may sustain, modify, reject or overrule any recommendations or rulings of the community development director that are the subject of the appeal, and may make any findings that are consistent with the provisions of the Subdivision Map Act or this title.

**Section 2.** Section 16.24.070 (Expiration and extensions) of Chapter 16.24 (Subdivisions of Four or Fewer Parcels) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

The approval or conditional approval of a tentative map shall expire 24 months from its approval, unless this time period is extended by the provisions of BMC 16.16.100 or 16.16.110. The subdivider may request an extension of the expiration date for action in accord with the provisions of BMC 16.16.110. The community development director may approve, conditionally approve or deny the request for an extension. The subdivider or any interested person or agency may appeal the action in accordance with Chapter 1.44.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING  
SUBSECTION C(3) OF SECTION 16.28.060 (RIGHTS OF VESTING TENTATIVE  
MAPS) OF CHAPTER 16.28 (VESTING TENTATIVE MAPS) OF TITLE 16  
(SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection C(3) of Section 16.28.060 (Rights of vesting tentative maps) of Chapter 16.28 (Vesting Tentative Maps) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

3. A subdivider may apply to the city council, in the case of final maps, or to the planning commission, in case of parcel maps, for a one-year extension at any time before the initial time period set forth in subsection (C)(1) of this section expires. If a parcel map extension is denied by the planning commission, the subdivider may appeal that denial to the city council in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING  
SUBSECTION E (2) OF SECTION 16.36.060 (IMPROVEMENT PLANS) OF CHAPTER  
16.36 (IMPROVEMENTS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA  
MUNICIPAL CODE**

**Section 1.** Subsection E (2) of Section 16.36.060 (Improvement plans) of Chapter 16.36 (Improvements) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

2. By City Engineer. When revisions are deemed necessary by the city engineer to protect the public health and safety, or as field conditions may require, a request in writing shall be made to the subdivider. The subdivider shall revise the plans and transmit the originals to the city engineer for initialing within the time specified by the city engineer.

Upon receipt of the initialed originals, the subdivider shall immediately transmit revised drawings to the city engineer.

Construction of all or any portion of the improvements may be stopped by the city engineer until revised drawings have been submitted.

The subdivider may appeal revisions required by the city engineer pursuant to Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 16.44.050 (APPEALS), SUBSECTION B OF SECTION 16.44.060 (MERGERS UNDER PRIOR LAW) AND SUBSECTION C OF SECTION 16.44.100 (REQUEST FOR DETERMINATION BY OWNER) OF CHAPTER 16.44 (PARCEL MERGERS AND UNMERGERS) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 16.44.050 (Appeals) of Chapter 16.44 (Parcel Mergers and Unmergers) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

The determination of the community development director may be appealed to the planning commission in accordance with Chapter 1.44. If, after hearing, the planning commission grants the appeal and determines that the affected property has not been merged pursuant to this chapter, the department shall, within 30 days after the planning commission determination, file for record with the county recorder a release of the notice of intention to determine status and mail a clearance letter to the owner.

**Section 2.** Subsection B of Section 16.44.060 (Mergers under prior law) of Chapter 16.44 (Parcel Mergers and Unmergers) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

B. If, after the hearing, the community development director determines that the parcels have merged, a notice of merger shall be filed for record with the county recorder by the department. The decision of the community development director may be appealed according to the procedures established in Chapter 1.44.

**Section 3.** Subsection C of Section 16.44.100 (Request for determination by owner) of Chapter 16.44 (Parcel Mergers and Unmergers) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

C. If the community development director determines that the parcels have merged and do not meet the unmerger requirements in BMC 16.44.090, a notice of merger specifying the record owner and description of the parcel shall be issued to the owner and filed for record with the county recorder by the department. The owner may appeal the decision of the community development director in accordance with Chapter 1.44.

**Section 4.**

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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 16.52.050 (APPEALS OF COMMUNITY DEVELOPMENT DIRECTOR ACTION) OF CHAPTER 16.52 (ENFORCEMENT) OF TITLE 16 (SUBDIVISIONS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 16.52.050 (Appeals of community development director action) of Chapter 16.52 (Enforcement) of Title 16 (Subdivisions) of the Benicia Municipal Code is amended to read as follows:

Appeal of any community development director action pursuant to this chapter shall be made to the planning commission in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

\_\_\_Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION C OF SECTION 17.08.040 (RULES FOR INTERPRETATION) OF CHAPTER 17.08 (ORGANIZATION, APPLICABILITY, AND INTERPRETATION) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection C of Section 17.08.040 (Rules for interpretation) of Chapter 17.08 (Organization, Applicability, and Interpretation) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

C. Appeals. An interpretation of the zoning regulations or zoning map by the community development director may be appealed to the planning commission, as provided in Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**CITY OF BENICIA**

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B(2) OF SECTION 17.54.030 (LAND USE AND DEVELOPMENT REGULATIONS) AND SUBSECTION E OF SECTION 17.54.100 (DEMOLITION AND DESIGN REVIEW PROCEDURES) OF CHAPTER 17.54 (H HISTORIC OVERLAY DISTRICT) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection B(2) of Section 17.54.030 (Land use and development regulation) of Chapter 17.54 (H Historic Overlay District) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

2. Applications for such use permits shall be filed with the community development director on a form provided. The community development director shall refer all applications for an exception under this section to the design review commission for a report and recommendation. In making a decision, the community development director shall make a written finding that shall specify the facts relied upon in rendering his decision. A copy of this written finding, together with all evidence presented to the community development director, shall be filed in the planning department. The written finding and decision shall be mailed to the applicant and shall be subject to appeal to the planning commission. Decision-making authority on such use permits may be deferred to the planning commission at the option of the community development director. Upon their decision in such instances, an appeal may be made to the city council as prescribed in Chapter 1.44.

**Section 2.** Subsection E of Section 17.54.100 (Demolition and design review procedures) of Chapter 17.54 (H Historic Overlay District) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

E. Effective Date – Appeals. Decisions of the director or commission shall be final on the tenth business day after the date of the decision, unless appealed in accordance with Chapter 1.44.

**Section 3.**

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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION E OF SECTION 17.70.060 (ACCESSORY DWELLING UNITS) AND SUBSECTION S OF SECTION 17.70.320 (INCLUSIONARY HOUSING) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection E of Section 17.70.060 (Accessory dwelling units) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

E. Appeals. The decision of the community development director, or designee, shall be final on the tenth business day following the decision, unless appealed or reviewed in accordance with Chapter 1.44.

**Section 2.** Subsection S of Section 17.70.320 (Inclusionary housing) of Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

S. Appeals. Decisions under this section shall be final on the tenth business day following the decision unless appealed or reviewed in accordance with Chapter 1.44.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.82.120 (EFFECTIVE DATE OF COMMITTEE DECISION – RIGHT OF APPEAL) OF CHAPTER 17.82 (TREES AND VIEWS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.82.120 (Effective date of committee decision – Right of appeal) of Chapter 17.82 (Trees and Views) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

The commission’s decision shall become final on the tenth business day following its action unless appealed to the city council in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.86.110 (APPEALS) OF CHAPTER 17.86 (WIND ENERGY CONVERSION SYSTEMS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.86.110 (Appeals) of Chapter 17.86 (Wind Energy Conversion Systems) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A decision on a use permit by the community development director or planning commission shall become final on the tenth business day following action, unless appealed in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.90.110 (APPEALS) OF CHAPTER 17.90 (CONDOMINIUM CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.90.110 (Appeals) of Chapter 17.90 (Condominium Conversions) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

The decision of the planning commission shall be final on the tenth business day following its action, unless appealed in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.94.060 (APPEALS) OF CHAPTER 17.94 (MOBILE HOME PARK CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.94.060 (Appeals) of Chapter 17.94 (Mobile Home Park Conversions) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

The decision of the planning commission shall be final on the tenth business day following its action, unless appealed in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION F OF SECTION 17.100.020 (APPLICATION FOR ZONING PERMIT), SECTION 17.100.040 (EFFECTIVE DATE – LAPSE OF PERMIT – APPEAL), SUBSECTION A(3) OF SECTION 17.100.060 (ENVIRONMENTAL REVIEW) AND 17.100.080 (ZONING ADMINISTRATOR) OF CHAPTER 17.100 (ZONING PERMITS – ENVIRONMENTAL REVIEW – FEES AND DEPOSITS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.100.020 (Application for zoning permit) of Chapter 17.100 (Zoning Permits – Environmental Review – Fees and Deposits) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

F. Upon receiving an application for a grading permit to be issued under the provisions of subsections (C)(9) or (10) of this section, the community development director shall publish in a newspaper of general circulation within the city a notice of intent to issue such permit on the date specified in the notice. The decision of the community development director shall be final, unless appealed by any interested party, under the procedures specified in Chapter 1.44.

**Section 2.** Section 17.100.040 (Effective date – Lapse of permit – Appeal) of Chapter 17.100 (Zoning Permits – Environmental Review – Fees and Deposits) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A zoning permit shall be effective on issuance and shall lapse upon the lapse or revocation of a permit required as a condition of issuance of the zoning permit or until affected by amendment of this title. Denial of a zoning permit shall be subject to appeal by the applicant, as prescribed in Chapter 1.44.

**Section 3.** Subsection A(3) Section 17.100.060 (Environmental review) of Chapter 17.100 (Zoning Permits – Environmental Review – Fees and Deposits) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

3. The community development director's decision on the applicability of an exemption or the lead agency determination shall be subject to appeal as prescribed in Chapter 1.44.

**Section 4.** Section 17.100.080 (Zoning administrator) of Chapter 17.100 (Zoning Permits – Environmental Review – Fees and Deposits) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

The community development director shall serve as the zoning administrator, or he or she may delegate the function of zoning administrator to any of the qualified

professional planners in the planning department. The zoning administrator may conduct hearings and approve, disapprove or approve with conditions any application for which the decision-making authority is specifically assigned to the community development director in the individual chapters of this title. Decisions of the zoning administrator to approve, approve with conditions, or disapprove a project may be appealed to the planning commission in accordance with the provisions of Chapter 1.44. The community development director, in consultation with the city manager, may refer a planning application to the planning commission. Referrals may be warranted when a project or proposal involves a significant policy issue, or when an environmental impact report has been prepared.

### **Section 5.**

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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.104.080 (EFFECTIVE DATE - APPEALS) AND SUBSECTION E OF SECTION 17.104.110 (TEMPORARY USE PERMITS) OF CHAPTER 17.104 (USE PERMITS AND VARIANCES) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.104.080 (Effective date - Appeals) of Chapter 17.104 (Use Permits and Variances) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A use permit or variance shall become effective at the end of the appeal period, unless appealed to the city council in the case of a decision by the planning commission, or to the planning commission in the case of a decision by the community development director, as provided in Chapter 1.44.

**Section 2.** Subsection E of Section 17.104.110 (Temporary use permits) of Chapter 17.104 (Use Permits and Variances) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

E. Effective Date – Duration – Appeals. An approved temporary use permit shall be effective on the date of its approval; a disapproval permit may be appealed by the applicant, as provided in Chapter 1.44. The permit shall be valid for a specified time period not to exceed one year. A temporary use permit shall lapse if not used within the dates approved and may be revoked by the community development director, effective immediately, upon verbal or written notice for violation of the terms of the permit. The community development director may approve changes in a temporary use permit.

**Section 3.**

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SUBSECTION B OF SECTION 17.108.060 (REVIEW RESPONSIBILITIES), SUBSECTION A OF SECTION 17.108.090 (EFFECTIVE DATE – LAPSE AND RENEWAL – ALTERATIONS) AND SECTION 17.108.110 (APPEALS) OF CHAPTER 17.108 (DESIGN REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection B of Section 17.108.060 (Review responsibilities) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

B. By the Historic Preservation Review Commission. The historic preservation review commission shall be responsible for design review in the RS (nonresidential structures only), RM, RH, C, OS, PS, PD and the H overlay districts, for projects not subject to community development director review. The historic preservation review commission shall hold a public hearing, as provided in BMC 17.108.080, and shall approve, conditionally approve, or disapprove applications for design approval. Decisions of the design review commission may be appealed to the planning commission in accordance with Chapter 1.44.

**Section 2.** Subsection A of Section 17.108.090 (Effective date – Lapse and renewal – Alterations) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A. Effective Date. Design review decisions shall become effective on the tenth day after the date of the notices of decision required by this chapter, unless appealed, as provided in Chapter 1.44.

**Section 3.** Section 17.108.100 (Appeals) of Chapter 17.108 (Design Review) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A. Rights of Appeal and Review. Design review decisions of the community development director may be appealed by any interested party to the historic preservation review commission. Design review decisions of the historic preservation review commission may be appealed, by any interested party, to the planning commission.

B. Procedures – Public Hearings. Procedures for appeals shall be as prescribed by Chapter 1.44.

C. Limits on Appeals. Appeal decisions of the historic preservation review commission shall be final.

**Section 4.**

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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.112.070 (APPEALS) OF CHAPTER 17.112 (DEVELOPMENT PLAN REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Section 17.112.070 (Appeals) of Chapter 17.112 (Development Plan Review) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

A decision disapproving plans may be appealed under the procedures established in Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA DELETING AND REPLACING CHAPTER 17.124 (APPEALS AND CALLS FOR REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE**

**Section 1.**

Chapter 17.124 (Appeals and Calls for Review) of Title 17 (Zoning) of the Benicia Municipal Code is deleted in its entirety and replaced to read as follows:

Chapter 17.124

APPEALS AND CALLS FOR REVIEW

Sections:

- 17.124.010 Purpose and authorization for appeals.
- 17.124.020 Failure to act.
- 17.124.030 New appeal.

17.124.010 Purpose and authorization for appeals.

A. Appeals. To avoid results with the purposes of this title, decisions of the director of community development and the historic preservation review commission may be appealed to the planning commission, and decisions of the planning commission may be appealed to the city council in accordance with Chapter 1.44.

B. Calls for Review. As an additional safeguard to avoid results inconsistent with the purposes of this title, decisions of the director of community development or the historic preservation review commission may be called up for review by the planning commission, and decisions of the planning commission may be called up for review by the city council in accordance with Chapter 1.44.

17.124.020 Failure to act. Failure to act within the time limits prescribed in Chapter 1.44 shall be deemed affirmation of the original decision, provided the requirements specified for development projects in Government Code Section 65956 et seq. have been met.

17.124.030 New appeal. Following denial of an appeal or certification of a decision called for review, any matter that is the same or substantially the same shall not be considered by the same body within one year, unless the denial or certification is made without prejudice.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING  
SUBSECTION F OF SECTION 17.128.060 (REVOCATION OF DISCRETIONARY  
PERMITS) OF CHAPTER 17.128 (ENFORCEMENT) OF TITLE 17 (ZONING) OF THE  
BENICIA MUNICIPAL CODE**

**Section 1.** Subsection F of Section 17.128.060 (Revocation of discretionary permits) of Chapter 17.128 (Enforcement) of Title 17 (Zoning) of the Benicia Municipal Code is amended to read as follows:

F. Effective Date – Appeals. A decision to revoke a discretionary permit shall become final 10 days after the date of the decision, unless appealed in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING  
SUBSECTION A OF SECTION 18.08.070 (APPEALS) OF CHAPTER 18.08  
(PERMITS) OF TITLE 18 (SIGNS) OF THE BENICIA MUNICIPAL CODE**

**Section 1.** Subsection A of Section 18.08.070 (Appeals) of Chapter 18.08 (Permits) of Title 18 (Signs) of the Benicia Municipal Code is amended to read as follows:

A. A person aggrieved by the action of the city planner may appeal the action to the planning commission for review in accordance with Chapter 1.44.

**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 clauses thereof irrespective of the fact that any one or more sections, subsections, phrases 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
and adopted at a regular meeting of the Council held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007,  
by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 24, 2007  
**TO** : City Council  
**FROM** : City Attorney   
**SUBJECT:** **SECOND READING OF ORDINANCES TO MAKE MINOR  
CHANGES TO THE OPEN GOVERNMENT ORDINANCE**

**RECOMMENDATION:**

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

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

**EXECUTIVE SUMMARY:**

The above ordinances were introduced at the October 16, 2007 Council meeting. The Open Government Commission requested these changes to add a definition for "interrupt" and clarify the term "criticize", add additional required training of city employees and conform the gift limit to be the same as specified by the Political Reform Act.

**BUDGET INFORMATION:**

There is no fiscal impact from these changes.

**BACKGROUND:**

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

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

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

These ordinances are presented as individual ordinances so the Council may act to recommend any or all of the ordinances. At their August 28, 2007 meeting, the Open Government Commission recommended the changes be adopted by the City Council.

Attachments:

- Proposed Ordinances

## **PROPOSED ORDINANCES**

CITY OF BENICIA

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

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

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

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

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

**Section 2.**

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

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

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 16<sup>th</sup> day of October, 2007, and adopted at a regular meeting of the Council held on the 6<sup>th</sup> day of November, 2007, by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

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

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

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

**Section 2.**

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

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

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 16<sup>th</sup> day of October, 2007, and adopted at a regular meeting of the Council held on the 6<sup>th</sup> day of November, 2007, by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

CITY OF BENICIA

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

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

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

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

**Section 2.**

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

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

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing ordinance was introduced at a regular meeting of the City Council on the 16<sup>th</sup> day of October, 2007, and adopted at a regular meeting of the Council held on the 6<sup>th</sup> day of November, 2007, by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 2, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works   
**SUBJECT** : **ACCEPTANCE OF THE DOOR RENOVATION PROJECT AT  
THE WATER AND WASTEWATER TREATMENT PLANTS  
INCLUDING CHANGE ORDERS**

**RECOMMENDATION:**

Adopt a resolution accepting the Door Renovation Project at the Water and Wastewater Treatment Plants as complete, including Change Orders, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**EXECUTIVE SUMMARY:**

The Door Renovation Project is part of the ongoing security enhancements at the water and wastewater treatment plants and consists of modifying or replacing a total of 24 doors. This project was necessary in order to accommodate an access control system, which, along with an intrusion detection system, will be the next phase of the security enhancements at the plants.

During construction it became apparent that additional work to install panic hardware in compliance with Uniform Building Code standards was necessary. Two contract change orders (one for each location) were issued for an additional cost of \$10,282.65 (approximately 18% of the original project estimated cost). A change order notification memo was sent to the City Manager on May 17, 2007, advising him of this additional cost.

The final construction cost is \$68,461.68, which includes \$10,282.65 for two Contract Change Orders. This project was budgeted and funded from the Water and Wastewater Enterprise Funds. Formal acceptance of the work by the City Council is now required.

**BUDGET INFORMATION:**

The Door Renovation Project expenditures are as follows:

**Wastewater Treatment Plant**

Original Contract .....	\$28,979.56
Change Order (for panic hardware) .....	<u>8,424.31</u>
Subtotal Project .....	\$37,403.87

**Water Treatment Plant**

Original Contract .....	\$29,199.47
Change Order (for panic hardware) .....	<u>1,858.34</u>
Subtotal Project .....	\$31,057.81

Total Project Cost: .....\$68,461.68

**BACKGROUND:**

On March 20, 2007, City Council awarded a contract in the amount of \$58,179.03 for this project to Opening Technologies. This project replaced a total of 24 doors at the Water and Wastewater Treatment Plants.

The contractor has completed the project to the satisfaction of the City. It is recommended; therefore, that Council accepts this project as complete, including the two Change Orders totaling \$10,282.65.

Attachments:

- Proposed Resolution
- Notice of Completion

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE DOOR RENOVATION PROJECT AT THE WATER AND WASTEWATER TREATMENT PLANTS AS COMPLETE, INCLUDING TWO CHANGE ORDERS, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 07-26, City Council awarded the contract to Opening Technologies of Concord, CA, for the Door Renovation Project at the Water and Wastewater Treatment Plants; and

**WHEREAS**, Opening Technologies has completed the work in accordance with the plans and specifications and to the satisfaction of the City for a final project cost of \$68,461.68, including two Change Orders.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the Door Renovation Project as complete for a final project cost of \$68,461.68.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice 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 6<sup>th</sup> day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

# Notice of Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA  
ATTN: ASSISTANT DIRECTOR OF PUBLIC WORKS  
250 EAST L STREET  
BENICIA, CA 94510

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN THAT:

1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:

**Water Treatment Plant** located at 100 Water Way in the City of Benicia, County of Solano, State of California (APN: 0080-030-15-0)

**and**

**Wastewater Treatment Plant** located at 614 East 5<sup>th</sup> Street in the City of Benicia, County of Solano, State of California (APN: 0080-180-04-0)

**Nature of title as stated owner: In Fee.**

2. A work of improvement known as the **Door Renovation Project at the Water and Wastewater Treatment Plants** at the property described was completed and accepted by the City Council of the City of Benicia on November 6, 2007.
3. The name of the contractor for the improvement is **Opening Technologies** of Concord, California.

CITY OF BENICIA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James R. Erickson, City Manager

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that the facts stated therein are true, under penalty of perjury.

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

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 30, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works   
**SUBJECT** : **ADOPTION OF THE BENICIA PORTION OF THE  
COUNTYWIDE SAFE ROUTES TO SCHOOL PLAN**

**RECOMMENDATION:**

Adopt a resolution:

1. Forwarding the projects and programs in the Benicia Safe Routes to School (SR2S) Plan to the Solano Transportation Authority (STA) for incorporation into the Countywide SR2S Plan; and
2. Appointing the Traffic Pedestrian and Bicycle Safety (TPBS) Committee to develop updates to the Benicia SR2S Plan and the City Council/School Board Liaison Committee to review and recommend said updates for approval to the School Board and City Council; and
3. Adopting the Benicia SR2S Plan including the additional improvements identified for Farmer Elementary School as a guiding document for the TPBS Committee and the City Council/School Board Liaison Committee.

**EXECUTIVE SUMMARY:**

The City was the first agency in Solano County to develop a Safe Routes to School Plan (SR2S) with the Solano Transportation Authority. The draft Benicia SR2S Plan, which was the subject of many public meetings and "walkabouts" hosted by the City and Benicia Unified School District, is ready for adoption and implementation. Adopting the Benicia portion of the countywide plan will make our projects eligible for future state and federal funding.

**BUDGET INFORMATION:**

There are no budget impacts related to this agenda item.

**BACKGROUND:**

City staff, in cooperation with the Benicia Unified School District and under the general guidance of the TPBS Committee, conducted an extensive public outreach to identify projects and programs that would enhance safety and encourage bicycling and walking to school.

With expert assistance from STA, identified projects/programs thought to have the greatest potential benefit were compiled into a newly created Benicia SR2S Plan. The plan was revised by the TPBS Committee in July and forwarded to the City Council/School Board Liaison Committee where it was unanimously recommended for approval at their September meeting. The City did receive a copy of a memo from the principal of Famar Elementary School to the School Superintendent, which included a list of additional priority improvements that were developed by the PTA and School Site Council for that school. Staff will present the Benicia SR2S Plan to the School Board for their approval on November 1<sup>st</sup> and will recommend that these additional improvements be included in the countywide plan. A copy of the countywide SR2S plan and the Famar Elementary School improvements memo are attached.

Once adopted and incorporated into the Countywide SR2S Plan, the Benicia SR2S Plan will be the guiding document for the City's SR2S Program and projects/programs will be eligible for grant funding administered by STA. Staff anticipates updates to the Benicia SR2S Plan will occur biennially.

Attachments:

- Benicia's Safe Routes to School Plan (Excerpt from Countywide Plan)
- Memo from Famar School Principal to BUSD Superintendent dated October 9, 2007
- STA correspondence dated October 3, 2007

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING THE BENICIA SAFE ROUTES TO SCHOOL PLAN, FORWARDING THE PLAN'S PROJECTS AND PROGRAMS TO THE SOLANO TRANSPORTATION AUTHORITY, AND ESTABLISHING A PROCESS FOR FUTURE UPDATES TO THE PLAN**

**WHEREAS**, in 2006 the Solano Transportation Authority requested each local agency conduct a public input process through local community task forces to create a local list of Safe Routes to School projects and programs to be forwarded to Solano Transportation Authority and incorporated into a new countywide Safe Routes to School plan; and

**WHEREAS**, by Resolution No. 06-144, the City Council supported Solano Transportation Authority's request by appointing the City Council/School District Liaison Committee to review and recommend for approval the draft list of Safe Routes to School priority projects/programs developed by the Traffic Pedestrian and Bicycle Safety Committee; and

**WHEREAS**, from November 2006 to June 2007, Benicia Public Works staff, in cooperation with the Benicia Unified School District and under the general guidance of the Traffic Pedestrian and Bicycle Safety Committee, conducted safety audits and workshops at seven Benicia schools to identify projects/programs that were compiled into the Benicia Safe Routes to School Plan; and

**WHEREAS**, the Traffic Pedestrian Bicycle and Safety Committee made minor revisions to the Benicia Safe Routes to School Plan at their meeting of August 16, 2007 and forwarded the Plan to the City Council/School Board Liaison Committee which recommended the Plan for approval at their September 7, 2007 meeting.

**WHEREAS**, the Principal of Mary Farmar Elementary School submitted a list of additional improvements that were developed by the PTA and School Site Council for that school to be included in Benicia's portion of the countywide SR2S Plan which were approved by the School Board in their approval of the countywide SR2S Plan on November 1, 2007.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby forwards the projects and programs in the Benicia Safe Routes to School Plan including the additional improvements identified for Farmar Elementary School to the Solano Transportation Authority for incorporation into the Countywide Safe Routes to School Plan.

**BE IT FURTHER RESOLVED** the Traffic Pedestrian and Bicycle Safety Committee is hereby appointed to propose updates to the Benicia Safe Routes to School Plan and the City Council/School Board Liaison Committee is hereby appointed to review and recommend said updates to the School Board and City Council.

**BE IT FURTHER RESOLVED** that the Benicia Safe Routes to School Plan including the additional improvements identified for Farmar Elementary School is hereby adopted as a guiding document for the Traffic Pedestrian and Bicycle Safety Committee and the City Council/School Board Liaison Committee.

\* \* \* \* \*

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

Ayes:

Noes:

Absent:

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

Attest:

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

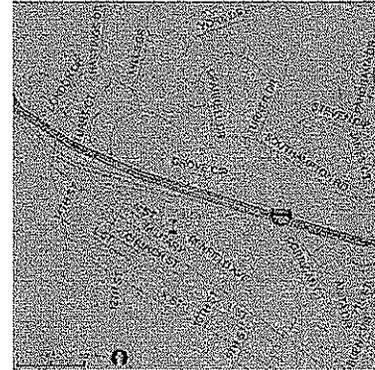


## BENICIA HIGH SCHOOL SAFE ROUTES TO SCHOOL PLAN

### A. Existing Conditions

#### School Location

Benicia High School is located at 1101 Military West Street in Benicia. Benicia High School serves grades 9 through 12. For the 2006-2007 school year, Benicia High School has a total enrollment of approximately 1790 students. Benicia High School site is bound by Military West Street to the south, Plaza de Oro on the west, I-780 to the north, and residences and offices to the east. Directly north of the parking lot is I-780. Plaza de Oro, West 11<sup>th</sup> Street, and Denfield Avenue provide vehicle access to the school. Pedestrians and bicyclists can enter the school site from Military West Street.



*Benicia High School Area Map*

#### Traffic Controls

The intersection of Military West Street/Plaza de Oro is a T-intersection; stop controlled on the Plaza de Oro approach. The intersection of Military West Street/West 11<sup>th</sup> Street is a four-way intersection with the side-street stop controlled. The dog-leg intersection of Military West Street/Denfield Avenue and West 10<sup>th</sup> Street is a side-street stop controlled.

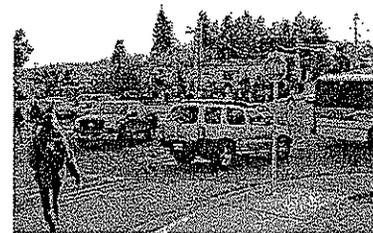
#### Parking

There are three parking lot locations on the Benicia High School property. The first parking area is located along the driveway loop off of West 11<sup>th</sup> Street. These parking stalls are reserved for visitors and administrators. The other two lots are behind the School, between the School and I-780, and southeast of the School, between West 11<sup>th</sup> Street and Denfield Avenue. Students use both of these lots for parking.

### B. Transportation to/from School

#### Drop-Off and Pick-Up

Many students drive to Benicia High School. The large majority of students that arrange rides with parents are dropped-off and picked-up on Military West Street. Parents pull up on the north and south sides of the Street, south of the School's main entrance. Access to onsite drop-off and pick-up is closed off during school times.



*Military West Street/West 11th Street intersection*

#### Walking

There are existing marked crosswalks at the following locations near the school:

- Military West Street/Plaza de Oro: yellow transverse crosswalks on the north and east legs
- Military West Street/West 11<sup>th</sup> Street: yellow transverse crosswalks on the south and east legs
- Military West Street/West 11<sup>th</sup> Street: in-pavement flashers on the east leg
- Military West Street/Denfield Avenue/West 10 Street: yellow transverse crosswalks on north, south and between the dog-leg on Military West Street
- On the Benicia High School campus, north of West 11<sup>th</sup> Street: yellow transverse crosswalk on north side of driveway loop

There is one crossing guard at Benicia High School located on the east leg of the Military West Street/West 11<sup>th</sup> Street intersection.

Many of the student walk east on Military West Street to and from school as well as cross Military West Street from the residential neighborhood to the south. This creates high-volumes of pedestrians crossing Military West Street, a major four lane street.

### Bicycling

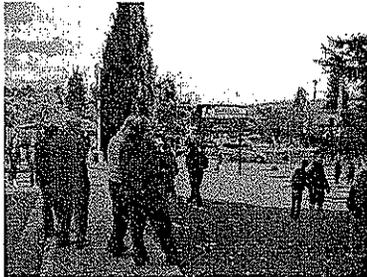
There are existing bicycle lanes on Military West Street in-front of the School. However, these lanes may be used as a pick-up/drop-off location during the school hours, causing potential conflicts.



*Two buses at the stop in-front of the School*

### Bus Service

The City of Benicia's transit provider, the Benicia Breeze provides bus service to/from Benicia High School. Five lines operate along Military West Street. These include route numbers: 15, 17, 21, 23, and 75. There is a bus stop in-front of the High School on Military West Street near the West 11<sup>th</sup> Street intersection. When buses stop at this location they block the School's eastern driveway.



*Walkabout attendees watch the action as school is let out (above) and police and City staff at the evening meeting looks at problem areas near the School (below)*

## C. Engineering Recommendations

### Walkabout

A walkabout was held at Benicia High School on November 28, 2006. The walkabout included members of local police, the School Vice-Principal, City and STA Staff. Following the audit, STA's Safe Routes to School consultant held a presentation of potential improvements and worked with attendees on problem areas and solutions. Several locations were identified as difficult locations for pedestrians and bicyclists. **Figure 1** includes issue locations, the issues, and possible improvements. Locations include the Military West Street/Plaza De Oro intersection, Military West Street, and the Military West Street/Denfield Avenue/West 10<sup>th</sup> Street intersection. Identified issues in the walking audit included illegal u-turns on Military West Street, buses blocking the West 11<sup>th</sup> Street entrance/exit to the school, and a large number of students walking on the sidewalk along Military West Street.

## Design Concepts

Design Concepts are shown on Figures 1 & 2. Some of the potential improvements are described below.

### Military West Street/Plaza De Oro intersection

Install bulb outs on the corners to decrease the crossing distance for pedestrians

### Military West Street

Consider giving Military West Street a “road diet,” decreasing the number of lanes from four to two as well as reinstalling the bicycle lanes. The likely result will be slower vehicle speeds along Military West Street. Also, consider a Class I pathway along the north side Military West Street

### Military West Street/11<sup>th</sup> Street

Extend the center medians, making it more difficult for drivers to make u-turns on Military West Street and install additional street trees, helping to slow vehicle speeds. See **Figure 2** for more detail.

### Military West Street/Denfield Avenue/West 10<sup>th</sup> Street intersection

Relocate the crosswalk across Military West Street, west of the intersection to decrease the number of potential vehicle-pedestrian conflicts.

### On-Site Circulation

The current practice of closing off the drop-off and pick-up area on campus should be reviewed and reversing the traffic flow should be considered.

## D. Education Recommendations

- Provide information as to appropriate parking and driving behavior around school for both parents and students early and several times throughout the school year.

## E. Enforcement Recommendations

- In conjunction with local police officers, establish driver education programs early in the school year and follow up periodically with strong enforcement techniques to ingrain proper driver and pedestrian behavior.
- Continue police patrol of the area during drop-off and pick-up hours, encouraging drivers to obey the rules of the road.

## F. Encouragement Recommendations

- Build on existing enthusiasm in younger age groups through education programs early in the high school experience. Work towards overcoming the bias in high school students against non-motorized transport by emphasizing the environmental benefits of walking and bicycling.
- Implement high school bicycling encouragement programs, e.g. – “Extreme Tricks”
- Work with the “student council” or student leadership group to engage students in bicycling and walking to school
- Develop a school based committee with students, parents, and staff to formulate ideas, assemblies, and participation efforts for Safe Routes to School

**Figure 1**

# Benicia High School



**Figure 2**  
**SAFE ROUTES TO SCHOOL BENICIA HIGH SCHOOL AUDIT/POTENTIAL IMPROVEMENTS**

**RECOMMENDED INTERSECTION IMPROVEMENTS: Military West and West 11th Street**



**Potential Recommendations Key:**

- 1B Install Bicycle Lanes on Military West
- 2A Extend Bus Stop to Accommodate two Buses
- 2B Construct Bus Shelter
- 3A Install Signal at Military West and West 11th Street
- 4B Review Circulation into Campus on West 11th Street
- 5A Extend Medians along Military West
- 5B Repaint Curbs Red
- 6B Build Bulbouts on Corners

Solano Transportation Authority  
 SR25



Benicia School District Safe Routes to School Improvements - Other Schools



Citywide Recommendations		Engineering	Education	Enforcement	Encouragement
	1	Work with City Traffic Calming Program and its outreach/planning procedures while studying and implementing Safe Routes to School Projects	During assemblies, discuss the health, science, and math elements of the safe routes to school program	Increase police patrol of the area during drop-off and pick-up hours	Work with students to develop ways to increase bicycling and walking
	2	Consider reopening closed off "drop-off and pick-up" areas	Develop programs to incorporate health, science, and math aspects of safe routes to school information in school	With local police, distribute materials early in the year describing drop-off/pick-up locations and driving safety	Participate in Bike to School Day and International Walk to School Day activities
	3	Study hot spots of bicycle vs. car traffic at all sites	Develop a "Walking School Bus" program at elementary schools, where parents take turns walking students in their neighborhood to school		Work with the local police department to implement after school bicycle rodeos at elementary schools where students can learn bicycling rules of the road.
	4		Provide appropriate parking information for driving behavior around the School for parents early in the school year and several times during the year		Work with students and parents to develop a map with the safest walking/bicycling routes to school
	5		Where not existing, develop Safety Patrols where older students team with crossing guards		Work with the "student council" to engage students in bicycling and walking safely to school
	6		Crossing Guard Training -Develop a training program that establishes guards' duties, responsibilities, and priorities		Develop a school based committee with students, parents, and staff to formulate ideas, assemblies, and participation efforts for Safe Routes to School



Benicia School District Safe Routes to School Improvements - Other Schools

School	Engineering Recommendations	Other Recommendations
Benicia Middle School	1 Improve informal trail in open space north of Southampton Road	<b>Education</b> No Additional Recommendations
	2 Install railing behind red curb on eastbound approach to Southampton Rd/Turner Dr crosswalk	<b>Encouragement</b> Installation of speed feedback signs on Southampton Rd
	3 Install a "table top" treatment at the Southampton Rd/Turner Dr intersection	<b>Enforcement</b> Review existing policy of prohibiting bicycle use on campus
	4 Widen bike path on Southampton Road	Implement school bicycling encouragement programs, e.g. - "Extreme Tricks."
	5 Install a mid block crossing at South Hampton/Grove	
	6 Connect the Middle School and High School with a bike/ped bridge over I-780 (long-term)	
Henderson Elementary School	1 On Hastings Drive north of the School, widen sidewalk and fix fence	<b>Education</b> Include educational driving safety information in the <i>Inside Benicia</i> newsletter
	2 Open gate in rear of School where Class I pathway connects to campus	Inform parents and students of protected bicycle parking near the playground
	3 Delineate lanes with pavement stencils at School entrance	<b>Enforcement</b>
	4 Create carpool unloading/loading area	No Additional Recommendations <b>Encouragement</b> No Additional Recommendations

Benicia School District Safe Routes to School Improvements - Other Schools

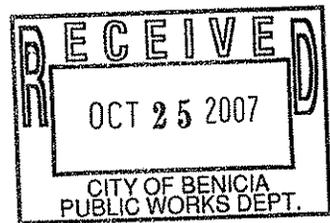


School	Engineering Recommendations	Other Recommendations
Mary Farmer Elementary School	1 Provide ADA accessibility on the path between the driveway loop and School entrance	<b>Education</b> No Additional Recommendations
	2 Restripe and repaint curb on access road	<b>Enforcement</b> Install speed feedback signs on Military West Street in-front of the School
	3 Pave path between the School's playground and Drolette Way	Hire a crossing guard if a mid-block crossing is installed at Drolette Way
	4 Consider a mid-block crossing at Drolette Way	<b>Encouragement</b> No Additional Recommendations
Matthew Turner Elementary School	1 Install a crosswalk at the entrance of the Community Park parking lot	<b>Education</b> No Additional Recommendations
	2 Install a path across the Community Park between the School and Kearney Street	<b>Enforcement</b> Add a crossing guard on the north side of Rose
	3 Install sidewalks in the Community Park parking lot and lot in front of the School preventing students from walking through them during drop-off/pick-up times	Consider teachers to monitor drop-off/pick-up in addition to the Principle
	4 Widen the sidewalk on the west side of Dempsey Drive	<b>Encouragement</b> No Additional Recommendations
	5 Extend no parking zone on Rose Drive and install no parking zone on Primrose Lane	

Benicia School District Safe Routes to School Improvements - Other Schools



School	Engineering Recommendations	Other Recommendations
Robert Semple Elementary School	<ol style="list-style-type: none"> <li>1 Fence off some of the School's exit points to help control pedestrian flow</li> <li>2 Add sidewalk to missing sections on East 3rd Street</li> <li>3 Maintain vegetation, sidewalks, and striping near School</li> <li>4 Consider replacing rolled curbs</li> <li>5 Add an unsignalized, high-visibility crosswalk on E 3rd Street in front of the School</li> <li>6 Keep gate open to E 2nd Street</li> <li>7 Improve tunnel under I-780 with regular maintenance and a public art mural</li> </ol>	<p>Education                      them from running into the street</p> <p>Education                      Implement a bicycle education program</p> <p>Education                      Provide crossing education for existing crossing guards</p> <p>Enforcement                      Increase enforcement in tunnel under I-780</p> <p>Enforcement                      Hire a crossing guard for the East S/East 3rd Streets intersection</p> <p>Enforcement                      Offer carpool parking</p>
St. Dominic's Catholic School	<ol style="list-style-type: none"> <li>1 Install bulb-outs at the East J Street/5th Street intersection (funded)</li> <li>2 Install high-visibility crosswalks at East J Street/5th Street intersection (funded)</li> <li>3 Repaint and extend red curb at the East J Street/5th Street intersection</li> <li>4 Study making East I Street one-way</li> <li>5 Increase parking restrictions and red curb at the East I Street/5th Street intersection</li> </ol>	<p>Education                      Address transportation issues in school newsletters</p> <p>Education                      Expand the Parent Handbook to include traffic safety information</p> <p>Enforcement                      Train parent volunteers to help with the control of unloading and loading procedures during the morning and afternoon school times</p> <p>Enforcement                      No Additional Recommendations</p>



Date: October 9, 2007

To: Superintendent Janice Adams

From: Susan Sullivan, Principal

Re: Mary Farmar SR 25 Audit from SAFE ROUTES TO SCHOOL

Cc: Mike Roberts  
Dan Schiada  
Chief Sandra Spagnoli, Benicia Police Department

Please refer to your letter dated July 25, 2007, STA Safe Routes to School Audit of Mary Farmar Elementary School. After much discussion with all teachers and staff employed at Mary Farmar, PTA board and members, and our School Site Council came up with the following priority list of improvements regarding traffic safety and flow. We do realize that cost is a factor but we did not consider that in our recommendations, as we are not fully apprised of the funding available. Thank you for your assistance in helping us improve the safety of our students and community.

The following are our recommendations in priority order:

1. Increase police enforcement for illegal U-turns on Drolette in front of the east exit.
2. Increase targeted enforcement at the 4-way stop at the intersection of Drolette/Corrigan/Goettel.
3. Consider installing a mid-block, high visibility crosswalk across Drolette at the school egress/ingress point. A safety analysis would need to be performed to determine feasibility. At minimum, the school district would need to have a crossing guard at this location during school start and end times.
4. Promote the use of the pedestrian bridge (over Military West), which is under utilized.
5. Mark existing white curb with "Loading Zone Only" and possibly extend its length.
6. Pave the east ingress/egress route between the playground and sidewalk on Drolette, eliminating the uneven dirt surfacing and stump (which dogs use and litter the area).
7. Re-stripe the access road to eliminate red curb and bus parking which were installed when busing was available off of Military West.
8. Repair holes in mesh on pedestrian bridge over Military West. This access is run down and has become a hang-out for older students.
9. Paint a blue handicap stall adjacent to the recently installed ramp on Drolette. There is only one handicap parking space in front of the school and there should be one on the east (Drolette) side. (This was requested last year.)

10. Install a stoplight at Military and 10<sup>th</sup>, which will create gaps in traffic so that motor vehicles can more easily make a left hand turn from the access road heading eastbound on Military West.
11. Convert the concrete pullout back to a bus stop for the special ed and Kids K buses, eliminating the perpendicular staff parking. This does eliminate 10 parking spaces for staff. The red zone on Drolette is now for bus parking and loading.

This concludes the priority list from Mary Farmer Staff and parents. Thank you for your consideration in this very important safety matter.

Sincerely,

A handwritten signature in cursive script that reads "Susan Sullivan". The signature is written in black ink and is positioned above the typed name and title.

Susan Sullivan  
Principal



DATE: October 3, 2007  
TO: Benicia's City Council/School Board  
FROM: Sam Shelton, Assistant Project Manager  
RE: Benicia's Safe Routes to School Plan

**Background:**

The STA's Safe Routes to School (SR2S) Plan is intended to improve the safety of pedestrian and bicycle modes of student travel by enhancing related infrastructure and programs, and to provide safe passage to schools. Eligible projects will include capital improvement projects as well as education, enforcement and encouragement activities and programs such as developing safety and health awareness materials and education programs. The STA contracted with Alta Planning + Design to complete the SR2S Plan.

The SR2S outreach process is split into three major phases:

- 1) City Council & School District Board presentations
- 2) Community Task Force meetings
- 3) City Council, School District Board, and STA Board adoption of the SR2S Study

The City of Benicia was the first agency to begin working with the STA on their Safe Routes to School Plan. On September 14, 2006, the Benicia City Council/School Board Liaison Committee reviewed this process and recommended that the Traffic Pedestrian Bicycle Safety (TPBS) Committee review and recommend the Benicia SR2S Plan to the liaison committee before the liaison committee recommends adoption by the city council and school board.

On October 19, 2006, the TPBS received a presentation from the STA regarding the SR2S Public Input process. On November 28, 2006, a walking audit was held at Benicia High School with STA Staff, Alta Planning consultants, Benicia public works, police, TPBS members, and school district staff. Between November 2006 and June 2007, Benicia public works staff has taken the lead on conducting additional walking audits for other schools in Benicia.

On August 16, 2007, the TPBS Committee reviewed, revised, and recommended the Benicia SR2S Plan to the Benicia City Council/School Board Liaison Committee.

On September 6, 2007, the City Council School Board Liaison Committee reviewed and recommended adoption of the Benicia SR2S Plan, contingent upon review by principals of schools listed in the plan.

**Discussion:**

The SR2S Plan for Benicia includes a comprehensive Benicia High School SR2S Plan and a matrix of Citywide and specific Education, Enforcement, Encouragement, and Engineering (4E's) projects for other schools in Benicia (see Attachment VII-H-17

Both the Benicia High School Plan and the 4E's Matrix are Benicia's contributions to the STA's Countywide Safe Routes to School Plan.

There are a number of ways in which each city and school board can adopt and implement the Benicia Safe Routes to School Plan. Each additional recommendation makes an additional commitment to planning and implementing Safe Routes to School Projects in Benicia.

To begin with, the STA is asking for a recommendation from the city council and school board to forward the locally planned projects and programs found in the Benicia Safe Routes to School Plan for incorporation into the Countywide Safe Routes to School Plan. This does not commit the city or school board to "adopt" the plan or pursue further action to plan or implement further SR2S plans, projects, or programs.

The next step of the commitment is to adopt the Benicia Safe Routes to School Plan as the "guiding document for a permanent SR2S Task Force in each city". This is part of the third goal of the STA's SR2S program, "Maximizing Interagency Cooperation". This is done by recommending that the Safe Routes to School Task Force setup by the STA be made a permanent advisory committee to the city council and school board to plan and implement SR2S projects and programs. Their work plan would be to update and implement the adopted Benicia SR2S plan with the assistance of the STA, if requested.

The table below shows the current traffic safety and school related committee structures in each city in Solano County. Instead of making each of the STA's Safe Routes to School Task Forces permanent, one or several of these existing committees could take on similar responsibilities.

City	Traffic and School Related Safety Group or Committee
Benicia	Traffic Pedestrian & Bicycle Safety Committee (PW/Police) City Council/School Board Liaison Committee (PW/School/Police)
Benicia	Transportation Advisory Commission (PW/School/Police)
Fairfield	3E's Staff Committee (staff level PW/School/Police)
Rio Vista	Joint-Use Ad-hoc Committee (PW/School/Police)
Suisun City	Unknown
Vacaville	Unknown
Vallejo	Unknown

STA Staff recommends that the task force make the most complete recommendation that they believe their council and school board would be comfortable with agreeing to.

Once adopted, grant applications for project funding will be much stronger. Three large grant opportunities are approaching quickly:

1. California State Safe Routes to School Grant  
\$52M available, Applications due by November 16, 2007.

2. Federal Safe Routes to School Grant  
\$48 M available, Applications are expected to be due in December 2007.
3. Solano Transportation Authority Safe Routes to School Program  
\$150,000 could be made available in March or April of 2008.

**Recommendation:**

Approve the following:

- 1) Forward the projects and programs found in the Benicia's Safe Routes to School Plan to the STA Board for incorporation in the STA's Countywide Safe Routes to School Plan,
- 2) Continue using Benicia's "Traffic Pedestrian & Bicycle Safety Committee" and "City Council/School Board Liaison Committee" in coordination with City of Benicia Public Works staff to continue planning and implementing Safe Routes to School projects and programs.
- 3) Adopt the Benicia Safe Routes to School Plan as a guiding document for Benicia's Traffic Pedestrian & Bicycle Safety Committee" and "City Council/School Board Liaison Committee".

Attachment:

- A. Benicia's Safe Routes to School Plan, 8-30-2007 (as revised by the TPBS Committee)

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 18, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works   
**SUBJECT** : **ACCEPTANCE OF THE PARK ROAD BIKE LANE  
PROJECT INCLUDING CHANGE ORDER NO. 1**

**RECOMMENDATION:**

Adopt a resolution accepting the Park Road Bike Lane Project as complete, including Change Order No. 1, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**EXECUTIVE SUMMARY:**

The Park Road Bike Lane Project constructed bike lanes on Park Road from Adams Street to Oak Road. It will provide a connector route from Martinez to downtown Benicia once the new bike path on the Benicia-Martinez Bridge is completed. Formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor.

The final construction cost is \$382,575.00, which includes \$33,480.00 for Contract Change Order No.1 to cover the cost for adjustments to final construction quantities. The project was completed under budget.

**BUDGET INFORMATION:**

The Park Road Bike Lane Project has a budget comprised of the following work items:

<b><u>Project Revenues</u></b>	
Federal Aid Grant .....	\$108,000
<u>Local Match (Gas Tax and Capital Improvement Funds) .....</u>	<u>\$275,900</u>
<b>Total Project Budget.....</b>	<b>\$383,900</b>

A summary of the final expenditures made to date is outlined below:

<b><u>Project Expenditures</u></b>	
Original Construction Contract per Resolution No. 06-11	\$349,095
<u>Contract Change Order No. 1 (Adjustment for Final Construction Quantities) .....</u>	<u>\$33,480</u>
<b>Total Project Expenditures .....</b>	<b>\$382,575</b>

**Final Total Project Balance.....\$1,325**

The final excavation and aggregate base material quantities for the street widening work was greater than the amount estimated in the original bid. Change Order No. 1 covers the cost for the adjustment in these final construction quantities. A contract change order summary memorandum was provided to the City Manager on October 16, 2007.

The remaining balance of \$1,325 for the project will be returned to the Capital Improvement Fund Reserves.

**BACKGROUND:**

On August 15, 2006, the City Council awarded a contract to J.A. Gonsalves & Son Construction for the Park Road Bike Lane Project in the amount of \$349,095.00.

The project constructed bike lanes on Park Road from Adams Street to Oak Road and included minor street widening. This segment of Park Road is on the Bay Trail and Ridge Trail and will connect Contra Costa County with downtown Benicia and the Arsenal once the new bike path on the Benicia-Martinez Bridge is completed.

Completion of the project was delayed due to the design discrepancies, inclement weather, and corrective work required of the contractor; however, these delays did not result in any additional cost to the City.

The Park Road Bike Lane Project has been completed to the satisfaction of the City Engineer and it is recommended that Council accept this project as complete, including Change Order No. 1.

**Attachments:**

- Proposed Resolution
- Notice of Completion
- Project Photograph

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE PARK ROAD BIKE LANE PROJECT AS COMPLETE, INCLUDING CHANGE ORDER NO. 1, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 06-118, City Council awarded the contract for the Park Road Bike Lane Project; and

**WHEREAS**, J.A. Gonsalves & Son Construction has completed the work in accordance with the plans and specifications and to the satisfaction of the City Engineer for a final construction cost of \$382,575.00, including Change Order No. 1 in the amount of \$33,480 for an adjustment for the final quantities used on the project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the Park Road Bike Lanes Project as complete for a final construction cost of \$382,575.00.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice 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 6<sup>th</sup> day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

# Notice of Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA  
ATTN: CITY ENGINEER  
250 EAST L STREET  
BENICIA, CA 94510

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN THAT:

1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:  
  
**Park Road** located in the City of Benicia, County of Solano, State of California.  
  
**Nature of title as stated owner: In Fee.**
2. A work of improvement known as the **Park Road Bike Lane Project** at the property described was completed and accepted by the City Council of the City of Benicia on November 6, 2007.
3. The name of the contractor for the improvement is **J.A. Gonsalves & Son Construction of Napa, California.**

CITY OF BENICIA

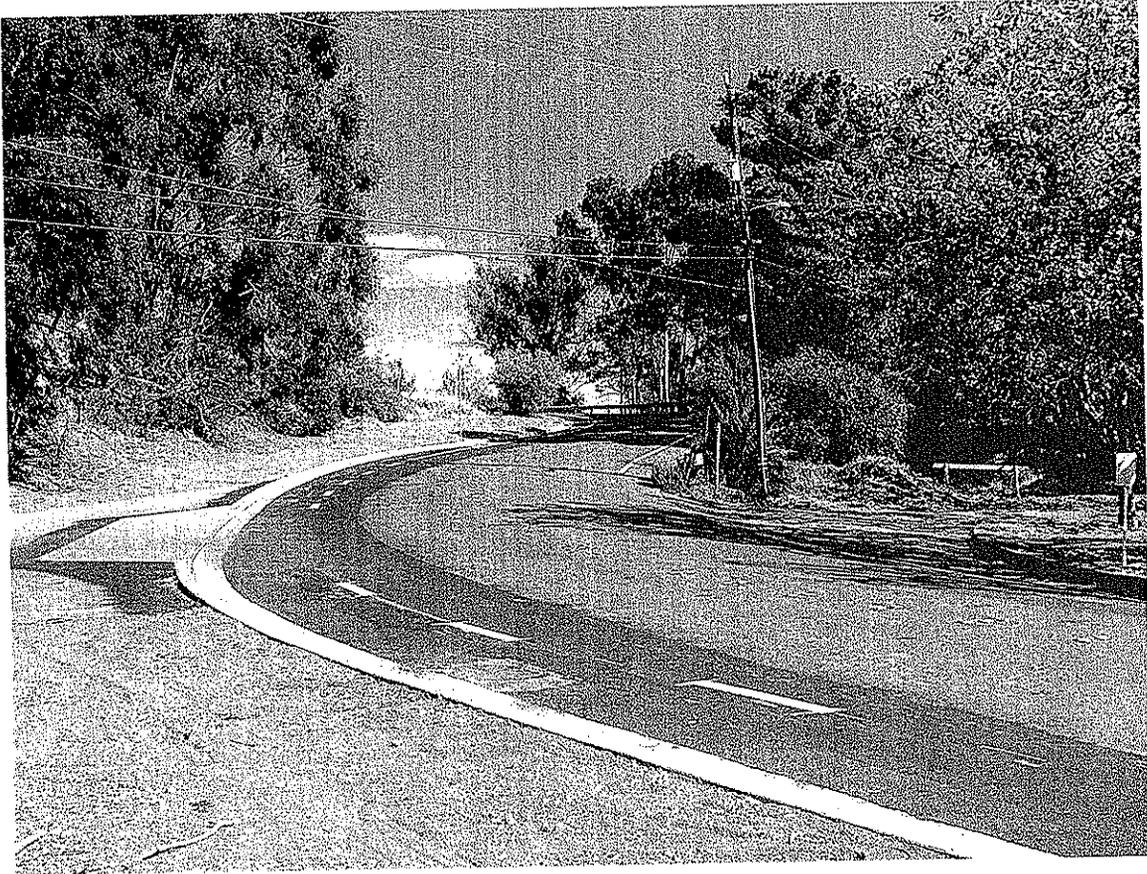
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James R. Erickson, City Manager

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

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



**PARK ROAD BIKE LANES PROJECT**

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 18, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works   
**SUBJECT** : **ACCEPTANCE OF THE ROBERT SEMPLE SAFE ROUTES TO SCHOOL PROJECT INCLUDING CHANGE ORDERS**

**RECOMMENDATION:**

Adopt a resolution accepting the Robert Semple Safe Routes to School Project as complete, including Change Order Nos. 1 and 2, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file same with the Solano County Recorder.

**EXECUTIVE SUMMARY:**

This project installed missing sections of sidewalk and handicap ramps in the vicinity of Robert Semple Elementary School, enhancing safety for children walking to school. Formal acceptance of the work by the City Council is now required to allow final payment to be made to the contractor.

The final construction cost of this grant funded project is \$119,527.25, which includes Contract Change Order No. 1 for \$20,000 to expand the limits of work and Contract Change Order No. 2 for \$10,752 to cover the cost for final construction quantities. The project was completed under budget and on schedule.

**BUDGET INFORMATION:**

The Robert Semple Safe Routes to School Project has a budget comprised of the following work items:

**Project Revenues**

Local Match (General Fund).....	\$13,530
Safe Routes to Schools Grant .....	\$121,770
<b>Total Project Budget.....</b>	<b>\$135,300</b>

A summary of the final expenditures made to date is outlined below:

**Project Expenditures**

Original Construction Contract Including Bid Alternate Bid per Resolution No. 07-34	\$88,775
Contract Change Orders	
No. 1 Expand Limits Of Work ( <i>Approved by Resolution No. 07-34</i> )	\$20,000
No. 2 Adjustment for Final Construction Quantities ( <i>Staff Approved</i> )	\$10,752
<b>Total Project Expenditures .....</b>	<b>\$119,527</b>
<b>Final Total Project Balance.....</b>	<b>\$15,773</b>

City Council approved Change Order No. 1 expanding the limits of work at the time of project award to use grant funding made available by the favorable low bids received. Material quantities installed by the contractor were greater than the original amount estimated in the bid. Change Order No. 2 covers the cost for the adjustment in these final construction quantities. A contract change order summary memorandum was provided to the City Manager on October 16, 2007.

The City's \$1,819 share of the remaining \$15,773 balance on this grant-funded project will be returned to the General Fund/Reserves.

**BACKGROUND:**

On April 17, 2007, the City Council awarded a construction contract to Pfister Excavating for the Robert Semple Safe Routes to School Project in the amount of \$88,775.25 and approved contract Change Order No. 1 in the amount of \$20,000 to use available grant funding to expand the project limits.

This project constructed sidewalks and handicap ramps on Hillcrest Avenue and East 3<sup>rd</sup> Street. These improvements, along with the recently installed ladder crosswalks and pedestrian crossing signs at the intersection of Hillcrest Avenue and East 3<sup>rd</sup> Street, enhance safety for children walking to Robert Semple Elementary School. The project was constructed during the summer break and was completed on the original construction schedule.

The Robert Semple Safe Routes to School Project was completed to the satisfaction of the City Engineer and it is recommended that Council accept this project as complete, including Change Order Nos. 1 and 2.

Attachments:

- Proposed Resolution
- Notice of Completion
- Project Photograph

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE ROBERT SEMPLE SAFE ROUTES TO SCHOOL PROJECT AS COMPLETE, INCLUDING CHANGE ORDER NOS. 1 AND 2, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 07-34, City Council awarded the contract for the Robert Semple Safe Routes to School Project and approved Change Order No. 1 in an amount of \$20,000 to expand the limits of work; and

**WHEREAS**, Pfister Excavating has completed the work in accordance with the plans and specifications and to the satisfaction of the City Engineer for a final construction cost of \$119,527.25, including Change Order No. 2 in the amount of \$10,752 for an adjustment for the final quantities used on the project.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the Robert Semple Safe Routes to School Project as complete for a final construction cost of \$119,527.25.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice 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 6<sup>th</sup> day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

# Notice of Completion

Recorded at the request of:

CITY OF BENICIA

After recording return to:

CITY OF BENICIA  
ATTN: CITY ENGINEER  
250 EAST L STREET  
BENICIA, CA 94510

**NOTICE OF COMPLETION**

NOTICE IS HEREBY GIVEN THAT:

- 1. The City of Benicia, 250 East L Street, Benicia, CA, 94510, is the owner of the property described as:

**Hillcrest Avenue and East 3<sup>rd</sup> Street** located in the City of Benicia, County of Solano, State of California.

**Nature of title as stated owner: In Fee.**

- 2. A work of improvement known as the **Robert Semple Safe Routes to School Project** at the property described was completed and accepted by the City Council of the City of Benicia on November 6, 2007.
- 3. The name of the contractor for the improvement is **Pfister Excavating of Vallejo, California.**

CITY OF BENICIA

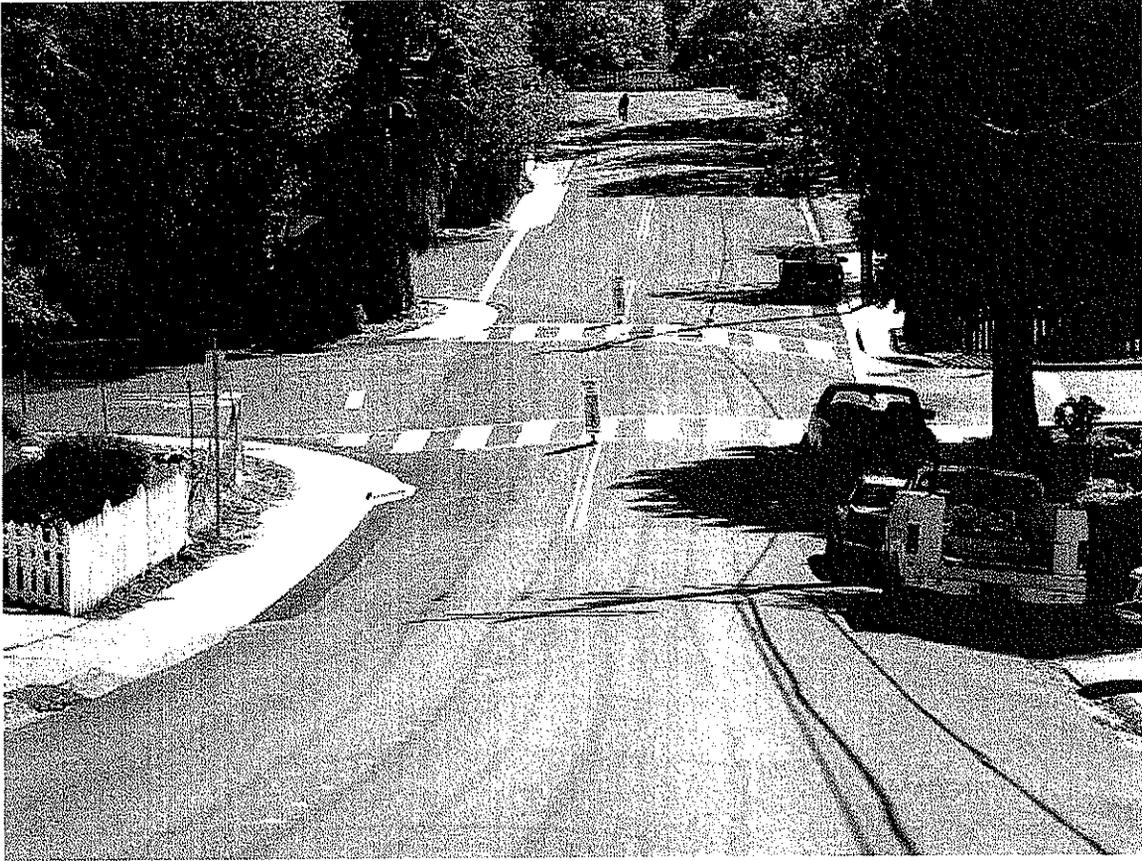
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James R. Erickson, City Manager

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

The undersigned, being duly sworn, says: that she is the person signing the above document; that she has read the same and knows the contents thereof, and that the facts stated therein are true, under penalty of perjury.

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



ROBERT SEMPLE SAFE ROUTES TO SCHOOL PROJECT

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 24, 2007

**TO** : City Manager

**FROM** : Economic Development Manager

**SUBJECT** : **ADOPTION OF A RESOLUTION AUTHORIZING SUBMITTAL OF A BAY AREA AIR QUALITY MANAGEMENT DISTRICT CLIMATE PROTECTION GRANT APPLICATION AND ADOPTION OF A RESOLUTION APPROVING ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY MEMBERSHIP AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION**

**RECOMMENDATION:**

Approve two resolutions related to energy efficiency and reducing our carbon footprint that will: 1) authorize submitting a Bay Area Air Quality Management District (BAAQMD) climate protection grant application, and 2) approve joining ICLEI-Local Governments for Sustainability, an international climate protection non-profit that runs the Cities for Climate Protection Campaign.

**EXECUTIVE SUMMARY:**

Reducing our organization's energy consumption and carbon footprint while improving the community's air quality is a Strategic Plan Top 12 Priority for 2007-09. Joining ICLEI will provide access to a toolkit of successful climate protection strategies, and submitting the BAAQMD grant application is intended to secure financial support for developing an emissions inventory and climate action plan, and/or hiring dedicated staff for monitoring energy use and coordinating climate protection actions.

**BUDGET INFORMATION:**

The cost to join ICLEI is \$600, which will be funded from the City Manager's Office memberships fund, in which adequate funds are available. The BAAQMD grant application request \$40,000 for development of the Inventory and Plan, or alternatively, up to \$75,000 for staffing energy use monitoring and coordination of climate protection actions.

**BACKGROUND:**

The United States Environmental Protection Agency set a national goal of reducing greenhouse gas intensity by 18% by 2012. More than 500 cities, through participation in the U.S. Mayors' Climate Protection Agreement, have pledged to meet or beat greenhouse gas emissions targets

based on the Kyoto Protocol – a 7% reduction in 1990 levels by 2010. The State of California’s goals are to reduce emissions to 2000 levels by 2010 and reduce to 1990 levels by 2020; the Governor’s Climate Action Team’s further goal is to reduce to 80% below 1990 levels by 2050. While Benicia does not have a specific target number, reducing our organization’s energy consumption and carbon footprint while improving the community’s air quality is also a Strategic Plan Top 12 Priority for 2007-09. On October 2, the Council directed staff to proceed with a lighting retrofit project, continue incremental improvements, gather more input from three commissions, and come back with recommendations for more projects or programs.

## **DISCUSSION:**

Tonight’s recommendations are intended to support the City’s existing initiatives, and future ones we undertake, notably taking an emissions inventory and formulating a Climate Action Plan (CAP). These are the two phases of the project in the application staff proposed to submit to BAAQMD. This is a new grant program, and its main goal is to reduce greenhouse gas emissions. The City’s application requests \$40,000 for the process of developing an emissions inventory and CAP. The City’s match will be an in-kind contribution for project management by staff, mainly the Economic Development Manager.

Staff also requests authority under the BAAQMD program to apply for up to \$75,000 for staffing a position that would be dedicated to monitoring energy use and coordinating climate protection actions. Note: As of this writing, we are unsure of which of the two alternative grant programs will be most competitive in the grant screening process, and accordingly, would like authority to submit either or both depending on further information.

The Inventory and Plan would be a multi-year project, which is allowable under the terms of the grant program: ICLEI staff suggested the inventory could take 400 person-hours. ICLEI has a resource package available for its members who hire student interns to do the inventory. Alternatively, ICLEI staff can be retained to conduct the Inventory and assist with Action Plan development.

Joining ICLEI will provide a strategy toolkit and outside assistance, but also requires the City to make a commitment to following the ICLEI-recommended route of doing an emissions inventory, then a CAP, then implementing the CAP. The City retains the right to determine appropriate objectives, policies and projects and undertake them at a pace that fits for the City. The annual membership cost for Benicia would be \$600. The resolution approving membership was authored by ICLEI.

The BAAQMD application is linked to joining ICLEI because it strengthens our grant application by demonstrating the City’s commitment to climate protection. Whether the grant application is successful or not, the City will need to tap outside resources like ICLEI to do an emissions inventory and CAP since there is no in-house expertise. A list of cities that are ICLEI members is attached including Walnut Creek, Martinez, Antioch, Hercules, Pinole, Dublin, San Ramon – and many other Bay Area cities.

Attachments:

- Proposed Resolutions
- ICLEI Members List, ICLEI FAQs, ICLEI CCP: How it works

## **PROPOSED RESOLUTIONS**

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING SUBMITTAL OF A BAY AREA AIR QUALITY MANAGEMENT  
DISTRICT CLIMATE PROTECTION GRANT APPLICATION**

**WHEREAS**, "increase energy efficiency" is Benicia General Plan Goal 3.27; and

**WHEREAS**, reducing our organization's energy consumption and carbon footprint while improving the community's air quality is a Strategic Plan Top 12 Priority for 2007-09; and

**WHEREAS**, on October 2, 2007, the City Council approved continuing the City's existing efforts to decrease energy use and greenhouse gas emissions, and increase the community's air quality; and

**WHEREAS**, the Bay Area Air Quality Management District (BAAQMD) has announced a climate protection grant program with the stated goal of reducing greenhouse gases; and

**WHEREAS**, City staff will prepare a grant application requesting \$40,000 to support developing an emissions inventory and Climate Action Plan, and a grant application requesting \$75,000 for a climate protection and capacity building grant intended to reduce greenhouse gas emissions.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves applying for the Bay Area Air Quality Management District Climate Protection Grants in the amount of \$40,000 and \$75,000, and authorizes the City Manager to sign the grant applications and any supporting documents on behalf of the City.

\* \* \* \* \*

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 6th day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING MEMBERSHIP IN ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION**

**WHEREAS**, scientific consensus has developed that carbon dioxide (CO<sub>2</sub>) and other greenhouse gases released into the atmosphere have a profound effect on the Earth's climate; and

**WHEREAS**, the 2007 Fourth Assessment Report from the Intergovernmental Panel on Climate Change (IPCC) states that it is very likely that most of the observed increases in globally averaged temperatures since the mid-20th century are due to human-induced greenhouse gas emissions; and

**WHEREAS**, in 2006 the U.S. National Climatic Data Center confirmed clear evidence of human influences on climate due to changes in greenhouse gases; and

**WHEREAS**, the U.S. Conference of Mayors endorsed the 2005 U.S. Mayors' Climate Protection Agreement initiated by Seattle Mayor Nickels and signed by 522 mayors in the United States as of May 2007; and

**WHEREAS**, the Urban Environmental Accords adopted by local government delegates during UN World Environment Day 2005 call for reduced emissions through energy efficiency, land use and transportation planning, waste reduction, and wiser energy management; and

**WHEREAS**, in 2003 the American Geophysical Union adopted a Statement noting that human activities are increasingly altering the Earth's climate and that natural influences cannot explain the rapid increase in near-surface temperatures observed during the second half of the 20th century; and

**WHEREAS**, in 2001, at the request of the Administration, the National Academy of Sciences (NAS) reviewed and declared global warming a real problem likely due to human activities; and

**WHEREAS**, the 2000 U.S. Global Change Research Program's (USGCRP) First National Assessment indicated that global warming has begun; and

**WHEREAS**, 162 countries including the United States pledged under the United Nations Framework Convention on Climate Change to reduce their greenhouse gas emissions; and

**WHEREAS**, energy consumption, specifically the burning of fossil fuels, accounts for more than 80% of U.S. greenhouse gas emissions; and

**WHEREAS**, local government actions taken to reduce greenhouse gas emissions and increase energy efficiency provide multiple local benefits by decreasing air pollution, creating jobs, reducing energy expenditures, and saving money for the local government, its businesses, and its residents; and

**WHEREAS**, the Cities for Climate Protection® Campaign sponsored by ICLEI – Local Governments for Sustainability has invited the City of Benicia to join ICLEI and become a partner in the Cities for Climate Protection Campaign.

**NOW, THEREFORE, BE IT RESOLVED** that the City of Benicia, California will join ICLEI as a Full Member and participate in the Cities for Climate Protection Campaign and, as a participant, pledges to take a leadership role in promoting public awareness about the causes and impacts of climate change.

**BE IT FURTHER RESOLVED** that the City of Benicia will undertake the Cities for Climate Protection Campaign’s five milestones to reduce both greenhouse gas and air pollution emissions throughout the community, and specifically:

- Conduct a greenhouse gas emissions inventory and forecast to determine the source and quantity of greenhouse gas emissions in the jurisdiction;
- Establish a greenhouse gas emissions reduction target;
- Develop an action plan with both existing and future actions which when implemented will meet the local greenhouse gas reduction target;
- Implement the action plan; and
- Monitor and report progress.

**BE IT FURTHER RESOLVED** that the City of Benicia requests assistance from ICLEI’s Cities for Climate Protection Campaign as it progresses through the milestones.

\* \* \* \* \*

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 6th day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

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

Attest:

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

# **ICLEI ATTACHMENTS**





**ICLEI Members  
Cities for Climate Protection® Campaign Participants  
October 2007**

Provincetown  
Reading  
Salem  
Shutesbury  
Somerville  
Spencer  
Springfield  
Waltham  
Watertown  
Williamstown  
Winchester  
Worcester

**Michigan**  
Ann Arbor  
Delta County  
East Lansing  
Grand Rapids  
Grand Traverse County  
Traverse City  
Washtenaw County

**Minnesota**  
Duluth  
Hennepin County  
Minneapolis  
Northfield  
Ramsey County  
Saint Paul  
White Bear Lake

**Missouri**  
Columbia  
Kansas City  
Saint Louis

**Montana**  
Bozeman  
Missoula

**Nevada**  
Las Vegas

**New Hampshire**  
Dover  
Epping  
Keene  
Nashua  
Portsmouth  
Rochester

**New Jersey**  
Belmar  
Hamilton  
Maplewood  
Meadowlands  
Newark

**New Mexico**  
Albuquerque  
Santa Fe  
Taos

**New York**  
Albany  
Babylon  
Bedford  
Brighton  
Buffalo  
Clarkstown  
Cooperstown  
Greenburgh  
Huntington  
Ithaca  
Larchmont  
Mamaroneck  
Mount Vernon  
Nassau County  
New Paltz

New Rochelle  
New York  
North Castle  
Oneonta  
Red Hook  
Saratoga Springs  
Schenectady County  
Suffolk County  
Syracuse  
Tompkins County  
Westchester County  
Yonkers  
Yorktown

**North Carolina**  
Asheville  
Carrboro  
Chapel Hill  
Charlotte  
Durham  
Orange County  
Raleigh  
Winston-Salem

**Ohio**  
Alliance  
Athens  
Cleveland  
Oberlin  
Toledo

**Oklahoma**  
Norman

**Oregon**  
Ashland  
Beaverton  
Corvallis  
Eugene

Hillsboro  
Lake Oswego  
Multnomah County  
Portland

**Pennsylvania**  
Haverford  
Lower Makefield Township  
Nether Providence  
Philadelphia County  
Pittsburgh  
West Chester

**Rhode Island**  
Pawtucket  
Providence

**South Carolina**  
Charleston  
Columbia  
Georgetown  
Sumter

**Tennessee**  
Chattanooga  
Knoxville  
Memphis  
Signal Mountain

**Texas**  
Arlington  
Austin  
Coppell  
Dallas  
Denon  
Houston  
Plano  
San Antonio

**Utah**  
Park City  
Salt Lake City  
Salt Lake County

**Vermont**  
Brattleboro  
Burlington  
Chittenden County  
Middlebury  
Montpelier

**Virginia**  
Albemarle County  
Arlington County  
Blacksburg

Charlottesville  
Harrisonburg  
Norfolk  
Roanoke  
Roanoke County

**Washington**  
Bellevue  
Bellingham  
Burien  
Clallam County  
Edmonds  
Everett  
Jefferson County  
King County  
Kirkland

La Conner  
Lake Forest Park  
Langley  
Lynnwood  
Mercer Island  
Oak Harbor  
Olympia

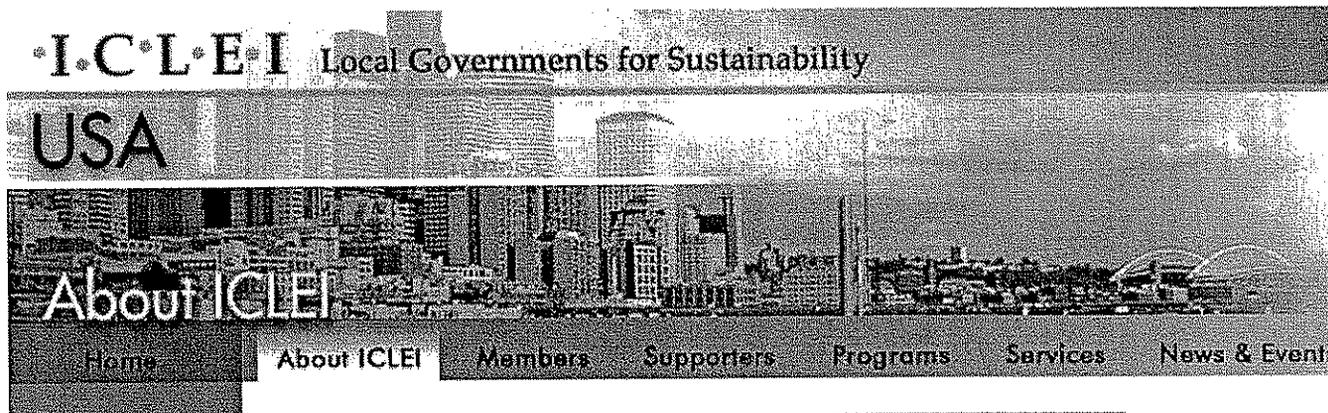
Pierce County  
Port Townsend  
Seattle  
Shoreline  
Snohomish County  
Spokane  
Spokane County  
Tacoma  
Tukwila  
Tumwater  
Vancouver  
Washougal  
Whatcom County

**Wisconsin**  
Ashland  
Dane County  
Madison  
Milwaukee

**Wyoming**  
Jackson  
Teton County

ICLEI - Local Governments for Sustainability U.S.A. Inc.  
436 14th Street, Suite 1520  
Oakland, CA 94612

Phone: 510.844.0699  
Fax: 510.844.0698  
e-mail: iclei-usa@iclei.org  
www.iclei.org/usa



ICLEI  
worldwide  
member login

US regional  
networks

### Frequently asked questions about ICLEI

[About ICLEI](#) | [who we are](#) | [what we do](#) | [jobs at ICLEI](#)

Here you will find answers to common questions about ICLEI and the programs and services that we offer.

#### General FAQs

[What is ICLEI?](#)

[What does the ICLEI acronym mean?](#)

[How can a jurisdiction join ICLEI?](#)

[What options are available to local governments related to greenhouse gas registries and carbon trading?](#)

#### Cities for Climate Protection (CCP) FAQs

[What is the Cities for Climate Protection Campaign?](#)

[How many local governments participate?](#)

[How does a jurisdiction participate in the CCP Campaign?](#)

[What do participating jurisdictions do?](#)

[How do jurisdictions benefit from participating in the CCP Campaign?](#)

[How much staff time does the CCP Campaign require?](#)

[How do Local Governments go about completing the 5 Milestones?](#)

[What technical assistance is available?](#)

[How do local governments inventory emissions?](#)

[How do jurisdictions develop emissions reduction plans?](#)

[How do jurisdictions implement Local Action Plans?](#)

#### Communities 21 FAQs

[What are the tangible benefits of undertaking a comprehensive local government sustainability initiative \(Communities 21\) process?](#)

[How does a comprehensive sustainability approach fit with existing policies and programs?](#)

[What is the cost of pursuing a comprehensive sustainability approach?](#)

[What does ICLEI offer local governments pursuing the Communities 21 milestone process?](#)

If you have further questions, please [contact us](#).

#### What is ICLEI?

ICLEI - Local Governments for Sustainability is an international

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membership association of local governments dedicated to addressing environmental problems through local actions.

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***What does the ICLEI acronym mean?***

ICLEI was founded in 1990 as the International Council for Local Environmental Initiatives. Today we are known as ICLEI - Local Governments for Sustainability. The U.S. affiliate corporation is ICLEI - Local Governments for Sustainability U.S.A., Inc.

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***How can a jurisdiction join ICLEI?***

ICLEI members pay an annual fee based on population. Members are invited to attend worldwide forums, receive discounts on workshop and other fees, have access to all ICLEI resources and programs, and participate in ICLEI's organizational structure.

Visit the [Members](#) section for more information on joining ICLEI.

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***What options are available to local governments related to greenhouse gas registries and carbon trading?***

As a network of independent local governments we recognize that there are many approaches available to motivated cities for achieving reductions in greenhouse gas emissions, from voluntary registries to cap and trade regimes. Each is governed by a variety of philosophies and ideals. ICLEI honors this diversity and respects each participant's political sovereignty to embrace a process that is compatible with their own jurisdiction. ICLEI occasionally develops collaborative agreements with organizations that advocate for a specific approach so that we can simplify voluntary access to these mechanisms for interested participants. In doing so, we do not advocate for any single approach.

Our role is to provide technical assistance and comprehensive information on available strategies and to support collaboration between local governments in order to strengthen this vital CCP global movement. By working together to make climate change mitigation a local priority, we all gain.

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***What is the Cities for Climate Protection Campaign?***

The Cities for Climate Protection® (CCP) Campaign is an ICLEI program that engages cities, towns, and counties in reducing the pollution that causes global warming. The CCP Campaign began in 1993.

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***How many local governments participate?***

More than 150 cities, towns, and counties in the United States and over 600 municipalities worldwide participate in the CCP Campaign.

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***How does a jurisdiction participate in the CCP Campaign?***

Any city, county, or town can participate in the CCP Campaign by adopting a resolution or making an executive proclamation that commits to achieving the CCP 5 Milestones. Visit the [climate protection](#) pages in the Programs section for more information.

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***What do participating jurisdictions do?***

Jurisdictions participating in the CCP Campaign commit to reduce local emissions that contribute to global warming by working through the 5 Milestones.

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***How do jurisdictions benefit from participating in the CCP Campaign?***

- CCP Campaign participants reduce global warming pollution, cut traffic, save tax dollars, clean the air, and improve quality of life in their communities.
- Jurisdictions participating in the CCP Campaign have access to a national and worldwide network of local governments that act to protect the climate through innovative and proven projects.
- ICLEI develops and provides case studies, training workshops, publications and other learning opportunities.
- ICLEI staff assists with the emissions inventory and connects jurisdictions with state, regional and federal government and other resources.

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***How much staff time does the CCP Campaign require?***

A staff liaison to the CCP Campaign from Energy, Planning, Public Works or other department integrates CCP Campaign work with ongoing department activity. The time requirement varies depending on the size and complexity of the local government, the pace at which the local government opts to address the milestones, and involvement from community members.

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***How do Local Governments go about completing the 5 Milestones?***

Most jurisdictions participating in the CCP Campaign address the campaign milestones internally along with the [assistance](#) of staff

from the US Office. Other options are:

- Hire or work with a local student intern to assist with the emissions inventory and action plan development. ICLEI provides a sample job description, workplan, tips on finding and working with an intern, and provides technical assistance tools specifically targeted at student interns.
- Hire a local consultant.

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#### ***What technical assistance is available?***

We provide a great deal of technical assistance through specific policy initiatives, case studies and other useful publications, quantification tools, and individual and conference-based training, all geared toward building in-house capacity among local governments to carry on climate protection work over the long-term.

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#### ***How do local governments inventory emissions?***

Collect relevant data on local transportation, waste, and energy consumption. ICLEI provides forms for collecting data and software for conducting the emissions inventory. The software computes emissions numbers as well as co-benefits such as cost savings and criteria air pollution prevention. The inventory establishes a GHG baseline.

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#### ***How do jurisdictions develop emissions reduction plans?***

Cities and counties follow the 5 Milestones through the [CCP Toolkit](#). The Toolkit, mailed out to each new jurisdiction, helps participants identify emissions reduction ideas and strategies.

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#### ***How do jurisdictions implement Local Action Plans?***

The Local Action Plan is a city's or county's strategy for reducing greenhouse gas emissions, based on the results of the emissions inventory. Each CCP local government uses the Local Action Plan to implement pollution-cutting measures, quantify benefits of the actions, and track success in meeting targets.

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#### ***What are the tangible benefits of undertaking a comprehensive local government sustainability initiative (Communities 21) process?***

- A cleaner, healthier environment for present and future generations.
- Cost savings: Effective policy integration and smart long-term planning can save resources and money.

- Local policy that is representative of ecosystem limits as well as the community's needs and values.
- Creative solutions fostered by integrated decision-making that emphasizes collaboration among municipal departments.
- Stronger community and local government partnerships.
- Creation of a more socially-just society.

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***How does a comprehensive sustainability approach fit with existing policies and programs?***

Sustainability, as a concept, provides a context for local government operations and multiple community concerns. ICLEI has designed the Communities 21 milestone process to allow for integration of existing planning processes undertaken by local government, such as a general/master/comprehensive plan. It is also designed to encourage incorporation with existing programs that support sustainability goals, such as recycling, green building, or smart growth programs. By developing interdepartmental staff collaboration on existing sustainable initiatives and by pursuing a comprehensive sustainability approach, sustainability goals can be achieved more efficiently.

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***What is the cost of pursuing a comprehensive sustainability approach?***

Expenses will vary among local governments depending on the scope of the process, and whether it is integrated into an existing process such as a revision of a master/comprehensive plan. If sustainability is the core principle of a master/comprehensive plan, some additional expenses may be incurred because the Communities 21 milestone process emphasizes public participation and a detailed sustainability inventory. If the sustainability process is not integrated into a general/master plan, then staff time and other costs will be incurred. Cost-effective solutions to meeting costs could involve soliciting non-monetary assistance, e.g. help from a local non-profit, obtaining a grant from a local foundation, or hiring a community/student volunteer.

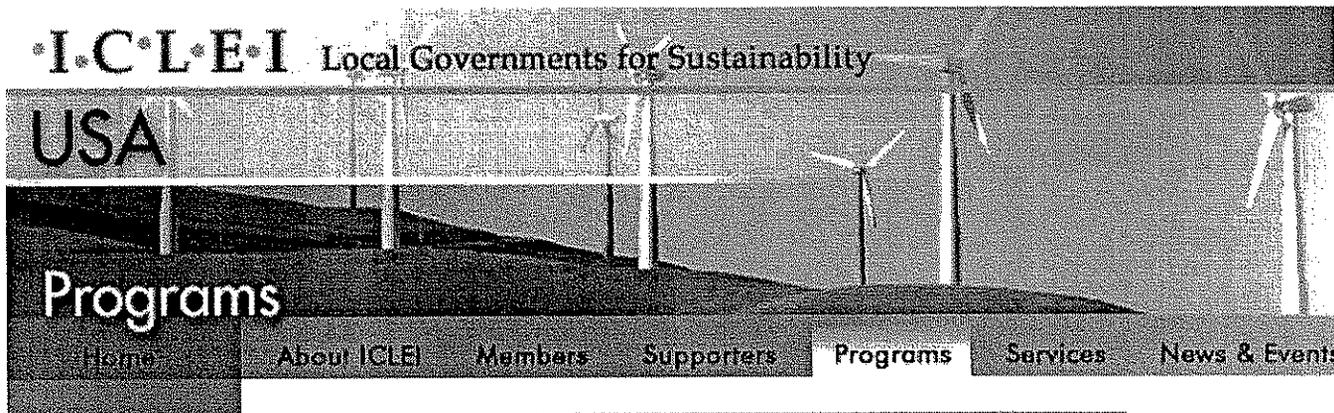
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***What does ICLEI offer local governments pursuing the Communities 21 milestone process?***

ICLEI offers numerous resources for local governments striving to create a more sustainable community. ICLEI offers consulting services for municipalities needing technical assistance in their sustainability endeavors. Assistance ranges from developing a comprehensive sustainability plan and completing a Sustainability Inventory, to formulating procurement, transportation, and planning policies that integrate sustainability criteria. Internet-accessible resources include a matrix of applied sustainability policies and programs that local government departments are carrying out, links to sustainability initiatives municipalities across the US, and a

comprehensive list of resources that describe 'sustainability' in depth. Training workshops are also held which describe the milestone process, with special emphasis on tools and best methods for completing the milestones. ICLEI coordinates regional meetings around the United States to assist municipalities in sharing success stories and developing more effective strategies for moving towards sustainability.

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**ICLEI**  
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[member login](#)  
  
**US regional**  
 networks

**CCP: How it works**

[CCP home](#) | [participants](#) | [join us](#) | [projects](#) | [resources](#) | [FAQs](#)

Once cities join ICLEI-US and make the commitment to participate in the CCP Campaign, ICLEI provides experienced staff, software tools, and a wide variety of programs and technical assistance to help local governments reduce greenhouse gas emissions in an effective, efficient manner.

**Benefits of Participation**

ICLEI provides local governments that participate in the CCP Campaign with access to the following resources:

- Software products and associated training to assist with the quantification of greenhouse gas reductions and other benefits of climate protection planning.
- Access to a professional network of peers through listservs, newsletters, conferences, and workshops.
- Toolkits, online resources, case studies, fact sheets, policy and practice manuals, and guides on approaches that other local governments have successfully used to reduce greenhouse gases.
- Training workshops for staff and elected officials on how to develop and implement effective long-term emission reduction strategies.
- Technical assistance in designing and implementing actions to reduce greenhouse gas emissions.
- Notification of relevant grant opportunities.
- Assistance in publicizing local climate protection successes.

In addition, the communities that participate in CCP also benefit from the actions that they take to reduce greenhouse gas emissions through:

- Financial savings in reduced utility and fuel costs to the local government, households, and businesses.
- Improved local air quality, contributing to the general health and well being of the community.
- Economic development and new local jobs as investments in locally produced energy products and services keep money circulating in the local economy.

**Getting Started**

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Local governments begin participating in the CCP Campaign by passing a resolution pledging to reduce greenhouse gas emissions from their local government operations and throughout their communities. Each local government sets its own emission reduction target and develops a Local Action Plan outlining actions that the city will pursue to meet its target.

After passing the resolution, the local government designates a staff member and an elected official to serve as the city's liaisons to ICLEI. The liaisons then receive welcome packets from ICLEI that include a detailed Toolkit. This toolkit leads the local government staff person step-by-step through the 5 Milestone process.

### **The 5 Milestones**

The methodology underlying the 5 Milestones of the CCP Campaign provides a simple, standardized means of calculating greenhouse gas emissions, of establishing targets to lower emissions, of reducing greenhouse gas emissions and of monitoring, measuring and reporting performance. ICLEI has developed a software tool that helps cities comply with the methodology. The 5 milestones are:

1. Conduct a baseline emissions inventory and forecast. Based on energy and waste data, the city calculates greenhouse gas emissions for a base year (e.g., 2000) and for a forecast year (e.g., 2015). The inventory and the forecast capture emissions from all municipal operations (e.g., city owned and/or operated buildings, streetlights, transit systems, wastewater treatment facilities) and from all community-related activities (e.g., residential and commercial buildings, motor vehicles, waste streams, industry). The inventory and forecast provide a benchmark against which the city can measure progress.
2. Adopt an emissions reduction target for the forecast year. The city passes a council resolution establishing an emission reduction target for the city. The target is essential both to foster political will and to create a framework to guide the planning and implementation of measures.
3. Develop a Local Action Plan. The local government develops a Local Action Plan that describes or lists the policies and measures that the local government will take to reduce greenhouse gas emissions and achieve its emissions reduction target. Most plans include a timeline, a description of financing mechanisms, and an assignment of responsibility to departments and staff. In addition to direct greenhouse gas reduction measures, most plans also incorporate public awareness and education efforts. The development of the Local Action Plan should include strong public input and involvement in order to build the consensus among stakeholders required to implement measures.
4. Implement policies and measures. The city implements the policies and measures contained in their Local Action Plan. Typical policies and measures implemented by CCP participants include energy efficiency improvements to municipal buildings and water treatment facilities, streetlight retrofits, public transit improvements, installation of renewable power applications, and methane recovery from

waste management.

5. Monitor and verify results. Monitoring and verifying progress on the implementation of measures to reduce or avoid greenhouse gas emissions is an ongoing process. Monitoring begins once measures are implemented and continues for the life of the measures, providing important feedback that can be used to improve the measures over time. ICLEI's software provides a uniform methodology for cities to report on measures.

#### **Technical Assistance**

ICLEI provides cities that participate in the CCP Campaign with a range of technical assistance. Some of the assistance is available for free to participating local governments. Other assistance is available for hire from ICLEI. In general, ICLEI offers assistance in four discrete categories.

- **Inventory Assistance.** ICLEI can assist local governments in conducting their baseline emission inventories and their emission forecasts, helping the city understand how and from whom to collect the necessary data. Alternatively, ICLEI can conduct the entire inventory and forecast on behalf of the city, presenting the results to city staff, elected officials and the community as and when requested by the city. If you would like assistance with conducting your inventory, please contact us.
- **Measures Identification and Quantification Assistance.** ICLEI can assist local governments in identifying potential measures that the city can take to reduce greenhouse gas emissions. ICLEI can also help the city quantify the emission reductions and other benefits (financial, quality of life) from the full range of possible policies and measures. If you would like assistance in identifying measures or quantifying the impact of measures, please contact us.
- **Policy Assistance.** ICLEI provides case studies, fact sheets, agenda reports, sample resolutions, policy frameworks, model ordinance language, and links to key technical information that can assist local governments implement a wide range of measures. Check out the [Tools](#) section for more details.
- **Software Assistance.** ICLEI can answer most of your questions regarding the use of the CACP software. If ICLEI cannot answer your question, we will refer you to the developer of the software.

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 29, 2007  
**TO** : City Manager  
**FROM** : Director of Public Works  
**SUBJECT** : **EMERGENCY WATER MAIN REPAIR WORK ON VIEWMONT STREET SOUTH OF CASA GRANDE STREET—FINAL REPORT**

**RECOMMENDATION:**

Adopt the resolution (by four-fifths vote) authorizing the termination of the Declaration of Emergency, accepting the completion of the emergency work to repair the water main and street pavement section on Viewmont Street south of Casa Grande Street, and authorizing an appropriation of \$109,000 from the Water Enterprise Fund Reserves.

**EXECUTIVE SUMMARY:**

The Public Works Department entered into a contract with G.D. Nielson Construction, Inc. of Napa to perform emergency repair work on the water main and street section of Viewmont Street south of Casa Grande Street in response to a water line break that occurred on September 30, 2007. An emergency declaration by the City Manager authorized staff to proceed ahead by hiring a contractor to perform the work without giving notice for bids. At their October 16, 2007 meeting, Council authorized continuation of this emergency work and an appropriation of \$200,000. Work began October 8<sup>th</sup> and was completed October 29<sup>th</sup> at a total cost of \$109,000. The remaining \$91,000 will be returned to the Water Enterprise undesignated fund reserves.

**BUDGET INFORMATION:**

The preliminary cost estimate to complete the repair work was \$200,000. The final cost is \$109,000 as shown below. A total of \$5,000 is included in the adopted Fiscal Year 2007–2008 municipal budget for emergency water line repairs. The City Council approved an appropriation of up to \$200,000 for this emergency work. However, as the project was less costly than originally estimated, only \$109,000 is needed to be appropriated from the Water Enterprise Fund undesignated reserves for the work performed. This appropriation allows for the original \$5,000 budget for other minor emergency repairs that may be required this fiscal year.

**Budget**

Adopted FY 2007–2008 Budget: Emergency Repairs (Water Utility).....	\$5,000
Additional Appropriation ( <i>THIS REQUEST</i> ) .....	109,000
<u>Total Budget Emergency Repairs .....</u>	<u>\$114,000</u>

**Emergency Repair Expenses**

G.D. Neilson Construction	
Original Contract .....	\$92,310
Change Order No. 1 (Additional valve, tee, pavement repair) .....	12,985
Change Order No. 2 (Overtime to complete work) .....	3,030
Subtotal Neilson Construction .....	\$108,325
Miscellaneous Striping Expenses .....	675
Total Emergency Repair Expenses .....	\$109,000
Other FY 2007–2008 Emergency Repairs .....	5,000
Total FY 2007–2008 Emergency Repair Expenses .....	\$114,000

**BACKGROUND:**

On September 30th, the Public Works Maintenance Division responded to a call of a water main break on Viewmont Street south of Casa Grande Street. The city crews performed temporary repairs and stopped the leak. However, permanent repairs needed to be made to the water main. The leak also caused significant damage to the street section along Viewmont Street including washing-out of the base material and heaving of the asphalt surface. A portion of the street was closed until permanent repairs were completed.

Because of the immediate health and safety concerns, the City Manager in accordance with Section 3.09.050 of the Benicia Municipal Code, made a Declaration of Emergency enabling the Public Works Department to proceed with hiring a contractor to perform the emergency repair work without delays resulting from solicitation for competitive bids. The Director of Public Works entered into a contract with G.D. Nielson Construction, Inc., of Napa to proceed immediately in completing the necessary work. Nielson began Monday, October 8th. The construction was completed to the satisfaction of the City Engineer on October 26, 2007. The work included replacing the water line, three service laterals, four control valves, and completely reconstructing the street pavement. City maintenance personnel performed final striping and marking on October 29th.

In accordance with State law and City Ordinance, it is recommended that the City Council terminate the emergency and accept the completion of the emergency work at a final cost of \$109,000. The project cost requires an appropriation from the Wastewater Enterprise Fund undesignated reserves. Overall, however, the costs were kept to a minimum through the efficient operations of the Contractor and the ongoing assistance provided by the City's Public Works Maintenance Division crews.

Attachments:

- Proposed Resolution
- Photographs of Completed Work

# Proposed Resolution

**RESOLUTION NO. 07-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
TERMINATING THE DECLARATION OF EMERGENCY, ACCEPTING THE  
COMPLETION OF THE EMERGENCY WORK TO REPAIR THE WATER  
MAIN AND STREET PAVEMENT SECTION ON VIEWMONT STREET SOUTH  
OF CASA GRANDE STREET, AND AUTHORIZING AN APPROPRIATION OF  
\$109,000 FROM THE WATER ENTERPRISE FUND RESERVES**

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

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

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

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

**WHEREAS**, the City Council on October 16, 2007, authorized the continuation of emergency repair work and appropriated \$200,000 from the Water Enterprise undesignated fund reserves; and

**WHEREAS**, G.D. Nielson Construction, Inc., of Napa was selected to perform the work, which began on October 8, 2007; and

**WHEREAS**, the emergency repair work to the Viewmont Street water main and street pavement was completed to the satisfaction of the City Engineer for a final cost of \$109,000.

**NOW, THEREFORE, BE IT RESOLVED BY A FOUR-FIFTHS VOTE** of the City Council of the City of Benicia that the City Council hereby terminates the Declaration of Emergency, accepts the completion of the emergency work to repair the water main and street pavement section on Viewmont Street south of Casa Grande Street, and authorizes an appropriation of \$109,000 from the Water Enterprise Fund Reserves.

\*\*\*\*\*

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

Ayes:

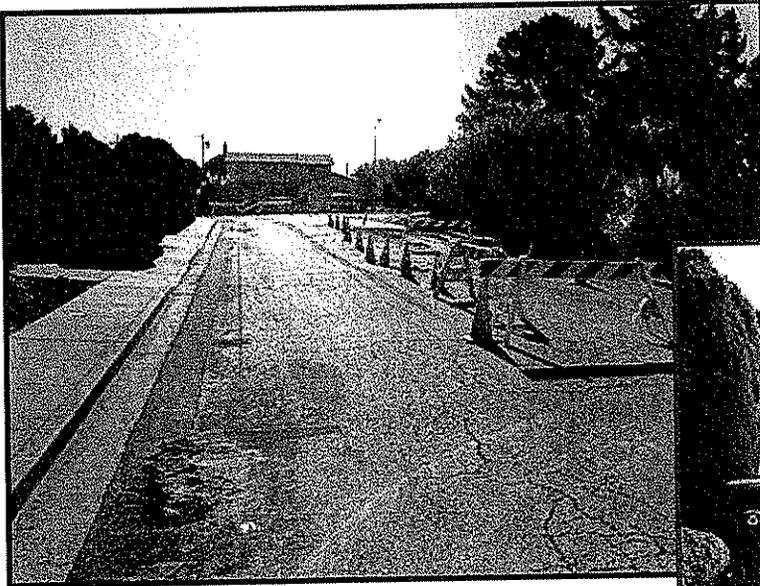
Noes:

Absent:

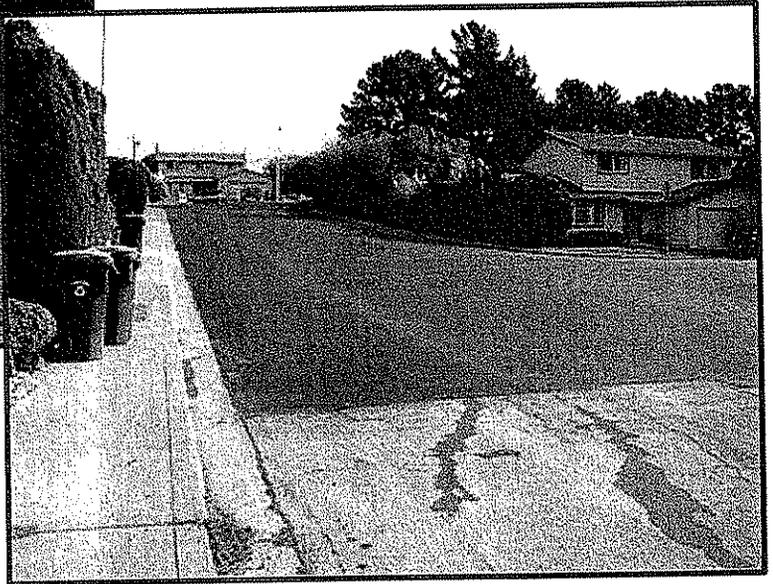
\_\_\_\_\_  
Steve Messina, Mayor

Attest:

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



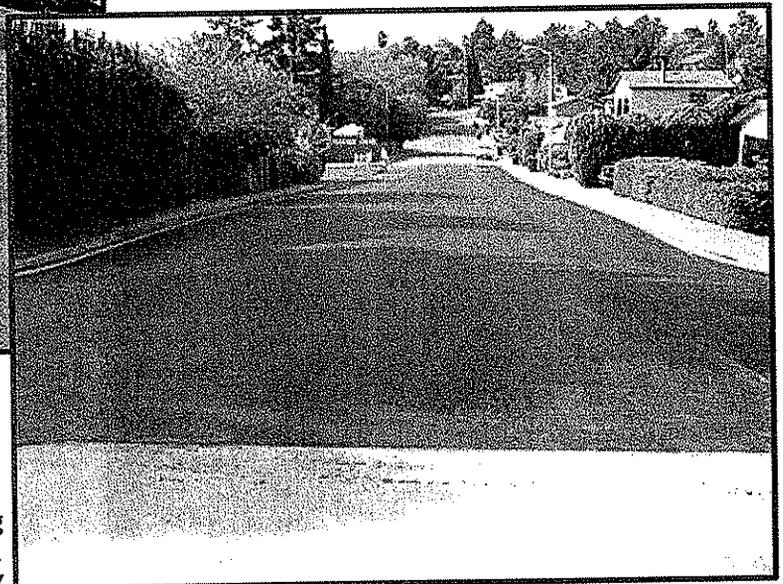
Street Damage Looking  
Eastbound on Viewmont St.  
October 1, 2007



Street Repairs Looking  
Eastbound on Viewmont St.  
October 26, 2007



Street Damage Looking  
Westbound on Viewmont St.  
October 1, 2007



Street Repairs Looking  
Westbound on Viewmont St.  
October 26, 2007

 <p>THE CITY OF <b>BENICIA</b> CALIFORNIA</p>	<p><b>CITY OF BENICIA</b></p>		<p>PUBLIC WORKS DEPARTMENT</p>	
	<p>TITLE <b>VIEWMONT STREET EMERGENCY REPAIRS</b> <b>VII-L-6</b></p>			
<p>PROJECT Viewmont St Declaration of Emergency</p>	<p>DATE OCTOBER 2007</p>	<p>SHEET One</p>		

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
CONSENT CALENDAR**

**DATE** : October 31, 2007  
**TO** : City Council  
**FROM** : City Manager  
**SUBJECT** : **CANCELLATION OF THE JANUARY 1, 2008 CITY COUNCIL MEETING**

**RECOMMENDATION:**

City Council authorize, by motion, cancellation of the January 1, 2008 City Council meeting.

**EXECUTIVE SUMMARY:**

The first City Council meeting of January 2008 falls on a holiday. It is recommended that the January 1st meeting be cancelled.

**BUDGET INFORMATION:**

There is no direct budget impact associated with this action.

**SUMMARY:**

During this time of year, business to be addressed at Council meetings is typically lighter and residents are more likely to be out of town on vacation. Because the date of this regularly scheduled Council meeting falls on the New Year's Day holiday, it is suggested that the City Council cancel the January 1, 2008 City Council meeting.

**AGENDA ITEM  
CITY COUNCIL MEETING: NOVEMBER 6, 2007  
ACTION ITEMS**

**DATE** : October 22, 2007

**TO** : City Manager

**FROM** : Director of Parks and Community Services

**SUBJECT** : **APPROVE SUBLEASE AGREEMENTS BETWEEN THE CITY OF BENICIA AND THE GIRL SCOUTS OF NORTHERN CALIFORNIA AND BENICIA LIONS CLUB (SPONSORING AGENT FOR BENICIA BOY SCOUTS)**

**RECOMMENDATION:**

Adopt the proposed resolution authorizing the City Manager to sign long term sublease agreements between the City of Benicia and the Girl Scouts of Northern California and Benicia Lions Club, which is the sponsoring agent of the Benicia Boy Scouts

**EXECUTIVE SUMMARY:**

The sublease agreements between the City and the respective scouting organizations establish a landlord tenant relationship for a period of 40 years with two 10 year extensions, for designated property at the Mills Community Center. The purpose of these agreements is to provide the organizations locations to conduct scouting business and activities.

**BUDGET INFORMATION:**

Both lease agreements establish an annual rental rate of one dollar. The lease agreements require that the rental payments, totaling forty dollars, are due and payable in full upon execution of the agreements.

The agreements further states that the respective organization's gift of funds from Valero Energy Corporation, in the amount of \$200,000, shall be paid to the City of Benicia. In consideration of this payment, the City shall perform improvements specified in the agreements.

**BACKGROUND:**

On March 29, 2007 the City Council and Benicia Unified School District Governing Board of Trustees, in a joint meeting, voted to enter into a lease agreement whereby the City of Benicia would lease the Mills facility from the BUSD for use as a community center. The lease agreement is for a term of 40 years with two 10 year options.

Following the execution of the Master Lease Agreement between the City and the BUSD, City Staff and the scout organizations began negotiating to develop sublease agreements. The

agreements establish a landlord-tenant relationship whereby each scout organization will rent two classrooms totaling over 1900 square feet.

Prior to taking occupancy, the City will make specified improvements including such things as a kitchenette, installation of cabinets, removal of a common wall, in the case of the Boy Scouts, and installation of a door between the common wall, for the Girl Scouts

cc: City Attorney

Attachments:

- Proposed Resolution
- Girl Scouts Sublease Agreement
- Lions Club of Benicia (Boy Scouts) Sublease Agreement

## Proposed Resolution

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING THE CITY MANAGER TO SIGN ON BEHALF OF THE CITY THE  
SUBLEASE AGREEMENTS BETWEEN THE GIRL SCOUTS OF NORTHERN  
CALIFORNIA AND THE LIONS CLUB OF BENICIA FOR A PORTION OF THE  
PROPERTY AT MILLS COMMUNITY CENTER**

**WHEREAS**, the City of Benicia entered into a long term lease (“Master Lease”) with the Benicia Unified School District for the property formerly known as Mills School, which is located at 380 East “L” street, Benicia, CA (“Property”); and

**WHEREAS**, pursuant to its terms, the Master Lease permits the City of Benicia to sublease or assign, all or any portion of its leasehold in the Property; and

**WHEREAS**, the City of Benicia wishes to sublease a portion of the Property to the Girls Scouts of Northern California and the Lions Club of Benicia for the sole purpose of providing a location for Benicia Scouts to conduct standard activities and operations; and

**WHEREAS**, the City of Benicia agrees to sublease a portion of the Property to the Girl Scouts of Northern California and the Lions Club of Benicia.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby approves the sublease agreements between the City of Benicia and the Girl Scouts of Northern California and the Lions Club of Benicia as a sponsoring agent for the Benicia Boy Scouts.

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

\*\*\*\*\*

On motion of Council Member \_\_\_\_\_ and seconded by Council Member \_\_\_\_\_, the above Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6<sup>th</sup> day of November, 2007, and adopted by the following vote.

Ayes:

Noes:

Absent:

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

Attest:

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

# **GIRL SCOUT LEASE AGREEMENT**

**SUBLEASE AGREEMENT**

**Between**

**THE CITY OF BENICIA, CALIFORNIA**

**and**

**THE GIRL SCOUTS OF NORTHERN CALIFORNIA**

This Sublease Agreement ("Sublease") is entered into on \_\_\_\_\_, by and between the CITY OF BENICIA, a municipal corporation (hereinafter "Sublessor") and the GIRL SCOUTS OF NORTHERN CALIFORNIA, a California corporation (hereinafter "Sublessee").

Sublessor agrees to sublease the Premises described herein to the Sublessee, for the period indicated, in accordance with the following terms and conditions:

**RECITALS**

WHEREAS, Sublessor entered into a long term lease ("Master Lease") with the Benicia Unified School District, ("BUSD") for the property formerly known as Mills School, which is located at 380 East 'L' Street, Benicia, CA, ("Property"); and

WHEREAS, pursuant to its terms, the Master Lease permits the Sublessor to sublease or assign, all or any portion of its leasehold interest in the Property; and

WHEREAS, Sublessee wishes to sublease a portion of the Property from the Sublessor for the sole purpose of providing a location for its local scout activities and operations; and

WHEREAS, Sublessor agrees to sublease a portion of the Property to Sublessee; and

WHEREAS, the Valero Energy Corporation donated the sum of two hundred thousand dollars (\$200,000.00), to support the long-term needs of the Boy Scout and Girl Scout troops of Benicia.

NOW, THEREFORE, the Sublessor and Sublessee, in consideration for the terms and conditions contained herein, and intending to be legally bound thereto, hereby enter into this Sublease.

## AGREEMENT

### 1. INTERPRETATION AND CONSTRUCTION OF SUBLEASE

1.1 The Parties hereto acknowledge that this Sublease of the Premises is subject to the terms and conditions of a Master Lease executed between Sublessor and the BUSD. To the extent there are conflicting provisions between the Master Lease and this Sublease, the rights, responsibilities, actions, obligations and duties of the parties shall be construed in a manner that does not cause Sublessor to be in breach of the Master Lease. A correct copy of the Master Lease agreement is attached hereto as Exhibit 'A,' and incorporated by reference.

1.2 The Parties have entered into this Sublease for the sole purpose of facilitating the ongoing scout activities of the Sublessee. Sublessee may not use the Premises, as herein defined, nor any portion thereof, for any other purpose. In the event that the Sublessee relocates, disbands or otherwise ceases to require use of the Premises at any time during the unexpired term of this Sublease for the stated purpose, or any extended term granted thereunder, then this Sublease shall immediately terminate.

### 2. DESCRIPTION OF PREMISES

2.1 Sublessor agrees to sublease to Sublessee the area outlined on Exhibit B, attached hereto and incorporated herein, which shall be known as Scout Rooms 3 & 4, for its exclusive use and possession, and Sublessee shall have shared use of the adjoining Boys Restroom and closest Girls Restroom (hereinafter collectively referred to as the "Premises"), along with the occupants of Scout Rooms 1 & 2, the Boy Scouts of America, Benicia Division.

### 3. TERM OF SUBLEASE

3.1 The initial term of this Sublease shall commence upon the execution of this Sublease by the Parties and shall terminate on March 31, 2047, unless sooner terminated pursuant to any provision of the Master Lease, or this Sublease, or by operation of law.

3.2 Providing Sublessee is not in breach of any part of this Sublease, Sublessee shall have the option to extend the Sublease for two additional ten (10) year terms, subject to the same terms and conditions of this Sublease unless a) Sublessor does not extend its Master Lease with BUSD or b) Sublessee's option to extend is precluded by any provision of the Master Lease or this Sublease, or by operation of law. In either case, Sublessor agrees to notify Sublessee of its intention not to extend the Sublease, in writing, a minimum of one hundred eighty (180) days prior to the expiration of the Sublease term, or any extension thereof.

3.3 Sublessee acknowledges and agrees that BUSD has the right to terminate the Master Lease at any time if all or any portion of the Property is needed for public

school classroom instruction purposes. Should BUSD elect to terminate the Master Lease with Sublessor under this provision, BUSD must inform Sublessor a minimum of two hundred and forty (240) days prior to the termination date. Sublessor shall inform Sublessee, in writing, of the BUSD's notice to terminate the Master Lease within 120 days of Sublessor's receipt of BUSD's notice to terminate the Master Lease.

#### **4. PAYMENT**

4.1 Sublessee agrees to pay to Sublessor total rent of \$1.00 per year for the Premises during the term of this Sublease and any extension. This amount is due and payable in full, in advance, upon execution of this Sublease, for the entire forty year term of this Sublease, in the amount of \$40.00.

4.2 Within 30 days following the execution of both this Sublease by the Parties, and the execution of a similar sublease for Scout Rooms 1 & 2 by the Boy Scouts of America, Benicia Division, Sublessee agrees to release and assign to the Sublessor all of its claims to the two hundred thousand dollars (\$200,000) donation from the Valero Energy Corporation for scout activities, that are presently being held in trust by the Lions Club of Benicia.

#### **5. POSSESSION**

5.1 Sublessor shall deliver exclusive possession of the Premises to the Sublessee no later than twelve months following the approval of the Mills Improvement Project budget by the Benicia City Council, and completion of the improvements to the Premises set forth at Section 11.1 below. Sublessee shall retain exclusive possession until the Sublease is terminated due to completion of the Sublease period, by any other provision of this Sublease or by operation of law.

5.2 Sublessor shall have the right of access to the Premises at any time and for any reason. Whenever possible, Sublessor shall provide Sublessee with 24 hours advance notice prior to accessing the Premises. In the event of an emergency, Sublessor shall not be required to provide Sublessee with any notice of entry.

#### **6. USE OF PREMISES**

6.1 Following the delivery of the Premises to Sublessee, as described in Section 5.1 above, Sublessee accepts the Premises in "as is" condition. Sublessor shall not be required to make any alterations or improvements to the Premises and Sublessee may not alter or modify the Premises in any way without the express written permission of Sublessor.

6.2 Sublessor authorizes Sublessee to use the Premises for activities that are consistent with Sublessee's operations, goals and objectives, subject to local noise or other ordinances, local or other use permits and so long as such activities do not interfere with the quiet enjoyment of other occupants of the Property or neighborhood.

6.3 Sublessee shall be responsible for any and all repairs to the Premises caused by Sublessee's intentional, accidental or negligent acts, which damage the Premises.

6.4 Sublessor reserves the right to terminate this Sublease if Sublessee engages in any illegal activity while in possession of the Premises. Should Sublessor terminate the Sublease at any time pursuant to this section, Sublessee shall have thirty (30) days to vacate the Premises.

6.5 Sublessee shall not dispose of e-waste, hazardous or toxic items or waste, landscaping materials, plants, trees, personal household trash or other forbidden materials in or about the garbage bins on the Premises or Property.

## 7. INDEMNIFICATION

7.1 Sublessee agrees to defend, indemnify, and hold harmless Sublessor, its officials, officers, employees, volunteers and agents from and against any and all claims, causes of action, judgments, obligations or liabilities and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of Sublessee's operation, use or occupancy of the Premises, except causes of action, claims, judgments, obligations arising out of Sublessor's gross negligence or willful misconduct.

## 8. INSURANCE

8.1 Sublessee shall, at Sublessee's sole expense, obtain and keep in force during the term of this Sublease a comprehensive general liability insurance policy insuring the Premises and Sublessor against all claims and liabilities arising out of the operation, condition, use or occupancy of the Premises. Such insurance shall be in an amount of not less than five million dollars (\$5,000,000) for bodily injury or death and property damage as a result of any one occurrence and a five million dollar (\$5,000,000) general aggregate policy. Insurance shall be with a carrier approved by Sublessor, who will not unreasonably withhold such approval. Prior to possession, Sublessee shall deliver to Sublessor a certificate of insurance and endorsement evidencing the existence of the policy required hereunder and stating that such policy shall:

8.1.1 Not be cancelled or altered without thirty (30) days prior written notice to Sublessor;

8.1.2 insure performance of the indemnity set forth in Section 7.1, above;

8.1.3 state that the coverage is primary and any coverage by Sublessor is in excess thereto;

8.1.4 contain cross liability endorsements and include a separate endorsement naming Sublessor, its officers, and its employees as additional insured.

At least thirty (30) days prior to the expiration of such certificate, and every such subsequent certificate, Sublessee shall deliver to Sublessor a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in Section 8.1.

8.2 On June 2, 2012, the monetary limit for liability coverage stated in this subsection may be adjusted by BUSD based upon the prevailing insurance industry standard for reasonable levels of coverage, and adjusted after each succeeding five (5) year period during the term, or any extension, of this Sublease. Sublessor shall notify Sublessee within 10 days of receiving notice from BUSD regarding any required adjustment of insurance coverage. Sublessee's liability insurance requirements will at all times during the term or any extensions of this Sublease, be amended to reflect the requirements set forth in the Master Lease.

8.3 Sublessee acknowledges that any insurance maintained by Sublessor on the Premises will not insure any of Sublessee's property. Sublessee shall, at its own expense, maintain in full force and effect insurance covering all fixtures, equipment, buildings, leasehold improvements and personal property in, about, or on the Premises. Sublessee hereby releases Sublessor, BUSD, its partners, officers, agents and employees, from any and all claims, demands, loss, expense or other injury to the Premises or to the furnishings, fixtures, equipment, inventory or other personal property of Sublessee, in, about, or upon the Premises, which is caused by perils, events or happenings which are covered by the insurance required by this Sublease or which are the subject of insurance carried by Sublessee and in force at the time of such loss.

## **9. CASUALTY DAMAGE**

9.1 In the event that any portion of the Premises is destroyed or damaged by an uninsured peril, Sublessor or Sublessee may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Sublease, provided however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at that party's sole expense, in which case this Sublease shall remain in full force and effect and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.

9.2 In the event that the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) of the then replacement cost of the Premises, Sublessor or Sublessee may elect to terminate this Sublease. Written notice of election to terminate must be given by the party electing to terminate to the other party within thirty (30) days after the occurrence of such damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, the insured party shall, at its own

expense, promptly rebuild or restore the premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, Sublessor may terminate this Sublease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.

9.3 In the event that, pursuant to the foregoing provisions, Sublessor or Sublessee is to rebuild or restore the premises, the Party charged with the restoration shall, within thirty (30) days after the occurrence of such damage or destruction, provide the other party with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit, either party may, within thirty (30) days of receipt of such notice from the other party, and prior to the commencement of any repair or restoration work, elect to terminate the Sublease by giving written notice to the other party of such election, whereupon the Sublease may immediately terminate. The period of time to complete the repair or restoration shall be extended for delays caused by the fault or neglect of the contractor(s) or because of force majeure, acts of publication, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of either party to this Sublease. Any obligation of Sublessor to repair or restore the Premises shall not include restoration of Sublessee's trade fixtures, equipment, merchandise, or any improvements, alterations or additions made by Sublessee.

9.4 Unless this Sublease is terminated pursuant to the foregoing provisions, this Sublease shall remain in full force and effect following the damage or destruction of the Premises provided, however, that during any period of repairs or restoration, rent and all other amounts to be paid by Sublessee shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of the Sublessee's purpose.

## **10. UTILITIES**

10.1 Sublessee shall pay the recurring costs associated with its own telephone, Internet and cable services.

10.2 Sublessor shall pay for all utilities in place on the Premises including water, sewer, alarm, electric and garbage.

## **11. ALTERATIONS, IMPROVEMENTS, MAINTENANCE AND REPAIR**

11.1 Prior to delivering possession of the Premises to the Sublessee, Sublessor shall perform the following improvements to the Premises:

- A door shall be installed along the common wall between the classrooms.
- All walls will have sheetrock installed and be taped, textured and painted.
- A kitchenette and sink will be installed.

- Cabinets, floor coverings, a white board, lighting and window and wall coverings will be installed.
- Telephone, Internet and cable services will be established.
- Both restrooms will be renovated.

The improvements shall be made at Sublessor's sole expense, conditioned upon Sublessee's timely payment of the two hundred thousand dollars (\$200,000) referenced at Section 4.2 above. Sublessor agrees to absorb any additional expense in the event that the cost of improvements exceeds \$200,000. If the total cost of the improvements is less than \$200,000, then any funds remaining will be applied to other improvements made to the Premises and Property by the Sublessor, and the reduced lease rate provided to Sublessee, and none shall be refunded or credited.

11.2 Following the delivery of possession of the Premises to the Sublessee, Sublessee shall not make or perform any alterations or improvements in, on or about the Premises, without Sublessor's express written consent. All such alterations or improvements made by Sublessee shall be completed at Sublessee's sole expense and in accordance with all applicable laws, with all necessary permits and in conformance with construction industry standards.

11.3 Prior to Sublessee's occupancy of the Premises, the Sublessor shall have completed over two million dollars (\$2,000,000) in repairs and improvements to the Property, including mold and asbestos abatement, installation of a new roof and HVAC units, construction of a new parking complex, and installation of new walls, interior lighting and floors. At the time possession of the Premises is delivered to the Sublessee, Sublessor warrants that the Premises will be safe for occupancy and in compliance with the Americans with Disability Act and all other similar regulatory and building standards and requirements then in effect. In the event any new or updated standards require additional construction or modification of the Premises at any time during the term of this Sublease, or any extended term granted hereunder, the Sublessee shall be responsible for all costs related to any such improvements.

11.4 Sublessee shall assume all custodial responsibility for the Premises for the duration of this Sublease. Sublessor makes no claim or warranty as to the condition of the Premises upon occupancy of Sublessee. Any agreements, warranties or representations, which are not expressly contained herein, shall not be binding upon Sublessor or BUSD.

11.5 Sublessor shall have custodial responsibility for all common areas of the Property.

## **12. DEFAULT**

12.1 Events of Default. A breach of this Sublease by Sublessee shall exist if any one of the following events shall occur:

12.1.1 Failure to make payment when due, of any installment of rent, or other payment required to be made by Sublessee hereunder and such default shall not have been cured within ten (10) days after payment is due;

12.1.2 Any effort by Sublessee to sublet the Premises or otherwise assign all or any portion of Sublessee's interest in this Sublease.

12.1.3 Sublessee's failure to perform any other term, covenant or condition contained in this Sublease and such failure shall have continued for thirty (30) days following written notice of such failure is given by Sublessor;

12.1.4 The Sublessee, or any guarantor of Sublessee's obligations hereunder, shall commence any case, proceeding, or other action seeking reorganization, arrangements, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seek appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;

12.1.5 The Sublessee, or any such guarantor, shall take any corporate action to authorize any of the actions set forth in Subsection 12.1.4 above.

12.1.6 Any case, proceeding or other action against the Sublessee or any guarantor of the Sublessee's obligation hereunder seeking to have an order of relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization for relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it, or all or any substantial part of its property, and in such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains a pending action for a period of forty-five (45) days.

12.2 Remedies. Upon any Event of Default, Sublessor shall notify Sublessee, in writing, specifying Sublessee's failure to perform and declaring Sublessor's intent to declare a default ("Default Notice"). Sublessee shall be deemed in default under the Sublease if, Sublessee has failed to perform any obligation of Sublessee specified in the Default Notice within thirty (30) days after its receipt from Sublessor, provided however, that if the nature of Sublessee's obligation is such that more than thirty (30) calendar days are required for its performance, Sublessee shall not be deemed in default if it shall commence such performance within (30) days and thereafter diligently pursue the same to completion. Upon any such default by Sublessee, Sublessor shall have the following remedies as provided by law to which Sublessor may resort, cumulatively or in the alternative:

12.2.1 Recovery of Rent. Sublessor shall be entitled to keep this Sublease in full force and effect (whether or not Sublessee shall have abandoned the Premises)

and to enforce all of its rights and remedies under this Sublease, including the right to recover rent and other sums as they become due, plus interest at the statutory rate from the due date of each installment of rent or other sum until paid.

#### 12.2.2 Termination of Sublease

12.2.2.a Termination by Sublessor. Sublessor may terminate this Sublease by giving Sublessee written notice of Sublessor's intent to terminate ("Notice of Termination"). Upon receipt of a Notice of Termination, Sublessee's rights in the Premises shall terminate. Upon receipt of the Notice of Termination, Sublessee shall surrender and vacate the Premises in the condition required by Section 22 below. Sublessor may re-enter and take possession of the Premises and all of the remaining improvements or property and eject Sublessee or any of Sublessee's sub-lessees, assignees or other person or persons claiming any right under or through Sublessee, or eject some and not others or eject none.

12.2.2.b Judicial Termination. This Sublease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release Sublessee from the payment of any sum then due Sublessor or from any claim for damages or rent previously accrued or then accruing against Sublessee. In no event shall any one or more of the following actions by Sublessor constitute a termination of this Sublease:

12.2.3 Maintain and preserve the Premises at Sublessee's expense;

12.2.4 Efforts to re-let the Premises;

12.2.5 Appointment of a receiver to protect Sublessor's interest hereunder;

12.2.6 Consent to any subletting of the Premises or assignment of this Sublease by Sublessor, whether pursuant to provisions hereof concerning subletting and assignment or otherwise;

12.2.7 Any other action by Sublessor or Sublessor's agents intended to mitigate the adverse effects of any breach of this Sublease by Sublessee.

12.2.8 Damages. If this Sublease is terminated pursuant to Subsection 12.2.2, or otherwise, Sublessor shall be entitled to damages in the following amounts:

12.2.8.a The amount of the unpaid rent, which has been earned as of the termination date; plus,

12.2.8.b The amount of rent earned between the termination date until the end of the Sublease period, or to the date when the Premises are re-let, less any amount that Sublessee proves could reasonably have been avoided.

12.2.8.c Any other amount necessary to compensate Sublessor for all detriment proximately caused by Sublessee's failure to perform Sublessee's obligation under this Sublease including, but not limited to; (i) expenses for retaking possession of the premises, cleaning, repairing or restoring the Premises to its condition prior to Sublessee's occupancy, (ii) real estate broker's fees, reasonable advertising costs and other expenses of re-letting the Premises, (iii) costs of insuring and securing the Premises between the time of termination and re-letting the Premises, (iv) reasonable attorney's fees and court costs, and (v) any unamortized real estate brokerage fees paid in connection with the Sublessee's Sublease.

12.2.8.d Interest at the highest rate allowed by law will be assessed on all amounts determined to be owed by Sublessee to Sublessor.

12.2.9 Events of Sublessor's Default. A breach of this Sublease by Sublessor shall exist if any of the following events occur:

12.2.9.a Sublessor's failure to perform any other term, covenant or condition contained in this Sublease and such failure shall have continued for thirty (30) days after written notice of such failure is given by Sublessee to Sublessor;

12.2.9.b Failure by Sublessor to deliver possession of the Premises to Sublessee, or the interruption of possession of the Premises by Sublessor, except as set forth in Section 3.2 or 3.3 of this Sublease.

12.2.9.c Sublessor shall be in default of this Sublease if Sublessor has failed to perform any obligation required to be performed by Sublessor under this Sublease within thirty (30) days after the receipt of notice from Sublessee specifying in detail Sublessor's failure to perform, provided, however, that if the nature of Sublessor's obligation is such that more than thirty (30) calendar days are required for its performance, Sublessor shall not be deemed in default if it shall commence such performance and thereafter diligently pursues the same to completion. Upon any such default by Sublessor, Sublessee may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation to cure any such default by Sublessor and to deduct the costs incurred by Sublessee in curing such default, including legal fees and expenses, from the amounts next due and owing under the Sublease.

### **13. MECHANICS LIEN**

13.1 For all work Sublessee may perform on the Premises which may provide the right of a mechanics lien, Sublessee shall; (i) pay for all labor and services performed, for materials used by or furnished to Sublessee by any contractor employed by Sublessee with respect to the Premises, (ii) defend, indemnify and hold the Sublessor and Premises

harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed, for materials used by or furnished to Sublessee or any contractor employed by Sublessee with respect to the Premises, (iii) give notice to Sublessor in writing thirty days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon the Premises, and (iv) permit Sublessor to post a notice of non-responsibility in accordance with the statutory requirements of California Civil Code Section 3094 or any amendment thereof. In the event Sublessee is required to post an improvement bond with a public agency in connection with the above, Sublessee agrees to include Sublessor as an additional obligee.

#### **14. INSPECTION OF PREMISES**

14.1 Sublessee shall permit Sublessor and its agents to enter the Premises at any reasonable time, with notice to Sublessee, for the purpose of inspecting the Premises, performing maintenance and repairs, or posting a notice of non-responsibility for alterations, additions, or repairs, Sublessee shall permit Sublessor and its agents to enter the Premises at any time within ninety (90) days prior to expiration of this Sublease to place upon the premises ordinary "For Lease" or "For Sale" signs, providing said signs shall not suggest the Sublessee is selling the Premises or any other property of Sublessor.

#### **15. HOLDING OVER**

15.1 Should Sublessee hold over in possession of the premises after the expiration of the original term or any extended term of this Sublease, such holding over shall not be deemed to extend the term or renew the Sublease, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at one hundred ten percent (110%) of the monthly rental (Hold Over Rent) of the last expiring term unless a different rental amount is mutually agreed to by the Sublessor and Sublessee.

#### **16. NOTICE**

16.1 Any notices which either of the parties hereto is required or may desire to send or deliver to give to the other party shall be sent by certified mail, return receipt requested and postage prepaid, or delivered with all charges prepaid, to the address listed below, or to any other address as either party may designate to the other from time to time in writing.

<b>Sublessee:</b>	<b>Sublessor:</b>	<b>Party In Interest</b>
Girl Scouts of Northern California 324 Campus Lane, Ste. C Benicia, CA 94510	City of Benicia 250 East "L" Street Benicia, CA 94510	Girl Scouts 380 East L Street Benicia, CA 94510
ATTN: President	ATTN: City Manager	ATTN: Scoutmaster

The date of service of any such notice mailed as aforesaid shall be deemed to be five (5) days after the date of such mailing. The date of service of any such notice hand delivered shall be deemed to be one (1) day after delivery thereof to the delivery service office.

## **17. ATTORNEYS' FEES**

17.1 In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of this Sublease, to recover rent or possession of the Premises, to terminate this Sublease, or to enforce, protect or establish any term or covenant of this Sublease or right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' fees and costs for appeal, as may be fixed by the court or jury. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

## **18. SUBLEASE AND ASSIGNMENT**

18.1 The Sublessee may not sublease the Premises nor assign this Sublease at any time. Any effort by Sublessee to sublet the Premises or otherwise assign all or any portion of Sublessee's interest in this Sublease shall be a breach of this Agreement.

## **19. SUCCESSORS**

19.1 This Sublease contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto.

## **20. WAIVER**

20.1 The waiver by Sublessor or Sublessee of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition, herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

## **21. GENERAL PROVISIONS**

21.1 The captions and section headings used in this Sublease are for the purposes of convenience only and shall not be construed to limit or extend the meaning of any part of this Sublease.

21.2 Time is of the essence for the performance of each term, covenant and condition of this Sublease.

21.3 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Sublease, but this Sublease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

21.4 This Sublease shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Sublease shall be maintained in Solano County, California.

21.5 This Sublease constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Sublease may be amended or modified only by a written instrument executed by both parties.

21.6 This Sublease and all exhibits, amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one original document.

21.7 Sublessee agrees to comply with all rules and regulations imposed by Sublessor that are at any time posted on the Premises or delivered to Sublessee. Sublessee shall not, and shall ensure that guests and licensees of Sublessee do not, disturb, annoy, endanger, or interfere with other Lessees, occupants or activities in the building.

## **22. SURRENDER OF THE PREMISES**

22.1 On the last day of the term hereof, or on sooner termination of this Sublease, Sublessee shall surrender to Sublessor the Premises and any then existing improvements to the Premises in good order, condition and repair, free and clear of all liens, claims and encumbrances. Said condition shall be similar to that existing as of the date occupancy was delivered to the Sublessee, except for ordinary wear and tear and approved improvements and/or alterations. Sublessee shall remove all of Sublessee's personal property and trade fixtures from the Premises and all property not so removed shall be deemed abandoned by Sublessee. If the Premises are not so surrendered at the termination of this Sublease, Sublessee shall indemnify Sublessor against loss or liability resulting from delay by Sublessee in surrendering the Premises including, without limitation, any claims made by any succeeding tenant or losses to Sublessor due to lost opportunities to lease to succeeding tenants.

## **23. HAZARDOUS SUBSTANCES**

23.1 Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and

property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in sections 66680 through 66685 of Title 22 of the California Code of Regulations, Divisions 4, Chapter 20, as the same may be amended from time to time.

23.2 Sublessee shall comply with all laws now and hereafter in effect relating to the use of Hazardous Materials on, under or about the Premises and shall not contaminate the Premises, or it's subsurface, with any Hazardous Materials.

23.2.1 Sublessee shall restrict its use of Hazardous Materials at the Premises to those kinds of materials that are normally used in the ordinary course of business. Disposal of any Hazardous Materials at the Premises is strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be in accordance with all applicable laws and regulations.

23.2.2 Sublessee shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from Sublessee's activities on the Premises. Sublessee shall also immediately notify Sublessor of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to any public agency.

23.2.3 Sublessee shall be solely and fully responsible and liable for such releases at the Premises, or into Sublessor's sewage or storm drainage systems. Sublessee shall take all necessary precautions to prevent any of its Hazard Materials from entering into any storm or sewage drain system or from being released on the Premises. Sublessee shall remove releases of its Hazardous Materials and remediate the Premises in accordance with all laws. In addition to all other rights and remedies of Sublessor hereunder, if the release of Hazardous Materials caused by Sublessee is not removed by Sublessee within ninety (90) days after discovery by Sublessee, Sublessor or any other third party, Sublessor may pay to have the same removed and Sublessee shall reimburse Sublessor for such costs within five (5) days of Sublessor's demand for payment.

23.2.4 Sublessee shall protect, defend, indemnify and hold harmless Sublessor from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which Sublessor may sustain as a result of the presence of Hazardous Materials on the Premises during the Term of this Sublease, excepting therefrom, any loss damage or liability attributable to Hazardous Materials which are a result of the actions of the Sublessor or the Sublessor's employees, contractors or agents.

23.2.5 Sublessee shall protect, defend, indemnify and hold harmless Sublessor from and against all claims, loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which Sublessor may sustain as a result of the presence of Hazardous Materials on the Premises prior to, or subsequent to, the Term of this Sublease, excepting therefrom any loss, damage or liability, attributable to Hazardous Materials which are a result of the actions of the Sublessor or the Sublessor's employees, contractors or agents.

23.2.6 Sublessee's and Sublessor's obligations under this Section 23 shall survive the expiration or earlier termination of this Sublease.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Dates set forth below.

SUBLESSOR: CITY OF BENICIA

SUBLESSEE: GIRL SCOUTS OF  
NORTHERN CALIFORNIA, INC.

BY \_\_\_\_\_  
James R. Erickson  
City Manager

\_\_\_\_\_  
Robin MacGillizray  
President

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Approved as to form:

BY: \_\_\_\_\_  
Heather McLaughlin  
City Attorney

DATE: \_\_\_\_\_

# **EXHIBIT A**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") is made on March 29, 2007, by and between Benicia Unified School District, a public school district of the State of California, (hereinafter referred to as "District"); and City of Benicia, a municipality in the State of California (hereinafter referred to as "City") (collectively referred to as "parties").

### 1 DESCRIPTION.

District does hereby rent and lease to the City the Mills School located at 380 L Street, Benicia, California, APN 0088-151-150 and 0088-153-150, including all structures and improvements located thereon and the contiguous grounds shown as the leased Premises in Exhibit "A" attached hereto and hereinafter referred to as "Premises."

### 2 TERM.

- 2.1 The term of this Lease shall be for forty (40) years commencing on April 1, 2007 and, unless sooner terminated under any provision hereof, ending on March 31, 2047 (First Term). This Agreement will renew for two (2) additional ten (10) year term(s), each ten (10) year Term shall be defined as the "Extension Term," upon the same terms and conditions unless the City notifies the District in writing of City's intention not to renew this Agreement at least One Hundred Eighty (180) days prior to the expiration of the existing Term. In the event that District requires the use of all or a portion of the Premises for public school classroom instruction purposes, the District may decline to approve the new Extension Term, provided that the District shall provide City with written notice of such non-approval at least Two Hundred Forty (240) days prior to the expiration of the First Term or any Extension Terms thereafter.
- 2.2 District reserves the right to terminate this Lease at any time if the property is needed for public school classroom instruction purposes. If District elects termination prior to the completion of the First Term, District will give City a minimum of Two Hundred Forty (240) days advance notice prior to the termination date. In the event that District requires the use of all or a portion of the Premises for public school classroom instruction purposes, District shall have the option prior to the expiration of the First (1st) Term and prior to the expiration of each subsequent Extension Term to propose revised lease terms.
- 2.3 In the event that the District declines to approve the Extension Term in accordance with Section 2.1 above or in the event that District terminates this Lease at any time for public school classroom instruction purposes in accordance with Section 2.2 above, District shall, in accordance with Section 10 hereof, reimburse the City for the costs of City's Improvements which were approved in writing by the District, and if required herein, by the Division of the State Architect prior to construction.

### 3 RENT.

- 3.1 The annual rent shall be One Hundred Twenty Thousand Dollars \$120,000.00, payable in equal monthly installments of Ten Thousand Dollars \$10,000.00. City shall pay promptly to District, the monthly rent on the first day of each month in advance during the term of this Lease, without deduction (unless agreed to), setoff, prior notice or demand.
- 3.2 Beginning in 2011, the monthly rent will be adjusted annually for each succeeding year. The Base Index for computing the adjustment is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) San Francisco - Oakland - San Jose Metropolitan Area as published for June 2011 (or the nearest preceding month if not published for that month). The first such adjustment shall occur on July 1, 2011 and shall be applied to the initial monthly rent. Subsequent yearly adjustment calculations shall be determined by the April index and become effective on July 1 for each succeeding year of the Lease. If the Consumer Price Index published nearest the adjustment date has increased over the Base Index then the monthly rent for the following year shall be adjusted by multiplying the initial monthly rent by a fraction, the numerator of which is the Current Index and denominator of which is the Base Index. In no case shall the monthly rent be less than the previous year's monthly rent.
- 3.3 City acknowledges that late payment by City to District of the monthly rent and other sums due hereunder will cause District to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from City shall not be received by District within ten (10) days after such amount shall be due, City shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by City. Acceptance of such late charge by District shall in no event constitute a waiver of City's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 3.4 Late charges, costs and expenses which City is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of City's failure to pay such amounts, and all reasonable damages, costs, and attorney's fees and expenses which District may incur by reason of any default of City or failure on City's part to comply with the terms of this Lease, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by City, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent.
- 3.5 The District and City are aware of Education Code section 17219, which may require repayment to the State of California of funds from the State Bond Program for the modernization cost of the Mills School buildings. These payments are commonly known as "non-use payments" and may be due after five years of non-use of school buildings for school purposes. The parties believe that this Lease is exempt from "non-use payments" under the provisions of Education Code section 17219, subsection (e)(1), in that the City will be using the Premises for a community center, which meets the definition of "civic

center” under the provisions of Education Code section 38130 et seq. (formerly § 41000 et seq.). The parties agree to cooperate on any application to the State Allocation Board under Education section 17220 for exemption from “non-use payments,” if necessary. In any event, District shall responsible for any “non-use payments,” if imposed, during the Term and any Extension Term of this Lease.

4 DELIVERY.

4.1 District shall deliver to City on the first day of the Term of this Lease actual and exclusive possession of the Premises, clear of all tenancies and occupancies. The Premises are leased to City on an “as is” basis.

4.2 District shall not be required to make or construct any major alterations including structural changes, additions or improvements to the Premises. City has conducted and will conduct inspections of the Premises on or before the entry and taking possession under this Lease. City shall prepare, or cause to be prepared a written report on the condition of the Premises, a copy of which shall be provided to District within ten (10) days of receipt by City (the “Condition Report”). Within sixty (60) days of the execution of this Lease, the District shall pay Twenty Five Thousand Dollars (\$25,000.00) to City to assist City in re-opening the Premises for occupation. By entry and taking possession of the Premises pursuant to this Lease, City accepts the Premises in their condition existing as of the date of entry. City acknowledges that neither the District nor District’s agents has made any representations or warranty as to the suitability of the Premises to the conduct of City’s business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or City, and District and City expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease.

5 USE OF PREMISES.

5.1 The Premises may be used by City as a facility for a community center and for recreational or governmental purposes and for no other uses. City shall use the Premises only in conformance with this paragraph and all applicable governmental laws, regulations, rules and ordinances including, but not limited to, the City Noise Ordinance. City shall require all sublessees, licensees, invitees, and assignees to use the Premises only in conformance with this paragraph and all applicable governmental laws, regulations, rules and ordinances.

5.2 Prior to changing any use of the Premises to any other use not described or contemplated by this Lease, City shall hold a duly noticed public meeting before the City Council and obtain the written permission of District, which permission shall not be unreasonably withheld.

6 ASSESSMENTS & FEES.

If applicable, City shall pay before delinquency any and all assessments, license fees and public charges levied, assessed or imposed upon or against City's fixtures, equipment, furnishings, furniture, appliances and personal property installed or located on or within the Premises. City shall cause said fixtures, equipment, furnishings, furniture, appliances and personal property to be assessed and billed separately from the real property of District.

7 INDEMNIFICATION AND INSURANCE.

7.1 City agrees to defend, indemnify, and hold harmless District, its officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of the City's operation, use or occupancy of the Premises and all areas appurtenant thereto or the condition of the Premises attributable to the City during the Term hereof (except for District's sole active negligence or willful misconduct). This Lease is made of the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause (except for District's active negligence or willful misconduct), in any way connected with the condition, use or occupancy of the Premises by the City specifically including, without limitation, any liability for injury to the person or property of the City, its agents, contractors, officers, employees, licensees, sublessees, and assignees.

7.2 District agrees to defend, indemnify, and hold harmless District, its officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of the District's operation, use or occupancy of the Premises and all areas appurtenant thereto or the condition of the Premises attributable to the District (except for City's sole active negligence or willful misconduct). This Lease is made of the express condition that City shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause (except for City's active negligence or willful misconduct), in any way connected with the condition, use or occupancy of the Premises by the District specifically including, without limitation, any liability for injury to the person or property of the District, its agents, contractors, officers, employees, licensees, sublessees, and assignees.

7.3 City shall, at City's expense, obtain and keep in force during the term of this Lease a policy of comprehensive general liability insurance or acceptable liability coverage under a public joint powers agency insuring District and City against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount of not less than five million dollars (\$5,000,000) for bodily injury or death and property damage as a result of any one occurrence and a five million dollar (\$5,000,000) general aggregate policy. The insurance shall be with a carrier approved by District, which approval shall

not be reasonably withheld. Prior to possession, City shall deliver to District a certificate of insurance and endorsement evidencing the existence of the policy required hereunder and stating that such policy shall:

- 7.3.1 not be canceled or altered without thirty (30) days prior written notice to District;
- 7.3.2 insure performance of the indemnity set forth in Section VIII. A above;
- 7.3.3 state the coverage is primary and any coverage by District is in excess thereto;
- 7.3.4 contain a cross liability endorsement; and, includes a separate endorsement naming District, its officers, and its employees as an additional insured.

At least thirty (30) days prior to the expiration of such certificate, and every such subsequent certificate, City shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in this Subsection 7.3.

On April 1, 2012, the monetary limit for liability coverage stated in this subsection will be adjusted by District based on the prevailing insurance industry standard for reasonable levels of coverage and adjusted after each succeeding five (5) year period during the Term or Extension Term of this Lease. In no case shall the monetary limit be less than \$5,000,000.00.

- 7.4 Workers' Compensation Insurance. During the term of this Lease, City shall comply with all provisions of law applicable to City with respect to obtaining and maintaining workers' compensation insurance. City shall provide District with certificate of insurance.
- 7.5 Sublessee Insurance. During the term of this Lease, City shall require any Sublessee of all or any portion of the Premises to maintain in effect during the term of such sublease, insurance coverage equivalent to that required to be maintained by City.
- 7.6 Release of District. City acknowledges any insurance maintained by District on the Premises will not insure any of City's property. Accordingly, City shall at its own expense, maintain in full force and effect insurance coverage on all its fixtures, equipment, buildings, leasehold improvements and personal property in, about, or on the Premises. Said policy to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of City's property. City hereby releases District, and its partners, officers, agents, employees, and servants, from any and all claims, demands, loss, expense or injury to the Premises or to the furnishings, fixtures, equipment, inventory or other personal property of City in, about, or upon the Premises, which is caused by perils, events or happenings which are covered by the insurance required by this Lease or which are the subject of insurance carried by City and in force at the time of such loss.

8 UTILITIES.

City shall pay for all water, gas, light, heat, power, electricity, telephone, security service, trash pick-up, sewage fees and all other services supplied to or consumed on the Premises and all taxes and surcharges thereon.

9 MAINTENANCE AND REPAIRS.

9.1 City, at its cost, shall maintain the existing Premises in a good condition consistent with the condition of the Premises existing at the time of delivery.

9.2 District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. City hereby expressly waives the provisions of Subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in Section 1942 of said Civil Code.

10 ALTERATIONS AND IMPROVEMENTS.

City may, at its sole cost and expense, construct or cause to be constructed on the Premises those Improvements including buildings, roadways, sidewalks, fences, playgrounds, parking areas, utilities, signs, monuments and landscaping which City deems necessary to the operation of its business ("Improvements") subject to local site, zoning, and design review and other required approvals and provided District has approved all such Improvements as stated in subsection 10.1.1 of this Lease.

10.1 Requirements. In regard to the Improvements constructed on the Premises consistent with the provisions of this Lease:

10.1.1 City must, prior to construction, obtain written approval from District and to the extent determined necessary by District, the Division of the State Architect (DSA) for any Improvements and their related costs with the exception of painting, carpet, building repairs, removal and construction of non weight bearing walls in existing buildings and other minor tenant improvements which may be approved by District alone in accordance with the terms hereof. Approval of any and all Improvements must be made by District in accordance with the terms hereof in order for these Improvements costs to be eligible for reimbursement. District and City recognize that such approvals may be completed in phases, such that City initially requests conceptual approval and, if approved by District, then proceeds to draw the plans and specifications for Improvements. District shall respond to City with said approval or disapproval within forty-five (45) days after District receives a written request from City. In the event that District does not respond within said 45 day period, District shall be deemed to have approved of the Improvements described in the request. Any written request for structural changes or new construction shall be accompanied by architectural plans and drawings. District's approval shall be at District's reasonable discretion. City must then proceed to obtain DSA's approval whenever notified by District that same is

required by law. City agrees to deliver DSA's written approval to District within ten (10) days after City's receipt. City agrees to not proceed with any construction of Improvements eligible for reimbursement until District's and, if required, DSA's written approvals have been obtained as set forth herein.

- 10.1.2 In the event District exercises its rights under Section 2.2 to terminate any Term or Extension Term of this Lease early for public school classroom instruction purposes, or in the event that District elects to not approve an Extension Term of this lease in accordance with Section 2.1, District shall reimburse City, for those Improvements approved by District in accordance with the terms of this Lease, on a straight-line pro-rata basis in accordance with this section. Major structural or other crucial building system (roofing, electrical, plumbing, HVAC) Improvements shall have a forty (40) year life for the purposes of determining amortization of the reimbursement. All other Improvements that are surface, aesthetic, or decorating changes shall have a ten (10) year life. The percentage of reimbursement will be equal to the number of years of life remaining on the Improvements divided by the full life of the Improvements as set forth herein. For example, if District terminated the Lease in year ten (10) and the Improvement built in the first year of the Lease had a forty (40) year life, the percentage for reimbursement would be seventy five percent (75%) calculated by taking the thirty (30) years of life remaining and dividing by the full forty (40) years average life of the Improvement. Said resulting percentage shall be applied to the original cost of the Improvements as approved in writing by District prior to installation.
- 10.2 Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any Improvements on the Premises, City shall provide District with information regarding the contractor's financial condition and evidence to District's reasonable satisfaction that adequate funds to complete the Improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District's discretion, a completion guarantee. No construction shall commence until District has given City written acceptance of such assurances. District's acceptance shall not be unreasonably withheld. District understands and agrees that City may complete certain Improvements to the Premises using City's own forces.
- 10.3 City shall give District fifteen (15) days prior written notice before commencing any work on the Premises so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate.
- 10.4 Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any Improvements on the Premises, City shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that City or City's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers' compensation.
- 10.5 Upon commencement of construction of any Improvements, City shall cause the work to

be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by supply shortages, strikes or force majeure.

- 10.6 All work on Improvements shall be performed in a sound and workmanlike manner, in compliance with the applicable laws and building codes, in conformance with the plans and specifications approved by District or any modifications thereto which have been approved in writing by District.
- 10.7 District or District's agent shall have a continuing right at all times during the period that Improvements are being constructed on the Premises to enter the Premises and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. City shall require its contractors or city forces who construct Improvements on the Premises to reasonably cooperate with District or its agent in such inspections. In connection with any entry by District or District's agent pursuant to this subsection 10.7, District covenants and agrees to defend (by counsel reasonably acceptable to City), indemnify, and hold harmless City and its officers, directors, and employees, from and against any and all damage, loss, liability or expense, including, without limitation, reasonable attorneys' fees and costs, which arise as a result of damage to property or injury to persons caused by the negligence or willful misconduct of District or its agents.
- 10.8 Within ninety (90) days after completion of construction of any work of Improvement on the Premises, City shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- 10.9 District shall cooperate with City by executing and recording such applications for zoning or use permits necessary for the City's operations on the Premises as may be reasonably required to complete City's Improvements, however, no costs shall accrue to or be borne by District.

## 11 CASUALTY DAMAGE.

- 11.1 In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, District or City may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease; provided, however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at such party's sole cost and expense, in which event this Lease shall remain in full force and effect, and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.
- 11.2 In the event the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) of the then replacement cost of the Premises, District or City may, upon written notice, given to the other within thirty (30) days after the occurrence of such

damage or destruction, elect to terminate this Lease. If neither party gives such notice in writing within such period, District shall be deemed to have elected to rebuild or restore the Premises, in which event District shall at its expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, District shall at District's expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, City may terminate this Lease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.

11.3 In the event that, pursuant to the foregoing provisions, District is to rebuild or restore the Premises, District shall, within thirty (30) days after the occurrence of such damage or destruction, provide City with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit, City may, within thirty (30) days of receipt of District's notice, elect to terminate the Lease by giving written notice to District of such election, whereupon the lease shall immediately terminate. The period of time for District to complete the repair or restoration shall be extended for delays caused by the fault or neglect of City or because of force majeure, acts of publication, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of contractors or subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of District. District's obligation to repair or restore the Premises shall not include restoration of City's trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by City to the Premises.

11.4 Unless this lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect; provided, however, that during any period of repairs or restoration, rent and all other amounts to be paid by City shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of City's business thereon.

## 12 DEFAULT.

12.1 Events of Default. A breach of this Lease by City shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:

12.1.1 Default in the payments when due of any installment of rent or other payment required to be made by City hereunder, and such default shall not have been cured within ten (10) days after receipt of written notice from District;

12.1.2 City's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to City;

- 12.1.3 The sequestration of, or execution on, any substantial part of the property of City or on any property essential to the conduct of City's business, shall have occurred and City shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;
- 12.1.4 The City or any guarantor of City's obligations hereunder shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seek appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;
- 12.1.5 The City or any such guarantor shall take any corporate action to authorize any of the actions set forth in Subsection 4 or 5 above;
- 12.1.6 Any case, proceeding or other action against the City or any guarantor of the City's obligation hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains a pending action for a period of forty-five (45) days.
- 12.2 Remedies. Upon any Event of Default, District shall notify City, in writing, of specifying in detail City's failure to perform and declaring District's intent to declare a Default ("Default Notice"). City shall be deemed in Default under the Lease if, City has failed to perform any obligation of City specified in the Notice of Default within thirty (30) days after the receipt of the Default Notice from District, provided however, that if the nature of City's obligation is such that more than thirty (30) calendar days are required for its performance, City shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such Default by City, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:
- 12.2.1 Recovery of Rent. District shall be entitled to keep this Lease in full force and effect (whether or not City shall have abandoned the Premises) and to enforce all of its rights and remedies under this Lease, including the right to recover rent and other sums as they become due, plus interest at the Local Agency Investment Fund (LAIF) rate from the due date of each installment of rent or other sum until paid.

12.2.2 Termination. District may terminate this Lease by giving City written notice of District's intent to terminate ("Notice of Termination"). Upon receipt of a Notice of Termination, City's rights in the Premises shall terminate. Upon receipt of the Notice of Termination, City shall surrender and vacate the Premises in the condition required by Section 25, and District may re-enter and take possession of the Premises and all the remaining Improvements or property and eject City or any of City's sublessees, assignees or other person or persons claiming any right under or through City or eject some and not others or eject none. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release City from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against City. In no event shall any one or more of the following actions by District constitute a termination of this Lease:

- 12.2.2.1 maintenance and preservation of the Premises;
- 12.2.2.2 efforts to relet the Premises;
- 12.2.2.3 appointment of a receiver in order to protect District's interest hereunder;
- 12.2.2.4 consent to any subletting of the Premises or assignment of this Lease by City, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or,
- 12.2.2.5 any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Lease by City.

12.2.3 Damages. In the event this Lease is terminated pursuant to Subsection 12.2.2 above, or otherwise, District shall be entitled to damages in the following sums:

- 12.2.3.1 The worth at the time of award of the unpaid rent which has been earned at the time of termination; plus,
- 12.2.3.2 The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that City proves could have been reasonably avoided; plus,
- 12.2.3.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that City proves could be reasonably avoided; and
- 12.2.3.4 Any other amount necessary to compensate District for all detriment proximately caused by City's failure to perform City's obligation under this Lease, or which in the ordinary course of things would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for

altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to the succeeding tenant, or otherwise); (iii) real estate broker's fees, reasonable advertising costs and other expenses or reletting the Premises; (iv) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (v) expenses in retaking possession of the Premises; (iv) reasonable attorneys' fees and court costs; and, (vii) any unamortized real estate brokerage commission paid in connection with the Lease;

12.2.3.5 The "worth at the time of award" of the amounts referred to above, is computed by allowing interest at the LAIF rate. The term "rent" as used in this section shall include all sums required to be paid by City to District pursuant to the term of this Lease.

12.3 Events of District Default. A breach of this Lease by District shall exist if any of the following events (hereinafter referred to as "Event of District Default") shall occur:

12.3.1 Default in the payments when due of any obligation of District relating to the Education Code Section 17219 as set forth in section 3.5 of this Lease;

12.3.2 District's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to District;

12.3.3 The failure by District to deliver possession of the Premises to City or the interruption of possession of the Premises by District, except as set forth in section 2.2 of this Lease.

12.3.4 The sequestration of, or execution on, any substantial part of the property of District or on any portion of the Premises, shall have occurred and District shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;

12.4 District shall be in default in the performance of any obligation required to be performed by District under the terms of this Lease if District has failed to perform such obligation within thirty (30) days after the receipt of notice from City specifying in detail District's failure to perform, provided, however, that if the nature of District's obligation is such that more than thirty (30) calendar days are required for its performance, District shall not be deemed in default if it shall commence such performance and thereafter diligently pursues the same to completion. Upon any such default by District, City may exercise any of its rights provided in law or at equity and shall have the right, but not the

obligation, to cure any such default by District and to deduct the costs incurred by City to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

13. MECHANICS LIEN.

City shall: (i) pay for all labor and services performed for, materials used by or furnished to City of any contractor employed by City with respect to the Premises; and, (ii) defend, indemnify, and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, materials, used by or furnished to City or any contractor employed by City with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for the use upon the Premises; and, (iv) permit District to post a notice of nonresponsibility in accordance with the statutory requirements of California Civil Code section 3094 or any amendment thereof. In the event City is required to post an improvement bond with a public agency in connection with the above, City agrees to include District as an additional obligee.

14. INSPECTION OF PREMISES.

City shall permit District and its agents to, upon notice to the City, enter the Premises at any reasonable time for the purpose of inspecting the same, performing District's maintenance and repair responsibilities, or posting a notice of nonresponsibility for alternations, additions, or repairs. City shall permit District and its agents to enter the Premises at any time within ninety (90) days prior to expiration of this Lease, to place upon the Premises, ordinary "For Lease" or "For Sale" signs, providing said signs shall not suggest the City is selling the Premises or any other property of the City.

15. HOLDING OVER.

Should City hold over in possession after the expiration of the original term or any extended term of this Lease, such holding over shall not be deemed to extend the term or renew the Lease, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at one hundred percent (100%) of the monthly rental (Holding Over Rent) of the last expiring term unless a different rental amount is mutually agreed to by the City and District.

16. NOTICE.

Any notices which either of the parties hereto is required or may desire to send or deliver to give to the other party, shall be mailed, certified mail, return receipt requested, postage prepaid, or delivered, with all charges prepaid, to such other party at the address listed below, or to such address as either party may designate to the other from time to time in

writing.

District:  
Benicia U.S.D.  
350 East "K" Street  
Benicia, CA 94510

City:  
City of Benicia  
250 East "L" Street  
Benicia, CA 94510

ATTN: Superintendent

ATTN: City Manager

The date of service of any such notice mailed as aforesaid shall be deemed to be five (5) days after the date of such mailing, and the date of service of any such notice hand delivered, as aforesaid, shall be deemed to be one (1) day after delivery thereof to the delivery service office.

17. ATTORNEYS' FEES.

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of this Lease, to recover rent or possession of the Premises, to terminate this Lease, or to enforce, protect or establish any term or covenant of this Lease or right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' fees and costs for appeal, as may be fixed by the court or jury. The term "prevailing party" shall mean the party who received substantially the relief requested, whether the settlement, dismissal, summary judgment, judgment, or otherwise.

18. ASSIGNMENT.

The City may not assign this Lease without District's written approval and consent, which consent shall not be unreasonably withheld. District shall not assign this lease without City's written approval and consent, which consent shall not be unreasonably withheld. In the event that the District determines to dispose of the Premises, District agrees that it will comply with Government Code Section 54220 et seq.

19. SUCCESSORS.

This Lease contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto, except as provided in Section 18.

20. SURRENDER OF LEASE NOT MERGER.

The voluntary or other surrender of this Lease by City, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or sublessees, or shall operate as an assignment to District of any or all such

subleases or sublessees.

21. WAIVER.

The waiver by District or City of any breach of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

22. GENERAL.

22.1 The captions and section headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Lease.

22.2 Time is of the essence for the performance of each term, covenant and condition of this Lease.

22.3 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

22.4 This Lease shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Lease shall be maintained in County in which the District's administrative offices are located.

22.5 This Lease constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Lease may be amended or modified only by a written instrument executed by both parties.

22.6 This Lease and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one original document.

23. SURRENDER OF THE PREMISES.

On the last day of the term hereof, or on sooner termination of this Lease, City shall surrender to District the Premises and any then existing Improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. Said condition shall be similar to that existing as of the Commencement Date of this Lease excepting normal ordinary wear and tear and approved Improvements. In the event District exercises its right to early termination per Section 2, compensation will be due to City for reimbursement of the unamortized

portion of the Improvement costs expended by City which are eligible for reimbursement per Section 10. This Lease shall operate as a conveyance and assignment thereof. City shall remove all of City's personal property and trade fixtures from the Premises and all property not so removed shall be deemed abandoned by City. If the Premises are not so surrendered at the termination of this Lease, City shall indemnify District against loss or liability resulting from delay by City in so surrendering the Premises including without limitation, any claims made by any succeeding tenant or losses to District due to lost opportunities to Lease to succeeding tenants.

24. DISTRICT'S COVENANTS.

The District covenants, warrants and represents that it has full right and power to execute and perform this Lease, and to grant the estate demised herein, and covenants that City on paying rent as herein provided and performing the covenants hereof shall peaceably and quietly have, hold and enjoy the demised Premises and all right, easements, appurtenances and privileges belonging or in any way appertaining thereto, during the terms of this lease and any extension or renewal thereof.

25. BROKERAGE.

District and City agree that no broker was involved in any of the negotiations which preceded this Lease Agreement or in the procuring of same. District and City agree that if any claim be made for brokerage fees by, through or on account of any acts of District or City or their respective representatives, the party upon whose acts such claim is made will hold the other harmless from any and all liabilities and expenses in connection therewith.

26. HAZARDOUS SUBSTANCES.

26.1 Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in sections 66680 through 66685 of Title 22 of the California Code of Regulations, Divisions 4, Chapter 20, as the same may be amended from time to time.

26.2 City shall comply with all laws now and hereafter in effect relating to the use of

Hazardous Materials on, under or about the Premises and shall not contaminate the Premises, or its subsurface, with any Hazardous Materials.

26.2.1 City shall restrict its use of Hazardous Materials at the Premises of those kinds of materials that are normally used in the ordinary course of business. Disposal of any Hazardous Materials at the Premises is strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be in accordance with all applicable laws and regulations.

26.2.2 City shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from City's activities on the Premises. City shall immediately inform District of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to the public agency.

26.2.3 City shall be solely and fully responsible and liable for such releases at the Premises, or into District's sewage or storm drainage systems. City shall take all necessary precautions to prevent any of its Hazard Materials from entering into any storm or sewage drain system or from being released on the Premises. City shall remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of District hereunder, if the release of Hazardous Materials caused by City is not removed by City within ninety (90) days after discovery by City, District or any other third party, District may pay to have the same removed and City shall reimburse District for such costs within five (5) days of District's demand for payment.

26.2.4 City shall protect, defend, indemnify and hold harmless District from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which District may sustain as a result of the presence of Hazardous Materials on the Premises during the Term of this Lease, excepting therefrom any loss damage or liability attributable to Hazardous Materials which are a result of the actions of the District or the District's , employees, contractors or agents.

26.2.5 District shall protect, defend, indemnify and hold harmless City from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which City may sustain as a result of the presence of Hazardous Materials on the Premises prior to, or subsequent to, the Term of this Lease, excepting therefrom any loss, damage or liability, attributable to Hazardous Materials which are a result of the actions of the City or the City's employees, contractors or agents.

26.2.6 City's and District's obligations under this Section 29 shall survive the expiration

or earlier termination of this Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Dates set forth below.

District:

City:

By:

By:

Title: President BUSD Governing Board

Title: Mayor

Approved as to Form:

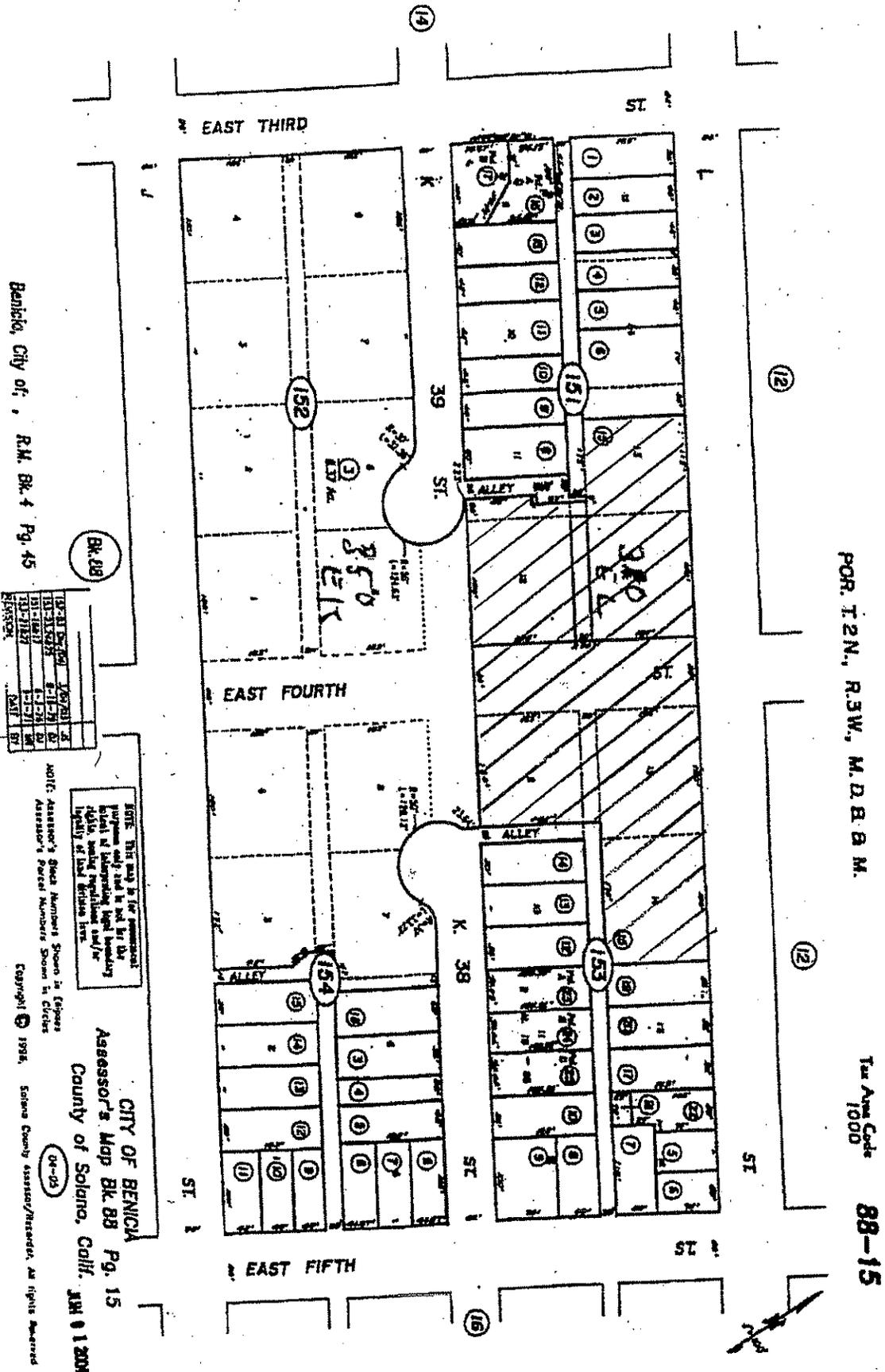
Approved as to Form:

Lawrence H. Sobers

Leanne J. Taylor

# EXHIBIT A

The leased premises are the cross-hatched areas below.



POR. T2N., R3W., M2B&B.M.

Tax Assn Code 1000 **88-15**

Benicia, City of, R.M. Bk. 4 Pg. 45

10-31-20	106/201	A
11-30-20	4-11-20	B
12-31-20	1-1-20	C
1-31-21	1-1-21	D
2-28-21	1-1-21	E
3-31-21	1-1-21	F
4-30-21	1-1-21	G
5-31-21	1-1-21	H
6-30-21	1-1-21	I
7-31-21	1-1-21	J
8-31-21	1-1-21	K
9-30-21	1-1-21	L
10-31-21	1-1-21	M
11-30-21	1-1-21	N
12-31-21	1-1-21	O
1-31-22	1-1-22	P
2-28-22	1-1-22	Q
3-31-22	1-1-22	R
4-30-22	1-1-22	S
5-31-22	1-1-22	T
6-30-22	1-1-22	U
7-31-22	1-1-22	V
8-31-22	1-1-22	W
9-30-22	1-1-22	X
10-31-22	1-1-22	Y
11-30-22	1-1-22	Z
12-31-22	1-1-22	AA
1-31-23	1-1-23	AB
2-28-23	1-1-23	AC
3-31-23	1-1-23	AD
4-30-23	1-1-23	AE
5-31-23	1-1-23	AF
6-30-23	1-1-23	AG
7-31-23	1-1-23	AH
8-31-23	1-1-23	AI
9-30-23	1-1-23	AJ
10-31-23	1-1-23	AK
11-30-23	1-1-23	AL
12-31-23	1-1-23	AM
1-31-24	1-1-24	AN
2-28-24	1-1-24	AO
3-31-24	1-1-24	AP
4-30-24	1-1-24	AQ
5-31-24	1-1-24	AR
6-30-24	1-1-24	AS
7-31-24	1-1-24	AT
8-31-24	1-1-24	AU
9-30-24	1-1-24	AV
10-31-24	1-1-24	AW
11-30-24	1-1-24	AX
12-31-24	1-1-24	AY
1-31-25	1-1-25	AZ
2-28-25	1-1-25	BA
3-31-25	1-1-25	BB
4-30-25	1-1-25	BC
5-31-25	1-1-25	BD
6-30-25	1-1-25	BE
7-31-25	1-1-25	BF
8-31-25	1-1-25	BG
9-30-25	1-1-25	BH
10-31-25	1-1-25	BI
11-30-25	1-1-25	BJ
12-31-25	1-1-25	BK
1-31-26	1-1-26	BL
2-28-26	1-1-26	BM
3-31-26	1-1-26	BN
4-30-26	1-1-26	BO
5-31-26	1-1-26	BP
6-30-26	1-1-26	BQ
7-31-26	1-1-26	BR
8-31-26	1-1-26	BS
9-30-26	1-1-26	BT
10-31-26	1-1-26	BU
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3-31-27	1-1-27	BZ
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3-31-29	1-1-29	CX
4-30-29	1-1-29	CY
5-31-29	1-1-29	CZ
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4-30-31	1-1-31	DW
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6-30-31	1-1-31	DY
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10-31-44	1-1-44	IV
11-30-44	1-1-44	IV
12-31-44	1-1-44	IV
1-31-45	1-1-45	IV

NOTE: This map is for information purposes only and is not to be used for the purpose of determining legal boundaries, title, zoning regulations and/or liability of the parties hereto.

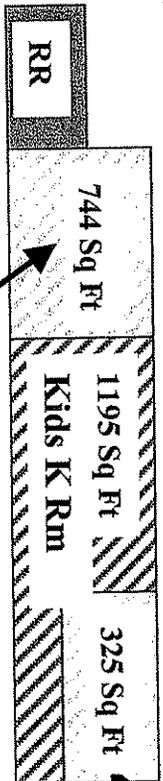
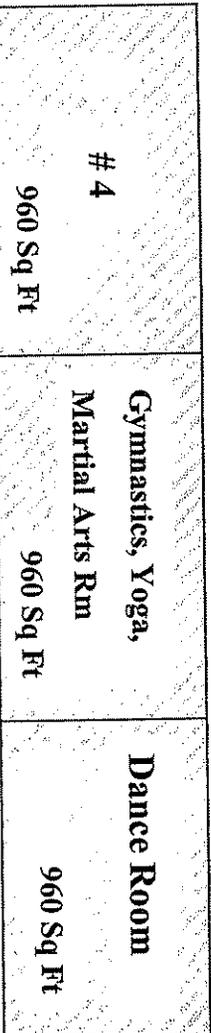
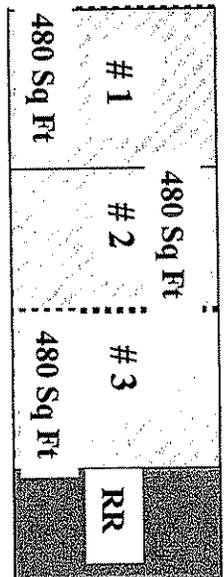
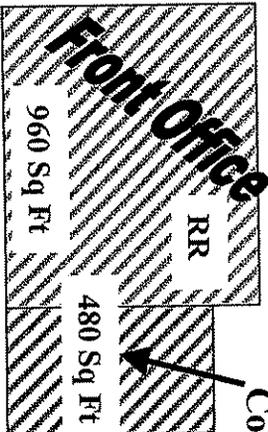
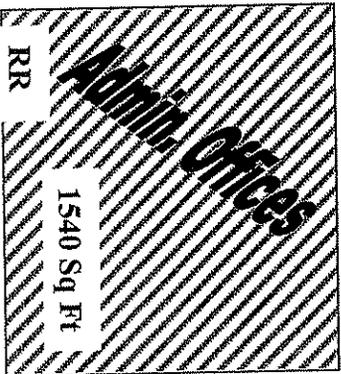
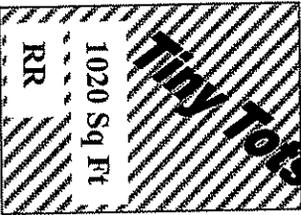
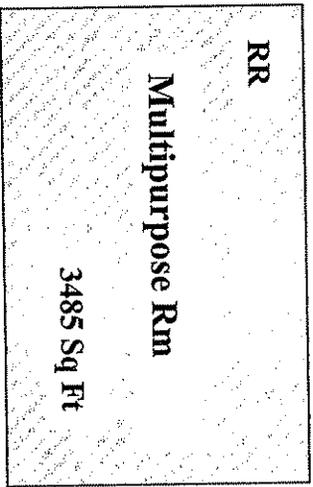
NOTE: Assessor's Sheet Numbers Shown in Figures and Assessor's Parcel Numbers Shown in Circles

CITY OF BENICIA  
 Assessor's Map Bk. 89 Pg. 15  
 County of Solano, Calif. JUN 9 1 2018  
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# **EXHIBIT B**

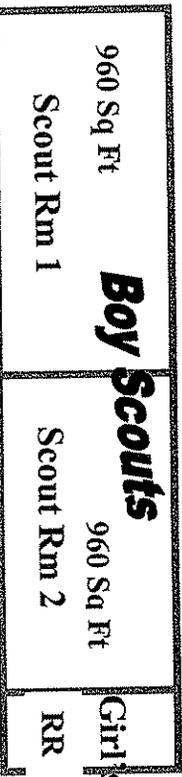
# Mills Community Center

## EXHIBIT B



Arts & Craft Rm

Computer Rm



**Key**

= Dedicated Use

= Multi-Use

\* Not To Scale

**LIONS CLUB OF BENICIA LEASE  
AGREEMENT**

**SUBLEASE AGREEMENT**

**Between**

**THE CITY OF BENICIA, CALIFORNIA**

**and**

**THE LIONS CLUB OF BENICIA AS**

**SPONSORING ORGANIZATION FOR**

**THE BOY SCOUTS OF AMERICA, BENICIA DIVISION**

This Sublease Agreement ("Sublease") is entered into on \_\_\_\_\_, by and between the CITY OF BENICIA, a municipal corporation (hereinafter "Sublessor") and the LIONS CLUB OF BENICIA, a California Corporation, (hereinafter "Sublessee") as sponsoring organization for the Boy Scouts of America, Benicia Division (hereinafter "Scouts").

Sublessor agrees to sublease the Premises described herein to the Sublessee, for the period indicated, in accordance with the following terms and conditions:

**RECITALS**

WHEREAS, Sublessor entered into a long term lease ("Master Lease") with the Benicia Unified School District, ("BUSD") for the property formerly known as Mills School, which is located at 380 East 'L' Street, Benicia, CA, ("Property"); and

WHEREAS, pursuant to its terms, the Master Lease permits the Sublessor to sublease or assign, all or any portion of its leasehold interest in the Property; and

WHEREAS, Sublessee wishes to sublease a portion of the Property from the Sublessor for the sole purpose of providing a location for the Benicia Scouts to conduct standard activities and operations; and

WHEREAS, Sublessor agrees to sublease a portion of the Property to Sublessee; and

WHEREAS, the Valero Energy Corporation donated the sum of two hundred thousand dollars (\$200,000.00), to support the long-term needs of the Boy Scout and Girl Scout troops of Benicia.

NOW, THEREFORE, the Sublessor and Sublessee, in consideration for the terms and conditions contained herein, and intending to be legally bound thereto, hereby enter into this Sublease.

## AGREEMENT

### 1. INTERPRETATION AND CONSTRUCTION OF SUBLEASE

1.1 The Parties hereto acknowledge that this Sublease of the Premises is subject to the terms and conditions of the Master Lease executed between Sublessor and the BUSD. To the extent there are conflicting provisions between the Master Lease and this Sublease, the rights, responsibilities, actions, obligations and duties of the parties shall be construed in a manner that does not cause Sublessor to be in breach of the Master Lease. A correct copy of the Master Lease agreement is attached hereto as Exhibit 'A,' and incorporated by reference.

1.2 The Parties have entered into this Sublease for the sole purpose of facilitating the ongoing activities of the Scouts. Sublessee may not use the Premises, as herein defined, nor any portion thereof, for any other purpose.

1.3 In the event that the Scouts relocate, are disbanded or otherwise cease to exist or require use of the Premises at any time during the unexpired term of this Sublease, or any extended term granted hereunder, then this Sublease shall immediately terminate.

1.4 Should the Sublessee disband, without a legal successor in interest, at any time during the unexpired term of this Sublease, or any extended term granted hereunder, then the Scouts shall have the first right of refusal to assume all of the rights and duties of Sublessee under this Sublease.

### 2. DESCRIPTION OF PREMISES

2.1 Sublessor agrees to sublease to Sublessee the area outlined on Exhibit B, attached hereto and incorporated herein, which shall be known as Scout Rooms 1 & 2, for its exclusive use and possession, and Sublessee shall have shared use of the adjoining Girls Restroom and closest Boys Restroom (hereinafter collectively referred to as the "Premises"), along with the occupants of Scout Rooms 3 & 4, the Girl Scouts of Northern California.

### 3. TERM OF SUBLEASE

3.1 The initial term of this Sublease shall commence upon the execution of this Sublease by the Parties and shall terminate on March 31, 2047, unless sooner terminated pursuant to any provision of the Master Lease, or this Sublease, or by operation of law.

3.2 Providing Sublessee is not in breach of any part of this Sublease, Sublessee shall have the option to extend the Sublease for two additional ten (10) year terms, subject to the same terms and conditions of this Sublease unless a) Sublessor does not extend its Master Lease with BUSD or b) Sublessee's option to extend is precluded

by any provision of the Master Lease or this Sublease, or by operation of law. In either case, Sublessor agrees to notify Sublessee of its intention not to extend the Sublease, in writing, a minimum of one hundred eighty (180) days prior to the expiration of the Sublease term, or any extension thereof.

3.3 Sublessee acknowledges and agrees that BUSD has the right to terminate the Master Lease at any time if all or any portion of the Property is needed for public school classroom instruction purposes. Should BUSD elect to terminate the Master Lease with Sublessor under this provision, BUSD must inform Sublessor a minimum of two hundred and forty (240) days prior to the termination date. Sublessor shall inform Sublessee, in writing, of the BUSD's notice to terminate the Master Lease within 120 days of Sublessor's receipt of BUSD's notice to terminate the Master Lease.

#### **4. PAYMENT**

4.1 Sublessee agrees to pay to Sublessor total rent of \$1.00 per year for the Premises during the term of this Sublease and any extension. This amount is due and payable in full, in advance, upon execution of this Sublease, for the entire forty year term of this Sublease, in the amount of \$40.00.

4.2 Within 30 days following the execution of both this Sublease by the Parties, and the execution of a similar sublease for Scout Rooms 3 & 4 by the Girl Scouts of Northern California, Sublessee agrees to pay the sum of two hundred thousand dollars (\$200,000) to the Sublessor, representing distribution in full of the funds donated by the Valero Energy Corporation that are presently held in trust by Sublessee and designated for the long-term needs of the Benicia Boy Scout and Girl Scout troops.

#### **5. POSSESSION**

5.1 Sublessor shall deliver exclusive possession of the Premises to the Sublessee no later than twelve months following the approval of the Mills Improvement Project budget by the Benicia City Council, and completion of the improvements to the Premises set forth at Section 11.1 below. Sublessee shall retain exclusive possession until the Sublease is terminated due to completion of the Sublease period, by any other provision of this Sublease or by operation of law.

5.2 Sublessor shall have the right of access to the Premises at any time and for any reason. Whenever possible, Sublessor shall provide Sublessee with 24 hours advance notice prior to accessing the Premises. In the event of an emergency, Sublessor shall not be required to provide Sublessee with any notice of entry.

#### **6. USE OF PREMISES**

6.1 Following the delivery of the Premises to Sublessee, as described in Section 5.1 above, Sublessee accepts the Premises in "as is" condition. Sublessor shall not be required to make any alterations or improvements to the Premises and Sublessee

may not alter or modify the Premises in any way without the express written permission of Sublessor.

6.2 Sublessor authorizes Sublessee to use the Premises for activities that are consistent with the operations, goals and objectives of the Scouts that are generally associated with, or for the benefit of, Scouts, subject to local noise or other ordinances, local or other use permits and so long as such activities do not interfere with the quiet enjoyment of other occupants of the Property or neighborhood.

6.3 Sublessee shall be responsible for any and all repairs to the Premises caused by Sublessee's or the Scout's intentional, accidental or negligent acts, which damage the Premises.

6.4 Sublessor reserves the right to terminate this Sublease if the Sublessee or the Scouts engage in any illegal activity while in possession of the Premises. Should Sublessor terminate the Sublease at any time pursuant to this section, Sublessee shall have thirty (30) days to vacate the Premises.

6.5 Sublessee shall not dispose of e-waste, hazardous or toxic items or waste, landscaping materials, plants, trees, personal household trash or other forbidden materials in or about the garbage bins on the Premises or Property.

## **7. INDEMNIFICATION**

7.1 Sublessee and the Scouts agree to defend, indemnify, and hold harmless Sublessor, its officials, officers, employees, volunteers and agents from and against any and all claims, causes of action, judgments, obligations or liabilities and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of Sublessee's or the Scout's operation, use or occupancy of the Premises, except causes of action, claims, judgments, obligations arising out of Sublessor's gross negligence or willful misconduct.

## **8. INSURANCE**

8.1 Sublessee shall, at Sublessee's sole expense, obtain and keep in force during the term of this Sublease a comprehensive general liability insurance policy insuring the Premises and Sublessor against all claims and liabilities arising out of the operation, condition, use or occupancy of the Premises. Such insurance shall be in an amount of not less than five million dollars (\$5,000,000) for bodily injury or death and property damage as a result of any one occurrence and a five million dollar (\$5,000,000) general aggregate policy. Insurance shall be with a carrier approved by Sublessor, who will not unreasonably withhold such approval. Prior to possession, Sublessee shall deliver to Sublessor a certificate of insurance and endorsement evidencing the existence of the policy required hereunder and stating that such policy shall:

- 8.1.1 Not be cancelled or altered without thirty (30) days prior written notice to Sublessor;
- 8.1.2 insure performance of the indemnity set forth in Section 7.1, above;
- 8.1.3 state that the coverage is primary and any coverage by Sublessor is in excess thereto;
- 8.1.4 contain cross liability endorsements and include a separate endorsement naming Sublessor, its officers, and its employees as additional insured.

At least thirty (30) days prior to the expiration of such certificate, and every such subsequent certificate, Sublessee shall deliver to Sublessor a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in Section 8.1.

8.2 On June 2, 2012, the monetary limit for liability coverage stated in this subsection may be adjusted by BUSD based upon the prevailing insurance industry standard for reasonable levels of coverage, and adjusted after each succeeding five (5) year period during the term, or any extension, of this Sublease. Sublessor shall notify Sublessee within 10 days of receiving notice from BUSD regarding any required adjustment of insurance coverage. Sublessee's liability insurance requirements will at all times during the term or any extensions of this Sublease, be amended to reflect the requirements set forth in the Master Lease.

8.3 Sublessee acknowledges that any insurance maintained by Sublessor on the Premises will not insure any of Sublessee's property. Sublessee shall, at its own expense, maintain in full force and effect insurance covering all fixtures, equipment, buildings, leasehold improvements and personal property in, about, or on the Premises. Sublessee hereby releases Sublessor, BUSD, its partners, officers, agents and employees, from any and all claims, demands, loss, expense or other injury to the Premises or to the furnishings, fixtures, equipment, inventory or other personal property of Sublessee, in, about, or upon the Premises, which is caused by perils, events or happenings which are covered by the insurance required by this Sublease or which are the subject of insurance carried by Sublessee and in force at the time of such loss.

## **9. CASUALTY DAMAGE**

9.1 In the event that any portion of the Premises is destroyed or damaged by an uninsured peril, Sublessor or Sublessee may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Sublease, provided however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at that party's sole expense, in which case this Sublease shall remain in full force and effect and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.

9.2 In the event that the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) of the then replacement cost of the Premises, Sublessor or Sublessee may elect to terminate this Sublease. Written notice of election to terminate must be given by the party electing to terminate to the other party within thirty (30) days after the occurrence of such damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, the insured party shall, at its own expense, promptly rebuild or restore the premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, Sublessor may terminate this Sublease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.

9.3 In the event that, pursuant to the foregoing provisions, Sublessor or Sublessee is to rebuild or restore the premises, Sublessor or Sublessee shall, within thirty (30) days after the occurrence of such damage or destruction, provide the other party with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit, either party may, within thirty (30) days of receipt of such notice from the other party, and prior to the commencement of any repair or restoration work, elect to terminate the Sublease by giving written notice to the other party of such election, whereupon the Sublease may immediately terminate. The period of time to complete the repair or restoration shall be extended for delays caused by the fault or neglect of the contractor(s) or because of force majeure, acts of publication, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of either party to this Sublease. Any obligation of Sublessor to repair or restore the Premises shall not include restoration of Sublessee's trade fixtures, equipment, merchandise, or any improvements, alterations or additions made by Sublessee.

9.4 Unless this Sublease is terminated pursuant to the foregoing provisions, this Sublease shall remain in full force and effect following the damage or destruction of the Premises provided, however, that during any period of repairs or restoration, rent and all other amounts to be paid by Sublessee shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of the Sublessee's purpose.

## 10. UTILITIES

10.1 Sublessee shall pay the recurring costs associated with its own telephone, Internet and cable services.

10.2 Sublessor shall pay for all utilities in place on the Premises including water, sewer, alarm, electric and garbage.

## 11. ALTERATIONS, IMPROVEMENTS, MAINTENANCE AND REPAIR

11.1 Prior to delivering possession of the Premises to the Sublessee, Sublessor shall perform the following improvements to the Premises:

- The common wall between the classrooms will be removed.
- A collapsible wall will be installed between the two classrooms.
- All walls will have sheetrock installed and be taped, textured and painted.
- A kitchenette and sink will be installed.
- Cabinets, floor coverings, lighting and window and wall coverings will be installed.
- Telephone, Internet and cable services will be established.
- Both restrooms will be renovated.

The improvements shall be made at Sublessor's sole expense, conditioned upon Sublessee's timely payment of the two hundred thousand dollars (\$200,000) referenced at Section 4.2 above. Sublessor agrees to absorb any additional expense in the event that the cost of improvements exceeds \$200,000. If the total cost of the improvements is less than \$200,000, then any funds remaining will be applied to offset the costs related to other improvements made to the Premises and Property by the Sublessor, and the reduced lease rate provided to Sublessee, and none shall be refunded or credited.

11.2 Following the delivery of possession of the Premises to the Sublessee, Sublessee shall not make or perform any alterations or improvements in, on or about the Premises, without Sublessor's express written consent. All such alterations or improvements made by Sublessee shall be completed at Sublessee's sole expense and in accordance with all applicable laws, with all necessary permits and in conformance with construction industry standards.

11.3 Prior to Sublessee's occupancy of the Premises, the Sublessor shall have completed over two million dollars (\$2,000,000) in repairs and improvements to the Property, including mold and asbestos abatement, installation of a new roof and HVAC units, construction of a new parking complex, and installation of new walls, interior lighting and floors. At the time possession of the Premises is delivered to the Sublessee, Sublessor warrants that the Premises will be safe for occupancy and in compliance with the Americans with Disability Act and all other similar regulatory and building standards and requirements then in effect. In the event any new or updated standards require additional construction or modification of the Premises at any time during the term of this Sublease, or any extended term granted hereunder, the Sublessee shall be responsible for all costs related to any such improvements.

11.4 Sublessee shall assume all custodial responsibility for the Premises for the duration of this Sublease. Sublessor makes no claim or warranty as to the condition of the Premises upon occupancy of Sublessee. Any agreements, warranties or representations, which are not expressly contained herein, shall not be binding upon Sublessor or BUSD.

11.5 Sublessor shall have custodial responsibility for all common areas of the Property.

## 12. DEFAULT

12.1 Events of Default. A breach of this Sublease by Sublessee shall exist if any one of the following events shall occur:

12.1.1 Failure to make payment when due, of any installment of rent, or other payment required to be made by Sublessee hereunder and such default shall not have been cured within ten (10) days after payment is due;

12.1.2 Any effort by Sublessee to sublet the Premises or otherwise assign all or any portion of Sublessee's interest in this Sublease.

12.1.3 Sublessee's failure to perform any other term, covenant or condition contained in this Sublease and such failure shall have continued for thirty (30) days following written notice of such failure is given by Sublessor;

12.1.4 The Sublessee, or any guarantor of Sublessee's obligations hereunder, shall commence any case, proceeding, or other action seeking reorganization, arrangements, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seek appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;

12.1.5 The Sublessee, or any such guarantor, shall take any corporate action to authorize any of the actions set forth in Subsection 12.1.4 above.

12.1.6 Any case, proceeding or other action against the Sublessee or any guarantor of the Sublessee's obligation hereunder seeking to have an order of relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization for relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it, or all or any substantial part of its property, and in such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains a pending action for a period of forty-five (45) days.

12.2 Remedies. Upon any Event of Default, Sublessor shall notify Sublessee, in writing, specifying Sublessee's failure to perform and declaring Sublessor's intent to declare a default ("Default Notice"). Sublessee shall be deemed in default under the Sublease if, Sublessee has failed to perform any obligation of Sublessee specified in the Default Notice within thirty (30) days after its receipt from Sublessor, provided however, that if the nature of Sublessee's obligation is such that more than thirty (30) calendar days

are required for its performance, Sublessee shall not be deemed in default if it shall commence such performance within (30) days and thereafter diligently pursue the same to completion. Upon any such default by Sublessee, Sublessor shall have the following remedies as provided by law to which Sublessor may resort, cumulatively or in the alternative:

12.2.1 Recovery of Rent. Sublessor shall be entitled to keep this Sublease in full force and effect (whether or not Sublessee shall have abandoned the Premises) and to enforce all of its rights and remedies under this Sublease, including the right to recover rent and other sums as they become due, plus interest at the statutory rate from the due date of each installment of rent or other sum until paid.

#### 12.2.2 Termination of Sublease

12.2.2.a Termination by Sublessor. Sublessor may terminate this Sublease by giving Sublessee written notice of Sublessor's intent to terminate ("Notice of Termination"). Upon receipt of a Notice of Termination, Sublessee's rights in the Premises shall terminate. Upon receipt of the Notice of Termination, Sublessee shall surrender and vacate the Premises in the condition required by Section 22 below. Sublessor may re-enter and take possession of the Premises and all of the remaining improvements or property and eject Sublessee or any of Sublessee's sub-lessees, assignees or other person or persons claiming any right under or through Sublessee, or eject some and not others or eject none.

12.2.2.b Judicial Termination. This Sublease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release Sublessee from the payment of any sum then due Sublessor or from any claim for damages or rent previously accrued or then accruing against Sublessee. In no event shall any one or more of the following actions by Sublessor constitute a termination of this Sublease:

12.2.3 Maintain and preserve the Premises at Sublessee's expense;

12.2.4 Efforts to re-let the Premises;

12.2.5 Appointment of a receiver to protect Sublessor's interest hereunder;

12.2.6 Consent to any subletting of the Premises or assignment of this Sublease by Sublessor, whether pursuant to provisions hereof concerning subletting and assignment or otherwise;

12.2.7 Any other action by Sublessor or Sublessor's agents intended to mitigate the adverse effects of any breach of this Sublease by Sublessee.

12.2.8 Damages. If this Sublease is terminated pursuant to Subsection 12.2.2, or otherwise, Sublessor shall be entitled to damages in the following amounts:

12.2.8.a The amount of the unpaid rent, which has been earned as of the termination date; plus,

12.2.8.b The amount of rent earned between the termination date until the end of the Sublease period, or to the date when the Premises are re-let, less any amount that Sublessee proves could reasonably have been avoided.

12.2.8.c Any other amount necessary to compensate Sublessor for all detriment proximately caused by Sublessee's failure to perform Sublessee's obligation under this Sublease including, but not limited to; (i) expenses for retaking possession of the premises, cleaning, repairing or restoring the Premises to its condition prior to Sublessee's occupancy, (ii) real estate broker's fees, reasonable advertising costs and other expenses of re-letting the Premises, (iii) costs of insuring and securing the Premises between the time of termination and re-letting the Premises, (iv) reasonable attorney's fees and court costs, and (v) any unamortized real estate brokerage fees paid in connection with the Sublessee's Sublease.

12.2.8.d Interest at the highest rate allowed by law will be assessed on all amounts determined to be owed by Sublessee to Sublessor.

12.2.9 Events of Sublessor's Default. A breach of this Sublease by Sublessor shall exist if any of the following events occur:

12.2.9.a Sublessor's failure to perform any other term, covenant or condition contained in this Sublease and such failure shall have continued for thirty (30) days after written notice of such failure is given by Sublessee to Sublessor;

12.2.9.b Failure by Sublessor to deliver possession of the Premises to Sublessee, or the interruption of possession of the Premises by Sublessor, except as set forth in Section 3.2 or 3.3 of this Sublease.

12.2.9.c Sublessor shall be in default of this Sublease if Sublessor has failed to perform any obligation required to be performed by Sublessor under this Sublease within thirty (30) days after the receipt of notice from Sublessee specifying in detail Sublessor's failure to perform, provided, however, that if the nature of Sublessor's obligation is such that more than thirty (30) calendar days are required for its performance, Sublessor shall not be deemed in default if it shall commence such performance and thereafter diligently pursues the same to completion. Upon any such default by Sublessor, Sublessee may exercise any of its rights provided in law or at equity and shall have the right, but not the obligation to cure any such default by Sublessor and to deduct the costs incurred by Sublessee in curing such default, including legal fees and expenses, from the amounts next due and owing under the Sublease.

### **13. MECHANICS LIEN**

13.1 For all work Sublessee may perform on the Premises which may provide the right of a mechanics lien, Sublessee shall; (i) pay for all labor and services performed, for materials used by or furnished to Sublessee by any contractor employed by Sublessee with respect to the Premises, (ii) defend, indemnify and hold the Sublessor and Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed, for materials used by or furnished to Sublessee or any contractor employed by Sublessee with respect to the Premises, (iii) give notice to Sublessor in writing thirty days prior to employing any laborer or contractor to perform services related to, or receiving materials for use upon the Premises, and (iv) permit Sublessor to post a notice of non-responsibility in accordance with the statutory requirements of California Civil Code Section 3094 or any amendment thereof. In the event Sublessee is required to post an improvement bond with a public agency in connection with the above, Sublessee agrees to include Sublessor as an additional obligee.

### **14. INSPECTION OF PREMISES**

14.1 Sublessee shall permit Sublessor and its agents to enter the Premises at any reasonable time, with notice to Sublessee, for the purpose of inspecting the Premises, performing maintenance and repairs, or posting a notice of non-responsibility for alterations, additions, or repairs, Sublessee shall permit Sublessor and its agents to enter the Premises at any time within ninety (90) days prior to expiration of this Sublease to place upon the premises ordinary "For Lease" or "For Sale" signs, providing said signs shall not suggest the Sublessee is selling the Premises or any other property of Sublessor.

### **15. HOLDING OVER**

15.1 Should Sublessee hold over in possession of the premises after the expiration of the original term or any extended term of this Sublease, such holding over shall not be deemed to extend the term or renew the Sublease, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at one hundred ten percent (110%) of the monthly rental (Hold Over Rent) of the last expiring term unless a different rental amount is mutually agreed to by the Sublessor and Sublessee.

### **16. NOTICE**

16.1 Any notices which either of the parties hereto is required or may desire to send or deliver to give to the other party shall be sent by certified mail, return receipt requested and postage prepaid, or delivered with all charges prepaid, to the address listed below, or to any other address as either party may designate to the other from time to time in writing.

Sublessee:	Sublessor:	Party of Interest
Lions Club of Benicia 306 Panorama Court Benicia, CA 94510	City of Benicia 250 East "L" Street Benicia, CA 94510	Boy Scouts of America 380 East L Street Benicia, CA 94510
ATTN: President	ATTN: City Manager	ATTN: Scoutmaster

The date of service of any such notice mailed as aforesaid shall be deemed to be five (5) days after the date of such mailing. The date of service of any such notice hand delivered shall be deemed to be one (1) day after delivery thereof to the delivery service office.

#### **17. ATTORNEYS' FEES**

17.1 In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of this Sublease, to recover rent or possession of the Premises, to terminate this Sublease, or to enforce, protect or establish any term or covenant of this Sublease or right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' fees and costs for appeal, as may be fixed by the court or jury. The term "prevailing party" shall mean the party who received substantially the relief requested, whether by settlement, dismissal, summary judgment, judgment, or otherwise.

#### **18. SUBLEASE AND ASSIGNMENT**

18.1 The Sublessee may not sublease the Premises nor assign this Sublease at any time. Any effort by Sublessee to sublet the Premises or otherwise assign all or any portion of Sublessee's interest in this Sublease shall be a breach of this Agreement.

#### **19. SUCCESSORS**

19.1 This Sublease contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto.

#### **20. WAIVER**

20.1 The waiver by Sublessor or Sublessee of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition, herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

## **21. GENERAL PROVISIONS**

21.1 The captions and section headings used in this Sublease are for the purposes of convenience only and shall not be construed to limit or extend the meaning of any part of this Sublease.

21.2 Time is of the essence for the performance of each term, covenant and condition of this Sublease.

21.3 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Sublease, but this Sublease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

21.4 This Sublease shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Sublease shall be maintained in Solano County, California.

21.5 This Sublease constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Sublease may be amended or modified only by a written instrument executed by both parties.

21.6 This Sublease and all exhibits, amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one original document.

21.7 Sublessee agrees to comply with all rules and regulations imposed by Sublessor that are at any time posted on the Premises or delivered to Sublessee. Sublessee shall not, and shall ensure that guests and licensees of Sublessee do not, disturb, annoy, endanger, or interfere with other Lessees, occupants or activities in the building.

## **22. SURRENDER OF THE PREMISES**

22.1 On the last day of the term hereof, or on sooner termination of this Sublease, Sublessee shall surrender to Sublessor the Premises and any then existing improvements to the Premises in good order, condition and repair, free and clear of all liens, claims and encumbrances. Said condition shall be similar to that existing as of the date occupancy was delivered to the Sublessee, except for ordinary wear and tear and approved improvements and/or alterations. Sublessee shall remove all of Sublessee's personal property and trade fixtures from the Premises and all property not so removed shall be deemed abandoned by Sublessee. If the Premises are not so surrendered at the termination of this Sublease, Sublessee shall indemnify Sublessor against loss or liability resulting from delay by Sublessee in surrendering the Premises including, without

limitation, any claims made by any succeeding tenant or losses to Sublessor due to lost opportunities to lease to succeeding tenants.

## **23. HAZARDOUS SUBSTANCES**

23.1 Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in sections 66680 through 66685 of Title 22 of the California Code of Regulations, Divisions 4, Chapter 20, as the same may be amended from time to time.

23.2 Sublessee shall comply with all laws now and hereafter in effect relating to the use of Hazardous Materials on, under or about the Premises and shall not contaminate the Premises, or it's subsurface, with any Hazardous Materials.

23.2.1 Sublessee shall restrict its use of Hazardous Materials at the Premises to those kinds of materials that are normally used in the ordinary course of business. Disposal of any Hazardous Materials at the Premises is strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be in accordance with all applicable laws and regulations.

23.2.2 Sublessee shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from Sublessee's activities on the Premises. Sublessee shall also immediately notify Sublessor of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to any public agency.

23.2.3 Sublessee shall be solely and fully responsible and liable for such releases at the Premises, or into Sublessor's sewage or storm drainage systems. Sublessee shall take all necessary precautions to prevent any of its Hazard Materials from entering into any storm or sewage drain system or from being released on the Premises. Sublessee shall remove releases of its Hazardous Materials and remediate the Premises in accordance with all

laws. In addition to all other rights and remedies of Sublessor hereunder, if the release of Hazardous Materials caused by Sublessee is not removed by Sublessee within ninety (90) days after discovery by Sublessee, Sublessor or any other third party, Sublessor may pay to have the same removed and Sublessee shall reimburse Sublessor for such costs within five (5) days of Sublessor's demand for payment.

23.2.4 Sublessee shall protect, defend, indemnify and hold harmless Sublessor from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which Sublessor may sustain as a result of the presence of Hazardous Materials on the Premises during the Term of this Sublease, excepting therefrom, any loss damage or liability attributable to Hazardous Materials which are a result of the actions of the Sublessor or the Sublessor's employees, contractors or agents.

23.2.5 Sublessee shall protect, defend, indemnify and hold harmless Sublessor from and against all claims, loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which Sublessor may sustain as a result of the presence of Hazardous Materials on the Premises prior to, or subsequent to, the Term of this Sublease, excepting therefrom any loss, damage or liability, attributable to Hazardous Materials which are a result of the actions of the Sublessor or the Sublessor's employees, contractors or agents.

23.2.6 Sublessee's and Sublessor's obligations under this Section 23 shall survive the expiration or earlier termination of this Sublease.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Dates set forth below.

SUBLESSOR: CITY OF BENICIA

SUBLESSEE: Lions Club of Benicia, Inc.

BY \_\_\_\_\_  
James R. Erickson  
City Manager

BY \_\_\_\_\_  
President

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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AGREEMENT AND ACKNOWLEDGEMENT BY PARTY IN INTEREST:

BOY SCOUTS OF AMERICA

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

President

Approved as to form:

\_\_\_\_\_  
Heather McLaughlin  
City Attorney

DATE: \_\_\_\_\_

# **EXHIBIT A**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter referred to as "Lease") is made on March 29, 2007, by and between Benicia Unified School District, a public school district of the State of California, (hereinafter referred to as "District"); and City of Benicia, a municipality in the State of California (hereinafter referred to as "City") (collectively referred to as "parties").

### 1 DESCRIPTION.

District does hereby rent and lease to the City the Mills School located at 380 L Street, Benicia, California, APN 0088-151-150 and 0088-153-150, including all structures and improvements located thereon and the contiguous grounds shown as the leased Premises in Exhibit "A" attached hereto and hereinafter referred to as "Premises."

### 2 TERM.

- 2.1 The term of this Lease shall be for forty (40) years commencing on April 1, 2007 and, unless sooner terminated under any provision hereof, ending on March 31, 2047 (First Term). This Agreement will renew for two (2) additional ten (10) year term(s), each ten (10) year Term shall be defined as the "Extension Term," upon the same terms and conditions unless the City notifies the District in writing of City's intention not to renew this Agreement at least One Hundred Eighty (180) days prior to the expiration of the existing Term. In the event that District requires the use of all or a portion of the Premises for public school classroom instruction purposes, the District may decline to approve the new Extension Term, provided that the District shall provide City with written notice of such non-approval at least Two Hundred Forty (240) days prior to the expiration of the First Term or any Extension Terms thereafter.
- 2.2 District reserves the right to terminate this Lease at any time if the property is needed for public school classroom instruction purposes. If District elects termination prior to the completion of the First Term, District will give City a minimum of Two Hundred Forty (240) days advance notice prior to the termination date. In the event that District requires the use of all or a portion of the Premises for public school classroom instruction purposes, District shall have the option prior to the expiration of the First (1st) Term and prior to the expiration of each subsequent Extension Term to propose revised lease terms.
- 2.3 In the event that the District declines to approve the Extension Term in accordance with Section 2.1 above or in the event that District terminates this Lease at any time for public school classroom instruction purposes in accordance with Section 2.2 above, District shall, in accordance with Section 10 hereof, reimburse the City for the costs of City's Improvements which were approved in writing by the District, and if required herein, by the Division of the State Architect prior to construction.

### 3 RENT.

- 3.1 The annual rent shall be One Hundred Twenty Thousand Dollars \$120,000.00, payable in equal monthly installments of Ten Thousand Dollars \$10,000.00. City shall pay promptly to District, the monthly rent on the first day of each month in advance during the term of this Lease, without deduction (unless agreed to), setoff, prior notice or demand.
- 3.2 Beginning in 2011, the monthly rent will be adjusted annually for each succeeding year. The Base Index for computing the adjustment is the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) San Francisco - Oakland - San Jose Metropolitan Area as published for June 2011 (or the nearest preceding month if not published for that month). The first such adjustment shall occur on July 1, 2011 and shall be applied to the initial monthly rent. Subsequent yearly adjustment calculations shall be determined by the April index and become effective on July 1 for each succeeding year of the Lease. If the Consumer Price Index published nearest the adjustment date has increased over the Base Index then the monthly rent for the following year shall be adjusted by multiplying the initial monthly rent by a fraction, the numerator of which is the Current Index and denominator of which is the Base Index. In no case shall the monthly rent be less than the previous year's monthly rent.
- 3.3 City acknowledges that late payment by City to District of the monthly rent and other sums due hereunder will cause District to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, if any installment of rent or any other sum due from City shall not be received by District within ten (10) days after such amount shall be due, City shall pay to District, as additional rent, a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs District will incur by reason of late payment by City. Acceptance of such late charge by District shall in no event constitute a waiver of City's default with respect to such overdue amount, nor prevent District from exercising any of its other rights and remedies granted hereunder.
- 3.4 Late charges, costs and expenses which City is required to pay hereunder, together with all interest and penalties that may accrue thereon in the event of City's failure to pay such amounts, and all reasonable damages, costs, and attorney's fees and expenses which District may incur by reason of any default of City or failure on City's part to comply with the terms of this Lease, shall be deemed to be additional rent ("Additional Rent") and, in the event of nonpayment by City, District shall have all of the rights and remedies with respect thereto as District has for the nonpayment of the monthly rent.
- 3.5 The District and City are aware of Education Code section 17219, which may require repayment to the State of California of funds from the State Bond Program for the modernization cost of the Mills School buildings. These payments are commonly known as "non-use payments" and may be due after five years of non-use of school buildings for school purposes. The parties believe that this Lease is exempt from "non-use payments" under the provisions of Education Code section 17219, subsection (e)(1), in that the City will be using the Premises for a community center, which meets the definition of "civic

center” under the provisions of Education Code section 38130 et seq. (formerly § 41000 et seq.). The parties agree to cooperate on any application to the State Allocation Board under Education section 17220 for exemption from “non-use payments,” if necessary. In any event, District shall responsible for any “non-use payments,” if imposed, during the Term and any Extension Term of this Lease.

4 DELIVERY.

4.1 District shall deliver to City on the first day of the Term of this Lease actual and exclusive possession of the Premises, clear of all tenancies and occupancies. The Premises are leased to City on an “as is” basis.

4.2 District shall not be required to make or construct any major alterations including structural changes, additions or improvements to the Premises. City has conducted and will conduct inspections of the Premises on or before the entry and taking possession under this Lease. City shall prepare, or cause to be prepared a written report on the condition of the Premises, a copy of which shall be provided to District within ten (10) days of receipt by City (the “Condition Report”). Within sixty (60) days of the execution of this Lease, the District shall pay Twenty Five Thousand Dollars (\$25,000.00) to City to assist City in re-opening the Premises for occupation. By entry and taking possession of the Premises pursuant to this Lease, City accepts the Premises in their condition existing as of the date of entry. City acknowledges that neither the District nor District’s agents has made any representations or warranty as to the suitability of the Premises to the conduct of City’s business. Any agreements, warranties or representations not expressly contained herein shall in no way bind either District or City, and District and City expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Lease.

5 USE OF PREMISES.

5.1 The Premises may be used by City as a facility for a community center and for recreational or governmental purposes and for no other uses. City shall use the Premises only in conformance with this paragraph and all applicable governmental laws, regulations, rules and ordinances including, but not limited to, the City Noise Ordinance. City shall require all sublessees, licensees, invitees, and assignees to use the Premises only in conformance with this paragraph and all applicable governmental laws, regulations, rules and ordinances.

5.2 Prior to changing any use of the Premises to any other use not described or contemplated by this Lease, City shall hold a duly noticed public meeting before the City Council and obtain the written permission of District, which permission shall not be unreasonably withheld.

6 ASSESSMENTS & FEES.

If applicable, City shall pay before delinquency any and all assessments, license fees and public charges levied, assessed or imposed upon or against City's fixtures, equipment, furnishings, furniture, appliances and personal property installed or located on or within the Premises. City shall cause said fixtures, equipment, furnishings, furniture, appliances and personal property to be assessed and billed separately from the real property of District.

7 INDEMNIFICATION AND INSURANCE.

- 7.1 City agrees to defend, indemnify, and hold harmless District, its officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of the City's operation, use or occupancy of the Premises and all areas appurtenant thereto or the condition of the Premises attributable to the City during the Term hereof (except for District's sole active negligence or willful misconduct). This Lease is made of the express condition that District shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause (except for District's active negligence or willful misconduct), in any way connected with the condition, use or occupancy of the Premises by the City specifically including, without limitation, any liability for injury to the person or property of the City, its agents, contractors, officers, employees, licensees, sublessees, and assignees.
- 7.2 District agrees to defend, indemnify, and hold harmless District, its officers, employees and agents against any and all claims, causes of action, judgments, obligations or liabilities, and all reasonable expenses incurred in investigating or resisting the same (including reasonable attorneys' fees), on account of, or arising out of the District's operation, use or occupancy of the Premises and all areas appurtenant thereto or the condition of the Premises attributable to the District (except for City's sole active negligence or willful misconduct). This Lease is made of the express condition that City shall not be liable for, or suffer loss by reason of, injury to person or property, from whatever cause (except for City's active negligence or willful misconduct), in any way connected with the condition, use or occupancy of the Premises by the District specifically including, without limitation, any liability for injury to the person or property of the District, its agents, contractors, officers, employees, licensees, sublessees, and assignees.
- 7.3 City shall, at City's expense, obtain and keep in force during the term of this Lease a policy of comprehensive general liability insurance or acceptable liability coverage under a public joint powers agency insuring District and City against claims and liabilities arising out of the operation, condition, use, or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount of not less than five million dollars (\$5,000,000) for bodily injury or death and property damage as a result of any one occurrence and a five million dollar (\$5,000,000) general aggregate policy. The insurance shall be with a carrier approved by District, which approval shall

not be reasonably withheld. Prior to possession, City shall deliver to District a certificate of insurance and endorsement evidencing the existence of the policy required hereunder and stating that such policy shall:

- 7.3.1 not be canceled or altered without thirty (30) days prior written notice to District;
- 7.3.2 insure performance of the indemnity set forth in Section VIII. A above;
- 7.3.3 state the coverage is primary and any coverage by District is in excess thereto;
- 7.3.4 contain a cross liability endorsement; and, includes a separate endorsement naming District, its officers, and its employees as an additional insured.

At least thirty (30) days prior to the expiration of such certificate, and every such subsequent certificate, City shall deliver to District a new certificate of insurance consistent with all of the terms and conditions required in connection with the original certificate of insurance as described in this Subsection 7.3.

On April 1, 2012, the monetary limit for liability coverage stated in this subsection will be adjusted by District based on the prevailing insurance industry standard for reasonable levels of coverage and adjusted after each succeeding five (5) year period during the Term or Extension Term of this Lease. In no case shall the monetary limit be less than \$5,000,000.00.

- 7.4 Workers' Compensation Insurance. During the term of this Lease, City shall comply with all provisions of law applicable to City with respect to obtaining and maintaining workers' compensation insurance. City shall provide District with certificate of insurance.
- 7.5 Sublessee Insurance. During the term of this Lease, City shall require any Sublessee of all or any portion of the Premises to maintain in effect during the term of such sublease, insurance coverage equivalent to that required to be maintained by City.
- 7.6 Release of District. City acknowledges any insurance maintained by District on the Premises will not insure any of City's property. Accordingly, City shall at its own expense, maintain in full force and effect insurance coverage on all its fixtures, equipment, buildings, leasehold improvements and personal property in, about, or on the Premises. Said policy to be for "All Risk" coverage insurance to the extent of at least ninety percent (90%) of the insurable value of City's property. City hereby releases District, and its partners, officers, agents, employees, and servants, from any and all claims, demands, loss, expense or injury to the Premises or to the furnishings, fixtures, equipment, inventory or other personal property of City in, about, or upon the Premises, which is caused by perils, events or happenings which are covered by the insurance required by this Lease or which are the subject of insurance carried by City and in force at the time of such loss.

8 UTILITIES.

City shall pay for all water, gas, light, heat, power, electricity, telephone, security service, trash pick-up, sewage fees and all other services supplied to or consumed on the Premises and all taxes and surcharges thereon.

9 MAINTENANCE AND REPAIRS.

9.1 City, at its cost, shall maintain the existing Premises in a good condition consistent with the condition of the Premises existing at the time of delivery.

9.2 District shall have no maintenance or repair obligations with respect to the Premises except as expressly provided in this section. City hereby expressly waives the provisions of Subsection 1 of Section 1932 and Sections 1941 and 1942 of the Civil Code of California and all rights to make repairs at the expense of District as provided in Section 1942 of said Civil Code.

10 ALTERATIONS AND IMPROVEMENTS.

City may, at its sole cost and expense, construct or cause to be constructed on the Premises those Improvements including buildings, roadways, sidewalks, fences, playgrounds, parking areas, utilities, signs, monuments and landscaping which City deems necessary to the operation of its business ("Improvements") subject to local site, zoning, and design review and other required approvals and provided District has approved all such Improvements as stated in subsection 10.1.1 of this Lease.

10.1 Requirements. In regard to the Improvements constructed on the Premises consistent with the provisions of this Lease:

10.1.1 City must, prior to construction, obtain written approval from District and to the extent determined necessary by District, the Division of the State Architect (DSA) for any Improvements and their related costs with the exception of painting, carpet, building repairs, removal and construction of non weight bearing walls in existing buildings and other minor tenant improvements which may be approved by District alone in accordance with the terms hereof. Approval of any and all Improvements must be made by District in accordance with the terms hereof in order for these Improvements costs to be eligible for reimbursement. District and City recognize that such approvals may be completed in phases, such that City initially requests conceptual approval and, if approved by District, then proceeds to draw the plans and specifications for Improvements. District shall respond to City with said approval or disapproval within forty-five (45) days after District receives a written request from City. In the event that District does not respond within said 45 day period, District shall be deemed to have approved of the Improvements described in the request. Any written request for structural changes or new construction shall be accompanied by architectural plans and drawings. District's approval shall be at District's reasonable discretion. City must then proceed to obtain DSA's approval whenever notified by District that same is

required by law. City agrees to deliver DSA's written approval to District within ten (10) days after City's receipt. City agrees to not proceed with any construction of Improvements eligible for reimbursement until District's and, if required, DSA's written approvals have been obtained as set forth herein.

- 10.1.2 In the event District exercises its rights under Section 2.2 to terminate any Term or Extension Term of this Lease early for public school classroom instruction purposes, or in the event that District elects to not approve an Extension Term of this lease in accordance with Section 2.1, District shall reimburse City, for those Improvements approved by District in accordance with the terms of this Lease, on a straight-line pro-rata basis in accordance with this section. Major structural or other crucial building system (roofing, electrical, plumbing, HVAC) Improvements shall have a forty (40) year life for the purposes of determining amortization of the reimbursement. All other Improvements that are surface, aesthetic, or decorating changes shall have a ten (10) year life. The percentage of reimbursement will be equal to the number of years of life remaining on the Improvements divided by the full life of the Improvements as set forth herein. For example, if District terminated the Lease in year ten (10) and the Improvement built in the first year of the Lease had a forty (40) year life, the percentage for reimbursement would be seventy five percent (75%) calculated by taking the thirty (30) years of life remaining and dividing by the full forty (40) years average life of the Improvement. Said resulting percentage shall be applied to the original cost of the Improvements as approved in writing by District prior to installation.
- 10.2 Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any Improvements on the Premises, City shall provide District with information regarding the contractor's financial condition and evidence to District's reasonable satisfaction that adequate funds to complete the Improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District's discretion, a completion guarantee. No construction shall commence until District has given City written acceptance of such assurances. District's acceptance shall not be unreasonably withheld. District understands and agrees that City may complete certain Improvements to the Premises using City's own forces.
- 10.3 City shall give District fifteen (15) days prior written notice before commencing any work on the Premises so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate.
- 10.4 Not less than fifteen (15) days prior to the construction, major repair, renovation or demolition of any Improvements on the Premises, City shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that City or City's contractor(s) has in effect, with premiums paid, adequate casualty and liability insurance (including builder's risk) coverage and workers' compensation.
- 10.5 Upon commencement of construction of any Improvements, City shall cause the work to

be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by supply shortages, strikes or force majeure.

- 10.6 All work on Improvements shall be performed in a sound and workmanlike manner, in compliance with the applicable laws and building codes, in conformance with the plans and specifications approved by District or any modifications thereto which have been approved in writing by District.
- 10.7 District or District's agent shall have a continuing right at all times during the period that Improvements are being constructed on the Premises to enter the Premises and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. City shall require its contractors or city forces who construct Improvements on the Premises to reasonably cooperate with District or its agent in such inspections. In connection with any entry by District or District's agent pursuant to this subsection 10.7, District covenants and agrees to defend (by counsel reasonably acceptable to City), indemnify, and hold harmless City and its officers, directors, and employees, from and against any and all damage, loss, liability or expense, including, without limitation, reasonable attorneys' fees and costs, which arise as a result of damage to property or injury to persons caused by the negligence or willful misconduct of District or its agents.
- 10.8 Within ninety (90) days after completion of construction of any work of Improvement on the Premises, City shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- 10.9 District shall cooperate with City by executing and recording such applications for zoning or use permits necessary for the City's operations on the Premises as may be reasonably required to complete City's Improvements, however, no costs shall accrue to or be borne by District.

## 11 CASUALTY DAMAGE.

- 11.1 In the event that any portion of the Premises are destroyed or damaged by an uninsured peril, District or City may, upon written notice to the other, given within thirty (30) days after the occurrence of such damage or destruction, elect to terminate this Lease; provided, however, that either party may, within thirty (30) days after receipt of such notice, elect to make the required repairs and/or restoration at such party's sole cost and expense, in which event this Lease shall remain in full force and effect, and the party having made such election to restore or repair shall thereafter diligently proceed with such repairs and/or restoration.
- 11.2 In the event the Premises are damaged or destroyed from any insured peril to the extent of seventy percent (70%) of the then replacement cost of the Premises, District or City may, upon written notice, given to the other within thirty (30) days after the occurrence of such

damage or destruction, elect to terminate this Lease. If neither party gives such notice in writing within such period, District shall be deemed to have elected to rebuild or restore the Premises, in which event District shall at its expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. In the event the Premises are damaged or destroyed from any insured peril to the extent of less than seventy percent (70%) of the then replacement cost of the Premises, District shall at District's expense, promptly rebuild or restore the Premises to their condition prior to the damage or destruction. Notwithstanding the foregoing, City may terminate this Lease if the Premises are damaged or destroyed to the extent of fifty percent (50%) or more of the then replacement cost of the Premises.

- 11.3 In the event that, pursuant to the foregoing provisions, District is to rebuild or restore the Premises, District shall, within thirty (30) days after the occurrence of such damage or destruction, provide City with written notice of the time required for such repair or restoration. If such period is longer than one hundred twenty (120) days from the issuance of a building permit, City may, within thirty (30) days of receipt of District's notice, elect to terminate the Lease by giving written notice to District of such election, whereupon the lease shall immediately terminate. The period of time for District to complete the repair or restoration shall be extended for delays caused by the fault or neglect of City or because of force majeure, acts of publication, labor disputes, strikes, fires, freight embargoes, rainy or stormy weather, inability to obtain materials, suppliers or fuels, acts of contractors or subcontractors, or delays of contractors or subcontractors due to such causes or other contingencies beyond the control of District. District's obligation to repair or restore the Premises shall not include restoration of City's trade fixtures, equipment, merchandise, or any improvements, alterations, or additions made by City to the Premises.
- 11.4 Unless this lease is terminated pursuant to the foregoing provisions, this Lease shall remain in full force and effect; provided, however, that during any period of repairs or restoration, rent and all other amounts to be paid by City shall be abated in proportion to the area of the Premises rendered not reasonably suitable for the conduct of City's business thereon.

## 12 DEFAULT.

- 12.1 Events of Default. A breach of this Lease by City shall exist if any of the following events (hereinafter referred to as "Event of Default") shall occur:

12.1.1 Default in the payments when due of any installment of rent or other payment required to be made by City hereunder, and such default shall not have been cured within ten (10) days after receipt of written notice from District;

12.1.2 City's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to City;

- 12.1.3 The sequestration of, or execution on, any substantial part of the property of City or on any property essential to the conduct of City's business, shall have occurred and City shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;
- 12.1.4 The City or any guarantor of City's obligations hereunder shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seek appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property;
- 12.1.5 The City or any such guarantor shall take any corporate action to authorize any of the actions set forth in Subsection 4 or 5 above;
- 12.1.6 Any case, proceeding or other action against the City or any guarantor of the City's obligation hereunder shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or all or any substantial part of its property, and such case, proceeding or other action (i) results in the entry of an order for relief against it which is not fully stayed within seven (7) business days after the entry thereof or (ii) remains a pending action for a period of forty-five (45) days.
- 12.2 Remedies. Upon any Event of Default, District shall notify City, in writing, of specifying in detail City's failure to perform and declaring District's intent to declare a Default ("Default Notice"). City shall be deemed in Default under the Lease if, City has failed to perform any obligation of City specified in the Notice of Default within thirty (30) days after the receipt of the Default Notice from District, provided however, that if the nature of City's obligation is such that more than thirty (30) calendar days are required for its performance, City shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Upon any such Default by City, District shall have the following remedies, in addition to all other rights and remedies provided by law, to which District may resort cumulatively, or in the alternative:
- 12.2.1 Recovery of Rent. District shall be entitled to keep this Lease in full force and effect (whether or not City shall have abandoned the Premises) and to enforce all of its rights and remedies under this Lease, including the right to recover rent and other sums as they become due, plus interest at the Local Agency Investment Fund (LAIF) rate from the due date of each installment of rent or other sum until paid.

12.2.2 Termination. District may terminate this Lease by giving City written notice of District's intent to terminate ("Notice of Termination"). Upon receipt of a Notice of Termination, City's rights in the Premises shall terminate. Upon receipt of the Notice of Termination, City shall surrender and vacate the Premises in the condition required by Section 25, and District may re-enter and take possession of the Premises and all the remaining Improvements or property and eject City or any of City's sublessees, assignees or other person or persons claiming any right under or through City or eject some and not others or eject none. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this section shall not release City from the payment of any sum then due District or from any claim for damages or rent previously accrued or then accruing against City. In no event shall any one or more of the following actions by District constitute a termination of this Lease:

- 12.2.2.1 maintenance and preservation of the Premises;
- 12.2.2.2 efforts to relet the Premises;
- 12.2.2.3 appointment of a receiver in order to protect District's interest hereunder;
- 12.2.2.4 consent to any subletting of the Premises or assignment of this Lease by City, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or,
- 12.2.2.5 any other action by District or District's agents intended to mitigate the adverse effects from any breach of this Lease by City.

12.2.3 Damages. In the event this Lease is terminated pursuant to Subsection 12.2.2 above, or otherwise, District shall be entitled to damages in the following sums:

- 12.2.3.1 The worth at the time of award of the unpaid rent which has been earned at the time of termination; plus,
- 12.2.3.2 The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that City proves could have been reasonably avoided; plus,
- 12.2.3.3 The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that City proves could be reasonably avoided; and
- 12.2.3.4 Any other amount necessary to compensate District for all detriment proximately caused by City's failure to perform City's obligation under this Lease, or which in the ordinary course of things would be likely to result therefrom including, without limitation, the following: (i) expenses for cleaning, repairing or restoring the Premises; (ii) expenses for

altering, remodeling or otherwise improving the Premises for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to the succeeding tenant, or otherwise); (iii) real estate broker's fees, reasonable advertising costs and other expenses or reletting the Premises; (iv) costs of carrying the Premises and insurance premiums thereon, utilities and security precautions; (v) expenses in retaking possession of the Premises; (iv) reasonable attorneys' fees and court costs; and, (vii) any unamortized real estate brokerage commission paid in connection with the Lease;

12.2.3.5 The "worth at the time of award" of the amounts referred to above, is computed by allowing interest at the LAIF rate. The term "rent" as used in this section shall include all sums required to be paid by City to District pursuant to the term of this Lease.

12.3 Events of District Default. A breach of this Lease by District shall exist if any of the following events (hereinafter referred to as "Event of District Default") shall occur:

12.3.1 Default in the payments when due of any obligation of District relating to the Education Code Section 17219 as set forth in section 3.5 of this Lease;

12.3.2 District's failure to perform any other term, covenant or condition contained in this Lease and such failure shall have continued for thirty (30) days after written notice of such failure is given to District;

12.3.3 The failure by District to deliver possession of the Premises to City or the interruption of possession of the Premises by District, except as set forth in section 2.2 of this Lease.

12.3.4 The sequestration of, or execution on, any substantial part of the property of District or on any portion of the Premises, shall have occurred and District shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such sequestration, attachment or levy, whichever is earlier;

12.4 District shall be in default in the performance of any obligation required to be performed by District under the terms of this Lease if District has failed to perform such obligation within thirty (30) days after the receipt of notice from City specifying in detail District's failure to perform, provided, however, that if the nature of District's obligation is such that more than thirty (30) calendar days are required for its performance, District shall not be deemed in default if it shall commence such performance and thereafter diligently pursues the same to completion. Upon any such default by District, City may exercise any of its rights provided in law or at equity and shall have the right, but not the

obligation, to cure any such default by District and to deduct the costs incurred by City to cure such default, including legal fees and expenses, from the amounts next due and owing under the Lease.

13. MECHANICS LIEN.

City shall: (i) pay for all labor and services performed for, materials used by or furnished to City of any contractor employed by City with respect to the Premises; and, (ii) defend, indemnify, and hold District and the Premises harmless and free from the perfection of any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, materials, used by or furnished to City or any contractor employed by City with respect to the Premises; and, (iii) give notice to District in writing fifteen (15) days prior to employing any laborer or contractor to perform services related to, or receiving materials for the use upon the Premises; and, (iv) permit District to post a notice of nonresponsibility in accordance with the statutory requirements of California Civil Code section 3094 or any amendment thereof. In the event City is required to post an improvement bond with a public agency in connection with the above, City agrees to include District as an additional obligee.

14. INSPECTION OF PREMISES.

City shall permit District and its agents to, upon notice to the City, enter the Premises at any reasonable time for the purpose of inspecting the same, performing District's maintenance and repair responsibilities, or posting a notice of nonresponsibility for alternations, additions, or repairs. City shall permit District and its agents to enter the Premises at any time within ninety (90) days prior to expiration of this Lease, to place upon the Premises, ordinary "For Lease" or "For Sale" signs, providing said signs shall not suggest the City is selling the Premises or any other property of the City.

15. HOLDING OVER.

Should City hold over in possession after the expiration of the original term or any extended term of this Lease, such holding over shall not be deemed to extend the term or renew the Lease, but the tenancy thereafter shall continue upon the covenants and conditions herein set forth at one hundred percent (100%) of the monthly rental (Holding Over Rent) of the last expiring term unless a different rental amount is mutually agreed to by the City and District.

16. NOTICE.

Any notices which either of the parties hereto is required or may desire to send or deliver to give to the other party, shall be mailed, certified mail, return receipt requested, postage prepaid, or delivered, with all charges prepaid, to such other party at the address listed below, or to such address as either party may designate to the other from time to time in

writing.

District:  
Benicia U.S.D.  
350 East "K" Street  
Benicia, CA 94510

City:  
City of Benicia  
250 East "L" Street  
Benicia, CA 94510

ATTN: Superintendent

ATTN: City Manager

The date of service of any such notice mailed as aforesaid shall be deemed to be five (5) days after the date of such mailing, and the date of service of any such notice hand delivered, as aforesaid, shall be deemed to be one (1) day after delivery thereof to the delivery service office.

17. ATTORNEYS' FEES.

In the event either party shall bring any action or legal proceeding for damages for any alleged breach of any provision of this Lease, to recover rent or possession of the Premises, to terminate this Lease, or to enforce, protect or establish any term or covenant of this Lease or right or remedy of either party, the prevailing party shall be entitled to recover as a part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' fees and costs for appeal, as may be fixed by the court or jury. The term "prevailing party" shall mean the party who received substantially the relief requested, whether the settlement, dismissal, summary judgment, judgment, or otherwise.

18. ASSIGNMENT.

The City may not assign this Lease without District's written approval and consent, which consent shall not be unreasonably withheld. District shall not assign this lease without City's written approval and consent, which consent shall not be unreasonably withheld. In the event that the District determines to dispose of the Premises, District agrees that it will comply with Government Code Section 54220 et seq.

19. SUCCESSORS.

This Lease contains all of the covenants, agreements, representations and provisions thereof and shall inure to the benefit of and be binding upon the respective heirs, legal representatives, executors, administrators, successors and assigns of the parties hereto, except as provided in Section 18.

20. SURRENDER OF LEASE NOT MERGER.

The voluntary or other surrender of this Lease by City, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or sublessees, or shall operate as an assignment to District of any or all such

subleases or sublessees.

21. WAIVER.

The waiver by District or City of any breach of any term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

22. GENERAL.

22.1 The captions and section headings used in this Lease are for the purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Lease.

22.2 Time is of the essence for the performance of each term, covenant and condition of this Lease.

22.3 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

22.4 This Lease shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Lease shall be maintained in County in which the District's administrative offices are located.

22.5 This Lease constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Lease may be amended or modified only by a written instrument executed by both parties.

22.6 This Lease and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one original document.

23. SURRENDER OF THE PREMISES.

On the last day of the term hereof, or on sooner termination of this Lease, City shall surrender to District the Premises and any then existing Improvements in good order, condition and repair, reasonable wear and tear excepted, free and clear of all liens, claims and encumbrances. Said condition shall be similar to that existing as of the Commencement Date of this Lease excepting normal ordinary wear and tear and approved Improvements. In the event District exercises its right to early termination per Section 2, compensation will be due to City for reimbursement of the unamortized

portion of the Improvement costs expended by City which are eligible for reimbursement per Section 10. This Lease shall operate as a conveyance and assignment thereof. City shall remove all of City's personal property and trade fixtures from the Premises and all property not so removed shall be deemed abandoned by City. If the Premises are not so surrendered at the termination of this Lease, City shall indemnify District against loss or liability resulting from delay by City in so surrendering the Premises including without limitation, any claims made by any succeeding tenant or losses to District due to lost opportunities to Lease to succeeding tenants.

24. DISTRICT'S COVENANTS.

The District covenants, warrants and represents that it has full right and power to execute and perform this Lease, and to grant the estate demised herein, and covenants that City on paying rent as herein provided and performing the covenants hereof shall peaceably and quietly have, hold and enjoy the demised Premises and all right, easements, appurtenances and privileges belonging or in any way appertaining thereto, during the terms of this lease and any extension or renewal thereof.

25. BROKERAGE.

District and City agree that no broker was involved in any of the negotiations which preceded this Lease Agreement or in the procuring of same. District and City agree that if any claim be made for brokerage fees by, through or on account of any acts of District or City or their respective representatives, the party upon whose acts such claim is made will hold the other harmless from any and all liabilities and expenses in connection therewith.

26. HAZARDOUS SUBSTANCES.

26.1 Definition. As used herein, the term "Hazardous Materials" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing risk of injury to health, safety, and property, including petroleum and petroleum products and all of those materials and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the California Water Quality Control Board, the U.S. Department of Labor, the California Department of Industrial Relations, the California Department of Health Services, the California Welfare Agency in connection with the Safe Water and Toxic Enforcement Act of 1986, the U.S. Department of Agriculture, the U.S. Consumer Product Safety Commission, the Drug Administration or any other governmental agency now or hereafter authorized to regulate materials and substances in the environment. Without limiting the generality of the foregoing, the term "Hazardous Materials" shall include all of those materials and substances defined as "toxic materials" in sections 66680 through 66685 of Title 22 of the California Code of Regulations, Divisions 4, Chapter 20, as the same may be amended from time to time.

26.2 City shall comply with all laws now and hereafter in effect relating to the use of

Hazardous Materials on, under or about the Premises and shall not contaminate the Premises, or its subsurface, with any Hazardous Materials.

26.2.1 City shall restrict its use of Hazardous Materials at the Premises of those kinds of materials that are normally used in the ordinary course of business. Disposal of any Hazardous Materials at the Premises is strictly prohibited. Storage of such permissible Hazardous Materials is allowed only in accordance with all applicable laws now or hereafter in effect. All safety and monitoring features of any storage facilities shall be in accordance with all applicable laws and regulations.

26.2.2 City shall be solely and fully responsible for the reporting of all Hazardous Materials releases to the appropriate public agencies, when such releases are caused by or result from City's activities on the Premises. City shall immediately inform District of any release of Hazardous Materials, whether or not the release is in quantities that would otherwise be reportable to the public agency.

26.2.3 City shall be solely and fully responsible and liable for such releases at the Premises, or into District's sewage or storm drainage systems. City shall take all necessary precautions to prevent any of its Hazard Materials from entering into any storm or sewage drain system or from being released on the Premises. City shall remove releases of its Hazardous Materials in accordance with all laws. In addition to all other rights and remedies of District hereunder, if the release of Hazardous Materials caused by City is not removed by City within ninety (90) days after discovery by City, District or any other third party, District may pay to have the same removed and City shall reimburse District for such costs within five (5) days of District's demand for payment.

26.2.4 City shall protect, defend, indemnify and hold harmless District from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which District may sustain as a result of the presence of Hazardous Materials on the Premises during the Term of this Lease, excepting therefrom any loss damage or liability attributable to Hazardous Materials which are a result of the actions of the District or the District's , employees, contractors or agents.

26.2.5 District shall protect, defend, indemnify and hold harmless City from and against all loss, damage, or liability (including all foreseeable consequential damages) and expenses (including, without limitation, the cost of any cleanup and remediation of Hazardous Materials) which City may sustain as a result of the presence of Hazardous Materials on the Premises prior to, or subsequent to, the Term of this Lease, excepting therefrom any loss, damage or liability, attributable to Hazardous Materials which are a result of the actions of the City or the City's employees, contractors or agents.

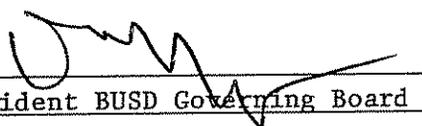
26.2.6 City's and District's obligations under this Section 29 shall survive the expiration

or earlier termination of this Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Dates set forth below.

District:

City:

By: 

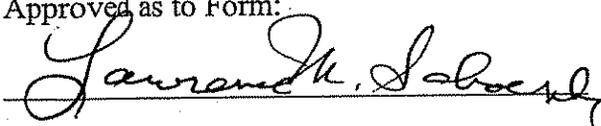
By: 

Title: President BUSD Governing Board

Title: Mayor

Approved as to Form:

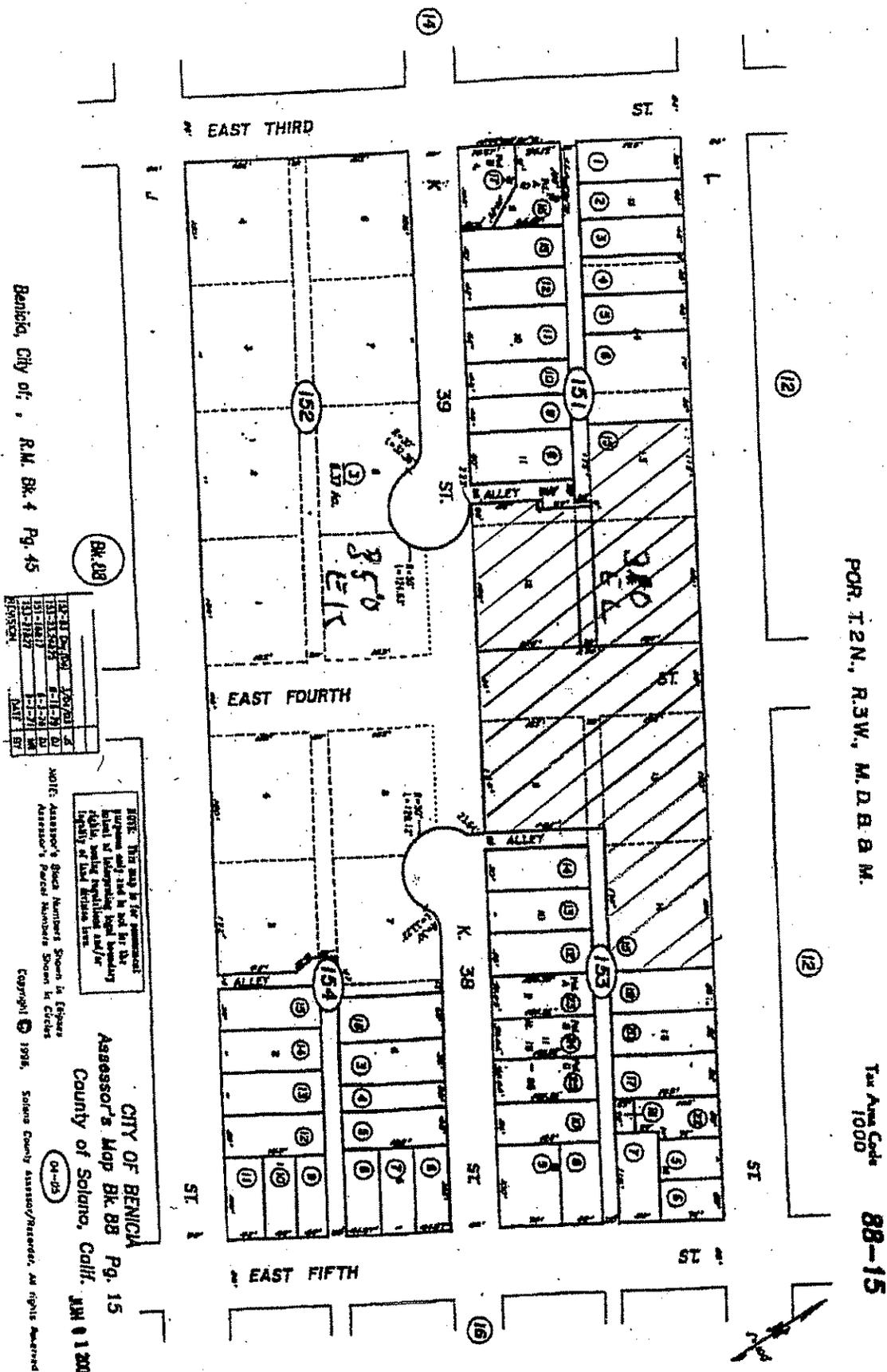
Approved as to Form:





# EXHIBIT A

The leased premises are the cross-hatched areas below.



PGR. T2N., R3W., M.D.B.B.M.

Tax Assn Code 1000 88-15

Benicia, City of, R.M. BK. 4 Pg. 45

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NOTE: This map is for assessment purposes only and is not for the purpose of determining legal boundaries. Public notice of this map and/or legality of land entries here.

NOTE: Assessor's Office Numbers Shown in Figures  
Assessor's Parcel Numbers Shown in Circles

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CITY OF BENICIA  
Assessor's Map BK. 88 Pg. 15  
County of Solano, Calif. JAN 1 2004

# **EXHIBIT B**



**AGENDA ITEM  
COUNCIL MEETING: NOVEMBER 6, 2007  
ACTION ITEMS**

**DATE** : October 22, 2007

**TO** : City Council

**FROM** : City Attorney 

**SUBJECT** : **INTRODUCTION OF AN ORDINANCE AMENDING VARIOUS SECTIONS IN TITLE 18 (SIGNS) AND ADDING A NEW SECTION 18.24.015 (BILLBOARDS/NONACCESSORY SIGNS) TO PROHIBIT FUTURE BILLBOARDS AND NONACCESSORY SIGNS CITYWIDE AND DELETING CHAPTER 18.32 (FREEWAY ADVERTISING DISPLAYS) OF THE BENICIA MUNICIPAL CODE AND DETERMINATION OF THE EFFECT OF THE CHANGES ON A PENDING APPLICATION**

**RECOMMENDATION:**

Introduce the ordinance to prohibit future billboards and nonaccessory signs in the City of Benicia based on the findings set forth in the ordinance.

Determine whether the pending completed application should be allowed to proceed.

**EXECUTIVE SUMMARY:**

On May 1, 2007, the City Council enacted a 45-day moratorium to prohibit any new billboards within the City while the City considered appropriate regulations for billboards or nonaccessory signs. On June 5, 2007, the Council extended the billboard moratorium for an additional 10 months and 15 days to prevent the issuance of any permits for new billboards. Pursuant to Council direction, the City Attorney's office has drafted the attached ordinance that would prohibit any future billboards or nonaccessory signs to be placed anywhere in the City of Benicia. The ordinance would *not* impact any currently existing billboards or nonaccessory signs in Benicia as State law protects them from removal.

**ENVIRONMENTAL ANALYSIS:**

Staff has determined that this action is not a "project" as defined by the California Environmental Quality Act (CEQA). Section 15061 (b)(3) of the CEQA Guidelines states that if the proposed "activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment." This section of the Guidelines also states that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

## **BUDGET INFORMATION:**

There is no budget impact.

## **DISCUSSION:**

As defined in the Benicia Municipal Code, billboards and nonaccessory signs are signs that advertise or provide information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property on which the sign is located. (See BMC Section 18.040.020.) These are the signs that are typically found along major highways. Currently, there are four such billboards, not including the Nationwide sign, located along I-680 near the industrial area of the City. A fifth billboard is proposed for removal pursuant to an agreement. There are no billboards along I-780.

State Law Regulating Outdoor Advertising: Although outdoor advertising is generally regulated by California State law through the Outdoor Advertising Act (Business and Professions Code Sections 5200 et seq.), local governments are authorized to regulate outdoor advertising, billboards and signs within their jurisdiction. However, certain regulations are preempted by State law. First, regardless of local agency approval, the California Department of Transportation (CalTrans) has the ultimate say in whether a sign can be located adjacent to the freeway. Second, and more important to the proposed ordinance, Business and Professions Code Section 5412 expressly prohibits the removal of any lawfully erected advertising signs without just compensation to the owner of the sign and the property owner, unless the parties enter into a mutually agreeable relocation agreement. Consequently, the owners of the billboards currently existing in the City of Benicia have a "property right" to continue to use the signs unless the City wishes to compensate them for their removal.

Benicia General Plan & Current Sign Ordinance: The City Council expressed intent to prohibit new billboards along Interstate Highways I-680 and I-780 when the General Plan was adopted in 1999. Goal 3.9 in Chapter 3 of the Benicia General Plan, entitled *Protect and Enhance Scenic Roads and Highways*, contains a policy goal to "preserve vistas" along I-680 and I-780, and the need to "inventory scenic resources" along I-680 and I-780 in order to apply for State scenic highway designation of these two Interstate Highways through Benicia. In addition, Program 3.9B specifically referred to developing a sign enforcement program along the freeways, which, with the special State scenic designation, would ensure "special scenic conservation treatment" of these highways from Caltrans. Despite the intent of the General Plan, these programs were never implemented and the City's sign ordinance was never changed to implement the necessary regulation of signage along the freeways. The City's current sign ordinance regulating billboards and outdoors advertising structures has not been reviewed since 1977 and 1965. Although there are conflicting sections that address billboards and nonaccessory signs, Benicia Municipal Code 18.32 specifically provides for freeway advertising display signs, which would allow for new billboards to be constructed along I-680 and I-780.

When it became known that an application for a new billboard was about to be submitted, the City Council passed the moratorium prohibiting the issuance of any new use permits for

billboards, so that there was sufficient time to study and develop appropriate regulations in keeping with the goals and policies of the General Plan. The proposed ordinance attached is the result of the Council's direction.

Proposed Ordinance: The proposed ordinance prohibits any new billboards or accessory signs to be constructed in the City of Benicia. It amends various sections in Title 18 (Signs) of the Benicia Municipal Code pertaining to billboards and non-accessory signs; and pursuant to the goals set forth in the General Plan, sets forth expressed findings that excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the City, its highways and the safety of the community.

In summary, the ordinance lists billboards and nonaccessory signs as one of the "prohibited signs" in Section 18.24.010; expressly prohibits them in a new Section 18.24.015 entitled "Billboards/Nonaccessory Signs;" and eliminates Chapter 18.32 entitled "Freeway Advertising Displays" in its entirety. It should be again noted that the ordinance does not impact any existing billboards in the City, which cannot be removed without proper compensation to the owner(s).

#### **FURTHER ACTION:**

The Community Development Department received a completed application for a use permit to construct a new billboard adjacent to Highway I-680. If this ordinance is adopted by the City Council, the Council must also determine if the Planning Commission should review the pending application. If so moved, this application will come forward to the Planning Commission at its November 8, 2007 meeting, prior to the effective date of the ordinance, if adopted by the City Council. The city manager has recommended that the pending application be denied.

#### Attachments:

- Ordinance
- Planning Commission Report and Resolution

# **ORDINANCE**

CITY OF BENICIA

ORDINANCE NO. 07-\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING VARIOUS SECTIONS IN TITLE 18 (SIGNS) TO UPDATE SECTIONS AND ADDING SECTION 18.24.015 (BILLBOARDS/NONACCESSORY SIGNS) TO PROHIBIT FUTURE BILLBOARDS OR NONACCESSORY SIGNS AND DELETING CHAPTER 18.32 (FREEWAY ADVERTISING DISPLAYS) OF THE BENICIA MUNICIPAL CODE**

**WHEREAS**, on May 1, 2007, the City Council enacted a 45-day moratorium to prohibit any new billboards within the City while the City considers appropriate regulations for billboards; and

**WHEREAS**, on June 5, 2007, the Council extended the billboard moratorium for an additional 10 months and 15 days to prevent the issuance of any permits for billboards.

**WHEREAS**, on October 11, 2007, the Planning Commission conducted a public hearing, considered all testimony and documents, and reviewed the proposed zoning text amendment.

**NOW BE IT RESOLVED**, the City Council of the City of Benicia finds:

- a) That the City's General Plan has goals and policies that specifically recommend protection and enhancement of scenic roads and highways through the City (Goal 3.9: Protect and enhance scenic roads and highways); and
- b) That the City should "preserve vistas along I-780 and I-680" as outlined in Policy 3.9.1 in the General Plan; and
- c) That General Plan programs implementing this policy call for a program to inventory of scenic resources and apply to the State for scenic highway designation for I-780 and I-680, and development of a sign enforcement program along freeways through town; and
- d) Billboards should not be allowed to proliferate along Benicia's highways since this would be contrary to pursuing the State scenic highway designation as required by the General Plan; and
- e) That in addition to promoting General Plan goals, excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the City and its highways, affects the appearance and quality of life of the community and can increase the safety risks to traffic and pedestrians; and

- f) In order to implement these important General Plan goals, policies and programs, new regulations prohibiting billboards along I-780 and I-680 and throughout Benicia are necessary.

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

**Section 1.**

Section 18.04.010 (Purpose) of Chapter 18.04 (General Purposes) of Title 18 (Signs) is amended to read as follows:

18.04.010 Purpose. The purpose of this title is to promote and protect the public health, welfare and safety by advancing the goals, policies and strategies of the General Plan to protect, preserve and enhance the vistas, scenic corridors and highways of the city, as well as the aesthetics, traffic safety and environmental values of the city's residential communities and commercial/industrial districts by restricting and regulating signage in the city. This title provides regulations regarding the size, height, design, quality of materials, construction, location, elimination and maintenance of permitted signs and sign structures within the city.

**Section 2.**

Section 18.04.020 (Definitions) of Chapter 18.04 (General Purposes) of Title 18 (Signs) is amended to read as follows:

"Billboard or nonaccessory sign" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.

"Nonaccessory sign or billboard" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.

**Section 3.**

Section 18.04.050 (Findings) of Chapter 18.04 (General Purposes) of Title 18 (Signs) is added to read as follows:

18.04.050 Findings. In adopting this title, the city council finds that excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the city and its highways, affects the appearance and quality of life of the community, and that it can increase the safety risks to traffic and pedestrians. By adopting this title, the city council intends to comply with the goals and policies of the

General Plan to preserve the city's vistas and scenic resources along I-780 and I-680 and to protect the city's ability to apply for State scenic highway designation for the portions of Interstate Highways I-780 and I-680 that run through the city. This title is intended to safeguard and preserve the health, property, and public welfare of residents and businesses by prohibiting, regulating, and controlling the type, design, location, and maintenance of signs.

#### **Section 4.**

Section 18.24.010 (Prohibited signs) of Chapter 18.24 (Prohibition and Exemptions) of Title 18 (Signs) is amended to read as follows:

18.24.010 Prohibited signs – generally. Unless specifically authorized under other sections of this title, the following types of signs shall not be erected or maintained: a flashing sign; a moving sign; a sign which has banners, flyers, pennants, pinwheels, or utilizes two or more light bulbs in a wire string; a portable sign; a projecting sign; a sign painted directly on the wall of a building or fence; a dilapidated or abandoned sign or a sign in disrepair or dangerous condition; a sign which is affixed to a fence, utility pole or utility structure, or a tree, shrub, rock or other natural object; a mobile sign or a sign attached to a motor vehicle which is parked with the intent to advertise to the public passing by; a sign containing obscene or profane matter; a sign illuminated by exposed light globes, i.e., clear light bulbs not turned away or properly shrouded from the viewer; and a sign created by the arrangement of vegetation, rocks, or other objects, such as hillside, visible to pedestrians and motorists, without application to and approval by the planning commission.

#### **Section 5.**

Section 18.24.030 (Exempt signs in manufacturing land use districts) of Chapter 18.24 (Prohibition and Exemptions) of Title 18 (Signs) is amended to read as follows:

18.24.030 Exempt signs – in commercial or industrial districts.

A. Identification signs within commercial or industrial districts shall be submitted to the community development director for approval. Directional signs are exempt in this zone. Billboards or nonaccessory signs are prohibited.

B. Any signs within commercial or industrial zones shall be designed so that the appearance of such signs shall be in keeping with the general surrounding architecture. Special attention shall be directed to those signs visible from freeway entrances to the city. Signs that negatively impact the landscaping, open space requirements, vistas, scenic corridors or general appearance of the freeway structures may be denied.

#### **Section 6.**

Section 18.24.040 (Billboards/nonaccessory signs) of Chapter 18.24 (Prohibition and Exemptions) of Title 18 (Signs) is added to read as follows:

18.24.040 Billboards/nonaccessory signs. The city completely prohibits the construction, erection or use of any billboards or nonaccessory signs other than those which legally exist in the city, or for which a valid permit has been issued and has not expired, as of the date on which this provision is first adopted. No permit shall be issued for any billboard which violates this policy, and the city will take immediate abatement action against any billboard or nonaccessory sign constructed or maintained in violation of this policy. In adopting this provision, the city council affirmatively declares that it would have adopted this billboard/nonaccessory sign policy even if it were the only provision in this chapter. The city council intends for this billboard policy to be severable and separately enforceable even if other provision(s) of this chapter or title may be declared, by a court of competent jurisdiction, to be unconstitutional, invalid or unenforceable. This provision does not prohibit agreements to relocate, remodel or enhance presently existing, legal billboards or nonaccessory signs.

### **Section 7.**

Chapter 18.32 (Freeway Advertising Displays) of Title 18 (Signs) is deleted in its entirety.

### **Section 8.**

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

Ayes:

Noes:

Absent:

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

Attest:

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

**PLANNING COMMISSION REPORT  
AND RESOLUTION**

**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: OCTOBER 11, 2007**  
**REGULAR AGENDA ITEM**

**DATE** : October 4, 2007

**TO** : Planning Commission

**FROM** : Kat Wellman, Contract Attorney  
Damon Golubics, Acting Community Development Director

**SUBJECT** : **REVIEW AND RECOMMEND APPROVAL OF A  
PROPOSED ORDINANCE PROHIBITING FUTURE  
BILLBOARDS AND NONACCESSORY SIGNS CITYWIDE**

**RECOMMENDATION:**

Recommend that the City Council amend various sections in Title 18 (Signs) to add and update Section 18.24.015 (Billboards/Nonaccessory Signs) and delete Chapter 18.32 (Freeway Advertising Displays) in the Benicia Municipal Code, prohibiting future billboards and nonaccessory signs in the City of Benicia, based on the findings set forth in the attached resolution.

**EXECUTIVE SUMMARY:** On May 1, 2007, the City Council enacted a 45-day moratorium to prohibit any new billboards within the City while the city considered appropriate regulations for billboards or nonaccessory signs. On June 5, 2007, the Council extended the billboard moratorium for an additional 10 months and 15 days to prevent the issuance of any permits for new billboards. Pursuant to Council direction, the City Attorney's office has drafted the attached ordinance that would prohibit any future billboards or nonaccessory signs to be placed anywhere in the City of Benicia. The ordinance would *not* impact any currently existing billboards or nonaccessory signs in Benicia, as they are protected from removal by State Law.

The Community Development Department has a completed application for a use permit to construct a new billboard on Highway I-680 pending the outcome of the moratorium. The City Council will determine if it will allow this last application to be reviewed for a use permit prior to the effective date of the ordinance. If the City Council so moves, the Planning Commission will be reviewing the use permit application for this proposed billboard at the next Planning Commission meeting on November 8, 2007.

Review and comment by the Planning Commission on the proposed ordinance is requested at this time.

## **ENVIRONMENTAL ANALYSIS:**

Staff has determined that this action is not a "project" as defined by the California Environmental Quality Act (CEQA). Section 15061 (b)(3) of the CEQA Guidelines state that if the proposed "activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment." This Section of the Guidelines also state that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

## **BUDGET INFORMATION:**

There is no foreseeable impact on the City's budget.

## **SUMMARY:**

As defined in the Benicia Municipal Code, billboards and nonaccessory are signs that advertise or provide information about a business organization, events, goods, products, services or uses, not directly concerning the use on the property on which the sign is located. (See BMC Section 18.040.020). These are the signs that are typically found along major highways. Currently, there are four such billboards located along I-680 near the industrial area of the City. A fifth billboard is proposed for removal pursuant to an agreement. There are no billboards along I-780.

State Law Regulating Outdoor Advertising: Although outdoor advertising is generally regulated by California State law through the Outdoor Advertising Act (Business and Professions Code Sections 5200 et seq.), local governments are authorized to regulate outdoor advertising, billboards and signs within their jurisdiction. However, certain regulations are preempted by State law. First, regardless of local agency approval, the California Department of Transportation (CalTrans) has the ultimate say in whether a sign can be located adjacent to the freeway. Second, and more important to the proposed ordinance, Business and Professions Code Section 5412 expressly prohibits the removal of any lawfully erected advertising signs without just compensation to the owner of the sign and the property owner, unless the parties enter into a mutually agreeable relocation agreement. Consequently, the owners of the billboards currently existing in the City of Benicia have a "property right" to continue to use the signs unless the City wishes to compensate them for their removal.

Benicia General Plan & Current Sign Ordinance: The City Council expressed an intent to prohibit new billboards along Interstate Highways I-680 and I-780 when the General Plan was adopted in 1999. Goal 3.9 in Chapter 3 of the Benicia General Plan, entitled *Protect and Enhance Scenic Roads and Highways*, contains a policy goal to "preserve vistas" along I-680 and I-780, and the need to "inventory scenic resources" along I-680 and I-780 in order to apply for State Scenic Highway designation of these two Interstate Highways through Benicia. In addition, Program 3.9B specifically referred to developing a sign enforcement program along the freeways, which, with the special State Scenic designation, would ensure "special scenic conservation treatment" of these Highways from Caltrans. Despite the intent of the General Plan, these programs were never

implemented and the City's sign ordinance was never changed to implement the necessary regulation of signage along the freeways. The City's current sign ordinance regulating billboards and outdoor advertising structures has not been reviewed since 1977 and 1965. Although there are conflicting sections that address billboards and nonaccessory signs, BMC Chapter 18.32 specifically provides for freeway advertising display signs, which would allow for new billboards to be constructed along I-680 and I-780.

When it became known that an application for a new billboard was about to be submitted, the City Council passed the moratorium prohibiting the issuance of any new use permits for billboards, so that there was sufficient time to study and develop appropriate regulations in keeping with the goals and policies of the General Plan. The proposed ordinance attached is the result of the Council's direction.

Proposed Ordinance: The proposed ordinance prohibits any new billboards or accessory signs to be constructed in the City of Benicia. It amends various sections in Title 18 (Signs) of the Benicia Municipal Code pertaining to billboards and non-accessory signs and pursuant to the goals set forth in the General Plan, sets forth expressed findings that excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the City, its highways and the safety of the community.

In summary, the ordinance lists billboards and non-accessory signs as one of the "prohibited signs" in Section 18.24.010; expressly prohibits them in a new Section 18.24.015 entitled "Billboards/Nonaccessory Signs;" and eliminates Chapter 18.32 entitled "Freeway Advertising Displays" in its entirety. It should be again noted, that the ordinance does not impact any existing billboards in the City, which cannot be removed without proper compensation to the owner(s).

If this ordinance is recommended for adoption by the Planning Commission to the City Council, the Council will also determine if a pending application for one additional billboard along I-680 can be reviewed by the Planning Commission for a use permit. If so moved, this application will come forward to the Planning Commission at its November 8, 2007 meeting, prior to the effective date of the ordinance if adopted by the City Council.

**FURTHER ACTION:**

The Planning Commission recommendation shall be final unless appealed to the City Council within ten business days.

**Attachments:**

- Draft Resolution
- Draft Ordinance (strikeout version)
- Draft Ordinance (nonstrikeout version)

**RESOLUTION NO. 07- 17 (PC)**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL APPROVE A ZONING TEXT AMENDMENT TO PROHIBIT FUTURE BILLBOARDS OR NONACCESSORY SIGNS AND ELIMINATE THE CHAPTER PERTAINING TO FREEWAY ADVERTISING DISPLAY SIGNS**

**WHEREAS**, on May 1, 2007, the City Council enacted a 45-day moratorium to prohibit any new billboards within the City while the city considers appropriate regulations for billboards; and

**WHEREAS**, on June 5, 2007, the Council extended the billboard moratorium for an additional 22 months and 15 days to prevent the issuance of any permits for billboard; and

**WHEREAS**, the City Attorney's office has drafted an ordinance suggesting new regulations for future billboard requests; and

**WHEREAS**, the Planning Commission at a regular meeting on October 11, 2007, conducted a public hearing, considered all testimony and documents and reviewed the proposed zoning text amendment.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission of the City of Benicia hereby recommends that the City Council approve a zoning text amendment to prohibit future billboards or nonaccessory signs and eliminate the chapter pertaining to freeway advertising; and

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Benicia finds that:

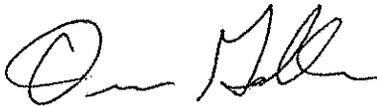
- a) The City's General Plan has goals and policies that specifically recommend protection and enhancement of scenic roads and highways through the City. (Goal 3.9: Protect and enhance scenic roads and highways);
- b) The City should "preserve vistas along I-780 and I-680" as outlined in Policy 3.9.1 in the General Plan;
- c) The General Plan programs implementing this policy call for a program to inventory of scenic resources, and apply to the State for Scenic Highway Designation for I-780 and I-680, and development of a sign enforcement program along freeways through town;
- d) Billboards should not be allowed to proliferate along Benicia's highways since this would be contrary to pursuing the State scenic highway designation as required by the General Plan;

- e) In addition to promoting General Plan goals, excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the City and its highways, affects the appearance and quality of life of the community and can increase the safety risks to traffic and pedestrians; and
- f) In order to implement these important General Plan goals, policies and programs, new regulations prohibiting billboards along I-780 and I-680 and throughout Benicia are necessary.

\* \* \* \* \*

On a motion of Commissioner Healy, seconded by Commissioner Ernst, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 11th day of October, 2007, and adopted by the following vote:

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



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Damon Golubics  
Acting Planning Commission Secretary