

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
NOVEMBER 7, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, November 7, 2006, 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).

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

CLOSED SESSION:

**A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9)**

Number of potential cases: 1

**B. CONFERENCE WITH LABOR NEGOTIATOR
(Government Code Section 54957.6 (a))**

**Agency negotiators: City Manager, Human Resources Director, Senior
Human Resources Analyst**

Employee organization: Benicia Police Officers Association

ADJOURNMENT:

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

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
NOVEMBER 7, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:14 p.m. on Tuesday, November 7, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Mayor Messina reported that Council gave direction to Staff on this item.

Openings on Boards and Commissions:

- People Using Resources Efficiently (PURE) Committee:
One immediate opening
- Open Government Commission:
One unexpired term to December 6, 2007
- Sky Valley Open Space Committee:
One full term to September 30, 2010
- Planning Commission
One unexpired term to October 7, 2007
- Civil Service Commission:
One full term to January 30, 2010
- Parks, Recreation and Cemetery Commission:
One full term to January 30, 2011

Mayor Messina stated that the three appointments to the Building Board of Appeals would be continued to the next meeting to allow for proper posting.

APPOINTMENTS:

RESOLUTION 06-166 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ERNIE GUTIERREZ TO THE PARKS, RECREATION & CEMETERY COMMISSION TO A FULL TERM ENDING NOVEMBER 30, 2010

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-167 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF DEAN O'HAIR TO THE OPEN GOVERNMENT COMMISSION TO A FULL TERM ENDING NOVEMBER 30, 2010

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

RESOLUTION 06-168 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ARLAN WILLIAMS TO THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING AUGUST 30, 2009

The above Resolution was adopted, on roll call by the following vote:

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

Noes: None

PRESENTATIONS:

Presentation of Findings from League of Women Voters Study of East Second Street Corridor:

Ms. Jan Cox Golovich, League of Women Voters Benicia, reviewed the report provided in the agenda packet.

Council Member Hughes inquired about the statement made on page IV-C-10 that reads, "The City could require a development agreement with Seeno that specifies what can and cannot be placed on the site." He asked if that was a fact. Ms. Cox Golovich stated that was something he would have to discuss with the City Manager. In the past when she was on the City Council, there were developer agreements on just about every project that came along. That is something that is up to Council's discretion. It would be a wise thing to do and it would put in some protections for the City. Ms. McLaughlin stated that the City would need Seeno's cooperation on this. It might be a good way to achieve many of the goals that Council has. Mayor Messina stated that Pacific Bay did developer agreements in lieu of following the normal zoning and procedures. They roll it into a package and negotiate it through.

Council Member Patterson stated that on that point, the City could use the mitigation measures on the EIR as part of the development agreement so the City would have more

control of what goes into the developer agreement. She asked Staff, with the requirements of design guidelines how does the current process the City has embarked on with the Form Based Code fit in with doing something similarly as mitigation measure for the Seeno Project. Mr. Knox stated that short of doing a specific plan that has Form Based for the project, and given that the project as a whole is coming in all at once, he thinks it would be reasonable to expect the developer to provide more than just the simple narrative that we have now that did the minimum necessary to make the application complete. Based on the discussion that he had with the City Attorney and the attorney for the applicant, the applicant would be amenable to come forward with a much more developed set of design guidelines that would both anticipate tenant improvements and set the framework for elevation, structure, variables, etc. up front.

The City would like to see color elevations and careful site planning for all the buildings they propose. Council Member Patterson stated that one of the things she took away from the Form Based Code exercise through the charrettes is that you could distinguish buildings and their uses through their design even though they have the capacity of serving different functions. Is that something that the City could accomplish through mitigation measures with this project? Mr. Knox confirmed it could be done. Under the visual quality section for CEQA, you could anticipate requiring the developer to agree to specific architecture for different types of buildings. The certainty of that could be through the development agreement or as a condition of the project. She inquired about the statement on page IV-C-7 that reads “A written specific site plan indicating the proposed uses, gross floor area, lot coverage, height, parking, and density was not submitted to the City. Seeno submitted written confirmation that the project will adhere to the Limited Zoning Industrial requirement.” She asked what that was all about. Ms. Cox Golovich stated that from what she could understand, the City was asking for specific things for Seeno to complete their application. At some point in time, Seeno’s attorney’s got involved and wrote a letter promising to adhere to the City’s limited industrial zoning requirements and the City gave in and accepted it as a complete application and gave them the go ahead with the EIR. She does not think that is normal procedure. Mr. Knox stated that since then, they have achieved a true project description for EIR analysis under CEQA. The City has a specific list of uses, but it is fairly general. Council Member Patterson’s point gets at realistically what the developer is thinking in terms of who the end users of the space would be. From his discussions with the developer’s attorneys, it seems that they would not have a problem with that approach. They have tentatively agreed that the developer will provide, in a timely fashion, a list of what tenants they feel would be appropriate for the development.

Council Member Patterson asked if the City was handicapped in terms of not having a specific plan filed at the time of the application. Mr. Knox stated that he did not think so. Based on the information he has, the City will have a lot more information than one might expect. Most recently, the developer has been a lot more forthcoming with providing information from a fiscal analysis standpoint, water and sewer analysis, traffic, etc. As to whether or not that will still require, in Council’s mind, a need to put conditions on the project or require mitigation measures remains unseen. In retrospect it

would have been nice to have more information. Right now, as the City goes forward for EIR, it will have a full, thorough, careful analysis for CEQA.

Council Member Whitney inquired about the members who collected the data for this report. Ms. Cox Golovich stated that the study committee should be listed on page 2. The members were herself, Dana Dean, Ed Salzman, and Belinda Smith.

Council Member Patterson asked Ms. Cox Golovich where the appendix was that was referenced in her report. Ms. Cox Golovich stated that the appendix was a very large document. If Council Member Patterson wants a copy, she could provide Mr. Knox with a copy that Council could share. Council Member Patterson asked Ms. Luanna Luther about the League's rules for doing such studies. Ms. Luther stated that the League is a three-tier organization (National, State, and Local). All tiers operate under basically the same bylaws. It is a grassroots organization. There is protocol for how the studies are conducted. The members vote on which studies to conduct. A chairman is elected. He or she then selects a committee. Data is then collected and analyzed. A report is then written. Once the report is written, it is sent to the Board of Directors. The Board reads and fine-tunes the language. The committee chairperson will discuss it at a general meeting of the members and ask five or six consensus questions to gauge where the members thinking is. That information goes back to the committee to formulate a position. The position then goes to the Board of Directors who may edit or fine-tune it. It is a very regimented procedure.

Vice Mayor Schwartzman asked how many members were in the local membership. Ms. Luther stated that currently, there were 26 members.

PROCLAMATIONS:

- Lung Cancer Awareness Month – November 2006

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. Jackie Klare – Ms. Klare discussed the rumor of having another Starbucks in Benicia. Her concerns are with any large corporation that would have a market penetration within one-mile radius of two existing Starbucks stores. Benicia has always had a marvelous tradition of diversity. She would like to maintain that diversity.
2. Lee Klare – Mr. Klare discussed the issue of having another Starbucks in Benicia. Starbucks acts as a 'Wal Mart' in other communities. This community cannot

support five Starbucks. Starbucks is a corporation that is not interested in the community, but in money. There is no room or excuse for another Starbucks in Benicia.

Vice Mayor Schwartzman stated that he has had experience with the Southampton Starbucks giving back to the community.

3. Jeanine Seeds – Ms. Seeds stated that Starbucks was just the symbol for what is known legally as formula businesses such as Staples, Home Depot, etc. She was told at the last Council meeting that she should speak to the City Manager and City Attorney and to submit a letter asking that these be limited. When she spoke with Ms. McLaughlin, she was told she (Ms. McLaughlin) did not have a template. She has been able to locate a template. In 2004 San Francisco added to their list of businesses that require neighborhood notification as formula based businesses. In addition, businesses that are formula based are banned entirely from some neighborhoods. It was sponsored by one of their Supervisors. She discussed the aspects of the law. She requested that the City of Benicia protect the citizens by implementing an ordinance for this issue. She was told that if one of the Council Members would direct the process, it might happen quicker. She requested that Council Member Patterson handle this project. Council Member Patterson clarified that there is a two-step process. She could submit a request for Council to consider the ordinance. If the Council majority agrees, it could direct staff to prepare the ordinance. She would be happy to do that.
4. Ann Hansen – Ms. Hansen thanked Council and Staff for the roof at the Benicia Historical Museum. The project went well. They did a good job of cleaning up afterwards. The museum would be open again on 12/1/06. She invited Council to attend the ‘Taste of Pasta’ dinner and auction.
5. Constance Beutell – Dr. Beutell reminded Council and citizens that on 11/9 BERT’s Third Annual Muster would take place at the Clocktower.
6. Susan Street – Ms. Street asked for clarification as to when the issue brought up by Ms. Seeds would be discussed. Mayor Messina stated that whenever Council Member Patterson brings it forward, it would be placed on a subsequent agenda. There would be more time for public input on this issue before it happens.
7. Concerned Citizen – The citizen wanted to discuss another Starbucks in town. Having another Starbucks in town would be too many.

CONSENT CALENDAR:

Council pulled items VII-B-1 and VII-C.

On motion of Council Member Patterson, 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 17, 2006 were approved.

Council approved the denial of the claim against the City by Diane Graybehl, and referral to insurance carrier.

RESOLUTION 06-169- - A RESOLUTION ACCEPTING THE BOCCE BALL COURT PROJECT AT CIVIC CENTER PARK, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION AND CITY CLERK TO FILE SAME WITH THE SOLANO COUNTY RECORDER

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Denial of the claims against the City by Suzanne Hamill, and referral to insurance carrier:

Mr. O'Dell stated that he worked for McNichols Randick O'Dea & Tooliatos. He stated that he had not spoken to this Council before and wanted to compliment Council and Staff on their professionalism and organization. The meeting is being handled extremely well. The issue he has is the proposed denial of Ms. Graybehl's claim. His firm is representing Ms. Graybehl on a number of issues. He was at tonight's meeting to discuss the proposed denial of Ms. Graybehl's claim. Mayor Messina advised Mr. O'Dell that Council would only be discussing two items; the one currently being discussed is the claim by Ms. Hamill. The claim Mr. O'Dell was discussing had been approved under the consent calendar. Mr. O'Dell stated that he asked to speak on behalf of Ms. Graybehl. He wanted to discuss Ms. Graybehl's claim, not Ms. Hamill's. Mayor Messina stated that Council could hear Mr. O'Dell's comments during his 5-minute public comment time, but that item had already been approved. Mr. O'Dell stated that there was an error in the way this was approached. He asked Staff what number he should use on the comment to speak on this item. If there was an error there, then there was a communication error. Mayor Messina stated that Council was willing to listen to Mr. O'Dell's comments, but then they would have to move on. Mr. O'Dell stated that the notice provided Ms. Graybehl from Mr. Carey at ABAG was that this item would be discussed at a Council meeting on 11/11/06. There was an error on the notice based on Mr. Carey's letter. Secondly, the agenda states that not all damages were related to flooding – that is inaccurate. All damages in the claim were in fact directly related to flood damage. Finally, the denial of claim is contrary to California law, as he is sure Ms. McLaughlin understands. This flood damage or damage related to failure of public improvements is a condemnation, or in this case inverse condemnation. The purpose of the California Constitution that addresses condemnation is that the value, benefit, and cost of public facilities should be spread throughout the community. Where there is damage caused by those facilities should be equally spread throughout the community. By denying Ms. Graybehl's claim, the City is averting Ms. Graybehl with a disproportionate amount of the damages related to the failure of the pumping system. The agenda states that the City's pumps were not able to keep up with the amount of water, suggesting a failure on the facilities themselves. The denial of the claim was inappropriate. He requested Council reconsider the denial of the claim. Ms. McLaughlin stated that she thought Mr. O'Dell was correct in the report that Bruce Carey presented based on the investigation that not all damages were related to the flooding incident. Mayor Messina stated that Council already approved the action on this claim.

On motion of Council Member Whitney, seconded by Vice Mayor Schwartzman, Council denied the claim against the City by Suzanne Hamill, and referral to insurance carrier, on roll call by the following vote:

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

Council Member Patterson requested that Mayor Messina explain the procedure of the denial of claim so that the public understands the process. Ms. McLaughlin stated that once the City denies a claim it starts the time for people to file suit. They can then decide whether they want to file suit against the City. It does not close the door to further negotiations or settlement. However, it does start the time clock ticking.

Adoption of updated California Environmental Quality Act (“CEQA”) Guidelines:

Council Member Patterson stated that she was pleased Council was going to be adopting these guidelines. It took three years, but here we are. There was considerable discussion at the Planning Commission about the updates over the past three years (which is why she requested that copies of the Planning Commission minutes be distributed). The Planning Commission discussion points were some very important and useful comments made by Ms. Taagepera. That is what led them to making the recommendation to take the next step in the CEQA guidelines. To wit is that these CEQA Guidelines before us are the minimum requirements. These will provide the City the legally required guidelines. The Staff recommendation is that the City begins to work on the other things that would enhance their usability, ability to be clearly understood by the public, applicants, etc. It is very important that the City have readable, accessible guidelines, and that it has standards for review as well as a boiler plate of mitigation measures. She requested Council amend its action so that there is a time certain for the draft of the second phase. She asked Staff how long that would take. Ms. McLaughlin stated that the legal work is done, but the second phase is trickier and involves community input. That would take longer than a few weeks to do. Council Member Patterson asked how Council would link the action with the adoption of the guidelines. Mayor Messina stated it could be done via direction to Staff. Mr. Erickson stated that he would like to come back to Council in a few weeks with a reasonable estimate on time. Council Member Patterson suggested on section (b) of the proposed resolution, it could state that ‘within the timeframe as provided on 11/21/06.’ Mayor Messina did not see a reason to do that. He did not want to add too many hooks to the resolution. He supported the City Manager coming back in two weeks to advise Council on what a reasonable timeframe would be.

Council Member Whitney asked Mr. Erickson if Staff was crystal clear that Council wanted them to come back in two weeks with an estimate on a reasonable timeframe. Mr. Erickson confirmed that Staff was clear on what Council was asking them to do.

Council Member Patterson stated that in defense of her request, it took three years to do the current guidelines. It could have been done in less than one year. The problem now is that the City is two years behind in what it could have had to deal with Seeno. Everything the City has to rely on is ad-hoc and extra staff time, work, and effort. The next step in the guidelines would actually be an efficient and effective way to do business better in

Benicia. The reason she wants a more time certain is because of our experience in taking way too long to do the first job of updating the guidelines.

RESOLUTION 06-170 - A RESOLUTION TO APPROVE THE PROPOSED CEQA GUIDELINES

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

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

Noes: Council Member Patterson

PUBLIC HEARINGS:

Introduction of an ordinance amending the Affordable Housing Density Bonus (Section 17.70.270) of the Benicia Municipal Code:

Mr. Damon Golubics, Senior Planner, reviewed the Staff report.

Vice Mayor Schwartzman inquired about language on page VIII-A-3, item (7) – regarding the term ‘must’ approve such requests. What does that mean? Mr. Golubics stated that an incentive or concession is something such as going above the density range. If there was a request to go above that, the developer could get that additional density for a larger project. Vice Mayor Schwartzman discussed using the term ‘could’ vs. ‘must.’ Mr. Knox referred to page VIII-A-16 – if you look at the reasons for items allowed – the applicant still has the burden to show that what is being requested relates to the units.

Council Member Patterson asked how this comports with the General Plan. The General Plan has a housing element. The housing element has to be horizontally and vertically integrated with the General Plan. If it contravenes the General Plan, can’t the City deny the increased density because of that? Mr. Knox stated that the housing element has already identified proprieties in which the City has created the zoning that makes it possible for private development and/or public partnership to produce the right number of units to meet its original housing needs assessment. The City has complied with State law. The General Plan sets parameters with setbacks, etc. However, the housing element is horizontally and vertically consistent within itself and with the General Plan. The problem comes in when you get a proposal that single density bonuses and concessions seeks to exceed the limits that are set forth in the General Plan and adopted in zoning. The density bonus under State law does not make the City’s housing element not comply with its General Plan. What it does is it may challenge the City’s General Plan desire for certain kinds of designs and subjugate them to what is based on State law – a higher threshold for affordable housing. In cities with fairly large projects you will see this on a common basis. A good example to use is the affordable housing development on Military East for which, with Council’s support, Staff just submitted an application to the State for community development block grant funding. That was one where the maximum density would have to be exceeded significantly. In a sense, one could see that as quite contrary to the General Plan zoning. It is a good example from the perspective of math. From a site development standpoint, it is a site where you might be able to do that many units, still save the elm tree, respect the natural drainage of the site, and have a good project.

Public Hearing Opened

Public Comment:

1. Susan Street – Ms. Street asked if, for example the property in the Arsenal that is being considered for some low income housing and some development, would this apply? Would this information applied to the Seeno project or Mr. Bortolazzo's project: Mr. Knox stated that this is State law and the City has to comply with it. On a property like Mr. Bortolazzo's, the owner could propose a project that complies with the specific plan. Within a building that looks military and fits the scale, someone could propose housing. If you have a property like Seeno, it is not zoned for residential; it is zoned commercial. Ms. Street summed it up by stating this was something that should be watched.

Public Hearing Closed

ORDINANCE 06- - AN ORDINANCE AMENDING BENICIA MUNICIPAL CODE SECTION 17.70.270 (AFFORDABLE HOUSING DENSITY BONUS)

On motion of Vice Mayor Schwartzman, 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

ACTION ITEMS:

Authorization of an agreement pertaining to the Utility Users Tax with Valero Refining Corporation – California:

Mr. Erickson reviewed a PowerPoint presentation (hard copy on file).

Council Member Whitney stated that the City was looking for an agreement that was fair, equitable, agreeable, predictable, had some equity to it and had some transparency to it, along with having some plus dollars to it. That is exactly what this is. This is a very square deal. He was pleased to recommend this to his colleagues.

Council Member Hughes stated that it was interesting injecting the City into the process. The City was asking Valero to do something that they were not obligated to consider. This turned out to be a terrific deal for the City. He wished Mr. Sousa were here tonight. Mr. Sousa and Mr. Erickson brought forward some creative ideas for Council to consider. Staff did a terrific job. He recognized Valero's input on this. This would be a true benefit to the City.

Mr. Doug Comeau, VP and GM of Valero Benicia, asked for Council's support on this item. The agreement is a result of a long cooperative effort. The new agreement meets all the guiding principles they sought to achieve over one year ago. The timing of payment changes will align with the City's fiscal year budget cycle. The tax payment will be stabilized. This will minimize large swings, either up or down. The City can be confident

that the refinery is paying the full amount of taxes it owes. In recognition of the mutual benefit of the agreement, and for the specific benefit of the City, Valero has agreed to initiate the tax calculations for the new agreement backdated to July 2005. This provides an additional benefit to the City as outlined by Mr. Erickson. Valero appreciates all the efforts of everyone involved.

Council Member Patterson had three questions for Staff. The basic premise for this was to stabilize payments rather than follow the up and down cycles of the cost of energy. Why is there a speculation that the cost of natural gas would be going down? Mr. Erickson stated that the usage would go down because there is incentive for Valero to reduce energy usage. Council Member Patterson referred to page IX-A-7 – it talks about the two 5-year periods. We don't go beyond that, correct? Mr. Erickson stated that was correct.

Council Member Patterson asked if it was Staff's recommendation to change the wording to 'either party could cancel the agreement'. Mr. Erickson stated that was correct. The language needs to be changed to reflect that either party could cancel. Council Member Patterson stated that she had an uncomfortable feeling about refineries and the oil business in general. The City's 4% rate is less than half of what other utility user tax rates are in the Bay Area. The City probably lost out on almost \$1 million per year because of the previous agreement with Exxon/Valero.

She previously raised questions to Staff regarding Valero's petition of their property tax assessment. She was asking for clarification because the Utility Users Tax affects the City's budget. Mayor Messina asked for a point of order. Council is not here to discuss property tax, only the Utility Users Tax and whether it is a good agreement or not. Her concerns may make sense, but it was not the time to use this as a catch all for all items tonight.

Mr. Erickson stated that Staff was prepared to give Council a rough thumbnail on that issue if Council desired. Council Member Patterson stated that she was sticking to the item on the agenda. The item on the agenda is an agreement to take a very large industry in town and have an agreement that restricts funds to the City if you think in the terms as described by Mr. Erickson. The City is saying that because Valero has the potential of saving energy, the City is going to stabilize its revenue by entering into this agreement. In fact, we do not know that – that's on faith. It is a fair open question to ask what the impact would be on the City's budget. She could not surmise the impact if she does not understand the property tax settlement. She asked if Staff was saying that this agreement backfills the \$344,000/year decrease in Valero's property tax settlement with the County, and also allows the City to pay \$2.3 million back in a property tax settlement, and that the City's budget is okay. Mr. Erickson stated that was Staff's forecast. Staff thinks it is a wise decision to enter into the five-year agreement. The ups and downs will neutralize each other. Staff is recommending that the five-year rolling average would stabilize things and put the City at an advantage. Staff thinks that the new agreement will offset the property tax loss.

Council Member Patterson asked about the approximate \$600,000 in attorney fees. Mr. Erickson stated that the City did not have any indication that those dollars would be paid by anyone other than the City. Those fees had already been paid. Council Member Patterson asked if she understood correctly that the City could have done more if it had not lost the property tax. This keeps the City's budget within 20% over reserve, it does not have to cut the workforce, and it is able to balance the budget. However, the City is not able to do the things it anticipated doing because of the property tax loss. Mr. Erickson stated that was not correct. The City does not anticipate this would change the CIP or operational plans at all because it is netting out better than it was before. He was just saying that there always things that one could do beyond the original plans.

Vice Mayor Schwartzman inquired about page IX-A-8. He asked when the City could view the billing records each period. Could the records be viewed within 30-60 days prior so that when the bills are received, it could concur on the amounts? Mr. Erickson stated there was a 90-day period that Valero had to compile the information. Vice Mayor Schwartzman asked if the information could be viewed before that so the City could be prepared. Council Member Whitney discussed the five-month time frame the City would have to audit the information. Vice Mayor Schwartzman stated that he was struggling with this whole issue about the Utility Users Tax and the problems that took place in the past. He saw the five-year rolling average as a benefit; it will help to mitigate the spikes. He does not like the fact that the City lost \$300,000. He does not like that a previous Council locked the City into an agreement where it lost money. This agreement makes up for some of those losses. He felt comfortable that in the near future, the City will make up for what it lost.

Council Member Whitney stated that one of the things he liked about the agreement is that it looks at the unknowns. It tries to look into the future and allow the City to budget effectively. This agreement got as close to perfect as the City is going to get.

Council Member Hughes stated that he was not happy with the 10-year agreement that the previous Council made until he saw the information that the previous Council had when it made the deal; it looked good. There was no mechanism in place to get out of that deal. Those mechanisms are in place with this agreement. He is not sure that he would not have signed that same deal at the time.

Council Member Patterson stated that she was unclear about Council Member Hughes' statement. From the data received from Mr. Sousa, it looked like the City was out \$7-9 million dollars. Council Member Hughes stated that the information that Council had gave no indication that the cost of energy was going to spike. Council Member Patterson stated that she was contacted by a former Council Member on the Council at the time the Utility Users Tax was adopted and he explained what it was like to be threatened with a lawsuit by Exxon. She does not think the decision was made because it was a good deal. She thought the decision was made not to lose the Utility Users Tax. The history does not show that energy use went down. The spike is a simple data point that does not change the basic trend – energy costs may have ups and downs over a period of a year, but the trend is always up. Council Member Hughes stated that he would agree with that, but

there is no way, that anyone could have predicted a large spike. Council Member Hughes stated that he thought it was a reasonable deal based on the information they had at the time.

Public comment:

1. Larry Fullington – Mr. Fullington stated that he agreed that the issue of property tax was a separate matter. Valero was right. They were entitled to the \$2.3 million – it was their money. It sounded to him like the City was coming out ahead. Valero is unique. Some good people got together and represented the City. Valero is a good corporate citizen in Benicia. He was impressed with the deal.

Council Member Patterson stated that she was going to vote for this because she thought it would be good for the City in the long run. The loss of the previous agreement and the loss of the \$300,000 + property tax troubled her. She was troubled by the fact that the Utility Users Tax allows the City to be able to afford to pay back the \$2.3 million property tax refund back to Valero as a result of their petition and settlement with the County. She is troubled that the City's tax at 4% is 50% of the general going rate. She was troubled that Board of Equalization rule 4-74 was adopted by the State yet we had a settlement by the County. The bottom line is that we have a company that is rated 15th in the Fortune 500, which had the highest third quarter earnings in the company's history, despite a drop in the price of gasoline. The City may be shortchanged by Valero's actions. There ought to be a better way to make sure the City is not shortchanged. She was uneasy at this point.

Council Member Hughes stated that Valero did not need to step forward with a dime on this. Some of the things that troubled Council Member Patterson trouble him as well. There was a settlement reached on the issue of property tax. Valero stepped forward. This is a good settlement for the City.

Council Member Whitney stated that the 4% is what the City has and what the community was comfortable with. Someone may want to bring that issue forward in the future.

RESOLUTION 06-171 - A RESOLUTION AUTHORIZING AN AGREEMENT
PERTAINING TO THE UTILITY USERS TAX WITH THE VALERO REFINING
COMPANY - CALIFORNIA

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

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

Noes: None

INFORMATIONAL ITEMS:

Reports from the City Manager:

Announcement of Strategic Plan Update:

Mr. Erickson reviewed the staff report. Staff would come back in February with a suggested plan.

Mayor Messina stated that capable individuals were working on this. Council should give Staff some leeway. Council will try it and address changes if need be. Council should follow the recommendations and give it a go.

Vice Mayor Schwartzman agreed with the Mayor's comments.

Council Member Whitney stated everyone worked hard to come up with this plan. Council should test the product to see if it works.

Public Comment:

1. Constance Beutell – Ms. Beutell urged Council to prioritize the need for a new police station.
2. Susan Street – Ms. Street asked if the public input would begin before the February date? Mayor Messina confirmed it would and that announcements on when that would take place would be made in the paper, posted in the proper places, etc.

Scheduling consideration of policy-related proposals:

Mr. Erickson discussed the rating sheet. He suggested that Council should fill it out and submit it to his office. After that Staff could sit down and figure out what needed to be done. This information should be back to the City Manager's office by the end of this week.

Vice Mayor Schwartzman asked if Council should rate all the items high/medium/low, or could they all be rated 'high'? Mr. Erickson stated that the purpose was to ration Council's time. It is an informal, quick format to see where they are.

Council Member Patterson stated that there was opportunity to combine some of the discussions. Council might wind up with six study sessions or workshops, however more than six study sessions would be a problem.

COMMENTS FROM COUNCIL MEMBERS:

Request to consider accepting the San Francisco Bay Area Integrated Regional Water Management Plan:

Council Member Patterson stated that the purpose of this was to plan ahead. Two of Benicia's projects are involved. It would look good if the City adopted the plan when it was ready. She would like to have Council's concurrence to have this on the 11/21 or 12/5 meeting. She felt that the 12/5 meeting would be fine.

Vice Mayor Schwartzman stated that Council had not had a PURE report in a while. He wondered how that was going. He was beginning to hear rumbling. Council Member Patterson stated that an EIR was being prepared. At the next PURE meeting, there would

be a discussion of one of the approaches for assessment and analysis. There is a window that was extended for the project because of Valero and their VIP Project. There are some issues about alternatives to the proposed wastewater treatment and recycling. The approach would be determined at the next meeting. The alternatives would be determined through the CEQA process. Vice Mayor Schwartzman asked what was going on with the cost of the project. Council Member Patterson stated that it was grim. Vice Mayor Schwartzman asked if monies allocated from this pick up some of those costs. Council Member Patterson stated that it would help.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, Council agreed to agendaize this for a future meeting, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 9:42 p.m.

Lisa Wolfe, City Clerk