

MINUTES OF THE  
REGULAR MEETING – CITY COUNCIL  
November 17, 2015

City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

**I. CALL TO ORDER:**

Mayor Patterson called the meeting to order at 7:01 p.m.

**II. CLOSED SESSION:**

**III. CONVENE OPEN SESSION:**

**A. ROLL CALL**

All Council Members were present.

Council Members Campbell and Strawbridge arrived at 7:02 p.m.

**B. PLEDGE OF ALLEGIANCE**

George Oakes led the Pledge of Allegiance.

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

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

**A. ANNOUNCEMENTS**

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

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

Arts and Culture Commission  
1 unexpired term  
Open until filled

Community Sustainability Commission  
2 unexpired terms  
1 Student Commissioner term  
Open until filled

**3. Mayor's Office Hours:**

**4. Benicia Arsenal Update**

Update from City Attorney

Heather McLaughlin, City Attorney, stated Staff was working on a few agenda items that they hope to have in December, but beyond that there is nothing new to report.

**B. PROCLAMATIONS**

**C. APPOINTMENTS**

**1. Appointment of Temma Roby to the Civil Service Commission for an unexpired term ending July 31, 2018**

**RESOLUTION 15-128 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF TEMMA ROBY TO THE CIVIL SERVICE COMMISSION TO FILL AN UNEXPIRED TERM ENDING JULY 31, 2018**

On motion of Mayor Patterson Council adopted Resolution 15-128, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**2. Appointment of Jennie Dilley to the Parks, Recreation and Cemetery Commission (Student Commissioner) for a one-year term ending July 31, 2016**

**RESOLUTION 15-129 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF JENNIE DILLEY TO THE PARKS, RECREATION AND CEMETERY COMMISSION (STUDENT COMMISSIONER) FOR A ONE-YEAR TERM ENDING JULY 31, 2016**

On motion of Mayor Patterson Council adopted Resolution 15-129, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**D. PRESENTATIONS**

1. CITIZENS' ACADEMY GRADUATION
2. BENICIA HISTORICAL MUSEUM ANNUAL PRESENTATION
3. ANNUAL TOURISM PRESENTATION BY JACK WOLF

**V. ADOPTION OF AGENDA:**

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

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**VI. OPPORTUNITY FOR PUBLIC COMMENT:**

**A. WRITTEN COMMENT**

Five items received (copies on file).

**B. PUBLIC COMMENT**

1. Judith Judson-Baker - Ms. Judson-Baker requested Council reconsider using the goats for weed abatement, as it causes negative ecological impacts on the community. The goats eat all the vegetation and the rabbits, pheasants, birds, etc. have nowhere to nest.
2. Mayor Patterson - Mayor Patterson discussed the Solano Transportation Authority (STA) award ceremony she attended at the Clock Tower. She was very proud of Benicia.

**VII. CONSENT CALENDAR:**

Council pulled items VII.F, VII.G, VII.I, and VII.J for discussion.

- A. APPROVAL OF THE MINUTES OF THE OCTOBER 20, 2015 CITY COUNCIL MEETING
- B. AWARD OF CONTRACT TO WELLS FARGO FOR BANKING AND TREASURY SERVICES

**RESOLUTION 15-130 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING A CONTRACT WITH WELLS FARGO FOR BANKING AND TREASURY SERVICES**

- C. MEASURE C FUNDED PROJECT - AUTHORIZE PURCHASE OF REPLACEMENT IN-CAR CAMERAS FOR TWELVE (12) POLICE PATROL VEHICLES

**RESOLUTION 15-131 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE PURCHASE OF TWELVE (12) REPLACEMENT IN-CAR CAMERAS UTILIZING MEASURE C FUNDS**

- D. MILLS ACT CONTRACTS FOR PROPERTIES AT 470 WEST J STREET AND 121 EAST J STREET

**RESOLUTION 15-132 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 470 WEST J STREET IN THE CITY OF BENICIA (15PLN-00037)**

**RESOLUTION 15-133 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 121 EAST J STREET IN THE CITY OF BENICIA (15PLN-00054)**

- E. REVIEW AND ACCEPTANCE OF THE INVESTMENT REPORT FOR THE QUARTER ENDED SEPTEMBER 30, 2015
- F. SECOND READING OF AN AMENDMENT TO BENICIA MUNICIPAL CODE CHAPTER 2.108 TO ALLOW THE COMMUNITY SUSTAINABILITY COMMISSION (CSC) TO ENGAGE IN FUNDRAISING ACTIVITIES AND CONCURRENTLY APPROVE FUNDRAISING GUIDELINES

**ORDINANCE 15-7 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING CHAPTER 2.108 (COMMUNITY SUSTAINABILITY COMMISSION) OF DIVISION 2 (BOARDS AND COMMISSIONS) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE BY ADDING A NEW SECTION 2.108.100 (POWERS) TO ESTABLISH FUNDRAISING POWER FOR THE COMMISSION**

Council Member Schwartzman and Staff discussed page VII.F.10 item #x. Council Member Schwartzman was concerned whether there was any liability around this. Staff clarified that an individual commissioner could apply to the commission for a commission grant.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the Second Reading and Adoption of Ordinance 15-7, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**G. UPDATE ON EMERGENCY CONTRACTS FOR CLOCK TOWER ELEVATOR REPLACEMENT**

Council Member Campbell and Staff discussed the time estimate on when the elevator would be up and working. Staff confirmed they have the material for the repair, but they still need to install them. They estimated it should be finished in approximately one month.

Public Comment:

None

On motion of Council Member Strawbridge, seconded by Council Member Hughes, Council approved the Second Reading and Adoption of Ordinance 15-7, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**H. INTRODUCTION AND FIRST READING OF AN AMENDMENT TO THE ARTS AND CULTURE COMMISSION'S ORDINANCE CHANGING THE NUMBER OF COMMISSIONERS FROM NINE TO SEVEN**

**I. APPROVAL OF AMENDMENT TO AGREEMENT FOR DREDGE ENGINEERING SERVICES RELATED TO THE ANNUAL DREDGING OF THE BENICIA MARINA**

**RESOLUTION 15-134 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AMENDMENT TO THE AGREEMENT FOR DREDGE ENGINEERING SERVICES FOR THE BENICIA MARINA WITH CULLEN-SHERRY & ASSOCIATES, INC. FOR A NOT-TO-EXCEED COST OF \$99,930 AND AUTHORIZING THE CITY MANAGER TO SIGN THE AMENDMENT TO AGREEMENT ON BEHALF OF THE CITY**

Per Mayor Patterson's email to Staff, she asked them to describe why Cullen-Sherry was uniquely qualified to perform the contract based on the relationship with the Benicia Harbor Corporation, and what the findings from the last analysis

of the dredged material were, and whether there was a trend since 2002 on pollution or biological issues of concern. Staff confirmed that Cullen-Sherry had been providing surveying services for the Marina dredging since 2002. They understand what is required and have surveyed control points. There are not many companies in the San Francisco Bay Area that provide this type of service. It would be difficult for City Staff to hire a new surveying company and get them up to speed with requirements. City Staff who are not familiar with the work would need to negotiate a scope of services and reasonable fees. This puts the City at a disadvantage, as key staff members have recently resigned. The dredging engineering services appear to be a good area to contract out given the recent loss of Staff. Staff did not have information readily available on the analysis of the dredged materials. They would get back to Council on this issue if necessary.

Council Member Campbell and Staff discussed the one-time and annual costs. He was concerned about the loss the City takes every year. The City needs to get out of the Marina/dredging business, as we continue to lose money every year.

Mayor Patterson stated Council needed to stay focused on what the approval was for tonight, which is whether or not Council would approve the proposed dredging. The future of the Marina plan would be discussed at a workshop early in 2016.

Public Comment:

None

Council Member Campbell discussed Cullen & Sherry's current costs, and whether the costs would change in the future if the City were to hire a civil engineer. He and Staff discussed the costs involved in dredging.

Mayor Patterson and Staff discussed the importance of sticking with Cullen-Sherry, as they have access to the control points. It would cost the City a lot more money if we were to go with another company.

Public Comment:

None

On motion of Council Member Hughes, seconded by Council Member Strawbridge, Council adopted Resolution 15-134, on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge  
Noes: (None)

**J. MONTHLY WATER UPDATE**

Council Member Campbell and Staff discussed the monthly water bills citizens receive and where people can find their 2013 costs relative to the present costs.

Public Comment:

None

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

**VIII. BUSINESS ITEMS:**

**A. CITY OF BENICIA COMMITMENT TO COMPACT OF MAYORS**

Christina Ratcliffe, Community Development Director, reviewed the staff report.

Vice Mayor Hughes asked Staff for confirmation that the compact would not require the City to do anything additional with the Climate Action Plan. Staff confirmed the City's current Climate Action Plan is over and above what is required by the Compact of Mayors.

Public Comment:

1. Craig Snyder - Mr. Snyder spoke in support of this item.

Council Member Schwartzman stated that the City was indeed committing itself to an obligation of spending four hours per year of staff time for completing the annual report.

On motion of Council Member Strawbridge, seconded by Council Member Hughes, Council approved the City of Benicia's Commitment to the Compact of Mayors , on roll call by the following vote:

Ayes: Patterson, Schwartzman, Campbell, Hughes, Strawbridge

Noes: (None)

**B. INTRODUCTION AND FIRST READING OF ORDINANCES RELATING TO A BUILDING SEWER LATERAL INSPECTION AND REPAIR PROGRAM**

Council Member Schwartzman discussed prior requests he made to have City Staff reach out to the real estate community, because this issue deals with point-of- sale/real estate. He discussed concern regarding the possibility of people's

perception of a conflict of interest on his part. Staff asked the Fair Political Practices Commission (FPPC) for a ruling on the issue of potential material conflict of interest. The FPPC concluded 'that their analysis ends here and we conclude that the Act does not prohibit the council member from taking part in these decisions.' However, Council Member Schwartzman chose to recuse himself from the discussion on this item so there would not be the possibility or perception of impropriety or conflict on his part.

Mayor Patterson and Vice Mayor Hughes discussed the issue of Council Member Schwartzman's recusal.

Graham Wadsworth, Public Works Director, reviewed the staff report.

Council Member Campbell and Staff discussed the sewer claims the City receives, and how many of them that the City paid could have been the property owner's responsibility. They also discussed what types of upgrades/improvements would trigger a sewer lateral inspection, and how condos and townhouses that share sewer laterals, would be handled.

Vice Mayor Hughes discussed concern with a few of the six triggers for sewer lateral inspections. He discussed with Staff how they came up with the \$50,000 trigger number? Regarding the 60-day repair timeline, what would happen if a house was in escrow and weather does not permit repairs? The City needs to come up with a way to track the follow-up of the repairs. Vice Mayor Hughes discussed whether the City considered looking at allowing the buyer to ask for a sewer lateral inspection, and leave the issue up to the buyer and seller.

Council Member Strawbridge and Staff discussed whether there was another way to implement the program rather than the point-of-sale method. There are two ways that could trigger inspection: 1) point of sale and 2) having more than two problems in two years.

Mayor Patterson discussed the benefits and needs of the program. She was very supportive of the point-of-sale option, as long as we provide some flexibility as described in the proposed ordinance. She suggested using the 'substantial improvement based on more than 50% of assessed valuation' to replace the \$50,000 trigger. If the City didn't do the point-of-sale, one solution might be to have a surcharge so we could fund the tracking/research at the County, etc., which does not seem fair.

Heather McLaughlin, City Attorney, discussed the issue of the \$50,000 trigger, what constituted "substantial improvement" to a home (50% of market value) and suggested changing it to 50% of the assessed value.

Council Member Campbell and Staff discussed how many sewer claims the City received in 2014. They discussed whether it was better to actively or passively look for leaks.

Public Comment:

1. George Oakes - Mr. Oakes discussed the realtor/stakeholder meeting that took place. There is no trigger that has occurred that was associated with the point-of-sale. He discussed concern regarding placing the burden on the homeowners. The City should put a 20-year certification plan in place for homeowners to review their sewer lateral. Council and Staff discussed the pros and cons of a 20-year program and point-of-sale program.
2. Eileen Stern - Ms. Stern discussed her concern regarding the point-of-sale program, was supportive of the 60-day implementation. She discussed concern regarding the inability to track "for sale by owner" homes and out-of-town realtors. The repairs should not be dictated to the seller - it should be a negotiable item.
3. Judith Judson-Baker - Ms. Judson-Baker spoke against attacking homeowners with the point-of-sale program. She talked about using smoke bombs in the sewers to see where there might be leaks, as they did in Biloxi, Mississippi.

Vice Mayor Hughes discussed being okay with the point-of-sale program, however the language was confusing. He suggested using the language from section 13.80.130 to section 13.80.100 as it allows the buyer and seller to negotiate.

Ms. McLaughlin stated that section 13.80.100 could be clarified to reflect Section 13.80.130. She also suggested clarifying the issue further by adding a section to the ordinance that states whenever the chapter requires the property owner (on a sale) to do the inspection or repair, the property owner and the buyer can negotiate.

Vice Mayor Hughes discussed the need to simplify the ordinance. He could agree to the point-of-sale if there was some flexibility added. The buyer and seller should be able to negotiate on the issue. He discussed the issue of Home Owner Associations (HOA) and why we are treating the HOA's differently than the rest of the home owners, and how to track when a home is sold (use water bills).

Mayor Patterson stated there was a potential direction to Staff: to change it to the 50% assessed valuation and to negotiate between buyer/seller.

Mayor Patterson asked Council to come up with something they could live with, and to revisit the issue in one year to see what is and isn't working.

Brad Kilger, City Manager, stated it seemed as if Council was not close to coming up with something they could live with.

Vice Mayor Hughes discussed his previously stated concerns.

Mayor Patterson asked if this issue were to go back to Staff with the requested changes, and it were brought back to Council for a vote, was that something Council could support?

Council Member Campbell suggested removing most of the triggers, since the underlying problem with this is the sewer laterals that clog up. What if we took that whole 'buy/sell your house' thing out? Do we actively or passively go after these things? Because if there is a sewer problem, the first two triggers covers it. He discussed the total amount of claims the City received in 2014 (approximately 35), not all of which dealt with sewer issues.

Council Member Strawbridge agreed with Council Member Campbell. She suggested going after the problematic sewer lines. The proposed ordinance is too far-reaching. She suggested educating the local realtors on possibly including sewer inspections when the other items (roof, etc.) are inspected.

Ms. McLaughlin said it sounded like this ordinance might need to die. Mayor Patterson stated that was what she was hearing. She cautioned waiting until the issue was enforced at a higher level, as it would cost a lot more.

Council Member Campbell and Mayor Patterson discussed what Council did and did not agree to at a previous meeting regarding sewer lateral inspections.

Vice Mayor Hughes discussed being okay with 5 of the 6 triggers. He suggested approving the ordinance with 5 of the 6 triggers and eliminate the point-of-sale issue.

Mayor Patterson summarized that Council had a request to send this back to Staff to eliminate the point-of-sale, refer to the staff report on page VIII.B.3 and go with items 1, 3, 4, 5, and 6.

Vice Mayor Hughes also suggested eliminating the common interest development section, so the homeowner would only have to do something if triggers 1,3,4,5 or 6 occurred.

Mayor Patterson and Vice Mayor Hughes discussed how this would affect common areas/HOA's. Mayor Patterson suggested giving some options for common areas if Staff could find some data to suggest it should be handled differently.

Vice Mayor Hughes discussed the need for the City allowing some flexible time if there is a hardship for HOA's.

Mayor Patterson suggested sending this back to Staff, with the direction to support the ordinance with the exception of point-of-sale, and have all the trigger points apply to the common areas.

Mr. Kilger clarified that Council was removing real estate transactions from the ordinance. It is basically failures that trigger an inspection.

Mayor Patterson asked for a vote on concurrent direction to Staff.

On motion of Council approved the direction to Staff by minute action, on roll call by the following vote:

Ayes: Patterson, Campbell, Hughes, Strawbridge

Noes: (None)

Abstain: Schwartzman

**C. Council Member Committee Reports:**

- 1. Mayor's Committee Meeting.(Mayor Patterson) Next Meeting Date: December 16, 2015**
- 2. Association of Bay Area Governments (ABAG) <http://www.abag.ca.gov/>. (Vice Mayor Hughes and Council Member Schwartzman) Next Meeting Date: TBD**
- 3. Finance Committee. (Vice Mayor Hughes and Council Member Strawbridge) Next Meeting Date: November 19, 2015**
- 4. League of California Cities. (Mayor Patterson and Vice Mayor Hughes) Next Meeting Date: TBD**
- 5. School Liaison Committee. (Vice Mayor Hughes and Council Member Strawbridge) Next Meeting Date: December 10, 2015**
- 6. Sky Valley Open Space Committee. (Vice Mayor Hughes and Council Member Campbell) Next Meeting Date: TBD**
- 7. Solano EDC Board of Directors. (Vice Mayor Hughes and Council Member Strawbridge) Next Meeting Date: November 12, 2015**
- 8. Solano Transportation Authority (STA). <http://www.sta.ca.gov/> (Mayor Patterson and Council Member Campbell) Next Meeting Date: December 9, 2015**
- 9. Solano Water Authority-Solano County Water Agency and Delta Committee. <http://www.scwa2.com/> (Mayor Patterson, Vice Mayor Hughes and Council Member Campbell) Next Meeting Date: December 10, 2015**
- 10. Traffic, Pedestrian and Bicycle Safety Committee. (Vice Mayor**

**Campbell and Council Member Strawbridge) Next Meeting Date:  
January 21, 2016**

- 11. Tri-City and County Cooperative Planning Group. (Vice Mayor Hughes and Council Member Schwartzman) Next Meeting Date: December 14, 2015**
- 12. Valero Community Advisory Panel (CAP). (Council Member Campbell and Council Member Schwartzman) Next Meeting Date: TBD**
- 13. Youth Action Coalition. (Vice Mayor Hughes and Council Member Strawbridge) Next Meeting Date: December 9, 2015**
- 14. ABAG-CAL FED Task Force-Bay Area Water Forum. <http://www.baywaterforum.org/> (Mayor Patterson) Next Meeting Date: TBD**
- 15. SOLTRANS Joint Powers Authority (Mayor Patterson, Vice Mayor Hughes and Council Member Campbell) Next Meeting Date: December 17, 2015**
- 16. Marin Clean Energy (MCE). (Council Member Schwartzman and Council Member Strawbridge) Next Meeting Date: TBD**

**IX. ADJOURNMENT:**

Mayor Patterson adjourned the meeting at 9:54 p.m.