November 27, 2007 Special Meeting
BENICIA CITY COUNCIL
SPECIAL MEETING AGENDA
City Council Chambers
November 27, 2007
6:00 P.M.

I. CALL TO ORDER:

II. CONVENE OPEN SESSION:

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC

III. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN

B. PUBLIC COMMENT

IV. CLOSED SESSION:

A. Conference with Labor Negotiator
(Government Code Section 54957.6 (a))
Agency negotiators: City Manager, Bill Avery, Assistant to the City Manager
Employee organizations: Benicia Senior Management Group, Benicia Middle Management Group, Local 1, Benicia Public Service Employees' Association (BPSEA)

V. RECONVENE OPEN SESSION:

VII. 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.

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR'S APPOINTMENT OF SOPHIA JENKINS AS THE YOUTH COMMISSION REPRESENTATIVE TO THE PARKS, RECREATION AND CEMETERY COMMISSION

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the appointment of Sophia Jenkins as the Youth Commission Representative to the Parks, Recreation and Cemetery Commission 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 20th day of November, 2007 and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Steve Messina, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

QUALIFICATIONS – SOPHIA JENKINS

Parks and Community Services
MEMORANDUM

DATE: November 7, 2007

TO: Jim Erickson
City Manager

FROM: Michael Alvarez
Director of Parks and Community Services

SUBJECT: APPROVAL OF SOPHIA JENKINS TO SERVE AS THE YOUTH COMMISSIONER TO THE PARKS, RECREATION AND CEMETERY COMMISSION

Per the Youth Commission By Laws the Youth Commission shall elect from its membership a Chairperson to serve for a one (1) year term and recommend to the Mayor the appointment of the Chairperson to serve as a voting member on the Parks, Recreation & Cemetery Commission. Provided below is a bio on Sophia Jenkins who was selected by the Youth Commission.

Sophia Jenkins is a senior at Benicia High School. This is Sophia's 5th year on the Commission and she has shown a lot of enthusiasm and eagerness to be very involved with Youth Commission activities over the years. Sophia has helped organize many of the commission's activities for the past four years and has worked closely with the different Youth Commission Chairs in the past. Sophia has experience with many different activities and organizations. Sophia currently works at First Street Café and is a member of the Varsity Tennis Team at her high school. It is very important to Sophia to be an active member of her community and looks forward to serving as the student representative on the Parks, Recreation & Cemetery Commission.

Sophia was happy to see last year's commission sponsor more activities for the youth of Benicia. She would like to see the commission continue their involvement in community service projects. Sophia is hardworking and has excellent organizational skills, which makes her well qualified for this position. We are looking forward to an exciting year under her leadership.

Please ask the Mayor to consider this nomination for the Council meeting scheduled for November 20, 2007.

Mayor

RECEIVED
OCT - 2 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council
RE: Closure of Skate Park

I am writing this letter to voice my opinion about the skateboard park located on West K and West 7th streets. I didn't think it was fair that this type of park was put in directly across from residences without even letting the home owners have a say. I used to live in one of these homes and can tell you that it was miserable. My window was in the front of the house and there were kids at the skate park all night long skating and partying when people with school and work were trying to sleep. I stress on the word trying because they kept me awake most nights to where I was calling the police on a nightly basis.

My parents still live in the house across the street and there was always garbage in their nicely kept yard and still is garbage in their yard which all started and continues because of the kids disrespect for the community and those residences. I can never park in front of their house because there are always kids parking there to go to the skateboard park. It is usually complete chaos and a lot of the kids at the park are very disrespectful. I tried to take my 12-year-old son over there because he is also into skateboarding, but the language and crowdedness forced us to leave. I wonder how many of the Benicia residences would appreciate having this right in their front yard. I am sure not many.

I feel my parents and the other residences on K street should finally be able to have peace in their neighborhood after all these years of having to deal with the noise and disrespect of a lot of these kids. A skateboard park should be just that, in a park not right in front of someone's house. The skateboard park in Southampton was a great idea and now it is time to give these businesses and residences their neighborhood back.

I hope the city does the right thing as I mentioned before no one else would want this kind of chaos and crowding in their very front yard. Thank you in advance for turning this park back into the serene quiet park it used to be.

Sincerely,

JSchumacker

Janelle Schumacker

cc: Tom Campbell
Bill Whitney
Mark Hughes
Elizabeth Patterson
Alan Schwartzman
Lisa Wolfe
Jim Erickson

Mayor

RECEIVED
OCT - 2 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Closure of Skate Park at Willow Glen

Dear Mayor Messina and Council Members,

First of all, we would like to say we are happy that, finally after all these years, the kids have acquired their brand new, state-of-the-art X-Park. It has been a long time in planning and how nice to see it come to fruition.

On the other side of the equation, after 20 years of living across the street from the existing skate park at Willow Glen, it would also be nice to have our neighborhood returned to peace and quiet. This neighborhood has endured the chaos and frustrations that this skate park presents for a very long time. Since we did not have a voice in the beginning when it was constructed, we would now ask you to return this park for use as a family area.

Thank you for your consideration.

Sincerely,

Eugene Unser
Darlene Unser

Eugene and Darlene Unser
662 West K Street, Benicia, CA 94510

cc: Tom Campbell
Bill Whitney
Mark Hughes
Elizabeth Patterson
Alan Schwartzman
Lisa Wolfe
Jim Erickson

October 6, 2007

Benicia City Council

RE: Closure of Skate Park @ Willow Glen
Corner of West 7th & West "K" Streets

Dear Council Members:

My family has been a part of Benicia for the past 80 years or so. It has been the home of my grandparents, parents, aunts and uncles, and cousins. Not to mention, all of the close, dear friends and acquaintances that reside here as well. I have lived in Benicia the entirety of my childhood and well into my adulthood, many of those years on West "K" Street. It is a beautiful town.

Approximately 20 years ago, the quiet park across the street was divided into a partial skate park. Over the years, as the park gained popularity with the youth of Benicia, the serenity of this neighborhood started to deteriorate slowly. At first it was just the noise of so many skaters and the increase of parking traffic. However, over the past 10 years, it has become increasingly worse. The kids have lost respect of the park and those that reside in this area. Now in addition to the noise and traffic, large quantities of litter and profanity have been added to the mix.

I am a mother of two and completely understand the recreation necessities of kids, both younger and older. I am grateful to the city for providing them with a new "state-of-the-art" skate park (X-Park) located in Southampton Community Park. I think the idea for the city providing transportation to and from this facility is a generous contribution to the kids for their benefit. I thank you for watching out for our youth.

Now, at this time, I have a request. I am asking that the voice that was not asked for 20 years ago when the skate park on West 7th and West "K" was put in, is listened to at this time. I am asking that the serenity of this neighborhood be returned to its residents, who have so patiently put up with the many inconveniences of this skate park for the past 20 years. Please hear them. This is a win-win situation. The youth of our town now have something way beyond what they have had in the past and the means to get there. The residents of the Willow Glen area now have the chance to have the something that they once had, back.

Thank you so much for your time and consideration. I know you will put a lot of thought into these requests.

Sincerely,

Deanna R. Schmaus-Tavis

RECEIVED
OCT 19 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

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With the new X-Park opening on October 6th, it would be nice to have the existing Skate Park at Willow Glen replaced with turf and trees for enjoyment by the neighborhood and surrounding neighborhoods. This was the unanimous recommendation of the Parks and Recreation Commission at their September 12th, 2007 meeting.

Please give this your most insightful attention and return the park back to its intended use.

Signed: George Lambro

Dated: Oct 3 2007

RECEIVED
OCT 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

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Signed: _____

Dated: 30 October 2007

RECEIVED
OCT 9 2007
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

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Signed: _____

Dated: 10-2-07

RECEIVED
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CITY OF BENICIA

October 1, 2007

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Signed: Jim Davis

Dated: 10-2-07

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OCT - 9 2007
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CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

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Signed: Timothy J. Miller

Dated: 10-2-07

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OCT 9 2007
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October 1, 2007

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Signed: _____

Dated: 8/3/07

RECEIVED
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CITY OF BENICIA

October 1, 2007

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Please give this your most insightful attention and return the park back to its intended use.

Signed: Michael G Vieto

Dated: 10.02.07

RECEIVED
OCT _ 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

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Signed: Annie D. Pietro

Dated: 10.02.07

VI-A-12

RECEIVED
OCT 9 2007
CITY CLERK'S OFFICE
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October 1, 2007

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Signed: Eugene L. Unser

Dated: 10/2/07

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OCT _ 9 2007
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October 1, 2007

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Signed: Darlene Unser

Dated: 10/2/07

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Signed: Schumacher

Dated: 10/2/07

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Signed: Betty Kerner

Dated: 10-2-07

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Signed: Melina Ingle

Dated: 10/2/07

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Signed: Valerie Anne Suffert

Dated: 10-1-07

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Dated: 10.1.07

RECEIVED
OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

We are requesting that consideration be given for the closure of the Skate Park at Willow Glen located at West K and West 7th Streets. This skate board area is an improper and dangerous setting for such an activity. This park was designed as a neighborhood facility to be enjoyed by families, not to be a meeting place and hangout for skate boarders. The traffic poses a danger for the riders, as well as, the drivers of the autos passing through this busy intersection. There have been accidents and incidents involving both. There is also the problems of litter, foul language, unavailability of parking spaces, and general disregard for residents of the neighborhood and passers-by.

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Please give this your most insightful attention and return the park back to its intended use.

Signed: _____

Dated: 10-2-07

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OCT - 9 2007
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CITY OF BENICIA

October 1, 2007

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Signed: Sam R. Evins (Sam Evins)

Dated: October 2, 2007

RECEIVED
OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

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SUBJECT: Skate Park at Willow Glen Closure

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Signed: Norman D. Koerner

Dated: 10-2-2007

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Signed: Jack Kerns

Dated: 10-8-07

RECEIVED
OCT - 9 2007
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CITY OF BENICIA

October 1, 2007

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Signed: Margarita Lebron Rivera

Dated: 10-7-07

RECEIVED
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October 1, 2007

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Signed: Yvette Mitchell

Dated: 10/6/07

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Signed: Laurel Vanten

Dated: 10/5/07

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Signed: [signature]

Dated: 10-8-07

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Signed: Kathie Haskins

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Signed: Jerry Gray 317 Durham Ct.

Dated: 10-2-07

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Dated: 10/6/07

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Dated: 10/5/07

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Signed: Jamie L. Jewil

Dated: 10-5-07

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Dated: 10-4-07

RECEIVED
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Signed: Roseina McDonnell

Dated: 10-04-07

RECEIVED
OCT - 9 2007
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Signed: John McDaniel

Dated: 10-04-07

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Signed: [illegible] 317 [illegible] Ct

Dated: 10-4-07

RECEIVED
OCT - 9 2007
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October 1, 2007

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Signed: Scott Deane

Dated: 10-4-07

690 West K St.
Benicia

RECEIVED
OCT - 9 2007
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October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

We are requesting that consideration be given for the closure of the Skate Park at Willow Glen located at West K and West 7th Streets. This skate board area is an improper and dangerous setting for such an activity. This park was designed as a neighborhood facility to be enjoyed by families, not to be a meeting place and hangout for skate boarders. The traffic poses a danger for the riders, as well as, the drivers of the autos passing through this busy intersection. There have been accidents and incidents involving both. There is also the problems of litter, foul language, unavailability of parking spaces, and general disregard for residents of the neighborhood and passers-by.

With the new X-Park opening on October 6th, it would be nice to have the existing Skate Park at Willow Glen replaced with turf and trees for enjoyment by the neighborhood and surrounding neighborhoods. This was the unanimous recommendation of the Parks and Recreation Commission at their September 12th, 2007 meeting.

Please give this your most insightful attention and return the park back to its intended use.

Signed: _____

Dated: 10/03/2007

OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

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Please give this your most insightful attention and return the park back to its intended use.

Signed: Kenneth R Nunn

Dated: 10-3-07

OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

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Please give this your most insightful attention and return the park back to its intended use.

Signed: Hortense L. Nunn

Dated: 10-3-07

RECEIVED
OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

SUBJECT: Skate Park at Willow Glen Closure

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Please give this your most insightful attention and return the park back to its intended use.

Signed: Barbara Sorrentino

Dated: 10/3/07

RECEIVED
OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

TO: Benicia City Council

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Signed: _____

Dated: 10-3-07

OCT - 9 2007
CITY CLERK'S OFFICE
CITY OF BENICIA

October 1, 2007

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SUBJECT: Skate Park at Willow Glen Closure

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Please give this your most insightful attention and return the park back to its intended use.

Signed: _____

Dated: 10-5-07

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
NOVEMBER 6, 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, November 6, 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:
Various Benicia Boy Scouts and Girl Scouts 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 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

APPOINTMENTS:
RESOLUTION 07-119 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF ATIBA MURPHY TO THE BENICIA HOUSING AUTHORITY TO AN UNEXPIRED TERM ENDING DECEMBER 31, 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

RESOLUTION 07-120 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF RICHARD SPRANKLE TO THE BENICIA HOUSING AUTHORITY TO AN UNEXPIRED TERM ENDING DECEMBER 31, 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:
Library Basement Project Review:
Diane Smikahl, Library Director, reviewed the Staff report.

Mr. Mark Thieme, Architect, reviewed the architectural plans for the project.

Public Comment:

1. John Van Landschoot – Mr. Van Landschoot expressed concern regarding insufficient public input on the project, the current lack of book shelves, proposed office space, he would like to see a coffee shop such as Rrags in the building, the proposed basement will be 'cave like, and he wished the project could be rearranged.
2. Donnell Rubay – Ms. Rubay expressed concerns regarding the lack of public input on the project, the door on the west side being closed forever, and the possibility of the door on the west side being used for a store front for the Friends of the Library book sales (which could stimulate activity on First Street).

Council and Staff discussed the process the project would go through prior to approval. The City has gone through the public process that was outlined by the Library Director. Staff had not planned to have any more public input sessions. Staff would do its best to listen to the public's concerns within the established parameters. Staff wants to proceed with the project. The Friends of the Library Program, its current location, and proposed location were discussed. Council Member Patterson suggested it would be a good idea to have an open house for the public so Staff could describe the proposed project.

Mayor Messina directed Staff to bring this item back for further discussion on a future agenda. Mr. Erickson suggested bringing the item back at the next regular Council meeting. There had been a lot of opportunity for public input in the process. The project was noticed sufficiently.

PROCLAMATIONS:

- California Law Enforcement Records and Support Personnel Day
- Lung Cancer Awareness 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. Marilyn Bardet – Ms. Bardet thanked the City for holding off on discussions regarding the proposed Seeno Project until 2008. She applauded the City for bringing the issue of climate control up for discussion.
2. Mary Roberts – Ms. Roberts thanked the Traffic, Pedestrian, and Bicycle Safety Committee for going to Hastings Drive to address the issue of traffic calming. There has been a lot of positive feedback on the visit and comments.
3. Larry Fullington – Mr. Fullington discussed his appreciation for the current Council's efforts.

CONSENT CALENDAR:
Council pulled item VII-E.

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, 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 16, 2007 were approved.

Council approved the denial of the claim against the City by Nancy Johnson and referral to insurance carrier.

Council approved the denial of the claim against the City by E. Lundburg and referral to insurance carrier.

Council approved the denial of the claim(s) against the City by the family and estate of Colene Maiden and referral to insurance carrier. Council denied the claims against the City by Jim Maiden, John Maiden, Theresa Maricich, and Melissa Kizer.

ORDINANCE 07-22 - 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

ORDINANCE 07- 23- 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

ORDINANCE 07-24 - 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

RESOLUTION 07-121 - A RESOLUTION 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

RESOLUTION 07- 122- A RESOLUTION 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

RESOLUTION 07-123 - 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

RESOLUTION 07-124 - 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

RESOLUTION 07-125 - A RESOLUTION AUTHORIZING SUBMITTAL OF A BAY AREA AIR QUALITY MANAGEMENT DISTRICT CLIMATE PROTECTION GRANT APPLICATION

RESOLUTION 07-126 - A RESOLUTION APPROVING MEMBERSHIP IN ICLEI – LOCAL GOVERNMENTS FOR SUSTAINABILITY AND CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION

RESOLUTION 07-127 - A RESOLUTION 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

Council approved the cancellation of the January 1, 2008 City Council Meeting.

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 and First Reading of Ordinances to amend the Municipal Code provisions regarding appeals:
Vice Mayor Schwartzman inquired about page VII-E-53 - he suggested a specified time frame of 10 days inserted in section 1564 section 1a - 1.44 - On page VII-E-70 – Vice Mayor Schwartzman requested that it be changed to the HPRC in section 1754.030 section 1 #2.

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 3.24.120 (APPEAL) OF CHAPTER 3.24 (TRANSIENT OCCUPANCY TAX) OF TITLE 3 (REVENUE AND FINANCE) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 9.20.040 (APPEAL – DENIAL OF RENEWAL, SUSPENSION OR REVOCATION OF PERMIT) OF CHAPTER 9.20 (FORTUNE TELLING) OF TITLE 9 (PUBLIC PEACE, MORALS AND WELFARE) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 17.86.110 (APPEALS) OF CHAPTER 17.86 (WIND ENERGY CONVERSION SYSTEMS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 17.90.110 (APPEALS) OF CHAPTER 17.90 (CONDOMINIUM CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 17.94.060 (APPEALS) OF CHAPTER 17.94 (MOBILE HOME PARK CONVERSIONS) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE AMENDING SECTION 17.112.070 (APPEALS) OF CHAPTER 17.112 (DEVELOPMENT PLAN REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE DELETING AND REPLACING CHAPTER 17.124 (APPEALS AND CALLS FOR REVIEW) OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE

ORDINANCE 07- - AN ORDINANCE 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

ORDINANCE 07- - AN ORDINANCE AMENDING SUBSECTION A OF SECTION 18.08.070 (APPEALS) OF CHAPTER 18.08 (PERMITS) OF TITLE 18 (SIGNS) OF THE BENICIA MUNICIPAL CODE

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, Council approved the Introduction and First Reading of the above ordinances, as amended, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

PUBLIC HEARINGS:
None

ACTION ITEMS:
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):
Jim Erickson, City Manager, and Mike Alvarez, Parks and Community Services Director, reviewed the staff report.

Mr. Jim Wallace, Benicia Lions Club, discussed concerns raised in a letter submitted to the City earlier today (hard copy on file).

Mr. Fred Henning, Benicia Lions Club, discussed the four concerns with the lease: 1) if the Benicia Lions Club should disband during the term of the lease, there wasn't a provision made for a successor organization to take the Boy Scout lease over, 2) in section 3.3, it would like to see a provision in the lease for the City to find a suitable alternate location, should the Mills site go back to BUSD. It is not looking for a promise; just that the City will show its best effort, 3) in section 11.3 there was a sentence that called for the Benicia Lions Club to be responsible for future construction due to upgrades. Since the Benicia Lions Club will be donating all of the funds raised by Valero, Valero employees, and various fundraisers, it did not feel it should be responsible for future major construction to the facility of an unspecified nature, and 4) in section 23.2.5, there was a provision that the Benicia Lions Club would be responsible for any hazardous materials that were found on the premises prior to their occupancy. It should not be responsible for anything that was there before it took occupancy. It would certainly be responsible for anything that happens during the term of the lease.

Mayor Messina asked Mr. Henning to clarify if on point #3, the changes were required by the Benicia Lions Club or the Scouts, would it pay for them or would they expect the City to pay for them. Mr. Henning stated that if there were changes that it was specifically requesting or needing, the Benicia Lions Club would pay for them.

Ms. McLaughlin stated that on item 1.4, it was the City's goal that the Boy Scouts use the space. She did not think the language needed to be changed, however Staff could insert language stating that it was the City's goal. On item 3.3, the difference in the timing is that the City wanted to have some wiggle room to be able to negotiate with BUSD in case it decided it (BUSD) wanted to terminate the lease. She had a problem on binding future councils. Staff could insert some very weak wiggle room language if Council wanted to. Mayor Messina suggested inserting language stating that the City would notify the Benicia Lions Club after receiving a termination notice from BUSD.

Council Member Patterson discussed that it was the City's intent to assist in relocating the Scouts. The intent is that the City provides in the future, all the tools the City has available if it could afford it and if circumstances permit that. She would like language inserted that it was the City's 'intent.'

Council and Staff discussed the issue of construction costs. Staff confirmed it would add language stating that the City would pay for upgrades that were required by law. The Benicia Lions Club would pay for items that were specifically required or wanted by them.

Ms. McLaughlin discussed the issue of Hazardous Materials liability. Staff confirmed it could make the change as requested by the Benicia Lions Club.

Ms. Tracee Devencenzi and Ms. Betsy Radke stated the Girl Scouts were okay with the proposed changes to the lease. The Girl Scouts have been waiting for this for a long time. They were very excited about the lease.

RESOLUTION 07-128 - A RESOLUTION 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

On motion of Vice Mayor Schwartzman, seconded by Council Member Patterson, the above Resolution was adopted as amended, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

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:
Heather McLaughlin, City Attorney, reviewed the staff report.

Mayor Messina, Vice Mayor Schwartzman, Council Member Patterson, Council Member Whitney, and Council Member Hughes disclosed ex parte communications.

Public Comment:

1. Reed Lewis – Mr. Lewis discussed the importance of signs. He discussed the proposed billboard and proposed changes to the ordinance. He requested his application be subject to the current ordinance.
2. Mike McCoy – Mr. McCoy requested his application be judged on the ordinance that was in place when the application was submitted. He discussed the process he went through to submit his application. They spoke to members of the community and asked approximately 40 people if they would prefer governments to make decisions based on fairness and consistency or strategic direction.
3. Eldon Peterson – Mr. Peterson spoke in opposition to any more billboards going up along Benicia's freeways. He asked Council to deny the permit.
4. Marilyn Bardet – Ms. Bardet spoke in opposition to the proposed billboard. She would rather see an American flag.
5. Larry Fullington – Mr. Fullington spoke in opposition to the proposed billboard. He asked Council to deny the application.

Council and Staff discussed the possibility of the City applying for designation as a State highway, scenic highways, landscaping of the highways, the need for a complete application, the General Plan, and the need for ordinances to comply with the General Plan.

Council Member Hughes discussed the original incomplete application, support of the recommended ordinance, support of sending the application back to the Planning Commission, and the need to be fair.

ORDINANCE 07- - AN ORDINANCE 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

On motion of Council Member Patterson, seconded by Council Member Hughes, the above Introduction and First Reading of an Ordinance was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, Council agreed to accept Staff's recommendation for denying the application, on roll call by the following vote:
Ayes: Council Members Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: Council Member Hughes

INFORMATIONAL ITEMS:
None

COMMENTS FROM COUNCIL MEMBERS:
None

ADJOURNMENT:
Mayor Messina adjourned the meeting at 8:46 p.m.

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE	:	November 14, 2007
TO	:	City Manager
FROM	:	Community Development Director
SUBJECT	:	**APPROVAL OF A MILLS ACT CONTRACT FOR THE HISTORIC PROPERTIES LOCATED AT 392-396 EAST H STREET, 224 WEST I STREET, 1025 WEST SECOND STREET, 141 WEST H STREET, 120 WEST D STREET, AND 140 EAST G STREET**

RECOMMENDATION:

Due to the need for additional information, continue this item to December 18, 2007.

EXECUTIVE SUMMARY:

The Mills Act program is a State of California authorized mechanism by which owners of Qualified Historical Properties may use an alternative method of determining property value for property tax purposes. The Historic Preservation Review Commission has reviewed and found that entering into a Mills Act contract for the properties at 392-396 East H Street, 224 West I Street, 1025 West Second Street, 141 West H Street, 120 West D Street, and 140 East G Street would encourage the preservation and rehabilitation of qualified historic properties in the City of Benicia.

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : October 29, 2007

TO : City Manager

FROM : Director of Public Works

SUBJECT : **PURCHASE OF REPLACEMENT VEHICLES FOR PUBLIC WORKS MAINTENANCE AND WASTEWATER TREATMENT DIVISIONS**

RECOMMENDATION:

Adopt two resolutions:

(1) authorizing the purchase of a replacement service truck for the Public Works Wastewater Treatment Division, the cab and chassis from Wilson-Cornelius Ford of Vallejo in an amount not-to-exceed $24,892.00 and the utility bed with crane from North Bay Truck Body in an amount not-to-exceed $23,517.27, and authorizing the City Manager to sign the purchase order on behalf of the City; and

(2) authorizing the purchase of a replacement dump truck for the Public Works Maintenance Division from TEC Oakland in an amount not-to-exceed $55,400.00 and authorizing the City Manager to sign the purchase order on behalf of the City.

EXECUTIVE SUMMARY:

Two Public Works Department diesel vehicles require replacement due to mileage, age, poor condition and new air emissions requirements. A service truck for Wastewater Treatment and a dump truck for the Maintenance Division are replacing older diesel-fueled vehicles that would be more costly to repair or retrofit than to replace. Funds to purchase these vehicles are included in the FY 2007/2008 budget.

BUDGET INFORMATION:

The total cost to purchase both replacement vehicles is $103,809.27. Sufficient funds for the proposed expenditure are available from the Streets Vehicle Replacement Fund (Account No. 114-8705-9125) and Wastewater Equipment Replacement Reserve Fund (Account No. 515-8356-9959).

BACKGROUND:

The new service vehicle for the Wastewater Treatment Division replaces a 1991 diesel service truck with a 2008 Ford F-550 cab and chassis and a new utility bed with crane and accessories. In addition to the benefits of updated equipment, replacing an older diesel truck with a newer, more efficient gasoline-powered truck helps the City satisfy requirements from the California Air Resources Control Board (CARB) to reduce diesel particulate matter emissions from public agency and utility fleet vehicles.

Purchasing the service truck requires separate purchases from two vendors - the cab and chassis from Cornelius Ford for $24,892.00 and the utility bed with crane from North Bay Truck Body for $23,517.27 for a total vehicle cost of $48,409.27. In accordance with the City's purchasing guidelines and Benicia Municipal Code Section 3.08.110.I, the City may purchase equipment from vendors awarded a contract by another governmental agency. A quote was received from Wilson-Cornelius Ford of Vallejo, who is a qualified supplier and was selected in a competitive bidding process through the California Department of General Services Administration's Procurement Division (GSA). Staff obtained bids from 3 vendors for purchase of the utility bed with crane, of which the lowest bid received was from North Bay Truck Body.

The Maintenance Division dump truck replaces a 19 year-old diesel dump truck in inoperable condition that would cost more to repair and retrofit than to purchase a new, more efficient gasoline powered truck. Staff received bids from two of the three companies requested. Of the bids received, TEC Oakland submitted the lowest in the amount of $55,394.13.

Therefore, staff recommends: (1) purchase of new service truck bed and chassis from Wilson-Cornelius Ford in an amount not-to-exceed $24,892.00 and purchase of the utility bed with crane from the lowest bidder, North Bay Truck Body in an amount not-to-exceed $23,517.27; and (2) purchase of the new dump truck from TEC Oakland in an amount not-to-exceed $55,400.00.

cc: City Attorney
Assistant Director of Public Works
City Engineer

Attachments:

- Proposed Resolutions

Proposed Resolutions

1. Replacement Service Truck for Public Works Wastewater Treatment Division

2. Replacement Dump Truck for Public Works Maintenance Division

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING THE PURCHASE OF A REPLACEMENT SERVICE VEHICLE FOR THE PUBLIC WORKS DEPARTMENT, THE CAB AND CHASSIS FROM WILSON-CORNELIUS FORD OF VALLEJO IN AN AMOUNT NOT-TO-EXCEED $24,892.00 AND THE UTILITY BED/CRANE FROM NORTH BAY TRUCK BODY IN AN AMOUNT NOT-TO-EXCEED $23,517.27 AND AUTHORIZING THE CITY MANAGER TO SIGN THE PURCHASE ORDER ON BEHALF OF THE CITY

WHEREAS, a service truck operated by the Public Works Department Wastewater Treatment Division is scheduled for replacement in accordance with City policy due to age, mileage and emission requirements; and

WHEREAS, in accordance with the City's purchasing guidelines and Benicia Municipal Code Section 3.08.110.I, a quote for the cab and chassis was received from Wilson-Cornelius Ford of Vallejo, who was selected by the California Department of General Services Procurement Division (GSA) as a governmental supplier by a competitive bidding process; and

WHEREAS, quotes were obtained for purchase of the utility bed/box with crane and accessories, the lowest being from North Bay Truck Body; and

WHEREAS, sufficient funds for this expenditure are available per the adopted 2007/2008 fiscal year budget in the Wastewater Enterprise Funds.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the purchase of a replacement service vehicle for the Public Works Department, cab and chassis from Wilson-Cornelius Ford of Vallejo in an amount not-to-exceed $24,892.00 and utility bed/crane from North Bay Truck Body in an amount not-to-exceed $23,517.27 and authorizes the City Manager to sign the purchase order 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 20th 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 AUTHORIZING THE PURCHASE OF A REPLACEMENT DUMP TRUCK FOR THE PUBLIC WORKS MAINTENANCE DIVISION FROM TEC OAKLAND IN AN AMOUNT NOT-TO-EXCEED $55,400.00 AND AUTHORIZING THE CITY MANAGER TO SIGN THE PURCHASE ORDER ON BEHALF OF THE CITY

WHEREAS, the dump truck operated by the Public Works Maintenance Division requires replacement in accordance with City policy due to age, mileage, poor condition and emission requirements; and

WHEREAS, in accordance with the City's purchasing guidelines, quotes were obtained for purchase of the replacement dump truck, the lowest being from TEC Oakland; and

WHEREAS, sufficient funds for this expenditure are available per the adopted 2007/2008 fiscal year budget in the Streets Vehicle Replacement Fund.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby authorizes the purchase of a replacement dump truck for the Public Works Department from TEC Oakland in an amount not-to-exceed $55,400.00 and authorizes the City Manager to sign the purchase order 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 20th day of November 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Mayor

Attest:

_____
Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : October 31, 2007

TO : City Manager

FROM : Director of Public Works

SUBJECT : **AWARD OF CONTRACT FOR LAKE HERMAN PUMP STATION MOTOR CONTROL CENTER REPLACEMENT PROJECT**

RECOMMENDATION:

Adopt a resolution accepting the bid for the Lake Herman Pump Station Motor Control Center Project, awarding the contract in the amount of $32,700 to Wulff Electric of Vacaville, California, and authorizing the City Manager to sign the contract on behalf of the City.

EXECUTIVE SUMMARY:

This pump station, located at the end of Channel Court, is a vital component of the water distribution system that moves untreated water from Lake Herman to the Water Treatment Plant and/or to Valero Refining Company. This project will replace the existing old pumping equipment with three new energy efficient motor control centers. On October 24, 2007, one bid was received and publicly opened from Wulff Electric of Vacaville. After review of this bid, staff determined it to be a responsible and responsive bid and recommends contract award. The cost of the work is budgeted and sufficient funds are available in the Water Enterprise Fund.

BUDGET INFORMATION:

The total cost of this project is $32,700. Sufficient funds are available in Account No. 594-8259-9960 to cover the cost.

BACKGROUND:

The motor control center pumping equipment currently in use at the Lake Herman pump station, in place since 1968, has served its useful life. Therefore, new, updated and more energy efficient equipment is necessary to continue providing water from Lake Herman to the Water Treatment Plant and Valero Refinery in the Benicia Industrial Park. The existing equipment was scheduled for replacement this fiscal year.

On October 24, 2007 one bid was properly received and publicly opened from Wulff Electric of Vacaville, California. Staff determined Wulff Electric to be a responsible bidder submitting a responsive bid, under the engineer's estimate of $40,000 and within the budget amount allocated.

Staff, therefore, recommends award of the contract for the Lake Herman Pump Station motor Control Center Replacement Project in the amount of $32,700 to Wulff Electric of Vacaville, California.

cc: City Attorney
Assistant Director of Public Works
Water Treatment Plant Superintendent

Attachment:

- Proposed Resolution

Proposed Resolution

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BID FOR THE LAKE HERMAN PUMP STATION MOTOR CONTROL CENTER REPLACEMENT PROJECT, AWARDING THE CONTRACT IN THE AMOUNT OF $32,700.00 TO WULFF ELECTRIC OF VACAVILLE, CALIFORNIA, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, the Lake Herman Pump Station Motor Control Center Replacement Project was advertised for bid and one bid was properly received and publicly opened on October 24, 2007; and

WHEREAS, Wulff Electric of Vacaville, California, has been determined to be a bidder submitting a responsive and responsible bid; and

WHEREAS, this project is categorically exempt under CEQA pursuant to Section 15301(a) (existing facilities – interior or exterior) of the CEQA guidelines.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby accepts the bid for the Lake Herman Pump Station Motor Control Center Replacement Project, and awards the contract in the amount of $32,700.00 to Wulff Electric of Vacaville, and authorizes the City Manager to sign the contract on behalf of the City, subject to approval by the City Attorney.

* * * * *

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 20th day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Steve Messina, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : November 9, 2007

TO : City Manager

FROM : Director of Public Works

SUBJECT : **AWARD OF CONTRACT FOR TRANSPORTATION AND DISPOSAL OF WASTEWATER TREATMENT PLANT SLUDGE**

RECOMMENDATION:

Adopt a resolution accepting the proposal for Transportation and Disposal of Sludge from the Wastewater Treatment Plant, awarding the contract to Norcal Waste Systems, Inc. of Vacaville, California, in an amount of $43.44 per ton, and authorizing the City Manager to sign the contract on behalf of the City.

EXECUTIVE SUMMARY:

During the treatment process, the Wastewater Treatment Plant (WWTP) generates sludge that must be hauled off-site to a permitted landfill. This material is often used as a cap for permitted landfills because it assists with environmental requirements for establishing a vegetative cover and, in many facilities, it is combined with green waste for composting. Staff sent Requests For Proposals (RFPs) to five firms and received three proposals for sludge transportation and disposal services. The cost of this work is budgeted and sufficient funds are available in the Wastewater Enterprise Fund.

BUDGET INFORMATION:

At the plant's current sludge output level, staff estimates the annual cost of these services to be $79,000. Adequate funds are budgeted in the FY 07/08 and 08/09 budget under Wastewater Operations, Account #014-8305-8751, Materials Disposal.

BACKGROUND:

On September 27, 2007, staff sent Requests for Proposals (RFPs) for sludge transportation and disposal to five firms: Solano Garbage Company of Fairfield, Redwood Sanitary Service of Healdsburg, North Bay Corporation of Santa Rosa, Allied Waste of Pacheco and Norcal Waste Systems Inc. of Vacaville.

On October 11, 2007, proposals were received from three of the five firms. After thorough review and analysis, staff determined that the proposal from Norcal Waste Systems Inc. best meets the City's needs.

A major benefit of contracting with Norcal for this service is that because of Norcal's recycling process, the City will receive full recycling credit for all sludge materials transported to their landfill, an option not available from the other companies. This recycling credit counts toward the goal to divert 50% of solid waste disposal from landfills, as required by the California Integrated Waste Management Board. The term of this agreement will be two years with renewal options at the consumer price index rate for each extension year thereafter.

Staff, therefore, recommends awarding the contract services agreement for Transportation and Disposal of Wastewater Treatment Plant Sludge in the amount of $43.44 per ton to Norcal Waste Systems Inc. of Vacaville.

cc: City Attorney
Assistant Director of Public Works
Wastewater Treatment Plant Superintendent

Attachment:

- Proposed Resolution

Proposed Resolution

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE PROPOSAL FOR TRANSPORTATION AND DISPOSAL OF SLUDGE FROM THE WASTEWATER TREATMENT PLANT, AWARDING THE CONTRACT TO NORCAL WASTE SYSTEMS INC OF VACAVILLE, CALIFORNIA, IN AN AMOUNT OF $43.44 PER TON, AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONTRACT ON BEHALF OF THE CITY

WHEREAS, in September 2007 Request for Proposals were sent to five firms for Transportation and Disposal of Sludge from the Wastewater Treatment Plant and, in October, three proposals were received; and

WHEREAS, Norcal Waste Systems of Vacaville, California's proposal has been reviewed and determined to meet the City's requirements and within the City's budget; and

WHEREAS, the term of this agreement is two years with renewal options at the consumer price index rate for each extension year thereafter.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia hereby accepts the proposal for Transportation and Disposal of Sludge from the Wastewater Treatment Plant, awards the contract to Norcal Waste Systems Inc of Vacaville, California, in an amount of $43.44 per ton, and authorizes the City Manager to sign the contract on behalf of the City, subject to approval by the City Attorney.

* * * * *

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 20th day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Steve Messina, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : October 31, 2007

TO : City Manager

FROM : Director of Parks and Community Services

SUBJECT : **ACCEPTANCE OF THE X-PARK PROJECT AT BENICIA COMMUNITY PARK**

RECOMMENDATION:

Adopt a Resolution accepting the X-Park Project at Benicia Community Park as complete, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file said notice with the Solano County Recorder.

EXECUTIVE SUMMARY:

The X-Park Project at Benicia Community Park, which included the construction of a 20,000 square ft. recreation facility for skateboarders, in-line skaters and BMX style bikes, has been completed for a total construction cost of $858,500. Formal acceptance of the work by the City Council is now required to allow the final payment to be made to the contractor.

BUDGET INFORMATION:

The X-Park Project at Benicia Community Park has a budget comprised of the following work items:

Project Budget

Engineering Design	$38,680
AJ Vasconi [Base Bid]	$858,500
Contingency	$85,000
Total Project Budget	**$982,180**

A summary of the final expenditures made to date is outlined below:

Project Expenditures

Engineering Design	$38,680
AJ Vasconi.	
Original Construction Contract per Resolution No. 07-09	$858,500
Contract Change Orders	$0

FINAL CONTRACT AMOUNT	$858,500
Contingency (Remaining Balance)	$44,154
Landscaping and Site Work (performed by City Staff)	$26,686
Security	$5,065
Installation of Donation Bricks	$6,000
Park Plaque	$1,454
Misc., Bidding, Postage, Copies	$1,641
Total Project Budget	**$938,026**

Per City Council direction, staff has allocated the balance of the project contingency, in the amount of $44,154, to the Mills Improvement Project for design and construction.

BACKGROUND:

In November of 2000 the City Council requested that the Parks and Community Services Department conduct a needs assessment regarding skateboarding facilities in Benicia. After community input and dialogue with the Parks, Recreation and Cemetery Commission it was determined that the current skate facility located at West 7th and J Street does not meet the needs of the community and a new facility was requested to meet the increasing demand of this recreation activity.

In the spring of 2002 the City Council authorized the execution of a contract with Wormhoudt Landscape Architecture for development of plans and specifications for the X-Park project, totaling $38,680. The Wormhoudt group designed the X-Park for all levels of skateboarders and bicycle riders. The park consists of multiple pools consisting of three to nine feet in depth. Located within the park are above ground blocks ranging from 18 inches to 26 inches tall. The park also includes grinding rails, pump bumps, and quarter pipe extensions.

In October of 2004 the City Council approved resolutions authorizing the X-Park design and Mitigated Negative Declaration.

On February 6, 2007 the City Council approved a resolution authorizing construction of the X-Park. The contractor, A.J. Vasconi, has completed the X-Park Project to the satisfaction of City staff. On October 6, 2007 the X-Park celebrated its grand opening.

Attachments:

- Proposed Resolution
- Notice of Completion

Proposed Resolution

RESOLUTION NO. 07 –

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE X-PARK 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

WHEREAS, by Resolution No. 07-09 the City Council awarded the contract for the X-Park Project in accordance with plans and specifications; and

WHEREAS, said work was completed to the satisfaction of City staff.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Benicia hereby accepts the X-Park Project at Benicia Community Park as complete for final construction cost of $858,500.

BE IT FURTHER RESOLVED that the City Council of the City of Benicia hereby authorizes the City Manager to sign the Notice of Completion and the City Clerk is authorized to file the same 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 20th 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
PARKS & COMMUNITY SERVICES
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:

   X-PARK PROJECT AT BENICIA COMMUNITY PARK

2. The nature of City's ownership is in fee title.

3. A work of improvement known as X-PARK PROJECT AT BENICIA COMMUNITY PARK on the property herein above described was completed and accepted by the City Council of the City of Benicia at a regular meeting thereof on November 20, 2007.

4. The name of the contractor for such improvements was A.J. VASCONI.

CITY OF BENICIA

Dated: _____

By:_____
James R. Erickson, City Manager

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.

Attest:_____
Lisa Wolfe, City Clerk

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : October 30, 2007

TO : City Manager

FROM : Community Development Director

SUBJECT : **APPROVAL OF AN AGREEMENT FOR BUILDING INSPECTION AND PLAN REVIEW SERVICES**

RECOMMENDATION:

Adopt a resolution approving an agreement with Coastland Civil Engineering, Inc. for professional services for building inspection and plan review, and authorizing the City Manager to execute the agreement on behalf of the City.

EXECUTIVE SUMMARY:

The Community Development Department seeks to enter into an agreement with Coastland Civil Engineering for professional services for building inspection and plan review for the Building Division. Coastland has provided building inspection services since September 2006 under a prior agreement to ensure that permits are processed in a timely manner during periods of heavier workload. Coastland has been available for plan review services but has not yet been needed for such.

BUDGET INFORMATION:

This agreement provides for $50,000 to cover one year of professional services, based on the expected volume of work per the prior agreement. There are adequate funds in Building Division Professional Services Account No. 010-4205-8106, and the funds expended are recovered through City building inspection fees.

SUMMARY:

The inspection services provided by Coastland Civil Engineering since 2006 have demonstrated expertise necessary to continue to provide the required professional assistance for the Building Division.

Attachments:
- Resolution
- Agreement

RESOLUTION

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING AN AGREEMENT IN THE AMOUNT OF $50,000 WITH COASTLAND CIVIL ENGINEERING, INC. FOR PROFESSIONAL SERVICES FOR BUILDING INSPECTION AND PLAN REVIEW, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, a professional consulting firm is needed for building functions including building inspection and plan review services as assigned by the Building Official; and

WHEREAS, Coastland Civil Engineering, Inc. has demonstrated the expertise necessary to provide the required professional services for the division.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Benicia approves an agreement in the amount of $50,000 with Coastland Civil Engineering, Inc. for professional services for the Building Division, Community Development Department and authorizes the City Manager to execute the agreement on behalf of the City, subject to approval by the City Attorney.

* * * * *

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 20th day of November, 2007 and adopted by the following vote:

Ayes:

Noes:

Absent:

Steve Messina, Mayor

ATTEST:

Lisa Wolfe, City Clerk

AGREEMENT

CONTRACT AGREEMENT

This agreement ("Agreement") entered into _____, 2007, is between the City of Benicia, a municipal corporation (hereinafter "CITY"), and Coastland Civil Engineering, Inc., a California corporation with its primary office located at 1400 Neotomas Avenue, Santa Rosa, CA 95405 (hereinafter "CONSULTANT") (collectively, "the Parties").

RECITALS

WHEREAS, CITY has determined it is necessary and desirable to secure certain professional services for plan check and building inspection services. The proposal for said service (hereinafter "Project") is attached hereto as Exhibit "A" and is hereby incorporated by reference; and

WHEREAS, CONSULTANT is specially trained, experienced and competent to perform the services required by this agreement; and

WHEREAS, CONSULTANT represents it is qualified and willing to provide such services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, IT IS AGREED by and between CITY and CONSULTANT as follows:

AGREEMENT

1. INCORPORATION OF RECITALS. The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraph preceding the recitals, are hereby incorporated into this Agreement as if set forth herein in full.

2. SCOPE OF SERVICE.

(a) Services to be Furnished. Subject to such policy direction and approvals as CITY through its staff may determine from time to time, CONSULTANT shall perform the services as described in Exhibit A, which is attached hereto and incorporated herein by reference.

(b) Standard of Quality. All work performed by CONSULTANT under this Agreement shall be in accordance with all applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in CONSULTANT'S field of expertise. CONSULTANT shall function as a technical advisor to CITY, and all of CONSULTANT'S activities under this Agreement shall be performed to the reasonable satisfaction and approval of the City Building Official.

(c) Compliance With Laws. CONSULTANT shall comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, and decrees. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its own cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance and approvals which are legally required for CONSULTANT to practice its profession or are necessary and incident to the due and lawful prosecution of the services it performs under this Agreement. CONSULTANT shall maintain a City of Benicia business license. CONSULTANT shall at all times during the term of this Agreement, and for one year thereafter, provide written proof of such licenses, permits, insurance, and approvals upon request by CITY. CITY is not responsible or liable for CONSULTANT'S failure to comply with any or all of the requirements contained in this paragraph.

3. PAYMENT.

(a) Compensation. The total cost for services provided by CONSULTANT shall not exceed $50,000.00 at the rates set forth in Exhibit A. The rate schedule in Exhibit A itemizes those standard and expected expenses for which CONSULTANT shall receive compensation. If CONSULTANT obtains CITY'S prior written approval from the City Building Official, CONSULTANT may be reimbursed for extraordinary costs incurred on the Project.

(b) Schedule of Payment. The compensation to be paid by CITY to CONSULTANT for the services rendered hereunder shall be on a time and materials basis based upon the rate schedule in Exhibit A attached hereto and hereby incorporated by reference or as may be adjusted annually each July 1.

(c) Additional Services. CITY shall make no payment to CONSULTANT for any additional services unless such services and payment have been mutually agreed to and this Agreement has been formally amended in accordance with Section 7.

(i) Only the City Council can act on behalf of CITY to authorize CONSULTANT to perform additional services.

(ii) CONSULTANT shall not commence any work or services exceeding the Scope of Services in Section 2 without prior written authorization from CITY in accordance with Section 7. CONSULTANT'S failure to obtain a formal amendment to this Agreement authorizing additional services shall constitute a waiver of any and all right to compensation for such work or services.

(iii) If CONSULTANT believes that any work CITY has directed CONSULTANT to perform is beyond the scope of this Agreement and constitutes additional services, CONSULTANT shall promptly notify CITY of this fact before commencing the work. CITY shall make a determination as to whether such work is beyond the scope of this Agreement and constitutes additional services. If CITY

finds that such work does constitute additional services, CITY and CONSULTANT shall execute a formal amendment to this Agreement, in accordance with Section 7, authorizing the additional services and stating the amount of any additional compensation to be paid.

(d) Invoicing and Payment. CONSULTANT shall submit monthly invoices for the services performed under this Agreement during the preceding period. Invoices or billings must be submitted in duplicate and must indicate the hours actually worked by each classification and employee name, as well as all other directly related costs by line item in accordance with Exhibit A. CITY shall approve or disapprove said invoice or billing within thirty (30) days following receipt thereof and shall pay all approved invoices and billings within thirty (30) days. Interest at the rate of one and one-half (1.5) percent per month will be charged on all past due amounts starting thirty (30) days after the invoice date, unless not permitted by law, in which case interest will be charged at the highest amount permitted by law. Payments will be credited first to interest, and then to principal.

4. PRODUCT REVIEW AND COMMENT. CONSULTANT shall provide CITY with at least two (2) copies of each product described in Exhibit A. Upon the completion of each product, CONSULTANT shall be available to meet with CITY. If additional review and/or revision is required by CITY, CITY shall conduct reviews in a timely manner.

5. TERM OF AGREEMENT. This Agreement shall be effective immediately upon the signatures of both Parties and shall remain in effect until completed, amended pursuant to Section 7, or terminated pursuant to Section 6.

6. TERMINATION:

(a) CITY shall have the right to terminate this Agreement for any reason whatsoever at any time by serving upon CONSULTANT written notice of termination. The Agreement shall terminate three (3) business days after notice of termination is given. The notice shall be deemed given on the date it is deposited in the U.S. mail, certified, postage prepaid, addressed to CONSULTANT at the address indicated in Section 11.

(b) If CITY issues a notice of termination,

(i) CONSULTANT shall immediately cease rendering services pursuant to this Agreement;

(ii) CONSULTANT shall deliver to CITY copies of all writings, whether or not completed, which were prepared by CONSULTANT, its employees, or its subcontractors, if any, pursuant to this Agreement. For purposes of this Agreement, the term "writings" shall include, but not be limited to, handwriting, typewriting, computer files and records, drawings, blueprints, printing, photostatting,

photographs, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, symbols, or combinations thereof;

(iii) CITY shall pay CONSULTANT for work actually performed up to the effective date of the notice of termination, subject to the limitations prescribed by Section 3 of this Agreement, less any compensation to CITY for damages suffered as a result of CONSULTANT'S failure to comply with the terms of this Agreement. Such payment shall be in accordance with Exhibit A. However, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT'S services which are of benefit to CITY.

7. AMENDMENTS. Modifications or amendments to the terms of this Agreement shall be in writing and executed by both Parties.

8. NONDISCLOSURE OF CONFIDENTIAL INFORMATION. CONSULTANT shall not, either during or after the term of this Agreement, disclose to any third party any confidential information relative to the work of CITY without the prior written consent of CITY.

9. INSPECTION. CITY representatives shall, with reasonable notice, have access to the work and work records, including time records, for purposes of inspecting same and determining that the work is being performed in accordance with the terms of this Agreement. Inspections by CITY do not in any way relieve or minimize the responsibility of CONSULTANT to comply with this Agreement and all applicable laws.

10. INDEPENDENT CONTRACTOR. In the performance of the services in this Agreement, CONSULTANT is an independent contractor and is not an agent or employee of CITY. CONSULTANT, its officers, employees, agents, and subcontractors, if any, shall have no power to bind or commit CITY to any decision or course of action, and shall not represent to any person or business that they have such power. CONSULTANT has and shall retain the right to exercise full control of the supervision of the services and over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of said service hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security and income tax withholding, workers' compensation insurance, and all other regulations governing such matters.

11. NOTICE. Any notices or other communications to be given to either party pursuant to this Agreement shall be in writing and delivered personally or by certified U.S. mail, postage prepaid, addressed to the party at the address set forth below. Either party may change its address for notices by complying with the notice procedures in this Section. Notice so mailed shall be deemed delivered three (3) business days after deposit in the U.S. mail. Nothing shall preclude the giving of notice by facsimile machine provided, however, that notice by facsimile machine

shall be followed by notice deposited in the U.S. mail as discussed above.

If to CITY:	C. H. Higgs, Building Official City of Benicia 250 East L Street Benicia, CA 94510
If to CONSULTANT:	Coastland Civil Engineering, Inc. 1400 Neotomas Avenue Santa Rosa, CA 95405

12. OWNERSHIP OF MATERIALS. CITY is the owner of all records and information created, produced, or generated as part of the services performed under this Agreement. At any time during the term of this Agreement, at the request of CITY, CONSULTANT shall deliver to CITY all writings, records, and information created or maintained pursuant to this Agreement. In addition, CONSULTANT shall not use any of the writing, records, or information generated for the Project under this Agreement for any other work without CITY's consent.

13. EMPLOYEES; ASSIGNMENT; SUBCONTRACTING.

(a) Employees. CONSULTANT shall provide properly skilled professional and technical personnel to perform all services required by this Agreement. CONSULTANT shall not engage the services of any person(s) now employed by CITY without CITY's prior express written consent.

(b) Assignment. CONSULTANT shall not assign, delegate, or transfer its duties, responsibilities, or interests in this Agreement without the prior express written consent of CITY. Any attempted assignment without such approval shall be void and, at CITY's option, shall terminate this Agreement and any license or privilege granted herein.

(c) Subcontracting. CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior express written consent of CITY. If CITY consents to CONSULTANT'S hiring of subcontractors, CONSULTANT shall provide to CITY copies of each and every subcontract prior to its execution. All subcontractors are deemed to be employees of CONSULTANT, and CONSULTANT agrees to be responsible for their performance. CONSULTANT shall give its personal attention to the fulfillment of the provisions of this Agreement by all of its employees and subcontractors, if any, and shall keep the work under its control.

14. BINDING AGREEMENT. This Agreement shall bind the successors in interest, legal representatives, and permitted assigns of CITY and CONSULTANT in the same manner as if they were expressly named herein.

15. WAIVER.

(a) Effect of Waiver. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right under this Agreement.

(b) No Implied Waivers. The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time.

16. NONDISCRIMINATION.

(a) Consultant shall not discriminate in the conduct of the work under this Agreement against any employee, applicant for employment, or volunteer on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated.

(b) Consistent with City's policy that harassment and discrimination are unacceptable employer/employee conduct, CONSULTANT agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by CONSULTANT or CONSULTANT'S employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, sex, age, sexual orientation or other prohibited basis will not be tolerated. CONSULTANT agrees that any and all violation of this provision shall constitute a material breach of the Agreement.

17. INDEMNITY. CONSULTANT specifically agrees to indemnify, defend, and hold harmless CITY, its officers, agents, and employees from and against any and all actions, claims, demands, losses, expenses including reasonable attorneys' fees, damages, and liabilities resulting from injury or death of a person or injury to property, arising out of the negligent acts, errors or omissions of CONSULTANT in connection with the performance of this Agreement. The CONSULTANT shall pay all costs that may be incurred by CITY in enforcing this indemnity in the event the CITY prevails, including reasonable attorneys' fees. The CITY agrees to indemnify CONSULTANT for the CITY'S grossly negligent acts, errors or omissions related to this project.

18. INSURANCE.

(a) Required Coverage. CONSULTANT, at its sole cost and expense, shall obtain and maintain in full force and effect throughout the entire term of this Agreement the following described insurance coverage. This coverage shall insure not only CONSULTANT, but also, with the exception of professional liability, workers' compensation and employer's liability insurance, shall name as additional insureds CITY, its officers, agents, employees, and volunteers, and each of them:

	Policy	Minimum Limits of Coverage
(i)	Workers' Compensation	Statutory
(ii)	Comprehensive Automobile Insurance Services Office, form #CA 0001 (Ed 1/87 covering auto liability code 1 (any auto)	Bodily Injury/Property Damage $1,000,000 each accident
(iii)	General Liability Insurance Services Office Commercial General Liability coverage on an occurrence basis (occurrence form CG 0001)	$1,000,000 per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit shall apply separately to this Project/ location, the general aggregate limit shall be twice the required occurrence limit
(iv)	Errors and Omissions/ Professionals' Liability, errors and omissions liability insurance appropriate to the CONSULTANT'S profession.	Generally $2,000,000 per claim and annual aggregate

(b) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by CITY.

(c) Required Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to this Project, the CONSULTANT'S insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, or volunteers shall be in excess of the CONSULTANT'S insurance and shall not contribute with it;

(ii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, or volunteers;

(iii) The CONSULTANT'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(iv) Each insurance policy required by this Section shall state that coverage shall not be canceled except after giving CITY 30 days' prior written notice unless canceled for non-payment, then 10 days notice shall be given.

(d) Acceptability of Insurers. CONSULTANT shall place insurance with insurers with a current A.M. Best's rating of no less than [A:VII] unless CONSULTANT requests and obtains CITY'S express written consent to the contrary.

(e) Verification of Coverage. CONSULTANT must provide complete, certified copies of all required insurance policies, including original endorsements affecting the coverage required by these specifications. The endorsements are to be signed by a person authorized by CONSULTANT'S insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences.

19. WORKERS' COMPENSATION.

(a) Covenant to Provide. CONSULTANT warrants that it is aware of the provisions of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code. CONSULTANT further agrees that it will comply with such provisions before commencing the performance of the work under this Agreement.

(b) Waiver of Subrogation. CONSULTANT and CONSULTANT'S insurance company agree to waive all rights of subrogation against CITY, its elected or appointed officials, agents, and employees for losses paid under CONSULTANT'S workers' compensation insurance policy which arise from the work performed by CONSULTANT for CITY.

20. FINANCIAL RECORDS. CONSULTANT shall retain all financial records, including but not limited to documents, reports, books, and accounting records which pertain to any work or transaction performed pursuant to this Agreement for four (4) years after the expiration of this Agreement. CITY or any of its duly authorized representatives shall, with reasonable notice, have access to and the right to examine, audit, and copy such records.

21. CONFLICT OF INTEREST. CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with CITY'S interest. During the term of this Agreement, CONSULTANT shall not accept any employment or engage in any consulting work which creates a conflict of interest with CITY or in any way compromises the services to be performed under this Agreement. CONSULTANT shall immediately notify CITY of any and all violations of this Section upon becoming aware of such violation.

22. TIME OF THE ESSENCE. CONSULTANT understands and agrees that time is of the essence in the completion of the work and services described in Section 2.

23. SEVERABILITY. If any court of competent jurisdiction or subsequent preemptive legislation holds or renders any of the provisions of this Agreement unenforceable or invalid, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected.

24. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement shall be brought in the Superior Court of Solano County.

25. COSTS AND ATTORNEYS' FEES. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees. In any action seeking recovery of monetary damages, the plaintiff shall not be considered to be the prevailing party unless it recovers at least 66% of the dollar amount requested in the complaint's prayer for relief.

26. INTEGRATION. This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 7.

Executed by CITY and CONSULTANT on the date shown next to their respective signatures. The effective date of this Agreement shall be the date of execution by the CITY as shown below.

COASTLAND CIVIL ENGINEERING, INC.

By:_____

Date:_____

CITY OF BENICIA
A Municipal Corporation

By:_____
Jim Erickson
City Manager
Date:_____

RECOMMENDED FOR APPROVAL

By:_____
Charlie Knox
Community Development Director
Date:_____

APPROVED AS TO FORM

By:_____
Heather McLaughlin
City Attorney
Date:_____

Attach: Exhibit A

06/30/03

PROPOSED FEE

Based on the Scope of Work shown in this proposal, the following outlines our proposed fees for the applicable services:

PLAN REVIEW

- All plan reviews will be performed on a time-and-materials basis in accordance with our attached schedule of hourly rates.
- For expedited plan reviews, an hourly rate times one and one half will be charged. Completion time will vary and will be determined at the time of complete plan submittal.

FIELD INSPECTIONS

- For building inspection services, we propose that our fees would be on an hourly time-and-materials basis in accordance with our hourly rate schedule which is attached.
- Authorized re-inspections would also be done on a time-and-materials basis.

BUILDING CODE CONSULTING

- If the agency desires to use our services for Building Code Consulting, we propose that these services be on an hourly time-and-materials basis in accordance with our hourly rate schedule attached.

Coastland will be responsible for the cost of transporting the plans to and from the City.

An additional $11 an hour will be charged for vehicle time when the inspector is on the field, as outlined on the following Schedule of Hourly Rates.

HOURLY RATES

JULY 01, 2006 THROUGH JUNE 30, 2007

Principal Engineer	$155/hour
Supervising Engineer	$115-125/hour
Resident Engineer	$100-125/hour
Construction Manager	$90-120/hour
Building Official	$90-120/hour
Senior Building Inspector	$85-90/hour
Building Inspector III	$85-89/hour
Building Inspector II	$80-84/hour
Building Inspector I	$75-78/hour
Sr. Building Plan Check Engineer	$100-120/hour
Assoc. Building Plan Check Engineer	$90-110/hour
Assist. Building Plan Check Engineer	$78-90/hour
Plans Examiner II	$86-108/hour
Plans Examiner I	$78-85/hour
Building Technician	$65-75/hour
CLERICAL	$60/hour
VEHICLE	$10-14/hour
MILEAGE	$0.60/mile
OUTSIDE SERVICES	Cost + 15%
MATERIALS	Cost + 15%

- Computer time is included in the hourly rates used above.
- Consultation in connection with litigation and court appearances will be quoted separately.
- Additional billing classifications may be added to the above listing during the year as new positions are created.
- Includes services subject to prevailing wage rates.

AGENDA ITEM
COUNCIL MEETING: NOVEMBER 20, 2007
CONSENT CALENDAR

DATE : November 13, 2007

TO : City Council

FROM : City Attorney

SUBJECT : **ADOPTION 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**

RECOMMENDATION:

Adopt the ordinance to prohibit future billboards and nonaccessory signs in the City of Benicia based on the findings set forth in the ordinance.

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. On November 6, 2007 the Council introduced the 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.

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.

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).

Attachment:

- Ordinance

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 commerical/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 commerical 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 commerical 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 structions 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

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
PUBLIC HEARING

DATE : October 31, 2007

TO : City Manager

FROM : Director of Public Works

SUBJECT : **TRAFFIC IMPACT FEE PROGRAM - UPDATE**

RECOMMENDATION:

Adopt a resolution approving an update to the Citywide Traffic Impact Fee Program and authorizing associated fee adjustments.

EXECUTIVE SUMMARY:

The City recently completed an update to the Citywide Traffic Impact Fee (TIF) Program. The update calculates a new traffic impact base fee of $1,223 is needed to sufficiently fund future roadway improvements necessary to accommodate projected development in the City. The updated base fee reflects the increased construction costs that have occurred over the last five years.

BUDGET INFORMATION:

Approval of the update to the TIF Program is anticipated to generate $24.1 million over a 20-year period. Since the last fee update in 2002, construction costs have increased 19% primarily due to inflation, scarcity of basic building materials and labor expenses. Based on the analysis and calculations described in the update, it is recommended to increase the base fee from $1,019 to $1,223 ($204 or 20%).

BACKGROUND:

The City of Benicia established a Citywide Traffic Fee Program on March 3, 1992, which established the authority for imposing and charging a citywide fee to fund future roadway and intersection improvements necessary to accommodate projected development in the City. Shortly thereafter, the City established the original base fee of $1,040 per P.M. peak hour trip generated by development.

In May 7, 2002, the City Council established a new reduced base fee amount of $1,019.

In June 2007, the City selected the traffic engineering consultant Omni-Means after requesting and receiving proposals to prepare a new update to the Citywide Traffic Impact Fee Program. This update, which was completed in October 2007, is attached and is briefly summarized below.

The update first identifies roadway and intersection improvements (pages 3-4, Figure 2) and associated cost necessary to accommodate the additional traffic generated by new development at buildout. The Circulation Element of the General Plan, City staff, and the Draft Environmental Impact Report (DEIR) for the Benicia Business Park were consulted for this work. The Benicia Business Park project will be required to contribute its fair-share mitigation fee to the projects listed in the update. It will also be required to fully fund those improvements identified in the DEIR that solely benefit the Benicia Business Park (page 5, Figure 3). Because additional development will increase traffic on major routes and create traffic/pedestrian safety issues and traffic intrusion in neighborhoods, funding for the City's traffic calming program is included. The update estimates the total cost for the needed improvements and programs will be $26.1 million (page 8).

The update calculates 19,701 trips will be generated by new development at build-out (page 13). Information used in this calculation includes underdeveloped and undeveloped parcel data provided by City staff, General Plan land use designation, and the Institute of Transportation Engineers Trip Generation Manual, 2003 Edition. Finally, the update calculates a new base fee of $1,223 per PM peak hour trip by subtracting the TIF fund balance ($2 million) from the total cost of needed improvements ($26.1 million) and dividing by the total number of trips generated by new development (19,701).

Traffic fees incorporating the updated $1,223 base fee rate for various land uses are shown on Page 15, Table 5 of the update. A comparison of the traffic fees using the updated base fee versus the current base fee for various land uses is shown in Table 1 (below). The updated base fee includes three important projects (the Bayshore Road connector, the State Park Road Bike/Pedestrian Bridge, and the Traffic Calming Program) identified since 2002 as being significant mitigation measures.

The 2007 update to the Citywide Traffic Impact Fee Program complies with AB 1600 establishing a clear connection between the traffic impact fee imposed by the City on private development and the cost of the needed improvements.

TABLE 1
TRIP RATES AND TRAFFIC FEES FOR VARIOUS LAND USES

FEE #	LAND USE	EXISTING FEE (2002)	PROPOSED FEE (2007)
201	Single Family Home	$1,029/D.U.	$1,235/D.U.
202	Townhouse/Condo	$550/D.U.	$954/D.U.
203	Apartment	$591/D.U.	$758/D.U.
205	Accessory Dwelling	$275/D.U.	$379/D.U.
234	Supermarket	$5,864/1,000 sq. ft.	$6,390/1,000 sq. ft.
235	Convenience Store	$17,613/1,000 sq. ft.	$21,140/1,000 sq. ft.
236	Sit-Down Restaurant	$3,816/1,000 sq. ft.	$4,580/1,000 sq. ft.
237	Deli/Hi-Turnover Rest.	$5,533/1,000 sq. ft.	$6,678/1,000 sq. ft.
238	Fast-Food Restaurant	$17,058/1,000 sq. ft.	$21,182/1,000 sq. ft.
239	Bank	$16,890/1,000 sq. ft.	$27,970/1,000 sq. ft.
240	Drug Store/Pharmacy	$5,299/1,000 sq. ft.	$5,271/1,000 sq. ft.
241	Service Station with Mart	$6,817/pump	$8,182/fueling position
242	Quick Lube Vehicle Shop	$2,644/stall	$3,174/service position
243	Hardware/Paint Store	$2,252/1,000 sq. ft.	$2,960/1,000 sq. ft.
244	Day Care Facility	$438/student	$501/student
245	Shopping Center	$3,342/1,000 sq. ft.	$2,293/1,000sq. ft.
246	Motel	Study Required	Study Required
247	General Office	$1,518/1,000 sq. ft.	$1,822/1,000 sq. ft.
248	Medical Office	$3,730/1,000 sq. ft.	$4,550/1,000 sq. ft.
249	Light Industrial	$999/1,000 sq. ft.	$1,199/1,000 sq. ft.
250	Warehouse	$520/1,000 sq. ft.	$575/1,000 sq. ft.
251	Self-Storage Units	$31 per unit	$37/unit

Attachments:

- Proposed Resolution
- Citywide Traffic Impact Fee Update, October 2007

Proposed Resolution

RESOLUTION NO. 07-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING THE UPDATE TO THE TRAFFIC IMPACT FEE PROGRAM AND AUTHORIZING ASSOCIATED FEE ADJUSTMENTS

WHEREAS, the City Council of the City of Benicia adopted Ordinance No. 92-6 N.S. creating and establishing the authority for imposing and charging a Citywide Traffic Impact Mitigation Fee, herein referred to as the "Fee"; and

WHEREAS, the City Council of the City of Benicia adopted Resolution No. 92-34 on March 3, 1992, which established the Traffic Impact Mitigation Fee in accordance with the traffic study prepared by Omni-Means, Ltd., and dated January 1992 with modified Table 4 and Table 5; and

WHEREAS, the City Council of the City of Benicia adopted Resolution No. 02-65 on May 7, 2002, which established an Update to the Traffic Impact Mitigation Fee in accordance with the traffic study prepared by Omni-Means, Ltd., and dated July 2001 with modified Table 4; and

WHEREAS, in accordance with the requirements contained in AB 1600, a review of the Traffic Impact Fee Program was performed and is outlined in the ***Citywide Traffic Impact Fee Program Update*** report prepared by Omni-Means, Ltd. and dated October 2007; and

WHEREAS, in accordance with the requirements of AB 1600, this review is being conducted at a public hearing to enable interested parties to review and comment on said review.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Benicia that the City Council has reviewed the ***Citywide Traffic Impact Fee Program Update*** and finds that the project descriptions and cost estimates are a reasonable basis for calculating and imposing the traffic impact fee.

BE IT FURTHER RESOLVED that the projects and methodology identified in the update are consistent with the General Plan.

BE IT FURTHER RESOLVED that the update is categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines sections 15061(b)(3), 15262, and 15306 as the intent of the update and proposed fees is to provide a means of mitigating potential environmental impacts.

BE IT FUTHER RESOLVED that the review of the Traffic Impact Fee Program outlined in the ***Citywide Traffic Impact Fee Program Update*** report, prepared by Omni-Means, Ltd. and dated October 2007 is hereby approved and that the fees shall be increased to a traffic fee base rate of $1,223 per PM trip for fiscal year 2007/08 commencing on January 21, 2008 or no sooner than sixty (60) days subsequent to adoption of this Resolution incorporating Table 5 of the update attached hereto as Exhibit A.

BE IT FURTHER RESOLVED THAT the automatic annual adjustment of the Traffic Impact Mitigation Fee, authorized per Resolution No. 92-34 and revised per Resolution No. 94-116, shall continue to occur on each successive July 1 with the adjustment based upon the Engineering News Record Construction Index (ENR) of the San Francisco area or its successor. The Finance Director shall compute the percentage difference between the ENR on July 1 of each year and the ENR for the previous July 1. The Finance Director shall then adjust by such percentage the fee set forth in this Resolution. The adjustment amount shall be rounded to the nearest dollar and these amounts shall constitute the fees authorized by Chapter 5.38 of the Benicia Municipal Code and established by Resolution No. 92-34. Should the ENR be revised or discontinued, the Finance Director shall use the revised index or a comparable index as approved by the City Council for determining fluctuations in the cost of development. It is found and determined that the cost of constructing and installing the facilities for which the subject is being assessed are likely to increase over time. Therefore, it is reasonable to include in this fee resolution a provision to increase such fees consistent with the proportionate increase in the cost of providing such facilities. In this connection, it is found and determined that the ENR is an accurate and well-accepted standard by which the industry measures increases in construction costs and the ENR is properly applied to the increases in costs incurred in installing, developing and constructing the transportation facilities to be funded with the fee assessed hereunder.

* * * * *

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 20th day of November, 2007, and adopted by the following vote:

Ayes:

Noes:

Absent:

_____
Steve Messina, Mayor

Attest:

_____
Lisa Wolfe, City Clerk

TABLE 5
TRIP RATES AND TRAFFIC FEES FOR VARIOUS LAND USES

LAND USE	PM PEAK TRIP RATE[1]	TRAFFIC FEE
Residential:		
Single Family	1.01/D.U.	$1,235/D.U.
Low-Rise Townhouse/Condo	0.78/D.U.	$954/D.U.
Apartment	0.62/D.U	$758/D.U.
Accessory Dwelling	0.31/D.U.[2]	$379/D.U.
Commercial:[3]		
Shopping Center	3.75/1,000 sq.ft.[4]	$2,293/1,000 sq.ft.
Supermarket	10.45/1,000 sq.ft.	$6,390/1,000 sq.ft.
Convenience Store	34.57/1,000 sq.ft.	$21,140/1,000 sq.ft.
Sit-Down Restaurant	7.49/1,000 sq.ft	$4,580/1,000 sq.ft.
High-Turnover Sit-Down Rest./Deli	10.92/1,000 sq.ft.	$6,678/1,000 sq.ft.
Fast-Food Restaurant	34.64/1,000 sq.ft.	$21,182/1,000 sq.ft.
Bank (with drive-through)	45.74/1,000 sq.ft.	$27,970/1,000 sq.ft.
Drug Store/Pharmacy	8.62/1,000 sq.ft.	$5,271/1,000 sq.ft.
Service Station/Mart	13.38/fueling position	$8,182/fueling position
Quick-Lube Vehicle Shop	5.19/service position	$3,174/service position
Hardware/Paint Store	4.84/1,000 sq.ft.	$2,960/1,000 sq.ft.
Day Care Facility	0.82/student	$501/student
Office:		
General Office	1.49/1,000 sq.ft.	$1,822/1,000 sq.ft.
Medical Office	3.72/1,000 sq.ft.	$4,550/1,000 sq.ft.
Industrial:		
Light Industrial	0.98/1,000 sq.ft.	$1,199/1,000 sq.ft.
Warehousing	0.47/1,000 sq.ft.	$575/1,000 sq.ft.
Self-Storage Units	0.03/unit	$37/unit

(1) Institute of Transportation Engineers (ITE), *Trip Generation – 7th Edition*, 2003. This table represents a listing of most potential development in the City of Benicia. For any development proposal not on this list, the ITE document should be used to establish the development's PM peak hour trip generation and resulting TIF assessment.

(2) An accessory dwelling represents a small (less than 800 sq.ft.) apartment type unit accessory to a single family dwelling. It is assumed that this type of unit would generate traffic at one-half the standard apartment rate.

(3) The calculated fee for the commercial uses reflects a 50% reduction to account for the fact that about one-half of commercial trips are either pass-by trips or trips to/from residential units.

(4) The trip rate (and resulting TIF) reflect an average sized shopping center. For a specific development proposal, the ITE trip equation for shopping centers should be used.

Citywide Traffic Impact Fee Program Update

CITYWIDE

TRAFFIC IMPACT FEE PROGRAM UPDATE

Prepared For The

City Of Benicia

October 2007

Omni-Means, Ltd.
Engineers and Planners
1901 Olympic Blvd., Suite 120
Walnut Creek, CA 94596

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1. INTRODUCTION

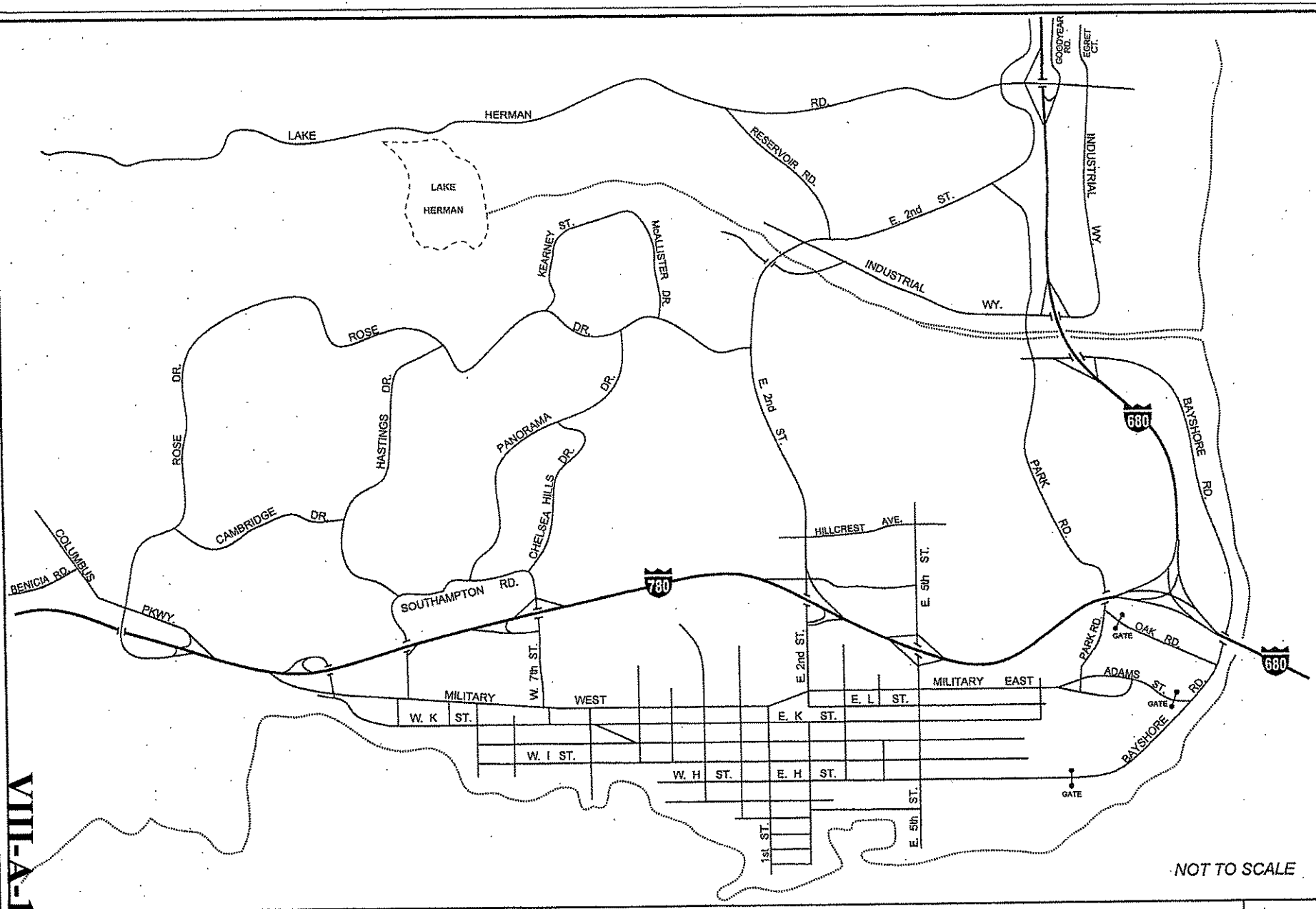
The City of Benicia performed a comprehensive update to the City Traffic Improvement Fee (TIF) program and its associated fees in January 1992.[1] Thereafter, the City has adopted amendments to the fees starting in January 1993 on a yearly basis. These fee increases have been based on construction cost inflation indices. Based on discussions with City Engineering staff, the needed infrastructure, cost of circulation improvements and remaining City development have not changed significantly since the last TIF update (with the exception of traffic impacts and mitigation associated with the proposed Benicia Business Park). As such, the City commissioned Omni-Means in May 2007 to perform a comprehensive update to the TIF. The comprehensive update will ensure fair, adequate and timely funding for necessary improvements. The calculated impact fees are consistent with the nexus requirements in Government Code 66000, et seq.

The traffic fees calculated in this report will fund the full cost of the planned traffic facilities, less the costs required for payment or dedication by property owners, or grants anticipated from state and federal sources. Bond financing through a Community Finance District (CFD) is not required because the traffic fee will fund the full cost of the planned facilities.

This report presents the assumptions, methodology and conclusions relative to the preparation of an updated citywide traffic impact fee (TIF) program for the City of Benicia. Specifically, this effort has considered the need for traffic improvements generated by the City's General Plan buildout development and the construction cost of those improvements. The study also addresses the likely apportionment of those costs that could be generated by traffic fees applied to citywide developments as well as the administrative costs associated with the TIF program. The final chapter of this report presents an updated TIF program for the specific types of development included in the existing program.

A continuing premise of the TIF program is that on a citywide basis, traffic improvements will be most important on the major streets. While collector and local streets also serve important travel needs, the major street network is critical in providing the basic transportation network for the City. Thus, this updated TIF has again focused on the major streets and key intersections and interchanges along the major streets (see Figure 1 for street network).

[1] Omni-Means Engineers and Planners, Citywide Traffic Impact Fee Program Update, City of Benicia, July, 2001.



Existing Street Network

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figure 1

VIII-A-12

2. NEEDED TRAFFIC IMPROVEMENTS

A. Sources of Improvement Needs

Traffic circulation improvements have been identified on the basis of several sources. First, the City's current General Plan outlines a circulation network which includes all of the existing and proposed major streets, and identifies the need for specific street widening and intersection/interchange improvements throughout Benicia.[2] In addition, a more recent traffic study for the Benicia Business Park identifies street widening and intersection/interchange improvements required by that project.[3] The various improvement recommendations have been reviewed in the field and refined as a part of this effort. Finally, discussions were held with City staff in an effort to determine any further improvements which will likely be necessary.[4]

The basic factor involved in the need for improvements is the expected growth in traffic volumes. In Benicia, future growth primarily reflects employment and commercial developments expected to occur throughout the City (a more complete discussion of future development is contained in Section 3.) Together, these developments will generate new PM peak hour vehicle trips. While different types of development land uses will be located in specific areas of the City, development traffic will have citywide effects. Thus, traffic improvements will be needed on a citywide basis to serve the overall traffic growth from development.

B. Identified Traffic Improvements for Inclusion in the TIF

The various reviews of potential improvements have resulted in a listing of citywide roadway improvements and a number of intersection improvements. Those improvements are listed in the following sections and depicted on Figure 2.

Roadway Improvements

a. Widen/restripe East 5th Street to three lanes (two through lanes and a center lane/median) between the I-780 westbound ramps and Military East;

b. Construct a new north-south two-lane connector road east of I-680 between Bayshore Road and Industrial Way (includes traffic signals at the I-680 ramp intersections with Bayshore and Industrial);

c. Widen Park Road from two to four lanes between Sulphur Springs Creek and Industrial Way;

d. Construct a new two-lane east-west arterial street between East 2nd Street and Park Road;

e. Widen/realign Park Road (retain two-lane width) between Adams Street and the new east-west connector street;

f. Widen Industrial Way from two to four lanes between East 2nd Street and the I-680 Northbound On-Ramp;

---

[2] City of Benicia, Benicia General Plan, Chapter 2, Community Development and Sustainability, C. Circulation, Adopted June 15, 1999.
[3] LSA Associates, Inc., Benicia Business Park DEIR, January, 2007
[4] Meeting with Mr. Mike Roberts (Senior Civil Engineer) and Mr. Dan Schiada (Public Works Director), City of Benicia, May 31, 2007.

g. Widen/restripe Military West to three lanes (two through lanes and a center lane/median) between West 2nd Street and West 5th Street;

h. Construct a new pedestrian/bicycle bridge across I-780 between the Benicia Middle School off Southampton Road and Benicia High School off Military West;

i. Widen Columbus Parkway at Rose Drive to accommodate a second westbound through lane;

j. Widen Columbus Parkway to four lanes from Rose Drive to the City limit (funded by the Bordoni Development in the City of Vallejo); and

k. Implement traffic calming/circulation improvements/signalization at Benicia High School

The General Plan also includes the widening of West 7th Street (between I-780 and Military West) to four lanes and Military East to four lanes between East 2nd Street and East 5th Street. However, these improvements are not included in the TIF Program. Further analyses will be required to address the project feasibility and impacts to adjacent residents/properties. In lieu of these improvements, TIF improvements are included for the intersections along these street sections.

Intersection Improvements

Restriping, widening and/or traffic signal improvements will be required at 10 intersections on key streets in the Benicia network. A summary listing of the intersection improvements is as follows (see Figure 2 for intersection improvement locations):

1. Columbus/Rose:	▪ widen/restripe northbound and eastbound approaches and widen State Park Road bridge over I-780;
2. Southampton/Hastings:	▪ install signal and widen/restripe southbound approach;
3. Southampton/Chelsea Hills:	▪ widen/restripe northbound, southbound and westbound approaches;
4. West 7th/I-780 Westbound Ramps:	▪ widen/restripe all approaches;
5. West 7th/I-780 Eastbound Ramps:	▪ widen/restripe northbound and southbound approaches;
6. East 2nd/Military East:	▪ widen/restripe southbound, eastbound and westbound approaches and coordinate with other signals between Military East and I-780 westbound ramps;
7. East 5th/I-780 Westbound Ramps:	▪ install signal and widen/restripe all approaches;
8. East 5th/I-780 Eastbound Ramps:	▪ install signal and widen/restripe all approaches;
9. East 5th/Military East:	▪ widen/restripe all approaches;
10. West 7th/Military West:	▪ improve signal controls <u>or</u> construct a roundabout intersection;

C. <u>Improvements to be Implemented by the Benicia Business Park</u>

In addition to citywide improvements included in the TIF program, a number of improvement projects were identified as being directly related to the Benicia Business Park development in the recent DEIR prepared for the project.[5] These improvement projects are identified in Figure 3 and would be as follows:

[5] LSA Associates, <u>Benicia Business Park DEIR</u>, Transportation and Circulation, page 220, January 2007.

Roadway Improvements:

-Widen Industrial Way to four lanes between East 2nd Street and the Business Park access;
-Construct a new two-lane Industrial Way connection between the Business Park access and Lake Herman Road (Reservoir Road would be abandoned);
-Widen East 2nd Street to four lanes (with a median) between Industrial Way and Lake Herman Road;
-Widen Lake Herman Road to four lanes between Benicia Business Park access (A Boulevard) to I-680.

Intersection Improvements:

-East 2nd/Park/BBP Access:	▪ install signal and widen/restripe all approaches;
-East 2nd/Industrial Way:	▪ widen/restripe southbound, eastbound and westbound approaches;
-East 2nd/Rose Drive:	▪ widen/restripe southbound, northbound and eastbound approaches;
-East 2nd/I-780 WB Ramps:	▪ widen/restripe northbound and southbound approaches;
-East 2nd/I-780 EB Ramps:	▪ widen/restripe westbound approach;
-Lake Herman/Industrial Way:	▪ install signal;
-Lake Herman/East 2nd :	▪ install signal and widen/restripe northbound, eastbound, and westbound approaches;
-Lake Herman/I-680 SB Ramps:	▪ install signal and widen/restripe westbound approach;
-Lake Herman/I-680 NB Ramps:	▪ install signal and widen/restripe northbound, eastbound, and westbound approaches;
-Park/Bayshore:	▪ widen/restripe westbound and southbound approaches;
-Park/Industrial Way:	▪ install signal.

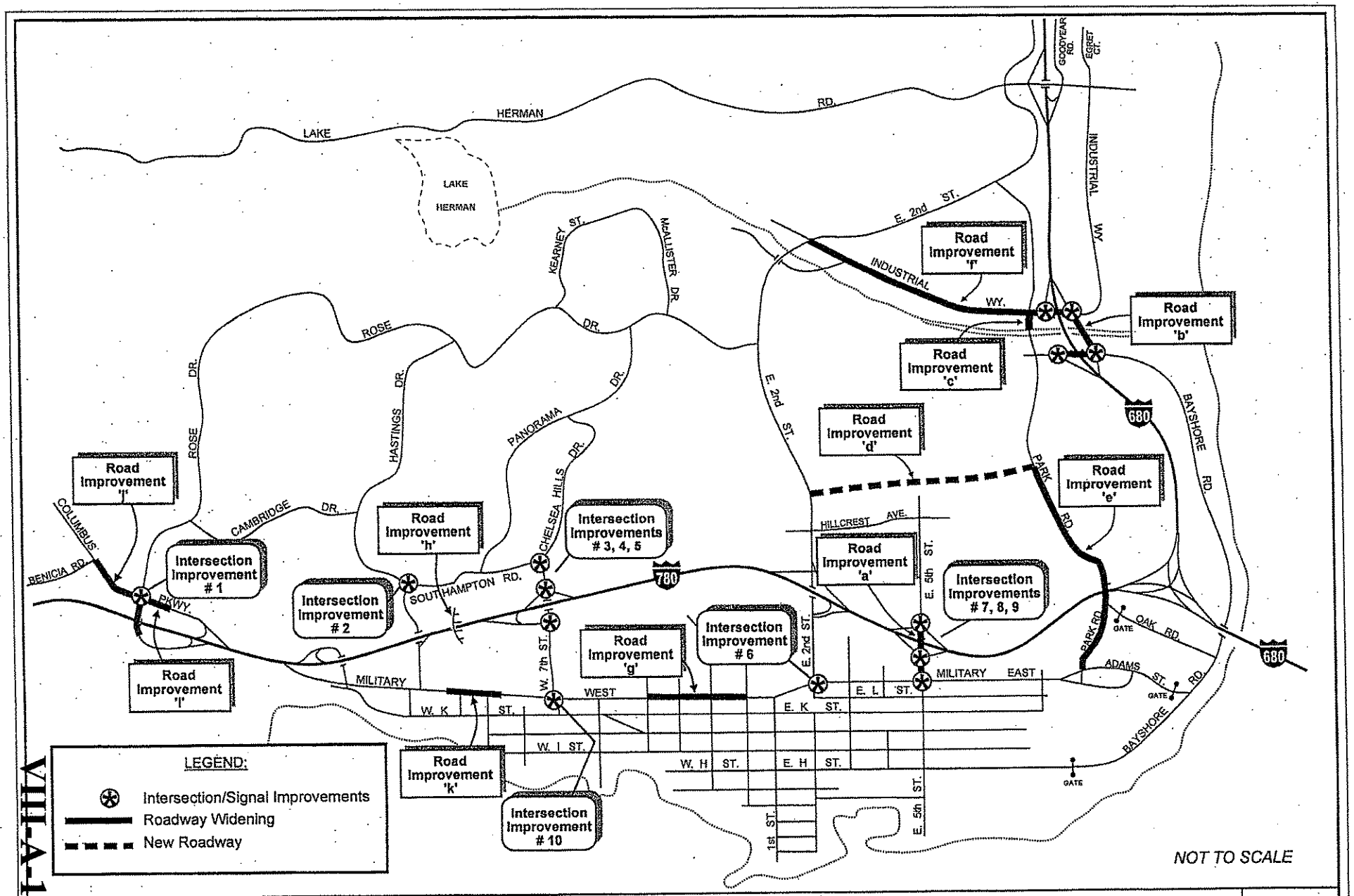
These improvements will be the responsibility of the Benicia Business Park development and are not included in the TIF program.

D. Freeway Improvements

It has been assumed that major construction of freeway interchanges will be accomplished through independent efforts coordinated between the City, Solano Transportation Authority and Caltrans. Freeway interchange problems reflect current design deficiencies, and it would be inappropriate for future development to pay for "corrections" in these designs. Thus, the improvement of interchanges should be the responsibility of Caltrans. It is recognized however that due to funding limitations, Caltrans reconstruction of the interchanges could be delayed for many years. With the likely delays, it would be appropriate for the City fee to address particular operational needs at specific interchanges. Therefore, certain intersection modifications and signalization have been recommended at the freeway ramp locations listed above.

E. Traffic Calming

As traffic volumes increase on major routes, issues involving traffic/pedestrian safety and traffic intrusion into neighborhoods will also occur. In response, the TIF program will explore various traffic calming measures on major roads and in neighborhoods to mitigate impacts from increased traffic volumes.

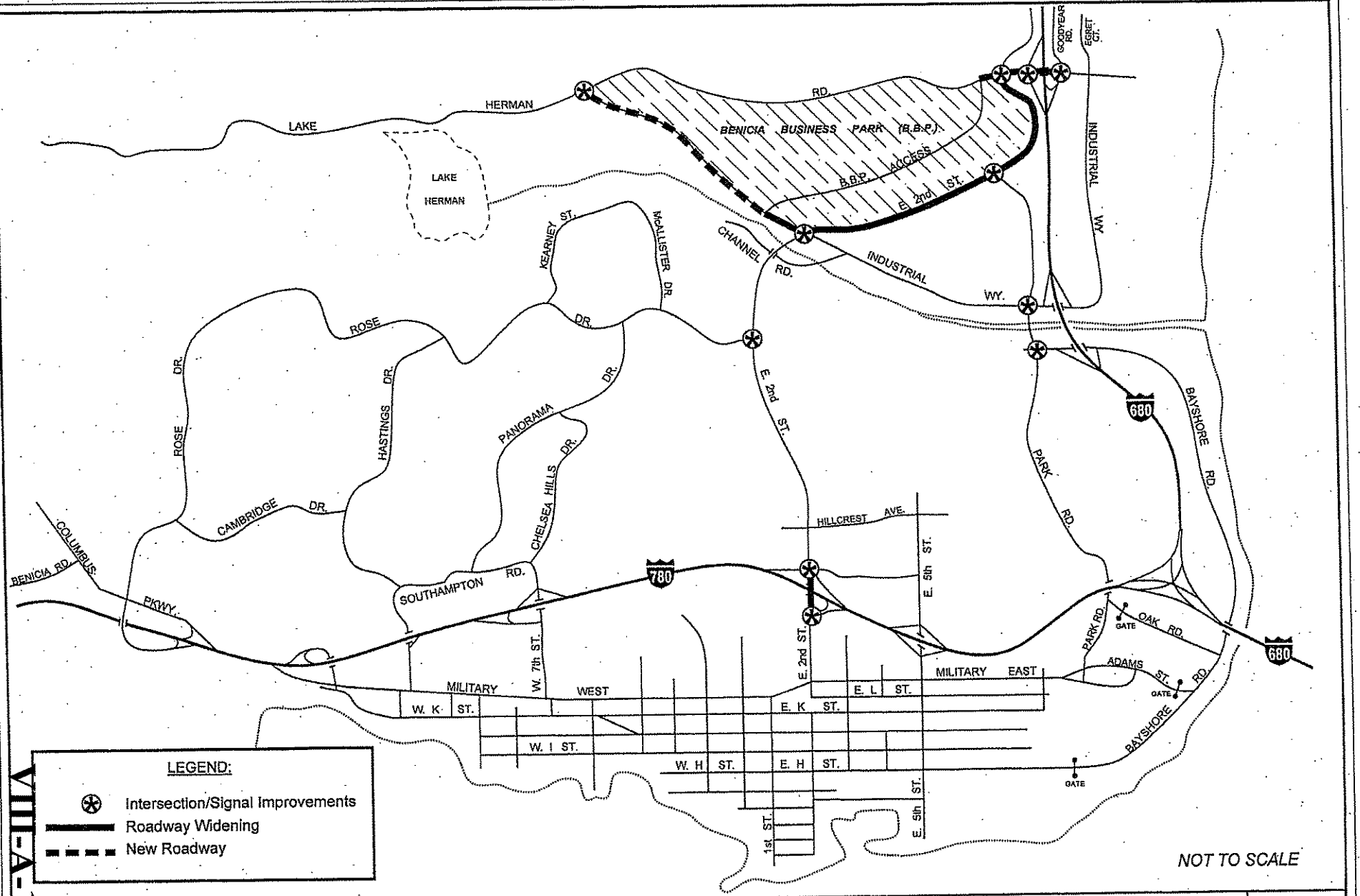


Street Network/Intersection Improvements Included in 2007 T.I.F. Program

North

omni-means

figure 2



VIII-A-1

Street Network/Intersection Improvements To Be Provided By Benicia Business Park
(Not Part of 2007 T.I.F. Program)

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figure 3

3. TRAFFIC IMPROVEMENT COSTS

A. Assumptions Regarding Costs

The costs of various traffic improvements were derived from a review of current cost data for other comparable projects and Caltrans price index costs (adjusted to include 2001-2007 inflation).[6]

For the major streets and intersections, unit costs were derived from recent information received from City Engineering staff on those portions of the costs that would be common to typical major street construction in the City. The costs also include a 25% contingency for engineering, environmental processing and administration of the overall traffic fee program (see below). The unit costs are summarized in the appendix.

Traffic signal costs were based on Omni-Means' recent experience in traffic signal design. Signal installation costs will vary, dependent upon the complexity of the intersection and the need for signal coordination. However, an average cost of $175,000 per signal would be appropriate for City-wide conditions.

Approximate right-of-way costs were included in the overall cost estimates. It is possible that right-of-way for some of the major street and intersection widening would be dedicated by adjacent properties. A final determination of the need for right-of-way, its cost (and any cost sharing) would require more detailed analyses of each intersection and street improvement.

As outlined in Tables 1 and 2, the recommended intersection and street improvements would cost a total of about $26.1 million, detailed as follows:

- Intersection Costs: =$ 6,788,750
- Roadway Costs: =$19,311,250

Total Improvement Costs: =$26,100,000

B. Contingency, Environmental/Design and Administration Costs

As noted above, the total calculated improvement costs include a 25% cost factor to cover the following environmental, design and administrative costs:

10%: Contingency factor;
10%: Environmental Documentation and Design;
5%: City staff costs for administration of the program;

The 10% contingency factor provides some flexibility should the actual project construction bids exceed the estimates in this TIF update.

The 10% factor for environmental documentation and design is a general guide for addressing various environmental and design issues. Some projects will have virtually no environmental review costs and the 10% factor will be very ample. Other projects may have more extensive environmental reviews and/or more complicated design issues. This 10% factor should be adequate to address the overall program needs.

[6] Caltrans, Engineering News Record (ENR), Price index construction costs, 2001-2007.

TABLE 1
SUMMARY OF
INTERSECTION IMPROVEMENT COSTS

Intersection	Road Construction	Signal Costs(2)	Right-of-Way Costs	Total Costs
1. Columbus Pkwy/ Rose Dr. (State Park Bridge)	$700,000(1)	$50,000	$90,000	$840,000
2. Southampton Rd/ Hastings Dr	$180,000	$175,000	-0-	$355,000
3. Southampton Rd/ Chelsea Hills Dr	$18,000	-0-	-0-	$18,000
4. West 7th St/ I-780 WB Ramps	$455,000	$50,000	-0-	$505,000
5. West 7th St/ I-780 EB Ramps	$18,000	$50,000	-0-	$68,000
6. East 2nd St/ Military	$655,000(3)	$50,000	$90,000	$795,000
7. East 5th St/ I-780 WB Ramps	$180,000	$175,000	-0-	$355,000
8. East 5th St/ I-780 EB Ramps	$180,000	$175,000	-0-	$355,000
9. East 5th St/ Military	$910,000	$50,000	$180,000	$1,140,000
10. West 7th/ Military West	$1,000,000(4)	-0-	-0-	$1,000,000
Total Costs Plus 25%(5)				**$6,788,750**

(1) It is assumed that this project would also include a $361,000 contribution toward widening of the State Park Road bridge over I-780.

(2) At certain intersections existing traffic signals are expected to require modifications to accommodate the planned widening, lane changes and changes in signal operation. A $50,000 cost has been assigned to these locations.

(3) This cost includes $200,000 for signal interconnection and minor widening on East 2nd between I-780 and Military.

(4) This cost reflects a "worst case" assumption that a roundabout will need to be constructed.

(5) The cost estimates include an extra 25% to cover the following items:

- 10% contingency
- 10% environmental documentation and design
- 5% City staff costs for administration of the program

TABLE 2
SUMMARY OF
ROADWAY SEGMENT IMPROVEMENT COSTS

Roadway Segment	Project	Construction Costs	Right-of-Way Costs	Total Costs
a. East 5th Street from I-780 WB ramps to Military	Widen/Restripe from 2 to 3 lanes	$250,000	-0-	$250,000
b. Bayshore Road Industrial Way Connector	Construct a new 2 lane connector road east of I-680	$1,380,000(1)	-0-	$1,380,000
c. Park Road from Industrial to Sulphur Creek	Widen from 2 to 4 lanes	$910,000	$50,000	$960,000
d. Park Road-E 2nd Street Connector	Construct new 2 lane road	$5,460,000	$400,000	$5,860,000
e. Park Road From Adams to Bayshore	Widen/Realign (retain 2 lane width)	$1,274,000	-0-	$1,274,000
f. Industrial Way from I-680 NB on to East 2nd	Widen from 2 to 4 lanes	$3,640,000	-0-	$3,640,000
g. Military West from W 2nd to W 5th	Widen/Restripe from 2 to 3 lanes	$635,000	-0-	$635,000
h. Pedestrian/Bike Connection across I-780	Construct ped/bike bridge between middle and high schools	$600,000(2)	-0-	$600,000
i. Columbus Pkwy at Rose Drive	Widen for 2nd westbound through lane	$100,000	$100,000	$200,000
j. Columbus Pkwy	Widen to 4 lanes From Rose to City limit	N.A.(4)		N.A.
k. Citywide traffic calming	Provide calming measures on various streets	$650,000	-0-	$650,000
Total Costs Plus 25%(3)				**$19,311,250**

(1) This cost is the 20% local share of the total project cost.

(2) This cost represents the City TIF share of this project (project funding to include grants, and School District contribution).

(3) The cost estimates include an extra 25% to cover the following items:

- 10% contingency
- 10% environmental documentation and design
- 5% City staff costs for administration of the program

(4) Cost to be funded by private development.

With regard to the 5% administrative cost factor ($1,044,000 over the life of the TIF program), the administration of the TIF program requires resources beyond the existing Public Works Department staff. This cost factor therefore allows the Department to retain a new staff person (or persons) to administer the overall program and administer individual improvement projects (coordinating environmental review, securing design contracts and construction review).

4. DISTRIBUTION OF TRAFFIC IMPROVEMENT COSTS

A. Future Development Traffic

As a part of this analysis, Omni-Means has identified citywide traffic growth due to new developments. The need for citywide traffic improvements is linked with the traffic growth generated by these developments. Further, traffic generation is most critical during the PM peak hour of street traffic (the highest hour within the 4-6 PM period). Traffic operation during this peak hour is the basis by which traffic improvement needs are identified. Each land use contributes differently to peak hour traffic. Employment land uses generate a relatively high portion of their daily traffic (15-20%) during the PM peak hour. Similarly, residential development generates 10% of its 24-hour volume during the PM peak hour. Retail commercial land uses tend to have traffic spread throughout the day so that 8-9% of their daily traffic occurs during the PM peak hour. Traffic generated by Benicia's retail uses is predominantly to/from residences in the area. As such, about one-half of the retail traffic could be considered as generated by residential units. Other studies have found that up to one-half of the trips generated by such retail uses are actually diverted from traffic on the adjacent streets. For these reasons, it was determined that the effective traffic generation of the basic retail land uses should be reduced by 50%.

Future development potential was inventoried by City staff from the City's General Plan and the Benicia Business Park project proposal. Projected land uses were further refined through discussions with City Engineering staff. The result of this process was a compilation of the PM peak hour traffic that will be generated by all new development citywide. This calculation yields a total citywide PM peak hour increase of about 19,701 vehicle trips, summarized in Table 3.

B. Improvement Costs Relative to Trip Generation

Currently, the City of Benicia has $2,000,000 in previously collected TIF monies that would be applied to the overall improvement costs of $26,100,000. Therefore, the updated Year 2007 TIF would be the result of calculated improvement costs less the existing $2,000,000 in TIF funds divided by the citywide PM peak hour trip total of 19,701 trips. As calculated in Table 4, this would yield a basic fee of $1,223 per PM peak hour trip.

C. Development TIF Assessments

The basic TIF fee of $1,233 has been applied to various land uses that could be developed in the City of Benicia. For each land use, a PM peak hour trip rate has been obtained from the Institute of Transportation Engineers (ITE) document *Trip Generation – 7th Edition*. This listing of development TIF assessments is provided in Table 5. This table represents a listing of most potential development in the City of Benicia. For any development proposal not on this list, the ITE document should be used to establish the development's PM peak hour trip generation and resulting TIF assessment.

TABLE 3
CALCULATION OF PM PEAK HOUR TRIPS GENERATED BY NEW DEVELOPMENT[1]

Vacant Industrial Land:		
• 302.9 acres @ 70% FAR = 9,236,027 sq.ft. @ 0.98/1,000	=	9,051 PM trips
Vacant Industrial Land Assuming Partial Development:		
• 289 acres @ 20% FAR[2] = 2,517,768 sq.ft. @ 0.98/1,000	=	2,467 PM trips
Underutilized Industrial Land Assuming Infill Development:		
• 204.3 acres @ 20% FAR[3] = 1,779,862 sq.ft. @ 0.98/1,000	=	1,744 PM trips
Vacant Retail Commercial Land:		
• 2.47 acres @ 50% FAR = 53,797 sq.ft. @ ITE equation[4]	=	208 PM trips
Vacant Office Commercial Land:		
• 6.3 acres @ 50% FAR = 137,214 sq.ft. @ 1.49/1,000	=	204 PM trips
Assumed Downtown Residential Infill Development:		
• 100 units @ 0.78/unit	=	78 PM trips
Benicia Business Park Development:		
• Trip generation from *Benicia Business Park EIR*[5]	=	5,949 PM trips
TOTAL CITYWIDE TRIP GENERATION	=	**19,701 PM trips**

(1) Except as noted, the FAR ratios reflect the maximum coverage factors allowed by the General Plan.
(2) This parcel, located west of east 2nd Street opposite the Valero refinery is assumed to have limited development potential (20% FAR).
(3) Currently underutilized industrial lands are projected to have some limited infill development potential (20% FAR).
(4) The gross retail trip calculation was reduced by 50% to account for a typical retail "pass-by" trip factor.
(5) The gross trip calculation in the EIR was adjusted to account for a typical 50% retail "pass-by" trip factor being applied to the project's retail development component.

TABLE 4
CALCULATION OF TRAFFIC IMPACT FEE
PER PM PEAK HOUR TRIP

CONSTRUCTION COST SUMMARY		
• Intersection improvement costs	=	$ 6,788,750
• Roadway improvement costs	=	$ 19,311,250
		$ 26,100,000
• Less Existing TIF funds	=	- $ 2,000,000
TOTAL NET TIF PROGRAM COST	=	$ 24,100,000
TIF PROGRAM COST PER PM PEAK HOUR TRIP = $24,100,000/19,701 trips	=	**$ 1,223**

TABLE 5
TRIP RATES AND TRAFFIC FEES FOR VARIOUS LAND USES

LAND USE	PM PEAK TRIP RATE[1]	TRAFFIC FEE
Residential:		
Single Family	1.01/D.U.	$1,235/D.U.
Low-Rise Townhouse/Condo	0.78/D.U.	$954/D.U.
Apartment	0.62/D.U	$758/D.U.
Accessory Dwelling	0.31/D.U.[2]	$379/D.U.
Commercial:[3]		
Shopping Center	3.75/1,000 sq.ft.[4]	$2,293/1,000 sq.ft.
Supermarket	10.45/1,000 sq.ft.	$6,390/1,000 sq.ft.
Convenience Store	34.57/1,000 sq.ft.	$21,140/1,000 sq.ft.
Sit-Down Restaurant	7.49/1,000 sq.ft	$4,580/1,000 sq.ft.
High-Turnover Sit-Down Rest./Deli	10.92/1,000 sq.ft.	$6,678/1,000 sq.ft.
Fast-Food Restaurant	34.64/1,000 sq.ft.	$21,182/1,000 sq.ft.
Bank (with drive-through)	45.74/1,000 sq.ft.	$27,970/1,000 sq.ft.
Drug Store/Pharmacy	8.62/1,000 sq.ft.	$5,271/1,000 sq.ft.
Service Station/Mart	13.38/fueling position	$8,182/fueling position
Quick-Lube Vehicle Shop	5.19/service position	$3,174/service position
Hardware/Paint Store	4.84/1,000 sq.ft.	$2,960/1,000 sq.ft.
Day Care Facility	0.82/student	$501/student
Office:		
General Office	1.49/1,000 sq.ft.	$1,822/1,000 sq.ft.
Medical Office	3.72/1,000 sq.ft.	$4,550/1,000 sq.ft.
Industrial:		
Light Industrial	0.98/1,000 sq.ft.	$1,199/1,000 sq.ft.
Warehousing	0.47/1,000 sq.ft.	$575/1,000 sq.ft.
Self-Storage Units	0.03/unit	$37/unit

(1) Institute of Transportation Engineers (ITE), *Trip Generation – 7th Edition*, 2003. This table represents a listing of most potential development in the City of Benicia. For any development proposal not on this list, the ITE document should be used to establish the development's PM peak hour trip generation and resulting TIF assessment.

(2) An accessory dwelling represents a small (less than 800 sq.ft.) apartment type unit accessory to a single family dwelling. It is assumed that this type of unit would generate traffic at one-half the standard apartment rate.

(3) The calculated fee for the commercial uses reflects a 50% reduction to account for the fact that about one-half of commercial trips are either pass-by trips or trips to/from residential units.

(4) The trip rate (and resulting TIF) reflect an average sized shopping center. For a specific development proposal, the ITE trip equation for shopping centers should be used.

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
ACTION ITEM

DATE : October 31, 2007

TO : City Manager

FROM : Director of Parks and Community Services

SUBJECT : **REPLACEMENT OF SKATE PARK AT WILLOW GLEN WITH TURF, PARK FURNITURE AND RELATED LANDSCAPING**

RECOMMENDATION:

Approve, by minute action, the replacement of a skate park at Willow Glen into a turf and landscaped area.

EXECUTIVE SUMMARY:

During the design phase of the X-Park, the Parks, Recreation and Cemetery Commission voiced a desire to visit the use of the skate park at Willow Glen when the X-Park neared completion. The X-Park opened on October 6, 2007.

Per the Commission's request, staff brought this issue back for Commission action on September 12, 2007. After hearing public testimony on this issue, the Commission is recommending that the skate park be converted into a landscape area with turf, other landscaping and related park furniture.

BUDGET INFORMATION:

No funds, within the current budget, have been designated for any work or action for the recommended conversion. The estimated cost for the Willow Glen Improvement Project is $45,000.

BACKGROUND:

On August 8, 2007, the Parks, Recreation, and Cemetery Commission indicated a desire to close the skate park and look at a variety of reuse options. In response, Staff inspected the site and generated cost estimates for demolition and reuse options. This information was presented to the Commission at their September 12, 2007 meeting.

The options for reuse were a result of staff's assessment of community needs and the feasibility of sustaining such uses at that site. For example, the addition of bocce ball courts were deemed a

community need; however, the Willow Glen site is not conducive to such activity due to the traffic and parking strain that bocce ball courts would create.
Staff has projected the demolition of the current skate park to be approximately $30,000. This cost includes demolition, hauling, removal and other associated destruction costs.

The Commission reviewed staff's suggested reuse options, listened to public comment and adopted the neighborhood consensus to convert the skate park into a park setting that blends with the current Willow Glen Park landscaping. This option also was the least expensive; staff has estimated the installation of turf and furniture to be approximately $15,000. With the additional cost of removing the skate park, the total is $45,000.

By comparison, to restore the current skate park, which would only include replacing the surface materials, would total $120,000. Furthermore, a site inspection of the skate facility by the risk manager from ABAG, our pooled liability assurance network, noted concern on the current condition. It is the collective assessment of both City staff and our ABAG representative that if the facility is to continue to serve as a skate park it requires restoration work in the immediate future.

Based on City Council direction, staff, at a future City Council meeting will recommend a project timeline and funding source.

AGENDA ITEM
CITY COUNCIL MEETING: NOVEMBER 20, 2007
ACTION ITEMS

DATE : November 12, 2007

TO : City Council

FROM : City Attorney

SUBJECT : **INTRODUCTION AND FIRST READING OF AN ORDINANCE AMENDING TITLE 6 PERTAINING TO ANIMAL REGULATION AND ADOPTING A COMPREHENSIVE ANIMAL CONTROL PROGRAM**

RECOMMENDATION:

Introduce the ordinance to amend the animal control provisions of the Benicia Municipal Code.

EXECUTIVE SUMMARY:

The last comprehensive review of the City's animal control regulations occurred in 1987. This proposed ordinance brings our regulations current with changes in State law. Following the introduction of the ordinance at the July 17, 2007 Council meeting additional changes were made to the ordinance to address the number of animals and to provide a program for feral cats. These changes were made as a result of two public meetings held by staff.

BUDGET INFORMATION:

There is no new fiscal impact from these changes.

BACKGROUND:

A subcommittee has worked on this proposal for several years. They reviewed the City's existing regulations and regulations from other agencies. The changes proposed by this ordinance update our regulations to reflect changes in State law and animal control practices. The dangerous dog/vicious dog provisions, in particular, have been updated to comply with State law. The dangerous animal provisions mirror the County's recently amended provisions so that administration may be easier.

Other provisions of the Benicia Municipal Code relating to animals have been consolidated into Title 6. An example is the noise provisions related to animals. The proposed ordinance sets forth procedures for declaring noisy animals to be public nuisances and provides additional methods to resolve these types of problems. A table showing the major changes is attached.

The ordinance also sets up a process for administrative hearings to hear appeals of matters related to the animal control ordinance. This would be instead of the appeal process brought to the City Council recently. Under the administrative hearing process, an appeal would be considered by a hearing officer who would make a decision on the matter. The hearing officer's decision would be final and not appealable to the City Council. This hearing process is similar to that used for parking violations.

Following the first introduction of this ordinance, staff met with members of the public to discuss issues related to cats in particular. Residents and representatives of the Benicia Vallejo Humane Society, Audubon Society and Feral Cat programs met twice to consider changes to the proposed ordinance. The goal was to balance the competing issues involving feral cats. Issues raised included protecting wildlife, cat waste and cat care. After two meetings it was clear that a permanent solution was not readily achievable so an interim step is proposed. This includes adopting the animal control ordinance and revisiting the cat issue in 6-12 months. This time span will allow staff to evaluate whether the proposed feral cat program is working and the subcommittee to consider whether additional cat regulations are needed for the non-feral cats. These additional regulations could include cat licensing (which was provided for in our existing ordinance but not implemented) and cat containment or fencing to require cats to stay on their own property.

The proposed feral cat program requires people wanting to take care of feral cats to obtain a permit. A feral cat colony keeper would have to obtain the permission of the property owner and would have to provide for the cats. The ordinance allows the Animal Control Director to have feral cats sterilized. Feral cat research indicates that sterilization should help reduce the feral cat population since cats are territorial. To balance the needs of feral cats with other animals, the ordinance only allows feral cats in industrial areas. This is to avoid conflicts with pets and wildlife and to minimize cat waste on neighboring properties.

The number of animals also was discussed as a result of the meetings. The number of birds, rabbits and other similar animals has increased to 20 for single family detached residences. This number is not counted toward the maximum of cats and dogs. It is proposed that obtaining an animal keepers permit would allow the maximum numbers to be exceeded. Previously, it was unclear what benefit an animal keeper's permit provided. This adjustment will require a change to the zoning code.

Attachments:

- Proposed Ordinance
- Redlined Ordinance
- Table

PROPOSED ORDINANCE

ORDINANCE NO. 07-__

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING TITLE 6 (ANIMALS) PERTAINING TO ANIMAL REGULATION AND ADOPTING A COMPREHENSIVE ANIMAL CONTROL PROGRAM

WHEREAS, the City Council of the City of Benicia desires to establish standards for the care, ownership, licensing, treatment and impounding of animals maintained in the city in such a manner as to ensure that such animals will not endanger the health, peace and safety of the citizens of this city and which will ensure that animals are kept in a clean, sanitary condition and not subjected to suffering, cruelty or abuse.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

The contents of Title 6 (Animals) of the Benicia Municipal Code are hereby repealed in its entirety.

Section 2.

Section 8.20.130 (Animals and fowl) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed in its entirety.

Section 3.

Section 12.28.060 (Dogs) of Chapter 12.28 (Use of City Parks) of Title 12 (Streets, Sidewalks, and Public Places) of the Benicia Municipal Code is hereby repealed in its entirety.

Section 4.

A new title, Title 6 (Animal Control Regulations), is added to read as follows:

Title 6

ANIMAL CONTROL REGULATIONS

Chapters:

6.04 General Provisions.
6.08 Administration and Enforcement.
6.12 Licensing of Dogs.
6.16 Regulation of Dogs.

6.20 Animal Shelter and Impoundment.
6.24 Public Nuisance.
6.28 Dangerous Animals.
6.32 Animal Keeping.
6.36 Wild and Undomesticated Animals.
6.40 Commercial Animal Establishments.
6.44 Animal Keeper Permit.
6.48 Administrative Hearings.

Chapter 6.04

GENERAL PROVISIONS

Sections:

6.04.010 Purpose.
6.04.020 Definitions.
6.04.030 Prohibition of slaughtering.
6.04.040 Disposal of dead animals.
6.04.050 Retention of animal without consent.
6.04.060 Appeal of administrative decisions.
6.04.070 Applicability of State laws.
6.04.080 Penalties.

6.04.010 Purpose. The purpose of this title is to establish standards for the care, ownership, licensing, treatment and impounding of animals maintained in the city in such a manner as to ensure that such animals will not endanger the health, peace and safety of the residents of this city and that animals are kept in a clean, sanitary condition and not subjected to suffering, cruelty or abuse.

6.04.020 Definitions. For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used are defined as follows:

"Altered" means a dog or cat that has been spayed or neutered.

"Apiary" includes bees, comb, hives, appliances, or colonies, or wherever bees are kept, located or stored.

"Animal" means any (1) arthropod or (2) vertebrate creature, domestic or wild, and includes these categories: birds, fish, mammals, amphibians and reptiles.

"Animal control director" ("director") means the police department patrol division commander who oversees and supervises the animal control function of the city or such person with whom the city has contracted to oversee the city animal shelter, including field animal control operations, and kennel and office operations.

"Animal control department" or "department" means, collectively, the personnel of the police department charged with implementing and enforcing the provisions of this title.

"Animal control officer" means any person appointed by the police chief to assist in implementing and enforcing the provisions of this title. "Animal control officer" includes, without limitation, a code enforcement officer, peace officer, and any other person authorized by the police chief or employed by the city to implement and enforce the provisions of this title.

"At large" means any animal which is off the premises of its owner, custodian or caretaker and which is not under physical restraint by leash of a size and material appropriate to the size and temperament of the animal and which is held by a person capable of restraining the animal, or is not otherwise physically restrained by some other device or instrument, except that such device or instrument shall not include voice control, eye control or signal control of the animal by any person, device or instrument, except with respect to a canine good citizen certified dog.

"Animal shelter" means the place or places designated by the city as a place for the keeping and safe holding of animals impounded pursuant to this title.

"Commercial animal establishment" includes, without limitation, a breeding or boarding kennel or cattery, pet shop, pet grooming parlor, commercial stable, riding academy, pony ride, guard-dog and/or sentry-dog service, animal menagerie, animal shelter, or miscellaneous animal or reptile establishment. For the purpose of this title, guard-dog and/or sentry-dog services located outside the city, but providing service within the city on a regular basis, shall be included within the definition of commercial animal establishment.

"Dog park" or "off leash area" means the area of a city-owned or controlled park or area designated for off-leash use for dogs by the resolution of the city council.

"Dog kennel" means any building or premises upon or within which five or more dogs, four months of age or older, are kept or maintained.

"Enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment or hutch.

"Hearing officer" means any designated representative of the city manager who conducts a hearing under section 6.28.110.

"Impound" or "impounded" means the status of an animal which has been received into the custody of an animal control officer or peace officer duly authorized by the law to receive custody of such animal, whether held in personal custody, in an animal shelter, or in a vehicle controlled by such officer.

"Operator" means the legal owner or person in actual control of any activities involving animals.

"Owner" means any person who is the legal owner, keeper, harborer, possessor or the custodian of an animal. Ownership is also established by a person registering as the owner on a license or other legal document or by a person claiming ownership and taking possession of an animal.

"Permanently non-fertile dog" means a dog that (1) has not been spayed or neutered, and (2) has been certified by a licensed veterinarian as a dog that cannot reproduce during its remaining life because of age or a permanent health condition.

"Person" means any individual, firm, partnership, joint venture, corporation, association, club, organization or other legal entity.

"Secure enclosure" means a fence or structure suitable to prevent the entry of young children or any part, limb or appendage of any child, and which is suitable to confine a potentially dangerous animal or a dangerous animal in conjunction with other measures which may be taken by the owner or keeper of the animal, or at the direction of the animal control director. A secure enclosure shall be designed to prevent the animal from escaping and from preventing an adult or child from coming in contact with the animal.

"Service dog" means any dog trained to aid a physically disabled person, including without limitation, a guide dog and a signal dog.

"Substantial physical injury" means a substantial impairment of the physical condition of a person or animal that requires professional medical treatment, including, but not limited to: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, tissue tears or punctures, disfiguring lacerations, wound requiring multiple sutures, or any injury requiring corrective or cosmetic surgery.

"Unaltered dog" means any dog other than a permanently non-fertile dog that has not been spayed or neutered.

"Wild animal" means any animal which may not be imported, transported or possessed without first obtaining a California Department of Fish and Game permit, as set forth in Title 14 of California Code of Regulations, section 671, or its successor regulations.

6.04.030 Prohibition of slaughtering. Slaughtering of animals within the city limits is strictly prohibited, unless it takes place in a licensed restaurant for the purpose of food preparation.

6.04.040 Disposal of dead animals.

A. An owner may bury a dead animal or part thereof, within six hours after the death of same, provided the animal is buried on private real property with the knowledge and consent of the property owner and provided the animal is buried in a hole at least three feet deep with at least three feet of soil above said carcass.

B. An owner of a deceased animal may notify the department and request pick up and disposal of said carcass. It shall be the duty of the department to take custody of all dead animals from the owner when requested. A pick up and disposal fee in an amount established by resolution of the city council may be charged for such service.

C. The department shall be responsible for the disposal of all dead animals whose ownership cannot be established.

D Whenever the department picks up a deceased animal whose ownership is or may be readily established, the owner shall be notified and a notice shall be posted at the city animal shelter giving such information in an easily visible location. This section shall not apply when the department picks up a deceased animal at the request of the owner.

6.04.050 Retention of animal without consent. No person shall take possession of any animal found running at large without notifying the director, or his

designee, within twelve hours after receiving possession, giving a full description of the animal and the address and phone number of the place where the animal may be found. Such person, upon the request of the director or his designee, shall surrender such animal.

6.04.060 Appeal of administrative decisions. Unless otherwise provided herein, any person aggrieved by any administrative decision made under this title may, upon the payment of a fee to be established by resolution of the city council, appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48.

6.04.070 Applicability of State laws. The provisions of all applicable State laws and regulations relating to animal health, control and care, shall apply when such provisions are more stringent than the provisions of this title.

6.04.080 Penalties. Except for violations of Chapter 6.28, any violation of this title shall be an infraction. Each day or part thereof when any violation of this title shall continue shall constitute a separate offense.

Chapter 6.08

ADMINISTRATION AND ENFORCEMENT

Sections:

6.08.010 Director; position created.
6.08.020 Authority and immunities.
6.08.030 Duties of director and animal control officials.
6.08.040 Inspections.
6.08.050 Recordkeeping.
6.08.060 Unlawful obstruction.

6.08.010 Director; position created. The position of animal control director ("director") shall be created and shall be under the direction of the police chief or a designee. The director is authorized and directed to perform, in conjunction with and under the supervision of the police chief or designee, the powers and duties set forth in this title. Nothing in this title shall prevent the city from undertaking any or all of the duties of the animal shelter and or any animal control services as defined herein.

6.08.020 Authority and immunities.

A. The director and animal control officers shall enforce state and local laws relating to the licensing of dogs and the care, ownership, treatment and impounding of animals and shall have immunity from liability for acts performed in good faith in the course of such duties.

B. The director and animal control officers shall have authority to issue citations for violations of animal control laws. Violators of animal control laws shall

be given the opportunity to be released on citation, rather than be taken into custody; however, any person who (i) fails to present his/her driver's license or other satisfactory evidence of his/her identity or (ii) refuses to sign a citation shall be taken into custody by police officers and not by the director or animal control officers who are not police officers.

C. In the performance of their duties, the director and animal control officers who are not police officers shall have the power, authority and immunity of a public officer and employee as set forth in Penal Code section 836.5 or its successor provisions to make arrests without warrant whenever they have reasonable cause to believe that the person to be arrested has committed a public offense in their presence which is a violation of this title, or of any ordinance of the city or penal law of this state relating to the care, ownership, licensing, treatment and impounding of animals. Animal control officers who have not received the Penal Code 832 training on arrests shall not have the power to make arrests.

D. The term "arrest" as used in this section shall mean the power to detain violators for a time sufficient to complete the processing of a citation and release pursuant to section 853.5 and 853.6 of the Penal Code or its successor provisions, but shall not be construed as authority to take any such violators into custody.

E. The director, subject to the approval of the police chief, may promulgate any necessary rules and regulations for the administration of the provisions of this Title.

F. Nothing in this chapter shall be construed as limiting the authority of the director or any animal control officer granted or imposed by any other applicable law or regulation.

6.08.030 Duties of director and animal control officials. The director and animal control officers shall be empowered and shall have the duty to follow the provisions of this title and all state laws pertaining to the care, licensing, treatment and impounding of animals maintained in the city.

6.08.040 Inspections.

A. Whenever it is necessary to make an inspection to enforce any of the provisions of or perform any duty imposed by this title, or whenever the director or an animal control officer has probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this title or other applicable law, said official is authorized to enter such property at any reasonable time and to inspect the same and perform any duty imposed upon an animal control officer by this title or other applicable law, provided that:

1. If such property is occupied, the animal control officer shall first present proper credentials to the occupants and request entry, explaining the reasons therefor. If such entry is refused, the animal control officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

2. If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property and request entry, explaining the reasons therefor. If such

entry cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the animal control officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

B. Notwithstanding the foregoing, if the animal control officer has probable cause to believe that the keeping or maintaining of any animal is so dangerous as to require immediate inspection to safeguard the life or safety of the animal, other animals, or the public, he/she shall have the right to immediately enter and inspect such property, and may use any reasonable means required to effect such entry and make such inspection, whether such property be occupied or unoccupied and whether or not permission to inspect has been obtained. If the property is occupied, the animal control officer shall first present proper credentials to the occupant and demand entry, explaining the reasons therefor and purpose of the inspection.

6.08.050 Recordkeeping. All records of the department are the records of the police department and shall be maintained by the police department and shall not be removed therefrom except upon written order from the police chief or other duly constituted authority.

6.08.060 Unlawful obstruction. It is unlawful for any person to willfully resist, hinder, molest, delay or obstruct any person authorized to enforce this title, while such person is engaged in the performance of his or her duties.

Chapter 6.12

LICENSING OF DOGS

Sections:

6.12.010 Administration.
6.12.020 License term, conditions and exceptions.
6.12.030 Rabies vaccination; deferment.
6.12.040 Application.
6.12.060 Renewal; late fee; penalty.
6.12.070 Nontransferability and refunds.
6.12.080 Issuance of duplicate tags and licenses.
6.12.090 Unlawful use of tag.
6.12.100 Disposition of fees and fines.

6.12.010 Administration.

A. The finance director or county shall be the issuing authority for dog licenses. Upon payment of the license fee provided in this chapter, and upon presentation of a valid vaccination certificate, as provided in this chapter, the Issuing Authority shall issue a license certificate stating the year for which such license fee is paid, the date of payment, the name and resident address to whom such license is issued, the name, breed and sex of the dog licensed, and the serial number of the license tag issued. Such certificate shall be delivered to the person paying such license fee, and one copy shall be retained by the issuing authority.

B. The issuing authority shall at the same time issue and deliver to the person paying the license fee, a tag of such form and design as the issuing authority shall designate with the words, "Solano County Dog License" and a serial number and the licensing period for which the tag was issued plainly inscribed thereon. The license tag shall be securely affixed to a collar, harness, or other device which shall be at all times worn by such dog.

6.12.020 License term, conditions and exceptions.

A. Except as provided in this chapter, every owner of any dog over the age of four months in the city shall obtain a license for each such dog so owned, cared for, or controlled by such person.

B. All owners of dogs subject to the licensing requirements of this chapter shall obtain one of the following three types of dog licenses:

1. Altered dog license. An altered dog license shall be obtained for an altered dog as defined by this title.

2. Permanently non-fertile dog license. A permanently non-fertile dog license shall be obtained for a permanently non-fertile dog as defined by this title.

3. Unaltered dog license. An unaltered dog license shall be obtained for an unaltered dog as defined by this title.

C. An altered dog license and a permanently non-fertile dog license may be purchased for either a one-year, two-year or three-year period. An unaltered dog license may only be purchased for a one-year period.

D. Such license shall be obtained and the fee therefor paid within 30 days after the day in which the dog is four months old, or within 30 days after acquisition of the dog, or within 30 days of moving into the city and annually thereafter prior to the expiration of the license. The license fee shall be as set forth by council resolution.

E. Written proof of neutering or spaying or that the dog permanently cannot reproduce must be provided at the time of the initial licensing for either an altered dog license or a permanently non-fertile dog license, but need not be produced for renewal of such licenses.

F. The license provisions of this section shall not apply to the following:

1. Dogs that are kept, harbored, or maintained by owners who are nonresidents and are staying within the city for 30 days or less, if kept, harbored, or maintained only during such temporary sojourn of their owners;

2. Dogs brought to the city exclusively for the purpose of participating in any dog show or exhibition, and which are actually entered in and kept at such show or exhibition;

3. Dogs under the treatment in the custody or control of animal hospitals;

4. Dogs on sale in duly licensed pet shops; and

5. Dogs owned, kept or controlled by any person having a permit to keep and maintain a dog kennel, provided that such dogs, when removed from such kennel, shall bear an identification tag attached to a collar, harness or other device, which tag shall be of a size and type designated by the issuing authority, and shall set forth the name and address of such kennel. Said tag shall be furnished at the

sole expense of the kennel owner.

6. Dogs being fostered as a part of a non-profit agency's program. The foster program shall be registered with the department and an individual foster dog shall be fostered in a particular residence for a period of no more than six months.

G. Notwithstanding the provisions of this chapter, any person moving into the city who is an owner of a dog possessing a valid, current dog licensed issued by another incorporated city within the County of Solano shall not be required to apply for a city dog license for a period of six months from the date the owner moved into the city or the date of expiration of the license issued by the other city, whichever is earlier.

H. Upon request of an animal control officer, an owner of a dog for which a license is required shall present to such officer a current, valid certificate of vaccination or license tag for such dog.

6.12.030 Rabies vaccination; deferment.

A. No dog shall be licensed without presentation of a certificate issued by a licensed veterinarian certifying that the dog to be licensed has been administered an anti-rabies vaccination within thirty days prior to the issuance of the license, or has received anti-rabies vaccination sufficient to immunize the dog against rabies for the entire licensing period.

B. The vaccination requirement for rabies shall not apply to a dog if a licensed veterinarian has examined the dog and certified at such time rabies vaccine may endanger the dog's health because of its age, infirmity, debility or other physiological considerations, and said dog is kept in the house or in a fenced yard adequate to confine the animal at all times. A temporary license shall be issued to any dog for whom rabies vaccination deferment is authorized under this part. The temporary license shall be valid only during the period that vaccination would endanger the dog's health as said period is shown by the veterinarian's certificate.

C. The vaccination requirement for rabies shall not apply to a dog if a licensed veterinarian has examined the dog and certified that the dog has been titer tested in the past one year. A license for such dog shall only be valid for one year.

6.12.040 Application. Application for dog licenses shall be made in writing on forms to be provided by the issuing authority which shall include the following information and documentation for each dog:

1. Name and address of owner;
2. Address where dog is kept;
3. Name, breed, age, sex and color of dog; and
4. A current rabies vaccination certificate issued by a licensed veterinarian in accordance with section 6.12.030 of this chapter.

6.12.050 Fees, discounts, waivers and surcharges.

A. All license fees imposed pursuant to this section shall be in the amounts established by resolution of the city council and in the amount established by the county. Such amounts shall be in compliance with Government Code section 38792 or its successor provisions.

B. The licensing fee shall be prorated on a quarterly basis for new

residents, newly acquired dogs, or puppies at four months of age. Proof of new residency, purchase or adoption date of dog or dog's age must be presented at the time of licensing to be eligible for the prorated fee. For a dog adopted from the city animal shelter, the first one-year license fee shall be waived or the first two or three-year license fee shall be reduced by 33%. Proof of adoption from the city animal shelter must be presented at the time of licensing to be eligible for the prorated fee.

C. The dog license fee shall be waived for any service dog, if such dog is under the control of and is aiding a blind, hearing impaired, or physically disabled person, or if such dog is owned by or in the custody of a bona fide organization having as its primary purpose the furnishing and training of service dogs.

D. The dog license fee shall be waived for one altered dog kept in a household where the owner of the dog is over the age of 65. A senior status license fee waiver shall not apply for an unaltered dog license.

E. The dog license fee shall be waived for dogs owned and used by a public agency, regardless of reproductive status.

F. A surcharge shall be assessed at the time of licensing of any dog that has been deemed a dangerous dog under chapter 6.28 of this title. The amount of the surcharge shall be established by resolution of the city council.

6.12.060 Renewal; late fee; penalty.

A. Each dog license issued pursuant to this chapter may be renewed. Application for renewal shall be made to the issuing authority not later than fifteen days after the expiration date on the license.

B. If application for a license renewal is made more than fifteen days after a dog license is required, the applicant shall pay, in addition to the regular license fees, such late fees as may be established from time to time by resolution of the city council or the county.

6.12.070 Nontransferability and refunds. License tags shall not be transferable from one dog to another and no refunds shall be made on any license fee because of death of the dog or the owner leaving the city or the removal of the dog from the city before expiration of the license term.

6.12.080 Issuance of duplicate tags and licenses. Whenever a dog license tag or license issued for the current year by the issuing authority has been lost, or taken or stolen by parties unknown to the owner of the dog for which the same was issued, such owner may, on the payment of a fee and on making and subscribing to an affidavit of the loss of such tag or license, receive from the issuing authority a duplicate dog license tag for the remaining portion of the term for which the original license was issued.

6.12.090 Unlawful use of tag. It is unlawful for any person to attach a dog license tag to the collar of any dog except the dog which is described in the application for such license tag.

6.12.100 Disposition of fees and fines. In accordance with section 30652 of the Food and Agricultural Code or its successor provisions, all fees for the issuance of dog license tags and all fines collected pursuant to Division 14 of the

Food and Agricultural Code shall be paid to the county except for any fees or fines imposed by the city and shall be used for the purposes set forth at that section as the same may be amended from time to time.

Chapter 6.16

REGULATION OF DOGS

Sections:

6.16.010 Carrying instrument for removal of dog feces and actual removal of such feces required.
6.16.020 Restraint of dogs.
6.16.030 Dogs in public playgrounds and parks prohibited; exceptions.
6.16.040 Permissive running at large.
6.16.050 Unspayed female dogs prohibited from running at large.

6.16.010 Carrying instrument for removal of dog feces and actual removal of such feces required.

A. Any person having custody of a dog while on public property, including any easements and public parks, and private property not owned by such person shall at all times carry an instrument suitable for removing and disposing of any feces which may be deposited by said dog and shall remove any such feces which may be deposited by such dog while on such property.

B. The provisions of this section shall not apply to dogs being used by the blind as guide dogs, or service dogs that are assisting disabled persons who are unable to remove such feces.

6.16.020 Restraint of dogs. Except in an area specifically set aside and designated by the city council by resolution as a "dog park", or "off-leash" area, no person owning or having charge, care, custody, or control of any dog shall cause or allow, either willfully or through failure to exercise due care or control, to be or run at large in or upon any public place or premises, or in or upon any private place or premises other than those of said owner or keeper except with the consent of the person in charge of said place or premises, unless such dog is securely restrained by a substantial leash, no longer than 6 feet, and is in charge and control. For the purposes of this section, any dog in or upon any motor vehicle shall be deemed to be on the premises of the operator thereof.

6.16.030 Dogs in public playgrounds and parks prohibited; exceptions.

A. Except for seeing-eye dogs and for areas designated by city council resolution and subject to rules established by city council resolution, it is unlawful for a person who owns, has an interest in, harbors or has charge care, control, custody or possession of a dog, to permit the dog to be in or upon a public park. Any employee of the city, including a peace officer, shall pick up a dog if found in a public park and deliver the dog to the Friends of Animals, a designated animal foster care agency.

B. This section shall not be applicable to dogs while they are enrolled and participating in obedience classes sponsored by the parks and community services department of the city, or to dogs being used by disabled individuals as service animals or at city approved special events. No dangerous dogs are allowed in no leash areas.

6.16.040 Permissive running at large. The provisions of this chapter do not prohibit dogs from running at large on the premises of the owner or person having charge of such dog, nor do they prohibit dogs, other than unspayed female dogs during the breeding period, from running at large on any private property with permission of the owner of such property.

6.16.050 Unspayed female dogs prohibited from running at large. It shall be unlawful for any owner to permit an unspayed female dog to run at large on any property during the breeding period.

Chapter 6.20

ANIMAL SHELTER AND IMPOUNDMENT

Sections:

6.20.010 Animal shelter established.
6.20.020 Impoundment authority.
6.20.030 Care of impounded animals.
6.20.040 Use of animals for experimental purposes or medical research.
6.20.050 Transporting of impounded animals.
6.20.060 Unauthorized removal of animals from shelter.
6.20.070 Fees established.
6.20.080 Fine imposed for impounded unaltered dogs and cats.
6.20.090 Identification of animals; returning animals to known owners.
6.20.100 Voluntary surrender; fees.
6.20.110 Redemption by owner; abandonment.
6.20.120 Holding period.
6.20.130 Placement of unredeemed animals.
6.20.140 Adoption by approved organizations.
6.20.150 Sterilization required.
6.20.160 Disposal.
6.20.170 Diseased or injured animals.

6.20.010 Animal shelter established. There shall be provided a suitable enclosure or place for the purpose of keeping and safely holding animals impounded, which shall be authorized as the city animal shelter; provided, that one or more suitable enclosures or places may be provided for the purpose of keeping and safely holding animals impounded, which places shall be designated as branches of the city animal shelter.

6.20.020 Impoundment authority. The director may take up, impound and

safely keep any of the animals enumerated in this title found running at large, staked, tied or being herded or pastured in any street, road, lane, alley, court, square, park or other place belonging to or under control of the city, or upon any private property in the city, contrary to the provisions of this title; or where said animal is engaged in an activity or existing in any condition prohibited by this title; or where said animal is, or will be, without proper care due to injury, illness, death, incarceration, or other involuntary absence of the owner or person responsible for the care of such animal; or where said animal is to be quarantined.

6.20.030 Care of impounded animals. The director or his designee shall safely keep all animals impounded at the city animal shelter and shall furnish the same with a sufficient quantity of good and wholesome food and water, and shall give the same ordinary attention as may appear to be reasonably required for the welfare of such animals.

6.20.040 Use of animals for experimental purposes or medical research. It is unlawful for any person providing animal control or animal shelter services within the city to give, use, sell or give to be sold, animals for diagnostic or experimental purposes or medical research.

6.20.050 Transporting of impounded animals. All animals taken into custody shall be humanely transported in specifically designed ventilated and properly maintained vehicles.

6.20.060 Unauthorized removal of animals from shelter. It shall be unlawful for any person to remove any impounded animal from the animal shelter without the consent of the director or designee.

6.20.070 Fees established.

A. Fees for impounding animals shall be established by resolution of the city council and the county.

B. Fees for adoption of impounded animals shall be established by resolution of the city council and the county.

C. Fees for boarding or keeping impounded animals, which shall be charged in addition to the impounding fees referenced above, shall be established by resolution of the city council and the county.

6.20.080 Fine imposed for impounded unaltered dogs and cats.

A. Pursuant to California Food & Agriculture Code section 30804.7 or its successor provisions, the owner of any impounded unaltered dog shall be subject to a fine in the amount established by resolution of the city council.

B. Pursuant to California Food & Agriculture Code section 31751.7 or its successor provisions, the owner of any impounded unaltered cat shall be subject to a fine in the amount established by resolution of the city council.

C. Fines levied pursuant to this section shall be in addition to any other fees and penalties imposed pursuant to this title.

6.20.090 Identification of animals; notice to owners; returning animals to

known owners.

A. It shall be the duty of the department to attempt to identify any impounded, found or turned-in animal via registration check, identification tags, microchip, lost reports and diligent search for any tattoo marks. When a tattoo or microchip is found, the tattoo or microchip registry shall be notified and additional, reasonable time provided for such registry to locate the owner prior to the animal being placed for sale or adoption or euthanized.

B. The animal control director shall, immediately upon impoundment of dogs or other animals, make a reasonable effort to notify the owner of such dogs or other animals impounded, and further, in the case of a licensed dog, or cats wearing a license, inform such owners of the conditions whereby they may regain custody of such animals.

C. When any animal is seized and its ownership is known to the department, such animal need not be impounded, but any authorized animal control officer may, at his or her own discretion, return such animal to its owner and issue a citation to the owner to appear in court to answer to charges of violations of this title. If the owner's telephone number is known or can be readily assessed, the owner shall be contacted by telephone; otherwise, the owner shall be contacted by regular mail to the owner's last known address.

6.20.100 Voluntary surrender; fees.

A. Upon request, an owner may surrender his/her animal to the department for placement for adoption.

B. Any owner relinquishing a dog shall comply with the provisions of Food and Agricultural Code section 31108.5 or its successor provisions, by presenting sufficient identification to establish his or her ownership of the dog and by signing a statement that he or she is the lawful owner of the dog. Any animal which is voluntarily surrendered to or deposited with the department by the owner shall immediately thereafter become the property of the city. It shall be understood that no guarantee of placement will be made, and humane disposal will be at the discretion of the department.

C. Any owner of an animal who voluntarily surrenders an animal to the department shall be subject to a fee for each animal over the age of four months. Litters of unweaned animals or animals less than four months of age shall be considered as one animal.

D. The surrender of an animal by an owner to the department, subsequent to impoundment for a violation of this title or any provisions of State law, shall not relieve the owner of the obligation to pay such charges as set forth in this section, prior to such surrender, plus accumulated boarding charges, veterinary charges or any other charges, related to the impounding and keeping of the animal.

E. Upon relinquishment, any animal may be made available for immediate euthanasia if it has a history of vicious behavior documented by the department or any other agency charged with enforcing state and local animal laws.

6.20.110 Redemption by owner; abandonment.

A. The owner of any impounded animal shall have the right to reclaim the same at any time prior to the lawful disposition thereof, upon payment to the animal control director of the costs and charges which shall be established by resolution of the

county or city for the impounding and keeping of such animals, provided, however, that if the animal is one which is subject to the licensing provisions of this title, the licensing requirements must be satisfied before the animal is released.

B. If the impounded animal is not currently vaccinated against rabies as required, and the owner has not previously been cited for failure to license the animal or the animal has not been previously impounded within the preceding thirty (30) calendar days, the animal may be released to the owner upon payment of all fees required (including the license fee and penalty fee, if applicable) on condition that the owner shall:

1. Have the animal vaccinated for rabies in accordance with this title within fourteen (14) calendar days; and

2. Exhibit a valid certificate of such vaccination to the director within fourteen (14) calendar days, at which time the license will be issued.

C. Animals may be vaccinated against rabies by a veterinarian designated by the director prior to redemption and the cost of the vaccination and any other costs accrued accomplishing the vaccination, including additional impoundment fees, must be satisfied before the animal is released.

6.20.120 Holding period.

A. All impounded dogs or cats found wearing a license tag or any other form of positive identification, shall be kept in the animal shelter or other authorized place of impoundment for a period of not less than six (6) business days following the day of impoundment unless redeemed within such period.

B. All impounded dogs and cats not wearing a license tag or other form of positive identification, shall be kept in the animal shelter or other authorized place of impoundment for a period of not less than six (6) business days following the day of impoundment unless redeemed within such period.

C. Any impounded animal which is of a type referred to in section 17001.5 of the Food and Agriculture Code shall be kept in the animal shelter for at least six (6) business days following the date of impoundment unless it is redeemed within that period. If the animal is a bovine animal and is not redeemed, it shall be turned over to the State Bureau of Livestock Identification for disposition by that office, pursuant to the requirement of the California Food and Agriculture Code.

D. Any animal impounded of the type referred to in section 17065 of the Food and Agriculture Code shall be kept in the animal shelter or other authorized place of impoundment for at least fourteen (14) calendar days.

E. Any other impounded animal shall be kept in the animal shelter for at least six (6) business days following the day of impoundment unless it is redeemed within such period.

F. Any animal which is voluntarily surrendered to or deposited with the director by the owner shall not be deemed to be impounded and need not be kept or retained for any minimum period of time.

G. Any feral animal, except feral cats, need not be kept or retained for any minimum period of time.

6.20.130 Placement of unredeemed animals.

A. Dogs.

1. Unless an unlicensed dog or a dog not wearing traceable

identification has been redeemed within six (6) working days from the day following the impoundment it may be sold by the animal control director for an amount determined and set by the city or county; provided, that the purchaser shall not be given possession of any dog until the purchaser has paid to the animal control director the license fee prescribed for such dog. The animal control director shall accept the application for license and the license fee, but shall not deliver the license until proof of current rabies vaccination has been provided. If any unlicensed dog, or dog not wearing traceable identification impounded by the animal control director shall not have been redeemed within such three (3) working day period, it may be destroyed by the animal control director in an humane manner.

2. Unless licensed dogs or dogs wearing traceable identification have been redeemed within six (6) working days from the day following the impoundment such dogs may be sold by the animal control director for an amount determined and set by ordinance of the board of supervisors. The animal control director shall notify the owner of such animal, by mail, within twenty-four (24) hours of impoundment. If any licensed dog, or dog wearing traceable identification which has been impounded by the animal control director has not been redeemed within the six (6) day period, it may be destroyed by the animal control director in a humane manner.

B. Cats.

1. Unless an unlicensed cat or a cat not wearing traceable identification has been redeemed within six (6) working days from the day following the impoundment, it may be sold by the animal control director for an amount determined and set by the city or county. If any cat impounded by the animal control director shall not have been redeemed within such three (3) working day period, it may be destroyed by the animal control director in a humane manner.

2. A licensed cat or cat wearing traceable identification shall be processed in the same manner as provided for licensed dogs in subparagraph (A)(2) of this section.

C. Other animals shall be processed in the same manner as provided for unlicensed dogs in subparagraph (A)(1) of this section, unless otherwise provided for by State statute.

D. It shall be the duty of the animal control director, and the director is authorized and empowered, to forthwith dispose of any animal lawfully impounded which is, by reason of injury, disease, or other cause, unfit for further use or is dangerous to keep impounded. The animal control director may immediately destroy surrendered animals in a humane manner.

E. At the discretion of the animal control director, an unredeemed or surrendered animal may be kept for a reasonable period of time after the expiration of the redemption period for the purpose of selling or adoption. Normally, the sale of the animal should be to the person offering to pay the prescribed amount as determined and set by resolution of the city or county; however, the animal control director may refuse to sell or adopt to a particular purchaser if the director has reason to believe the sale would not be in the best interest of the animal.

6.20.140 Adoption by approved organizations. Under special provisions to be adopted by the director, subject to the approval of the police chief, specific breed clubs and humane organizations approved by the director shall have the

option of adopting available animals from the city animal shelter for purposes of placement. Adoption fees to be paid by such approved organizations shall be established by resolution of the city council.

6.20.150 Sterilization required.

A. In accordance with section 30503 of the Food and Agriculture Code or its successor provisions, the department shall not sell or give away to a new owner any dog that has not been spayed or neutered, unless otherwise provided by law.

B. In accordance with section 31751.3 of the Food and Agriculture Code or its successor provisions, the department shall not sell or give away to a new owner any cat that has not been spayed or neutered, unless otherwise provided by law.

6.20.160 Disposal. In the event any impounded dog or cat or any other animal cannot be suitably placed in a new home within the holding period designated in section 6.20.120 of this chapter, the director shall euthanize such animal and dispose of the carcass.

6.20.170 Diseased or injured animals.

A. Notwithstanding any provisions of this chapter, the director may, without waiting for the requisite holding period to elapse, cause any impounded animal to be euthanized without delay under the following circumstances:

1. When the director reasonably determines in good faith that such animal is unfit for further use by reason of its having been injured, having become infected with a dangerous or communicable disease, having become incurably crippled or having become infirmed on account of advanced age; and/or

2 When a licensed veterinarian determines in good faith that such animal is suffering extreme pain due to disease or injury, and there is no reasonable probability that the animal will recover from its disease or injury.

B. The department may destroy any animal found at large without transporting it first to the animal shelter or a veterinarian where the animal is too severely injured to move or where it would be more humane to destroy the animal.

Chapter 6.24

PUBLIC NUISANCE

Sections:

6.24.010 Animal nuisances.
6.24.020 Written petitions; investigation.
6.24.030 Notice to owner to abate; failure to abate.
6.24.040 Temporary impoundment of animal.
6.24.050 Grounds for determination of nuisance.
6.24.060 Public nuisance declared; reimbursement of costs.
6.24.070 Disposition of public nuisance.

6.24.010 Animal nuisances.

A. The keeping or maintaining possession on any lot in the city, of an animal shall be deemed a public nuisance if the animal has committed any one or more of the following acts:

1. Barks, cries or other noises which are so loud and/or so frequent and/or continued over so long a period of time as to disturb the peace and quiet of nearby property or which would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area;

2. Inflicts unprovoked damage to real or personal property of a person other than the owner which damage occurs off the property of the owner;

3. Chases pedestrians, skateboards, sedgways, vehicles, bicycles or ridden horses while off the property of its owner; and/or

4. By its bodily waste odor or other unsanitary condition causes annoyance or discomfort to a reasonable person of normal sensitivity in the area.

B. Such a public nuisance may be abated in accordance with the procedures set forth in this chapter. These procedures are in addition to any other remedies which may be available under the law.

6.24.020 Written petitions; investigation.

A. The director or a designee shall investigate either of the following:

1. A written petition in which it is asserted by three or more persons having separate residences or regularly employed in a neighborhood that an animal is a public nuisance within the meaning of this chapter; or

2. A written petition in which it is asserted by one or more residents in a neighborhood that an animal is a public nuisance within the meaning of this chapter, and:

a. Such resident(s) can demonstrate to the satisfaction of the animal control officer that the resident(s) has made a good faith effort to obtain the signatures of other residents in the neighborhood or can demonstrate that it is not possible to obtain such other signatures, as in the case where there are less than three (3) occupied residences in the neighborhood, and

b. Such resident(s) has provided to the satisfaction of the animal control officer adequate and competent evidence in support of the claim that the subject animal is a public nuisance within the meaning of this chapter.

B. Petitions shall be signed by and bear the name, address and telephone number of each complainant, shall state the place or places where the nuisance exists, shall describe the animal(s) and the conduct which constitutes the nuisance, and shall give the name and address of the animal's owner, if known to complainants. Petitions shall be public records and open to public inspection.

C. Whenever a valid petition has been filed with the department pursuant to this section, the director or a designee shall determine whether the petition appears to set forth a valid complaint of a public nuisance within the meaning of this chapter.

6.24.030 Notice to owner to abate; failure to abate.

A. If the director or designee determines that a petition filed pursuant to section 6.24.020 of this chapter appears to be valid, he/she shall serve a notice of

nuisance upon the owner of the subject animal which shall inform the owner of the following:

1. That a petition has been received;
2. The nature of complaints stated in the Petition; and
3. That such nuisance must be abated within the time specified, which shall be reasonable.

A copy of the provisions of this chapter shall also be provided to the owner with the notice of nuisance.

B. If the owner fails to abate the public nuisance within the specified time, the director or a designee may refer the matter to a hearing officer for a hearing conducted by a hearing officer pursuant to the provisions of chapter 6.48.

6.24.040 Temporary impoundment of animal.

A. The director or designee shall have the power to temporarily impound the subject animal pending the outcome of an administrative hearing conducted pursuant to section 6.24.030 if:

1. After making a good faith effort, he/she is unable to contact the animal's owner and determines, at the time of inspection, that the offending noise, condition or behavior of the animal cannot be immediately abated and the peace and comfort of the neighborhood restored;
2. Determines, at the time of inspection, that the offending noise, condition or behavior of the animal cannot be immediately abated and the peace and comfort of the neighborhood restored; or
3. Determines that the public nuisance has not been abated within the time specified in the notice of nuisance.

B. The owner of the animal shall be responsible for all costs of impounding the animal, including but not limited to daily impoundment fees and any costs incurred in providing care and maintenance of the animal.

C. In lieu of impounding an animal, the animal control officer may permit the animal to be confined by the owner at the owner's expense in a director-approved veterinary facility, or in the case of a dog, in a director-approved veterinary facility or director-approved dog kennel.

6.24.050 Grounds for determination of nuisance. In making a determination that an animal is or is not a public nuisance, the hearing officer shall consider the following evidence:

A. All petitions filed pursuant to section 6.24.020 of this chapter;

B. The testimony of persons residing or working in the area of the place where the animal is kept;

C. The testimony of any investigating animal control officer and any other department or city employee having contact with the animal or its owner;

D. Video or tape recordings of the animal or of the place where the animal is kept;

E. Any previous complaints, abatement orders, citations, or convictions regarding maintenance of a public nuisance by the owner by reason of an animal's offending noise, condition or behavior;

F. The nature and extent of the animal's offending noise, condition or

behavior;

G. The manner in which the animal had been maintained by its owner;

H. The presence or absence of any provocation for the offending noise, condition or behavior;

I. Whether the offending noise, condition or behavior can be eliminated by effectively training or retraining the animal; and

J. Any other relevant evidence regarding the ability of the owner to preserve the comfort, peace or quiet of the neighborhood if the animal is permitted to remain in the city.

6.24.060 Public nuisance declared; reimbursement of costs. The owner of any animal declared by a hearing officer to be a public nuisance pursuant to this chapter shall reimburse the city for all costs incurred in verifying compliance and enforcing provisions of this chapter.

6.24.070 Disposition of public nuisance.

A. The hearing officer may order the owner of any animal declared to be a public nuisance to remove the animal from the city by a date certain if the owner:

1. Fails to abate the public nuisance within the time period specified by the hearing officer;

2. Fails to reimburse the costs of abating the public nuisance; or

3. Permits, suffers, or allows the public nuisance to occur again.

B. If the owner fails to remove the animal from the city by such date, the department may impound the animal and not permit the reclaiming or redemption of the animal by the owner unless adequate arrangements acceptable to the director have been made by the owner to ensure abatement of the public nuisance. Such arrangements shall be agreed to in writing between the owner and the director prior to and as a condition of release of the animal to its owner. If such agreement is not made and executed within thirty (30) days from the date of impoundment, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

C. If the written agreement referred to in paragraph B of this section is made and is subsequently breached by the owner, the director may immediately impound the animal and not permit the reclaiming or redemption of the animal by the owner unless the owner can make adequate, written assurances acceptable to the director that the owner shall commit no further violation of the agreement. If such further assurances are not made and executed within thirty (30) days from the date of impoundment, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

D. Any person failing to comply with the hearing officer's order to abate a public nuisance shall be prohibited from keeping or harboring within the city an animal of the type, species, group or family to which the order applies (including the animal initially causing the nuisance) for a period of three (3) years from the date of such noncompliance; provided, however, that any person prohibited from keeping or harboring an animal pursuant to this section shall be entitled to appeal to a hearing officer pursuant to the provisions of chapter 6.48 of this title. The scope of any such appeal hearing shall be limited to a determination regarding whether a failure to

comply with a hearing officer's order has occurred.

Chapter 6.28

DANGEROUS ANIMALS

Sections:

6.28.010 Definitions.
6.28.020 Prohibitions regarding dangerous animals.
6.28.030 Inspection.
6.28.040 Dangerous animals at large.
6.28.050 Temporary impoundment or confinement.
6.28.060 Hearing procedures.
6.28.070 Disposition of dangerous animals.
6.28.080 Sale or transfer restrictions.
6.28.090 Enforcement and penalties.
6.28.100 Exemptions.
6.28.110 Removal of designation.

6.28.010 Definitions. For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used are defined as follows:

"Abused animal" means any animal which is:

1. Mistreated, beaten, tormented, or teased; or
2. Deprived of water, food, or shelter; or
3. Kept under unsanitary conditions; or
4. Abandoned; or
5. Trained for fighting other animals.

"Dangerous animal":

1. "Dangerous animal" means any animal that:

a. Has been designated a potentially dangerous animal and thereafter exhibits any of the behaviors listed in the definition of potentially dangerous animal; or

b. Inflicts serious injury or kills a human being. An injury shall be considered a severe injury if it results in any muscle tear or disfiguring laceration or requires multiple sutures or corrective or cosmetic surgery; or

c. Engages in, or is found to have been trained to engage in, exhibitions of fighting or is associated with conduct that results in the animal's owner or keeper being convicted of Penal Code section 597.5; or

d. Attacks or kills livestock off the property of the owner of the attacking animal.

2. An animal shall not be considered a dangerous animal if the person or domestic animal that it attacked, threatened, or menaced:

a. Provoked, tormented, teased, or abused the animal into the alleged behavior; or

b. Committed a willful trespass or other tort upon the private

property of the owner or keeper in control of the animal; or

c. Threatened or committed an unprovoked assault or battery against the owner or keeper in control of the animal.

"Enclosure" means a fence or structure of a last six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to humanely confine an animal with adequate exercise area, and posted with an appropriate warning sign, in conjunction with other measures which may be taken by the owner or keeper.

"Hearing officer" means any designated representative of the city manager who conducts a hearing under section 6.28.110.

"Impounded" means taken into custody of the animal shelter.

"Person" means a natural person or any legal entity, including, but not limited to, a corporation, firm, partnership or trust.

"Potentially dangerous animal":

1. "Potentially dangerous animal" means any animal that:

a. On two (2) separate occasions within a thirty-six (36) month period engages in any unprovoked behavior that requires a defensive action by any person to prevent bodily injury; or

b. Bites a person causing a minor injury not resulting in muscle tears or disfiguring lacerations or requiring multiple sutures or corrective or cosmetic surgery; or

c. Kills, seriously bites, inflicts injury upon, or otherwise causes injury to any domestic animal; or

d. Engages in any behavior that constitutes a physical threat of bodily harm to a person or domestic animal or poses an immediate threat to public safety.

2. An animal shall not be considered a potential dangerous animal if the person or domestic animal that it attacked, threatened, or menaced:

a. Provoked, tormented, teased or abused the animal into the alleged behavior; or

b. Committed a willful trespass or other tort upon the private property of the owner or keeper in control of the animal; or

c. Threatened or committed an unprovoked assault or battery against the owner or keeper in control of the animal.

6.28.020 Prohibitions regarding dangerous animals. It shall be unlawful for an owner or person having possession, custody, charge or control of an animal that the owner or person having possession knew or should have known was dangerous to permit said animal to be found outside of a house or fully enclosed space, unless that animal is muzzled and on a substantial leash or similar restraint of appropriate length and under the control of a responsible person eighteen years of age or older who is physically capable of restraining the animal when the animal is not contained in a locked, secure enclosure or as otherwise restrained by lawful order of the director or a hearing officer.

6.28.030 Inspection.

A. Whenever it is necessary to make an inspection to enforce any of the

provisions of or perform any duty imposed by this section, or whenever any police officer or animal control officer has probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this chapter or other applicable law, the officer is authorized to enter such property at any reasonable time to inspect it and to perform any duty imposed upon the officer by this code or other applicable law; provided that:

1. If the property is occupied, the officer shall first present proper credentials to the occupant, briefly describe the basis for the probable cause, and request entry. If entry is refused, the officer shall have recourse to every legal remedy, including an inspection warrant, to secure lawful entry and inspect the property.

2. If the property is unoccupied, the officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property and present proper credentials to the occupant, briefly describe the basis for the probable cause, and request entry. If entry cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the officer shall have recourse to every legal remedy, including an inspection warrant, to secure lawful entry and inspect the property.

3. Notwithstanding the foregoing, if the officer has probable cause to believe that the keeping or maintaining of any animal is so dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the officer shall have the right immediately to enter and inspect the property, and may use any reasonable means required to enter and inspect, whether or not the property is occupied and whether or not permission to inspect has been obtained, provided that, if the property is occupied, the officer shall first present proper credentials to the occupant, briefly describe the basis for the probable cause, and demand entry.

B. No person shall interfere with, hinder, fail or refuse, after proper demand has been made upon him or her, to permit the officer to make any inspection under subsection A.3. of this section. Any person violating this section shall be guilty of a misdemeanor.

6.28.040 Dangerous animals at large.

A. A person who owns or keeps an animal and who allows, permits or causes the animal to be at large in or upon a public street, sidewalk, park, or other public property, or in or upon the premises or private property of another person, shall be guilty of a misdemeanor if the animal bites, attacks, or causes injury to any human being or other animal.

B. Any person convicted under this section shall not own or keep the type of animal which caused the bite, attack, or injury for a three (3) year period after the date of conviction. Neither the department nor the county shall issue or renew any license to the convicted person for that type of animal during that three (3) year period.

6.28.050 Temporary impoundment or confinement.

A. If animal control officers or police officers have probable cause to believe any animal has attacked, bitten, or injured any human being or other

domestic animal, the officers shall have the power to summarily and immediately impound the animal pending:

1. Any court proceeding or animal license revocation proceeding arising from the attack, bite, or injury; or

2. A hearing under this chapter.

B. Failure to surrender on demand the animal to an animal control officer for impoundment shall be a misdemeanor.

C. If an animal impounded under this section is declared to be potentially dangerous or dangerous, it may be returned to the owner or keeper upon satisfaction of any conditions the hearing officer places on the animal's release unless the hearing officer orders the animal to be destroyed. If an animal impounded under this section is not declared to be potentially dangerous or dangerous, it shall be returned to the owner or keeper as soon as is practicable after receipt of the hearing officer's notice of determination.

D. Within forty-eight (48) hours of any impoundment, the department shall serve the owner or keeper with a notice of impoundment. The notice shall contain a description of the animal, a brief description of the facts and circumstances leading to the impoundment, and the charge or charges being filed. The notice shall be personally served or served by first-class or certified mail and shall be posted on the owner or keeper's property.

E. In lieu of impounding, the department may permit the animal to be confined at the owner's or keeper's expense in a kennel or veterinary facility approved by the department or at the owner's or keeper's residence provided that:

1. The animal is not removed from the kennel, veterinary facility, or residence without the prior written approval of the department; and

2. The animal shall be available for observation and inspection by an animal control officer or a police officer or their authorized representatives. The department shall specify to the owner or keeper the exact way the animal is to be restrained while awaiting the hearing.

3. The animal may be photographed for identification purposes.

F. If there is no reasonable method available to determine ownership of the animal, the animal shall be considered a stray.

6.28.060 Hearing procedures.

A. If a police officer or animal control officer determines that there is probable cause to believe that an animal is potentially dangerous or dangerous or that the owner or keeper of an animal has violated any conditions previously imposed by a hearing officer in relation to a declaration that the animal is potentially dangerous or dangerous, the city manager, or designee, shall serve as a hearing officer to conduct a hearing to determine whether the animal is a potentially dangerous or dangerous animal or whether the owner or keeper has violated any conditions.

B. If the owner or keeper does not contest the charges alleged, the owner or keeper may waive the right to a hearing.

C. In the event an animal has been impounded or confined pending a hearing, the hearing shall be conducted within thirty (30) calendar days of the impoundment or confinement. Failure to hold the hearing within thirty (30) calendar

days shall result in an automatic dismissal of the charges; provided, however, that evidence of the underlying acts or behavior of the animal may be used in a subsequent proceeding.

D. The hearing shall be held not less than five (5) business days nor more than ten (10) business days from the service of the notice of the hearing. The department shall serve the owner or keeper of the animal with a notice containing a description of the animal, a brief statement of the charges and the facts and circumstances supporting the charges, and the date, time, and place of the hearing. The notice shall be accompanied by a copy of this chapter. Service shall be by first-class mail, certified mail, or personal service. Except as provided in this chapter, the hearing shall be conducted in accordance with the provisions of chapter 6.48.

E. After a hearing, the hearing officer may declare any animal to be potentially dangerous or dangerous and determine the appropriate disposition of the animal.

F. In making a determination that an animal is or is not potentially dangerous or dangerous, evidence of the following shall be considered if available:

1. Any previous history of the animal attacking, biting, or causing injury to a human being or other domestic animal or livestock;

2. The nature and extent of injuries inflicted and the number of victims involved;

3. The place where the bite, attack, or injury occurred;

4. The absence or presence of any provocation for the bite, attack, or injury;

5. The extent to which property has been damaged or destroyed;

6. Whether the animal exhibits any characteristics of being trained for fighting or attacking or there exists other evidence of such training;

7. Whether the animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or domestic animals;

8. Whether the animal can be effectively trained or retrained to change its temperament or behavior;

9. The manner in which the animal has been maintained by its owner or keeper;

10. Any other relevant evidence concerning the maintenance of the animal;

11. Any other relevant evidence regarding the ability of the owner or keeper, or the department, to protect the public safety in the future if the animal is permitted to remain in the city.

G. Within ten (10) calendar days after the hearing, the owner or keeper of the animal shall be notified in writing of the determination and orders issued by the hearing officer, either personally or by pre-paid, first class mail. The notice of determination shall include the following information:

1. A determination of whether or not the animal is potentially dangerous or dangerous;

2. A brief summary of facts supporting the determination;

3. An order to destroy the animal, release the animal with conditions, or release the animal without conditions;

4. Advisement of appeal rights.

H. The decision of the hearing officer shall be final. If any party to the hearing contests the hearing officer's determination, he or she may, within five (5) calendar days of the receipt of the notice of determination, appeal the decision by filing an action in the Superior Court of Solano County and serving the city manager with a notice of appeal.

6.28.070 Disposition of dangerous animals.

A. If the hearing officer finds that an animal is so dangerous that it would constitute an unreasonable danger to human beings, domestic animals, or livestock even with reasonable conditions upon release, the hearing officer may order the animal to be destroyed. This remedy is in addition to all other remedies and shall not limit or restrict the right of any person, including the city attorney, to commence a proceeding under California Civil Code section 3342.5, or its successor, to have the animal destroyed.

B. If the hearing officer finds that the animal is potentially dangerous or dangerous, the hearing officer may require the owner or keeper of the animal, as a condition of the release of the animal from confinement or impoundment, to comply with any or all of the following conditions:

1. Immediately register the animal with the department. The fee for a permit to keep one dangerous animal shall be fifty dollars ($50.00) for a twelve (12) month term, and the fee for each additional dangerous animal shall be twenty-five dollars ($25.00). The permit expires at the end of each term and is renewable.

2. Keep the animal securely confined on its premises in a locked enclosure approved by the department in its sole and absolute discretion. The structure must have secure sides and top composed of nine-gauge galvanized steel affixed to a concrete foundation. It must be locked with a key or a combination lock when holding animals. The structure must be adequately lighted, ventilated, and kept in a clean and sanitary condition, and it must comply with all building and zoning regulations.

3. Keep the animal securely muzzled, leashed, and under the control of a person eighteen (18) years or older, and who is physically capable of restraining the animal when it is not confined in a secure pen.

4. Spay or neuter the animal by a licensed veterinarian and present proof to the animal control officer.

5. Provide and maintain financial responsibility for injuries to the public by obtaining and showing proof of liability insurance in a form and amount considered acceptable under the circumstances by the hearing officer. The insurance policy shall clearly state that the insurance cannot be canceled, suspended, reduced, or allowed to expire unless thirty (30) calendar days written notice is first given to the department.

6. Immediately inform the local postmaster, utility company meter readers, and anyone else who lawfully and regularly comes onto the property of the animal's status as a potentially dangerous or dangerous animal and to inform the department in writing prior to moving the animal to any new location within or outside the city or if the animal dies.

7. Display in a prominent place on the property a sign easily

readable by the public, using the words "Beware of Dangerous Animal" in letters at least three (3) inches high.

8. All dangerous dogs shall receive a microchip and permanently wear a "Dangerous Dog" tag. The owner or keeper of the dog shall pay for the microchip and tag. The department shall maintain on file the assigned microchip and tag numbers. The owner or keeper shall immediately notify the department if the tag is lost or stolen and shall pay for a replacement. Failure to report the lost or stolen tag or to replace it shall constitute a misdemeanor.

9. Pay the reasonable costs for the hearing incurred by the city and its officials, not to exceed one thousand dollars ($1,000.00).

10. Take any other reasonable steps to prevent injuries to the public, domestic animals, livestock, or property.

In addition, if the hearing officer orders the animal released with conditions, the owner or keeper of the animal shall have thirty (30) calendar days from the receipt of the written disposition to complete any conditions imposed by the hearing officer and to demonstrate such compliance to the department. The hearing officer may grant a written extension of time for compliance not to exceed an additional thirty (30) calendar days. The owner or keeper of the animal must, within thirty (30) calendar days from the receipt of the written disposition, provide the department with a minimum of two (2) color photographs of the animal that clearly shows its color and size. No potentially dangerous or dangerous animal shall be kept on a porch, patio, or in any part of a house or structure that would allow the animal to escape. No dangerous animal may be kept in a house or structure when the windows are open or screen doors are the only obstacle preventing the animal from leaving the premises.

C. If the hearing officer determines that the animal is neither potentially dangerous nor dangerous, the animal shall be returned to the owner as soon as is practicable after receipt of the hearing officer's notice of determination. If the animal is unlicensed, the owner or keeper shall be cited for failure to obtain a license.

6.28.080 Sale or transfer restrictions.

A. No person shall sell or transfer a potentially dangerous or dangerous animal to any person within the city, unless the recipient permanently resides with the owner or keeper or the owner or keeper has received prior written approval of the director.

B. The owner or keeper of a potentially dangerous or dangerous animal shall not sell or transfer the animal to any person outside the city or otherwise remove the animal from the city without the prior written approval of the director.

C. No person shall bring into the city any animal designated or registered as a potentially dangerous, dangerous, or vicious animal in any other jurisdiction within the United States without the prior written approval of the director.

6.28.090 Enforcement and penalties.

A. It shall be unlawful for an owner or keeper not to comply with the conditions imposed by a hearing officer or any other requirements imposed by this chapter. If a failure to comply occurs, the animal shall be subject to immediate

seizure and impoundment by the department. The department may additionally order the removal of the animal from the city or seek its destruction if necessary. No animal may be destroyed under this section until ten (10) calendar days after the owner or keeper has been served with written notice from the hearing officer that the animal will be destroyed. The destruction order shall be stayed if within the ten (10) calendar days the owner or keeper:

1. Demonstrates to the satisfaction of the hearing officer compliance with the conditions imposed and this chapter; or

2. Files a petition to stay destruction of the animal in the Superior Court of Solano County and serves an endorsed filed copy of the petition on the city manager.

If the owner or keeper of the animal does not take the action described in subsection (1) or (2), the hearing officer may, without further notice, order the animal to be destroyed. The destruction order notice shall be served either personally or by pre-paid first class mail on the owner or keeper and a copy posted on the property.

B. Any person who violates the provisions of this chapter shall, upon conviction in the Superior Court of Solano County, be fined not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00). The fine shall be paid to the department for the purpose of defraying the cost of implementing this chapter. The court may also impose a jail term not to exceed thirty (30) calendar days.

C. Any person convicted of violating the provisions of this chapter shall be prohibited from owning or keeping within the county the same type of animal for three (3) years from the date of conviction.

D. The provisions of this article may be enforced by the department or by any law enforcement agency, fire department, or other authorized representative of the city.

E. The costs of abating a potentially dangerous or dangerous animal declared to be a public nuisance may be recovered from the owner or keeper as provided by state law.

F. The penalties and remedies in this article are not exclusive but cumulative with all other remedies at law or equity.

6.28.100 Exemptions. The provisions of this article shall not apply to:

A. Any dog assisting a police officer or deputy sheriff engaged in law enforcement duties; or

B. Any guide dog for the blind or physically disabled while performing its services; or

C. Any animal shelter owned, operated, or maintained by the department.

6.28.110 Removal of designation. The owner or keeper of a dangerous animal may petition the city manager or designee for a hearing to remove the potentially dangerous or dangerous determination if, for a period of three (3) years following that determination, the animal has not been involved in any incidents of the type which led to the determination. A hearing shall be held within thirty (30) calendar days of receipt of the written petition. Within ten (10) calendar days after

the hearing, the owner or keeper of the animal shall be notified in writing of the hearing officer's determination.

Chapter 6.32

ANIMAL KEEPING

Sections:

6.32.010 Proper care of animals.
6.32.020 Compliance with zoning requirements.
6.32.030 Keeping household animals.
6.32.040 Keeping birds, fowl and rabbits.
6.32.050 Keeping pigs and livestock.
6.32.060 Bee keeping prohibited.
6.32.070 Animal offspring.
6.32.080 Animal keeper permit required for additional animals.
6.32.090 Prohibited animals.
6.32.100 Animals not classified.
6.32.110 Sales or gifts of animals.
6.32.120 Animal in unattended vehicle.
6.32.130 Rabies suppression, control and quarantine.

6.32.010 Proper care of animals.

A. Any person who harbors any animal within the city shall at all times supply the same with sufficient amounts of food and water or other liquid generally accepted as standard for the age and type of the animal.

B. Any person who harbors any animal within the city shall at all times supply the same with appropriate housing which is safe, sanitary and generally accepted as standard for the age and type of the animal, and shall remove excreta and manure therefrom every day, or as often as is necessary so as not to become a nuisance to any person in the neighborhood.

6.32.020 Compliance with zoning requirements. Notwithstanding any other provision of this chapter, it is unlawful for any person to keep or maintain or cause to be kept or maintained any animal, unless the keeping of such is permitted in the particular district as provided in the city's zoning ordinance.

6.32.030 Keeping household animals.

A. For single-family detached residences in a residential district, a maximum of three dogs, three cats and other similar household animals are permitted, where the total number of such animals in one place of residence shall not exceed ten.

B. For multi-family residences, a maximum of one dog, two cats and other similar household animals are permitted, where the total number of animals in one place of residence shall not exceed five.

C. Household animals being fostered as a part of a non-profit agency's

program shall not be included for the purposes of determining the number of household animals. The foster program shall be registered with the department and an individual foster animal shall be fostered in a particular residence for a period of no more than six months.

6.32.040 Keeping birds, fowl and rabbits.

A. It is unlawful to keep birds, fowl and rabbits in the city, except:

1. In a single-family detached residences in a residential district, a maximum combination of twenty birds or rabbits per legal lot are permitted provided all of them are kept at least 20 feet from any neighboring house built or used for human habitation. In no case shall more than ten chickens or other fowl be permitted.

2. For multi-family residences, a maximum total combination of 6 birds, fowl or rabbits per legal lot is permitted provided that all of them are kept at least 20 feet from any neighboring house built or used for human habitation.

B. Roosters or other fowl which constitute a nuisance by their loud cries, are not allowed in any zone.

C. No person owning, having an interest in, harboring or having charge, control, or custody of any rabbit, bird, and/or fowl, shall permit, allow, or suffer any animal to run or fly at large to go upon the premises of any person in the city.

D. Birds, fowl and rabbits being fostered as a part of a non-profit agency's program shall not be included for the purposes of determining the number of household animals. The foster program shall be registered with the department and an individual foster animal shall be fostered in a particular residence for a period of no more than six months.

6.32.050 Keeping pigs and livestock.

A. It is unlawful to keep any pig, hog, sheep, ox, horse, bull, steer, cow, burro, jack, jenny, mule, goat, or similar animal in the city except that such animals may be kept in an O-S district subject to the provisions of 17.70.300.

B. No person owning, having an interest in, harboring or having charge, control, or custody of any pig, hog, sheep, ox, horse, bull, steer, bull, cow, horse, burro, jack, jenny, mule, goat, or similar animal shall:

1. Cause or permit any such animal to be pastured, herded, staked, or tied, in any street, lane, alley, park or other public place, except the city may allow goats on public property for weed reduction or abatement; or

2. Tie, stake, pasture, or permit the tying, staking or pasturing of any such animal upon any private property within the city without the consent of the property owner or occupant of such property, or in such a way as to permit such animal to trespass upon any street or public place or upon any such private property; or

3. Permit any such animal to be or remain during the night time secured by a stake, or secured in any manner other than by enclosing the animal in a pen, corral, barn or other such sufficient enclosure.

6.32.060 Bee keeping.

A. It shall be unlawful for any person to have, keep, or maintain any apiary

within the city in any zone district except the O-S district. The provisions of this section shall not apply to the keeping of bees within an educational institution for study or observation or within a physician's office or laboratory for medical research, treatment, or other scientific purposes provided the bees are not permitted to fly at large.

B. All colonies and hives located within the city shall be registered with the county and properly maintained in accordance by State law.

C. No more than three colonies of bees may be maintained on a single lot or parcel in a permitted zone. Said apiary(ies) shall be located within ten feet of any rear or side property line when the adjoining property is occupied or within forty feet of the front property line, which property line for purposes of this subsection shall be defined as the sidewalk boundary line furtherest from the street.

6.32.070 Animal offspring. The offspring of animals shall not be counted toward the minimum allowed number until they are four months old.

6.32.080 Animal keeper permit required for additional animals. Every person owning or having custody of animals in excess of the number permitted by section 6.32.030 and 6.32.040 of this chapter shall procure an animal keeper permit from the director as set forth at chapter 6.44 of this title.

6.32.090 Prohibited animals. The director may prohibit those animals which are permitted by this chapter if findings are made that the keeping of such animals create an unsanitary condition or other public nuisance. The director's determination to prohibit any animal permitted by this chapter may be appealed to a hearing officer at an administrative hearing conducted pursuant to chapter 6.48 of this title.

6.32.100 Animals not classified. Any animal not specifically classified within this chapter shall be classified by the director based upon a determination as to the probable negative impact of the animal upon the health, safety and general welfare of the community.

6.32.110 Sales or gifts of animals.

A. No person under the age of 18 shall place any dog, cat, puppy or kitten on public display for the purpose of sale, offer for sale, barter or give-away upon any street, sidewalk, parking lot, shopping center walkway or other public place, and no transfer of any such animal shall be made in any such place to any person under the age of 18.

B. No person shall display, sell, offer for sale, barter or give-away any rabbit, baby chick, duckling or other fowl upon any street, sidewalk, parking lot, shopping center walkway or other public place, and no transfer of any such animal shall be made in any such place to any person.

6.32.120 Animal in unattended vehicle.

A. It is unlawful for any person to leave an animal in an unattended vehicle without adequate ventilation or in such a manner as to subject the animal to

extreme temperatures which may adversely affect the animal's health or welfare.

B. Animal control officers are authorized to remove and take into custody and impound any animal found in an unattended vehicle who appears to be suffering the effects of exposure to extreme temperatures and to place all such animals taken into custody in the city animal shelter if the owner cannot be, upon initial contact, identified and contacted.

6.32.130 Rabies suppression, control and quarantine.

A. If it shall appear to the director that any animal has rabies, the director may destroy such animal forthwith pursuant to this chapter, or may hold such animal for further examination or observation for such time as the director may determine to be appropriate.

B. Whenever any animal has been bitten by an animal which has rabies or which exhibits any symptoms of rabies, or which is suspected of having or having been exposed to rabies, the owner or the person having custody of such bitten animal shall immediately notify the director, and shall immediately confine the animal within a secure enclosure and maintain that confinement until it is established that such animal does not have rabies. The director shall have the power to quarantine such animal, or impound it at the owner's expense if the owner or person having custody of such animal shall fail, refuse, or is unable, in the opinion of the director, to adequately confine such animal immediately, or in the event the owner of such animal is not readily accessible.

C. Whenever it is shown that any animal has bitten any person, the owner shall, upon the order of the director, quarantine such animal and keep it confined at the owner's expense for a minimum period of ten (10) days for dogs and cats and fourteen (14) days for all other animals, and shall allow the director to inspect and examine such animal at any time during such period of quarantine. Animals quarantined pursuant to this subsection shall not be removed from the premises upon which such animal is quarantined without permission of the director. The director is authorized to impound any animal at the owner's expense in the event the owner or person having custody of such animal fails or refuses or is unable to so confine such animal. Animals shall remain quarantined until notice is given by the director that such quarantine is terminated.

D. The director may, in her or his discretion, post an appropriate sign on any premises where an animal is quarantined, to warn the public of such quarantine. It is unlawful for any person to remove such a sign without the permission of the director.

E. Whenever the director determines that an epidemic of rabies or any animal disease which threatens the public health or safety exists, or is threatened; he or she shall have the authority to take such measures as may be reasonably necessary to prevent the spread of the disease, including but not limited to the declaration of quarantine against any or all animals in any area of the city, for a period of not more than one hundred twenty (120) days. An additional or extended quarantine period may be declared by the city council if such period shall be deemed necessary by the director for the protection and preservation of the public health, peace and safety. Any quarantine declared pursuant to this subsection, other than as restricted in this chapter, shall be upon such conditions as the director may

determine.

Chapter 6.36

FERAL, WILD AND UNDOMESTICATED ANIMALS

Sections:

6.36.010 Keeping wild animal prohibited.
6.36.020 Prohibited feeding of certain wildlife.
6.36.030 Unlawful tampering with traps.
6.36.040 Wildlife protected.
6.36.050 Feral cat colonies.
6.36.060 Colony caretaker responsibilities.

6.36.010 Keeping wild animal prohibited. No person shall keep or maintain any wild animal within the boundaries of the city.

6.36.020 Prohibited feeding of certain wildlife.

A. It shall be unlawful for any person to feed or in any manner provide food for nondomesticated mammalian predators such as coyotes (Canis latrans). This section shall also include a ban on feeding or providing food to feral cats, raccoons, foxes, skunks, opossums, and squirrels.

B. Exceptions:

1. An owner in legal possession of a wild or nondomesticated animal that is kept under a valid permit issued by the city pursuant to this chapter; and

2. When a person provides food and water to a trapped, injured or unweaned wild or nondomesticated animal during the time department is notified and the animal has been picked up.

3. When a feral cat colony caretaker provides food and water to a feral cat colony registered with the department in accordance with section 6.36.050.

6.36.030 Traps.

A. No person shall set or use any spring steel trap, No. 1 or larger, in the city. This section shall not prohibit the use of gopher traps.

B. It is unlawful to willfully or recklessly disturb, move, obstruct, or damage any humane trap placed and set by the department or any official, employee or representative of the city.

6.36.040 Wildlife protected.

A. Except for trappers licensed by the state or federal government, no person shall hunt, shoot, kill, or molest any species of wildlife or molest or damage the nest or eggs of any wildlife within the city, except any poisonous reptile or insect. A federal trapper is required for trapping possum or skunk.

B. In the event that the city council determines that a species of wildlife

has become so numerous in any particular location or area as to constitute a public nuisance or a particular wild animal is a menace to any person's health, safety or property, the city council may order the species or animal involved either destroyed or otherwise controlled.

6.36.050 Feral Cat Colonies.

A. The director, in order to encourage the stabilization of the feral cat population in the city and to protect wildlife, shall establish a feral cat colony program for feral cats in the industrial zones of the city. In no event shall a feral cat colony be permitted for an area next to an environmentally sensitive area since the feral cats may feed on other animals living in the area. The fee to register a feral cat colony shall not exceed $100.

B. The director, in order to encourage the stabilization of the feral cat population in the city, may:

1. Trap any feral cat in a humane manner;

2. Have the cat surgically sterilized, ear-tipped, and vaccinated against rabies by a licensed veterinarian; and

3. Release the cat to animal shelter or local humane society for adoption or other disposition in accordance with law, or to a colony caretaker who will maintain the cat as part of a managed colony of feral cats.

4. Impound feral cats in violation of this chapter and dispose of the cats in accordance with this title. Any feral cat impounded by the department that bears an appropriate ear-tipping indicating it belongs to a managed colony may, at the discretion of the director, be returned to its managed colony unless illness or injury present an imminent danger to public health or safety.

6.36.060 Colony caretaker responsibilities.

A. Colony caretakers shall abide by standard guidelines developed by the department regarding the provision of food, water, shelter and veterinary care for cats within the managed colony and shall obtain the property owner's permission to register the colony.

B. Colony caretakers shall have a licensed veterinarian evaluate the health of all trapped free-roaming cats. Seriously ill or injured cats with no reasonable prognosis for humane rehabilitation for survival outdoors will be humanely euthanized by the colony caretakers.

C. A violation of this section shall be cited as an infraction. The fine imposed for the first such violation shall not be less than twenty-five dollars ($25.00). Subsequent or continued violations will result in caretaker's removal from management of the managed colony, or the designee's removal from the program.

Chapter 6.40

COMMERCIAL ANIMAL ESTABLISHMENTS

Sections:

6.40.010 Mandatory permitting of commercial animal establishments.

6.40.020 Application.
6.40.030 Investigation.
6.40.040 Notice of action
6.40.050 Commercial animal establishment fee.
6.40.060 Numerical limitation.
6.40.070 Regulations relating to animal establishments.
6.40.080 Permit nontransferable.
6.40.090 Expiration and renewal of permit.
6.40.100 Revocation of permit.
6.40.110 Display of permit.
6.40.120 Emergency information.
6.40.130 Kennel dogs exempt for individual license tag requirements; identification tag required.

6.40.010 Mandatory permitting of commercial animal establishments.

A. No person shall conduct or operate within the city any commercial animal establishment or operate as an animal dealer without first obtaining a commercial animal establishment permit from the director issued pursuant to this chapter.

B. Any person desiring to conduct or operate within the city any commercial animal establishment or operate as an animal dealer shall first make application to the city's community development department for a written determination that the proposed animal establishment is in compliance with the applicable provision of the then-current zoning ordinance of the city. Where an establishment is sought to be operated upon leased or rented premises, a letter of consent from the owner of the premises shall be submitted to the community development department at the time the application for a written determination is submitted.

C. Within thirty (30) days of the issuance of a written compliance determination from the city's community development department, any person desiring to conduct or operate within the city a commercial animal establishment shall make application to the director for a commercial animal establishment permit.

6.40.020 Application. Each application for a commercial animal establishment permit shall be in writing upon a form to be furnished by the director or a designee. The application form shall contain such information as may reasonably be required by the director for the purposes of enforcement of this chapter, including but not limited to, the current home telephone number of the caretaker of the subject establishment, and another current telephone number for emergency use or messages when such caretaker is absent from the subject establishment. At the time of filing of the application for a commercial animal establishment permit, the applicant shall provide a copy of the community development department's written compliance determination.

6.40.030 Investigation.

A. Prior to the issuance of a commercial animal establishment, the director, or his or her designee, shall conduct an inspection of the intended business

location and facilities and prepare a report for inclusion with the application for an original permit or a renewal. A permit shall be issued to the applicant if the director or designee finds that:

1. The keeping of animals, or the conduct of operation of the business for which the permit is requested, at the place set forth in the application, will not violate any law or ordinance of the city, or any law of the state;

2. The keeping of animals, or the conduct or operation of the business for which the permit is requested, will not endanger the health, peace or safety of the community;

3. The premises and establishment where animals are to be kept satisfy the conditions set forth at section 6.40.070 of this chapter, and animals will not be subject to suffering, cruelty or abuse; and

4. The applicant has not had a similar permit revoked within one year prior to the application.

B. The director may impose such conditions in granting a permit as he or she may deem necessary to protect the public and may limit the term of such permit.

6.40.040 Notice of action. The applicant shall be notified in writing of the action of the director in either granting or denying the permit and, if the application has been denied, the notice shall advise the applicant of his or her right to appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48 of this title. Service of the notice may be made by personal service or by registered mail. If service is made by mail, it shall be deemed complete upon deposit in the United States Mail directed to the applicant at his or her latest address shown on the application.

6.40.050 Commercial animal establishment fee.

A. The fee for a commercial animal establishment permit shall be set by resolution of the city council and shall be paid to the city before a permit is issued.

B. Nonprofit corporations formed pursuant to the provisions of the California Corporations Code for the prevention of cruelty to animals, and which have furnished proof of such incorporation to the director shall not be required to pay a fee for an animal establishment permit. However, all other provisions of this chapter shall be applicable to any such nonprofit corporation. Each corporation claiming to be exempt from fees pursuant to this subsection shall, before issuance of any permit, agree in writing to indemnify and hold the city and its officers, employees and agents harmless from all liability arising out of the exercise of the permit.

6.40.060 Numerical limitation.

A. Notwithstanding any other provisions of this chapter, the director upon application for issuance or renewal of a commercial animal establishment permit may limit the number of animals which are to be kept or maintained on the permitted premises. A numerical limitation may also be imposed by the community development director when a land use approval is required for operation of the subject establishment.

B. At any time that there are more animals than a commercial animal establishment permit allows, the operator of any commercial animal establishment

shall obtain a new permit which allows the keeping of the greater number of animals. The former permit shall be canceled and a credit for the canceled permit fee shall be allowed on the new permit.

6.40.070 Regulations relating to animal establishments.

A. Every person who owns, conducts, manages or operates any animal establishment for which a permit is required shall comply with each of the following conditions:

1. Housing facilities for animals shall be structurally sound and shall be maintained in good repair to protect animals from injury and restrict entrance of other animals. In the case of animals kept outdoors, sufficient shade shall be provided to prevent overheating or discomfort from sun exposure. Animals kept outdoors shall also be provided with access to shelter to allow them to remain dry during inclement weather.

2. All animals and all animal buildings or enclosures shall be maintained in a clean and sanitary condition with sufficient light provided to permit routine observation of animals and proper cleaning of the facilities.

3. All animals shall be supplied with sufficient good and wholesome food and water as often as the feeding habits of the respective animals require.

4. Animal buildings and enclosures shall be so constructed and maintained as to prevent the escape of animals.

5. All reasonable precautions shall be taken to protect the public from the animals and animals from the public.

6. Every building or enclosure wherein animals are maintained shall be properly ventilated to prevent drafts and to remove odors. Heating and cooling shall be provided as required according to the physical needs of the animals.

7. All animal rooms, cages and runs shall be of sufficient size to provide adequate and proper housing for animals kept therein.

8. All dog runs shall be of concrete or other impervious material and provided with adequate drainage into an approved sewage disposal installation.

9. All animals shall be taken to a licensed veterinarian for examination and treatment if so ordered by the director.

10. Adequate and effective vector control shall be established and maintained at all times.

11. Every violation of applicable regulations shall be corrected within a reasonable time to be specified by the director.

12. Facilities shall be subject to unannounced inspections during regular business hours to insure compliance with the above regulations and any permit conditions.

B. Failure of an applicant for a permit to comply with any one of the foregoing conditions shall be deemed just cause for the denial of any permit, whether original or renewal.

6.40.080 Permit nontransferable.

A. A commercial animal establishment permit issued pursuant to the provisions of this chapter shall not be transferable.

B. The permit shall become void if the holder thereof changes the location

of his or her place of business or sells, assigns, transfers or otherwise disposes of such business or his or her interest therein for a period of thirty days or more.

6.40.090 Expiration and renewal of permit.

A. Any permit issued under this chapter shall expire at the end of the calendar year in which the permit is issued.

B. A commercial animal establishment permit issued under the provisions of this chapter shall be renewed within thirty (30) days after the expiration thereof. The procedure for the renewal of a permit shall be the same as for an original permit.

6.40.100 Revocation of permit.

A. Upon reaching the determination that a specific violation of this chapter and/or applicable statute, rule, code, regulation or permit condition warrants suspension, modification or revocation of a commercial animal establishment permit, the director or his or her designee shall prepare and serve a written notice of action recommendation upon the subject permittee.

B. The notice of action recommendation should include all of the following information:

1. The name and business address of the subject permittee;

2. A description of the code section(s) violated and/or the actions or conditions which warrant suspension, modification or revocation of the subject permit;

3. The action proposed (i.e., suspension, modification or revocation of the subject permit or license);

4. A description of any prior action taken by the director or the department to gain compliance with regards to the subject violation(s);

5. A description of the procedures involved in taking the proposed action, including the permittee's right to attend an administrative hearing on the proposed action; and

6. The name, title and telephone number of the director.

B. The director or his or her designee shall cause a copy of the notice of action recommendation to be provided to the subject permitee by causing a copy of the notice to be delivered to the permitee personally or by causing a copy of the notice to be delivered to the permitee via certified mail, postage prepaid, return receipt requested, and addressed to permitee at the address shown on the permit.

C. Proof of service of the notice of action recommendation shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the director or his or her designee.

D. As soon as practicable after service of the notice of action recommendation, the director or his or her designee shall submit a copy of the notice of action recommendation to the city clerk who, as soon as practicable after receiving said notice, shall fix a date, time and place for the hearing to consider suspension, modification or revocation of the subject permit or license. Such date shall be not less than ten (10) calendar days and not more than thirty (30) calendar days from the

date the notice was submitted to the city clerk.

E. A hearing on the notice of action recommendation shall thereafter be noticed and conducted in accordance with the procedures set forth at chapter 6.48 of this title.

F. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of the notice of action recommendation and a staff report, which should include a description of the violations and any actions taken by the subject permitee subsequent to the service of the notice, a record of conversations or correspondence between the director, the department and the permittee concerning the violations and/or the notice of action recommendation.

G. If a commercial animal establishment permit is revoked for cause, the director shall not accept a new application by the same person for the same activity at the same location less than one year after such denial or revocation, unless the applicant affirmatively shows and the director finds, by inspection and/or investigation, that the grounds upon which the first application was denied or the permit was revoked no longer exist. On revocation of a permit, no part of the fee is refundable.

H. Notwithstanding any other provision in this section, prior to the holding of the administrative hearing, the director may, for good cause, revoke, suspend or modify any commercial animal establishment permit for a period not to exceed thirty (30) days in the event it is reasonably necessary to protect against an immediate threat to the health or safety of the public or the animals held on the subject premises.

6.40.110 Display of permit. All commercial animal establishment permits issued under the provisions of this chapter shall be displayed in a conspicuous place on the permitted premises.

6.40.120 Emergency information. Each commercial animal establishment shall have posted, in such a place as to be legible from the exterior of the building, the names, addresses and telephone numbers of persons to be notified in case of emergency.

6.40.130 Kennel dogs exempt for individual license tag requirements; identification tag required.

A. Where a commercial animal establishment permit has been issued to a dog kennel and is in effect, the dogs contained in such dog kennel shall be exempt from the requirements of individual license tags as provided by section 6.12.020 of this title.

B. Any dog exempt from the requirements of an individual license tag shall wear an identification tag that shall be securely affixed to a collar, harness, or other device which shall be at all times worn by such dog. The identification tag shall identify the name, address and telephone number of the kennel operator.

Chapter 6.44

ANIMAL KEEPER PERMIT

Sections:

6.44.010 Animal keeper permit required.
6.44.020 Animal keeper application.
6.44.030 Investigation.
6.44.040 Notice of action.
6.44.050 Animal keeper permit fee.
6.44.060 Numerical limitation.
6.44.070 Regulations relating to keeping animals.
6.44.080 Expiration and renewal of permit.
6.44.090 Permit nontransferable.
6.44.100 Revocation of permit.

6.44.010 Animal keeper permit required. To allow the placement of animals in temporary foster homes or to allow small hobby businesses involving animals, any person owning or having custody of animals in excess of the number permitted by section 6.32.030 and 6.32.040 of this title may make application to the director for an animal keeper permit issued pursuant to this chapter.

6.44.020 Animal keeper application. Each application for an animal keeper's permit shall be in writing upon a form to be furnished by the director or a designee. The application form shall contain such information as may reasonably be required by the director for the purposes of enforcement of this chapter, including but not limited to, the address and home telephone number of the applicant and the number and general description of all animals for which the permit is sought.

6.44.030 Investigation.

A. Prior to the issuance of an animal keeper permit, the director, or his or her designee, shall conduct an inspection of the applicant's premises where the permitted animals are intended to be kept and prepare a report for inclusion with the application for an original permit or a renewal. A permit shall be issued to the applicant if the director or designee finds that:

1. The keeping of animals, or the conduct of operation of the business for which the permit is requested, at the place set forth in the application, will not violate any law or ordinance of the city, or any law of the state;

2. The keeping of animals, or the conduct or operation of the business for which the permit is requested, will not endanger the health, peace or safety of the community;

3. The proposed site is adequate in size and shape to accommodate the number and type of animals for which the permit is requested without harm to the animals or material detriment to the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site.

4. The premises and establishment where animals are to be kept satisfy the conditions set forth at section 6.40.070 of this chapter, and animals will not be subject to suffering, cruelty or abuse; and

5. The applicant has not had a similar permit revoked within one (1) year prior to the application.

B. The director may impose such conditions in granting a permit as he or she may deem necessary to protect the public and may limit the term of such permit.

6.44.040 Notice of action. The applicant shall be notified in writing of the action of the director in either granting or denying the permit and, if the application has been denied, the notice shall advise the applicant of his or her right appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48 of this title. Service of the notice may be made by personal service or by registered mail. If service is made by mail, it shall be deemed complete upon deposit in the United States mail directed to the applicant at his or her latest address shown on the application.

6.44.050 Animal keeper permit fee. The fee for an animal keeper permit shall be set by resolution of the city council and shall be paid to the city before a permit is issued.

6.44.060 Numerical limitation.

A. Notwithstanding any other provisions of this chapter, the director, upon application for issuance or renewal of an animal keeper permit, may limit the number of animals which are to be kept or maintained on the permitted premises.

B. At any time that there are more animals than an animal keeper permit allows, the permittee shall obtain a new permit which allows the keeping of the greater number of animals. The former permit shall be canceled and a credit for the canceled permit fee shall be allowed on the new permit.

6.44.070 Regulations relating to keeping animals.

A. Every person to whom an animal keeper permit is issued shall comply with each of the following conditions:

1. Housing facilities for animals shall be structurally sound and shall be maintained in good repair to protect animals from injury and restrict entrance of other animals. In the case of animals kept outdoors, sufficient shade shall be provided to prevent overheating or discomfort from sun exposure. Animals kept outdoors shall also be provided with access to shelter to allow them to remain dry during inclement weather.

2. All animals and all animal buildings or enclosures shall be maintained in a clean and sanitary condition with sufficient light provided to permit routine observation of animals and proper cleaning of the facilities.

3. All animals shall be supplied with sufficient good and wholesome food and water as often as the feeding habits of the respective animals require.

4. Animal buildings and enclosures shall be so constructed and maintained as to prevent the escape of animals.

5. All reasonable precautions shall be taken to protect the public from the animals and animals from the public.

6. Every building or enclosure wherein animals are maintained shall be properly ventilated to prevent drafts and to remove odors. Heating and

cooling shall be provided as required according to the physical needs of the animals.

7. All animal rooms, cages and runs shall be of sufficient size to provide adequate and proper housing for animals kept therein.

8. All animals shall be taken to a licensed veterinarian for examination and treatment if so ordered by the director.

9. Adequate and effective vector control shall be established and maintained at all times.

10. Every violation of applicable regulations shall be corrected within a reasonable time to be specified by the director.

B. Failure of an applicant for a permit to comply with any one of the foregoing conditions shall be deemed just cause for the denial of any permit, whether original or renewal.

6.44.080 Expiration and renewal of permit.

A. An animal keeper permit issued pursuant to the provisions of this chapter shall expire at the end of the calendar year in which the permit is issued.

B. An animal keeper permit issued pursuant to the provisions of this chapter shall be renewed within thirty (30) days after the expiration thereof. The procedure for the renewal of a permit shall be the same as for an original permit.

6.44.090 Permit nontransferable. An animal keeper permit issued pursuant to the provisions of this chapter shall not be transferable.

6.44.100 Revocation of permit.

A. Upon reaching the determination that a specific violation of this chapter and/or applicable statute, rule, code, regulation or permit condition warrants suspension, modification or revocation of an animal keeper permit, the director or his or her designee shall prepare and serve a written notice of action recommendation upon the subject permittee.

B. The notice of action recommendation should include all of the following information:

1. The name and business address of the subject permittee;

2. A description of the code section(s) violated and/or the actions or conditions which warrant suspension, modification or revocation of the subject permit;

3. The action proposed (i.e., suspension, modification or revocation of the subject permit or license);

4. A description of any prior action taken by the director or the department to gain compliance with regards to the subject violation(s);

5. A description of the procedures involved in taking the proposed action, including the permittee's right to attend an administrative hearing on the proposed action; and

6. The name, title and telephone number of the director.

C. The director or his or her designee shall cause a copy of the notice of action recommendation to be provided to the subject permitee by causing a copy of the notice to be delivered to the permitee personally or by causing a copy of the notice to be delivered to the permitee via certified mail, postage prepaid, return receipt requested, and addressed to permitee at the address shown on the permit.

D. Proof of service of the notice of action recommendation shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the director or his or her designee.

E. As soon as practicable after service of the notice of action recommendation, the director or his or her designee shall submit a copy of the notice of action recommendation to the city clerk who, as soon as practicable after receiving said notice, shall fix a date, time and place for the hearing to consider suspension, modification or revocation of the subject permit or license. Such date shall be not less than ten (10) calendar days and not more than thirty (30) calendar days from the date the notice was submitted to the city clerk.

F. A hearing on the notice of action recommendation shall thereafter be noticed and conducted in accordance with the procedures set forth at chapter 6.48 of this title.

G. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of the notice of action recommendation and a staff report, which should include a description of the violations and any actions taken by the subject permitee subsequent to the service of the notice, a record of conversations or correspondence between the director, the department and the permittee concerning the violations and/or the notice of action recommendation.

H. If an animal keeper permit is revoked for cause, the director shall not accept a new application by the same person for the same activity at the same location less than one year after such denial or revocation, unless the applicant affirmatively shows and the director finds, by inspection and/or investigation, that the grounds upon which the first application was denied or the permit was revoked no longer exist. On revocation of a permit, no part of the fee is refundable.

I. Notwithstanding any other provision in this section, prior to the holding of the administrative hearing, the director may, for good cause, revoke, suspend or modify any animal keeper permit for a period not to exceed thirty (30) days in the event it is reasonably necessary to protect against an immediate threat to the health or safety of the public or the animals held on the subject premises.

Chapter 6.48

ADMINISTRATIVE HEARINGS

Sections:

6.48.010	Purpose.
6.48.020	Duties of administrative hearing officer.
6.48.030	Limitations on authority of hearing officer.
6.48.040	Request for hearing and hearing officer.
6.48.050	Scheduling of administrative appeals hearing; notice of administrative appeals hearing.
6.48.060	Service of notice of administrative appeals hearing.

6.48.070 Proof of service of hearing notice.
6.48.080 Report and recommendation.
6.48.090 Admissibility of evidence.
6.48.100 Failure to attend administrative appeals hearing.
6.48.110 Rights of parties at appeals hearing.
6.48.120 Decision of the hearing officer.
6.48.130 Duty to prepare and serve decision and compliance order.
6.48.140 Time in which to serve decision and compliance order.
6.48.150 Content of decision and compliance order.
6.48.160 Service of decision and compliance order.
6.48.170 Effective date.
6.48.180 Failure to comply with decision and compliance order.

6.48.010 Purpose.

A. Unless otherwise provided by this title, any appeal filed by person aggrieved by an administrative decision made pursuant to this title shall be conducted in accordance with the provisions of this chapter.

B. Any administrative hearing of the city concerning animals which is required to be held by state law shall be conducted in accordance with the provisions of this chapter.

6.48.020 Duties of administrative hearing officer. The administrative hearing officer ("hearing officer") shall conduct all administrative appeal hearings of any timely and properly filed appeal from any administrative decision made under this title. The hearing officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties at or before the scheduled administrative appeals hearing and render all decisions and findings in writing to the appellant with a duplicate copy to the director.

6.48.030 Limitations on authority of hearing officer. The hearing officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The hearing officer shall consider at the hearing on the appeal only those matters or issues which were specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The hearing officer shall not have the authority to waive any requirements of the Municipal Code, zoning ordinance and/or any applicable statutes, rules, codes or regulations.

6.48.040 Request for hearing and hearing officer.

A. Within ten (10) days business days of a decision, an affected party may appeal the decision by filing a written appeal specifying the reasons for the appeal and paying the appeal fee established by council resolution.

B. Within three (3) days after the director has determined that a timely and complete appeal has been filed, the director shall request appointment of a hearing officer in accordance with city policy.

6.48.050 Scheduling of administrative appeals hearing; notice of

administrative appeals hearing. As soon as practicable, but allowing sufficient time for providing notice of the hearing as provided by this title, the hearing officer shall fix a date, time and place for the hearing of the appeal and shall instruct the director of the same. The director or his or her designee shall prepare a notice of administrative appeals hearing ("hearing notice"), which shall be in substantially the same form as follows: "You are hereby notified that a hearing will be held before the administrative hearing officer at _____ on the ____ day of _____, _____, at the hour of _____upon the _____ served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you."

6.48.060 Service of notice of administrative appeals hearing. The director shall cause a copy of the hearing notice to be provided to each appellant either by causing a copy of said notice to be delivered to each appellant personally or by causing a copy of said notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal.

6.48.070 Proof of service of hearing notice. Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the director.

6.48.080 Report and recommendation. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of all department documents pertaining to the subject violations, a staff report and any evidence of the violation(s).

6.48.090 Admissibility of evidence. At the appeals hearing, the hearing officer shall hear any evidence offered either in support of appellant's claim or in support of the administrative decision which is the subject of the appeal, provided such evidence is relevant to the issues of the hearing. The hearing officer has the authority to determine the relevance of any evidence to the hearing. The hearing officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

6.48.100 Failure to attend administrative appeals hearing. If appellant fails to attend the scheduled appeals hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

6.48.110 Rights of parties at appeals hearing. Each party appearing at the hearing shall have the following rights: (a) to call and examine witnesses; (b) to introduce documentary and physical evidence; (c) to cross-examine opposing

witnesses; (d) to impeach any witness regardless of which party first called the witness to testify; (e) to rebut evidence; and (f) to be represented by anyone who is lawfully permitted to do so.

6.48.120 Decision of the hearing officer.

A. Following an appeal, the hearing officer may decide to uphold the administrative decision or overturn such decision, in whole or in part. In the event the hearing officer determines to overturn the decision in whole, the appellant shall not be required to pay any administrative fines imposed as a result of said administrative decision.

B. Following an appeal, the hearing officer may impose upon appellant such conditions for the keeping of animals as are permitted by State or local law.

6.48.130 Duty to prepare and serve decision and compliance order. The hearing officer shall prepare and serve a written notice of decision and compliance order ("decision and compliance order") upon the appellant and the director following the appeals hearing. The decision of the hearing officer shall be final and not appealable.

6.48.140 Time in which to serve decision and compliance order. The hearing officer shall serve the decision and compliance order on each appellant within thirty (30) calendar days from the date the hearing is deemed closed. The hearing officer shall also provide or cause to be provided a copy of the decision and compliance order to the director.

6.48.150 Content of decision and compliance order. The decision and compliance order for a notice and order shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and a compliance order which shall specifically describe the actions which shall be required to be taken to remedy the violations indicated in the decision and compliance order and shall require the actions to be completed within a specified time period and by a specified deadline. The decision and compliance order shall further require the recipient of the notice and order to pay all applicable administrative fines no later than ten (10) days from the date of issuance of the notice of decision and compliance order. The amount of the fine for which the recipient shall be responsible shall be as set forth in the notice and order. Payment of the administrative fine shall be ordered to be made to the department unless otherwise directed by the director.

6.48.160 Service of decision and compliance order. The hearing officer shall cause a copy of the decision and compliance order to be provided to each appellant either by causing a copy of said decision and compliance order to be delivered to each appellant personally or by causing a copy to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. A copy of the decision and compliance order shall also be provided to the director.

6.48.170 Effective date. The effective date of the hearing officer's decision and compliance order shall be as stated therein.

6.48.180 Failure to comply with decision and compliance order. It shall be unlawful to fail, neglect or refuse to obey a final decision and compliance order.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

Section 5.

Repeal of Conflicting Provisions. All the provisions of the Benicia Municipal Code as heretofore adopted by the City of Benicia that are in conflict with the provisions of this ordinance are hereby repealed.

*****

On motion of Council Member , seconded by Council Member , the foregoing ordinance was introduced at a regular meeting of the City Council on the 20th day of November, 2007 and adopted at a regular meeting of the City Council held on the day of , 2007, by the following vote:

Ayes:
Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

REDLINED ORDINANCE

ORDINANCE NO. 07-__ (Manual Redline)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING TITLE 6 (ANIMALS) PERTAINING TO ANIMAL REGULATION AND ADOPTING A COMPREHENSIVE ANIMAL CONTROL PROGRAM

WHEREAS, the City Council of the City of Benicia desires to establish standards for the care, ownership, licensing, treatment and impounding of animals maintained in the city in such a manner as to ensure that such animals will not endanger the health, peace and safety of the citizens of this city and which will ensure that animals are kept in a clean, sanitary condition and not subjected to suffering, cruelty or abuse.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BENICIA DOES ORDAIN as follows:

Section 1.

The contents of Title 6 (Animals) of the Benicia Municipal Code are hereby repealed in its entirety.

Section 2.

Section 8.20.130 (Animals and fowl) of Chapter 8.20 (Noise Regulations) of Title 8 (Health and Safety) of the Benicia Municipal Code is hereby repealed in its entirety.

Section 3.

Section 12.28.060 (Dogs) of Chapter 12.28 (Use of City Parks) of Title 12 (Streets, Sidewalks, and Public Places) of the Benicia Municipal Code is hereby repealed in its entirety.

Section 4.

A new title, Title 6 (Animal Control Regulations), is added to read as follows:

Title 6

ANIMAL CONTROL REGULATIONS

Chapters:

6.04 General Provisions.
6.08 Administration and Enforcement.
6.12 Licensing of Dogs.
6.16 Regulation of Dogs.

6.20 Animal Shelter and Impoundment.
6.24 Public Nuisance.
6.28 Dangerous Animals.
6.32 Animal Keeping.
6.36 Wild and Undomesticated Animals.
6.40 Commercial Animal Establishments.
6.44 Animal Keeper Permit.
6.48 Administrative Hearings.

Chapter 6.04

GENERAL PROVISIONS

Sections:

6.04.010 Purpose.
6.04.020 Definitions.
6.04.030 Prohibition of slaughtering.
6.04.040 Disposal of dead animals.
6.04.050 Retention of animal without consent.
6.04.060 Appeal of administrative decisions.
6.04.070 Applicability of State laws.
6.04.080 Penalties.

6.04.010 Purpose. The purpose of this title is to establish standards for the care, ownership, licensing, treatment and impounding of animals maintained in the city in such a manner as to ensure that such animals will not endanger the health, peace and safety of the residents of this city and that animals are kept in a clean, sanitary condition and not subjected to suffering, cruelty or abuse.

6.04.020 Definitions. For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used are defined as follows:

"Altered" means a dog or cat that has been spayed or neutered.

"Apiary" includes bees, comb, hives, appliances, or colonies, or wherever bees are kept, located or stored.

"Animal" means any (1) arthropod or (2) vertebrate creature, domestic or wild, and includes these categories: birds, fish, mammals, amphibians and reptiles.

"Animal control director" ("director") means the police department patrol division commander who oversees and supervises the animal control function of the city or such person with whom the city has contracted to oversee the city animal shelter, including field animal control operations, and kennel and office operations.

"Animal control department" or "department" means, collectively, the personnel of the police department charged with implementing and enforcing the provisions of this title.

"Animal control officer" means any person appointed by the police chief to assist in implementing and enforcing the provisions of this title. "Animal control officer" includes, without limitation, a code enforcement officer, peace officer, and any other person authorized by the police chief or employed by the city to implement and enforce the provisions of this title.

"At large" means any animal which is off the premises of its owner, custodian or caretaker and which is not under physical restraint by leash of a size and material appropriate to the size and temperament of the animal and which is held by a person capable of restraining the animal, or is not otherwise physically restrained by some other device or instrument, except that such device or instrument shall not include voice control, eye control or signal control of the animal by any person, device or instrument, except with respect to a canine good citizen certified dog.

"Animal shelter" means the place or places designated by the city as a place for the keeping and safe holding of animals impounded pursuant to this title.

"Commercial animal establishment" includes, without limitation, a breeding or boarding kennel or cattery, pet shop, pet grooming parlor, commercial stable, riding academy, pony ride, guard-dog and/or sentry-dog service, animal menagerie, animal shelter, or miscellaneous animal or reptile establishment. For the purpose of this title, guard-dog and/or sentry-dog services located outside the city, but providing service within the city on a regular basis, shall be included within the definition of commercial animal establishment.

"Dog park" or "off leash area" means the area of a city-owned or controlled park or area designated for off-leash use for dogs by the resolution of the city council.

"Dog kennel" means any building or premises upon or within which five or more dogs, four months of age or older, are kept or maintained.

"Enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment or hutch.

"Hearing officer" means any designated representative of the city manager who conducts a hearing under section 6.28.110.

"Impound" or "impounded" means the status of an animal which has been received into the custody of an animal control officer or peace officer duly authorized by the law to receive custody of such animal, whether held in personal custody, in an animal shelter, or in a vehicle controlled by such officer.

"Operator" means the legal owner or person in actual control of any activities involving animals.

"Owner" means any person who is the legal owner, keeper, harborer, possessor or the custodian of an animal. Ownership is also established by a person registering as the owner on a license or other legal document or by a person claiming ownership and taking possession of an animal.

"Permanently non-fertile dog" means a dog that (1) has not been spayed or neutered, and (2) has been certified by a licensed veterinarian as a dog that cannot reproduce during its remaining life because of age or a permanent health condition.

"Person" means any individual, firm, partnership, joint venture, corporation, association, club, organization or other legal entity.

"Secure enclosure" means a fence or structure suitable to prevent the entry of young children or any part, limb or appendage of any child, and which is suitable to confine a potentially dangerous animal or a dangerous animal in conjunction with other measures which may be taken by the owner or keeper of the animal, or at the direction of the animal control director. A secure enclosure shall be designed to prevent the animal from escaping and from preventing an adult or child from coming in contact with the animal.

"Service dog" means any dog trained to aid a physically disabled person, including without limitation, a guide dog and a signal dog.

"Substantial physical injury" means a substantial impairment of the physical condition of a person or animal that requires professional medical treatment, including, but not limited to: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, tissue tears or punctures, disfiguring lacerations, wound requiring multiple sutures, or any injury requiring corrective or cosmetic surgery.

"Unaltered dog" means any dog other than a permanently non-fertile dog that has not been spayed or neutered.

"Wild animal" means any animal which may not be imported, transported or possessed without first obtaining a California Department of Fish and Game permit, as set forth in Title 14 of California Code of Regulations, section 671, or its successor regulations.

6.04.030 Prohibition of slaughtering. Slaughtering of animals within the city limits is strictly prohibited, unless it takes place in a licensed restaurant for the purpose of food preparation.

6.04.040 Disposal of dead animals.

A. An owner may bury a dead animal or part thereof, within six hours after the death of same, provided the animal is buried on private real property with the knowledge and consent of the property owner and provided the animal is buried in a hole at least three feet deep with at least three feet of soil above said carcass.

B. An owner of a deceased animal may notify the department and request pick up and disposal of said carcass. It shall be the duty of the department to take custody of all dead animals from the owner when requested. A pick up and disposal fee in an amount established by resolution of the city council may be charged for such service.

C. The department shall be responsible for the disposal of all dead animals whose ownership cannot be established.

D Whenever the department picks up a deceased animal whose ownership is or may be readily established, the owner shall be notified and a notice shall be posted at the city animal shelter giving such information in an easily visible location. This section shall not apply when the department picks up a deceased animal at the request of the owner.

6.04.050 Retention of animal without consent. No person shall take possession of any animal found running at large without notifying the director, or his

designee, within twelve hours after receiving possession, giving a full description of the animal and the address and phone number of the place where the animal may be found. Such person, upon the request of the director or his designee, shall surrender such animal.

6.04.060 Appeal of administrative decisions. Unless otherwise provided herein, any person aggrieved by any administrative decision made under this title may, upon the payment of a fee to be established by resolution of the city council, appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48.

6.04.070 Applicability of State laws. The provisions of all applicable State laws and regulations relating to animal health, control and care, shall apply when such provisions are more stringent than the provisions of this title.

6.04.080 Penalties. Except for violations of Chapter 6.28, any violation of this title shall be an infraction. Each day or part thereof when any violation of this title shall continue shall constitute a separate offense.

Chapter 6.08

ADMINISTRATION AND ENFORCEMENT

Sections:

6.08.010 Director; position created.
6.08.020 Authority and immunities.
6.08.030 Duties of director and animal control officials.
6.08.040 Inspections.
6.08.050 Recordkeeping.
6.08.060 Unlawful obstruction.

6.08.010 Director; position created. The position of animal control director ("director") shall be created and shall be under the direction of the police chief or a designee. The director is authorized and directed to perform, in conjunction with and under the supervision of the police chief or designee, the powers and duties set forth in this title. Nothing in this title shall prevent the city from undertaking any or all of the duties of the animal shelter and or any animal control services as defined herein.

6.08.020 Authority and immunities.

A. The director and animal control officers shall enforce state and local laws relating to the licensing of dogs and the care, ownership, treatment and impounding of animals and shall have immunity from liability for acts performed in good faith in the course of such duties.

B. The director and animal control officers shall have authority to issue citations for violations of animal control laws. Violators of animal control laws shall

be given the opportunity to be released on citation, rather than be taken into custody; however, any person who (i) fails to present his/her driver's license or other satisfactory evidence of his/her identity or (ii) refuses to sign a citation shall be taken into custody by police officers and not by the director or animal control officers who are not police officers.

C. In the performance of their duties, the director and animal control officers who are not police officers shall have the power, authority and immunity of a public officer and employee as set forth in Penal Code section 836.5 or its successor provisions to make arrests without warrant whenever they have reasonable cause to believe that the person to be arrested has committed a public offense in their presence which is a violation of this title, or of any ordinance of the city or penal law of this state relating to the care, ownership, licensing, treatment and impounding of animals. Animal control officers who have not received the Penal Code 832 training on arrests shall not have the power to make arrests.

D. The term "arrest" as used in this section shall mean the power to detain violators for a time sufficient to complete the processing of a citation and release pursuant to section 853.5 and 853.6 of the Penal Code or its successor provisions, but shall not be construed as authority to take any such violators into custody.

E. The director, subject to the approval of the police chief, may promulgate any necessary rules and regulations for the administration of the provisions of this Title.

F. Nothing in this chapter shall be construed as limiting the authority of the director or any animal control officer granted or imposed by any other applicable law or regulation.

6.08.030 Duties of director and animal control officials. The director and animal control officers shall be empowered and shall have the duty to follow the provisions of this title and all state laws pertaining to the care, licensing, treatment and impounding of animals maintained in the city.

6.08.040 Inspections.

A. Whenever it is necessary to make an inspection to enforce any of the provisions of or perform any duty imposed by this title, or whenever the director or an animal control officer has probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this title or other applicable law, said official is authorized to enter such property at any reasonable time and to inspect the same and perform any duty imposed upon an animal control officer by this title or other applicable law, provided that:

1. If such property is occupied, the animal control officer shall first present proper credentials to the occupants and request entry, explaining the reasons therefor. If such entry is refused, the animal control officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

2. If such property is unoccupied, the animal control officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property and request entry, explaining the reasons therefor. If such

entry cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the animal control officer shall have recourse to every remedy provided by law to secure lawful entry and inspect the property, including an inspection warrant.

B. Notwithstanding the foregoing, if the animal control officer has probable cause to believe that the keeping or maintaining of any animal is so dangerous as to require immediate inspection to safeguard the life or safety of the animal, other animals, or the public, he/she shall have the right to immediately enter and inspect such property, and may use any reasonable means required to effect such entry and make such inspection, whether such property be occupied or unoccupied and whether or not permission to inspect has been obtained. If the property is occupied, the animal control officer shall first present proper credentials to the occupant and demand entry, explaining the reasons therefor and purpose of the inspection.

6.08.050 Recordkeeping. All records of the department are the records of the police department and shall be maintained by the police department and shall not be removed therefrom except upon written order from the police chief or other duly constituted authority.

6.08.060 Unlawful obstruction. It is unlawful for any person to willfully resist, hinder, molest, delay or obstruct any person authorized to enforce this title, while such person is engaged in the performance of his or her duties.

Chapter 6.12

LICENSING OF DOGS

Sections:

6.12.010 Administration.
6.12.020 License term, conditions and exceptions.
6.12.030 Rabies vaccination; deferment.
6.12.040 Application.
6.12.060 Renewal; late fee; penalty.
6.12.070 Nontransferability and refunds.
6.12.080 Issuance of duplicate tags and licenses.
6.12.090 Unlawful use of tag.
6.12.100 Disposition of fees and fines.

6.12.010 Administration.

A. The finance director or county shall be the issuing authority for dog licenses. Upon payment of the license fee provided in this chapter, and upon presentation of a valid vaccination certificate, as provided in this chapter, the Issuing Authority shall issue a license certificate stating the year for which such license fee is paid, the date of payment, the name and resident address to whom such license is issued, the name, breed and sex of the dog licensed, and the serial number of the license tag issued. Such certificate shall be delivered to the person paying such license fee, and one copy shall be retained by the issuing authority.

B. The issuing authority shall at the same time issue and deliver to the person paying the license fee, a tag of such form and design as the issuing authority shall designate with the words, "Solano County Dog License" and a serial number and the licensing period for which the tag was issued plainly inscribed thereon. The license tag shall be securely affixed to a collar, harness, or other device which shall be at all times worn by such dog.

6.12.020 License term, conditions and exceptions.

A. Except as provided in this chapter, every owner of any dog over the age of four months in the city shall obtain a license for each such dog so owned, cared for, or controlled by such person.

B. All owners of dogs subject to the licensing requirements of this chapter shall obtain one of the following three types of dog licenses:

1. Altered dog license. An altered dog license shall be obtained for an altered dog as defined by this title.

2. Permanently non-fertile dog license. A permanently non-fertile dog license shall be obtained for a permanently non-fertile dog as defined by this title.

3. Unaltered dog license. An unaltered dog license shall be obtained for an unaltered dog as defined by this title.

C. An altered dog license and a permanently non-fertile dog license may be purchased for either a one-year, two-year or three-year period. An unaltered dog license may only be purchased for a one-year period.

D. Such license shall be obtained and the fee therefor paid within 30 days after the day in which the dog is four months old, or within 30 days after acquisition of the dog, or within 30 days of moving into the city and annually thereafter prior to the expiration of the license. The license fee shall be as set forth by council resolution.

E. Written proof of neutering or spaying or that the dog permanently cannot reproduce must be provided at the time of the initial licensing for either an altered dog license or a permanently non-fertile dog license, but need not be produced for renewal of such licenses.

F. The license provisions of this section shall not apply to the following:

1. Dogs that are kept, harbored, or maintained by owners who are nonresidents and are staying within the city for 30 days or less, if kept, harbored, or maintained only during such temporary sojourn of their owners;

2. Dogs brought to the city exclusively for the purpose of participating in any dog show or exhibition, and which are actually entered in and kept at such show or exhibition;

3. Dogs under the treatment in the custody or control of animal hospitals;

4. Dogs on sale in duly licensed pet shops; and

5. Dogs owned, kept or controlled by any person having a permit to keep and maintain a dog kennel, provided that such dogs, when removed from such kennel, shall bear an identification tag attached to a collar, harness or other device, which tag shall be of a size and type designated by the issuing authority, and shall set forth the name and address of such kennel. Said tag shall be furnished at the

sole expense of the kennel owner.

6. Dogs being fostered as a part of a non-profit agency's program. The foster program shall be registered with the department and an individual foster dog shall be fostered in a particular residence for a period of no more than six months.

G. Notwithstanding the provisions of this chapter, any person moving into the city who is an owner of a dog possessing a valid, current dog licensed issued by another incorporated city within the County of Solano shall not be required to apply for a city dog license for a period of six months from the date the owner moved into the city or the date of expiration of the license issued by the other city, whichever is earlier.

H. Upon request of an animal control officer, an owner of a dog for which a license is required shall present to such officer a current, valid certificate of vaccination or license tag for such dog.

6.12.030 Rabies vaccination; deferment.

A. No dog shall be licensed without presentation of a certificate issued by a licensed veterinarian certifying that the dog to be licensed has been administered an anti-rabies vaccination within thirty days prior to the issuance of the license, or has received anti-rabies vaccination sufficient to immunize the dog against rabies for the entire licensing period.

B. The vaccination requirement for rabies shall not apply to a dog if a licensed veterinarian has examined the dog and certified at such time rabies vaccine may endanger the dog's health because of its age, infirmity, debility or other physiological considerations, and said dog is kept in the house or in a fenced yard adequate to confine the animal at all times. A temporary license shall be issued to any dog for whom rabies vaccination deferment is authorized under this part. The temporary license shall be valid only during the period that vaccination would endanger the dog's health as said period is shown by the veterinarian's certificate.

C. The vaccination requirement for rabies shall not apply to a dog if a licensed veterinarian has examined the dog and certified that the dog has been titer tested in the past one year. A license for such dog shall only be valid for one year.

6.12.040 Application. Application for dog licenses shall be made in writing on forms to be provided by the issuing authority which shall include the following information and documentation for each dog:

1. Name and address of owner;
2. Address where dog is kept;
3. Name, breed, age, sex and color of dog; and
4. A current rabies vaccination certificate issued by a licensed veterinarian in accordance with section 6.12.030 of this chapter.

6.12.050 Fees, discounts, waivers and surcharges.

A. All license fees imposed pursuant to this section shall be in the amounts established by resolution of the city council and in the amount established by the county. Such amounts shall be in compliance with Government Code section 38792 or its successor provisions.

B. The licensing fee shall be prorated on a quarterly basis for new

residents, newly acquired dogs, or puppies at four months of age. Proof of new residency, purchase or adoption date of dog or dog's age must be presented at the time of licensing to be eligible for the prorated fee. For a dog adopted from the city animal shelter, the first one-year license fee shall be waived or the first two or three-year license fee shall be reduced by 33%. Proof of adoption from the city animal shelter must be presented at the time of licensing to be eligible for the prorated fee.

C. The dog license fee shall be waived for any service dog, if such dog is under the control of and is aiding a blind, hearing impaired, or physically disabled person, or if such dog is owned by or in the custody of a bona fide organization having as its primary purpose the furnishing and training of service dogs.

D. The dog license fee shall be waived for one altered dog kept in a household where the owner of the dog is over the age of 65. A senior status license fee waiver shall not apply for an unaltered dog license.

E. The dog license fee shall be waived for dogs owned and used by a public agency, regardless of reproductive status.

F. A surcharge shall be assessed at the time of licensing of any dog that has been deemed a dangerous dog under chapter 6.28 of this title. The amount of the surcharge shall be established by resolution of the city council.

6.12.060 Renewal; late fee; penalty.

A. Each dog license issued pursuant to this chapter may be renewed. Application for renewal shall be made to the issuing authority not later than fifteen days after the expiration date on the license.

B. If application for a license renewal is made more than fifteen days after a dog license is required, the applicant shall pay, in addition to the regular license fees, such late fees as may be established from time to time by resolution of the city council or the county.

6.12.070 Nontransferability and refunds. License tags shall not be transferable from one dog to another and no refunds shall be made on any license fee because of death of the dog or the owner leaving the city or the removal of the dog from the city before expiration of the license term.

6.12.080 Issuance of duplicate tags and licenses. Whenever a dog license tag or license issued for the current year by the issuing authority has been lost, or taken or stolen by parties unknown to the owner of the dog for which the same was issued, such owner may, on the payment of a fee and on making and subscribing to an affidavit of the loss of such tag or license, receive from the issuing authority a duplicate dog license tag for the remaining portion of the term for which the original license was issued.

6.12.090 Unlawful use of tag. It is unlawful for any person to attach a dog license tag to the collar of any dog except the dog which is described in the application for such license tag.

6.12.100 Disposition of fees and fines. In accordance with section 30652 of the Food and Agricultural Code or its successor provisions, all fees for the issuance of dog license tags and all fines collected pursuant to Division 14 of the

Food and Agricultural Code shall be paid to the county except for any fees or fines imposed by the city and shall be used for the purposes set forth at that section as the same may be amended from time to time.

Chapter 6.16

REGULATION OF DOGS

Sections:

6.16.010 Carrying instrument for removal of dog feces and actual removal of such feces required.
6.16.020 Restraint of dogs.
6.16.030 Dogs in public playgrounds and parks prohibited; exceptions.
6.16.040 Permissive running at large.
6.16.050 Unspayed female dogs prohibited from running at large.

6.16.010 Carrying instrument for removal of dog feces and actual removal of such feces required.

A. Any person having custody of a dog while on public property, including any easements and public parks, and private property not owned by such person shall at all times carry an instrument suitable for removing and disposing of any feces which may be deposited by said dog and shall remove any such feces which may be deposited by such dog while on such property.

B. The provisions of this section shall not apply to dogs being used by the blind as guide dogs, or service dogs that are assisting disabled persons who are unable to remove such feces.

6.16.020 Restraint of dogs. Except in an area specifically set aside and designated by the city council by resolution as a "dog park", or "off-leash" area, no person owning or having charge, care, custody, or control of any dog shall cause or allow, either willfully or through failure to exercise due care or control, to be or run at large in or upon any public place or premises, or in or upon any private place or premises other than those of said owner or keeper except with the consent of the person in charge of said place or premises, unless such dog is securely restrained by a substantial leash, no longer than 6 feet, and is in charge and control. For the purposes of this section, any dog in or upon any motor vehicle shall be deemed to be on the premises of the operator thereof.

6.16.030 Dogs in public playgrounds and parks prohibited; exceptions.

A. Except for seeing-eye dogs and for areas designated by city council resolution and subject to rules established by city council resolution, it is unlawful for a person who owns, has an interest in, harbors or has charge care, control, custody or possession of a dog, to permit the dog to be in or upon a public park. Any employee of the city, including a peace officer, shall pick up a dog if found in a public park and deliver the dog to the Friends of Animals, a designated animal foster care agency.

B. This section shall not be applicable to dogs while they are enrolled and participating in obedience classes sponsored by the parks and community services department of the city, or to dogs being used by disabled individuals as service animals or at city approved special events. No dangerous dogs are allowed in no leash areas.

6.16.040 Permissive running at large. The provisions of this chapter do not prohibit dogs from running at large on the premises of the owner or person having charge of such dog, nor do they prohibit dogs, other than unspayed female dogs during the breeding period, from running at large on any private property with permission of the owner of such property.

6.16.050 Unspayed female dogs prohibited from running at large. It shall be unlawful for any owner to permit an unspayed female dog to run at large on any property during the breeding period.

Chapter 6.20

ANIMAL SHELTER AND IMPOUNDMENT

Sections:

6.20.010 Animal shelter established.
6.20.020 Impoundment authority.
6.20.030 Care of impounded animals.
6.20.040 Use of animals for experimental purposes or medical research.
6.20.050 Transporting of impounded animals.
6.20.060 Unauthorized removal of animals from shelter.
6.20.070 Fees established.
6.20.080 Fine imposed for impounded unaltered dogs and cats.
6.20.090 Identification of animals; returning animals to known owners.
6.20.100 Voluntary surrender; fees.
6.20.110 Redemption by owner; abandonment.
6.20.120 Holding period.
6.20.130 Placement of unredeemed animals.
6.20.140 Adoption by approved organizations.
6.20.150 Sterilization required.
6.20.160 Disposal.
6.20.170 Diseased or injured animals.

6.20.010 Animal shelter established. There shall be provided a suitable enclosure or place for the purpose of keeping and safely holding animals impounded, which shall be authorized as the city animal shelter; provided, that one or more suitable enclosures or places may be provided for the purpose of keeping and safely holding animals impounded, which places shall be designated as branches of the city animal shelter.

6.20.020 Impoundment authority. The director may take up, impound and

safely keep any of the animals enumerated in this title found running at large, staked, tied or being herded or pastured in any street, road, lane, alley, court, square, park or other place belonging to or under control of the city, or upon any private property in the city, contrary to the provisions of this title; or where said animal is engaged in an activity or existing in any condition prohibited by this title; or where said animal is, or will be, without proper care due to injury, illness, death, incarceration, or other involuntary absence of the owner or person responsible for the care of such animal; or where said animal is to be quarantined.

6.20.030 Care of impounded animals. The director or his designee shall safely keep all animals impounded at the city animal shelter and shall furnish the same with a sufficient quantity of good and wholesome food and water, and shall give the same ordinary attention as may appear to be reasonably required for the welfare of such animals.

6.20.040 Use of animals for experimental purposes or medical research. It is unlawful for any person providing animal control or animal shelter services within the city to give, use, sell or give to be sold, animals for diagnostic or experimental purposes or medical research.

6.20.050 Transporting of impounded animals. All animals taken into custody shall be humanely transported in specifically designed ventilated and properly maintained vehicles.

6.20.060 Unauthorized removal of animals from shelter. It shall be unlawful for any person to remove any impounded animal from the animal shelter without the consent of the director or designee.

6.20.070 Fees established.

A. Fees for impounding animals shall be established by resolution of the city council and the county.

B. Fees for adoption of impounded animals shall be established by resolution of the city council and the county.

C. Fees for boarding or keeping impounded animals, which shall be charged in addition to the impounding fees referenced above, shall be established by resolution of the city council and the county.

6.20.080 Fine imposed for impounded unaltered dogs and cats.

A. Pursuant to California Food & Agriculture Code section 30804.7 or its successor provisions, the owner of any impounded unaltered dog shall be subject to a fine in the amount established by resolution of the city council.

B. Pursuant to California Food & Agriculture Code section 31751.7 or its successor provisions, the owner of any impounded unaltered cat shall be subject to a fine in the amount established by resolution of the city council.

C. Fines levied pursuant to this section shall be in addition to any other fees and penalties imposed pursuant to this title.

6.20.090 Identification of animals; notice to owners; returning animals to

known owners.

A. It shall be the duty of the department to attempt to identify any impounded, found or turned-in animal via registration check, identification tags, microchip, lost reports and diligent search for any tattoo marks. When a tattoo or microchip is found, the tattoo or microchip registry shall be notified and additional, reasonable time provided for such registry to locate the owner prior to the animal being placed for sale or adoption or euthanized.

B. The animal control director shall, immediately upon impoundment of dogs or other animals, make a reasonable effort to notify the owner of such dogs or other animals impounded, and further, in the case of a licensed dog, or cats wearing a license, inform such owners of the conditions whereby they may regain custody of such animals.

C. When any animal is seized and its ownership is known to the department, such animal need not be impounded, but any authorized animal control officer may, at his or her own discretion, return such animal to its owner and issue a citation to the owner to appear in court to answer to charges of violations of this title. If the owner's telephone number is known or can be readily assessed, the owner shall be contacted by telephone; otherwise, the owner shall be contacted by regular mail to the owner's last known address.

6.20.100 Voluntary surrender; fees.

A. Upon request, an owner may surrender his/her animal to the department for placement for adoption.

B. Any owner relinquishing a dog shall comply with the provisions of Food and Agricultural Code section 31108.5 or its successor provisions, by presenting sufficient identification to establish his or her ownership of the dog and by signing a statement that he or she is the lawful owner of the dog. Any animal which is voluntarily surrendered to or deposited with the department by the owner shall immediately thereafter become the property of the city. It shall be understood that no guarantee of placement will be made, and humane disposal will be at the discretion of the department.

C. Any owner of an animal who voluntarily surrenders an animal to the department shall be subject to a fee for each animal over the age of four months. Litters of unweaned animals or animals less than four months of age shall be considered as one animal.

D. The surrender of an animal by an owner to the department, subsequent to impoundment for a violation of this title or any provisions of State law, shall not relieve the owner of the obligation to pay such charges as set forth in this section, prior to such surrender, plus accumulated boarding charges, veterinary charges or any other charges, related to the impounding and keeping of the animal.

E. Upon relinquishment, any animal may be made available for immediate euthanasia if it has a history of vicious behavior documented by the department or any other agency charged with enforcing state and local animal laws.

6.20.110 Redemption by owner; abandonment.

A. The owner of any impounded animal shall have the right to reclaim the same at any time prior to the lawful disposition thereof, upon payment to the animal control director of the costs and charges which shall be established by resolution of the

county or city for the impounding and keeping of such animals, provided, however, that if the animal is one which is subject to the licensing provisions of this title, the licensing requirements must be satisfied before the animal is released.

B. If the impounded animal is not currently vaccinated against rabies as required, and the owner has not previously been cited for failure to license the animal or the animal has not been previously impounded within the preceding thirty (30) calendar days, the animal may be released to the owner upon payment of all fees required (including the license fee and penalty fee, if applicable) on condition that the owner shall:

1. Have the animal vaccinated for rabies in accordance with this title within fourteen (14) calendar days; and

2. Exhibit a valid certificate of such vaccination to the director within fourteen (14) calendar days, at which time the license will be issued.

C. Animals may be vaccinated against rabies by a veterinarian designated by the director prior to redemption and the cost of the vaccination and any other costs accrued accomplishing the vaccination, including additional impoundment fees, must be satisfied before the animal is released.

6.20.120 Holding period.

A. All impounded dogs or cats found wearing a license tag or any other form of positive identification, shall be kept in the animal shelter or other authorized place of impoundment for a period of not less than six (6) business days following the day of impoundment unless redeemed within such period.

B. All impounded dogs and cats not wearing a license tag or other form of positive identification, shall be kept in the animal shelter or other authorized place of impoundment for a period of not less than six (6) business days following the day of impoundment unless redeemed within such period.

C. Any impounded animal which is of a type referred to in section 17001.5 of the Food and Agriculture Code shall be kept in the animal shelter for at least six (6) business days following the date of impoundment unless it is redeemed within that period. If the animal is a bovine animal and is not redeemed, it shall be turned over to the State Bureau of Livestock Identification for disposition by that office, pursuant to the requirement of the California Food and Agriculture Code.

D. Any animal impounded of the type referred to in section 17065 of the Food and Agriculture Code shall be kept in the animal shelter or other authorized place of impoundment for at least fourteen (14) calendar days.

E. Any other impounded animal shall be kept in the animal shelter for at least six (6) business days following the day of impoundment unless it is redeemed within such period.

F. Any animal which is voluntarily surrendered to or deposited with the director by the owner shall not be deemed to be impounded and need not be kept or retained for any minimum period of time.

G. Any feral animal, except feral cats, need not be kept or retained for any minimum period of time.

6.20.130 Placement of unredeemed animals.

A. Dogs.

1. Unless an unlicensed dog or a dog not wearing traceable

identification has been redeemed within six (6) working days from the day following the impoundment it may be sold by the animal control director for an amount determined and set by the city or county; provided, that the purchaser shall not be given possession of any dog until the purchaser has paid to the animal control director the license fee prescribed for such dog. The animal control director shall accept the application for license and the license fee, but shall not deliver the license until proof of current rabies vaccination has been provided. If any unlicensed dog, or dog not wearing traceable identification impounded by the animal control director shall not have been redeemed within such three (3) working day period, it may be destroyed by the animal control director in an humane manner.

2. Unless licensed dogs or dogs wearing traceable identification have been redeemed within six (6) working days from the day following the impoundment such dogs may be sold by the animal control director for an amount determined and set by ordinance of the board of supervisors. The animal control director shall notify the owner of such animal, by mail, within twenty-four (24) hours of impoundment. If any licensed dog, or dog wearing traceable identification which has been impounded by the animal control director has not been redeemed within the six (6) day period, it may be destroyed by the animal control director in a humane manner.

B. Cats.

1. Unless an unlicensed cat or a cat not wearing traceable identification has been redeemed within six (6) working days from the day following the impoundment, it may be sold by the animal control director for an amount determined and set by the city or county. If any cat impounded by the animal control director shall not have been redeemed within such three (3) working day period, it may be destroyed by the animal control director in a humane manner.

2. A licensed cat or cat wearing traceable identification shall be processed in the same manner as provided for licensed dogs in subparagraph (A)(2) of this section.

C. Other animals shall be processed in the same manner as provided for unlicensed dogs in subparagraph (A)(1) of this section, unless otherwise provided for by State statute.

D. It shall be the duty of the animal control director, and the director is authorized and empowered, to forthwith dispose of any animal lawfully impounded which is, by reason of injury, disease, or other cause, unfit for further use or is dangerous to keep impounded. The animal control director may immediately destroy surrendered animals in a humane manner.

E. At the discretion of the animal control director, an unredeemed or surrendered animal may be kept for a reasonable period of time after the expiration of the redemption period for the purpose of selling or adoption. Normally, the sale of the animal should be to the person offering to pay the prescribed amount as determined and set by resolution of the city or county; however, the animal control director may refuse to sell or adopt to a particular purchaser if the director has reason to believe the sale would not be in the best interest of the animal.

6.20.140 Adoption by approved organizations. Under special provisions to be adopted by the director, subject to the approval of the police chief, specific breed clubs and humane organizations approved by the director shall have the

option of adopting available animals from the city animal shelter for purposes of placement. Adoption fees to be paid by such approved organizations shall be established by resolution of the city council.

6.20.150 Sterilization required.

A. In accordance with section 30503 of the Food and Agriculture Code or its successor provisions, the department shall not sell or give away to a new owner any dog that has not been spayed or neutered, unless otherwise provided by law.

B. In accordance with section 31751.3 of the Food and Agriculture Code or its successor provisions, the department shall not sell or give away to a new owner any cat that has not been spayed or neutered, unless otherwise provided by law.

6.20.160 Disposal. In the event any impounded dog or cat or any other animal cannot be suitably placed in a new home within the holding period designated in section 6.20.120 of this chapter, the director shall euthanize such animal and dispose of the carcass.

6.20.170 Diseased or injured animals.

A. Notwithstanding any provisions of this chapter, the director may, without waiting for the requisite holding period to elapse, cause any impounded animal to be euthanized without delay under the following circumstances:

1. When the director reasonably determines in good faith that such animal is unfit for further use by reason of its having been injured, having become infected with a dangerous or communicable disease, having become incurably crippled or having become infirmed on account of advanced age; and/or

2 When a licensed veterinarian determines in good faith that such animal is suffering extreme pain due to disease or injury, and there is no reasonable probability that the animal will recover from its disease or injury.

B. The department may destroy any animal found at large without transporting it first to the animal shelter or a veterinarian where the animal is too severely injured to move or where it would be more humane to destroy the animal.

Chapter 6.24

PUBLIC NUISANCE

Sections:

6.24.010 Animal nuisances.
6.24.020 Written petitions; investigation.
6.24.030 Notice to owner to abate; failure to abate.
6.24.040 Temporary impoundment of animal.
6.24.050 Grounds for determination of nuisance.
6.24.060 Public nuisance declared; reimbursement of costs.
6.24.070 Disposition of public nuisance.

6.24.010 Animal nuisances.

A. The keeping or maintaining possession on any lot in the city, of an animal shall be deemed a public nuisance if the animal has committed any one or more of the following acts:

1. Barks, cries or other noises which are so loud and/or so frequent and/or continued over so long a period of time as to disturb the peace and quiet of nearby property or which would cause annoyance or discomfort to a reasonable person of normal sensitivity in the area;

2. Inflicts unprovoked damage to real or personal property of a person other than the owner which damage occurs off the property of the owner;

3. Chases pedestrians, skateboards, sedgways, vehicles, bicycles or ridden horses while off the property of its owner; and/or

4. By its bodily waste odor or other unsanitary condition causes annoyance or discomfort to a reasonable person of normal sensitivity in the area.

B. Such a public nuisance may be abated in accordance with the procedures set forth in this chapter. These procedures are in addition to any other remedies which may be available under the law.

6.24.020 Written petitions; investigation.

A. The director or a designee shall investigate either of the following:

1. A written petition in which it is asserted by three or more persons having separate residences or regularly employed in a neighborhood that an animal is a public nuisance within the meaning of this chapter; or

2. A written petition in which it is asserted by one or more residents in a neighborhood that an animal is a public nuisance within the meaning of this chapter, and:

a. Such resident(s) can demonstrate to the satisfaction of the animal control officer that the resident(s) has made a good faith effort to obtain the signatures of other residents in the neighborhood or can demonstrate that it is not possible to obtain such other signatures, as in the case where there are less than three (3) occupied residences in the neighborhood, and

b. Such resident(s) has provided to the satisfaction of the animal control officer adequate and competent evidence in support of the claim that the subject animal is a public nuisance within the meaning of this chapter.

B. Petitions shall be signed by and bear the name, address and telephone number of each complainant, shall state the place or places where the nuisance exists, shall describe the animal(s) and the conduct which constitutes the nuisance, and shall give the name and address of the animal's owner, if known to complainants. Petitions shall be public records and open to public inspection.

C. Whenever a valid petition has been filed with the department pursuant to this section, the director or a designee shall determine whether the petition appears to set forth a valid complaint of a public nuisance within the meaning of this chapter.

6.24.030 Notice to owner to abate; failure to abate.

A. If the director or designee determines that a petition filed pursuant to section 6.24.020 of this chapter appears to be valid, he/she shall serve a notice of

nuisance upon the owner of the subject animal which shall inform the owner of the following:

1. That a petition has been received;
2. The nature of complaints stated in the Petition; and
3. That such nuisance must be abated within the time specified, which shall be reasonable.

A copy of the provisions of this chapter shall also be provided to the owner with the notice of nuisance.

B. If the owner fails to abate the public nuisance within the specified time, the director or a designee may refer the matter to a hearing officer for a hearing conducted by a hearing officer pursuant to the provisions of chapter 6.48.

6.24.040 Temporary impoundment of animal.

A. The director or designee shall have the power to temporarily impound the subject animal pending the outcome of an administrative hearing conducted pursuant to section 6.24.030 if:

1. After making a good faith effort, he/she is unable to contact the animal's owner and determines, at the time of inspection, that the offending noise, condition or behavior of the animal cannot be immediately abated and the peace and comfort of the neighborhood restored;
2. Determines, at the time of inspection, that the offending noise, condition or behavior of the animal cannot be immediately abated and the peace and comfort of the neighborhood restored; or
3. Determines that the public nuisance has not been abated within the time specified in the notice of nuisance.

B. The owner of the animal shall be responsible for all costs of impounding the animal, including but not limited to daily impoundment fees and any costs incurred in providing care and maintenance of the animal.

C. In lieu of impounding an animal, the animal control officer may permit the animal to be confined by the owner at the owner's expense in a director-approved veterinary facility, or in the case of a dog, in a director-approved veterinary facility or director-approved dog kennel.

6.24.050 Grounds for determination of nuisance. In making a determination that an animal is or is not a public nuisance, the hearing officer shall consider the following evidence:

A. All petitions filed pursuant to section 6.24.020 of this chapter;

B. The testimony of persons residing or working in the area of the place where the animal is kept;

C. The testimony of any investigating animal control officer and any other department or city employee having contact with the animal or its owner;

D. Video or tape recordings of the animal or of the place where the animal is kept;

E. Any previous complaints, abatement orders, citations, or convictions regarding maintenance of a public nuisance by the owner by reason of an animal's offending noise, condition or behavior;

F. The nature and extent of the animal's offending noise, condition or

behavior;

G. The manner in which the animal had been maintained by its owner;

H. The presence or absence of any provocation for the offending noise, condition or behavior;

I. Whether the offending noise, condition or behavior can be eliminated by effectively training or retraining the animal; and

J. Any other relevant evidence regarding the ability of the owner to preserve the comfort, peace or quiet of the neighborhood if the animal is permitted to remain in the city.

6.24.060 Public nuisance declared; reimbursement of costs. The owner of any animal declared by a hearing officer to be a public nuisance pursuant to this chapter shall reimburse the city for all costs incurred in verifying compliance and enforcing provisions of this chapter.

6.24.070 Disposition of public nuisance.

A. The hearing officer may order the owner of any animal declared to be a public nuisance to remove the animal from the city by a date certain if the owner:

1. Fails to abate the public nuisance within the time period specified by the hearing officer;

2. Fails to reimburse the costs of abating the public nuisance; or

3. Permits, suffers, or allows the public nuisance to occur again.

B. If the owner fails to remove the animal from the city by such date, the department may impound the animal and not permit the reclaiming or redemption of the animal by the owner unless adequate arrangements acceptable to the director have been made by the owner to ensure abatement of the public nuisance. Such arrangements shall be agreed to in writing between the owner and the director prior to and as a condition of release of the animal to its owner. If such agreement is not made and executed within thirty (30) days from the date of impoundment, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

C. If the written agreement referred to in paragraph B of this section is made and is subsequently breached by the owner, the director may immediately impound the animal and not permit the reclaiming or redemption of the animal by the owner unless the owner can make adequate, written assurances acceptable to the director that the owner shall commit no further violation of the agreement. If such further assurances are not made and executed within thirty (30) days from the date of impoundment, then the animal may be considered abandoned and may be handled in the same manner as any other unclaimed stray animal.

D. Any person failing to comply with the hearing officer's order to abate a public nuisance shall be prohibited from keeping or harboring within the city an animal of the type, species, group or family to which the order applies (including the animal initially causing the nuisance) for a period of three (3) years from the date of such noncompliance; provided, however, that any person prohibited from keeping or harboring an animal pursuant to this section shall be entitled to appeal to a hearing officer pursuant to the provisions of chapter 6.48 of this title. The scope of any such appeal hearing shall be limited to a determination regarding whether a failure to

comply with a hearing officer's order has occurred.

Chapter 6.28

DANGEROUS ANIMALS

Sections:

6.28.010 Definitions.
6.28.020 Prohibitions regarding dangerous animals.
6.28.030 Inspection.
6.28.040 Dangerous animals at large.
6.28.050 Temporary impoundment or confinement.
6.28.060 Hearing procedures.
6.28.070 Disposition of dangerous animals.
6.28.080 Sale or transfer restrictions.
6.28.090 Enforcement and penalties.
6.28.100 Exemptions.
6.28.110 Removal of designation.

6.28.010 Definitions. For the purpose of this title, unless it is plainly evident from the context that a different meaning is intended, certain terms used are defined as follows:

"Abused animal" means any animal which is:

1. Mistreated, beaten, tormented, or teased; or
2. Deprived of water, food, or shelter; or
3. Kept under unsanitary conditions; or
4. Abandoned; or
5. Trained for fighting other animals.

"Dangerous animal":

1. "Dangerous animal" means any animal that:

a. Has been designated a potentially dangerous animal and thereafter exhibits any of the behaviors listed in the definition of potentially dangerous animal; or

b. Inflicts serious injury or kills a human being. An injury shall be considered a severe injury if it results in any muscle tear or disfiguring laceration or requires multiple sutures or corrective or cosmetic surgery; or

c. Engages in, or is found to have been trained to engage in, exhibitions of fighting or is associated with conduct that results in the animal's owner or keeper being convicted of Penal Code section 597.5; or

d. Attacks or kills livestock off the property of the owner of the attacking animal.

2. An animal shall not be considered a dangerous animal if the person or domestic animal that it attacked, threatened, or menaced:

a. Provoked, tormented, teased, or abused the animal into the alleged behavior; or

b. Committed a willful trespass or other tort upon the private

property of the owner or keeper in control of the animal; or

c. Threatened or committed an unprovoked assault or battery against the owner or keeper in control of the animal.

"Enclosure" means a fence or structure of a last six (6) feet in height, forming or causing an enclosure suitable to prevent the entry of young children, and suitable to humanely confine an animal with adequate exercise area, and posted with an appropriate warning sign, in conjunction with other measures which may be taken by the owner or keeper.

"Hearing officer" means any designated representative of the city manager who conducts a hearing under section 6.28.110.

"Impounded" means taken into custody of the animal shelter.

"Person" means a natural person or any legal entity, including, but not limited to, a corporation, firm, partnership or trust.

"Potentially dangerous animal":

1. "Potentially dangerous animal" means any animal that:

a. On two (2) separate occasions within a thirty-six (36) month period engages in any unprovoked behavior that requires a defensive action by any person to prevent bodily injury; or

b. Bites a person causing a minor injury not resulting in muscle tears or disfiguring lacerations or requiring multiple sutures or corrective or cosmetic surgery; or

c. Kills, seriously bites, inflicts injury upon, or otherwise causes injury to any domestic animal; or

d. Engages in any behavior that constitutes a physical threat of bodily harm to a person or domestic animal or poses an immediate threat to public safety.

2. An animal shall not be considered a potential dangerous animal if the person or domestic animal that it attacked, threatened, or menaced:

a. Provoked, tormented, teased or abused the animal into the alleged behavior; or

b. Committed a willful trespass or other tort upon the private property of the owner or keeper in control of the animal; or

c. Threatened or committed an unprovoked assault or battery against the owner or keeper in control of the animal.

6.28.020 Prohibitions regarding dangerous animals. It shall be unlawful for an owner or person having possession, custody, charge or control of an animal that the owner or person having possession knew or should have known was dangerous to permit said animal to be found outside of a house or fully enclosed space, unless that animal is muzzled and on a substantial leash or similar restraint of appropriate length and under the control of a responsible person eighteen years of age or older who is physically capable of restraining the animal when the animal is not contained in a locked, secure enclosure or as otherwise restrained by lawful order of the director or a hearing officer.

6.28.030 Inspection.

A. Whenever it is necessary to make an inspection to enforce any of the

provisions of or perform any duty imposed by this section, or whenever any police officer or animal control officer has probable cause to believe that there exists in any building or upon any premises any violation of the provisions of this chapter or other applicable law, the officer is authorized to enter such property at any reasonable time to inspect it and to perform any duty imposed upon the officer by this code or other applicable law; provided that:

1. If the property is occupied, the officer shall first present proper credentials to the occupant, briefly describe the basis for the probable cause, and request entry. If entry is refused, the officer shall have recourse to every legal remedy, including an inspection warrant, to secure lawful entry and inspect the property.

2. If the property is unoccupied, the officer shall first make a reasonable effort to locate the owner or other person having charge or control of the property and present proper credentials to the occupant, briefly describe the basis for the probable cause, and request entry. If entry cannot be obtained because the owner or other person having charge or control of the property cannot be found after due diligence, the officer shall have recourse to every legal remedy, including an inspection warrant, to secure lawful entry and inspect the property.

3. Notwithstanding the foregoing, if the officer has probable cause to believe that the keeping or maintaining of any animal is so dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the officer shall have the right immediately to enter and inspect the property, and may use any reasonable means required to enter and inspect, whether or not the property is occupied and whether or not permission to inspect has been obtained, provided that, if the property is occupied, the officer shall first present proper credentials to the occupant, briefly describe the basis for the probable cause, and demand entry.

B. No person shall interfere with, hinder, fail or refuse, after proper demand has been made upon him or her, to permit the officer to make any inspection under subsection A.3. of this section. Any person violating this section shall be guilty of a misdemeanor.

6.28.040 Dangerous animals at large.

A. A person who owns or keeps an animal and who allows, permits or causes the animal to be at large in or upon a public street, sidewalk, park, or other public property, or in or upon the premises or private property of another person, shall be guilty of a misdemeanor if the animal bites, attacks, or causes injury to any human being or other animal.

B. Any person convicted under this section shall not own or keep the type of animal which caused the bite, attack, or injury for a three (3) year period after the date of conviction. Neither the department nor the county shall issue or renew any license to the convicted person for that type of animal during that three (3) year period.

6.28.050 Temporary impoundment or confinement.

A. If animal control officers or police officers have probable cause to believe any animal has attacked, bitten, or injured any human being or other

domestic animal, the officers shall have the power to summarily and immediately impound the animal pending:

1. Any court proceeding or animal license revocation proceeding arising from the attack, bite, or injury; or

2. A hearing under this chapter.

B. Failure to surrender on demand the animal to an animal control officer for impoundment shall be a misdemeanor.

C. If an animal impounded under this section is declared to be potentially dangerous or dangerous, it may be returned to the owner or keeper upon satisfaction of any conditions the hearing officer places on the animal's release unless the hearing officer orders the animal to be destroyed. If an animal impounded under this section is not declared to be potentially dangerous or dangerous, it shall be returned to the owner or keeper as soon as is practicable after receipt of the hearing officer's notice of determination.

D. Within forty-eight (48) hours of any impoundment, the department shall serve the owner or keeper with a notice of impoundment. The notice shall contain a description of the animal, a brief description of the facts and circumstances leading to the impoundment, and the charge or charges being filed. The notice shall be personally served or served by first-class or certified mail and shall be posted on the owner or keeper's property.

E. In lieu of impounding, the department may permit the animal to be confined at the owner's or keeper's expense in a kennel or veterinary facility approved by the department or at the owner's or keeper's residence provided that:

1. The animal is not removed from the kennel, veterinary facility, or residence without the prior written approval of the department; and

2. The animal shall be available for observation and inspection by an animal control officer or a police officer or their authorized representatives. The department shall specify to the owner or keeper the exact way the animal is to be restrained while awaiting the hearing.

3. The animal may be photographed for identification purposes.

F. If there is no reasonable method available to determine ownership of the animal, the animal shall be considered a stray.

6.28.060 Hearing procedures.

A. If a police officer or animal control officer determines that there is probable cause to believe that an animal is potentially dangerous or dangerous or that the owner or keeper of an animal has violated any conditions previously imposed by a hearing officer in relation to a declaration that the animal is potentially dangerous or dangerous, the city manager, or designee, shall serve as a hearing officer to conduct a hearing to determine whether the animal is a potentially dangerous or dangerous animal or whether the owner or keeper has violated any conditions.

B. If the owner or keeper does not contest the charges alleged, the owner or keeper may waive the right to a hearing.

C. In the event an animal has been impounded or confined pending a hearing, the hearing shall be conducted within thirty (30) calendar days of the impoundment or confinement. Failure to hold the hearing within thirty (30) calendar

days shall result in an automatic dismissal of the charges; provided, however, that evidence of the underlying acts or behavior of the animal may be used in a subsequent proceeding.

D. The hearing shall be held not less than five (5) business days nor more than ten (10) business days from the service of the notice of the hearing. The department shall serve the owner or keeper of the animal with a notice containing a description of the animal, a brief statement of the charges and the facts and circumstances supporting the charges, and the date, time, and place of the hearing. The notice shall be accompanied by a copy of this chapter. Service shall be by first-class mail, certified mail, or personal service. Except as provided in this chapter, the hearing shall be conducted in accordance with the provisions of chapter 6.48.

E. After a hearing, the hearing officer may declare any animal to be potentially dangerous or dangerous and determine the appropriate disposition of the animal.

F. In making a determination that an animal is or is not potentially dangerous or dangerous, evidence of the following shall be considered if available:

1. Any previous history of the animal attacking, biting, or causing injury to a human being or other domestic animal or livestock;
2. The nature and extent of injuries inflicted and the number of victims involved;
3. The place where the bite, attack, or injury occurred;
4. The absence or presence of any provocation for the bite, attack, or injury;
5. The extent to which property has been damaged or destroyed;
6. Whether the animal exhibits any characteristics of being trained for fighting or attacking or there exists other evidence of such training;
7. Whether the animal exhibits characteristics of aggressive or unpredictable temperament or behavior in the presence of human beings or domestic animals;
8. Whether the animal can be effectively trained or retrained to change its temperament or behavior;
9. The manner in which the animal has been maintained by its owner or keeper;
10. Any other relevant evidence concerning the maintenance of the animal;
11. Any other relevant evidence regarding the ability of the owner or keeper, or the department, to protect the public safety in the future if the animal is permitted to remain in the city.

G. Within ten (10) calendar days after the hearing, the owner or keeper of the animal shall be notified in writing of the determination and orders issued by the hearing officer, either personally or by pre-paid, first class mail. The notice of determination shall include the following information:

1. A determination of whether or not the animal is potentially dangerous or dangerous;
2. A brief summary of facts supporting the determination;
3. An order to destroy the animal, release the animal with conditions, or release the animal without conditions;

4. Advisement of appeal rights.

H. The decision of the hearing officer shall be final. If any party to the hearing contests the hearing officer's determination, he or she may, within five (5) calendar days of the receipt of the notice of determination, appeal the decision by filing an action in the Superior Court of Solano County and serving the city manager with a notice of appeal.

6.28.070 Disposition of dangerous animals.

A. If the hearing officer finds that an animal is so dangerous that it would constitute an unreasonable danger to human beings, domestic animals, or livestock even with reasonable conditions upon release, the hearing officer may order the animal to be destroyed. This remedy is in addition to all other remedies and shall not limit or restrict the right of any person, including the city attorney, to commence a proceeding under California Civil Code section 3342.5, or its successor, to have the animal destroyed.

B. If the hearing officer finds that the animal is potentially dangerous or dangerous, the hearing officer may require the owner or keeper of the animal, as a condition of the release of the animal from confinement or impoundment, to comply with any or all of the following conditions:

1. Immediately register the animal with the department. The fee for a permit to keep one dangerous animal shall be fifty dollars ($50.00) for a twelve (12) month term, and the fee for each additional dangerous animal shall be twenty-five dollars ($25.00). The permit expires at the end of each term and is renewable.

2. Keep the animal securely confined on its premises in a locked enclosure approved by the department in its sole and absolute discretion. The structure must have secure sides and top composed of nine-gauge galvanized steel affixed to a concrete foundation. It must be locked with a key or a combination lock when holding animals. The structure must be adequately lighted, ventilated, and kept in a clean and sanitary condition, and it must comply with all building and zoning regulations.

3. Keep the animal securely muzzled, leashed, and under the control of a person eighteen (18) years or older, and who is physically capable of restraining the animal when it is not confined in a secure pen.

4. Spay or neuter the animal by a licensed veterinarian and present proof to the animal control officer.

5. Provide and maintain financial responsibility for injuries to the public by obtaining and showing proof of liability insurance in a form and amount considered acceptable under the circumstances by the hearing officer. The insurance policy shall clearly state that the insurance cannot be canceled, suspended, reduced, or allowed to expire unless thirty (30) calendar days written notice is first given to the department.

6. Immediately inform the local postmaster, utility company meter readers, and anyone else who lawfully and regularly comes onto the property of the animal's status as a potentially dangerous or dangerous animal and to inform the department in writing prior to moving the animal to any new location within or outside the city or if the animal dies.

7. Display in a prominent place on the property a sign easily

readable by the public, using the words "Beware of Dangerous Animal" in letters at least three (3) inches high.

8. All dangerous dogs shall receive a microchip and permanently wear a "Dangerous Dog" tag. The owner or keeper of the dog shall pay for the microchip and tag. The department shall maintain on file the assigned microchip and tag numbers. The owner or keeper shall immediately notify the department if the tag is lost or stolen and shall pay for a replacement. Failure to report the lost or stolen tag or to replace it shall constitute a misdemeanor.

9. Pay the reasonable costs for the hearing incurred by the city and its officials, not to exceed one thousand dollars ($1,000.00).

10. Take any other reasonable steps to prevent injuries to the public, domestic animals, livestock, or property.

In addition, if the hearing officer orders the animal released with conditions, the owner or keeper of the animal shall have thirty (30) calendar days from the receipt of the written disposition to complete any conditions imposed by the hearing officer and to demonstrate such compliance to the department. The hearing officer may grant a written extension of time for compliance not to exceed an additional thirty (30) calendar days. The owner or keeper of the animal must, within thirty (30) calendar days from the receipt of the written disposition, provide the department with a minimum of two (2) color photographs of the animal that clearly shows its color and size. No potentially dangerous or dangerous animal shall be kept on a porch, patio, or in any part of a house or structure that would allow the animal to escape. No dangerous animal may be kept in a house or structure when the windows are open or screen doors are the only obstacle preventing the animal from leaving the premises.

C. If the hearing officer determines that the animal is neither potentially dangerous nor dangerous, the animal shall be returned to the owner as soon as is practicable after receipt of the hearing officer's notice of determination. If the animal is unlicensed, the owner or keeper shall be cited for failure to obtain a license.

6.28.080 Sale or transfer restrictions.

A. No person shall sell or transfer a potentially dangerous or dangerous animal to any person within the city, unless the recipient permanently resides with the owner or keeper or the owner or keeper has received prior written approval of the director.

B. The owner or keeper of a potentially dangerous or dangerous animal shall not sell or transfer the animal to any person outside the city or otherwise remove the animal from the city without the prior written approval of the director.

C. No person shall bring into the city any animal designated or registered as a potentially dangerous, dangerous, or vicious animal in any other jurisdiction within the United States without the prior written approval of the director.

6.28.090 Enforcement and penalties.

A. It shall be unlawful for an owner or keeper not to comply with the conditions imposed by a hearing officer or any other requirements imposed by this chapter. If a failure to comply occurs, the animal shall be subject to immediate

seizure and impoundment by the department. The department may additionally order the removal of the animal from the city or seek its destruction if necessary. No animal may be destroyed under this section until ten (10) calendar days after the owner or keeper has been served with written notice from the hearing officer that the animal will be destroyed. The destruction order shall be stayed if within the ten (10) calendar days the owner or keeper:

1. Demonstrates to the satisfaction of the hearing officer compliance with the conditions imposed and this chapter; or

2. Files a petition to stay destruction of the animal in the Superior Court of Solano County and serves an endorsed filed copy of the petition on the city manager.

If the owner or keeper of the animal does not take the action described in subsection (1) or (2), the hearing officer may, without further notice, order the animal to be destroyed. The destruction order notice shall be served either personally or by pre-paid first class mail on the owner or keeper and a copy posted on the property.

B. Any person who violates the provisions of this chapter shall, upon conviction in the Superior Court of Solano County, be fined not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00). The fine shall be paid to the department for the purpose of defraying the cost of implementing this chapter. The court may also impose a jail term not to exceed thirty (30) calendar days.

C. Any person convicted of violating the provisions of this chapter shall be prohibited from owning or keeping within the county the same type of animal for three (3) years from the date of conviction.

D. The provisions of this article may be enforced by the department or by any law enforcement agency, fire department, or other authorized representative of the city.

E. The costs of abating a potentially dangerous or dangerous animal declared to be a public nuisance may be recovered from the owner or keeper as provided by state law.

F. The penalties and remedies in this article are not exclusive but cumulative with all other remedies at law or equity.

6.28.100 Exemptions. The provisions of this article shall not apply to:

A. Any dog assisting a police officer or deputy sheriff engaged in law enforcement duties; or

B. Any guide dog for the blind or physically disabled while performing its services; or

C. Any animal shelter owned, operated, or maintained by the department.

6.28.110 Removal of designation. The owner or keeper of a dangerous animal may petition the city manager or designee for a hearing to remove the potentially dangerous or dangerous determination if, for a period of three (3) years following that determination, the animal has not been involved in any incidents of the type which led to the determination. A hearing shall be held within thirty (30) calendar days of receipt of the written petition. Within ten (10) calendar days after

the hearing, the owner or keeper of the animal shall be notified in writing of the hearing officer's determination.

Chapter 6.32

ANIMAL KEEPING

Sections:

6.32.010 Proper care of animals.
6.32.020 Compliance with zoning requirements.
6.32.030 Keeping household animals.
6.32.040 Keeping birds, fowl and rabbits.
6.32.050 Keeping pigs and livestock.
6.32.060 Bee keeping prohibited.
6.32.070 Animal offspring.
6.32.080 Animal keeper permit required for additional animals.
6.32.090 Prohibited animals.
6.32.100 Animals not classified.
6.32.110 Sales or gifts of animals.
6.32.120 Animal in unattended vehicle.
6.32.130 Rabies suppression, control and quarantine.

6.32.010 Proper care of animals.

A. Any person who harbors any animal within the city shall at all times supply the same with sufficient amounts of food and water or other liquid generally accepted as standard for the age and type of the animal.

B. Any person who harbors any animal within the city shall at all times supply the same with appropriate housing which is safe, sanitary and generally accepted as standard for the age and type of the animal, and shall remove excreta and manure therefrom every day, or as often as is necessary so as not to become a nuisance to any person in the neighborhood.

6.32.020 Compliance with zoning requirements. Notwithstanding any other provision of this chapter, it is unlawful for any person to keep or maintain or cause to be kept or maintained any animal, unless the keeping of such is permitted in the particular district as provided in the city's zoning ordinance.

6.32.030 Keeping household animals.

A. For single-family detached residences in a residential district, a maximum of three dogs, three cats and other similar household animals are permitted, where the total number of such animals in one place of residence shall not exceed ten.

B. For multi-family residences, a maximum of one dog, two cats and other similar household animals are permitted, where the total number of animals in one place of residence shall not exceed five.

C. Household animals being fostered as a part of a non-profit agency's

program shall not be included for the purposes of determining the number of household animals. The foster program shall be registered with the department and an individual foster animal shall be fostered in a particular residence for a period of no more than six months.

6.32.040 Keeping birds, fowl and rabbits.

A. It is unlawful to keep fowl and rabbits in the city, except:

1. In a single-family detached residences in a residential district, a maximum combination of twenty birds or rabbits per legal lot are permitted provided all of them are kept at least 20 feet from any neighboring house built or used for human habitation. In no case shall more than ten chickens or other fowl be permitted.

2. For multi-family residences, a maximum total combination of 6 birds,fowl or rabbits per legal lot is permitted provided that all of them are kept at least 20 feet from any neighboring house built or used for human habitation.

B. Roosters or other fowl which constitute a nuisance by their loud cries, are not allowed in any zone.

C. No person owning, having an interest in, harboring or having charge, control, or custody of any rabbit, bird, and/or fowl, shall permit, allow, or suffer any animal to run or fly at large to go upon the premises of any person in the city.

D. Birds, fowl and rabbits being fostered as a part of a non-profit agency's program shall not be included for the purposes of determining the number of household animals. The foster program shall be registered with the department and an individual foster animal shall be fostered in a particular residence for a period of no more than six months.

6.32.050 Keeping pigs and livestock.

A. It is unlawful to keep any pig, hog, sheep, ox, horse, bull, steer, cow, burro, jack, jenny, mule, goat, or similar animal in the city except that such animals may be kept in an O-S district subject to the provisions of 17.70.300.

B. No person owning, having an interest in, harboring or having charge, control, or custody of any pig, hog, sheep, ox, horse, bull, steer, bull, cow, horse, burro, jack, jenny, mule, goat, or similar animal shall:

1. Cause or permit any such animal to be pastured, herded, staked, or tied, in any street, lane, alley, park or other public place, except the city may allow goats on public property for weed reduction or abatement; or

2. Tie, stake, pasture, or permit the tying, staking or pasturing of any such animal upon any private property within the city without the consent of the property owner or occupant of such property, or in such a way as to permit such animal to trespass upon any street or public place or upon any such private property; or

3. Permit any such animal to be or remain during the night time secured by a stake, or secured in any manner other than by enclosing the animal in a pen, corral, barn or other such sufficient enclosure.

6.32.060 Bee keeping.

A. It shall be unlawful for any person to have, keep, or maintain any apiary

within the city in any zone district except the O-S district. The provisions of this section shall not apply to the keeping of bees within an educational institution for study or observation or within a physician's office or laboratory for medical research, treatment, or other scientific purposes provided the bees are not permitted to fly at large.

B. All colonies and hives located within the city shall be registered with the county and properly maintained in accordance by State law.

C. No more than three colonies of bees may be maintained on a single lot or parcel in a permitted zone. Said apiary(ies) shall be located within ten feet of any rear or side property line when the adjoining property is occupied or within forty feet of the front property line, which property line for purposes of this subsection shall be defined as the sidewalk boundary line furtherest from the street.

6.32.070 Animal offspring. The offspring of animals shall not be counted toward the minimum allowed number until they are four months old.

6.32.080 Animal keeper permit required for additional animals. Every person owning or having custody of animals in excess of the number permitted by section 6.32.030 and 6.32.040 of this chapter shall procure an animal keeper permit from the director as set forth at chapter 6.44 of this title.

6.32.090 Prohibited animals. The director may prohibit those animals which are permitted by this chapter if findings are made that the keeping of such animals create an unsanitary condition or other public nuisance. The director's determination to prohibit any animal permitted by this chapter may be appealed to a hearing officer at an administrative hearing conducted pursuant to chapter 6.48 of this title.

6.32.100 Animals not classified. Any animal not specifically classified within this chapter shall be classified by the director based upon a determination as to the probable negative impact of the animal upon the health, safety and general welfare of the community.

6.32.110 Sales or gifts of animals.

A. No person under the age of 18 shall place any dog, cat, puppy or kitten on public display for the purpose of sale, offer for sale, barter or give-away upon any street, sidewalk, parking lot, shopping center walkway or other public place, and no transfer of any such animal shall be made in any such place to any person under the age of 18.

B. No person shall display, sell, offer for sale, barter or give-away any rabbit, baby chick, duckling or other fowl upon any street, sidewalk, parking lot, shopping center walkway or other public place, and no transfer of any such animal shall be made in any such place to any person.

6.32.120 Animal in unattended vehicle.

A. It is unlawful for any person to leave an animal in an unattended vehicle without adequate ventilation or in such a manner as to subject the animal to

extreme temperatures which may adversely affect the animal's health or welfare.

B. Animal control officers are authorized to remove and take into custody and impound any animal found in an unattended vehicle who appears to be suffering the effects of exposure to extreme temperatures and to place all such animals taken into custody in the city animal shelter if the owner cannot be, upon initial contact, identified and contacted.

6.32.130 Rabies suppression, control and quarantine.

A. If it shall appear to the director that any animal has rabies, the director may destroy such animal forthwith pursuant to this chapter, or may hold such animal for further examination or observation for such time as the director may determine to be appropriate.

B. Whenever any animal has been bitten by an animal which has rabies or which exhibits any symptoms of rabies, or which is suspected of having or having been exposed to rabies, the owner or the person having custody of such bitten animal shall immediately notify the director, and shall immediately confine the animal within a secure enclosure and maintain that confinement until it is established that such animal does not have rabies. The director shall have the power to quarantine such animal, or impound it at the owner's expense if the owner or person having custody of such animal shall fail, refuse, or is unable, in the opinion of the director, to adequately confine such animal immediately, or in the event the owner of such animal is not readily accessible.

C. Whenever it is shown that any animal has bitten any person, the owner shall, upon the order of the director, quarantine such animal and keep it confined at the owner's expense for a minimum period of ten (10) days for dogs and cats and fourteen (14) days for all other animals, and shall allow the director to inspect and examine such animal at any time during such period of quarantine. Animals quarantined pursuant to this subsection shall not be removed from the premises upon which such animal is quarantined without permission of the director. The director is authorized to impound any animal at the owner's expense in the event the owner or person having custody of such animal fails or refuses or is unable to so confine such animal. Animals shall remain quarantined until notice is given by the director that such quarantine is terminated.

D. The director may, in her or his discretion, post an appropriate sign on any premises where an animal is quarantined, to warn the public of such quarantine. It is unlawful for any person to remove such a sign without the permission of the director.

E. Whenever the director determines that an epidemic of rabies or any animal disease which threatens the public health or safety exists, or is threatened; he or she shall have the authority to take such measures as may be reasonably necessary to prevent the spread of the disease, including but not limited to the declaration of quarantine against any or all animals in any area of the city, for a period of not more than one hundred twenty (120) days. An additional or extended quarantine period may be declared by the city council if such period shall be deemed necessary by the director for the protection and preservation of the public health, peace and safety. Any quarantine declared pursuant to this subsection, other than as restricted in this chapter, shall be upon such conditions as the director may

determine.

Chapter 6.36

FERAL, WILD AND UNDOMESTICATED ANIMALS

Sections:

6.36.010 Keeping wild animal prohibited.
6.36.020 Prohibited feeding of certain wildlife.
6.36.030 Unlawful tampering with traps.
6.36.040 Wildlife protected.
6.36.050 Feral cat colonies.
6.36.060 Colony caretaker responsibilities.

6.36.010 Keeping wild animal prohibited. No person shall keep or maintain any wild animal within the boundaries of the city.

6.36.020 Prohibited feeding of certain wildlife.

A. It shall be unlawful for any person to feed or in any manner provide food for nondomesticated mammalian predators such as coyotes (Canis latrans). This section shall also include a ban on feeding or providing food to feral cats, raccoons, foxes, skunks, opossums, and squirrels.

B. Exceptions:

1. An owner in legal possession of a wild or nondomesticated animal that is kept under a valid permit issued by the city pursuant to this chapter; and

2. When a person provides food and water to a trapped, injured or unweaned wild or nondomesticated animal during the time department is notified and the animal has been picked up.

3. When a feral cat colony caretaker provides food and water to a feral cat colony registered with the department in accordance with section 6.36.050.

6.36.030 Traps.

A. No person shall set or use any spring steel trap, No. 1 or larger, in the city. This section shall not prohibit the use of gopher traps.

B. It is unlawful to willfully or recklessly disturb, move, obstruct, or damage any humane trap placed and set by the department or any official, employee or representative of the city.

6.36.040 Wildlife protected.

A. Except for trappers licensed by the state or federal government, no person shall hunt, shoot, kill, or molest any species of wildlife or molest or damage the nest or eggs of any wildlife within the city, except any poisonous reptile or insect. A federal trapper is required for trapping possum or skunk.

B. In the event that the city council determines that a species of wildlife

has become so numerous in any particular location or area as to constitute a public nuisance or a particular wild animal is a menace to any person's health, safety or property, the city council may order the species or animal involved either destroyed or otherwise controlled.

6.36.050 Feral Cat Colonies.

A. The director, in order to encourage the stabilization of the feral cat population in the city and to protect wildlife, shall establish a feral cat colony program for feral cats in the industrial zones of the city. In no event shall a feral cat colony be permitted for an area next to an environmentally sensitive area since the feral cats may feed on other animals living in the area. The fee to register a feral cat colony shall not exceed $100.

B. The director, in order to encourage the stabilization of the feral cat population in the city, may:

1. Trap any feral cat in a humane manner;

2. Have the cat surgically sterilized, ear-tipped, and vaccinated against rabies by a licensed veterinarian; and

3. Release the cat to animal shelter or local humane society for adoption or other disposition in accordance with law, or to a colony caretaker who will maintain the cat as part of a managed colony of feral cats.

4. Impound feral cats in violation of this chapter and dispose of the cats in accordance with this title. Any feral cat impounded by the department that bears an appropriate ear-tipping indicating it belongs to a managed colony may, at the discretion of the director, be returned to its managed colony unless illness or injury present an imminent danger to public health or safety.

6.36.060 Colony caretaker responsibilities.

A. Colony caretakers shall abide by standard guidelines developed by the department regarding the provision of food, water, shelter and veterinary care for cats within the managed colony and shall obtain the property owner's permission to register the colony.

B. Colony caretakers shall have a licensed veterinarian evaluate the health of all trapped free-roaming cats. Seriously ill or injured cats with no reasonable prognosis for humane rehabilitation for survival outdoors will be humanely euthanized by the colony caretakers.

C. A violation of this section shall be cited as an infraction. The fine imposed for the first such violation shall not be less than twenty-five dollars ($25.00). Subsequent or continued violations will result in caretaker's removal from management of the managed colony, or the designee's removal from the program.

Chapter 6.40

COMMERCIAL ANIMAL ESTABLISHMENTS

Sections:

6.40.010 Mandatory permitting of commercial animal establishments.

6.40.020 Application.
6.40.030 Investigation.
6.40.040 Notice of action
6.40.050 Commercial animal establishment fee.
6.40.060 Numerical limitation.
6.40.070 Regulations relating to animal establishments.
6.40.080 Permit nontransferable.
6.40.090 Expiration and renewal of permit.
6.40.100 Revocation of permit.
6.40.110 Display of permit.
6.40.120 Emergency information.
6.40.130 Kennel dogs exempt for individual license tag requirements; identification tag required.

6.40.010 Mandatory permitting of commercial animal establishments.

A. No person shall conduct or operate within the city any commercial animal establishment or operate as an animal dealer without first obtaining a commercial animal establishment permit from the director issued pursuant to this chapter.

B. Any person desiring to conduct or operate within the city any commercial animal establishment or operate as an animal dealer shall first make application to the city's community development department for a written determination that the proposed animal establishment is in compliance with the applicable provision of the then-current zoning ordinance of the city. Where an establishment is sought to be operated upon leased or rented premises, a letter of consent from the owner of the premises shall be submitted to the community development department at the time the application for a written determination is submitted.

C. Within thirty (30) days of the issuance of a written compliance determination from the city's community development department, any person desiring to conduct or operate within the city a commercial animal establishment shall make application to the director for a commercial animal establishment permit.

6.40.020 Application. Each application for a commercial animal establishment permit shall be in writing upon a form to be furnished by the director or a designee. The application form shall contain such information as may reasonably be required by the director for the purposes of enforcement of this chapter, including but not limited to, the current home telephone number of the caretaker of the subject establishment, and another current telephone number for emergency use or messages when such caretaker is absent from the subject establishment. At the time of filing of the application for a commercial animal establishment permit, the applicant shall provide a copy of the community development department's written compliance determination.

6.40.030 Investigation.

A. Prior to the issuance of a commercial animal establishment, the director, or his or her designee, shall conduct an inspection of the intended business

location and facilities and prepare a report for inclusion with the application for an original permit or a renewal. A permit shall be issued to the applicant if the director or designee finds that:

1. The keeping of animals, or the conduct of operation of the business for which the permit is requested, at the place set forth in the application, will not violate any law or ordinance of the city, or any law of the state;

2. The keeping of animals, or the conduct or operation of the business for which the permit is requested, will not endanger the health, peace or safety of the community;

3. The premises and establishment where animals are to be kept satisfy the conditions set forth at section 6.40.070 of this chapter, and animals will not be subject to suffering, cruelty or abuse; and

4. The applicant has not had a similar permit revoked within one year prior to the application.

B. The director may impose such conditions in granting a permit as he or she may deem necessary to protect the public and may limit the term of such permit.

6.40.040 Notice of action. The applicant shall be notified in writing of the action of the director in either granting or denying the permit and, if the application has been denied, the notice shall advise the applicant of his or her right to appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48 of this title. Service of the notice may be made by personal service or by registered mail. If service is made by mail, it shall be deemed complete upon deposit in the United States Mail directed to the applicant at his or her latest address shown on the application.

6.40.050 Commercial animal establishment fee.

A. The fee for a commercial animal establishment permit shall be set by resolution of the city council and shall be paid to the city before a permit is issued.

B. Nonprofit corporations formed pursuant to the provisions of the California Corporations Code for the prevention of cruelty to animals, and which have furnished proof of such incorporation to the director shall not be required to pay a fee for an animal establishment permit. However, all other provisions of this chapter shall be applicable to any such nonprofit corporation. Each corporation claiming to be exempt from fees pursuant to this subsection shall, before issuance of any permit, agree in writing to indemnify and hold the city and its officers, employees and agents harmless from all liability arising out of the exercise of the permit.

6.40.060 Numerical limitation.

A. Notwithstanding any other provisions of this chapter, the director upon application for issuance or renewal of a commercial animal establishment permit may limit the number of animals which are to be kept or maintained on the permitted premises. A numerical limitation may also be imposed by the community development director when a land use approval is required for operation of the subject establishment.

B. At any time that there are more animals than a commercial animal establishment permit allows, the operator of any commercial animal establishment

shall obtain a new permit which allows the keeping of the greater number of animals. The former permit shall be canceled and a credit for the canceled permit fee shall be allowed on the new permit.

6.40.070 Regulations relating to animal establishments.

A. Every person who owns, conducts, manages or operates any animal establishment for which a permit is required shall comply with each of the following conditions:

1. Housing facilities for animals shall be structurally sound and shall be maintained in good repair to protect animals from injury and restrict entrance of other animals. In the case of animals kept outdoors, sufficient shade shall be provided to prevent overheating or discomfort from sun exposure. Animals kept outdoors shall also be provided with access to shelter to allow them to remain dry during inclement weather.

2. All animals and all animal buildings or enclosures shall be maintained in a clean and sanitary condition with sufficient light provided to permit routine observation of animals and proper cleaning of the facilities.

3. All animals shall be supplied with sufficient good and wholesome food and water as often as the feeding habits of the respective animals require.

4. Animal buildings and enclosures shall be so constructed and maintained as to prevent the escape of animals.

5. All reasonable precautions shall be taken to protect the public from the animals and animals from the public.

6. Every building or enclosure wherein animals are maintained shall be properly ventilated to prevent drafts and to remove odors. Heating and cooling shall be provided as required according to the physical needs of the animals.

7. All animal rooms, cages and runs shall be of sufficient size to provide adequate and proper housing for animals kept therein.

8. All dog runs shall be of concrete or other impervious material and provided with adequate drainage into an approved sewage disposal installation.

9. All animals shall be taken to a licensed veterinarian for examination and treatment if so ordered by the director.

10. Adequate and effective vector control shall be established and maintained at all times.

11. Every violation of applicable regulations shall be corrected within a reasonable time to be specified by the director.

12. Facilities shall be subject to unannounced inspections during regular business hours to insure compliance with the above regulations and any permit conditions.

B. Failure of an applicant for a permit to comply with any one of the foregoing conditions shall be deemed just cause for the denial of any permit, whether original or renewal.

6.40.080 Permit nontransferable.

A. A commercial animal establishment permit issued pursuant to the provisions of this chapter shall not be transferable.

B. The permit shall become void if the holder thereof changes the location

of his or her place of business or sells, assigns, transfers or otherwise disposes of such business or his or her interest therein for a period of thirty days or more.

6.40.090 Expiration and renewal of permit.

A. Any permit issued under this chapter shall expire at the end of the calendar year in which the permit is issued.

B. A commercial animal establishment permit issued under the provisions of this chapter shall be renewed within thirty (30) days after the expiration thereof. The procedure for the renewal of a permit shall be the same as for an original permit.

6.40.100 Revocation of permit.

A. Upon reaching the determination that a specific violation of this chapter and/or applicable statute, rule, code, regulation or permit condition warrants suspension, modification or revocation of a commercial animal establishment permit, the director or his or her designee shall prepare and serve a written notice of action recommendation upon the subject permittee.

B. The notice of action recommendation should include all of the following information:

1. The name and business address of the subject permittee;

2. A description of the code section(s) violated and/or the actions or conditions which warrant suspension, modification or revocation of the subject permit;

3. The action proposed (i.e., suspension, modification or revocation of the subject permit or license);

4. A description of any prior action taken by the director or the department to gain compliance with regards to the subject violation(s);

5. A description of the procedures involved in taking the proposed action, including the permittee's right to attend an administrative hearing on the proposed action; and

6. The name, title and telephone number of the director.

B. The director or his or her designee shall cause a copy of the notice of action recommendation to be provided to the subject permitee by causing a copy of the notice to be delivered to the permitee personally or by causing a copy of the notice to be delivered to the permitee via certified mail, postage prepaid, return receipt requested, and addressed to permitee at the address shown on the permit.

C. Proof of service of the notice of action recommendation shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the director or his or her designee.

D. As soon as practicable after service of the notice of action recommendation, the director or his or her designee shall submit a copy of the notice of action recommendation to the city clerk who, as soon as practicable after receiving said notice, shall fix a date, time and place for the hearing to consider suspension, modification or revocation of the subject permit or license. Such date shall be not less than ten (10) calendar days and not more than thirty (30) calendar days from the

date the notice was submitted to the city clerk.

E. A hearing on the notice of action recommendation shall thereafter be noticed and conducted in accordance with the procedures set forth at chapter 6.48 of this title.

F. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of the notice of action recommendation and a staff report, which should include a description of the violations and any actions taken by the subject permitee subsequent to the service of the notice, a record of conversations or correspondence between the director, the department and the permittee concerning the violations and/or the notice of action recommendation.

G. If a commercial animal establishment permit is revoked for cause, the director shall not accept a new application by the same person for the same activity at the same location less than one year after such denial or revocation, unless the applicant affirmatively shows and the director finds, by inspection and/or investigation, that the grounds upon which the first application was denied or the permit was revoked no longer exist. On revocation of a permit, no part of the fee is refundable.

H. Notwithstanding any other provision in this section, prior to the holding of the administrative hearing, the director may, for good cause, revoke, suspend or modify any commercial animal establishment permit for a period not to exceed thirty (30) days in the event it is reasonably necessary to protect against an immediate threat to the health or safety of the public or the animals held on the subject premises.

6.40.110 Display of permit. All commercial animal establishment permits issued under the provisions of this chapter shall be displayed in a conspicuous place on the permitted premises.

6.40.120 Emergency information. Each commercial animal establishment shall have posted, in such a place as to be legible from the exterior of the building, the names, addresses and telephone numbers of persons to be notified in case of emergency.

6.40.130 Kennel dogs exempt for individual license tag requirements; identification tag required.

A. Where a commercial animal establishment permit has been issued to a dog kennel and is in effect, the dogs contained in such dog kennel shall be exempt from the requirements of individual license tags as provided by section 6.12.020 of this title.

B. Any dog exempt from the requirements of an individual license tag shall wear an identification tag that shall be securely affixed to a collar, harness, or other device which shall be at all times worn by such dog. The identification tag shall identify the name, address and telephone number of the kennel operator.

Chapter 6.44

ANIMAL KEEPER PERMIT

Sections:

6.44.010 Animal keeper permit required.
6.44.020 Animal keeper application.
6.44.030 Investigation.
6.44.040 Notice of action.
6.44.050 Animal keeper permit fee.
6.44.060 Numerical limitation.
6.44.070 Regulations relating to keeping animals.
6.44.080 Expiration and renewal of permit.
6.44.090 Permit nontransferable.
6.44.100 Revocation of permit.

6.44.010 Animal keeper permit required. To allow the placement of animals in temporary foster homes or to allow small hobby businesses involving animals, any person owning or having custody of animals in excess of the number permitted by section 6.32.030 and 6.32.040 of this title may make application to the director for an animal keeper permit issued pursuant to this chapter.

6.44.020 Animal keeper application. Each application for an animal keeper's permit shall be in writing upon a form to be furnished by the director or a designee. The application form shall contain such information as may reasonably be required by the director for the purposes of enforcement of this chapter, including but not limited to, the address and home telephone number of the applicant and the number and general description of all animals for which the permit is sought.

6.44.030 Investigation.

A. Prior to the issuance of an animal keeper permit, the director, or his or her designee, shall conduct an inspection of the applicant's premises where the permitted animals are intended to be kept and prepare a report for inclusion with the application for an original permit or a renewal. A permit shall be issued to the applicant if the director or designee finds that:

1. The keeping of animals, or the conduct of operation of the business for which the permit is requested, at the place set forth in the application, will not violate any law or ordinance of the city, or any law of the state;

2. The keeping of animals, or the conduct or operation of the business for which the permit is requested, will not endanger the health, peace or safety of the community;

3. The proposed site is adequate in size and shape to accommodate the number and type of animals for which the permit is requested without harm to the animals or material detriment to the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site.

4. The premises and establishment where animals are to be kept satisfy the conditions set forth at section 6.40.070 of this chapter, and animals will not be subject to suffering, cruelty or abuse; and

5. The applicant has not had a similar permit revoked within one (1) year prior to the application.

B. The director may impose such conditions in granting a permit as he or she may deem necessary to protect the public and may limit the term of such permit.

6.44.040 Notice of action. The applicant shall be notified in writing of the action of the director in either granting or denying the permit and, if the application has been denied, the notice shall advise the applicant of his or her right appeal the determination to a hearing officer pursuant to the provisions of chapter 6.48 of this title. Service of the notice may be made by personal service or by registered mail. If service is made by mail, it shall be deemed complete upon deposit in the United States mail directed to the applicant at his or her latest address shown on the application.

6.44.050 Animal keeper permit fee. The fee for an animal keeper permit shall be set by resolution of the city council and shall be paid to the city before a permit is issued.

6.44.060 Numerical limitation.

A. Notwithstanding any other provisions of this chapter, the director, upon application for issuance or renewal of an animal keeper permit, may limit the number of animals which are to be kept or maintained on the permitted premises.

B. At any time that there are more animals than an animal keeper permit allows, the permittee shall obtain a new permit which allows the keeping of the greater number of animals. The former permit shall be canceled and a credit for the canceled permit fee shall be allowed on the new permit.

6.44.070 Regulations relating to keeping animals.

A. Every person to whom an animal keeper permit is issued shall comply with each of the following conditions:

1. Housing facilities for animals shall be structurally sound and shall be maintained in good repair to protect animals from injury and restrict entrance of other animals. In the case of animals kept outdoors, sufficient shade shall be provided to prevent overheating or discomfort from sun exposure. Animals kept outdoors shall also be provided with access to shelter to allow them to remain dry during inclement weather.

2. All animals and all animal buildings or enclosures shall be maintained in a clean and sanitary condition with sufficient light provided to permit routine observation of animals and proper cleaning of the facilities.

3. All animals shall be supplied with sufficient good and wholesome food and water as often as the feeding habits of the respective animals require.

4. Animal buildings and enclosures shall be so constructed and maintained as to prevent the escape of animals.

5. All reasonable precautions shall be taken to protect the public from the animals and animals from the public.

6. Every building or enclosure wherein animals are maintained shall be properly ventilated to prevent drafts and to remove odors. Heating and

cooling shall be provided as required according to the physical needs of the animals.

7. All animal rooms, cages and runs shall be of sufficient size to provide adequate and proper housing for animals kept therein.

8. All animals shall be taken to a licensed veterinarian for examination and treatment if so ordered by the director.

9. Adequate and effective vector control shall be established and maintained at all times.

10. Every violation of applicable regulations shall be corrected within a reasonable time to be specified by the director.

B. Failure of an applicant for a permit to comply with any one of the foregoing conditions shall be deemed just cause for the denial of any permit, whether original or renewal.

6.44.080 Expiration and renewal of permit.

A. An animal keeper permit issued pursuant to the provisions of this chapter shall expire at the end of the calendar year in which the permit is issued.

B. An animal keeper permit issued pursuant to the provisions of this chapter shall be renewed within thirty (30) days after the expiration thereof. The procedure for the renewal of a permit shall be the same as for an original permit.

6.44.090 Permit nontransferable. An animal keeper permit issued pursuant to the provisions of this chapter shall not be transferable.

6.44.100 Revocation of permit.

A. Upon reaching the determination that a specific violation of this chapter and/or applicable statute, rule, code, regulation or permit condition warrants suspension, modification or revocation of an animal keeper permit, the director or his or her designee shall prepare and serve a written notice of action recommendation upon the subject permittee.

B. The notice of action recommendation should include all of the following information:

1. The name and business address of the subject permittee;

2. A description of the code section(s) violated and/or the actions or conditions which warrant suspension, modification or revocation of the subject permit;

3. The action proposed (i.e., suspension, modification or revocation of the subject permit or license);

4. A description of any prior action taken by the director or the department to gain compliance with regards to the subject violation(s);

5. A description of the procedures involved in taking the proposed action, including the permittee's right to attend an administrative hearing on the proposed action; and

6. The name, title and telephone number of the director.

C. The director or his or her designee shall cause a copy of the notice of action recommendation to be provided to the subject permitee by causing a copy of the notice to be delivered to the permitee personally or by causing a copy of the notice to be delivered to the permitee via certified mail, postage prepaid, return receipt requested, and addressed to permitee at the address shown on the permit.

D. Proof of service of the notice of action recommendation shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the notice and retained by the director or his or her designee.

E. As soon as practicable after service of the notice of action recommendation, the director or his or her designee shall submit a copy of the notice of action recommendation to the city clerk who, as soon as practicable after receiving said notice, shall fix a date, time and place for the hearing to consider suspension, modification or revocation of the subject permit or license. Such date shall be not less than ten (10) calendar days and not more than thirty (30) calendar days from the date the notice was submitted to the city clerk.

F. A hearing on the notice of action recommendation shall thereafter be noticed and conducted in accordance with the procedures set forth at chapter 6.48 of this title.

G. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of the notice of action recommendation and a staff report, which should include a description of the violations and any actions taken by the subject permitee subsequent to the service of the notice, a record of conversations or correspondence between the director, the department and the permittee concerning the violations and/or the notice of action recommendation.

H. If an animal keeper permit is revoked for cause, the director shall not accept a new application by the same person for the same activity at the same location less than one year after such denial or revocation, unless the applicant affirmatively shows and the director finds, by inspection and/or investigation, that the grounds upon which the first application was denied or the permit was revoked no longer exist. On revocation of a permit, no part of the fee is refundable.

I. Notwithstanding any other provision in this section, prior to the holding of the administrative hearing, the director may, for good cause, revoke, suspend or modify any animal keeper permit for a period not to exceed thirty (30) days in the event it is reasonably necessary to protect against an immediate threat to the health or safety of the public or the animals held on the subject premises.

Chapter 6.48

ADMINISTRATIVE HEARINGS

Sections:

6.48.010	Purpose.
6.48.020	Duties of administrative hearing officer.
6.48.030	Limitations on authority of hearing officer.
6.48.040	Request for hearing and hearing officer.
6.48.050	Scheduling of administrative appeals hearing; notice of administrative appeals hearing.
6.48.060	Service of notice of administrative appeals hearing.

6.48.070 Proof of service of hearing notice.
6.48.080 Report and recommendation.
6.48.090 Admissibility of evidence.
6.48.100 Failure to attend administrative appeals hearing.
6.48.110 Rights of parties at appeals hearing.
6.48.120 Decision of the hearing officer.
6.48.130 Duty to prepare and serve decision and compliance order.
6.48.140 Time in which to serve decision and compliance order.
6.48.150 Content of decision and compliance order.
6.48.160 Service of decision and compliance order.
6.48.170 Effective date.
6.48.180 Failure to comply with decision and compliance order.

6.48.010 Purpose.

A. Unless otherwise provided by this title, any appeal filed by person aggrieved by an administrative decision made pursuant to this title shall be conducted in accordance with the provisions of this chapter.

B. Any administrative hearing of the city concerning animals which is required to be held by state law shall be conducted in accordance with the provisions of this chapter.

6.48.020 Duties of administrative hearing officer. The administrative hearing officer ("hearing officer") shall conduct all administrative appeal hearings of any timely and properly filed appeal from any administrative decision made under this title. The hearing officer shall review all evidence, documents, and written testimony and hear all oral testimony submitted by the parties at or before the scheduled administrative appeals hearing and render all decisions and findings in writing to the appellant with a duplicate copy to the director.

6.48.030 Limitations on authority of hearing officer. The hearing officer's authority to hear and consider appeals shall be limited to passing on only those appeals pertaining to matters within his or her subject matter jurisdiction. The hearing officer shall consider at the hearing on the appeal only those matters or issues which were specifically raised by the appellant in his or her appeal and which are relevant to the issues of the hearing. The hearing officer shall not have the authority to waive any requirements of the Municipal Code, zoning ordinance and/or any applicable statutes, rules, codes or regulations.

6.48.040 Request for hearing and hearing officer.

A. Within ten (10) days business days of a decision, an affected party may appeal the decision by filing a written appeal specifying the reasons for the appeal and paying the appeal fee established by council resolution.

B. Within three (3) days after the director has determined that a timely and complete appeal has been filed, the director shall request appointment of a hearing officer in accordance with city policy.

6.48.050 Scheduling of administrative appeals hearing; notice of

administrative appeals hearing. As soon as practicable, but allowing sufficient time for providing notice of the hearing as provided by this title, the hearing officer shall fix a date, time and place for the hearing of the appeal and shall instruct the director of the same. The director or his or her designee shall prepare a notice of administrative appeals hearing ("hearing notice"), which shall be in substantially the same form as follows: "You are hereby notified that a hearing will be held before the administrative hearing officer at _____ on the ____ day of _____, _____, at the hour of _____upon the _____ served upon you. You may be present at the hearing. You may be, but need not be, represented by an attorney. You may present any relevant evidence at the hearing and you will be given a full opportunity to cross-examine all witnesses testifying against you."

6.48.060 Service of notice of administrative appeals hearing. The director shall cause a copy of the hearing notice to be provided to each appellant either by causing a copy of said notice to be delivered to each appellant personally or by causing a copy of said notice to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal.

6.48.070 Proof of service of hearing notice. Proof of service of the hearing notice shall be certified at the time of service by a written declaration under penalty of perjury executed by the persons effecting service, declaring the date and manner in which service was made. The declaration shall be affixed to a copy of the hearing notice and retained by the director.

6.48.080 Report and recommendation. The director or his or her designee shall prepare an administrative hearing packet for the hearing officer to review prior to the hearing. The packet shall include a copy of all department documents pertaining to the subject violations, a staff report and any evidence of the violation(s).

6.48.090 Admissibility of evidence. At the appeals hearing, the hearing officer shall hear any evidence offered either in support of appellant's claim or in support of the administrative decision which is the subject of the appeal, provided such evidence is relevant to the issues of the hearing. The hearing officer has the authority to determine the relevance of any evidence to the hearing. The hearing officer also has the authority to exclude unduly repetitious and cumulative evidence, regardless of its relevancy.

6.48.100 Failure to attend administrative appeals hearing. If appellant fails to attend the scheduled appeals hearing, the hearing will proceed without appellant and he or she will be deemed to have waived his or her rights to be orally heard at the appeals hearing.

6.48.110 Rights of parties at appeals hearing. Each party appearing at the hearing shall have the following rights: (a) to call and examine witnesses; (b) to introduce documentary and physical evidence; (c) to cross-examine opposing

witnesses; (d) to impeach any witness regardless of which party first called the witness to testify; (e) to rebut evidence; and (f) to be represented by anyone who is lawfully permitted to do so.

6.48.120 Decision of the hearing officer.

A. Following an appeal, the hearing officer may decide to uphold the administrative decision or overturn such decision, in whole or in part. In the event the hearing officer determines to overturn the decision in whole, the appellant shall not be required to pay any administrative fines imposed as a result of said administrative decision.

B. Following an appeal, the hearing officer may impose upon appellant such conditions for the keeping of animals as are permitted by State or local law.

6.48.130 Duty to prepare and serve decision and compliance order. The hearing officer shall prepare and serve a written notice of decision and compliance order ("decision and compliance order") upon the appellant and the director following the appeals hearing. The decision of the hearing officer shall be final and not appealable.

6.48.140 Time in which to serve decision and compliance order. The hearing officer shall serve the decision and compliance order on each appellant within thirty (30) calendar days from the date the hearing is deemed closed. The hearing officer shall also provide or cause to be provided a copy of the decision and compliance order to the director.

6.48.150 Content of decision and compliance order. The decision and compliance order for a notice and order shall contain a brief summary of the evidence considered, findings of fact, a determination of the issues presented, the effective date of the decision, and a compliance order which shall specifically describe the actions which shall be required to be taken to remedy the violations indicated in the decision and compliance order and shall require the actions to be completed within a specified time period and by a specified deadline. The decision and compliance order shall further require the recipient of the notice and order to pay all applicable administrative fines no later than ten (10) days from the date of issuance of the notice of decision and compliance order. The amount of the fine for which the recipient shall be responsible shall be as set forth in the notice and order. Payment of the administrative fine shall be ordered to be made to the department unless otherwise directed by the director.

6.48.160 Service of decision and compliance order. The hearing officer shall cause a copy of the decision and compliance order to be provided to each appellant either by causing a copy of said decision and compliance order to be delivered to each appellant personally or by causing a copy to be delivered by certified mail, postage prepaid, return receipt requested, and addressed to each appellant at the address shown on the appeal. A copy of the decision and compliance order shall also be provided to the director.

6.48.170 Effective date. The effective date of the hearing officer's decision and compliance order shall be as stated therein.

6.48.180 Failure to comply with decision and compliance order. It shall be unlawful to fail, neglect or refuse to obey a final decision and compliance order.

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 clause thereof irrespective of the fact that any one or more sections, subsections, phrases or clauses be declared unconstitutional on their face or as applied.

Section 5.

Repeal of Conflicting Provisions. All the provisions of the Benicia Municipal Code as heretofore adopted by the City of Benicia that are in conflict with the provisions of this ordinance are hereby repealed.

*****

On motion of Council Member , seconded by Council Member , the foregoing ordinance was introduced at a regular meeting of the City Council on the 20th day of November, 2007 and adopted at a regular meeting of the City Council held on the day of , 2007, by the following vote:

Ayes:
Noes:

Absent:

Steve Messina, Mayor

Attest:

Lisa Wolfe, City Clerk

TABLE

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
Title 6 – New Title – Animal Control Regulations	Just ANIMALS
Added Definitions under 6.04General Provisions: • Altered • Apiary • Animal –(1- Arthropod; 2- vertebrate Creature domestic or wild) • Animal Control Director • Animal Control Department • Animal Control Officer • At Large • Animal Shelter • Dog Park or Off leash area • Dog Kennel • Enclosure • Hearing Officers • Operator • Owner • Permanently Non-fertile dog • Person – expanded to say: any individual, firm, partnership, joint venture, corporation, association, club, organization or other legal entity • Secure Enclosure • Service dog • Substantial Physical Injury • Unaltered Dog • Wild Animal	• Just mammal, poultry, bird, reptile fish…etc. • Person: includes any firm, partnership, corporation, trust, association, or person.
6.04.030 – Prohibition on Slaughtering • States slaughtering of "animals" Only includes exception of slaughtering of animals in a licensed restaurant for purposes of food preparation	• Was 6.16.230 • Listed specific animals • Used to include for educational purposes (medical or educational), deemed slaughterhouses
6.04.040 – Disposal of Dead Animals • Owner burial on private property • May request pick-up by department • Department disposal of animals with no established ownership • Notification of owner when a deceased animal is picked up.	• Not included

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
6.04.050 – Retention of animal without consent • Paragraph form	Was 6.16.050 – Giving Notice of Captured Animals • Numbered form
6.04.070 Applicability of State Laws • States only "State Law" is to be followed	Was 6.04.040 State Codes • Was specific on which departments to follow
6.08 – Administration and Enforcement • Animal Control Director established under the guidance of the Police Chief • Gives purpose (enforcement of state and local laws ….) • Licensing authority not specified in this section (under next chapter and given to finance department) • Combines with 6.08.030 of current code re: police power • Ability to arrest and detain violators • May promulgate any necessary rules and regs (upon approval of police chief) • More authority in protection of animals • 6.08.030 – establishes animal control officials under director	6.08 – Animal Control Director • established under the guidance of City Manager • Has authority to grant licenses • Ability to use firearms
6.08.050 Recordkeeping – **new section** • Any records will be maintained by police department	Not included

Chapter 6.12 – Licensing of **DOGS**
• Limited to dogs
• Establishes finance department as issuers of licenses and will establish application
• Fees not yet established – allows city council to establish by order of resolution
• Gives 30 days to obtain license upon moving to city or upon puppy turning 4 months of age
• Gives exceptions to licenses:
  ○ Dogs bought for dog shows
  ○ In custody of an animal hospital
  ○ On sale in licensed pet shop
  ○ Dogs kept by a person having a permit to maintain dogs in kennel providing they have identification
	6.12 – Licensing
	• Included cats
	• County Tax collector in charge
	• States Fees as: $10.60, unless spayed/neutered then 5.60, however are outdated
	• No established time frame
	
	Footnote: Currently licenses are sold based on how long the license is good for (1-3 years), and whether or not the animal is spayed or neutered. Standard is unaltered: 1 yr $40, 2 yr $76, 3 yr $116. Altered: 1 yr $20, 2 yr $36, 3 yr $56. Senior rates for persons 65 and older are: 1 yr $10, 2 yr $16, 3 yr $22. Length of license based on how long rabies vaccination is good for.

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
when leaving kennel. • Any owner moving to city who has a license from previous city has (6) months to obtain new license	• License to be prorated of expiration of established licensing year (july 1 – august 31)
6.12.030 Rabies Vaccination; deferment • Required vaccination to be received no later than 30 days prior to issuance of license • Provides rabies exception if vaccine will endanger a dogs health per veterinarian	No established time line Has specifications on types of vaccines and regulations of issuing license with them.
6.12.050 Fees, discounts, waivers and surcharges • Given own section vs. in various parts of code • Fees established by resolution of city council • Dog adoptions given one year waiver, or 33% credit if two-three year licensed issued • Fee waivers: service dogs, owner is over age of 65 and must be altered, dogs owned by a public agency • A different fee and license issued to dogs deemed to be dangerous (included in another chapter)	Fees in multiple sections and already established. • 10.60 for one year unaltered • 5.60 for altered dog • only exception is for person owning dogs for site
6.12.060 Renewal; Late fee; penalty • Added section • Will be renewed no later than 15 days after to expiration of old license • Late fee established by city council resolution	Not included
6.12.070 No transferability and Refunds • Added Section • Non transferable and no refunds	Not included
6.12.090 Unlawful Use of Tag • New Section • Attachment of tag to another dog	Not Included
6.12.100 Disposition of fees and fines • New section • Where the fees go (to county unless fee imposed by city) can be amended	Not included - Section of no authorized removal of tag other than by owner not included in proposed ordinance

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
Chapter 6.16 Regulation of DOGS • Just includes dogs	Chapter 6.16 Regulations Included regulations on cats, and various other animals
6.16.010 Carrying instrument for removal of dog feces and actual removal of such feces required • Added section but same requirement of removal of feces	Just states removal of feces is a requirement, not that a tool was required to be carried on person at all times
6.16.030 Dogs in public playgrounds and parks prohibited: exceptions • Adds subsection of exceptions of dogs in parks while participating in permitted activities.	Was 12.28.060 under Chapter Parks
6.16.040 Permissive running at large • new section – allows dogs without a leash to run on private property or other property with permission	Not included
6.16.050 Unspayed female dogs • new section • clarifies that unspayed female dogs not allowed to run at large	Chapter 6.16 has various sections that are included in other parts of the proposed ordinance that is more specific to its nature. Ex: 6.16.240 Animal nuisances declared – new chapter created.
6.20 Animal Shelter and Impoundment • Adds establishment of an animal shelter in City • 6.20.020 Impounded authority added wording to include: "or where said animal is engaged in an activity or existing in any condition prohibited by this title; ort where said animal ...."	
6.20.040 Use of Animals for experimental purposes or medical research • New section • New ordinance makes this unlawful	Not included
6.20.050 Transporting of Impounded Animals • New section	Not included
6.20.060 Unauthorized removal of animals from Shelter • New section • Unlawful removal w/out permission of director	Not included

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
6.20.070 Fees Established • Added section • Fees to be established by city council for impoundment of animal and removal of animal	Not included
6.20.080 Fine imposed for impounded unaltered dogs and cats • Added section	Not included
6.20.090 Identification of animals • Adds that if director/officer knows owner of picked up animal may upon his discretion return animal but will impose citation and/or court appearance.	
6.20.100 Voluntary surrender; fees • Added section • Specifies conditions under which an owner may surrender dogs to shelter and conditions thereof	Not included
6.20.110 Redemption by owner; abandonment • Adds subsections to include vaccines required after impoundment and timelines to do so	Not included
6.20.120 Holding period • States impoundment period of (6) business days not 120 hours • Adds subsections to include impoundment of other animals than dogs and cats	Found in multiple sections to include 6.20.080 and 6.20.090
6.20.160 Placement of unredeemed animals • Separates a dog section and cat sections and restrictions of whether the animal is licensed or not, and how long they will be kept (six days if licensed, possible 3 days if unlicensed)	
6.20.140 Adoption by approved organizations • Added to allow adoption agencies to take control of impounded animals if no owner is identified.	Not included
6.20.150 Sterilization required • Added section • Any impounded animal shall not be given away unless it has been spayed/neutered	Not included

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
6.20.160 Disposal • Given its own section vs. in various sections of current code • Director may dispose of animal if no owner identified within given timeframes by euthanization and will dispose of carcass.	Throughout code sections
Chapter 6.24 Public Nuisance • New Chapter • Sections in Chapter: • 6.24.010 Animal Nuisances • 6.24.020 Written petitions; investigations (neighbors may petition animal noise) • 6.24.030 Temporary impoundment of animal • 6.24.050 Grounds for determination of nuisance • 6.24.060 Public Nuisance Declared; reimbursement of costs • 6.24.070 Disposition of public nuisance	Was section 8.20.130 under Noise Regulations
6.28 Dangerous Animals • More definitions added to include: • Abused Animal • Dangerous Animal • Hearing Officer • Person • Potentially Dangerous animal	Was 6.28 Wild and Viscous Animals
6.28.020 Prohibitions regarding dangerous animals • Permit not originally required but must maintain control of animals	Permit required of any wild or viscous animal Does not state how it is determined that they wild and viscous
6.28.030 Inspections • Gives authority for inspection of suspected dangerous animal to director in violation of any of the proposed chapter.	Not included

Animal Control Ordinance – Differences Between Proposed and Current Code

Proposed Ordinance	Current Code
Adds Sections: • 6.28.050 Temporary Impoundment or Confinement • 6.28.060 Hearing Procedures • 6.28.070 Disposition of Dangerous Animals • Requirements of owner should they be allowed to keep under permit dangerous animal • 6.28.080 Sale or Transfer restrictins • 6.28.090 Enforcement and penalties • 6.28.100 Exemptions • 6.28.110 Removal of designation of dangerous animal	
6.32 Animal Keeping • New Chapter that includes sections from current code under Regulations • New sections • Bee Keeping no longer own chapter but section under chapter • Puts restrictions on how many animals are to be allowed in single family units and multi-family units	
6.36 Feral, Wild and Undomesticated Animals Added Chapter	
6.44 Animal Keeper Permit New Chapter For those people going to be housing more than previously established animal limits in a dwelling	
6.48 Administrative Hearings New Chapter – establishes procedure for hearings and appeal process relating to entire Title 6 Animal Control Regulations	