

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
December 03, 2013

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

I. CALL TO ORDER:

Mayor Patterson called the Closed Session to order at 6:15 p.m.

All Council Members were present.

II. CLOSED SESSION:

- A. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
(Subdivision (b) of Government Code Section 54957)
Title: City Manager**

III. CONVENE OPEN SESSION:

Mayor Patterson called the Open Session to order at 7:02 p.m.

A. ROLL CALL

All Council Members were present.

B. PLEDGE OF ALLEGIANCE

Bruce Barrows led the Pledge of Allegiance.

C. REFERENCE TO THE FUNDAMENTAL RIGHTS OF THE PUBLIC.

IV. ANNOUNCEMENTS/PROCLAMATIONS/APPOINTMENTS/PRESENTATIONS:

A. ANNOUNCEMENTS

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

Mayor Patterson reported that Council gave direction to Staff. This item will be agendaized on a future agenda.

- 2. Openings on Boards and Commissions:**

Historic Preservation Review Commission
1 unexpired term
Open until filled

3. Mayor's Office Hours

4. Benicia Arsenal Update

Update from City Attorney

Status quo. Nothing new to report.

B. PROCLAMATIONS

C. APPOINTMENTS

Council Subcommittee Recommendations:

Mayor Patterson stated that there were no appointments tonight. Council was starting a new process, and it didn't come together tonight as planned. All applicants were not listed on tonight's agenda, which will be rectified at a future meeting.

- 1. Subcommittee recommendation to Mayor of Jim Leland to the Arts and Culture Commission for a four year term ending July 31, 2017.**
- 2. Subcommittee recommendation to Mayor of Anavi Subramanyam to the Community Sustainability Commission (Student Commissioner) for a one year term ending July 31, 2014.**
- 3. Subcommittee recommendation to Mayor of Crystal Luna-Yarnell to the Human Services Board for a four year term ending July 31, 2017.**
- 4. Subcommittee recommendation to Mayor of James Wallace to the Open Government Commission for a four year term ending July 31, 2017.**

D. PRESENTATIONS

- 1. COMMUNITY SUSTAINABILITY COMMISSION (CSC) ANNUAL PRESENTATION TO COUNCIL**

V. ADOPTION OF AGENDA:

On motion of Council Member Schwartzman, seconded by Council Member

Hughes, Council adopted the Agenda, as presented, on roll call by the following vote:

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

VI. OPPORTUNITY FOR PUBLIC COMMENT:

A. WRITTEN COMMENT

Seven item received (copies on file).

B. PUBLIC COMMENT

None

VII. CONSENT CALENDAR:

Council pulled items VII.B, VII.C, and VII.I for discussion.

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

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

A. APPROVAL OF THE MINUTES OF THE NOVEMBER 19, 2013 CITY COUNCIL MEETING

B. SECOND READING AND ADOPTION OF ORDINANCES RELATING TO A BUILDING SEWER LATERAL INSPECTION AND REPAIR PROGRAM

Public Comment:

1. George Oakes - Mr. Oakes spoke in opposition to the proposed ordinance. He was concerned with the lack of efficiency, point of sale regulations, and lack of public notice.
2. Eileen Stern - Ms. Stern discussed point of sale ordinances, concerns regarding possible high costs and how it could affect the housing recovery status.

Council Member Schwartzman requested Council continue this item until the public has a chance to provide input on the issue.

Vice Mayor Campbell discussed concern regarding the logistics of this item. He

was not clear on the responsibility of the City/homeowner. He did feel like it would address health and safety issues for homeowners.

Council Member Hughes asked Staff if this item could be delayed. Staff indicated that the City was already behind according the settlement agreement.

Council Member Schwartzman reiterated the need to allow the public to weigh in on this item. Staff discussed concern regarding staff availability for an outreach program.

Mayor Patterson supported continuing this item. She noted that Council supported the item, but wanted to allow the public the opportunity to weigh in.

The item would be continued to 1/7/14 after a stakeholder meeting could be held.

C. AMENDMENT FOR THE PRESBYTERY OF THE REDWOODS LEASE

Vice Mayor Campbell recused himself from discussion, as he had a proximity conflict of interest.

Ms. McLaughlin clarified that if there is a consent calendar item Council has a conflict of interest with, they don't need to step down or pull the item; they just need to state the conflict at the beginning of the consent calendar.

Public Comment:

None

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved, by motion, the amendment for the Presbytery of the Redwoods lease, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Hughes

Noes: (None)

D. FIRST READING OF AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE CHAPTER 3.26 OF TITLE 3 WITH RESPECT TO AN ELECTRIC, GAS AND COMMUNICATION USER'S TAX

ORDINANCE 13- - AN ORDINANCE AMENDING CHAPTER 3.26 OF TITLE 3 WITH RESPECT TO AN ELECTRIC, GAS, AND COMMUNICATION USER'S TAX

E. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE TO INCORPORATE BUILDING AND FIRE CODE REVISIONS

ORDINANCE 13-14 - AN ORDINANCE AMENDING TITLE 8 (HEALTH AND SAFETY) AND DIVISION 1 OF TITLE 15 (BUILDINGS AND CONSTRUCTION) BY AMENDING CHAPTER 8.28 (FIRE PREVENTION AND LIFE SAFETY CODE) , ADDING NEW CHAPTERS 15.19 (CALIFORNIA ADMINISTRATIVE CODE), 15.20 (CALIFORNIA ENERGY CODE), 15.21 (CALIFORNIA HISTORICAL BUILDING CODE), 15.22 (CALIFORNIA EXISTING BUILDINGS CODE) AND 15.23 (CALIFORNIA REFERENCED STANDARDS CODE) AND AMENDING CHAPTERS 15.02 (CALIFORNIA RESIDENTIAL CODE, 15.04 (CALIFORNIA BUILDING CODE), 15.08 (CALIFORNIA MECHANICAL CODE), 15.12 (CALIFORNIA PLUMBING CODE), 15.16 (CALIFORNIA ELECTRICAL CODE), 15.18 (CALIFORNIA GREEN BUILDING STANDARDS CODE), AND 15.26 (BUILDING PERMIT AND OTHER FEES)

F. SECOND READING AND ADOPTION OF AN ORDINANCE AMENDING THE BENICIA MUNICIPAL CODE FOR UPDATES TO THE INDUSTRIAL ZONING DISTRICTS AND ADOPTION OF THE RELATED NEGATIVE DECLARATION

ORDINANCE 13-15 - AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 17.16 (USE CLASSIFICATIONS) AND CHAPTER 17.32 (INDUSTRIAL USES), SECTION 17.28.020 (CC, CO, CG, AND CW DISTRICTS – LAND USE REGULATIONS) OF CHAPTER 17.28 (C COMMERCIAL DISTRICTS), SECTION 17.46.010 (SCHEDULE S-1) OF CHAPTER 17.46 (USE REGULATIONS SUMMARY), SECTION 17.48.010 (SCHEDULE S-2) OF CHAPTER 17.48 (PROPERTY DEVELOPMENT REGULATIONS SUMMARY), SECTION 17.74.030 (OFF STREET PARKING AND LOADING SPACES REQUIRED) OF CHAPTER 17.74 (OFF-STREET PARKING AND LOADING REGULATIONS) AND SECTIONS OF CHAPTER 17.108 (DESIGN REVIEW) ALL OF TITLE 17 (ZONING) OF THE BENICIA MUNICIPAL CODE TO UPDATE THE DEVELOPMENT STANDARDS AND REGULATIONS TO REFINE REGULATIONS IN THE INDUSTRIAL ZONING DISTRICTS

G. AUTHORIZATION TO SUBMIT APPLICATION FOR THE CALIFORNIA ENERGY COMMISSION ENERGY PARTNERSHIP PROGRAM

RESOLUTION 13-104 - A RESOLUTION AUTHORIZING SUBMITTAL OF A GRANT APPLICATION FOR THE CALIFORNIA ENERGY COMMISSION'S ENERGY PARTNERSHIP PROGRAM

- H. **APPROVE JOB SPECIFICATION AND SALARY RANGE FOR ASSISTANT CITY MANAGER, ALLOCATE THE POSITION IN THE 2013-15 BUDGET, AND ELIMINATE THE POSITION OF ADMINISTRATIVE SERVICES DIRECTOR**

RESOLUTION 13-105 - A RESOLUTION APPROVING THE JOB SPECIFICATION AND SALARY RANGE FOR ASSISTANT CITY MANAGER, ALLOCATING THE POSITION IN THE 2013-15 BUDGET, AND ELIMINATING THE POSITION OF ADMINISTRATIVE SERVICES DIRECTOR

- I. **ADOPTION OF THE 2014 CITY COUNCIL REGULAR MEETING CALENDAR**

Council agreed to cancel the 11/25/14 and 12/23/14 Council meetings.

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted the 2014 City Council Regular Meeting Calendar, as amended, on roll call by the following vote:

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

- J. **APPROVE AMENDMENT TO THE CITY ATTORNEY EMPLOYMENT AGREEMENT**

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

VIII. **BUSINESS ITEMS:**

- A. **DESIGNATION OF A CONTRIBUTING STRUCTURE TO THE DOWNTOWN HISTORIC DISTRICT AND MILLS ACT CONTRACT FOR 251 WEST G STREET, AFTER DETERMINATION THAT THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA**

RESOLUTION 13-106 - A RESOLUTION AMENDING THE DOWNTOWN HISTORIC CONSERVATION PLAN TO DESIGNATE THE RESIDENTIAL STRUCTURE AT 251 WEST G STREET AS A CONTRIBUTING BUILDING TO THE DOWNTOWN HISTORIC DISTRICT AND SUBSEQUENTLY DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 251 WEST G STREET IN THE CITY OF BENICIA

Amy Million, Principal Planner, reviewed the staff report.

Public Comment:

1. Jack Maccoun - Mr. Maccoun spoke in support of the proposed item. He thanked City staff for their efforts.

On motion of Council Member Schwartzman, seconded by Council Member Strawbridge, Council adopted Resolution 13-106, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes

Noes: (None)

B. BENICIA INDUSTRIAL PARK PRIORITY DEVELOPMENT AREA PLANNING GRANT

Mike Roberts, Sr. Civil Engineer reviewed the staff report.

Public Comment:

None

Council Member Schwartzman discussed the Cortese List, FUD documents, etc. and how this played into what the City is trying to do in the Arsenal.

Staff confirmed this was an informational item only. Mr. Kilger emphasized that the goal was to improve the information and planning documents so the City could expedite investment in the Industrial Park.

C. ADOPT MITIGATED NEGATIVE DECLARATION AND APPROVE CONCEPTUAL PLAN FOR THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT

RESOLUTION 13-107 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING THE MITIGATED NEGATIVE DECLARATION AND APPROVING THE CONCEPTUAL PLAN FOR THE BENICIA INDUSTRIAL PARK BUS HUB PROJECT AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF DETERMINATION WITH THE SOLANO COUNTY CLERK OF THE BOARD

Mike Roberts, Sr. Civil Engineer, reviewed the staff report.

Vice Mayor Campbell and Staff discussed the issue of mobile food vending sites.

Mayor Patterson and Ms. McLaughlin discussed updating the ordinance regarding mobile food vendors. It is currently not on staff's list of priorities. Staff

would bring this issue back as part of the next Council priority list update.

Council Member Hughes disclosed exparte communications. He discussed the issue of private property, eminent domain, etc. He would be interested in hearing the private property owner's view on this issue.

Staff and Council clarified what action was before Council for this item.

Public Comment:

None

Council Member Schwartzman and Staff discussed the Cortese List, Envirostar, etc. They discussed how the big rigs would be able to access food trucks in the area (but would not be able to park in the proposed site). Alternative sites were not addressed in the mitigated negative declaration.

On motion of Council Member Strawbridge, seconded by Vice Mayor Campbell, Council adopted Resolution 13-107, on roll call by the following vote:

Ayes: Patterson, Strawbridge, Schwartzman, Campbell, Hughes

Noes: (None)

D BENICIA INDUSTRIAL PARK BUS HUB PROJECT; \$175K REGIONAL MEASURE 2 GRANT REQUEST, AWARD OF CONSULTANT CONTRACT TO MARK THOMAS AND COMPANY FOR FINAL DESIGN CONTINGENT UPON AWARD OF SAID FUNDING, AND APPROVAL OF AN AGREEMENT FOR THE SOLANO TRANSPORTATION AUTHORITY (STA) TO ACQUIRE THE RIGHT-OF-WAY ON BEHALF OF THE CITY AND CONTRIBUTE \$500K IN STATE TRANSIT ASSISTANCE FUNDING TO THE PROJECT

Mike Roberts, Sr. Civil Engineer reviewed the staff report.

Council Member Hughes and Staff discussed when the site for the bus hub was selected (2002), when the property owner was contacted (2013), and previous meetings staff had (2) with the property owner.

Heather McLaughlin, City Attorney, clarified the eminent domain process. Council was not negotiating with the property owner tonight; they are deciding tonight if it is in the best interest of the community to put the bus hub on the proposed property.

Mayor Patterson discussed the rights of property owners in California, and the eminent domain process.

Vice Mayor Campbell and Staff discussed the City's role in the eminent domain process. He wondered if the STA could run it by Council prior to proceeding with the eminent domain process. Vice Mayor Campbell discussed concern regarding possibly walking away from \$1.3 million in funding for the project.

Public Comment:

1. Hector Barragan - Mr. Barragan is the property owner in question. He discussed concern regarding the process and lack of notification to the property owner. He had a signed petition in opposition to the project. He clarified that the family did not want to sell their property. He requested the item be postponed until they had a chance to review the information.
2. Jose Barragan - Mr. Barragan spoke in opposition to the proposed project. He discussed concerns regarding the lack of notification to the property owners. His family wants to keep the property so they can continue to have their food trucks on site. He requested Council continue this item so they could have time to review the plan.
3. Jim Ponder - Mr. Ponder spoke in opposition to the proposed project.
4. Jasmine Powell - Ms. Powell spoke in opposition to the project. She discussed concern regarding the possibility of eminent domain, lack of notification.
5. John Gardner - Mr. Gardner is the Barragan family's attorney. He requested Council continue this item until the next council meeting so the Barragan's could have a chance to review it.
6. Jim Allen - Mr. Allen spoke in opposition to the proposed project. He suggested the City look at the lot directly across the street from the Barragan's property.

Mayor Patterson and Staff discussed the outreach and contact with the property owners to date, any problems the City would have if Council were to continue this until next meeting, and the timing of the project.

Council Member Hughes and Staff discussed the timing, contact with and notification of the property owner, and the claim that the engineers were doing work on the property without the property owner's consent.

Staff discussed the benefits of the proposed project.

Council Member Schwartzman and Staff discussed providing assurances that the Barragan's could continue to operate their food trucks on the property after the bus hub was complete. They discussed the eminent domain process. If the City does not proceed, the funding will be given to other entities. He discussed his absence from the next council meeting. He would be willing to phone in to participate in the discussion.

Council Member Hughes clarified that he supported a project; however he was

concerned about the eminent domain process and the property owner's lack of desire to sell.

Council Member Strawbridge and Staff discussed when the project was conceived (2002) and the delay in contact with the property owners. She asked Mr. Barragan to clarify if their intention when the property was purchased was to use it for their trucks (it was). Mr. Barragan discussed his father's wish to keep the property in their family.

Council Member Strawbridge and Staff discussed the proposed project and any assurances the City could provide stating the Barragan's could occupy the site with their food trucks.

Mayor Patterson and Staff discussed adding assurances to the agreement/project regarding the Barragan's food trucks.

Mayor Patterson discussed taking action on this item, and that action would include clarification on the purchase from a willing seller or condemnation, and there should be a guarantee for the Barragan's food trucks.

Mr. Barragan discussed concern regarding being treated with dignity and respect. He would like to have time to review the project. He discussed concern regarding the lack of notification. Mayor Patterson assured Mr. Barragan they would be engaged in a respectful manner going forward.

Vice Mayor Campbell discussed STA's responsibility in the project. He would like 'condemnation' removed from STA's responsibility. He would like STA to come back to Council prior to condemnation.

Mayor Patterson and Staff discussed the possibility of having the STA agree to have a special meeting with Council prior to moving forward with condemnation. Staff discussed the tight timeframe with the project. Council could continue tonight's item to the next meeting, and have time to discuss concerns with the STA; however, anything past the next council meeting would be problematic.

Mayor Patterson discussed leaving 'condemnation' in the agreement, and add language stating that prior to taking action for that first step, if there isn't a willing seller, Council would have a meeting with the STA.

Mr. Kilger discussed his desire to consult with the STA to see what is workable. Staff recommended continuing this item to the next meeting.

Council Member Schwartzman and Staff discussed prior contact between Staff and the Barragan's.

Mr. Gardner discussed the benefit of continuing this item for two weeks. The

property owners could study the application to see what was involved, and the City could talk to the STA.

Council Member Schwartzman discussed the benefits of the project. He hoped there was a way that everyone could benefit from the project, including the Barragan's.

Vice Mayor Campbell discussed approving the plan with his previously suggested changes regarding removing condemnation.

Ms. McLaughlin suggested continuing the item so the concerns could be addressed. Mr. Kilger suggested Council clarify the items they would like Staff to discuss with the STA.

Mayor Patterson clarified that the Barragan's and their legal representative needed the opportunity to meet with Staff and review their concerns, have STA come back (if they have to go the route of condemnation) and inform Council on the details.

Mayor Patterson and Staff discussed whether the public hearing would be continued. Mayor Patterson clarified that however the discussion turns out with the Barragan's, and if the public hearing needed to be reopened because changes are made, that is the criteria for reopening the hearing. However, if it is just as it was presented tonight, and the adjustments being made are to satisfy a common ground with the Barragan's, the City, and STA, there would not be a need to reopen the public hearing.

Council Member Hughes discussed his desire for the language regarding the STA and eminent domain. He would like STA to come back to Council to revisit the eminent domain issue.

Mayor Patterson clarified that every effort should be made to include Council Member Schwartzman in the discussion at the next meeting, as he will be out of town.

On motion of Council Member Schwartzman, seconded by Council Member Hughes, Council approved the motion to continue, on roll call by the following vote:

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

IX. ADJOURNMENT:

Mayor Patterson adjourned the meeting at 10:06 p.m.