

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
DECEMBER 5, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:00 p.m. on Tuesday, December 5, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: Council Member Patterson (arrived at 6:32 p.m.)

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENT OF CLOSED SESSION:

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

OPPORTUNITY FOR PUBLIC COMMENT:

1. Jon Van Landschoot – Mr. Van Landschoot stated that he would like to discuss the issue of how the next election is run. Many community members and commission members worked on the Business License Tax increase issue. It took many Council meetings and a very long time to get that issue resolved. It also took many meetings to get the parking improvement issue on First Street resolved. It took the Valero VIP issue many meetings and a long time to get resolved. It took many important issues, including affordable housing, etc. many meetings to get resolved. He wondered how the precious electoral process only got one meeting. The noticing for the one meeting was legal, but questioned if it was ethical. Can't there be another meeting? The noticing should be at least two weeks, it should be in the evening, and should be held in council chambers. Raising \$30,000 will make it difficult for many citizens to run for office.

Mayor Messina stated that this item would be on the Council agenda in two weeks. Citizens could speak on this item at that time.

CLOSED SESSION:

A. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property: Mills School

Negotiating Parties: City Manager/Parks & Community Services Director

Under Negotiation: Instruction to negotiators on lease terms.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 6:06 p.m.

RECONVENE OPEN SESSION:

Mayor Messina reconvened the meeting at 6:23 p.m.

ANNOUNCEMENT OF ACTION TAKEN IN CLOSED SESSION:

Ms. Kat Wellman, Contract City Attorney, stated that Staff provided direction to the negotiator.

Mayor Messina stated that Council was dealing with negotiations with the Benicia Unified School District on the reuse of the Mills school site. Council provided direction on items such as rent, terms, indemnifications, etc.

ACTION ITEM:

Holiday Sign Request:

Mayor Messina reviewed the Staff report. He stated that there were questions raised regarding the notification for this item on the agenda and the compliance with the City, Open Government, and Brown Act policies. He asked the City Clerk to confirm whether the City complied with all legal noticing requirements for this item.

Lisa Wolfe, City Clerk, confirmed all noticing requirements for the Special Meeting were complied with.

Ms. Wellman stated that there were no violations with the Brown Act or any other State law. However, there is a provision in the Open Government Ordinance that provides that if something is to be placed on an agenda for discussion at a special meeting, the presiding official or senior staff member to the body can place it on the agenda, as long as there is a finding that waiting for the next available regular meeting of the body would make it impossible to take meaningful action, or the regular meeting would be cancelled due to a lack of quorum or a City holiday. It would be up to the Council to decide if this applies. Mayor Messina stated that unless the issue is dealt with now, the holiday season would have come and gone. So, the sign issue needed to be dealt with now. He asked if anyone on the Council disagreed with that statement. All Council Members present acknowledged they agreed with the statement.

Mayor Messina stated that he was discouraged this item was brought before Council. There are numerous other things that Staff and Council would have to spend time on. Staff should handle this type of issue at the Staff level in the future. It should not have made it this far. He proposed that Council not spend any more time or energy on this issue. Council should approve the appeal, allow the sign to be put up, and deal with the situation at a later date.

Mayor Messina made a motion to allow the sign to be put up and deal with the issue at a later date. Council Member Whitney seconded the motion.

Mr. Erickson stated that Council Member Patterson was not present. She called him approximately 45 minutes ago and requested this item be continued to the next meeting. He asked Council to consider Council Member Patterson's request. She is on a train that hit a car, and cannot make it here at this time. The reason this item is on the agenda is that it is an issue of time. The request was for two signs; one at City Park and one at the foot of First Street by the City's holiday sign. The request was denied because it violates the City's standing policy. It would add clutter; there is a safety issue with the sign placement, etc. Regarding affixing 'Merry Christmas' to the City's sign - that would open up a can of worms. It would appear to many that the City was supporting a particular religious persuasion. At what point do we stop? Staff is looking to Council for guidance on this issue.

Vice Mayor Schwartzman stated that he too was discouraged about this item being at Council level. This issue was brought up one year ago. He did not know why this was not brought forward sooner. He asked Ms. Wellman if the violation was a policy or an ordinance. Ms. Wellman stated that it was a departmental policy and procedure. It states that no unattended temporary signs are allowed on landscaped public land. This type of sign raises very complex constitutional issues that are not well decided in case law. The establishment clause that prohibits a public entity from endorsing religion or a specific religion, and the placement of the sign gives the appearance of endorsing religious preference. The second issue is that of free speech of the private citizen. If this type of sign were allowed, Council would be opening the door for signs of any nature in the same place. The City can only make decisions about signs and free speech in public areas, particularly parks, with respect to time, place, and manner. You can't say yes to one type of sign and no to another. You cannot prohibit a sign based on content. A park is a public area.

Council Member Patterson stated that she had asked for a continuation on this item because her train was in a wreck. She was sorry that the continuation was not extended. She had asked about the appropriateness of this item being on a special meeting agenda. She asked if that issue had been discussed. Mayor Messina stated that it had been discussed Council felt comfortable it was appropriate. There was discussion on that issue before she arrived. Vice Mayor Schwartzman stated that Council concluded, by consensus, that agendaizing the item was not inappropriate. Ms. Wellman stated that she read the applicable provision in the Open Government Ordinance and Council determined that it was appropriate to be discussed. Council Member Patterson asked if it was clarified that the information in the packet was an unsolicited legal opinion by an advocacy group for this particular item. Mayor Messina stated that Ms. Wellman had clarified that it was not an opinion from the City Attorney's office. Ms. Wellman stated that Council did not have an opinion from the City Attorney's office. The opinion in the agenda packet was not something that was relied on by the City Attorney. Council Member Patterson asked how an unsolicited legal opinion came to be in Council's agenda packet. Mayor Messina stated that the information came to him in his in-box. He

had requested the information be made available to Council and staff. Mr. Erickson clarified that the information in question was not part of the agenda packet. It was a separate handout that came in later. It was confusing, as it appeared to be a legal opinion that was provided by Staff.

Council Member Whitney asked about the issue of time, place, and manner. Could the issue of 'time' be the holiday season? Ms. Wellman stated that there might be a way of coming up with some regulations regarding the sign. You could not regulate the content of the sign and there is still the constitutional issue of insuring that the City is not endorsing religion or a religious preference.

Mayor Messina stated that there was a motion and a second to allow Mr. Woods to put his sign up.

Council Member Patterson asked if it was within the rules to have a motion before the public has a chance to speak. Doesn't making a motion before public testimony taint the perception of the Council Members position?

Mayor Messina stated that in terms of Council's rules of procedure, he did not think there had been any violations. He stated that to be honest, he thought Council was wasting a lot of the public's time, energy, and money. This item should not even be before Council. It is unfortunate that this was not addressed at a lower level. It is unfortunate that it took so long to be brought to Council for an opinion. It is a gross waste of time and energy. He is disappointed it is before Council tonight.

Council Member Patterson stated that she would like to hear from Counsel on the appropriateness of having a motion on the floor and then taking public testimony.

Mayor Messina stated that he believed that there was not anything in Council's rules that prohibits it from taking motions and having discussion afterwards.

Council Member Patterson stated that she would like someone who actually is a lawyer to provide an answer.

Mayor Messina stated that he was somewhat perplexed by this. He has the sense that she was not trying to listen to the testimony of the public, but trying to prolong it and throw up objections, which would cause Council to spend more time, energy, and money. He was disappointed by that. Mayor Messina asked Ms. Wellman if Council had violated any rules or procedures. Ms. Wellman stated that she would have to review the rules and procedures. However, it is normal to hear the staff report, to receive the applicant's comment, public comment, and then bring it back to Council for discussion, prior to having a motion put on the table. Mayor Messina stated that the question was not answered. He asked Ms. Wellman if Council had done anything improper or illegal. Ms. Wellman stated that she did not know if Council had done anything improper or illegal, and would have to check the Sunshine Ordinance, as she is not familiar with this

particular issue. She would be happy to review that portion of the Sunshine Ordinance during public comment.

Public Comment:

1. John Woods – Mr. Woods stated that this was the third time he has brought this issue forward to Council. Last year, he requested a hearing on this issue. He was not denied last year, but ignored by Council. He thought he applied early enough this year to have this issue resolved. He submitted a letter this year. He was told before Thanksgiving that there would not be a reply until after Thanksgiving. He told Staff he needed an answer right away. He filed a letter with the City Manager's Office asking for this item to be put on the agenda. He was told it was not submitted in time for the current agenda. It would have just taken a phone call to the Mayor asking that it be allowed to be placed on the agenda. He wants equal access. He wants the same access as the City has with this political item. The sign has said 'Merry Christmas' for the last 150 years. It did not read 'Happy Holidays' until last year. He put his 'Merry Christmas' signs up twice last year. His signs were removed both times. The City has not yet returned the signs to him. The legal holiday is 'Christmas' not 'holiday.' It is a sad state of events when we have to be so politically correct. The reason the City Attorney gave him last year for not allowing the signs was that she did not want to open the City up to liability. He wants the sign to read 'Merry Christmas.' Travis Air Force Base has the nativity scene, a menorah, etc. on its property. Is the City any different?

Mr. Erickson stated that Staff had explained why it made the decision it did with regards to the signs. Staff felt the decision was appropriate.

Ms. Wellman referenced section 4.08.090 (b) of the Benicia Municipal Code. The BMC states that every agenda for a special or regular meeting at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item before taking action. She stated that Council needed to take public comment and hear from the public before taking action. It goes towards keeping an open mind and hearing all of the comments before making a decision. The term 'taking action' generally means a motion. She believed that this item was to provide direction to Staff. She was not sure if the Mayor's motion was a correct motion to make. This is not an appeal, but a direction to Staff. It was her understanding that this was placed on the agenda as a special meeting item prior to Staff making a final determination on the item. She believed it went on the special meeting on the 27th, and that Staff's decision to deny the request was after the special meeting was noticed.

Mayor Messina withdrew his motion.

Council Member Patterson asked for a point of order. From Staff's point of view, is this the first step in the Council's Rules of Procedure two-step process, which is giving policy direction?

Mayor Messina stated that the action was to give direction to staff. In terms of allowing Mr. Woods to put his signs up, he was not sure if that would extend beyond Council's scope of direction to Staff. He would like to hear the rest of the public comment. Then Council could have some discussions about what direction it wants to give Staff.

Council Member Patterson stated that she wanted to hear from Staff. Her point of order was to ask Staff what action Council was undertaking. Is it possible to take action on an appeal at this meeting?

Mayor Messina stated that under the rules of procedure, the presiding Member rules on points of order. Council Member Patterson stated that the procedure was to act according to BMC. Mayor Messina stated that Council could provide direction to Staff. It could not take a vote and grant approval of the appeal.

Council Member Hughes stated that it was frustrating to hear the jockeying back and forth. It is not professional. Staff is looking for direction. It is fairly simple. Council needs to listen to the public and provide direction to Staff. He recommended moving forward on this issue.

Public Comment:

1. Marty Duvall – Mr. Duvall is against this issue. The way First Street looks now is perfect. We don't need any other signs. The City does not need Mr. Woods name or signs put down there.
2. Susan Street – Ms. Street stated that she was a firm believer that Mr. Woods has the right and privilege to bring this issue to Council. As an atheist, she is glad to see the City recognizing the rights of the citizens. As a citizen of this town, she can't understand why Mr. Woods should be an exception to the City's policy.
3. Mary Magill – Ms. Magill stated this is a celebration of peace, joy, and community. One citizen has made it political. He said in his statement that it was political. The fact that it says 'brought to you by John Woods' confirms it is a political statement. The sign downtown is beautiful just the way it is.
4. Jon Van Landschoot – Mr. Van Landschoot discussed the Winter Solstice Celebration. He discussed how the idea of Santa Clause, Christmas trees, etc. came about. We seem to be in a conflict about this issue. The schools don't call this 'Christmas Break'; they call it 'winter break' or 'recess.' He described the many signs he would like to place in the same spot if the rules are changed. The City should not get involved in this.
5. Warren O'Blennis – Mr. O'Blennis asked what it would take to get a public hearing in this town. Mr. Woods has tried to get a hearing on this for over a year and a half. This is a simple issue. The City has celebrated Christmas as community for over 150 years. Council establishes policy and Staff implements procedures. He does not know if the City established a policy to whitewash the word 'Christmas' out of the celebration. December 25th is a federal holiday called 'Christmas.' Inclusiveness is a good thing. To whitewash the word 'Christmas' from the celebration is wrong. He fully supports other celebrations such as

Hannukah as well. Mr. Woods is asking the Council to provide him the right of free expression. The City has allowed two signs in public areas, one in Southampton and one in the City Park that reads 'Main Street Program.' If the City is going to set precedent, it should be consistent. This issue is not doing anybody any harm. Council has intimidated people in this matter. Council has denied Mr. Woods due process on this issue for over one year.

6. Gary Moss – Mr. Moss asked if there was separation of Church and State in the United States. He asked if Californians were trendsetters. The citizens pay the City Attorney for her services. Benicians have always been trendsetters. He told Council to have the balls to do the right thing and tell Mr. Woods 'no.'

Council Member Whitney stated that this was clearly an emotional issue for a lot of people. In a situation like this, it is political. He wants to do what is right. He wondered where the harm was in what Mr. Woods was suggesting. In the Constitution, it does not say you should be anti-religion. Democracy does not always work the way you want it to work. He asked if there could be a specific area where the City could allow signs – how would that hurt the community? He did not think the signs would make the City sink into an abyss. He did not have an opposition to allowing people to place signs in a specific area to say what they want to say.

Council Member Hughes stated that as a society, we have spent far too much time and energy on the word 'Christmas.' He does not think the word itself endorses religion. It is frustrating to be going through this. The City does not have a sign ordinance. The City has a policy. The direction he would like to give Staff is to find a way to place the sign in the park this year and follow up early in the next year with a sign ordinance. If there are others that want to put their signs in a designated area, so be it.

Vice Mayor Schwartzman stated that the due process took quite a while. He feels the policy in place is an appropriate policy for the City. Since the area in discussion is a public place, the City has to follow the church and state separation issue. He would rather see the City put the signs up. Maybe the city should put up 'Merry Christmas', Hannukah, etc.

Council Member Patterson stated that because this is an important issue, the community has to be fully informed and aware of the issue. That is why she was asking the procedural question. Far from it being unprofessional, it was to protect the publics' interest and their ability to come before Council to express their desire and give guidance. She has not heard the staff report. The meeting was listed as a special meeting, yet the Open Government Ordinance states that items should be placed on a special meeting only when it would be impossible to take action otherwise. The item tonight was merely to give direction to Staff. It could have and still could be put on the 12/19 agenda. It was not impossible to wait on this issue. There is no written legal staff report. The staff report was confusing. The reason the Open Government Ordinance provision for special meetings exists, among other reasons, is that there was considerable concern that there would be special allowances for certain people. There

is sensitivity as to how this was posted. She believes the question before Council is to give direction to Staff to consider the appropriate rules and criteria for the use of public park spaces regarding signs.

Mr. Erickson stated that current policy has been in place for more than one year. He was not aware this request was on the dais for the past year and a half. Allowing sign placement of particular persuasion could open the City up to a lot of liability. He asked Council to please consider the implications involved before it acts on this issue.

Mayor Messina stated Council has spent too much time on this. He does not have a problem with Mr. Woods putting a sign up. The City runs on the exception or complaint policy. When there is a problem, the City deals with it. The citizens' rights have to be protected. He recommended allowing the signs to be put up. Staff needs to spend some time on this issue in the near future.

Council Member Whitney stated that he did not have an issue with Mr. Woods or anyone else's signs being put up. If Mr. Woods is allowed to put his signs up, everyone else should be allowed as well.

Council Member Patterson stated the statement was an invitation to violate City ordinances, and only if a violation bothers someone, then the City would enforce it. There should be a vote on this issue so that it is the issue of a 'majority' is clear.

Ms. Wellman stated there were at least three out of five Council Members that seemed to want to give direction to Staff to figure out a way to allow the signs. She pointed out that there would be a legal review by the City Attorney if this goes through. There would be constitutional issues if the signs were allowed because of the location of the signs. The City might be in violation of the establishment clause. She recommended the City Attorney be allowed to review the issue of placing this type of sign by a City sign and if it would be endorsing a particular religion. It is not a simple issue. It is a very complex legal issue that has gone before the United States Supreme Court on many occasions. It is very factually based, based on location, signage, message, etc. The direction would have to be that it be done with a legal review. The City cannot give the appearance it was endorsing one religion over another. She would prefer to wait on the sign placement until the issue could be reviewed. The 'Happy Holidays' statement has essentially passed muster under the establishment clause. It is considered to be secular. She does not want to make an 'off the cuff' opinion.' This issue should be reviewed. A legal opinion could be reached before the next Council meeting.

Vice Mayor Schwartzman stated that it seems to be moving backwards. Council needs to look into the policy. It should make a decision if it wants to change the policy. That would be the prudent way to go, especially in light of what the City Attorney has said about the constitutional issues.

Council Member Whitney asked Ms. Wellman if a separate area could be used to place citizens' signs. Ms. Wellman stated that there were various cases; however, in this case, it would be right next to the City sign which is a problem. She would be happy to look into alternatives.

Mayor Messina stated that he preferred to give direction to staff. Ms. Wellman could look into this tomorrow. If it is grossly illegal or improper, it will not move forward.

Ms. Wellman stated that she would not be able to meet that timeframe. She could look into it and get back to Council by next week.

Council Member Hughes stated he was okay with the sign going up. He was okay with waiting until the legal opinion is done next week.

Mr. Alvarez stated that Council was talking about one sign tonight. If Council could be very clear on 'any kind of sign', the City would start to see real estate signs, etc. being placed on public property. As soon as the policy is changed, the City would be opening up a can of worms. Mayor Messina stated that at this point, he was addressing signs regarding the holiday season.

Ms. Wellman stated that the City could not limit the signs to holiday messages. If the City allows any kind of sign, it would have to allow all signs, no matter what the content. The City cannot limit the content of signs.

Mayor Messina asked if Council could allow the signs now, and change the policy later. Ms. Wellman confirmed it could.

Vice Mayor Schwartzman asked for clarification on Council Member Hughes' stand on this issue. Council Member Hughes stated that he would like Staff to look into ways that the City could include the signs, and get a legal opinion on the issue on Tuesday. He was hoping that it could be limited to holiday related signs.

Council Member Patterson stated the central issue is how the City will manage public places and signage. She does not have an issue with the sign's message. She has an issue with finding out what the policy is dealing with signs in public places.

Council Member Hughes clarified that the direction to Staff was for them to begin to look at ways and methods of sign placement. He does not want a sign up until the legal opinion is obtained.

Council Member Whitney stated that he concurred with Council Member Hughes' direction to Staff. He asked Ms. Wellman if the City could craft the policy in a way that was restricted to a timeframe, etc. Ms. Wellman stated that she would look into that.

Council Member Patterson clarified that the City Attorney was being asked to render an opinion on placement of temporary signs on City property in time for Christmas. In the meanwhile, Staff is to work with legal to prepare criteria and standards for placement of temporary signs in public places.

Vice Mayor Schwartzman stated that he was fine with that, as long as signs in general are what Council is talking about.

Mr. Erickson stated that he recommended Staff bring their recommendation back to Council so it could endorse those recommendations.

Mayor Messina stated that if legal says the signs could be put up; it does not have to come back to Council. If there were a problem, it would have to come back to Council.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:46 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 5, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:58 p.m. on Tuesday, December 5, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Action taken at Closed Session:

Mayor Messina stated that Council gave direction to Staff in the negotiations with the Benicia Unified School District over the reuse of the Mills property.

Openings on Boards and Commissions:

- People Using Resources Efficiently (PURE) Committee:
One immediate opening
- Open Government Commission:
One unexpired term to December 6, 2007
One unexpired term to December 6, 2008
- Sky Valley Open Space Committee:
One full term to September 30, 2010
- Planning Commission
One unexpired term to October 2007

APPOINTMENTS:

RESOLUTION 06-177- A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF RUFUS BUNCH TO THE PARKS, RECREATION AND CEMETERY COMMISSION TO A FULL TERM ENDING JANUARY 30, 2011

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

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

Kyle Daley - One unexpired term to October 7, 2007

Public Comment:

1. Houston Robertson – Ms. Robertson stated that she was in favor of Mr. Daley’s appointment. She has observed Mr. Daley’s informed and insightful perspectives on many issues. She is impressed with his initiative and commitment to task. She is a membership at the Benicia Toastmasters with Mr. Daley. His dedication to civic activity and responsibility is important. He could only benefit the Planning Commission with his skills. She hopes Council will support the appointment.
2. Jeanine Seeds – Ms. Seeds stated that she endorses Mr. Daley’s appointment. The City needs some new people on the commission.

Council Member Hughes has a great deal of respect for Mr. Daley. He admires his high level of energy and willingness to learn about city government. He ran an effective campaign. He is now on the Open Government Commission. He (Council Member Hughes) spent twelve years on the Parks, Recreation and Cemetery Commission. He knows the Planning Commission is a huge leap to go from the Parks, Recreation and Cemetery Commission to the Planning Commission. He would like to see Mr. Daley gain more experience on Open Government Commissions before leaping to the Planning Commission.

Council Member Patterson stated that she had been working with Mr. Daley on other issues and had an extensive interview with him. She is voting yes because she believes he has the inquisitiveness and willingness to learn rapidly. Also, the City has a very firm, professional planning staff to provide him with direction.

Vice Mayor Schwartzman stated that as of this meeting, it has been one year since he has been on the City Council. As of today, there is only one original member of the Open Government Commission. He would prefer Mr. Daley’s focus be on the Open Government Commission. The Open Government Commission seems to be floundering. The issue of having individuals on more than one commission has come up. The policy addressing individuals being on more than one commission needs to be looked at. Mayor Messina stated that Mr. Daley would no longer be on the Open Government Commission if he were appointed to the Planning Commission. Vice Mayor Schwartzman stated that he believed that Mr. Daley has higher aspirations. If in one year he moves up, there would be another opening on the Planning Commission.

Council Member Whitney stated that he supports Mr. Daley’s appointment. It is a term that expires in 10/07. Council has talked about diversity. Mr. Daley got 1,800 votes when he ran for City Council. Mr. Daley meets his litmus test and has youthful energy and exuberance.

RESOLUTION 06-178 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF KYLE DALEY TO THE PLANNING COMMISSION TO AN UNEXPIRED TERM ENDING OCTOBER 7, 2007

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

Ayes: Council Members Patterson, Whitney, and Mayor Messina

Noes: Council Members Hughes and Schwartzman

RESOLUTION 06-179 - A RESOLUTION CONFIRMING THE MAYOR'S REAPPOINTMENT OF ROB BARNARD TO THE CIVIL SERVICE COMMISSION TO A FULL TERM ENDING JANUARY 30, 2010

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

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

Noes: None

PRESENTATIONS:

Benicia Citizen Corps Council (BCCC) Presentation:

Mr. Jerry Pollard, Chair of BCCC, reviewed a PowerPoint presentation on the BCCC.

Council Member Whitney stated that he was impressed by the energy and coordination of the group. He encouraged citizens to become involved in the BCCC. He asked if the Ham radio operators were trained. Mr. Pollard stated that the operators receive FCC licenses and they go through training and drills. There are currently 35 Ham operators that have been trained. Council Member Whitney asked about retired physicians acting in a physician capacity during a disaster. Should people contact their legislators about allowing retired physicians to help out in a disaster? Mr. Pollard stated that it was his understanding that a person needed to have an active medical license before they can act in that capacity. Council Member Whitney stated that the BERT program is an excellent program. He encouraged citizens to become involved with BERT. BERT holds regular musters and ongoing training.

Vice Mayor Schwartzman echoed Council Member Whitney's comments. He hoped BUSD and Chamber of Commerce would quickly join the BCCC.

Council Member Patterson asked how the BCCC was chartered. Mr. Pollard stated that it was officially sponsored through the Fire Department. She suggested having it memorialized with a Council Resolution. That might encourage BUSD, Valero, Chamber, etc. to become involved. She heard from people that online training would be preferred. She asked Mr. Pollard how many were signed up to do the online training for BERT. Chief Hanley stated that they would start out with 15 people. If that goes well, they will go to a class of 25, etc.

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

On motion of Council Member Patterson, seconded by Council Member Whitney, 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. Jeanine Seeds – Ms. Seeds stated that Council Member Whitney should do what the citizens' feel is right. She is concerned about the continuing work on the latest Fulton project at Rose Drive and Columbus Parkway. Mr. Fulton has not complied with the rules. He is working seven days per week. Why is it not being enforced? We do not need another place that sells liquor in Benicia. We don't have the issue of alcohol sales to minors under control. How did that part of the project get approved? She is not clear about the issue of a building having to be 600 feet from the State Park before it could sell alcohol. Why are we allowing another place that has drugs and alcohol to go on this site? Mayor Messina asked Mr. Erickson to look into Ms. Seeds' concerns. Council Member Whitney asked Mr. Knox if there was a stop order on the project. Mr. Knox stated there was not.
2. Karen Posey – Ms. Posey stated that it was the City's responsibility to make sure developers are in compliance. She has been at many meetings when Mr. Knox stated the developer would comply with the rules and regulations. Conditions of approval are just that. A project must comply with all the conditions of approval. Mayor Messina stated that Mr. Erickson would assist her in addressing some of the issues. Mr. Erickson stated that Mr. Fulton was in 100% complete compliance with all conditions of approval.

CONSENT CALENDAR:

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

Council approved the minutes of November 18, 2006 and November 21, 2006.

Council approved the denial of the claim against the City by Gary and Nancy Sperko and referral to insurance carrier:

RESOLUTION 06-180 - A RESOLUTION AWARDED A PURCHASE ORDER TO BUS WEST FOR ONE CUTAWAY BUS THROUGH THE STATE PROCUREMENT PROGRAM

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

(END OF CONSENT CALENDAR)

PUBLIC HEARINGS:

None

ACTION ITEMS:

Approval of a Mills Act Contract for the historic property located at 125 East I Street:
Charlie Knox, Community Development Director, reviewed the Staff report.

Council Member Whitney asked Mr. Knox if the annual inspections of the homes with Mills Act contracts were being completed. Mr. Knox stated that the homes were being inspected and reports were being done. Council Member Whitney asked if the City receives copies of the recordation. Mr. Knox confirmed that the copies of the recordations were kept in the City Clerk's office. Council Member Whitney asked if the State Office of Historic Preservation was receiving copies of the Mills Act contracts within six months as it is stated. Mr. Knox stated that to his knowledge, that was being done. There were a few homes that have had contracts within the past six months that he would need to check on.

Council Member Patterson stated this was a wonderful program. It enables property owners to improve their property and add value to the City. It is important to note that for a lot of people who don't maintain property, no one goes after them. Homeowners on this program must maintain their properties. It shows homeowners with valuable historic properties that the City values them.

Mayor Messina asked about exhibit C – the work plan – who will review the changes to the project schedule? Mr. Knox confirmed that would be done by the HPRC.

RESOLUTION 06-181 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 125 EAST I STREET IN THE CITY OF BENICIA

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

Consideration of mid-cycle budget adjustments for Fiscal Years 2005-2007:

Rob Sousa, Finance Director, reviewed Staff report.

Council Member Hughes stated that he appreciated we were forecasting the balance for 06-07. The reserve shows 25%. He suggested we begin to look at that. How much is too much?

Vice Mayor Schwartzman stated that on the last page, there were significant savings on expenditures. Mr. Sousa stated that in the haste of getting the report to Council, he did

not do a full analysis. Salary and benefit savings as well as high revenue in Parks account for the savings. Vice Mayor Schwartzman asked about the cost for sq. ft. of carpet. Chief Trimble stated that there was a sewer overflow in the men's locker room that made new carpet necessary.

Council Member Patterson complemented Staff on the report. She asked about the increased funds due to the Utility Users Tax. Council Member Patterson would like Staff to report back on how the City could use the excess reserves on projects. The amount that is over 20% should be available for spending.

Council Member Whitney asked about the back tax that is owed to Valero. He asked if that issue was settled. Mr. Sousa stated that the County is confused on the issue. The County wants to know exactly what the agreement with Valero is at this time. The City would rather deal with the issue and leave the County out of the picture. The County is desperately trying to stay involved. Council Member Whitney asked if Staff was pleased with where the City is at with its budget. Are there other things in the budget that concern Staff? Mr. Sousa stated that the budget is balanced, positive outcome in sales tax, and the PERS retirement rates have stabilized. There have been a lot of positive developments. As the City does the budget, it will have a lot more focus on what the departments can do to focus on the community instead of figuring out what items to cut.

RESOLUTION 06- 182- A RESOLUTION APPROVING ADJUSTMENTS TO THE MUNICIPAL BUDGETS FOR FISCAL YEARS 2005-2006 AND 2006-2007

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

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

Adoption of the San Francisco Bay Area Integrated Regional Water Management Plan (IRWMP):

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

Council Member Patterson reviewed the background on the IRWMP. It is important for Council to show support for this to show that it is on board. They will be working very hard during the next year to pull a plan together that would be approved for implementation by the State Water Resources Control Board and the Department of Water Resources.

RESOLUTION 06-183 - A RESOLUTION ADOPTING THE BAY AREA INTEGRATED REGIONAL WATER MANAGEMENT PLAN

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

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

INFORMATIONAL ITEMS:

Reports from City Manager.

Report of Results - National Citizen Survey - Continued from November 21, 2006 City Council Meeting:

Jim Erickson, City Manager, reviewed the Staff report. He reviewed a PowerPoint Presentation (hard copy on file), which gave an overview of the survey.

COMMENTS FROM COUNCIL MEMBERS:

Consideration of formula-based businesses zoning regulations affecting location, design, type, and distribution:

Mayor Messina stated that the action Council is taking tonight is to agree whether or not this should be placed on a future agenda. Council would decide whether to direct Staff to spend time and resources on this issue.

Mr. Erickson stated that Staff did some work on a policy calendar. This item was tentatively scheduled for discussion in February. Mayor Messina stated that it seemed to be Council's consensus that this item was important enough to have a special workshop scheduled.

Council Member Patterson stated that this was the item she brought forward. This item deals with formula based businesses, zoning regulations affecting the location, design, type, and distribution.

Public Comment:

1. Gary Moss – Mr. Moss stated that Benicia has a tendency to delay things. The citizens are asking Council to take the information they have and consider it. If this issue is not addressed now, what would stop people from pulling permits now to put in a business in after the new ordinance would go into effect? He stated that Starbucks donated \$870 and did some work at one of the schools. On 11/21, some citizens made their concerns known. He asked if there was a conflict of interest with this issue. Doing the work and donating the funds to the school benefits the City. He again questioned if that could be a conflict of interest. Mayor Messina told Mr. Moss to write down his questions and any Council Member or the City Manager would address them.
2. Council Member Patterson stated that the City is going to try and work together with Staff on the workshop idea to have it be more of a community conversation. Maybe Council could discuss the wisdom of that approach. Staff and Council are full steam ahead to try and get the workshop and ordinance on the calendar for February 2007. She would do everything possible to make sure that happens.
3. Council Member Whitney asked why the workshop could not be held in January. The City needs the community's input before it hammers out details on the ordinance. Mayor Messina stated that when the calendar was put together, the number one issue was the campaign issue. The campaign issue would be discussed in January. If Council wants to delay the campaign issue and fasttrack the ordinance issue, so be it.

4. Vice Mayor Schwartzman stated that he would like to see the workshop sooner than later. He would like to see the workshop held in January.
5. Harry Newhall – Mr. Newhall stated that he was a bit concerned. Starbucks sent a crew of workers to volunteer to paint a school office? He thought that was against the law. Starbucks is raising their awareness in the community to counteract the issues as of late. He was afraid for the community that the City would let Starbucks take over. We don't need that many Starbucks in Benicia.
6. Dan Clark – Mr. Clark stated that we have a unique community. Benicia is a great place to live. He is concerned about some of the moves that have been happening lately. The local businesses should be able to depend on the City to protect them. There is a predatory influence here – Starbucks. He read an article he wrote in the Benicia Herald in March 2006 regarding Starbucks. The City should not seek these businesses out.
7. Jeanine Seeds – Ms. Seeds stated that she did not understand why we have to wait until February to for a workshop. Why didn't the City stop this before it happened? Is there a possibility that we can say that the City is not giving out any other permits for formula based businesses until this issue is settled? She is upset about Longs Drug store (at the Rose Center Project) selling alcohol. Is there a way to stop it? Regarding the workshop – do we need it? Isn't it clear the citizens don't want this?

Council Member Patterson asked if there was a vehicle for a moratorium on ministerial permits as suggested by Ms. Seeds. Ms. Wellman stated that she was not sure. It might be possible. She will look into that issue.

8. Marilyn Bardet – Ms. Bardet stated that she was glad this item was being agendized. She discussed how this issue would come into play with the Seeno Business Park. She liked the idea of stalling permit issuance until this is figured out. She discussed the Tourtelot project. The Economic Development Manager should not recruit such businesses in Benicia.
9. Vice Mayor Schwartzman – Vice Mayor Schwartzman stated that there should be another workshop, preferably in January. The issue of big box companies needs to be discussed.
10. Council Member Patterson discussed why the workshop is needed. The City could come up with a draft ordinance that could be critiqued by the citizens. The workshop should be scheduled in January, possibly the 4th Tuesday of the month.
11. Sam Tran – Mr. Tran stated that one of his customers was interested in the Blockbuster building. That person called numerous times to inquire about the building, but no one would return her calls. Regarding Vice Mayor Schwartzman's suggestion about citizens contacting the property manager to voice their concerns, the property manager can rent to anybody. One of the most important reasons people want to live in Benicia is because it is unique and it has character. The City should set a limit as to how many Starbucks or similar businesses can come into Benicia. He liked the idea of freezing the issuance of permits, as suggested by one of the other speakers.
12. Citizen – The citizen stated that he lived in Benicia for many years, but moved away. He recently moved back to town. Since he has been back in town, there

- have been a lot of changes. The City needs to take a serious approach to what is being done.
13. Bob Craft – Mr. Craft would like Council to ask Staff to look into what happens to a town's character when this type of thing happens. That information should be made available for the workshop.
 14. Susan Street – Ms. Street stated she agreed with the comments earlier about Seeno. If the City develops an ordinance too quickly, it may not be strong enough to limit the Seeno development and who goes in there. The City needs to be careful about what it says it wants and does not want. A freeze on issuing permits might be a good idea.
 15. Haley Green – Ms. Green stated that allowing formula based businesses takes away from the town's diversity. She wants Council to do its part in preserving the unique character of the town. She would like to see this item on the agenda as soon as possible.
 16. Leann Cawley – Ms. Cawley is a local business owner. When you put a local small business owner up against a corporate giant, they don't have a chance. She strongly suggested getting this issue going soon. Freezing permits would be a good idea.

Council Member Patterson stated that she had an ex parte conversation with a Starbucks contact. She explained to the Starbucks contact that the community gave Starbucks the benefit of the doubt when they opened on First Street. She explained that with the third Starbucks in town, the community's good will had been lost. Starbucks was taken aback by that comment. Council Member Patterson explained to the Starbucks contact that the City would be working on trying to protect the City and its independent businesses. The contact appreciated Council Member's candor. In terms of not rushing, several communities have done a great job considering all the ramifications. Staff and Council have a great deal of information to work with. She thinks there is an advantage of having something prepared before the workshop.

Mayor Messina worried that Council was putting too much of a load on Staff. Staff and Council may not have the capacity to process all of the projects. Council has to be realistic. He does not want to place unachievable limits on Staff. He would like Mr. Erickson to report back at the next meeting if the direction to Staff is achievable.

Council Member Patterson stated that she is trying to absorb a great deal of the work that needs to be done. The work she and Vice Mayor Schwartzman will do will take much of the load off of Staff.

Council Member Hughes stated that he was sensitive to Staff's time. Some of these items have to be fasttracked. He hopes Council could accommodate the January workshop.

Mr. Erickson stated that Staff could come back in two weeks to give an overview on resources. Everything else might go slower if this was fasttracked. Before drafting ordinances, it should be clear what content the City is looking for. What types of businesses need to be regulated in form base? If the City takes a blanket approach, it

might miss some things that need to be spelled out. He suggested sorting this out, and trying to come to the conclusion as to what types of businesses are problematic,

Vice Mayor Schwartzman stated that the points were well taken. He asked Mr. Knox about the draft EIR for Seeno. Would that be coming in January? Mr. Knox stated he was confident the City would see something in the first ten days of January.

Council Member Whitney stated that he supported a moratorium on issuing permits, as long as it is legal. There seems to be a consensus in the community that they don't want formula based businesses.

Council Member Patterson stated that all the issues raised are covered in the existing ordinances that she has obtained from other cities. This would be more straightforward than everyone thinks. All issues raised by Mr. Erickson are addressed by the example ordinances she has looked at.

Mr. Erickson stated that Council should look at what it wants with respect to the types of businesses it wants to regulate.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, Council gave direction to Staff to work on the preparation of an ordinance to address such things as big box and other formula based businesses and restaurants, and other notable businesses, and Council should have a workshop in January. Council approved the direction to Staff, on roll call by the following vote:

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

ADJOURNMENT:

Mayor Messina adjourned the meeting at 10:24 p.m.

Lisa Wolfe, City Clerk