

**December 6, 2005**

**The Benicia City Council meets the 1st and 3rd Tuesday of each month at 7:30 p.m. in the Council Chambers. Copies of Council Agendas are available in the City Clerk's office at the end of the business day on the Wednesday before the Council meeting.**

**BENICIA CITY COUNCIL  
CITY COUNCIL CHAMBERS**

**REGULAR MEETING AGENDA**

**December 6, 2005**

**(Immediately following first City Council Meeting of the evening)**

**CALL TO ORDER:**

**ADMINISTRATION OF OATH OF OFFICE TO ELECTED OFFICIALS**

**CLOSED SESSION:**

**NONE**

**CONVENE OPEN SESSION:**

**ROLL CALL:**

**PLEDGE OF ALLEGIANCE**

**REFERENCE TO THE FUNDAMENTAL RIGHTS OF PUBLIC**

**REMARKS BY ELECTED OFFICIALS**

**NOMINATION AND ELECTION OF MAYOR PRO TEM**

**ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:**

**ANNOUNCEMENTS:**

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

**Openings on Boards and Commissions:**

**Parks, Recreation & Cemetery Commission: 1 unexpired term**

**Planning Commission: 1 unexpired term**

**APPOINTMENTS:**

**Approval of resolution confirming Mayor's appointments of members of the City Council to Council Committees.**

**Approval of resolution confirming the Mayor's appointment of the City Attorney as the City's representative to the Arsenal Restoration Advisory Board (RAB).**

**Appointments to the Open Government Commission - Five Full Terms:**

**Sandy Tanner - 1 year term**

**Janet Grothe - 2 year term**

**Pierre Bidou - 3 year term**

**Patricia Moreira - 4 year term**

**John Woods - 4 year term**

**Appointments to Library Board of Trustees - Two Full Three Year Terms**

**Ruth Workman**

**Carole Nail**

**PRESENTATIONS:**

**Overview of Brown Act by City Attorney**

**PROCLAMATIONS:**

**ADOPTION OF AGENDA:**

**COMMUNICATIONS:**

**WRITTEN**

**PUBLIC COMMENT**

**CONSENT CALENDAR:**

**Denial of a claim by George and Lorraine Brigham against the City and referral to insurance carrier. (City Attorney)**

**A claim for \$4,833.62 was submitted by the Brighams for reimbursement for costs to have their modular home bolted to the foundation.**

**Recommendation: Deny the claim against the City by George and Lorraine Brigham.**

**Acceptance of Grant Deed of Easement for a waterline. (Public Works Director)**

**The City's untreated water transmission pipeline extends from Cordelia to the water treatment plant. As development occurs in the Cordelia area of Fairfield and where necessary, City staff requires the dedication of an easement for the protection of the pipeline from permanent, above-ground structures and allows access for maintenance. The proposed action has no budget impact.**

**Recommendation: Adopt a resolution accepting a grant deed of easement for the City's water line at 5180 Fulton Drive in Fairfield (APN 0180-140-05-0) and authorizing the City Clerk to record the grand deed of easement on behalf of the City.**

**Acceptance of the 2005 Street Resurfacing Project. (Public Works Director)**

**This project acceptance and notice of completion is for the City's annual street resurfacing work. The last step of the project requires formal acceptance by the City Council and filing of the notice of completion by the City Clerk, which allows the City to process the final payment to the contractor. Sufficient funding is available in the Citywide Street Resurfacing Program Fund.**

**Recommendation: Adopt the resolution accepting the 2005 Street Resurfacing Project, approving the Contract Change Order Numbers 1 through 5, authorizing the City Manager to sign the Notice of Completion and authorizing the City Clerk to file the Notice of Completion with the Solano County Recorder.**

**Award of contract for East I Street Sewer Main Relocation Project. (Public Works Director)**

**This project, located in the 400 block of East I Street, will relocate a very old, shallow, clay sewer line from the backyards of six residences to East I Street. One of the residences will connect to the new sewer line during the construction of this project, while the remaining five residences are expected to connect to it at a later date. Sufficient funds are available in the Sanitary Sewer Line Upgrades account.**

**Recommendation: Adopt the resolution accepting the bids, awarding the construction contract, including the bid alternate, in the amount of \$75,780 to Pacific Underground Services of Martinez, CA, for the East I Street Sanitary Sewer Main Relocation project and authorizing the City Manager to sign the contract on behalf of the City.**

**Review of Monthly Investment Reports for July through September, 2005. (Finance Director)**  
The investment portfolio is in compliance with the City's investment policy and California law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Audit and Finance Committee has reviewed these reports and recommends acceptance. There is no affect on the City's budget.

**Recommendation: Accept the monthly investment reports for July - September, 2005. Authorization of the filing of an application for allocation of Transportation Development Act Funds/State Transit Assistance Funds for Fiscal Year 2005-06. (Finance Director)**  
Each year, the City Council authorizes the Finance Director to submit a claim to the Metropolitan the Transportation Development Act (TDA) claim to secure funding to meet the operational and capital needs of providing the Benicia Transit service. The attached resolution authorizing the submission of the Fiscal Year 2005-06 claim is offered for the Council's consideration. Benicia Transit and Benicia Transit Dial-A-Ride are budgeted to receive a total of \$973,788 in TDA and State Transit Assistance (STA) funds for this fiscal year.

**Recommendation: Adopt the resolution authorizing the Finance Director to submit the Transportation Development Act (TDA) and State Transit Assistance (STA) Claim for Fiscal Year 2005-2006.**

**Adopt the City of Benicia Cafeteria Plan (Flexible Benefits Plan). (Finance Director)**  
The proposed Cafeteria Plan (Flexible Benefits Plan) allows employees to pay for health insurance premium co-payments on a pretax basis and to allocate additional health care and dependent care expenses to pre-tax reimbursement accounts authorized by the Internal Revenue Service, commonly referred to as Section 125 accounts. Staff is requesting authorization to allow employees in the City to participate in the Plan due to the tax benefits that can be realized and the minimal one-time cost of \$625.

**Recommendation: Adopt the resolution authorizing the creation of the City of Benicia Cafeteria Plan (Flexible Benefits Plan).**

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

**PUBLIC HEARINGS:**

**Appeals regarding the issuance of a building permit for 120 Incline Place. (Interim Community Development Director)**

This matter involves two separate appeals, one from Sue Johnson and one from William Jabas, challenging the City's issuance of a building permit on July 8, 2005 for the construction of a residence on 120 Incline Place. The only mechanism for appealing the issuance of a building permit is Benicia Municipal Code Section 1.04.100, which provides a thirty (30) day window for appealing "administrative actions taken by any officer of the City under the Code." Staff recommends that both appeals be denied as they were filed after this thirty (30) day appeal period had expired.

**Recommendation:** Hold a public hearing and adopt the resolutions denying the two appeals and upholding the decision of the Planning Commission and the Community Development Director that the building permit appeal period has expired.

**UNFINISHED BUSINESS:**

**Approval of modification to the application for Regional Measure 2 Funding for the Park/Industrial Intersection and Park-and-Ride Facility Project. (Finance Director)**  
The Park/Industrial Intersection and Park-and-Ride Facility Project is being modified to be constructed in two phases. The first phase includes constructing the bus stop for Fairfield/Suisun Transit System Solano Express Route 40 at a cost of \$175,000 and would be included in the 2005/06 FY budget. The second phase would include the construction of the park and ride lot and making improvements to the Park Road and Industrial Way intersection area. Phase 2 improvements will not proceed ahead at this time.

**Recommendation:** Adopt the resolution requesting the Metropolitan Transportation Commission allocate Regional Measure 2 Funding for the Park/Industrial Intersection and Park-and-Ride Facility Project, Phase I.

**NEW BUSINESS:**

**Revisions to Rules of Procedure for the Conduct of City Council Meetings. (City Attorney)**  
The proposed revisions by Mayor Messina modify a number of sections of the Rules of Procedure, including the preparation and format of the agenda; opportunity for public comment at City Council Meetings; and the process for appointments to boards and commissions.

**Recommendation:** Adopt the resolution revising the Rules of Procedure for the Conduct at City Council Meetings.

**First reading of an ordinance amending Section 2.04.010 (Meeting Time and Place) of Chapter 2.04 (City Council) of Title 2 (Administration and Personnel) of the Benicia Municipal Code. (City Attorney)**

The proposed revisions to Section 2.04.010 (Meeting Time and Place) by Mayor Messina amend the start time of City Council meetings from 7:30 p.m. to 6:30 p.m.

**Recommendation:** Introduce the amended ordinance and schedule the second reading for the next regular City Council meeting.

**First reading of an ordinance amending Section 2.52.030 (Members - Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code. (City Attorney)**

The proposed revisions by Mayor Messina modify Section 2.52.030 (Members - Term of Office) for Planning Commissioners, allowing a member to serve until a successor is appointed and qualifies, as well as eliminating the term limit.

**Recommendation:** Introduce the amended ordinance and schedule the second reading for the next regular City Council meeting.

**Authorization of a six month extension of the Letter Agreement with the Valero Refining Company pertaining to the Utility Users Tax. (Finance Director)**

The ten year Letter Agreement with Valero pertaining to the Utility Users Tax is set to expire on December 31, 2005. The attached resolution authorizes a six month extension of the agreement to June 30, 2006 to allow the City and Valero more time to develop a new agreement. In addition to the extension, the resolution temporarily increases Valero's annual tax from \$1 million to \$1.2 million and the new agreement amount, if higher, will be retroactive to January 1, 2006. If the new agreement is not completed in six months, Valero would pay the 4% UUT retroactively to January 1, 2006. As an alternative, the City Council could allow the agreement to expire and Valero would immediately begin paying a 4% UUT effective January 1, 2006. However, the proposed interim agreement provides for this same outcome if a long-term agreement is not reached within six months, including retroactive payments to January 1, 2006.

**Recommendation:** Adopt the resolution authorizing the six month extension of the Letter Agreement with the Valero Refining Company pertaining to the Utility Users Tax.

**REPORTS FROM CITY MANAGER:**

**REPORTS FROM CITY COUNCIL COMMITTEES:**

**ADJOURNMENT:**

For the first Agenda, please [click here](#)

## **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 agendized and non-agendized matters under public comment. 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 Diane O'Connell, 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.

If you have difficulty accessing any of the City Council agenda items online, please contact Anne Cardwell in the City Manager's Office at (707)-746-4210 or [acardwell@ci.benicia.ca.us](mailto:acardwell@ci.benicia.ca.us)

## **Downloading of reports from this agenda**

Some agenda items have attached reports available for downloading from this web page. To view these reports, you must have the latest Adobe Acrobat reader installed in your web browser.

[Click here to download the free Acrobat reader](#)

[Attached Document or FileIV-B-1\\_Council\\_SubCommittees.pdf](#)

[Attached Document or FileIV-B-2\\_RAB\\_Appointment.pdf](#)

[Attached Document or FileIV-B-3\\_Appointment\\_Tanner.pdf](#)

[Attached Document or FileIV-B-3\\_Appointment\\_Grothe.pdf](#)

[Attached Document or FileIV-B-3\\_Appointment\\_Bidou.pdf](#)

[Attached Document or FileIV-B-3\\_Appointment\\_Moreira.pdf](#)

[Attached Document or FileIV-B-3\\_Appointment\\_Woods.pdf](#)

[Attached Document or FileIV-B-4\\_Appointment\\_Workman.pdf](#)

[Attached Document or FileIV-B-4\\_Appointment\\_Nail.pdf](#)

[Attached Document or FileVII-A\\_Denial\\_Claim\\_Brigham.pdf](#)

[Attached Document or FileVII-B\\_Easement\\_Waterline.pdf](#)

[Attached Document or FileVII-C\\_Street\\_Resurfacing.pdf](#)

[Attached Document or FileVII-D\\_East\\_I\\_St\\_Sewer\\_Main.pdf](#)

[Attached Document or FileVII-E\\_Monthly\\_Investment.pdf](#)

**Attached Document or FileVII-F\_TDA.pdf**

**Attached Document or FileVII-G\_Cafeteria\_Plan.pdf**

**Attached Document or FileVIII-A\_Incline\_Place\_Appeal.pdf**

**Attached Document or FileIX-A\_RM2\_Funding.pdf**

**Attached Document or FileX-A\_Rules\_Revisions-Council.pdf**

**Attached Document or FileX-B\_Start\_Time-1.pdf**

**Attached Document or FileX-C\_Planning\_Commission\_Ord.pdf**

**Attached Document or FileX-D\_UUT\_Report.pdf**

**RESOLUTION 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING MAYOR'S APPOINTMENTS OF MEMBERS OF THE CITY COUNCIL  
TO COMMITTEES**

**COMMITTEES**

<u>OUTSIDE AGENCY COMMITTEES</u>	<u>COUNCIL APPOINTEES</u>	
ABAG	Steve Messina	Alan Schwartzman (Alternate)
LEAGUE OF CALIFORNIA CITIES	Steve Messina	Alan Schwartzman (Alternate)
SOLANO EDC BOARD OF DIRECTORS	Steve Messina	
SOLANO TRANSPORTATION AUTHORITY	Steve Messina	Alan Schwartzman (Alternate)
SOLANO WATER AUTHORITY/SOLANO COUNTY WATER AGENCY	Steve Messina	Mark Hughes (Alternate)
TRI-CITY & COUNTY REGIONAL PARKS & OPEN SPACE	Bill Whitney	Elizabeth Patterson (Alternate)

<u>STANDING COMMITTEES</u>	<u>COUNCIL APPOINTEES</u>	
AUDIT & FINANCE COMMITTEE	Alan Schwartzman	Mark Hughes
SCHOOL DISTRICT LIAISON	Bill Whitney	Mark Hughes
TRAFFIC, PEDESTRIAN AND BICYCLE SAFETY COMMITTEE	Elizabeth Patterson	Mark Hughes
YOUTH ACTION TASK FORCE	Bill Whitney	Alan Schwartzman

<u>AD HOC COMMITTEES</u>	<u>COUNCIL APPOINTEES</u>	
PEOPLE USING RESOURCES EFFICIENTLY (PURE)	Elizabeth Patterson	
SKY VALLEY AREA OPEN SPACE	Bill Whitney	Elizabeth Patterson
VALERO CITIZENS ADVISORY COMMITTEE (CAP)	Mark Hughes	Bill Whitney (Alternate)

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby confirms the above Committee appointments and any resolutions inconsistent with this resolution are superceded.

\*\*\*\*\*

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 6<sup>th</sup> day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

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Steve Messina, Mayor

ATTEST:

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Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF THE CITY ATTORNEY AS THE  
CITY'S REPRESENTATIVE TO THE ARSENAL RESTORATION ADVISORY BOARD  
("RAB")**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of the City Attorney as the City's representative to the Arsenal Restoration Advisory Board ("RAB") by Mayor Messina is hereby confirmed and the appointments to the RAB in Resolution No. 05-60 are hereby superceded.

\*\*\*\*\*

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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF SANDY TANNER TO THE OPEN  
GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2006**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Sandy Tanner to the Open Government 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF JANET GROTHE TO THE OPEN  
GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2007**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Janet Grothe to the Open Government 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF PIERRE BIDOU TO THE OPEN  
GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2008**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Pierre Bidou to the Open Government 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF PATRICIA MOREIRA TO THE  
OPEN GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2009**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of Patricia Moreira to the Open Government 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S APPOINTMENT OF JOHN WOODS TO THE OPEN  
GOVERNMENT COMMISSION TO A TERM ENDING NOVEMBER 30, 2009**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the appointment of John Woods to the Open Government 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S REAPPOINTMENT OF RUTH WORKMAN TO THE  
LIBRARY BOARD OF TRUSTEES TO A TERM ENDING DECEMBER 31, 2008**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the reappointment of Ruth Workman to the Library Board of Trustees 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
CONFIRMING THE MAYOR'S REAPPOINTMENT OF CAROLE NAIL TO THE  
LIBRARY BOARD OF TRUSTEES TO A TERM ENDING DECEMBER 31, 2008**

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benicia that the reappointment of Carole Nail to the Library Board of Trustees 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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 14, 2005  
**TO** : City Council  
**FROM** : City Attorney  
**SUBJECT** : **DENIAL OF THE CLAIM AGAINST THE CITY BY GEORGE  
AND LORRAINE BRIGHAM AND REFERRAL TO INSURANCE  
CARRIER**

**RECOMMENDATION:**

Deny the claim against the City by George and Lorraine Brigham.

**EXECUTIVE SUMMARY:**

A claim was submitted by the Brighams for reimbursement for costs to have their modular home bolted to the foundation.

**BUDGET INFORMATION:**

The amount of the claim is \$4,833.62.

**BACKGROUND:**

It is recommended that the Council reject the claim against the City by George and Lorraine Brigham. Upon rejection of the claim, the City Clerk should issue a rejection notice using ABAG's Form Letter No. 6 of the ABAG Plan Claims Procedures Manual and process with the proof of service by mail form (located in the forms directory). A copy of the rejection notice and proof of service by mail form should be sent to Jim Nagal (ABAG Claims Examiner) and the City Attorney. This claim is being rejected as untimely as this claim was not received until October 7, 2005, more than 20 years after the mobile home was installed. Government Code Sections 818.6 and 821.4 also provide immunity for the City and the inspector.

Attachment:

- Copy of Claim Filed Against City (*If viewing on line, this attachment is available upon request from the City Clerk's office.*)

# **ATTACHMENT**

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 2, 2005

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **ACCEPTANCE OF A GRANT DEED OF EASEMENT FOR A WATERLINE**

**RECOMMENDATION:**

Adopt the attached Resolution accepting a grant deed of easement covering a portion of the City's untreated water transmission pipeline at 5180 Fulton Drive in Fairfield (APN 0180-140-050), and authorizing the City Clerk to record the grant deed of easement.

**EXECUTIVE SUMMARY:**

The City's untreated water transmission pipeline extends from Cordelia to the water treatment plant. As development occurs in the Cordelia area of Fairfield and where necessary, City staff requires the dedication of an easement for the protection of the pipeline from permanent, above-ground structures and to allow access for maintenance.

**BUDGET INFORMATION:**

The proposed action has no budget impacts.

**SUMMARY:**

The City of Fairfield Planning Department forwards proposed development plans to the City for review and comment when the project is near the City's untreated water transmission pipeline that extends from the Cordelia area of Fairfield to the City's Water Treatment Plant. Generally, if the City does not already have an easement on the property of the proposed project to protect its waterline, a 30-foot wide easement is required as part of the conditions of approval. This allows for on-going access for maintenance to the waterline and appurtenances.

When reviewing a proposed project for an industrial building at 5180 Fulton Drive in Fairfield (APN 0180-140-050, copy of map attached), staff determined the need for an additional easement. In this case, the City already has a 20-foot waterline easement as shown on parcel 2 of PM 22-40, attached as Exhibit B to the Grant Deed of Easement. There also is a public utilities easement at the northerly 20 feet of the parcel. In between these two easements is a trapezoidal shaped sliver of undesignated land extending across the property and measuring 8.68 feet on the

westerly side and 2.26 on the easterly side. The property owner/developer, Commercial Development Consulting Services (C.D.C.S.), agreed that the existing City waterline easement be extended to the southern boundary of the existing public utilities easement, thus eliminating the gap of undesignated land. A grant deed of easement was signed by C.D.C.S. As stated above, acceptance of the grant deed of easement at 5180 Fulton Drive will provide additional protection for the City's transmission pipeline from permanent above-ground structures, including trees, and allow access for maintenance.

cc: City Attorney  
Assistant Director of Public Works  
City Engineer

Attachments:

[Proposed Resolution](#)

*If viewing online, the following documents are available from the City Clerk's office:*

- Assessor's Map Book 180 Page 14
- Grant Deed of Easement

# Proposed Resolution

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING A GRANT DEED OF EASEMENT FOR A WATERLINE AT 5180 FULTON DRIVE IN FAIRFIELD (APN 0180-140-050) AND AUTHORIZING THE CITY CLERK TO RECORD THE GRANT DEED OF EASEMENT**

**WHEREAS**, it is in the City's best interest to accept the grant deed of easement for a waterline granted by the property owner/developer of 5180 Fulton Drive in Fairfield (APN 0180-140-050) to provide additional protection of the City's waterline from permanent above-ground structures; and

**WHEREAS**, acceptance of the grant deed of easement will provide access for maintenance of the City's waterline and appurtenances.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia accepts the grant deed of easement for a waterline at 5180 Fulton Drive in Fairfield (APN 0180-140-050) and authorizes the City Clerk to record the grant deed of easement.

\*\*\*\*\*

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 6<sup>th</sup> day of December, 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

# Assessor's Parcel Map Book 180 Page 14

# Grant Deed of Easement

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 8, 2005

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **2005 STREET RESURFACING PROJECT ACCEPTANCE AND NOTICE OF COMPLETION**

**RECOMMENDATION:**

Adopt the resolution accepting the 2005 Street Resurfacing Project, approving Contract Change Order Numbers 1 through 5, authorizing the City Manager to sign the Notice of Completion, and authorizing the City Clerk to file the Notice of Completion with the Solano County Recorder.

**EXECUTIVE SUMMARY:**

This project acceptance and notice of completion is for the City's annual street resurfacing work. The last step of the project requires formal acceptance by the City Council and filing of the notice of completion by the City Clerk, which allows the City to process the final payment to the contractor

**BUDGET INFORMATION:**

The final total cost of this project is \$492,277.23 which includes \$22,022.71 for Contract Change Order Numbers 1 through 5. Sufficient funding is available in the Citywide Street Resurfacing Program Fund (Account No. 017-8705-9711).

**BACKGROUND:**

The Contractor for this project, Evans Paving and Grading, slurry sealed 15 streets and overlaid 8 streets throughout the City this summer for a total of 4.75 miles of street improvements. Evans Paving and Grading performed extremely well and to the satisfaction of the City Engineer.

Five Contract Change Orders were issued on this project. Change Order No. 1 deleted the East "D" Street striping from the contract. Change Order No. 2 in the amount of \$48,500 is for grinding and overlaying the 100 block of West K Street. The City is receiving a credit in the Inflow/Infiltration project for half this cost. Change Order No. 3 is for patching the West 7<sup>th</sup> Street/Military West intersection. Change Order No. 4 is for field fitting manhole frames and covers while Change Order No. 5 is a credit for using less material quantities than what was estimated in the contract bid. The contractor was given authorization to proceed by staff on these

contract change orders since the total costs were less than \$50,000. The contract change orders are summarized in the table below.

	<b>Description</b>	<b>Amount</b>
Original Contract	Per City Council Resolution 05-108	\$470,254.52
CCO #1	Deletion of East D St. striping	Included in CCO #5
CCO #2	Grind and pave 100 block of West K St.	\$48,500.00
CCO #3	Remove and replace 2,000 sq. ft. at W-7 <sup>th</sup> St. and Military West	\$7,493.00
CCO #4	Manhole frame and covers for rodding inlets	\$1,409.36
CCO #5	Adjustment for bid item quantities actually used (Credit)	(\$35,379.65)
Final Contract		\$492,277.23

After this resolution is approved, the City Manager will be authorized to sign the attached Notice of Completion, which will then be sent by the City Clerk to the Solano County Recorder for filing.

cc: City Attorney  
Assistant Engineer

Attachments:

- [Proposed Resolution](#)
- [Notice of Completion](#)

# Proposed Resolution

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE 2005 STREET RESURFACING PROJECT, APPROVING CONTRACT CHANGE ORDER NUMBERS 1 THROUGH 5, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE THE NOTICE OF COMPLETION WITH THE SOLANO COUNTY RECORDER**

**WHEREAS**, by Resolution No. 05-108 the City Council awarded the construction contract to Evans Grading and Paving of Foresthill, CA, for the 2005 Street Resurfacing Project in accordance with the plans and specifications; and

**WHEREAS**, Evans Grading and Paving has completed the work, including Change Order Numbers 1 through 5, to the satisfaction of the City Engineer.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the 2005 Street Resurfacing Project as complete and approves Contract Change Order Numbers 1 through 5 for a final construction contract cost of \$492,277.23.

**BE IT FURTHER RESOLVED** that the City Manager is hereby authorized to sign the Notice of Completion and the City Clerk is authorized to file said Notice with the Solano County Recorder's office.

\* \* \* \* \*

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 6<sup>th</sup> of December, 2005, 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  
ATTN: CITY ENGINEER  
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 right-of-way described as:

**Various Streets** located in the City of Benicia, County of Solano, State of California  
(no assessor's parcel number)

**Nature of title as stated owner: Fee Title**

- 2. A work of improvement known as the **2005 Street Resurfacing Project** within the property described was completed and accepted by the City Council of the City of Benicia on December 6, 2005.
- 3. The name of the contractor for such improvement was **Evans Grading and Paving of Foresthill, California.**

CITY OF BENICIA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James R. Erickson, City Manager

Attest: \_\_\_\_\_  
Lisa Wolfe, City Clerk

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.

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 30, 2005

**TO** : City Manager

**FROM** : Director of Public Works

**SUBJECT** : **EAST I STREET SANITARY SEWER MAIN RELOCATION:  
AWARD OF CONTRACT**

**RECOMMENDATION:**

Adopt the Resolution accepting the bids, awarding the construction contract, including the bid alternate, in the amount of \$75,780 to Pacific Underground Services of Martinez, CA, for the East I Street Sanitary Sewer Main Relocation, and authorizing the City Manager to sign the contract on behalf of the City.

**EXECUTIVE SUMMARY:**

This project, located in the 400 block of East I Street, will relocate a very old, shallow, clay sewer line from the backyards of six residences to East I Street. One of the residences will connect to the new sewer line during the construction of this project, while the remaining five residences are expected to connect to it at a later date.

**BUDGET INFORMATION:**

Sufficient funds for constructing this project are available in Account No. 014-8315-9840 (Sanitary Sewer Line Upgrades).

**BACKGROUND:**

A 6-inch clay sewer line runs east-west through the backyards of six houses fronting on the north side of the 400 block of East I Street (See Attached Exhibit A). The sewer line was installed in the 1940's with only 9 inches of cover over the top of the pipe. Due to health and safety concerns and the risk of having a public sewer main about five feet behind each residence, it is important to relocate this sewer line.

The proposed project consists of installing a new sewer main along East I Street in front of the aforementioned six homes. 401 East I Street will connect to the new sewer main as part of this project. The remaining five homes will be provided connection points so that they can connect to the new main during the construction of this project or in the future. Once all of the homes have connected to the new sewer main, the existing 6-inch sewer main will be taken out of service and abandoned. This project is tentatively scheduled to begin in January and to be

completed within twenty working days.

On October 26, 2005, a total of four responsive bids were received for the East I Street Sanitary Sewer Main Relocation with the results listed below:

**Bid Results:**

<b>RANK</b>	<b>BIDDER'S NAME AND ADDRESS</b>	<b>Total BASE BID</b>	<b>Sewer Main Extension Bid Alternate</b>	<b>Base Bid + Alternate</b>
<b>1</b>	<b>Pacific Underground Services Martinez, CA</b>	\$47,448.00	\$28,332.00	\$75,780.00
2	Biland Construction Company Rio Vista, CA	\$57,441.00	\$31,498.00	\$88,939.00
3	B. Carone Grading & Paving Concord, CA	\$59,865.00	\$29,980.00	\$89,845.00
<u>4</u>	Pfister Excavating, Inc. Vallejo, CA	\$73,690.00	\$41,364.00	\$115,054.00

The bids are based on the quantities estimated by the Engineer. The final contract amount may be adjusted once final material quantities are determined upon completion of the work.

In accordance with the contract specifications, the construction contract should be awarded to the bidder submitting the lowest responsive responsible total base bid, which is Pacific Underground Services. A bid alternate was included in the notice inviting bids to provide the City with the option of extending the sewer main along "I" Street to provide service to the five houses in addition to 401 East I Street.

It is recommended that the construction contract be awarded to Pacific Underground Services and include the sewer main extension bid alternate in the project.

cc: City Attorney  
City Engineer

Attachments:

- [Proposed Resolution](#)
- [Exhibit "A" Project Schematic](#)

# Proposed Resolution

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ACCEPTING THE BIDS, AWARDING THE CONSTRUCTION CONTRACT, INCLUDING THE BID ALTERNATE, IN THE AMOUNT OF \$75,780 TO PACIFIC UNDERGROUND SERVICES OF MARTINEZ, CA, FOR THE EAST I STREET SANITARY SEWER MAIN RELOCATION PROJECT AND AUTHORIZING THE CITY MANAGER TO SIGN THE CONSTRUCTION CONTRACT ON BEHALF OF THE CITY**

**WHEREAS**, the City of Benicia's East I Street Sanitary Sewer Main Relocation Project was advertised for construction bids and four sealed bids were properly received and opened on October 26, 2005; and

**WHEREAS**, Pacific Underground Services of Martinez, California was the lowest, responsive, responsible bidder; and

**WHEREAS**, sufficient funds are available in the project budget to include the sewer main extension bid alternate; and

**WHEREAS**, this project is categorically exempt under CEQA pursuant to Section 15302(c) of the CEQA guidelines.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby accepts the bids and awards the construction contract including the bid alternate in the amount of \$75,780 to Pacific Underground Services of Martinez, California for the East I Street Sanitary Sewer Main Relocation Project.

**BE IT FURTHER RESOLVED THAT** the City Manager is hereby authorized to sign the construction 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 6<sup>th</sup> day of December, 2005, and adopted by the following vote:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

Exhibit “A”  
Project Schematic

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 3, 2005

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **REVIEW MONTHLY INVESTMENT REPORTS FOR JULY THROUGH SEPTEMBER, 2005**

**RECOMMENDATION:**

Accept the monthly investment reports for July through September 2005.

**EXECUTIVE SUMMARY:**

The investment portfolio is in compliance with the City's Investment Policy and California Law. Additionally, the City has adequate investments to meet its expenditure needs for the next six months. The Audit and Finance Committee has reviewed these reports and recommends acceptance.

**BUDGET INFORMATION:**

There is no affect on the City's budget.

**BACKGROUND:**

The City's investment portfolio consists of cash balances in checking accounts (less outstanding checks), certificates of deposit, Local Agency Investment Fund, treasury bills and trustee accounts which manage the installment payments and reserves for bonds issued by the City.

The City has adequate investments to meet its expenditure requirements for the next six months. In addition, the City's investment portfolio is in compliance with Government Code Sections 53600 et seq. and the City's Investment Policy. The Audit and Finance Committee has reviewed these reports and recommends acceptance.

The attached schedules identify the City's investments by maturity date, investment type, custodian of investment and cost. The market value information is provided by Wells Fargo Bank and Morgan Stanley.

Attachment:

- [Investment Reports for July through September 2005](#)

**INVESTMENT REPORTS FOR  
JULY THROUGH SEPTEMBER, 2005**

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 15, 2005

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **AUTHORIZE FILING OF AN APPLICATION FOR ALLOCATION OF TRANSPORTATION DEVELOPMENT ACT FUNDS/STATE TRANSIT ASSISTANCE FUNDS FOR FISCAL YEAR 2005-06**

**RECOMMENDATION:**

City Council adopt a resolution authorizing the Finance Director to submit the Transportation Development Act (TDA) and State Transit Assistance (STA) Claim for Fiscal Year 2005-2006.

**EXECUTIVE SUMMARY:**

Each year, the City Council authorizes the Finance Director to submit a claim to the Metropolitan Transportation Commission to secure funding to meet the operational and capital needs of providing the Benicia Transit service. The attached resolution authorizing the submission of the Fiscal Year 2005-06 claim is offered for the Council's consideration.

**BUDGET INFORMATION:**

Benicia Transit and Benicia Transit Dial-A-Ride are budgeted to receive TDA and State Transit Assistance (STA) funds for fiscal year 2005-2006 as follows:

Article 4, Fixed Route Operating	\$ 508,892
Article 4, Fixed Route Capital	60,488
Article 8, Demand Response Operating	339,420
Article 8, Demand Response Capital	30,265
State Transit Assistance for Fixed Route	34,723
Total	<u>\$ 973,788</u>

**BACKGROUND:**

The City of Benicia operates a transit system that includes fixed route bus service, paratransit and general public demand response service. The Metropolitan Transportation Commission (MTC) requires that the exhibit resolution and Opinion of Counsel be submitted when applying for TDA funds on annual basis.

**Attachments:**

- ❑ [Resolution](#)
- ❑ [Opinion of Counsel](#)

# **RESOLUTION**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING THE FILING OF AN APPLICATION WITH THE METROPOLITAN  
TRANSPORTATION COMMISSION FOR ALLOCATION OF TRANSPORTATION  
DEVELOPMENT ACT FUNDS/STATE TRANSIT ASSISTANCE FUNDS FOR FISCAL  
YEAR 2005-06**

**WHEREAS**, the Transportation Development Act (TDA), (Public Utilities Code (PUC) 99200 et seq.), provides for the disbursement of funds from the Local Transportation Fund (LTF) and State Transit Assistance (STA) of the County of Solano for use by eligible applicants for the purpose of operating Benicia Transit and Benicia Transit Dial-A-Ride; and

**WHEREAS**, pursuant to the provisions of the TDA and pursuant to the applicable rules and regulations thereunder (21 Cal. Code of Regs. §6600 et. esq.) a prospective applicant wishing to receive an allocation from the Local Transportation Fund (LTF) shall file its claim with the Metropolitan Transportation Commission; and

**WHEREAS**, the State Transit Assistance (STA) fund is created pursuant to Public Utilities Code §99310 et seq.; and

**WHEREAS**, the STA fund makes funds available pursuant to Public Utilities Code §99313.6 for allocation to eligible applicants to support approved transit projects; and

**WHEREAS**, TDA funds from the Local Transportation Funds and State Transit Assistance funds of Solano County will be required by applicant in Fiscal Year 2005-06 for Benicia Transit and Benicia Transit Dial-a-Ride; and

**WHEREAS**, the City of Benicia is an eligible applicant for TDA funds and/or STA funds pursuant to PUC §99260(a), 99400(c), 99400(d), and 99400(e) as attested by the Opinion of Counsel dated November 3, 2005.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby authorizes the Finance Director or his designee to execute and file appropriate TDA/STA application together with all necessary supporting documents, with the Metropolitan Transportation Commission for an allocation of TDA and STA funds in Fiscal Year 2005-06.

**BE IT FURTHER RESOLVED** that a copy of this resolution is transmitted to the Metropolitan Transportation Commission in conjunction with the filing of the claim and the Metropolitan Transportation Commission is requested to grant the allocation of funds as requested.

\*\*\*\*\*

On motion of Council Member\_\_\_\_, seconded by Council Member\_\_\_\_, the above resolution was approved by the City Council of the City of Benicia at a regular meeting held on the 6th day of December 2005, by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

## **OPINION OF COUNSEL**

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
CONSENT CALENDAR**

**DATE** : November 28, 2005

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **ADOPT THE CITY OF BENICIA CAFETERIA PLAN  
(FLEXIBLE BENEFITS PLAN)**

**RECOMMENDATION:**

Adopt the Resolution authorizing the creation of the City of Benicia Cafeteria Plan (Flexible Benefits Plan).

**EXECUTIVE SUMMARY:**

The proposed Cafeteria Plan (Flexible Benefits Plan) allows employees to pay for health insurance premium co-payments on a pretax basis and to allocate additional health care and dependent care expenses to pre-tax reimbursement accounts authorized by the Internal Revenue Service, commonly referred to as Section 125 accounts. Staff is requesting authorization to allow employees in the City to participate in the Plan due to the tax benefits that can be realized and the minimal one-time cost of \$625.

**BUDGET INFORMATION:**

The original one-time set-up cost will be \$625 and will be absorbed in the current General Fund budget. It is expected that at least 18 out of 230 employees will participate in the Section 125 program at their own expense.

**BACKGROUND:**

The City Council authorized the creation of the Plan during MOU discussions this year. Staff researched several companies that specialize in creating and administering cafeteria plans and chose MyCafeteriaPlan of Miamisburg, Ohio to assist us. They will charge \$625 for setting up the program and a minimum of \$100 per month for administering the Section 125 accounts. If at least 18 of 230 employees sign up for the Section 125 accounts at \$5.75 per employee, there will be no cost to the City. The attached resolution authorizes the creation of the Cafeteria Plan and authorizes the City Manager to sign all documents required to establish the plan.

Description of Cafeteria Plan

A cafeteria plan allows employees to choose from an assortment of health benefit options and tax deferred medical reimbursement or dependent care accounts. The City of Benicia will include

four basic elements that are written into the founding Cafeteria Plan documents attached to the staff report and summarized below.

### **Elements of City of Benicia Cafeteria Plan**

1. Health Insurances that are fully paid by City.
2. Health Insurances that require employee co-payments.
3. Section 125 tax-deferred medical and dependent care reimbursements.
4. Cash in-lieu of health insurance coverage.

Presently, an employee that chooses Kaiser health coverage will have the entire premium paid by the city. If the employee chooses Health Net, the City requires them to pay one-half of the difference between the Kaiser rate and the Health Net rate. The Cafeteria Plan will allow the employee to make the co-payments on a pre-tax basis. Currently, the employee makes the co-payments on an after-tax basis.

The Cafeteria Plan also allows an employee to sign-up for Health or Dependent Care Flexible Spending Accounts on a pretax basis. Under each of these accounts, if an employee has payments for these expenses that are not covered by their health insurance, such as for eyeglass or recurring medical co-payments, the employee may estimate what their expenses will be during a calendar year and have the amount deducted in equal portions on a pre-tax basis from each paycheck.

The City will transfer the money to MyCafeteriaPlan and the employee will send medical or dependent care receipts to them for reimbursement. The cost for this service to the employee will be \$5.75 per month. Under the plan guidelines, the maximum amount available for the Medical account is \$2,500 per year and the Dependent Care account maximum is \$5,000.

The cafeteria plan will also allow employees to receive taxable cash payments in-lieu of health coverage or divert the cash in-lieu to pre-tax Section 125 accounts if they choose. An employee is required to show proof of coverage in order to qualify for this option.

Upon approval, staff will schedule Employee Orientation Meetings for early December and begin registrations shortly thereafter for the January through December 2006 calendar year program.

It is the intention of the Human Resources staff to encourage all employees of the City to research and consider enrolling in the Section 125 program for two reasons. First, the program will allow employees with out-of-pocket expenses for medical care or child care significant tax savings. Second, IRS regulations require that all employees be allowed equal access to the Section 125 Flexible Benefits Program. If only “highly compensated employees” of the City apply, the program may not receive IRS approval for pre-tax treatment.

Attachments:

- ❑ [Resolution](#)
- ❑ [Attachment A: City of Benicia Cafeteria Plan](#)
- ❑ [Attachment B: Summary Plan Description](#)

# **RESOLUTION**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA ADOPTING THE CITY OF BENICIA CAFETERIA PLAN**

**WHEREAS**, the City Council has considered the value of establishing a Cafeteria Plan for City of Benicia employees; and

**WHEREAS**, the City Council wishes to comply with Federal regulations relating to the establishment of a Cafeteria Plan that includes Internal Revenue Service Section 125 accounts; and

**WHEREAS**, the City Manager has accepted responsibility for maintaining compliance with all Federal regulations and has recommended that MyCafeteriaPlan of Miamisburg, Ohio be selected as the Administrator of the Cafeteria Plan.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby acknowledges that the form of the Cafeteria Plan including a Dependent Care Flexible Spending Account and Health Flexible Spending Account effective December 31, 2005, presented at this meeting is hereby approved and adopted and that the City Manager is hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

**BE IT FURTHER RESOLVED THAT** the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan; and

**THAT** the City Manager shall act as soon as possible to notify the employees of the City of Benicia of the adoption of the Cafeteria Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented at this meeting, which form is hereby approved; and

**THAT** the undersigned further certifies that attached hereto as Exhibits A and B, respectively, are true copies of City of Benicia Cafeteria Plan and the Summary Plan Description approved and adopted in the foregoing resolutions.

\*\*\*\*\*

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 6<sup>th</sup> day of December 2005, and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING DECEMBER 6, 2005  
PUBLIC HEARING**

**DATE:** November 18, 2005

**TO:** Mayor and City Council Members

**FROM:** Interim Community Development Director

**SUBJECT:** **APPEALS REGARDING THE ISSUANCE OF A BUILDING PERMIT FOR 120 INCLINE PLACE**

**RECOMMENDATION:**

Hold a public hearing and adopt the resolutions denying the two appeals and upholding the decision of the Planning Commission and the Community Development Director that the building permit appeal period has expired.

**EXECUTIVE SUMMARY:**

This matter involves two separate appeals, one from Sue Johnson and one from William Jabas, challenging the City's issuance of a building permit on July 8, 2005 for the construction of a residence on 120 Incline Place.

The only mechanism for appealing the issuance of a building permit is Benicia Municipal Code Section 1.04.100, which provides a thirty (30) day window for appealing "*administrative actions taken by any officer of the City under the Code.*" Staff recommends that both appeals be denied as they were filed after this thirty (30) day appeal period had expired.

**BUDGET INFORMATION:**

This project has no impact on the City budget. The City will receive a slight increase in property tax revenue from the new single-family house.

**BACKGROUND:**

**Sue Johnson Appeal:** City staff received an email requesting an appeal of the building permit issued for construction at 120 Incline Place by Sue Johnson on August 25, 2005. The formal appeal of the building permit by Sue Johnson was received on September 1, 2005. Both of these requests were received by the city after the thirty-day appeal period had expired and were denied by the Interim Director of Community Development. This decision was appealed to the Planning Commission, which on October 6, 2005, also denied the appeal, finding that it was untimely filed. Sue Johnson then appealed the

Planning Commission decision on October 11, 2005 claiming error or abuse of discretion in denying her appeal.

**William Jabas Appeal:** After the Planning Commission denied Sue Johnson's appeal of the issuance of the Incline Place building permit, William Jabas filed an appeal dated October 11, 2005 claiming error and abuse of discretion by the Director of Community Development in issuing the building permit. Although Mr. Jabas's appeal does not mention the Planning Commission decision, based on the subject and the date of the appeal, it was determined it should be heard by the City Council at the same time as Ms. Johnson's appeal.

The issuance of a building permit for the construction of a single family residence outside of the Historic District is primarily a ministerial decision if all the Benicia Municipal Codes have been met. Consequently, there is no formal appeal mechanism available to challenge such a decision. However, there is a general appeal provision under Chapter 1.04.100 of the Benicia Municipal Code, which allows administrative actions by City officials to be challenged, which states:

Unless otherwise specifically provided a person aggrieved by an administration action taken by any officer of the city under the code may appeal from the action to the city council. A written notice of appeal concisely stating the facts of the case and the grounds of appeal shall be filed with the city administrator within 30 days of the action appealed from...

To avoid confusion, it was decided that the Planning Commission should make the initial decision regarding the appeal of the issuance of the building permit filed by Sue Johnson based on the fact that the Commission was already scheduled to hear her appeal (and others) regarding the decision to allow a lot line adjustment at the same property at Incline Place. Any decision of the Planning Commission could then be appealed to the City Council, which is now the case. On October 6, 2005, the Planning Commission denied the appeal and upheld the action of the Community Development Director concurring that the appeal was untimely.

William Jabas filed his appeal regarding the error/abuse of discretion by the Director of Community Development in denying the appeal regarding the building permit issued for construction at Incline Place. In this case, since the appeal was filed after the Planning Commission's decision, it was decided that it was more appropriate for it to be heard by the City Council along with Ms. Johnson's appeal.

## **DISCUSSION OF THE APPEALS**

### **Johnson Appeal:**

Ms. Johnson's claims, directly quoted from the submitted appeal, are listed below, followed by staff responses (in italics) to each allegation:

1. During the August 4 meeting with the Mayor, Vice Mayor, City Attorney, City Manager, Interim Community Development Director and residents, when I said that I wanted to appeal the lot line adjustment, City Manager Erickson stated: “All of the permits have been issued and no appeals are possible.” Although we were specifically talking about the lot line adjustment, Mr. Erickson’s reference was to ALL permits and ALL appeals. This includes the Building Permit, which I’m told, was signed on July 7. Therefore, on August 4, City Manager Erickson said that I couldn’t appeal the Building Permit.

*Staff discussion #1:*

*Staff does not remember having made such a statement. However, Ms. Johnson is correct that the meeting context was to discuss the lot line adjustment. Building permits were not discussed.*

2. During the latter part of the Aug 4 meeting, I asked to look at the Mark Lobdell plans, specifically the garage elevations. The garage elevations that we were shown that night by Interim Community Development Director Golick did not have obvious elevation markings and Mr. Golick was not able to provide a scale for us to check the garage height. It was obvious that I was concerned about the garage height and this is the issue that was the basis of my first appeal: an illegal 30-foot high detached garage. I was “timely” in my questioning of the Mark Lobdell garage height, since my height questions on Aug 4 are within 30 days of July 7th, when, I’m told, the building permit was signed.

My questions were timely. However, the City’s response: “all permits have been issued and no appeals are possible”, stopped my further pursuing the appeal process. On August 4, I still had time for a “timely” appeal of the building permit.

*Staff discussion #2:*

*According to the originally proposed set of building plans date stamped April 14, 2005 the proposed garage with habitable space above scales to slightly under 23 feet above finished grade. In addition, a revised set of plans was received by the Community Development Department during the week of October 17-21, 2005. This set of plans calls for the reduction of the two-story garage structure to a single-story garage. The revised height of the proposed garage is 13 feet 5 inches above finished grade. Therefore, encroachment into the view corridor would be mitigated. The proposed set of plans has been approved by the Community Development Department and the modified building permit is ready for issuance. Please note, however, that even if the plans had not been changed, the view corridor is not a City code requirement and thus cannot be enforced by the City.*

*As stated previously, Staff does not recall this statement about “all permits” being made. Regardless, her appeal is untimely and should be denied on that basis.*

**Jabas Appeal:** William Jabas of 153 Incline Place filed an appeal on October 11, 2005 challenging the issuance of a building permit for 120 Incline Place based on the following reason that is a direct quote from the submitted appeal:

*A legal description of the property is required to obtain a building permit. The legal description was not provided until September 21, 2005, the date of recordation of the lot line adjustment document with the county. UBC Section 106.4.3 states that work started the first week of August did so without a valid permit.*

*Staff discussion:*

*It appears that Mr. Jabas may have meant to quote Section 106.3.1 paragraph 2 of the 2001 California Building Code. This section states that, “to obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall: Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.” Building permit applications submitted without a physical address or other identifier would not invalidate approval of a building permit. The Lobdell’s building permit application would remain valid since Community Development Department staff was aware of the location of the project site.*

*Regardless, the building permit for construction of the Lobdell’s new residence was issued on July 8, 2005. However, Mr. Jabas did not submit an appeal for the building permit issuance until October 11, 2005. According to Benicia Municipal Code Section 1.04.100 an appeal shall be filed within 30 days of the action appealed from. Consequently, this appeal is untimely and should be denied on that basis.*

**CONCLUSION:** For the foregoing reasons, staff recommends that the City Council deny both appeals as being untimely.

**Attachments:**

- Proposed Resolutions  
[City Council Resolution denying appeal of S. Johnson](#)  
[City Council Resolution denying appeal of W. Jabas](#)

*If viewing online, the following documents are available from the City Clerk’s office:*

- Appeal Forms:
  - Appeal from Sue Johnson dated September 1, 2005
  - Appeal from Sue Johnson dated October 11, 2005

Appeal from William Jabas dated October 11, 2005

- Resolutions No. 05-22 of the Planning Commission denying an appeal of the issuance of a building permit at 120 Incline Place:
- Planning Commission Staff Report for October 6, 2005 meeting regarding appeals for project at 120 Incline Place

## **PROPOSED RESOLUTIONS**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
DENYING SUE JOHNSON'S APPEAL OF THE ISSUANCE OF A BUILDING  
PERMIT (04 BLD-1211) AT 120 INCLINE PLACE**

**WHEREAS**, a building permit was issued on July 8, 2005, for the construction of a single-family residence on the property located at 120 Incline Place; and

**WHEREAS**, the City of Benicia received an appeal by Sue Johnson on September 1, 2005 regarding the Community Development Director's decision that the appeal period for the building permit had expired; and

**WHEREAS**, On October 6, 2005, the Planning Commission held a public hearing on the appeal, considered the appeal, staff report and presentation, all public testimony and pertinent documents and denied the appeal, finding that it was untimely filed; and

**WHEREAS**, the City of Benicia received an appeal by Sue Johnson on October 11, 2005 regarding the Planning Commission's decision denying the appeal; and

**WHEREAS**, on December 6, 2005, the City Council held a public hearing on the appeal, considered the appeal, staff report and presentation, all public testimony and pertinent documents and plans.

**NOW, THEREFORE BE IT RESOLVED**, the City Council of the City of Benicia hereby denies Sue Johnson's appeal regarding the issuance of the building permit on July 8, 2005, and upholds the decision of the Community Development Director because the 30-day appeal period for the building permit had expired prior to the receipt of the appeal.

\*\*\*\*\*

On a motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6<sup>th</sup> day of December 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA DENYING WILLIAM JABAS' APPEAL OF THE ISSUANCE OF A BUILDING PERMIT (04 BLD-1211) AT 120 INCLINE PLACE**

**WHEREAS**, a building permit was issued on July 8, 2005, for the construction of a single-family residence on the property located at 120 Incline Place; and

**WHEREAS**, the City of Benicia received an appeal by William Jabas on October 11, 2005 regarding the Community Development Director's decision that the appeal period for the building permit had expired;

**WHEREAS**, on December 6, 2005, the City Council held a public hearing on the appeal, considered the appeal, staff report and presentation, all public testimony and pertinent documents and plans.

**NOW, THEREFORE BE IT RESOLVED**, the City Council of the City of Benicia hereby denies William Jabas' appeal regarding the issuance of the building permit on July 8, 2005, and upholds the decision of the Community Development Director because the 30-day appeal period for the building permit had expired prior to the receipt of the appeal.

\*\*\*\*\*

On a motion of Council Member \_\_\_\_\_, seconded by Council Member \_\_\_\_\_, the foregoing Resolution was introduced and passed by the City Council of the City of Benicia at a regular meeting of said Council held on the 6<sup>th</sup> day of December 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
UNFINISHED BUSINESS**

**DATE** : November 29, 2005

**TO** : City Manager

**FROM** : Finance Director  
Director of Public Works

**SUBJECT** : **MODIFICATION TO THE APPLICATION FOR REGIONAL  
MEASURE 2 FUNDING FOR THE PARK/INDUSTRIAL  
INTERSECTION AND PARK-AND-RIDE FACILITY PROJECT**

**RECOMMENDATION:**

City Council adopt the resolution requesting the Metropolitan Transportation Commission allocate Regional Measure 2 Funding for the Park/Industrial Intersection and Park-and-Ride Facility Project, Phase 1.

**EXECUTIVE SUMMARY:**

The Park/Industrial Intersection and Park-and-Ride Facility Project is being modified to be constructed in two phases. The first phase includes constructing the bus stop for Fairfield/Suisun Transit System Solano Express Route 40 at a cost of \$175,000 and would be included in the 2005/06 FY budget. The second phase would include the construction of the park and ride lot and making improvements to the Park Road and Industrial Way intersection area. Phase 2 improvements will not proceed ahead at this time.

**BUDGET INFORMATION:**

The Park/Industrial Intersection and Park-and-Ride Facility Project has been identified for RM2 funding under the Regional Express Bus North category. This project includes the following amounts allocated for Phase 1 in the 2005/06 FY:

<b><u>Project</u></b>	<b><u>2005/06 FY</u></b>
Park Rd./Industrial Road Park-N-Ride Bus Stop Project (Phase 1)	\$ 175,000

The City's local match for phases 1 and 2 are budgeted in the Traffic Mitigation Fund, Account Number 034-8705-9724.

**BACKGROUND:**

This project will provide a much needed transit stop for the existing Fairfield/Suisun Transit System Solano Express Route 40 service between Vacaville, Fairfield and Pleasant Hill BART Station. It will serve the Industrial Park with connecting Benicia Transit and Benicia Transit Dial-A-Ride service. The City is ready to proceed ahead with the first phase of this project which includes constructing the bus stop for Fairfield/Suisun Transit System Solano Express Route 40. Construction on the second phase is not yet scheduled and will include the installation of the park and ride lot and making improvements to the adjacent roadways and the intersection of Park Road and Industrial Way.

**Attachments:**

- [Resolution](#)
- [Attachment A: Regional Measure 2 - Initial Project Report \(IPR\) Revised](#)

cc: City Engineer

# **RESOLUTION**

**RESOLUTION NO. 05-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA SUBMITTING A MODIFICATION TO THE APPLICATION TO THE METROPOLITAN TRANSPORTATION COMMISSION FOR ALLOCATION OF REGIONAL MEASURE 2 FUNDING FOR THE PARK/INDUSTRIAL INTERSECTION AND PARK-AND-RIDE FACILITY PROJECT, PHASE I**

**WHEREAS**, SB 916 (Chapter 715, Statutes 2004), commonly referred as Regional Measure 2, identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

**WHEREAS**, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

**WHEREAS**, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 2 funding; and

**WHEREAS**, allocations to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 2 Policy and Procedures; and

**WHEREAS**, City of Benicia is an eligible sponsor of transportation project(s) in Regional Measure 2, Regional Traffic Relief Plan funds; and

**WHEREAS**, the Park/Industrial Intersection Improvement and Park and Ride Facility is eligible for consideration in the Regional Traffic Relief Plan of Regional Measure 2, as identified in California Streets and Highways Code Section 30914(c) or (d); and

**WHEREAS**, the Regional Measure 2 allocation request, attached hereto in the Initial Project Report and incorporated herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which City of Benicia is requesting that MTC allocate Regional Measure 2 funds; and

**NOW, THEREFORE, BE IT RESOLVED**, that the City of Benicia and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 2 Policy Guidance (MTC Resolution No. 3636); and

**BE IT FURTHER RESOLVED**, that the City of Benicia certifies that the project is consistent with the Regional Transportation Plan (RTP); and

**BE IT FURTHER RESOLVED**, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and

**BE IT FURTHER RESOLVED**, that the Regional Measure 2 phase or segment is fully funded, and results in an operable and useable segment; and

**BE IT FURTHER RESOLVED**, that City of Benicia approves the updated Initial Project Report, attached to this resolution; and

**BE IT FURTHER RESOLVED** that City of Benicia approves the cash flow plan, attached to this resolution; and

**BE IT FURTHER RESOLVED**, that City of Benicia has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the updated Initial Project Report, attached to this resolution; and

**BE IT FURTHER RESOLVED**, that City of Benicia is an eligible sponsor of projects in the Regional Measure 2 Regional Traffic Relief Plan, Capital Program, in accordance with California Streets and Highways Code 30914(c); and

**BE IT FURTHER RESOLVED**, that City of Benicia is authorized to submit an application for Regional Measure 2 funds for Park/Industrial Intersection Improvement and Park and Ride Facility in accordance with California Streets and Highways Code 30914(c); and

**BE IT FURTHER RESOLVED**, that City of Benicia certifies that the projects and purposes for which RM2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and

**BE IT FURTHER RESOLVED**, that there is no legal impediment to City of Benicia making allocation requests for Regional Measure 2 funds; and

**BE IT FURTHER RESOLVED**, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of City of Benicia to deliver such project; and

**BE IT FURTHER RESOLVED** that City of Benicia indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of City of Benicia, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and

**BE IT FURTHER RESOLVED**, that City of Benicia shall, if any revenues or profits from any non-governmental use of property (or project) are collected, that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and

**BE IT FURTHER RESOLVED**, that assets purchased with RM2 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public

transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 2 funds were originally used; and

**BE IT FURTHER RESOLVED**, that City of Benicia shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 2 Toll Revenues; and

**BE IT FURTHER RESOLVED**, that City of Benicia authorizes its City Manager to execute and submit an allocation request for the (environmental/ design/ right-of-way/ construction) phase with MTC for Regional Measure 2 included in the project application attached to this resolution; and

**BE IT FURTHER RESOLVED**, that the City Manager is hereby delegated the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate; and

**BE IT FURTHER RESOLVED**, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the City of Benicia application referenced herein.

\*\*\*\*\*

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 6th day of December, 2005 and adopted by the following vote:

Ayes:

Noes:

Absent:

---

Steve Messina, Mayor

**ATTEST:**

---

Lisa Wolfe, City Clerk

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
NEW BUSINESS**

**DATE** : November 25, 2005  
**TO** : City Council  
**FROM** : City Attorney  
**SUBJECT** : **REVISIONS TO RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS**

**RECOMMENDATION:**

Adopt the resolution revising the Rules of Procedure for the Conduct of City Council Meetings.

**EXECUTIVE SUMMARY:**

The proposed revisions by Mayor Messina modify a number of sections of the Rules of Procedure, including the preparation and format of the agenda; opportunity for public comment at City Council Meetings; and the process for appointments to boards and commissions.

**Attachment:**

- [Draft Resolution](#)

*(If viewing on line, this attachment is available upon request from the City Clerk's office.)*

- Draft Resolution – Proposed changes highlighted

# **DRAFT RESOLUTION**

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
NEW BUSINESS**

**DATE** : November 25, 2005

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **PROPOSED ORDINANCE AMENDING SECTION 2.04.010  
(MEETING TIME AND PLACE) OF CHAPTER 2.04 (CITY  
COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL)  
OF THE BENICIA MUNICIPAL CODE**

**RECOMMENDATION:**

Mayor Messina requests that the City Council introduce the amended ordinance and schedule the second reading for the next regular City Council Meeting.

**EXECUTIVE SUMMARY:**

The proposed revisions to Section 2.04.010 (Meeting Time and Place) by Mayor Messina amend the start time of City Council meetings from 7:30 p.m. to 6:30 p.m.

**Attachment:**

- [Draft Ordinance](#)

**AGENDA ITEM  
CITY COUNCIL MEETING: DECEMBER 6, 2005  
NEW BUSINESS**

**DATE** : November 25, 2005

**TO** : City Council

**FROM** : City Attorney

**SUBJECT** : **PROPOSED ORDINANCE AMENDING SECTION 2.52.030  
(MEMBERS – TERM OF OFFICE) OF CHAPTER 2.52  
(PLANNING COMMISSION) OF TITLE 2 (ADMINISTRATION  
AND PERSONNEL) OF THE BENICIA MUNICIPAL CODE**

**RECOMMENDATION:**

Mayor Messina requests that the City Council introduce the amended ordinance and schedule the second reading for the next regular City Council Meeting.

**EXECUTIVE SUMMARY:**

The proposed revisions by Mayor Messina modify Section 2.52.030 (Members – Term of Office) for Planning Commissioners, allowing a member to serve until a successor is appointed and qualifies, as well as eliminating the term limit.

**Attachment:**

- [Draft Ordinance](#)

**AGENDA ITEM**  
**CITY COUNCIL MEETING: DECEMBER 6, 2005**  
**NEW BUSINESS**

**DATE** : November 30, 2005

**TO** : City Manager

**FROM** : Finance Director

**SUBJECT** : **AUTHORIZATION OF A SIX MONTH EXTENSION OF THE LETTER AGREEMENT WITH THE VALERO REFINING COMPANY PERTAINING TO THE UTILITY USERS TAX**

**RECOMMENDATION:**

Adopt the Resolution authorizing the six month extension of the Letter Agreement with the Valero Refining Company (Valero) pertaining to the Utility Users Tax (UUT).

**EXECUTIVE SUMMARY:**

The ten year Letter Agreement with Valero pertaining to the Utility Users Tax is set to expire on December 31, 2005. The attached resolution authorizes a six month extension of the agreement to June 30, 2006 to allow the City and Valero more time to develop a new agreement. In addition to the extension, the resolution temporarily increases Valero's annual tax from \$1 million to \$1.2 million and the new agreement amount, if higher, will be retroactive to January 1, 2006. If the new agreement is not completed in six months, Valero would pay the 4% UUT retroactively to January 1, 2006.

As an alternative, the City Council could allow the agreement to expire and Valero would immediately begin paying a 4% UUT effective January 1, 2006. However, the proposed interim agreement provides for this same outcome if a long-term agreement is not reached within six months, including retroactive payments to January 1, 2006.

**BUDGET INFORMATION:**

The City will receive an additional \$100,000 during the term of the six month extension. The current budget for FY 2005-06 is \$1.05 million, yielding an additional \$50,000 in FY 2005-06 through June 30, 2006. Once the agreement is final, the agreed upon amount, if higher will be paid retroactively from January 1, 2006.

**BACKGROUND:**

In February 1996, the City Council authorized a ten year agreement with the Exxon Company to have them pay \$900,000 per year for the first five years and \$1 million per year for the next five

in lieu of paying the 4% UUT. In June 2000, the Valero Refining Company inherited the agreement when they purchased the Refining and have been paying monthly since that time.

Staff began meeting with Valero representatives over the summer and developed several criteria that should be included in the next long-term agreement. The criteria included:

1. Annual adjustments linked to the Consumer Price Index or another suitable pricing index.
2. Consumption formulas should be considered to promote energy efficiency, guard against fluctuations in commodity prices, and encourage continued investment in plant and equipment.
3. Minimum and maximum payment limits should be established to protect both parties from market or consumption fluctuations.
4. Renegotiation clauses should be included to allow each party to reopen the agreement when specific events occur, such as plant expansion or contraction.

Armed with this information, staff and Chris Howe, Valero Manager of Community Relations and Governmental Affairs, began developing a new agreement. Unfortunately, we have not been able to complete the task prior to the expiration of the old agreement and Valero has requested that the City allow additional time in which to prepare the agreement. Staff is recommending an extension of six months in which to accomplish this goal.

During the interim six month period, Valero will begin paying the City \$100,000 per month. Once an agreement is reached, if the agreed upon amount is greater than the interim payment, Valero will pay the higher amount retroactively to January 1, 2006. If no agreement is reached prior to June 30, 2006 and the City has not agreed to further extensions, Valero would resort to paying the 4% UUT in accordance with the Ordinance, including retroactive payments to January 1, 2006. Using this approach, the City will not be disadvantaged by postponing the completion of the new agreement.

The attached Draft Letter Agreement from Valero contains the provisions recommended by staff above, with two minor differences. First, section 2B does not limit the minimum six month payment at \$100,000 once the final agreement is made retroactive. Secondly, the reversion to the 4% UUT if no agreement is reached is not referenced as being retroactive to January 1, 2006. Valero has indicated they would be open to accepting these changes when approved by the City Council.

An agreement benefits both the City and Valero. Each benefits by having predictable financial flows that are not subject to wide market fluctuations. Also, the long-term nature of the agreement allows for stability in long term planning and physical plant and equipment maintenance. For these reasons, staff recommends continued focus on developing the agreement.

As an alternative, the City Council could accept the expiration of the Letter Agreement and require Valero to begin paying the 4% UUT. Staff has made some preliminary estimates of the possible impact of this decision but is not ready to predict the change in our receipts at this time. There are also some outstanding issues relating to the metering of natural gas vs. co-generated

electricity that need to be completed in order to determine the appropriate application of our UUT Ordinance.

Prior Letter Agreement and Ensuing Draft Agreement

In February 1996, the City Council approved the Letter Agreement that established the UUT payments for the following 10 years. Within the letter, a clause referenced that a new agreement would be drafted setting out the elements listed in the letter, as well as, other provisions that appeared to be part of the previous five year agreement. The management of Exxon drafted the referenced agreement in May of 1996 but it was not approved by the City. However, because it references several of the issues that will be considered in the new agreement, Valero has requested that it be included as an exhibit in this staff report.

Consumer Price Index (CPI) History

The following chart references changes in the CPI since the adoption of the Letter Agreement in 1996 and allows one to see what the payment would be today if it was tied to changes in the CPI. If the first payment of \$900,000 is increased in each of the succeeding 9 years, the total amount would be \$1,177,950. If the second payment amount of \$1 million is increased in each of the succeeding 4 years, the total amount would be \$1,068,984.

<b>Consumer Price Index History</b>				
<b>Year</b>	<b>Annual CPI Factor</b>	<b>Annual CPI Percentage</b>	<b>Current Agreement First 5 Years</b>	<b>Current Agreement Last 5 Years</b>
(1)	(2)	(3)	(4)	(5)
1996	155.1	2.31%	\$ 900,000	
1997	160.4	3.42%	\$ 930,754	
1998	165.5	3.18%	\$ 960,348	
1999	172.5	4.23%	\$ 1,000,967	
2000	180.2	4.46%	\$ 1,045,648	
2001	189.9	5.38%	\$ 1,101,934	\$ 1,000,000
2002	193.0	1.63%	\$ 1,119,923	\$ 1,016,324
2003	196.4	1.76%	\$ 1,139,652	\$ 1,034,229
2004	198.8	1.22%	\$ 1,153,578	\$ 1,046,867
2005*	203.0	2.11%	\$ 1,177,950	\$ 1,068,984
* Thru August, 2005				
(1)	Calendar Year			
(2)	Annual Consumer Price Index			
(3)	Annual Percentage Change			
(4)	Current Agreement \$900,000 value inflated by CPI.			
(5)	Current Agreement \$1,000,000 value "inflated" by CPI.			

Attachments:

- ❑ [Resolution](#)
- ❑ Extension Request from Valero Refining Company – *if viewing online, a copy of this attachment is available from the City Clerk’s Office*
- ❑ [Copy of February 1996 Resolution and Letter Agreement](#)
- ❑ [Copy of May 31, 1996 Draft Agreement](#)

# **RESOLUTION**

**RESOLUTION NO. 05-\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA  
AUTHORIZING A SIX MONTH EXTENSION OF THE LETTER AGREEMENT  
PERTAINING TO THE UTILITY USERS TAX WITH THE VALERO REFINING  
COMPANY**

**WHEREAS**, the City of Benicia seeks to secure a long-term revenue stream from payment of the Utility Users Tax by Valero Refining Company; and

**WHEREAS**, the City of Benicia and Valero Refining Company have previously agreed to a ten year Letter Agreement that is set to expire on December 31, 2005; and

**WHEREAS**, the City Council has considered a six month extension of the Letter Agreement to allow for the development of a new long-term agreement; and

**WHEREAS**, Valero Refining Company has agreed to pay \$100,000 per month from January 1, 2006 through June 30, 2006 and will adjust the payment retroactively to the higher of \$100,000 per month or to the amount specified in the new agreement; and

**WHEREAS**, in the absence of a new agreement or further extensions of the Letter Agreement, Valero Refining Company has agreed to adjust the payment retroactively to January 1, 2006 to the higher of \$100,000 per month or to the amount indicated by the application of the Utility Users Tax Ordinance.

**NOW, THEREFORE, BE IT RESOLVED THAT** the City Council of the City of Benicia hereby authorizes the City Manager to approve a six month extension of the February 1996 Letter Agreement with the Valero Refining Company, provided that specific references are made to the aforementioned considerations.

\*\*\*\*\*

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 6<sup>th</sup> day of December 2005, and adopted by the following vote:

Ayes:  
Noes:  
Absent:

\_\_\_\_\_  
Steve Messina, Mayor

Attest:

\_\_\_\_\_  
Lisa Wolfe, City Clerk

**Extension Request from  
Valero Refining Company**

**Copy of February 1996  
Resolution And Letter Agreement**  
(Attached as Prior Agreement. PDF if viewing online.)

**Copy of May 1996  
Prior Draft Agreement**

(Attached as Prior Draft Agreement. PDF if viewing online.)