

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
DECEMBER 2, 2008

The special meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 6:44 p.m. on Tuesday, December 2, 2008, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Absent: None

PLEDGE OF ALLEGIANCE:

Council Member Hughes 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).

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN: None

PUBLIC COMMENT:

None

ANNOUNCEMENT OF CLOSED SESSION:

Heather McLaughlin, City Attorney, read the announcement of Closed Session

CLOSED SESSION:

**A. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
(Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9)**

1 Claim: Baron

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 6:46 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 2, 2008

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Elizabeth Patterson at 7:00 p.m. on Tuesday, December 2, 2008, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

Present: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Absent: None

PLEDGE OF ALLEGIANCE:

Charlie Knox 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:

Heather McLaughlin reported that Council gave direction to Staff to settle the matter.

Openings on Boards and Commissions:

- Sky Valley Open Space Committee:
One unexpired term to September 30, 2010
- Civil Service Commission
One full term to January 31, 2012
- Sky Valley Open Space Committee
One full term to January 31, 2013
- Planning Commission
Two full terms to January 31, 2013
- Open Government Commission
One full term to January 31, 2013
- Library Board of Trustees
Two full terms to January 31, 2012

Mayor's Office Hours:

Mayor Patterson will maintain an open office every Monday (except holidays) in the Mayor's Office at City Hall from 6:00 p.m. to 7:00 p.m. No appointment is necessary. Other meeting times may be scheduled through the City Hall office at 746-4200 or by email acardwell@ci.benicia.ca.us.

APPOINTMENTS:

RESOLUTION 08-117 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR’S APPOINTMENT OF KIMBLE GOODMAN TO THE ECONOMIC DEVELOPMENT BOARD TO A FULL TERM ENDING JULY 31, 2012

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

RESOLUTION 08-118 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA CONFIRMING THE MAYOR’S APPOINTMENT OF ELLEN BLAUFARB TO THE HUMAN SERVICES AND ARTS BOARD TO AN UNEXPIRED TERM ENDING JULY 31, 2009

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mr. Erickson stated that there was a correction on item XI-A which would be discussed during that agenda item.

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various items submitted (copies on file).

PUBLIC COMMENT:

1. Eldon Petersen – Mr. Petersen invited everyone attend the Downtown Merchant Open House & Tree Lighting Ceremony on Friday, 12/5/08.
2. Vice Mayor Campbell - Vice Mayor Campbell inquired about water from Lake Berryessa.
3. Jim Erickson – Mr. Erickson discussed the agreement with Solano Irrigation.

CONSENT CALENDAR:

Council pulled items VII-D and VII-I.

On motion of Council Member Schwartzman, seconded by Council Member Ioakimedes, the Consent Calendar was adopted, as amended, on roll call by the following vote:
Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

Council approved the Minutes of November 18, 2008.

RESOLUTION 08-119 - A RESOLUTION ACCEPTING THE BIDS, AWARDING A MULTI-YEAR CONTRACT FOR FY 2008–2011 STREET LIGHTING MAINTENANCE AND REPAIR SERVICES IN THE BASELINE CONTRACT AMOUNT OF \$74,580 TO REPUBLIC INTELLIGENT TRANSPORTATION SERVICES, INC., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 08-120 - A RESOLUTION ACCEPTING THE BIDS, AWARDING A MULTI-YEAR CONTRACT FOR FY 2008–2011 TRAFFIC CONTROL DEVICE MAINTENANCE AND REPAIR SERVICES IN THE BASELINE CONTRACT AMOUNT OF \$49,752 TO REPUBLIC INTELLIGENT TRANSPORTATION SERVICES, INC., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACT ON BEHALF OF THE CITY

RESOLUTION 08-121 - A RESOLUTION APPROVING TASK ORDER NO. 3 TO THE CONSULTANT AGREEMENT WITH FEHR & PEERS FOR FINAL DESIGN SERVICES OF THE BENICIA HIGH SCHOOL TRAFFIC SIGNAL AND ENTRANCE CIRCULATION IMPROVEMENT PROJECT AND AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO EXECUTE THE TASK ORDER ON BEHALF OF THE CITY

RESOLUTION 08-122 - A RESOLUTION AUTHORIZING THE SPENDING PLAN OF THE SUPPLEMENTAL LAW ENFORCEMENT GRANT FUND FOR FISCAL YEAR 2008/09

Council approved the denial of the claim against the City by Robert Fields and referral to insurance carrier.

Council approved the denial of the claim against the City by Nina and Inez Rankin and referral to insurance carrier.

RESOLUTION 08-123 - A RESOLUTION APPROVING A COOPERATIVE AGREEMENT WITH THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR THE STATE PARK ROAD BIKE/PEDESTRIAN BRIDGE PROJECT

RESOLUTION 08-124 - A RESOLUTION ESTABLISHING ROSE DRIVE AS THE OFFICIAL NAME OF THE STREET CONNECTING THE ROSE DRIVE/COLUMBUS PARKWAY INTERSECTION TO THE I-780 EASTBOUND ON- AND OFF-RAMPS

RESOLUTION 08-125 - A RESOLUTION APPROVING THE PURCHASE OF A 2008 TOYOTA FORKLIFT MODEL 7FGU25 FROM TOYOTA MATERIAL HANDLING OF NORTHERN CALIFORNIA FOR PURCHASE PRICE OF \$24,500

RESOLUTION 08-126 - A RESOLUTION APPROVING THE PURCHASE OF A 2009 INTERNATIONAL DIAMOND SPEC 7400 SBA 6X4 FROM RIVERVIEW INTERNATIONAL TRUCKS OF WEST SACRAMENTO FOR A PURCHASE PRICE OF \$96,000

RESOLUTION 08-127 - A RESOLUTION APPROVING THE PURCHASE OF TWO 2008 FORD F-250 4X2S FROM RON DUPRATT FORD OF DIXON FOR A TOTAL PURCHASE PRICE OF \$40,000

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approve Mills Act contracts for properties at 141 West F Street, 271 West J Street, 155 West J Street and accept a revised Mills Act work plan for 401 First Street:

Council Member Schwartzman pulled the item due to a conflict of interest. He recused himself from the discussion on this item.

RESOLUTION 08-128 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 141 WEST F STREET IN THE CITY OF BENICIA

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

Ayes: Council Member Campbell, Hughes, Ioakimedes, and Mayor Patterson

Noes: None

Abstain: Council Member Schwartzman

RESOLUTION 08-129 - A RESOLUTION DIRECTING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 271 WEST J STREET IN THE CITY OF BENICIA

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

RESOLUTION 08-130 - A RESOLUTION THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MILLS ACT CONTRACT FOR 155 WEST J STREET IN THE CITY OF BENICIA

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

RESOLUTION 08-131 - A RESOLUTION ACCEPTING A REVISED WORK PLAN TO THE MILLS ACT CONTRACT FOR 401 FIRST STREET IN THE CITY OF BENICIA

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson
Noes: None

Approval of resolution confirming project compliance and requesting \$92,000 in regional Measure 2 funds for the Benicia Intermodal Facilities Project:

Mayor Patterson pulled this item due to a conflict of interest. She recused herself from the discussion on this item.

RESOLUTION 08-132 - A RESOLUTION CONFIRMING PROJECT COMPLIANCE AS THE RM2 IMPLEMENTING AGENCY AND REQUESTING THE METROPOLITAN TRANSPORTATION COMMISSION ALLOCATE \$92,000 IN RM2 FUNDING FOR FISCAL YEAR 2008/2009 FOR THE BENICIA INTERMODAL FACILITIES PROJECT

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, and Schwartzman.
Noes: None
Abstain: Mayor Patterson

PUBLIC HEARINGS:

None

ACTION ITEMS:

Consideration of mid-cycle budget adjustments for Fiscal Years 2007-09:
Rob Sousa, Finance Director, reviewed the Staff report.

Council Member Campbell discussed a prediction he made last summer regarding the imminent budget shortfall. At that time, he urged the City to reduce spending over the summer. Unfortunately, it looked like his prediction was accurate.

Council directed Staff to put together a contingency plan in case of revenue declines and unexpected new expenses.

Council Member Hughes discussed a commitment that was made years ago to provide the City's Boy Scout organization with a meeting space, and questioned whether this would delay the Community Center Project. He was informed that the Community Center's opening was not being delayed due to recent budget cuts, but because the construction drawings for the site would not be completed before March.

Mayor Patterson asked for monthly finance updates. She agreed with Council that the City should be able to react more quickly to the changing economy.

RESOLUTION 08-133 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING ADJUSTMENTS TO THE MUNICIPAL BUDGETS FOR FISCAL YEAR 2008-2009

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Approval of AT&T Permit Application and Review Process for U-Verse Service (Project Lightspeed):

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

Public Comment:

1. Yvonne Quenga - Ms. Quenga spoke in support of the proposed project.
2. Susan McCain - Ms. McCain supports the need for choice.
3. Mike Heil - Mr. Heil spoke in support of the proposed project.
4. Kathy Smith - Ms. Smith spoke in support of the proposed project.
5. Tom Clausen - Mr. Clausen spoke in support of the proposed project.
6. Chris Esparza - Mr. Esparza spoke in support of the proposed project.
7. Rene Warsha - Ms. Warsha spoke in support of the proposed project.
8. Dave Ernst - Mr. Ernst discussed the noise of the fans.
9. Kathy Robison - Ms. Robison spoke in support of the proposed project.

On motion of Vice Mayor Campbell, seconded by Council Member Hughes, Council approved the AT&T Permit Application and Review Process for U-Verse Service (Project Lightspeed), on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Mayor Patterson called for a 5-minute break at 9:06 p.m.

The meeting resumed at 9:12 p.m.

Approve an increase in the solid waste fee to cover the increase in County Local Enforcement Agency Fees:

Heather McLaughlin, City Attorney, reviewed staff report.

RESOLUTION 08-134 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA AUTHORIZING AN INCREASE IN FEES COLLECTED BY ALLIED WASTE SERVICES FOR THE SOLANO COUNTY LOCAL ENFORCEMENT AGENCY (LEA)

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Approval of change to the name, duties, and structure of the Audit & Finance Committee:

Rob Sousa, Finance Director, reviewed the staff report.

RESOLUTION 08-135 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENICIA APPROVING CHANGES TO THE NAME, DUTIES AND STRUCTURE OF THE AUDIT AND FINANCE COMMITTEE

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

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

INFORMATIONAL ITEMS:

Reports from City Manager:

City Holiday Schedule:

Jim Erickson, City Manager, reviewed an informational report stating that the City administrative offices and Corporation Yard were planning to be closed on the Fridays following both Christmas and New Years Day this year.

COMMENTS FROM COUNCIL MEMBERS:

Request to agendize the reconsideration of the City Council's vote on November 18, 2008 to deny the Benicia Business Park Project approval:

Mayor Patterson stated that Council would follow the two-step process to find out if Council wanted to proceed with reconsideration of this item. Staff confirmed it was within Councils Rules of Procedures to follow the process as described. The action taken tonight would not be a vacation of the decision made on 11/18/08.

Ms. McLaughlin confirmed that this was the proposal from Discovery Builders that would allow the City to extend the time. So, yes, it is legally binding at least in terms of the waiver and extension of time. If Council wanted to make changes, it would have to submit those changes back to the developer to see if they were amenable to them. If the project goes forward, we would have to reduce it all into a development agreement and cover it that way.

Council and Staff discussed the issue of a public workshop or facilitated discussion to work through the agreement to work through the issues that have been brought forward.

Heather McLaughlin, City Attorney, confirmed that any decision tonight would not change the vote taken at the November 18, 2008, Council meeting.

Council Member Ioakimedes discussed the letter submitted by Discovery Builders (copy on file). He was surprised when Seeno approached him two weeks ago, but felt he was probably

considered to be Council's swing vote on this issue. He felt that the City would be able to enforce new concessions by Seeno and have more control over the ambitious project than the developer had been willing to allow previously.

Public Comment:

1. Richard Bortolazzo - Mr. Bortolazzo spoke in favor of placing item on a future agenda.
2. Bob Craft - Mr. Craft discussed the need for the builder to earn our trust.
3. Harry Newhall - Mr. Newhall spoke in opposition of placing item on a future agenda.
4. Sue Johnson - Ms. Johnson spoke in opposition to placing the item on a future agenda. It is not a legal document.
5. Kyle Wheeler - Mr. Wheeler spoke in favor of placing item on a future agenda.
6. Marilyn Bardet - Ms. Bardet spoke in favor of placing item on a future agenda with caveats.
7. Janice Adams - Ms. Adams spoke in favor of placing item on a future agenda.
8. Susan Street - Ms. Street inquired whether the letter was a legal document.
9. Norma Fox - Ms. Fox discussed her desire for the vote to stand from the November 18, 2008 meeting.
10. David Lockwood - Mr. Lockwood spoke in opposition of placing item on a future agenda.
11. Dana Dean - Ms. Dean spoke in favor of placing item on a future agenda.
12. Jerome Page - Mr. Page spoke in favor of placing item on a future agenda.
13. Bryan Harkins - Mr. Harkins spoke in favor of placing item on a future agenda.
14. Albert Seeno III - Mr. Seeno discussed that Seeno was open to whatever City wanted to do.
15. Joe Kearns - Mr. Kearns discussed concerns regarding the clarity of the project. He made personal comments regarding Staff and Council.
16. Rick Ernst - Mr. Ernst spoke in favor of placing item on a future agenda.
17. Steve Goetz - Mr. Goetz spoke in favor of placing item on future agenda and moving the project forward.

Council Member Schwartzman clarified statements made by Mr. Kearns. Council Member Schwartzman discussed what his vision was for this item tonight. He understood the two-step process would be followed. He understood that if Council agreed to move forward, this would be discussed in detail at a future meeting, not tonight, to allow for Council and the public to prepare questions, etc. He wanted to keep the discussions open all along. Staff has been getting bashed lately. Staff is very capable. Council has not given Staff clear direction on which way to go. He disclosed ex parte communications he had on this issue. He definitely wanted to reconsider this item.

Council Member Hughes discussed being pleased that this item was brought back for possible reconsideration. He discussed his past votes on this item. He was in favor of having a public workshop. He supported bringing this item back for reconsideration.

Vice Mayor Campbell discussed concerns regarding bringing this project back for reconsideration as opposed to requesting a new project. He discussed concerns regarding the process that has taken place up to this point. Council should not allow the brinkmanship to take place.

Mayor Patterson discussed the actions that had taken place up to this point. She discussed the issue of a facilitated community workshop, where there could be a real dialogue. She discussed BUSD's letter regarding being able to live with this, with changes that had been submitted in writing, however, any future arrangement must include those items in the planning process. If, after the facilitated process, the items that she, the community, BUSD, etc. are seeking are not included, she would not have to vote for it. There is a window of time for dialogue. If we don't have the elements identified – specific plan, the assurances, and the inclusiveness built into the agreement, there is no way she would vote for it.

Council Member Ioakimedes discussed issues with 'no means no' and 'now means now.' He discussed concerns regarding climate change. He discussed conversations with former mayor Jerry Hayes, former council member Bill Whitney, Jerry Page, labor officials, Dana Dean, Roger Straw, Green Gateway Group, BUSD, Mayor Patterson, and Benicia First. He has made every possible effort to keep this above board. He discussed a climate change conference that took place recently. He discussed concerns regarding the labor force. When does now mean now? He discussed his past vote regarding the transit system. We have to start addressing the issues of climate change right now.

Council discussed whether or not to include a scheduled workshop in the motion to re-agendize the item.

On motion of Council Member Hughes, seconded by Council Member Schwartzman, Council agreed to agendize the reconsideration of the City Council's vote on November 18, 2008 to deny the Benicia Business Park Project approval, at a meeting no later than the first Council meeting in February 2009, and between now and the first Council meeting in February, Council would have a facilitated workshop on the document (with the waiver of the time limits), on roll call by the following vote:

Ayes: Council Members Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: Vice Mayor Campbell

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, at 11:15 p.m., Council approved hearing the remaining agenda items, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

Request to agendize the Garbage Franchise Agreement:

Council Member Schwartzman reviewed his request to agendize the Garbage Franchise Agreement. In an effort to craft a new state of the art Franchise Agreement that could be put out to bid, he requested that this issue be placed on a Council agenda in early 2009 so that Council could discuss the process, timing, and budget implications.

On motion of Council Member Hughes, seconded by Council Member Ioakimedes, Council agreed to agendize the Garbage Franchise Agreement at a future Council meeting, on roll call by the following vote:

Ayes: Council Members Campbell, Hughes, Ioakimedes, Schwartzman, and Mayor Patterson

Noes: None

ADJOURNMENT:

Mayor Patterson adjourned the meeting at 11:25 p.m.

Lisa Wolfe, City Clerk