

December 11, 2008

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, December 11, 2008

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance
- B. Roll Call of Commissioners
- C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN
- B. PUBLIC COMMENT

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

- A. Approval of Agenda
- B. [Approval of Minutes of November 5, 2008](#)
- C. [Approval of Minutes of November 13, 2008](#)

D. ZONING MAP AMENDMENT - DOWNTOWN HISTORIC OVERLAY DISTRICT

City of Benicia

Zoning Map Amendment - Downtown Historic Overlay District

PROPOSAL:

The City of Benicia is in the process of updating its downtown historic resource inventory. A current survey of historic properties has been completed and reviewed by the Historic Preservation Review Commission. Pursuant to Chapter 17.120 (Amendments) of the Benicia Municipal Code, the Planning Commission must make a recommendation to the City Council regarding only the Downtown Historic District map boundary changes recommended by the Historic Preservation Review Commission. The Planning Commission does not make a recommendation to Council on any other aspect of the historic survey update.

Recommendation: Recommend City Council amendment to the Downtown Historic Overlay District based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

REGULAR AGENDA ITEMS

A. [726 FIRST STREET – RELLIK TAVERN USE PERMIT FOR LIVE ENTERTAINMENT AND ALCOHOL BEVERAGE SALES](#)

08PLN-57 Use Permit

726 First Street, APN: 89-341-010

PROPOSAL:

In accordance with the Downtown Mixed Use Master Plan, the applicant requests approval of a Use Permit for alcohol beverage sales between the hours of 9pm and 2am and for indoor live entertainment.

Recommendation: Approve a Use Permit for alcoholic beverage sales and live entertainment, for the proposed bar located at 726 First Street, based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

[*Smoking Room Legal Opinion*](#)

B. [ADOPTION OF COMMISSION RULES & PROCEDURES](#)

The Commission will discuss and adopt Rules and Procedures.

Recommendation: Discuss, review, take public testimony, and approve rules and procedures by which the Planning Commission can conduct business. Adopt a resolution authorizing use of the Planning Commission rules and procedures.

VI. COMMUNICATIONS FROM STAFF

VII. COMMUNICATIONS FROM COMMISSIONERS

IX. ADJOURNMENT

Public Participation

The Benicia Planning Commission 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 Planning Commission allows speakers to speak on non-agendized matters under public comments, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five 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 Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Commission Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, 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 Commission 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 Planning Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission 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 Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at www.ci.benicia.ca.us under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall

Council Chambers. If you wish to submit written information on an agenda item, please submit to Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [Minutes of November 5, 2008 \(pdf\)](#)

 [Minutes of November 13, 2008 \(pdf\)](#)

 [H District Report \(pdf\)](#)

 [Rellik Tavern report \(pdf\)](#)

 [Smoking Room Legal Opinion \(pdf\)](#)

 [PC Rules and Procedures \(pdf\)](#)



**BENICIA PLANNING COMMISSION
CITY COUNCIL CHAMBERS**

SPECIAL MEETING MINUTES

Wednesday, November 5, 2008

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Rick Ernst, Dan Healy, Rod Sherry, Lee Syracuse, and Chair Railsback
Absent: Commissioner Brad Thomas

Staff Present: Damon Golubics, Principal Planner
Rhonda Corey, Senior Administrative Clerk
Deborah Fox, Contract Attorney

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

None.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
Written comments received related to the public hearing item were distributed to the Commission and copies were available to the public.

- B. PUBLIC COMMENT**
None.

IV. CONSENT CALENDAR

On motion of Commissioner Sherry, seconded by Commissioner Ernst, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse, and Chair Railsback
Noes: None
Absent: Commissioner Thomas
Abstain: None

A. Approval of Agenda

V. REGULAR AGENDA ITEMS

A. ZONING TEXT AMENDMENT TO AMEND TITLE 5 AND TITLE 17 BY ADDING A NEW CHAPTER 17.102 (ADULT BUSINESSES) AND NEW CHAPTER 5.45 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO THE BENICIA MUNICIPAL CODE

Zoning Text Amendment
City Wide

PROPOSAL:

The proposed ordinance would update the Benicia Municipal Code provisions regarding adult entertainment by updating Chapter 5.44 and adding a new Chapter 5.45 in Title 5 (Business Taxes, Licenses and Regulations) to regulate the licensing and operational standards for adult businesses. It will also, as part of a zoning text amendment, add a new Chapter 17.102 (Adult Businesses) and amend Sections 17.28.020 (CC, CO, CG, and CW districts – Land use regulations) and 17.32.020 (IL, IG, IW and IP districts – Land use regulations).

Recommendation: Provide direction to City Council on amendments of Title 5 and Title 17 of the Benicia Municipal Code regarding adult businesses.

Damon Golubics gave a presentation on the proposed revised draft ordinance

Debra Fox gave a presentation explaining existing case law that prohibits the City from denying adult businesses in designated appropriate areas of town. She clarified the restrictions that could be applied to deter applicants from opening this type of business in the City of Benicia. She advised that the proposed ordinance is a state of the art ordinance covering a variety of possible adult businesses. Binders were made available for public view containing case law and extensive research done to draft the proposed ordinance. Direction was given to the Planning Commission to pass the item on to the City Council.

Commissioner Bortolazzo asked whether anyone has applied to open an adult business yet. Damon advised that no applications have been received. A prospective applicant, Mr. Amatrone, made an inquiry.

Commissioners had questions for Debra Fox about restrictions that could be incorporated in the ordinance to further restrict the operations of the business. Commissioners also

needed clarification of the fact that they cannot deny the ability of adult businesses to open up in Benicia.

Debra Fox advised Commissioners that they could not deny the opening of such a business, only restrict them through the proposed ordinance.

Chair Railsback stated that the city is doing its best to protect our community with a well-crafted ordinance that would make it more difficult for an adult business to open.

Public hearing was opened.

The majority of speakers stated that they came to the meeting with the impression that they could stop the business from opening by showing up at the meeting and voicing their opinions against the ordinance. They expressed their sadness and disappointment in their opinions not making a difference.

Glenn Goldstein-584 Lori-Read the United States Constitution and doesn't agree that it protects filth like this. Called on church groups to patronize the business and encouraged citizens of the community to videotape patrons to embarrass them. Suggested a civilian patrol.

Julia Ecker-421 Larkin-Had no solutions to suggest. Is worried about the impact on the community. Concerned about the Police Department handling all of the issues that may be secondary effects. Hopes the community will work together.

James West-98 Carlisle-Thanked Deborah Fox for her hard work in helping to protect our city. Asked if the number of patrons could be limited. Suggested widening parking spaces. Hopes that citizen complaints will be taken seriously by the Police Department. Mr. West addressed the prospective applicant stating that there is no demand for this type of business and that importing demand from other areas due to highway access is asking for trouble. Feels this type of business is corrosive with respect to women.

Lynn Lokey-174 East H-Appalled, frightened and angry that counsel is defending this business. Offered no solutions Stated she is outraged and apologized for inappropriately directing her anger toward Debra for her personal attack. Concerned about morals and standards staying the same in Benicia. Suggested making fees too expensive to deter applicants. Stated that any business owner of an adult business should expect every mother in the city will be at their doorstep everyday.

Shelley Paden-45 Vista Grande-Spent the past 21 days since the first meeting on this ordinance talking to people to get them to show up to express opposition to the ordinance. She was very upset due to the fact that she mistakenly thought that the resolution would not be passed if enough people showed up to oppose it. She also gave others she spoke with the same information. Wrote a speech and said she did not need to read it now that she knows that the city cannot stop businesses of this type to open up. Said she was saddened by this fact She has spoken to approximately 300 people who also oppose the ordinance.

Maria Teresa Matthews-575 Cooper-Thanked staff and counsel for hard work done to put together the proposed resolution. She is hoping the community will rally to convey to the business owner that an adult business is not wanted here. She requests that the City of Benicia take the strongest position possible.

Karen LaRiviere-318 Dale Ct-Thought she came to vote for or against the ordinance being proposed and was upset that meeting was not for that purpose. Appreciates the efforts of Deborah Fox and requests strong restrictions.

Andrew Murphy-677 Robinson Way-Stated that case law exists because people have been against these types of establishments. Asked if there was a possibility of rezoning. Commissioner Healy advised him that all laws must be followed in good faith while honoring citizens. Healy also stated that the city cannot zone its way out of the problem. Murphy questioned whether or not we could establish mini parks near areas where the business could be opened. Requested a broader distance than 300 ft from parks or schools.

Debby Skall 560 First-Was disappointed that everyone who showed up thought their opposition of the ordinance would matter. Questioned whether citizens who oppose may be able to pay to enter such a business and fill all seats in the business so no other patrons may enter. Deborah Fox stated she could not encourage citizens to picket or protest in any way. It is not possible to make it more costly to operate. Staff and counsel are trying to make a very thoughtful and legally defensible ordinance. Chair Railsback said that he shares in her frustration but must protect the city legally.

Tyson Jones-563 Primrose-Is new to the community and chose Benicia due to family values. Suggested limiting hours of operation and touching between patrons and performers. Chair Railsback responded stating that these issues are already addressed in the proposed ordinance. Jones asked if the ordinance could be revised as laws change. Deborah Fox stated that it could be revised if found to be constitutionally sound. She further advised that lap dancing carries no first amendment protection.

Kelly White-2092 Casa Grande-Thought she was here to voice opposition and is disappointed. Likes the town the way it is. Moved here for her children due to schools and the atmosphere in Benicia. She was concerned about the impact on the Police Department and wondered if they could handle the extra activity. Doesn't understand how a business could just start operating if denied. Debra responded that if the city has an unconstitutional ordinance, anything could open anywhere.

John Cosimedes- Supports staff recommendation to revise the ordinance. Was concerned about crimes that may occur in limousines in the parking lot. States he googled the prospective applicant Robert Amatrone and found that he owns Mobster Limousine Transportation in Concord and is concerned that he may be transporting customers to the business via his service. Believes provisions in the ordinance are strong and will deter adult businesses from opening in Benicia. Feels that it would be a good faith move for an adult business owner to understand community concerns, history and how vigilant citizens of this community are. Wants to let the applicant know that there will be no

protection from mothers and children picketing or videotaping patrons, which may end up on YouTube. Suggested sending in grandmothers and Nuns to police the business.

Kelly Patchin-256 Essex Way-Happy about the proposed restrictions. Asked about any cities that have fought and won to keep adult businesses from opening and asked if citizens of the community should hire their own attorney. Asked what citizens could do to stop this and what other options may exist. Suggested delaying the process as a deterrent. Deborah Fox advised that there has not been any success in trying to fight the opening of adult businesses. Federal law says that cities have no choice. Chair Railsback advised that there is a time limit to respond to an application.

Ken Maffeo-847 Rose-Expressed frustration about thinking he was coming to the meeting to oppose the business and is disappointed that citizens cannot fight the opening of adult businesses. Said he will let other community members know about the situation.

John Lawson-652 Rose-Asked why the applicant wouldn't have opened the business since an ordinance does not currently exist. Deborah Fox said that an ordinance already exists as well as a moratorium on adult businesses that is due to expire next year. Dislikes the fact that adult businesses can open even if the community doesn't want it. Feels that most of the patrons will be residents from other cities. Asked Deborah Fox if citizens could take pictures of vehicles and license plates. Debra Fox could not legally advise anyone to do that.

Ken Paulk-298 East S-Moved to Benicia a few years ago and chose Benicia because of the low crime rate. Requested a definition of a juice bar as opposed to a liquor bar. Chair Railsback responded to the question, stating a juice bar does not allow any type of alcohol on the premises. Patrons cannot bring in their own alcohol.

Jasmine Powell-Has been a Benicia citizen for 35 years and loves this town. Wants to know if the 300 ft buffer from schools and parks could be increased to a greater distance. She questioned if the buffer could include churches and the Benicia Industrial Park. States she is a business owner and has not had to be concerned about excess traffic or security issues that the business could create.

Flint Christensen-652 Rose-Stated that not one person has said that the ordinance is great. Suggested making it more difficult for the business to open. Feels that it is reasonable to explore further and take more time, regardless of a lawsuit. Wants the approval of a resolution delayed as much as possible with the maximum revisions possible.

Deborah Fox suggested that the matter be turned over to the City Council for approval with a 30-day time frame until adoption of the ordinance.

Commissioner Bortolazzo suggested acting expeditiously due to the expiration of the moratorium next year.

Darin Judd-496 McCall-Applauded the efforts of staff in crafting the ordinance so well. Has experience in dealing with the issue and believes that efforts by counsel have been

excellent. Addressed the issues of environmental, traffic and parking impact. Asked if an EIR may be necessary due to the proximity of wetlands. The report would be very costly. A traffic study may also be necessary which would create mitigation fees for traffic impact, Police Officer response and extra traffic lights and signs. Asked if on-site parking is sufficient and suggested that off site parking not be allowed. He feels that it could be very costly for an applicant to provide enough parking. Suggested bonded security.

Darrin Reading-1432 O'Hare-Asked everyone to pray about it. Suggested a "members only" club requiring a city permit for members.

Kim Boufay-Voiced her concern about transfer of liquor licenses if another business has one at the address prior. Was concerned about alcohol consumption in limousines while patrons are en-route to the establishment. Asked counsel if we are modeling our ordinance after other cities that have successfully kept adult businesses from opening. Deborah Fox said that it is modeled after successful cities.

Jon Van Landschoot-Pleased to see a large turnout for the meeting tonight. Thanked Commissioners for their efforts. Asked if it is possible to restrict the evening hours of operation to midnight and the parking lot cleared by the Police Department one half hour after closing. Suggested very bright lights in the parking lot and video surveillance. Also suggested that patrons not be allowed to sit in their vehicles in the parking lot for more than 5 minutes. Agrees with the idea of an EIR. Asked if security personnel would be relative to the occupancy limit. Suggested security be present at all times. Inquired about the possibility of progressive fines for noise and light pollution, litter, citations and other violations. Chair Railsback stated that there would be fines with progressive action for violations of all types. Stated that the citizens should file a lawsuit for first amendment rights.

Five minute break at 9:12 pm. Reconvened at 9:21 pm.

Commissioner Sherry asked why a revision was not made to the ordinance addressing the issue of the proximity to bars and liquor stores. Deborah Fox stated that counsel has not yet explored the restriction, as it is not routinely done. She does believe that it makes sense. Commissioner Sherry expressed concern about traffic into establishments selling alcohol. Asked if the 300 ft distance can be increased. Damon Golubics feels it is a good idea and Deborah Fox advised that most ordinances have a 500 ft distance. She also advised that she will do a map for the City Council showing a 300 ft buffer and another map with a 500 ft buffer. Deborah Fox directed Commissioners to move forward with a recommendation to Council to approve a 500 ft buffer.

Chair Railsback asked if a 10 ft distance between performers and patrons is possible. Debra said that 6ft is standard and defensible.

Commissioner Ernst addressed issues limiting juice bars so they can only have topless entertainment. Deborah Fox said that they could not be limited. Commissioner Ernst asked if a traffic study could be required. Chair Railsback stated that a study would have to wait until a specific site was applied for. He questioned using bonded security. Debra

Fox said that the requirement could be added. Commissioner Ernst questioned if the ordinance has strong enough language to cover ordinance violations and enforcement of penalties up to and including revocation of the business license. Deborah Fox advised that several provisions are already in place in the report.

Commissioner Healy expressed concern about violence toward women. Suggested broader coverage screening of all employees of the business. Stated that interactions between patrons and waitresses have not been addressed. Suggested a separate entrance and exit for employees with security in place at the door.

Commissioner Ernst thanked counsel for hard work in crafting the ordinance. He said he is not happy with the situation and it appears that the community agrees. He hopes that the community will work to find options to deter prospective applicants. Deborah Fox stated that any new ideas or concerns should be directed to City Attorney, Heather McLaughlin. Deborah Fox advised that the Police Department has been involved extensively in the ongoing process.

On the motion of Commissioner Sherry, seconded by Commissioner Ernst the following resolution was approved and forwarded to the City Council by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse and Chair
Railsback

Noes: None

Absent: Commissioner Thomas

Abstain: None

RESOLUTION NO. 08-10 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF AMENDMENTS TO CHAPTER 5.44 (ADULT BUSINESSES) AND ADDING CHAPTER 5.45 (ADULT BUSINESS PERFORMER LICENSE) IN TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) TO REGULATE THE LICENSING AND OPERATIONAL STANDARDS FOR ADULT BUSINESSES AND AMENDING SECTION 17.28.020 (CC, CO, CG and CW DISTRICTS- LAND USE REGULATIONS) AND SECTION 17.32.020 (IL, IG, IW and IP DISTRICTS- LAND USE REGULATIONS) AND ADDING CHAPTER 17.102 (ADULT BUSINESSES) IN TITLE 17 (ZONING) TO REGULATE THE LOCATIONS OF ADULT BUSINESSES

VI. COMMUNICATIONS FROM STAFF

Damon Golubics reminded Commissioners and public that the next Planning Commission meeting would be held on Thursday November 13, 2008 at 5:30 pm. One item is on the agenda for a use permit for live entertainment and alcohol. The meeting will then adjourn and reconvene at the Senior Center where a Climate Action Plan Workshop will be conducted to begin at 6:30 pm Damon Golubics also stated that Planning Commission meeting rules will be discussed at the December meeting.

VII. COMMUNICATIONS FROM COMMISSIONERS

Chair Railsback thanked staff and counsel for their hard work and citizens for their large turnout.

Commissioner Ernst requested that a reminder be given to Commissioners and citizens regarding Del Lacey's retirement party at the Clocktower at 5:30 pm on Saturday November 8th. Del is retiring after 35 years serving the City of Benicia.

VIII. ADJOURNMENT

Chair Railsback adjourned the meeting at 10:00 pm



BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS – Meeting SENIOR CENTER, 187 EAST L STREET - Workshop

REGULAR MEETING MINUTES

Thursday, November 13, 2008

5:30 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Rick Ernst, Rod Sherry,
Lee Syracuse, Brad Thomas and Chair Railsback. Commissioner
Healy arrived at 5:35 P.M.

Absent: None

Staff Present: Damon Golubics, Principal Planner
Kat Wellman, Contract Attorney
Mike Marcus, Assistant Planner
Rhonda Corey, Senior Administrative Clerk

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

None.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.
- B. PUBLIC COMMENT**
None.

IV. CONSENT CALENDAR

On the motion of Commissioner Syracuse, seconded by Commissioner Sherry, the Consent Calendar was approved by the following vote:

Ayes: Commissioners Bortolazzo, Ernst, Sherry, Syracuse, Thomas and Chair Railsback
Noes: None
Absent: Commissioner Healy arrived
Abstain: Commissioner Syracuse from item V (B) only
Commissioner Thomas from item V (C) only:

- A. Approval of Agenda**
- B. Approval of Minutes of October 9, 2008**
- C. Approval of Minutes of October 14, 2008**

V. REGULAR AGENDA ITEMS

A. 439 FIRST STREET – LUCCA BAR AND RESTAURANT USE PERMIT FOR LIVE ENTERTAINMENT AND ALCOHOL BEVERAGE SALES

08PLN-56 Use Permit
439 First Street, APN: 89-174-030

PROPOSAL:

In accordance with the Downtown Mixed Use Master Plan, the applicant requests approval of a Use Permit for alcohol beverage sales between the hours of 9pm and 2am and for indoor live entertainment.

Recommendation: Approve a Use Permit for a bar establishment and live entertainment, for the proposed bar and restaurant located at 439 First Street, based on the findings, and subject to the conditions listed in the proposed resolution and as discussed during the public hearing.

Mike Marcus gave a presentation regarding Lucca Bar and Restaurant and also made note of revised conditions for the project.

Commissioner Sherry asked if staff level review is required for hours of operation. Mike Marcus said the Planning Commission should review it.

Commissioner Bortolazzo questioned what type of lighting would be present on the E Street side of the building. The applicant will address the question after his presentation.

Chair Railsback asked if other businesses have been denied. Damon Golubics advised that the Police Department has approved the application. Chair Railsback asked if staff or the Planning Commission would address design review. Damon Golubics stated that the Historic Preservation Review Commission would be responsible for design review.

Commissioner Healy said that he feels that the business would be good for the downtown area. Believes that other businesses should be allowed.

Commissioner Ernst asked if alcohol would be served between the hours of 9 P.M.-2 A.M. Damon Golubics said that a use permit would be required if alcohol was served during those hours. Commissioner Ernst asked if amplified music would be allowed with limits or restrictions. Mike Marcus said that at this time there are no plans for amplified music. Commissioner Ernst asked if the yard to the rear of the business on West E Street belongs to the business. Mike Marcus advised that it does and there would be a rear deck, which would comply with ADA requirements. There would be no tables or chairs in that area. Commissioner Ernst asked if smoking would be allowed. Mike Marcus says that per the applicant, the back deck area would be a designated smoking area and would also serve as a legal exit.

Commissioner Thomas asked if the only ADA access and exit would be from the back deck area. Mike Marcus stated that the front will also be ADA accessible with a total of three ADA accessibility points.

The applicant Jan Lucca gave a presentation and said that he agrees with the staff report and conditions. He said that music is not an issue at this point, as any live entertainment would not be amplified. There will be two ADA ramps. One at the front door and one at the back door. There will be non-smoking tables in front of the business and the side of the business. Smoking tables would be located in back of the business on the deck. Commissioner Bortolazzo asked which outside tables would be smoking tables. Jan Lucca stated that three tables in the back near the deck would be designated smoking tables.

Jan Lucca advised that lighting issues have not yet been addressed for the outdoor areas but will be in the future.

Commissioner Syracuse said that he is very happy about the location.

Commissioner Ernst was surprised that there was no public comment on the project. He asked the proper noticing requirements were met. Damon Golubics advised that they were. Commissioner Ernst also asked if the building would be properly insulated due to the live entertainment proposed.

Recess called By Chair Railsback at 5:53 P.M.

Reconvened at the Senior Center (187 East L Street) at 6:40 P.M.

VI. WORKSHOP (6:30 p.m.)

A. CLIMATE ACTION PLAN – Cal Poly City and Regional Planning

Workshop Facilitators: Professor Zeljka Howard, Dr. Adrienne Greve and Cal Poly students

The Climate Action Plan is the implementation strategy to achieve the greenhouse gas (GHG) reduction target adopted by the City Council on September 16, 2008. The City's

project consultant is the Cal Poly, San Luis Obispo City and Regional Planning Department community design lab.

The purpose of the workshop is to inform members of the public about the City's climate protection planning process, set a community vision, and solicit ideas and input on implementation strategies. The City encourages everyone to participate in the workshop.

VII. COMMUNICATIONS FROM STAFF

None

VIII. COMMUNICATIONS FROM COMMISSIONERS

None.

IX. ADJOURNMENT

Workshop was adjourned at 8:47 P.M.

AGENDA ITEM
PLANNING COMMISSION MEETING: DECEMBER 11, 2008
CONSENT CALENDAR

DATE : December 2, 2008
TO : Planning Commission
FROM : Gina Eleccion, Management Analyst
SUBJECT : **ZONING MAP AMENDMENT - DOWNTOWN HISTORIC OVERLAY DISTRICT**

RECOMMENDATION:

Recommend that the City Council amend the Downtown Historic Overlay District map to:

1. Categorize all historic resources as either a landmark or a contributor to the historic district; and
2. Expand the district boundary to include the portion of East K Street between East Third and East Fourth Streets; and include 470 West J Street and 327 Gull Point Court.

EXECUTIVE SUMMARY:

The City of Benicia is in the process of updating its downtown historic resource inventory. The Downtown Historic Conservation Plan (DHCP) was adopted in November 1990 and amended in December 1992. In March 2004, the City Council approved a work program for an update to the DHCP, with new historic survey forms and documentation as the top priority. A series of joint meetings of the then Historic Preservation, Design Review and Planning Commissions were held to refine the update process.

A current survey of historic properties has been completed and was reviewed by the Historic Preservation Review Commission at its September 25, 2008 meeting. Pursuant to Chapter 17.120 (Amendments) of the Benicia Municipal Code, the Planning Commission must make a recommendation to the City Council regarding the Downtown Historic Overlay District map historic designations and boundary changes recommended by the Historic Preservation Review Commission. The Planning Commission does not make a recommendation to Council on any other aspect of the historic survey update.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- ❑ Goal 4.00: Preserve and Enhance City Assets and Infrastructure
 - Strategy 4.30: Maintain and enhance Benicia's historic character
- ❑ Goal 9.00: Promote Arts, Culture, Continuous Learning and Historic Preservation
 - Strategy 9.20: Maintain and enhance Benicia's historic character

BUDGET INFORMATION:

The consultant work necessary to complete this portion of the DHCP update was funded in FYs 05-07. Additional funds will be requested to complete an update of the DHCP text, including preparation of a historic context which may assist in future listing of additional historic resources.

ENVIRONMENTAL ANALYSIS:

This action is Categorically Exempt under the California Environmental Quality Act, Section 15308. This exception applies to actions by a regulatory agency as authorized by local ordinance (Title 17.120 of the Benicia Municipal Code) to assure the maintenance, restoration, or enhancement of the environment. Amending the boundaries of the Downtown Historic Overlay District will continue to ensure the preservation of historic resources.

SUMMARY:

The DHCP was adopted in 1990, and amended in 1992, as the principal tool to identify historic properties in the Downtown Historic Overlay District and guide their preservation. In March 2004, the City Council approved a work program for an update to the DHCP, with new historic survey forms and documentation as the top priority.

The completed historic survey forms and documentation include a State-standard "DPR 523" form, a current photograph and a description for each property recommended by Roland-Nawi Associates to be designated as landmarks or contributors. These recommended additions to the City's historic resources, as well as the new district boundaries, was considered and approved by the HPRC.

Designation Changes

A total of 304 properties were surveyed. DPR 523 forms were prepared for all buildings recommended for designation within the historic district, as well as ones currently identified as "potential" resources. A property must meet State and Federal eligibility criteria and retain sufficient integrity to convey its significance in order to qualify as a historical resource under California law and regulation. (The California Register and the State Office of Historic Preservation do not recognize "potential" landmarks or contributors as a category.)

Properties currently categorized as a "potential contributor" or a "potential landmark" were field inspected. Previous survey documentation was reviewed, and additional research was undertaken to determine whether each of these buildings should be included in the list of designated resources (and if a DPR 523 form should be prepared.) Of the 304 properties surveyed, 46 are recommended as landmarks, 184 are recommended as contributors, and 74 are recommended for removal as historic resources.

Boundary Changes

A preliminary survey of areas outside the existing district boundary conducted in September 2005 identified a group of properties on East K Street as having a sufficient concentration of historic resources to constitute a historic exclave eligible for listing in the California Register.

The proposed new area includes 8 residential structures and 2 historic school buildings. A DPR 523 form was prepared for each building (all of them contributors), and the boundaries for the potential district were defined. In addition, boundary changes are recommended to include contributors at 470 West J and 327 Gull Point Court.

Once approved, new designation maps will be prepared to replace Figures 1 and 2 of the DHCP to identify historic properties in the Downtown Historic Overlay District, including the added exclave along East K Street, and any other additional approved boundary changes.

Findings

In accordance with Benicia Municipal Code Section 17.54.090, the Planning Commission, in recommending approval to the City Council, must find that the Downtown Historic District, as proposed to be amended, has a significant architectural or historical character that can be preserved and enhanced through appropriate controls on new development and alterations to existing buildings and landscaping, and is consistent with the policies and goals of the General Plan.

FURTHER ACTION:

Planning Commission recommendations on amendments to the Downtown Historic Overlay District proposed boundary changes and property designations will be presented to the City Council.

Attachments:

- Draft Resolution
- HPRC Resolution No. 08-8

DRAFT RESOLUTION

RESOLUTION NO. 08- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA TO THE CITY COUNCIL RECOMMENDING AN AMENDMENT TO THE DOWNTOWN HISTORIC OVERLAY DISTRICT MAP

WHEREAS, the purpose of the Historic Preservation Review Commission is to:

- advise and assist the City Council in implementing the goals, policies and programs set forth in the city's General Plan relating to preservation and enhancement of the city's historic character;
- identify, register, designate, preserve, protect, enhance and perpetuate those historic structures, districts and neighborhoods which contribute to the cultural and aesthetic heritage of Benicia; and
- maintain a program to compile, record and update an inventory of cultural resources within the city, which shall be based on comprehensive surveys conducted in conformance with state survey standards and procedures.

WHEREAS, the Historic Preservation Review Commission on September 25, 2008 reviewed recommended updates to the Downtown Historic Conservation Plan text and maps and has recommended approval of the proposed amendments to the Downtown Historic Overlay District maps; and

WHEREAS, the Planning Commission, at its regular meeting on December 11, 2008, held a public hearing and reviewed recommended updates to survey documentation and historic resource designations for properties within the Downtown Historic Overlay District as well as proposed modifications to the boundaries of the Downtown Historic Overlay District.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends that the City Council amend the Downtown Historic Overlay District map to:

1. Categorize all historic resources as either landmark or contributor to the historic district; and
2. Expand the district boundary to include the portion of East K Street Between East Third and East Fourth Streets; and include 470 West J Street and 327 Gull Point Court.

3. Amend the Zoning Map to expand the boundary of the Downtown Historic Overlay District to include the portion of East K Street between East Third and East Fourth Streets; include 470 West J Street and 327 Gull Point Court.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Benicia hereby finds, in accordance with Benicia Municipal Code Section 17.54.090, that the Downtown Historic District, as proposed to be amended, has a significant architectural or historical character that can be preserved and enhanced through appropriate controls on new development and alterations to existing buildings and landscaping, and that the proposed amendments are consistent with the goals and policies of the General Plan.

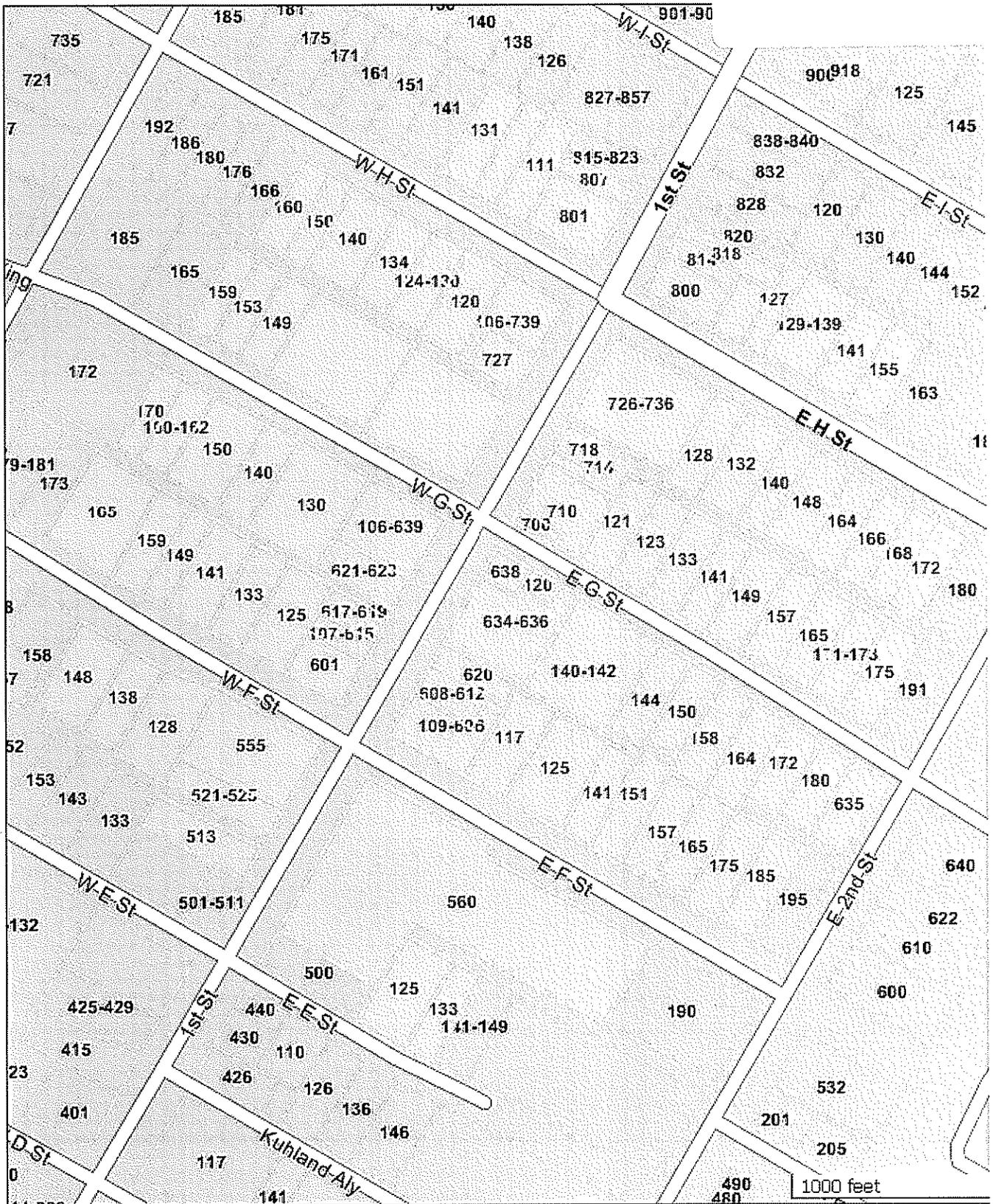
* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution, with abstentions as noted in Exhibit A of the final Resolution, was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on December 11, 2008 by the following vote:

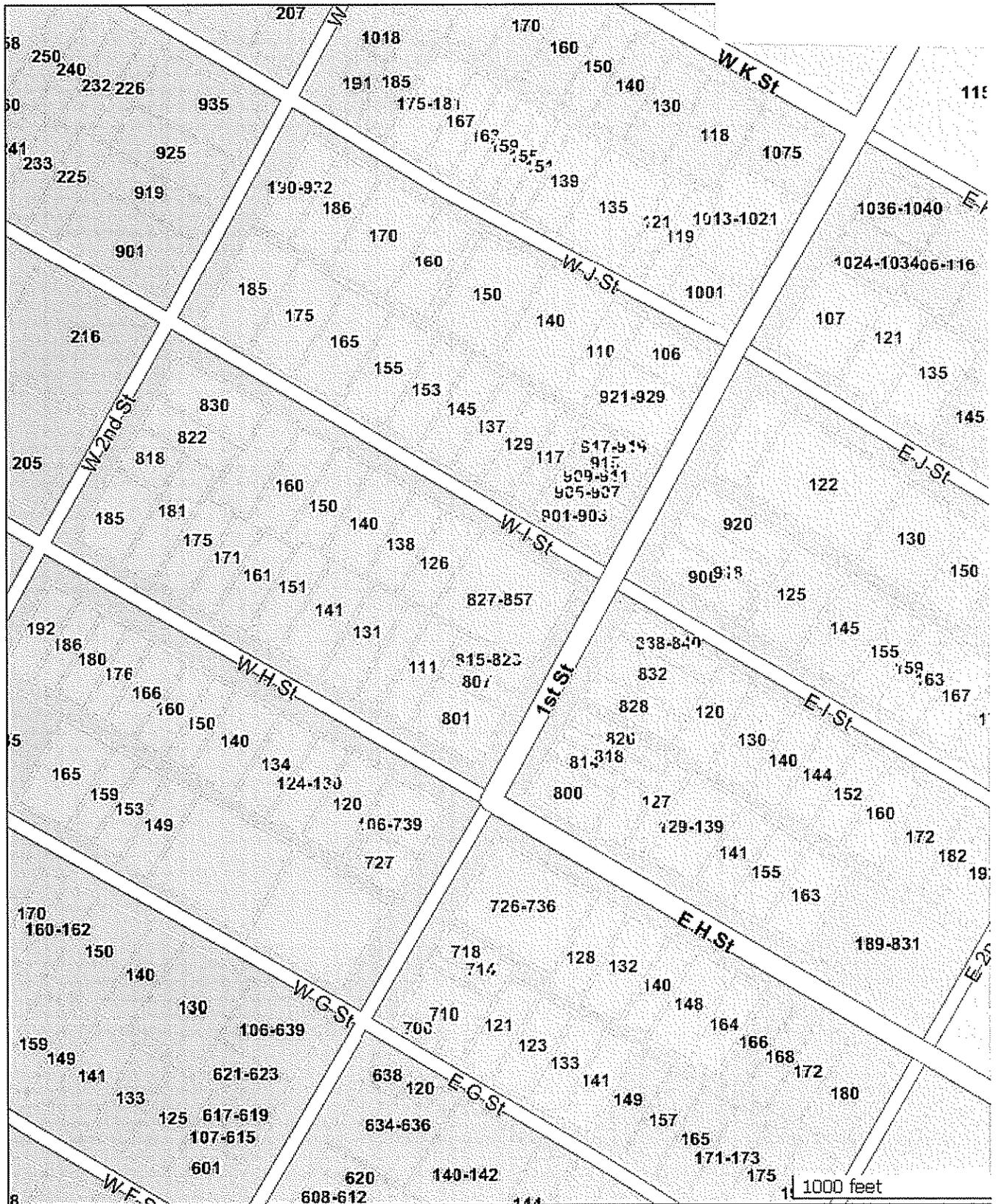
Ayes:
Noes:
Absent:
Abstain:

Dan Healy
Planning Commission Vice Chair

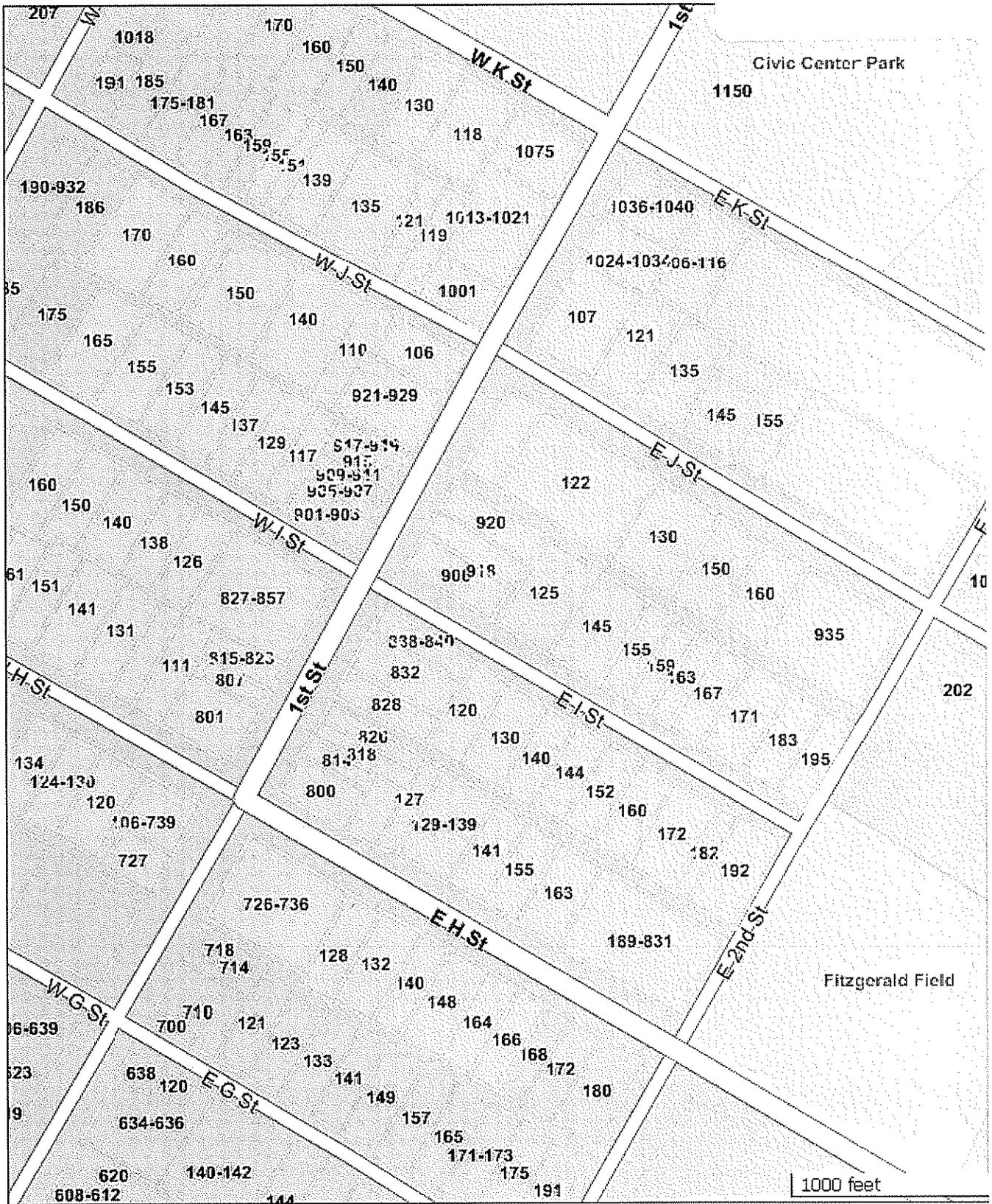
Exhibit A



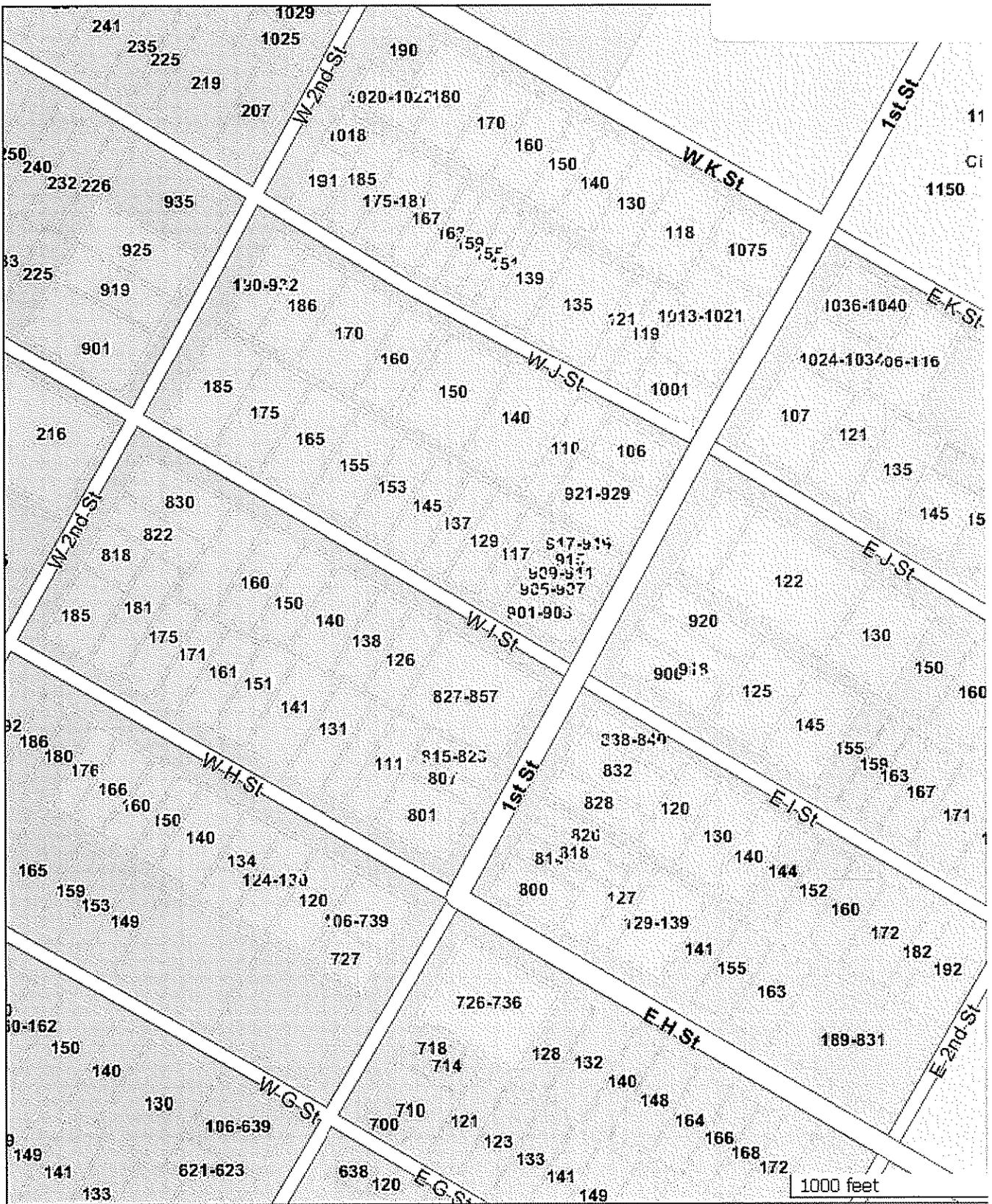
Commissioner Bortolazzo - 638 First Street



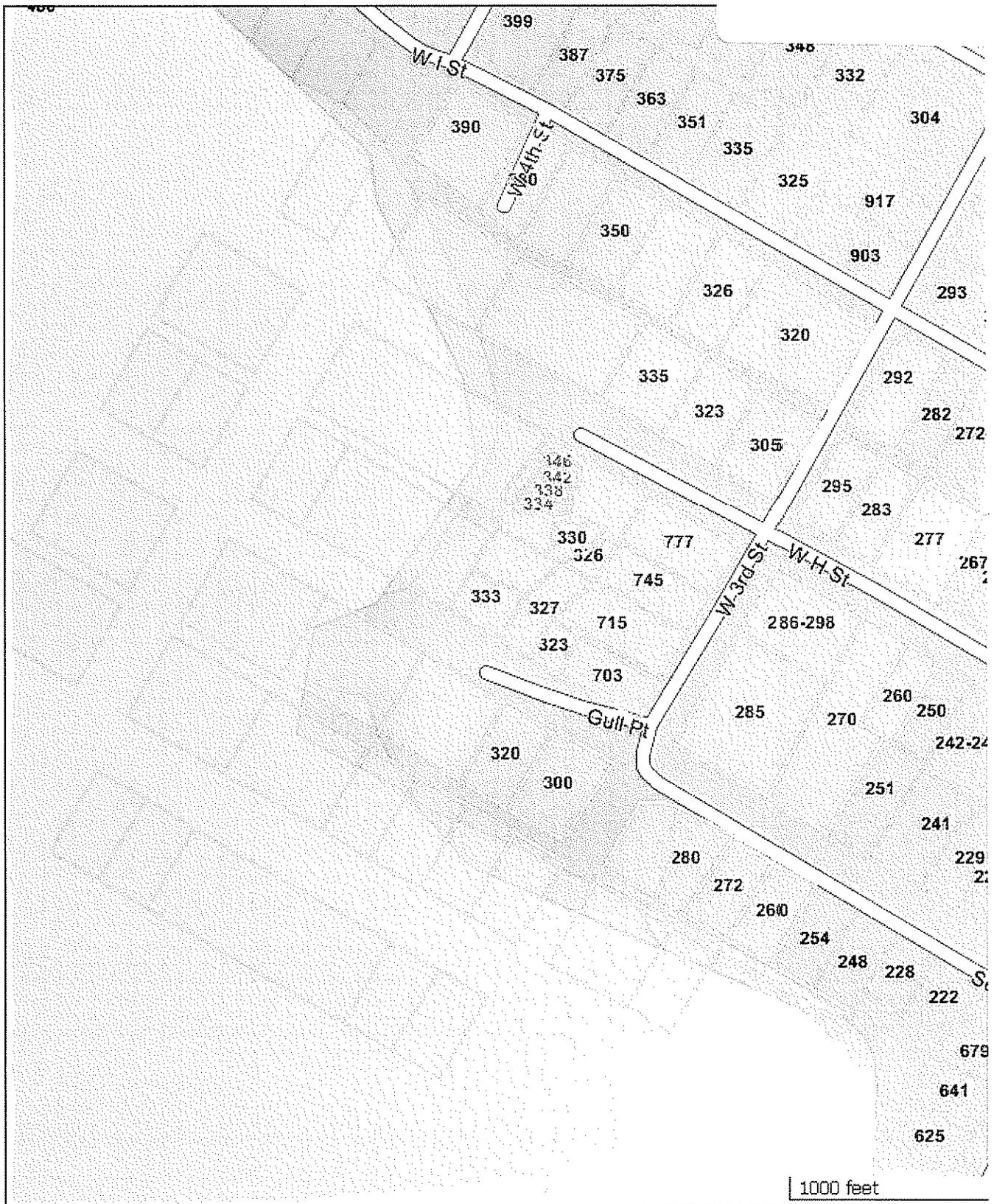
Commissioner Bortolazzo - 827 First Street



Commissioner Bortolazzo - 900 First Street



Commissioner Sherry - 129 West I Street



Commissioner Syracuse - 333 Gull Point Court

HPRC RESOLUTION NO. 08-8

RESOLUTION NO. 08-8 (HPRC)

A RESOLUTION OF THE HISTORIC PRESERVATION REVIEW COMMISSION OF THE CITY OF BENICIA TO THE CITY COUNCIL REGARDING THE DOWNTOWN HISTORIC DISTRICT SURVEY AND THE UPDATE TO THE DOWNTOWN HISTORIC CONSERVATION PLAN

WHEREAS, the purpose of the Historic Preservation Review Commission is to:

- advise and assist the City Council in implementing the goals, policies and programs set forth in the city's General Plan relating to preservation and enhancement of the city's historic character;
- identify, register, designate, preserve, protect, enhance and perpetuate those historic structures, districts and neighborhoods which contribute to the cultural and aesthetic heritage of Benicia; and
- maintain a program to compile, record and update an inventory of cultural resources within the city, which shall be based on comprehensive surveys conducted in conformance with state survey standards and procedures.

WHEREAS, the Historic Preservation Review Commission has reviewed recommended updates to survey documentation and historic resource designations for properties within the Downtown Historic Overlay District; and

WHEREAS, the Historic Preservation Review Commission has reviewed recommended updates to the Downtown Historic Conservation Plan text and maps; and

WHEREAS, the Historic Preservation Review Commission has considered modifications to the boundaries of the Downtown Historic Overlay District.

NOW, THEREFORE, BE IT RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby recommends that the City Council amend the Downtown Historic Conservation Plan (DHCP) to:

1. Categorize all historic resources as either landmark or contributor to the historic district;
2. Utilize the standard federal historic designation forms (DPR 523) prepared by Roland-Nawi Associates, and the Historic Survey Ad Hoc Committee's recommendation, to determine historic designation status;
3. Expand the district boundary to include the portion of East K Street Between East Third and East Fourth Streets; and include 470 West J Street and 327 Gull Point Court;
4. Update the DHCP maps (Figures 1 and 2) to reflect changes 1-3 above;
5. Identify and list all historic Resources by address, assessor parcel number and designation status; and
6. Amend the DHCP text to reflect changes 1-5 above and correct minor internal consistencies.

BE IT FURTHER RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby recommends that the Planning Commission recommend to the City Council that the Zoning Map be amended to expand the boundary of the Downtown Historic Overlay District to include the portion of East K Street Between East Third and East Fourth Streets; include 470 West J Street and 327 Gull Point Court.

BE IT FURTHER RESOLVED that the Historic Preservation Review Commission of the City of Benicia hereby formally acknowledges the importance of developing a formal historic context, and recommends City Council consideration of this project during the upcoming 2009/2011 budget cycle.

* * * * *

On motion of Commissioner White, seconded by Commissioner Haughey, the above Resolution, with abstentions as noted in Exhibit A of the final Resolution and specifically noted below, was adopted by the Historic Preservation Review Commission of the City of Benicia at a regular meeting of said Commission held on September 25, 2008 by the following vote:

Ayes: Commissioners Crompton, Donaghue, Haughey, McKee, Taagepera, White and Chair Mang
Noes: None
Absent: None
Abstain: None

130 West E

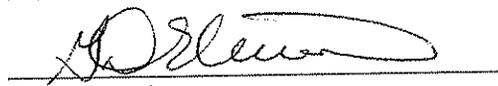
On motion of Commissioner Crompton, seconded by Commissioner Haughey, the property is recommended to remain as a contributing structure in the Downtown Historic Overlay District by the following vote:

Ayes: Commissioners Crompton, Haughey, Taagepera
Noes: Commissioners White and Chair Mang
Absent: None
Abstain: Commissioners Donaghue and McKee

251 West G

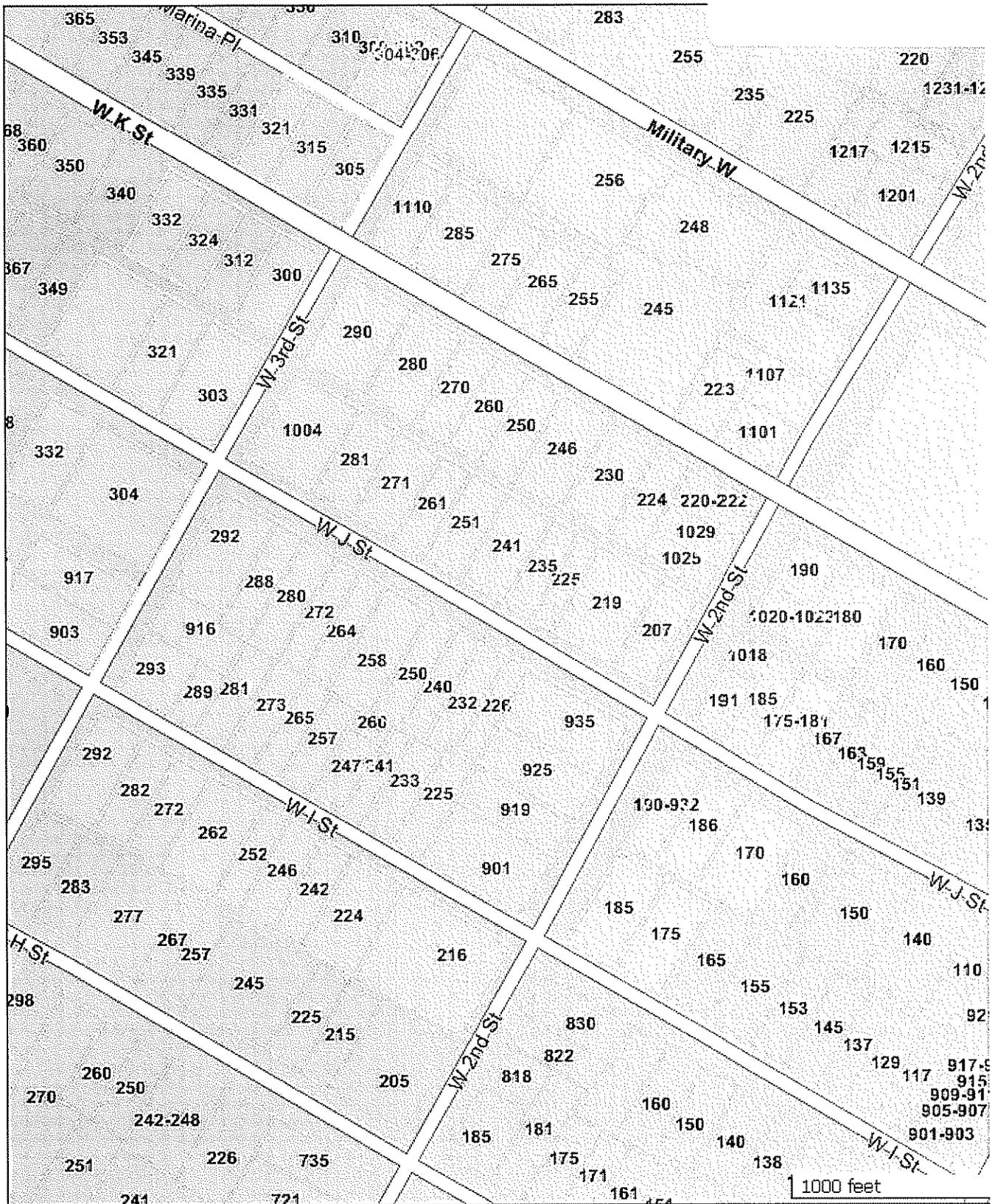
On motion of Commissioner White, seconded by Commissioner Donaghue, the property is recommended to be removed as a contributing structure in the Downtown Historic Overlay District by the following vote:

Ayes: Commissioners Donaghue, McKee, White and Mang
Noes: Commissioner Crompton
Absent: None
Abstain: Commissioners Haughey and Taagepera

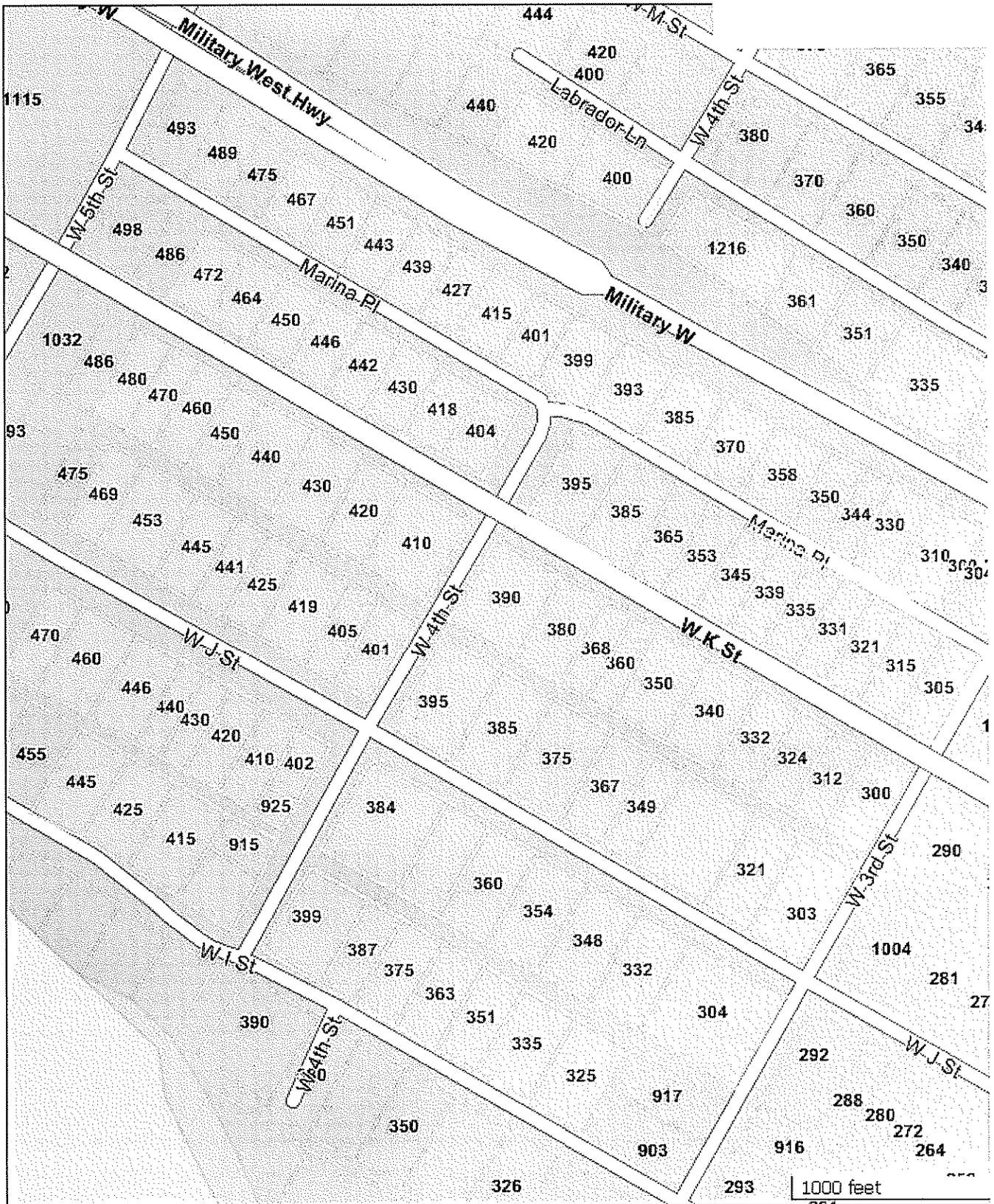


Gina Eleccion
Historic Preservation Review Commission Secretary

Exhibit A

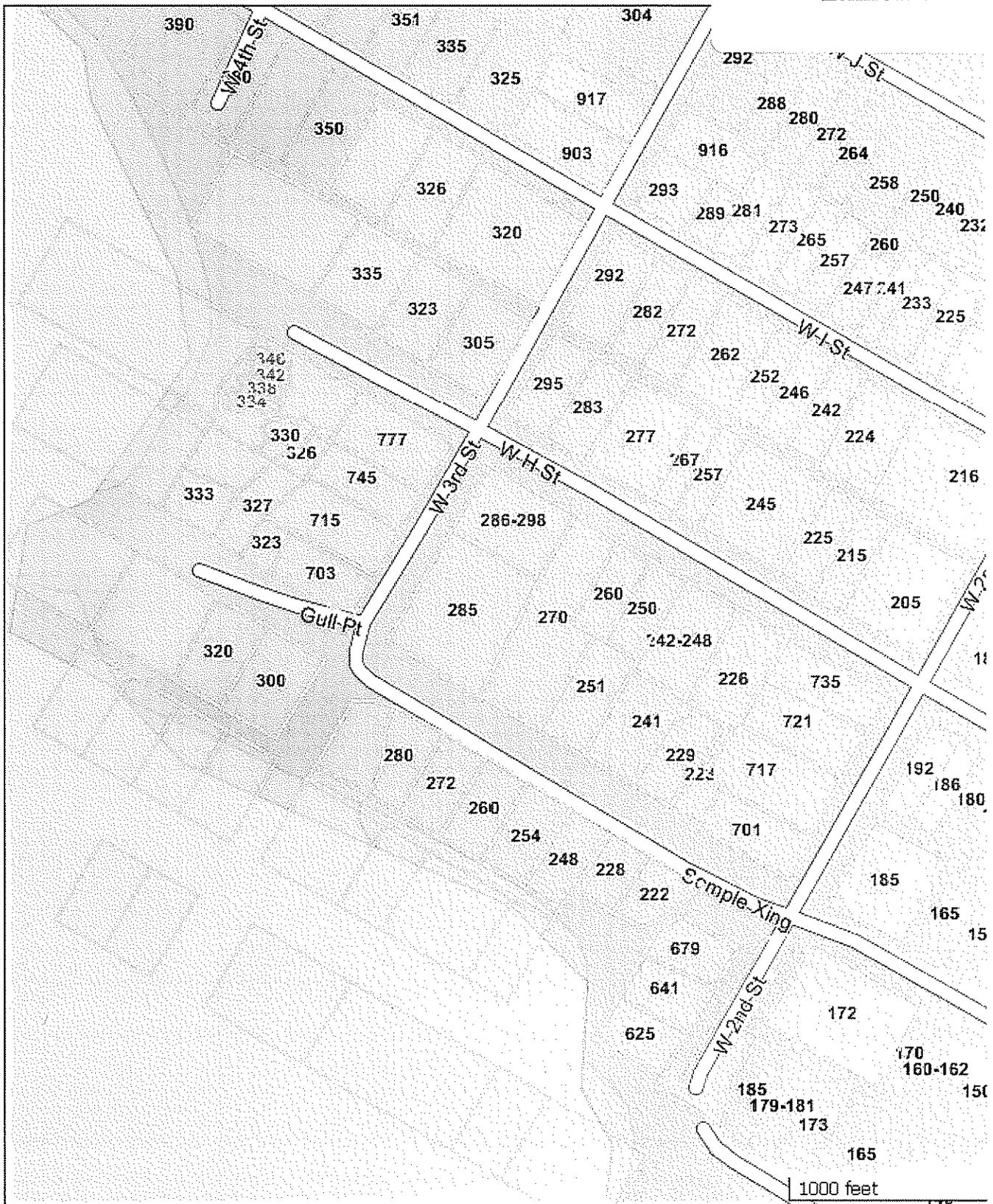


Commissioner Haughey - 251 West J Street



Commissioner Donaghue - 390 West K Street

Exhibit A



Commissioner Taagapera - 270 West H Street

AGENDA ITEM
PLANNING COMMISSION MEETING: DECEMBER 11, 2008
REGULAR AGENDA ITEMS

DATE : December 4, 2008

TO : Planning Commission

FROM : Mike Marcus, Assistant Planner

SUBJECT : **USE PERMIT FOR A BAR ESTABLISHMENT WITH
LIVE ENTERTAINMENT AT 726 FIRST STREET**

PROJECT : 726 First Street – Rellik Tavern (currently Pastime)
08PLN-57
APN: 89-341-010

RECOMMENDATION:

Approve a Use Permit for a bar establishment and live entertainment for the proposed business located at 726 First Street, based on the findings and subject to the conditions listed in the attached resolution.

EXECUTIVE SUMMARY:

A Use Permit is requested for the establishment of a bar with live entertainment at 726 First Street, with hours of operation from 6:00 a.m. to 2:00 a.m., seven days per week. The site is currently occupied by an existing bar (Pastime). Staff is recommending a condition of approval that limits the hours for live entertainment to 10:00PM on weekdays (Sunday through Thursday) and 11:30PM on weekends (Friday and Saturday). Proposed exterior alterations will require design review approval from the Historic Preservation Review Commission.

STRATEGIC PLAN:

Relevant Strategic Plan Goals and Strategies:

- Goal 2.00: Strengthen the Economy
 - Strategy 2.10: Small business assistance
 - Strategy 2.20: Facilitate and encourage sustainable development (providing substantial economic benefits while preserving Benicia's environment)
- Goal 3.00: Strengthen Downtown

BUDGET INFORMATION:

There are no anticipated budgetary impacts.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is Categorically Exempt under Section 15301 of the State of California Environmental Quality Act (CEQA). This exemption includes interior and exterior alterations of existing private facilities.

BACKGROUND:

Applicant/Owner: DiZy Enterprizes – Delando and Zoe Pegan

General Plan designation: Downtown Commercial/Mixed Use

Zoning designation: Town Core

Existing use: Bar and Card Room (Pastime)

Proposed use: Bar

Adjacent zoning and uses:

North: Town Core; Commercial (Benicia Home Improvement Center)

East: Town Core; Public & Semi-Public, Commercial (State Capitol Building, Randy's)

South: Town Core; Commercial (Randy's Catering)

West: Town Core – Open; Vacant lot

SUMMARY:

A. Project Description

The proposed bar will be located in an existing building at 726 First Street; the applicant anticipates remodeling and reopening the existing bar establishment. Primary access to the respective business will take place from First Street. Alley access that previously existed to serve the card room (no longer permitted) will not be utilized in the current plan. Neighboring commercial businesses include the Benicia Home Improvement Center to the north and Randy's Catering to the south.

The bar is proposed to operate seven days a week, from 6:00 a.m. to 2:00 a.m., thus requiring a Use Permit per the Downtown Mixed Use Master Plan. No Use Permit had been attained by the previous owner and it was operating as a nonconforming use.

The applicant requests live entertainment inside the establishment similar to that offered at First Street Café, which includes acoustic guitarists, small jazz ensembles and other similar music. In addition, the applicant would like the flexibility to have occasional amplified or recorded music. Staff recommends several conditions of approval to protect the interests of adjacent residential neighbors, including limited hours of operation for live entertainment and a limited number of amplified entertainment events (twelve times per calendar year).

A smoking lounge was initially proposed as part of the interior tenant improvements. The applicant indicated that the purpose of such use was to “deter patrons from congregating outside, therefore reducing noise and unsightly cigarette butts.” This is the first request of this nature to be processed by the City; therefore, the request was forwarded to the City Attorney’s office for a legal opinion. The legal opinion concludes that a smoking room in a bar or restaurant is no longer allowed by State law. Staff recommends a condition of approval that prohibits the operation of the smoking lounge portion of this proposal and has proposed that the space be used for a private VIP room.

In-lieu of an interior smoking lounge, the applicant would like to provide an enclosed back patio in order to keep patrons from smoking on First Street, in front of the establishment. Historic Preservation Review Commission (HPRC) design review approval will be required for this addition. The applicant has indicated that this will be included as part of their design review application for the front facade. Since there are no enclosed patio plans for the Planning Commission to review, staff recommends a condition of approval that requires the approved HPRC design for the enclosed patio to come back to the Planning Commission for final review and consideration; the most likely format for this would be the consent calendar. Staff also recommends several other conditions of approval:

- Limit the hours of operation for the enclosed patio to reflect those recommended for live entertainment in order to protect the interests of surrounding residential neighbors:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 11:30 p.m.
 - Saturday: 12:00 p.m. to 11:30 p.m.
 - Sunday: 12:00 p.m. to 10 p.m.
- No alcohol service/table service shall be permitted in the enclosed patio area.
- Design shall address noise attenuation, create a buffer between the commercial bar use and neighboring residential uses, provide a secure environment that can be monitored by Rellik staff and maintain all legal exiting requirements.

There are several other proposed alterations to the building, including internal tenant improvements and exterior façade improvements. The remodeled interior will feature a custom built bar, food preparation area, ADA accessible restrooms and an office. The food preparation area will be used for food items that do not require a commercial kitchen, such as preparation of morning croissants, specialty sandwiches, evening cheese plates, and other various hors d'oeuvres. Exterior improvements will require appropriate Historic Preservation Review Commission approvals and a staff-level sign permit.

1. Alcohol Establishment

A full ABC liquor license already exists for the Pastime bar establishment, which currently occupies the space. The applicant intends on closing the Pastime and transferring the license over to the Rellik Tavern, which will be opened after the extensive remodel is completed. The concept of the Rellik Tavern, as described to staff, is to “create an upscale tavern that provides a relaxed, comfortable atmosphere for patrons to enjoy microbrewery beers, fine wines, mixed cocktails, appetizers and a

variety of espresso drinks. Benicia's large art community will be provided space to showcase their craft and local musicians will entertain guests."

The First Street area, with its concentration of commercial development and tourist attractions, is a logical location for these uses. The proposed bar will replace an existing bar, therefore resulting in no net increase of alcohol establishments. The proposed hours of operation, 6:00 a.m. to 2:00 a.m., seven days per week, are consistent with other bar establishments.

2. Live Entertainment

Live entertainment also requires Planning Commission permit approval. Staff recommends a condition of approval that limits the number of events with amplified music to twelve (12) per calendar year. The subject parcel is buffered from residential uses by means of a vacant parcel to the rear (east) and an alley to the south; therefore, staff supports the request for live entertainment with a condition of approval that limits live entertainment to the following hours:

Monday - Thursday: 6 p.m. to 10:00 p.m.

Friday: 5 p.m. to 11:30 p.m.

Saturday: 12:00 p.m. to 11:30 p.m.

Sunday: 12:00 p.m. to 10 p.m.

Pursuant to Benicia Municipal Code (BMC) Sections 8.20.080(C) and 8.20.190, sound levels emanating from sound-amplifying equipment shall be limited to seventy-five (75) decibels, as measured from the property line. This is based upon the prescribed ambient base noise level of sixty (60) decibels in a commercial zoning designation (including Town Core), in combination with BMC 8.20.080(C), which allows an additional fifteen (15) decibels for noise emanating from sound-amplifying equipment.

B. Project Analysis

1. Consistency with the General Plan

General Plan Policy 2.12.3 (p. 49) provides general support for the applicant's proposed uses in the Downtown area. Specifically, it states, "Seek to make Downtown a thriving and vigorous community center offering a variety of activities and attractions for residents and visitors." General Plan Program 2.12.B (p. 48) states, "Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses." Providing an upscale bar and dining establishment is consistent with the General Plan, in that it would attract both local and visitor business. Providing entertainment would further encourage nightlife in the downtown area.

2. Zoning

a. Bar Establishment

The Downtown Mixed Use Master Plan requires a Use Permit for full alcohol beverage service operating between the hours of 9:00 p.m. and 7:00 a.m. The purpose of this is to give the Planning Commission the opportunity to review and decide upon the appropriateness of such establishments at the locations where they are proposed.

b. Live Entertainment

Benicia Municipal Code Section 17.12.030.B defines live entertainment as, *A comedy act, musical, theatrical, or dance recital performed by one or more persons, regardless of whether performers are compensated.* Zoning regulations pertaining to live entertainment apply to defined activities where they occur on a scheduled basis, three or more days during a calendar year, on the site of a use other than a public or semi-public use. Businesses such as restaurants and bars are defined as commercial uses, not public or semi-public uses.

BMC Chapter 8.20, commonly referred to as the Noise Ordinance, prohibits excessive noise that “disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area.” The Noise Ordinance provides standards that are considered in determining whether a violation of the ordinance exists. The Police Department enforces Chapter 8.20 and responds to citizen complaints under the provisions of this ordinance. This use would be subject to enforcement of the standards contained in the Noise Ordinance.

3. Standard Use Permit Findings

- a. The Planning Commission finds that the proposed bar is consistent with the objectives and provisions of Title 17 of the Benicia Municipal Code, the Downtown Mixed Use Master Plan and the purposes of the Town Core zoning district.

The proposed use is consistent with Title 17 of the Benicia Municipal Code and under the Downtown Mixed Use Master Plan’s Town Core zoning district.

- b. The proposed location of the bar and the proposed conditions of approval are consistent with the General Plan, Title 17 of the Benicia Municipal Code and the Downtown Mixed Use Master Plan and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city;

The proposed use is consistent with General Plan Goal 2.12 B (p. 48) that provides general support for the applicant’s proposed use on First Street. Specifically, it states, “Work to attract economically viable businesses that will create night-life

*Downtown such as restaurants, cafes, movie theaters, and other entertainment uses.”
The proposed use of an upscale bar complements the surrounding businesses and
adds to the vitality of the downtown area.*

- c. The proposed bar will comply with the provisions of Title 17 (Benicia Zoning Ordinance) and the Downtown Mixed Use Master Plan, including specific conditions required for use in the district in which it will be located.

*The proposed use is consistent with Title 17 of the Benicia Municipal Code and the
Downtown Mixed Use Master Plan since it meets the requirements of Town Core
zoning designation.*

CONCLUSION:

The proposed business meets the purpose and intent of the General Plan and the Downtown Mixed Use Master Plan, subject to the attached conditions of approval.

FURTHER ACTION:

The Planning Commission action will be final unless appealed to the City Council within ten business days. Historic Preservation Review Commission design review approval is required for exterior alterations.

Attachments:

- Draft Resolution
- Written Statement from the Applicant
- Project Plans
- Photographs

DRAFT RESOLUTION

RESOLUTION NO. 08- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR A BAR ESTABLISHMENT WITH LIVE ENTERTAINMENT AT 726 FIRST STREET

WHEREAS, Mr. Delando Pegan of DiZy Enterprises, has requested Use Permit approval for a bar establishment with live entertainment at 726 First Street; and

WHEREAS, the Planning Commission at a regular meeting on December 11, 2008 conducted a public hearing and reviewed the proposed project.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the bar establishment with live entertainment at 726 First Street.

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a. The proposed use is categorically exempt from California Environmental Quality Act review under Guidelines Section 15301, which applies to interior and exterior alterations of existing facilities.
- b. The proposed uses are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and with the Downtown Mixed Use Master Plan, which allows for bar establishments and live entertainment in the Town Core zoning district, subject to the conditions listed below.
- c. The proposed conditional use is required to comply with the provisions of the Noise Ordinance (BMC Chapter 8.20), as well as with all other City ordinances, as discussed in the staff report.
- d. The proposed bar and restaurant are consistent with the goals, policies, programs, and maps of the General Plan. Specifically, the proposal is consistent with General Plan Goal 2.12 B (p. 48), "Work to attract economically viable businesses that will create night-life Downtown such as restaurants, cafes, movie theaters, and other entertainment uses."

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby approves the proposed project subject to the following conditions:

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans date stamped "October 20, 2008" prepared by Steve McKee, attached as an exhibit and on file with the Community Development Department.
2. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.

3. Establishment hours shall not exceed 6:00 a.m. to 2:00 a.m., seven days per week.
4. Pursuant to the City Attorney's legal opinion regarding the State of California Labor Code, the smoking lounge portion of this proposal shall not be allowed.
5. Exterior alterations shall obtain necessary design review approvals from the Historic Preservation Review Commission (HPRC). Following HPRC design review approval, the applicant shall submit the final design of the enclosed outdoor patio to the Planning Commission for final review and consideration.
6. Outdoor enclosed patio area shall be limited to the following hours of operation:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 11:30 p.m.
 - Saturday: 12:00 p.m. to 11:30 p.m.
 - Sunday: 12:00 p.m. to 10 p.m.
7. No alcohol service/table service shall be permitted in the enclosed patio area.
8. Outdoor enclosed patio design shall address noise attenuation, create a buffer between the commercial bar use and neighboring residential uses, provide a secure environment that can be monitored by Rellik staff, and maintain all legal exiting requirements.
9. Indoor live entertainment shall be limited to the following hours:
 - Monday - Thursday: 6 p.m. to 10:00 p.m.
 - Friday: 5 p.m. to 11:30 p.m.
 - Saturday: 12:00 p.m. to 11:30 p.m.
 - Sunday: 12:00 p.m. to 10 p.m.
10. Amplified music shall be permitted to occur twelve (12) times per calendar year. The applicant shall provide the Community Development Department and the Police Department with seventy-two (72) hours of notice prior to each event.
11. Noise levels from the site shall comply with the standards contained in the Noise Ordinance, BMC Chapter 8.20. Pursuant to BMC 8.20.080(C), sound levels emanating from sound-amplifying equipment shall be limited to seventy-five (75) decibels, as measured from the property line.
12. Live entertainment shall not take place in any exterior area at any time. Music from interior performances shall not be transmitted to outdoor areas; doors and windows shall remain closed during all live entertainment performances.

13. The total number of occupants present at live entertainment events shall not exceed the total allowed occupant capacity of the bar, which shall be posted in compliance with the Uniform Building Code.
14. In the case of a private event, Licensee(s) shall provide written notification to the Investigation Commander of the Benicia Police Department at least two (2) weeks prior, concerning all contracted events occurring on the premises. Notification shall include the date of the event, the start and end time, and estimated number in attendance. If the contracted event is agreed upon prior to the two (2) week period of the occurrence, the licensee(s) shall notify the Investigation Commander of the Benicia Police Department in writing within 24 hours of the contracted event.
15. Current contact information for all business owners shall be on file with the Police Department and the Community Development Department; any changes shall be reported to both departments within 15-calendar days.
16. The operator of the establishment shall be responsible for monitoring clients' behavior both inside and outside the building to avoid excessive noise or disturbance to the neighborhood.
17. No alcohol shall be consumed outside of the business establishment.
18. All employees shall attend the Responsible Beverage Service training; certificates must be renewed and kept current in the time frame established by the program, and certificates must be kept at the establishment and available upon request.
19. Owner / Manager shall attend all restaurant and / or bar owner meetings called by the Chief of Police.
20. The applicant shall obtain all proper permits required by the Solano County Health and Social Services Department for light food service prior to food service operation. The applicant shall obey all Health Department general conditions, laws, and regulations relative to their food service operation.
21. This establishment is subject to all requirements of the Fire and Life Safety Division, in relation to its enforcement of the Uniform Building Code and Fire Code
22. The applicant shall obey all subsequent ABC general conditions, laws, and regulations relative to their liquor license.
23. Use Permit conditions of approval shall be reviewed on an as needed basis by the Community Development Department and Police Department.
24. In the event of violations of the conditions of this permit, the Community Development Director and the Police Department may refer the Use Permit to the Planning Commission for subsequent review, potential modifications to conditions of

approval, or potential revocation of the Use Permit, pursuant to BMC Chapter 17.104.090 and Chapter 17.128.060.

25. All exterior modifications will require Design Review approval from the Historic Preservation Review Commission.
26. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

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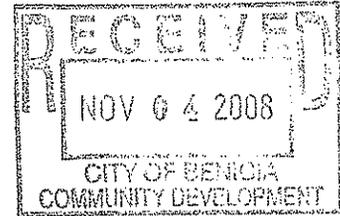
On motion of Commissioner , seconded by Commissioner , the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on December 11, 2008 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Fred Railsback
Planning Commission Chair

WRITTEN STATEMENT FROM APPLICANT

The Rellik Tavern
2008 Business Plan



Vision:

To create an upscale tavern that provides a relaxed, comfortable atmosphere for patrons to enjoy microbrewery beers, fine wines, mixed cocktails, appetizers and a variety of espresso drinks. A smoking lounge (attachment 1) that meets state laws will be provided to deter patrons from congregating outside, therefore reducing noise and unsightly cigarette butts. Benicia's large art community will be provided space to showcase their craft and local musicians will entertain guests.

Mission:

To provide a rich atmosphere for drinks and entertainment that Benicians and Solano county residence currently find in Walnut Creek, Napa or Marine.

Implementation:

The Rellik Tavern will be an upscale tavern serving fine wines, microbrew beers (bottled and draft), specialty cocktails, and a full compliment of espresso drinks. Morning croissants, specialty sandwiches, evening cheese plates, and other various hors devours will be offered. Entertainment will include recorded, live acoustic and amplified music. The Rellik Tavern will open at 6:00 a.m. and close at 2:00 a.m..

Interior alterations will include enlarging and handicapping the restrooms, a new interior, new bar, new lighting, new seating, and a segregated ventilated smoking room that meets state codes. State of the art video surveillance with DVR's and alarm system will be installed. Electronic age identification system and door security personnel will be provided when warranted.

Business frontage will be upgraded to reflect interior beautification. Exterior alterations will include the removal of all existing signs, replaced with a carved, wooden sign that will hang from wrought iron, lit up by lights on either side at night. White painted faux brick will be replaced to the original red brick. The existing white beam will receive a wood overlay and exterior windows will be enlarged along with a new wood front door.

Location:

The tavern will be located in the heart of Benicia on First Street. This is the main location for restaurants, shopping and entertainment. First Street hosts many festivals throughout the year and has a thriving weekly farmers market. Benicia puts a lot of resources towards tourism for First Street and it's down town businesses.

City of Benicia Facts:

- 42.9% of Benicia households make over \$100,000 annually, twice the national average and making it the most affluent Solano County City with the highest median household income.
- The largest percentage of Benicians, 19% are ages 35 to 44.
- Ranked LOW COST location according to Kosmont 1999 Cost of Doing Business Survey.
- Lowest Solano County crime rate and one of the lowest in the U.S. for cities with under 30,000 population.
- Schools ranked top 15% in the nation by School Match, a private corporate site location firm.
- Named Best Place to Raise a Family according to a San Francisco Chronicle Newspaper survey.
- Benicia is home to many world-renowned artists.

Objectives:

- To provide Benicians and Solano County residence a “nice” place for cocktails, espresso drinks and entertainment.
- To make a destination spot for Benicia tourist.

Strategies:

- Take advantage of the many downtown events and support the community by sponsoring local events and entertaining fund raiser.
- Constantly be creative with events that will bring new customers in and retain the old ones.
- Keep the community involved by allowing a place for local artist to display their craft.
- Hire friendly, outgoing employees that generally care about the clientele.
- Advertise the tavern in local and county wide publications.
- Create a website that is informative, entertaining, and up to date with current and future events.

Plans:

We are currently in escrow. DiZy Enterprises lease is contingent to the purchase of the Pastime, the Pastime purchase is contingent on a new city business license that has satisfactory use permits. Everything is contingent on this happening by January 1st 2009 or DiZy Enterprises will be force to terminate all contracts and escrow.

Attachment 1

Smoking Lounge:

The smoking lounge is regulated by Labor Code 6404.5 and OSHA standard 29USC655 (Indoor Air Quality in the Workplace). Rellik Tavern will be in compliance with both of these regulations. Air from the smoking lounge will be exhausted directly to the outside and not recirculated to any other parts of the building. Cleaning of the smoking lounge will be done by the owners or an independent janitorial service. The smoking lounge will not be accessible to minors and employees will not be required to enter the smoking lounge. The following plans will be implemented in the design and construction of the smoking lounge.

- ✓ Installation of an independent HVAC system providing at least 25l/p/s (90m³/p/h) of fresh air ventilation. Airflow designed to sweep through all of the room space.
- ✓ Airflow managed either by a motion sensor or a CO2 sensor so that the equipment switches on/off – or up/down – according to the occupancy.
- ✓ Designed with a self-closing door.
- ✓ Use of non-absorbent materials for furnishings and floor coverings to avoid deposition of ETS particles.
- ✓ Self-closing or self-extinguishing ashtrays.
- ✓ Rigorous and regular cleaning regime to ensure that ashtrays are emptied and all surfaces wiped down to clean them thoroughly.
- ✓ Installation of one or more electric venting skylights to promote circulation of fresh air.
- ✓ Installation of smoke eating system to filter air.
- ✓ Posted with signage as a designated smoking area.

PROJECT PLANS

PROJECT INFO

PROJECT DESCRIPTION:

REMODEL EXISTING BAR SPACE. ADD FOOD PREP AREA AND HANDICAPPED ACCESSIBLE RESTROOMS.

OCCUPANCY GROUP A-2

CONST TYPE V- NO HR (1-HR AT WALLS THAT ABUT OTHER TENANTS) (NON-SPRINKLERED)

NORTH LOUNGE	1,133 S.F.
SOUTH LOUNGE	331 S.F.
SMOKING LOUNGE	211 S.F.
OFFICE	106 S.F.
FOOD PREP AND REFRIGERATION	264 S.F.
RESTROOMS	267 S.F.
HALLS/ STORAGE	<u>208 S.F.</u>
TOTAL	2,520 S.F.

REMODEL
726 FIRST STREET
BENICIA CA

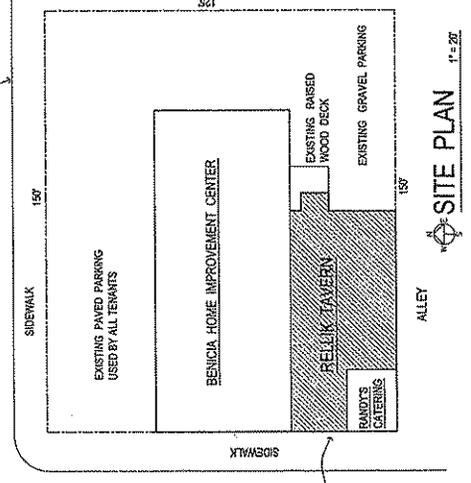
THE REILLIK TAVERN

Date: 10/15/08
Drawn By: SM

Revisions:

925 West K Street
Benicia CA 94510
(707) 746-9788
www.mckee.com

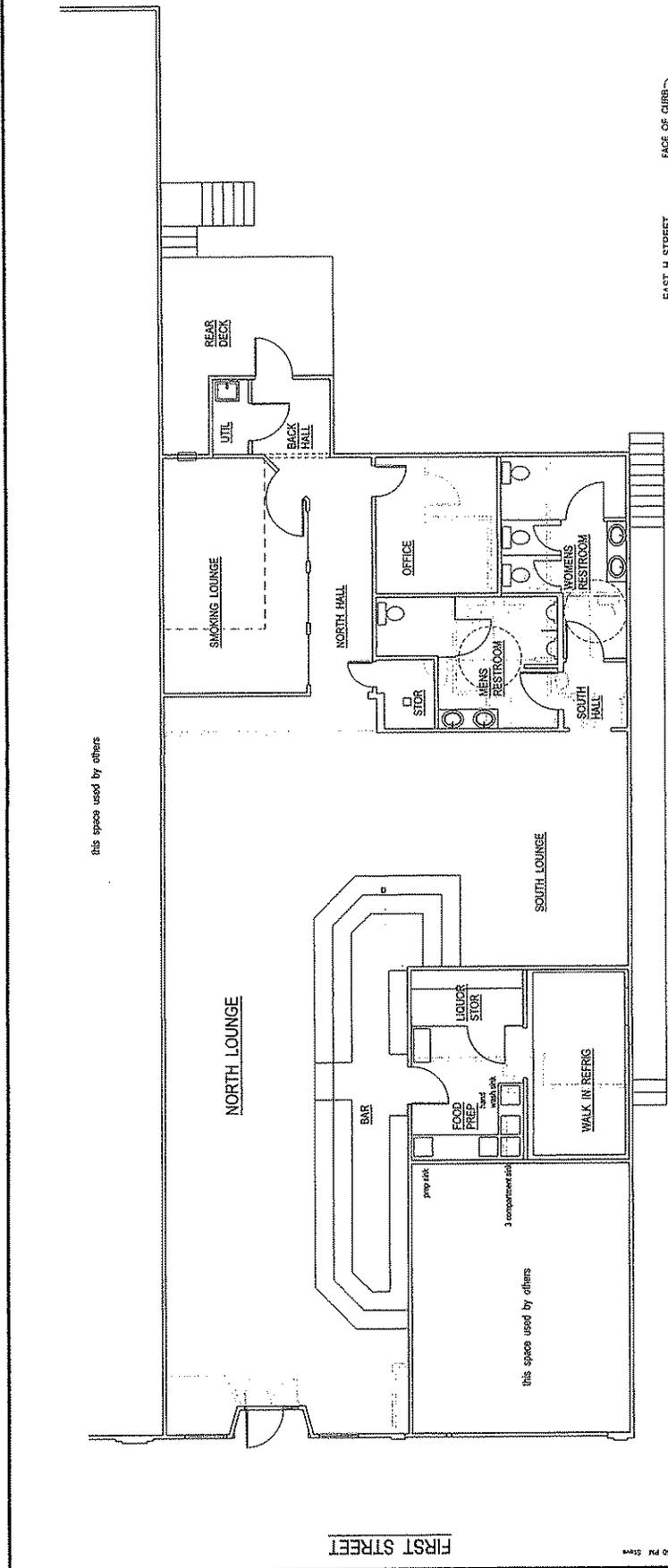
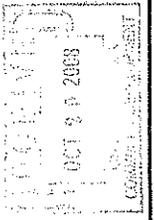
Steven McKee - Architect



1"=20'

SITE PLAN

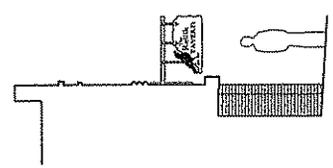
EXISTING BLDS ENVELOPE UNCHANGED EXCEPT FOR METRIC SCALE IN SUPPORT OF REILLIK TAVERN



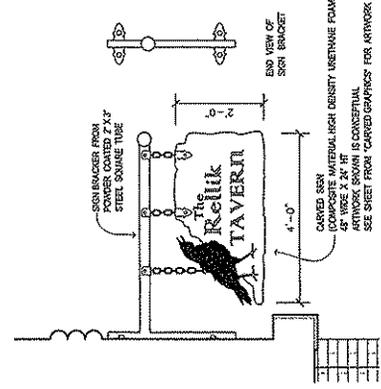
FLOOR PLAN 2574 sq ft
 The Reillic Tavern
 726 First Street in Benicia



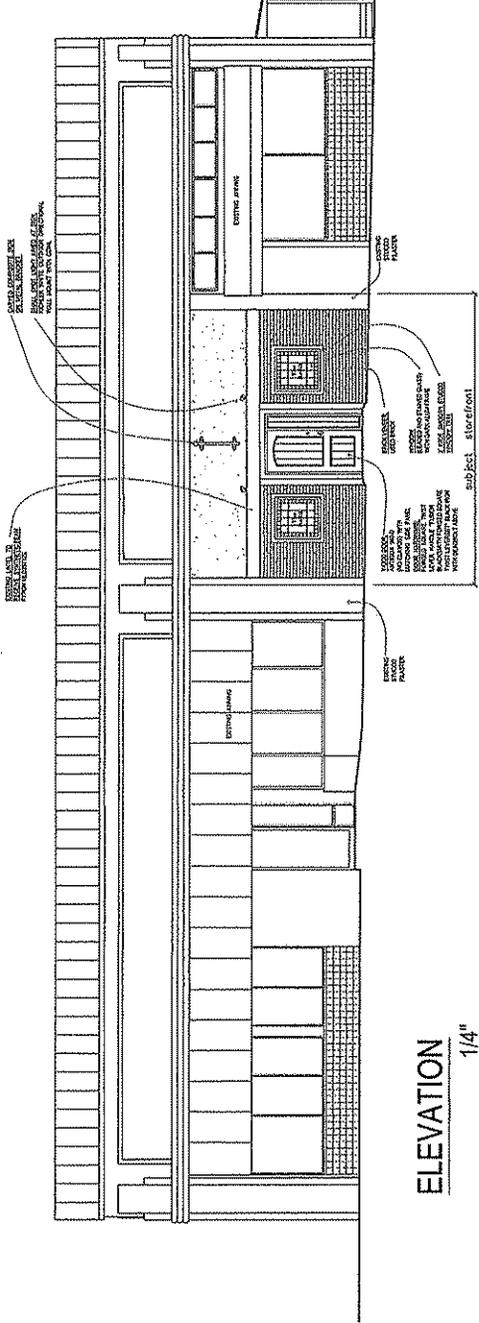
FIRST STREET



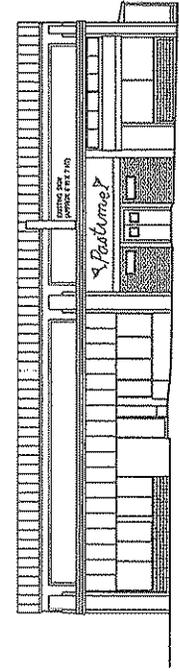
ELEVATION OF SIGN



DETAIL OF SIGN

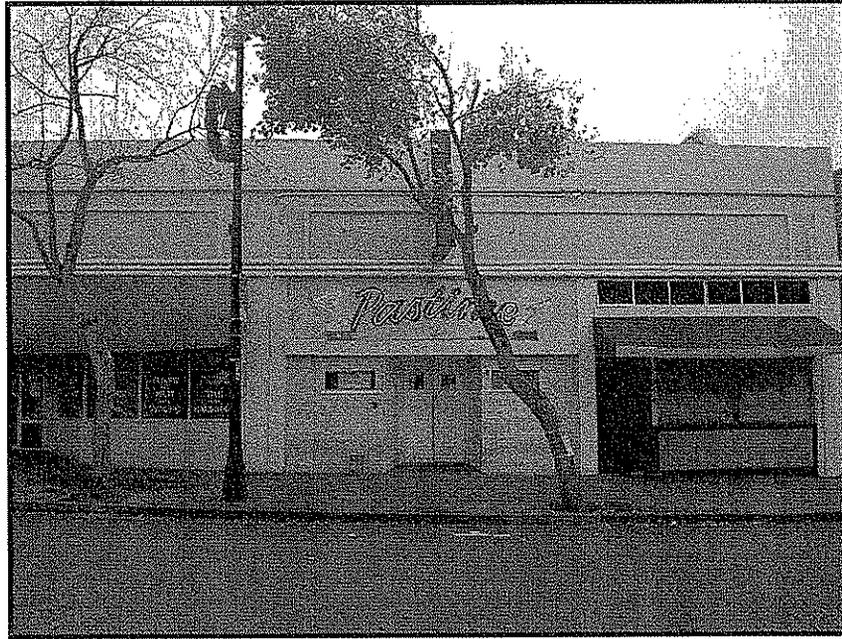


ELEVATION
1/4"

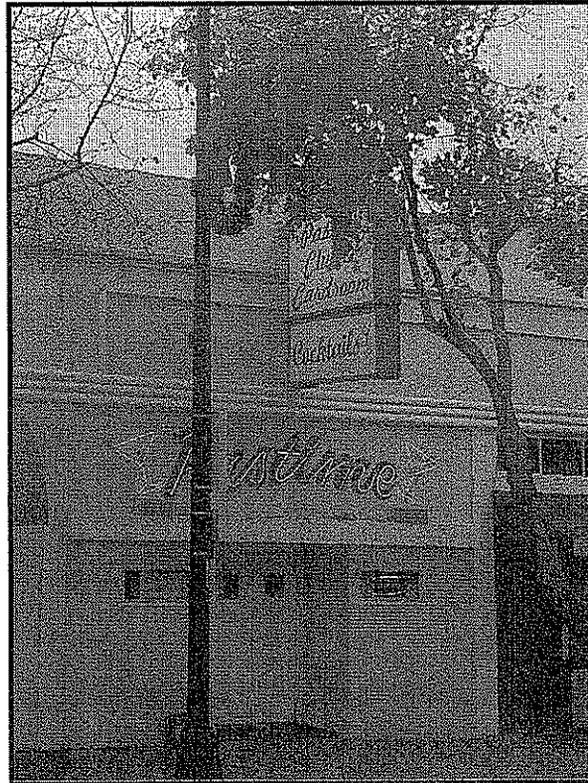


EXISTING ELEVATION
1/8"

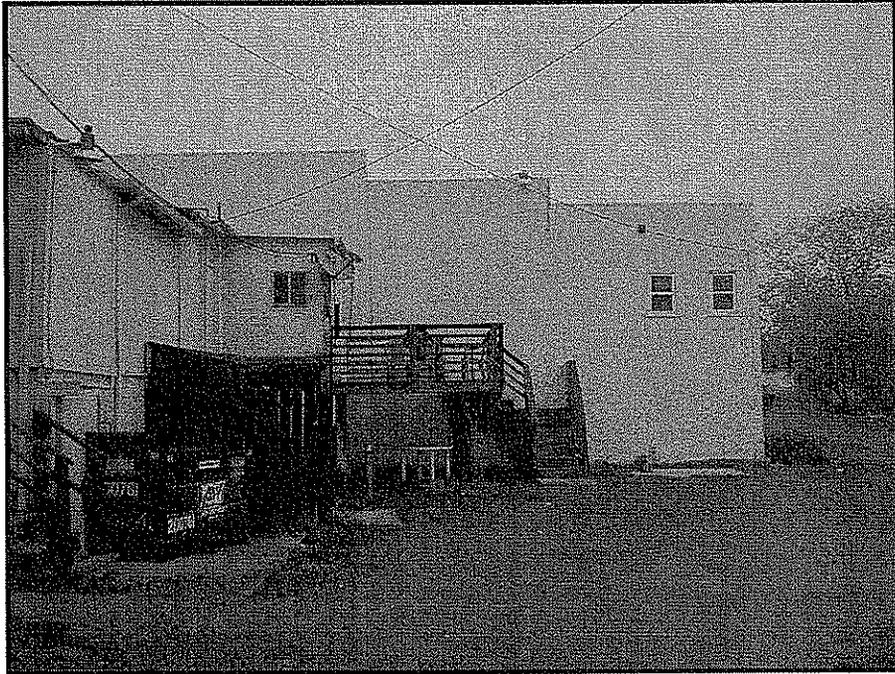
PHOTOGRAPHS



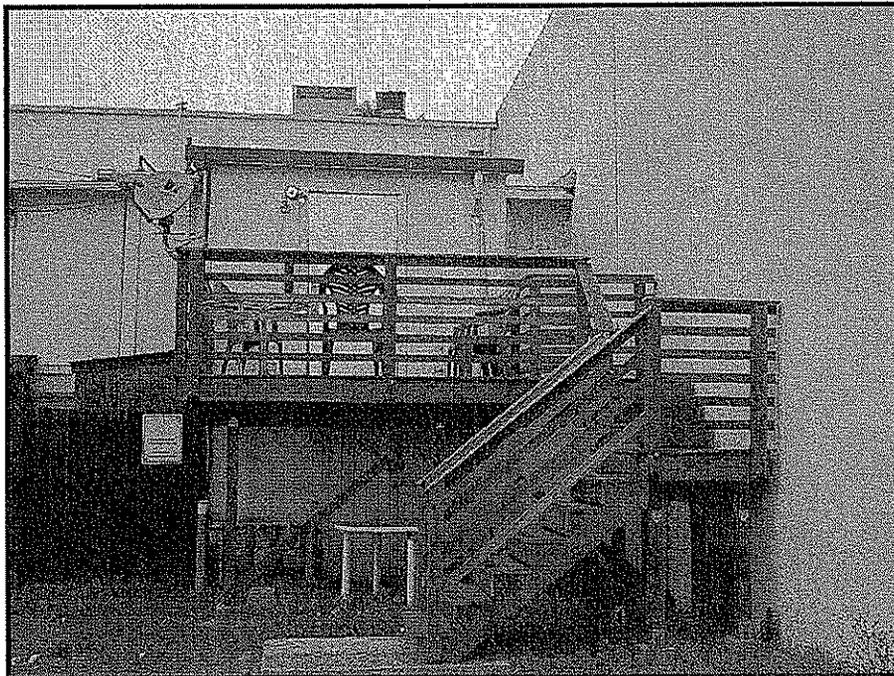
Photograph 1: Existing building façade



Photograph 2: Existing storefront



Photograph 3: Rear of existing structure



Photograph 4: Rear deck; location of proposed outdoor enclosed patio



City Attorney's Office
MEMORANDUM

Date: December 10, 2008
To: Mike Marcus, Assistant Planner
From: Kat Wellman, Contract Attorney
Re: **LEGAL OPINION ON PRIVATE SMOKERS' LOUNGE IN BAR ESTABLISHMENT**

BACKGROUND:

A use permit has been requested to open a bar establishment called Rellik Tavern at 726 First Street. The applicant has included a private smoker's lounge in the plans. The purpose of the room would be to deter patrons from congregating outside the front of the establishment on First Street to smoke. The City's ordinance pertaining to smoking has not been amended since 1987. Thus, the issue arose whether a smoking lounge would be permitted under current State law.

ISSUE:

Can the City approve a use permit that would allow a smoking lounge to be located in a bar?

SHORT ANSWER/CONCLUSION:

No. California Labor Code Section 6404.5 restricts smoking in most enclosed work places. The only current exemptions are located in "retail or wholesale tobacco shops" where the primary purpose is the sale of tobacco products.

DISCUSSION/ANALYSIS:

In 1994, the California legislature determined that smoking in the workplace was a matter of statewide interest and enacted Labor Code Section 6404.5 with the intent of "eliminating the need for local governments to enact workplace smoking restrictions within their respective jurisdictions." The statute prohibited smoking in any "enclosed space at a place of employment," with few exceptions. Initially, bars and taverns were exempted. However, Labor Code Section 6404.5 (f) only allowed smoking in bars and taverns until the earlier of the following:

- (A) January 1, 1998; or
- (B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board [OSHA] reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency [EPA] establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

No regulations were ever adopted by either OSHA or the EPA regarding smoking exposure levels. Consequently, smoking in bars has been prohibited since January 1, 1998.

The only current exemption under Labor Code Section 6404.5 (d)(4)(B) where smoking can take place in a place of employment is inside a “retail or wholesale tobacco shop.” A retail or wholesale tobacco shop is defined as a business whose main purpose is the sale of tobacco products. Subsection (d)(4)(A) does provide for “private smoking lounges,” but only if they are located in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products.

CONCLUSION:

The City cannot approve an application for a private smoking lounge at 726 First Street since the primary purpose of Rellik Tavern is to be bar with live entertainment, not a retail or wholesale tobacco shop, which is the only exemption permitted by current State law.

AGENDA ITEM
PLANNING COMMISSION MEETING: DECEMBER 11, 2008
PUBLIC HEARING

DATE : December 2, 2008
TO : Planning Commission
FROM : Damon Golubics, Principal Planner
SUBJECT : **PLANNING COMMISSION RULES AND PROCEDURES**

RECOMMENDATION:

Discuss, review, take public testimony, and approve rules and procedures by which the Planning Commission can conduct business. Adopt a resolution authorizing use of the Planning Commission rules and procedures.

EXECUTIVE SUMMARY:

The Planning Commission does not have an approved set of rules and procedures by which to operate. In consultation with the City Attorney's Office, staff has prepared a draft set of rules and procedures for review and consideration. Once the Planning Commission and the public have had an opportunity to review and comment on this draft, the Commission should approve the final document for use by the current Planning Commission and future Commissions.

BUDGET INFORMATION:

The proposed action has no budget impacts.

ENVIRONMENTAL REVIEW:

The proposed action is not classified as a "project" pursuant to the California Environmental Quality Act Guidelines (CEQA), thus no environmental review is necessary for this request.

SUMMARY:

Each Commission or Committee representing the City of Benicia operates under a set of rules and procedures. The Planning Commission should consider the draft rules and procedures, amend them if necessary, and adopt the document.

Attachments:

- Proposed Resolution
- Draft Rules and Procedures

PROPOSED RESOLUTION

RESOLUTION NO. 08-XX (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA ADOPTING FORMAL RULES AND PROCEDURES BY WHICH THE COMMISSION WILL OPERATE

WHEREAS, the Planning Commission at a regular meeting on December 11, 2008 conducted a public hearing and reviewed draft rules and procedures by which the Planning Commission can conduct business; and

WHEREAS, the Planning Commission reviewed specifics within the draft rules and procedures such as designated Commission officers, meeting schedule, required agendas, meeting minutes, rules of order, and meeting attendance.

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission approves the staff prepared rules and procedures for the function and operation of the current Planning Commission and future Planning Commissions which serve the citizens of the City of Benicia.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on the 11th day of December, 2008 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Dan Healy
Planning Commission Vice Chair

DRAFT RULES AND PROCEDURES

RULES AND PROCEDURES

A. GENERAL PROVISIONS

1. These rules and procedures shall be known as "Rules and Procedures of the Planning Commission, City of Benicia." A copy of these rules and amendments thereto shall be filed in the Community Development Department for examination by the public.
2. These rules, and any amendments thereto, shall be effective on the date of the adoption hereof and shall govern the conduct of the Planning Commission.
3. These rules and procedures may be amended hereafter by action of the Planning Commission.

B. OFFICERS

1. The officers of the Commission/Board shall be:

Chair: who shall preside at all meetings of the Planning Commission, call special meetings, appoint committees, and perform other proper duties of a presiding officer. Except as otherwise authorized by the Planning Commission, the Chair shall sign all correspondence, reports and other instruments approved by the Planning Commission.

Vice Chair: who shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or other permanent absence of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Planning Commission shall select a new chair.

Secretary: who shall keep a written record of all business transacted by the Planning Commission, notify members of meetings, maintain the official records of the Planning Commission, and perform such other duties as the Planning Commission may direct.

2. The Chair and Vice Chair shall be elected by the Planning Commission from its membership at their October meeting each year when the Planning Commission is fully constituted. The Community Development Director or his or her designee shall serve as Secretary to the Commission/Board.
3. Staff Person. The Staff Person of the Planning Commission shall: (a) supply the Planning Commission members with such information and make such

PLANNING COMMISSION
RULES AND PROCEDURES
PAGE 2

recommendation as deemed necessary to carry out the purposes of the Planning Commission and to properly administer its affairs; and (b) be the single point of contact for the Planning Commission.

4. Additional Duties. The officers of the Planning Commission shall perform such other duties and functions as may from time to time be required by the Planning Commission.

C. MEETINGS

1. The regular meeting of the Planning Commission shall be on the second Thursday of each month at 7:00 pm. In compliance with the Brown Act and the Open Government Ordinance, all regular meetings shall be open and public. An agenda for regular meetings will be prepared and posted six (6) days prior to a meeting.
2. Special meetings may be called by the Chair or by a majority of the Planning Commission members if determined to be necessary for discharge of the Planning Commission's responsibilities. The Secretary shall poll Planning Commission members and attempt to arrange a date and time convenient to all Planning Commission members. Notice of special meetings shall be given consistent with Brown Act and Open Government Ordinance requirements.
3. Meeting Location. Regular meetings shall be held in the Council Chambers. When the Council Chamber is unavailable and in exceptional circumstances, the Planning Commission may change this meeting location by notice on its agenda
4. Adjournment. The Planning Commission shall not begin new public hearing items after 11:00 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting. At the conclusion of the last public hearing item that ends after 11:00 p.m., the Commission may determine by a simple majority vote that all remaining administrative items on the agenda be heard by the Commission or continued to a future meeting and the Planning Commission may extend the meeting to an additional specified amount of time.

D. AGENDA

1. Opening of Meeting/Pledge of Allegiance/Roll Call
2. Reference to Fundamental Rights of Public
3. Agenda Changes and Discussion

PLANNING COMMISSION
RULES AND PROCEDURES
PAGE 3

4. Public Comment
5. Consent Calendar/Approval of the Agenda/Approval of Minutes
6. Agenda Items
7. Communications from Staff/Communications from Commissioners
8. Adjournment

E. MINUTES

1. General Policy Statement on Minutes of Meeting. It is the general policy of the Planning Commission to prepare draft minutes of the deliberations of the Planning Commission. These minutes will include:
 - a. the time the meeting was called to order,
 - b. the names of the members attending the meeting,
 - c. a one-sentence summary of, and the roll call vote on, each matter considered at the meeting,
 - d. the time the body began and ended any closed session,
 - e. any letters submitted on agenda items,
 - f. those members of the public who spoke on each matter if the speakers identified themselves,
 - g. and the time the meeting was adjourned.

The draft minutes of each meeting shall be available for inspection and copying upon request within the shortest possible time after the meeting. Minutes must be finalized and adopted by the majority of Planning Commission members in order to be regarded as an official record of the Planning Commission. No later than five business days after the meeting at which the minutes are adopted, the officially adopted minutes shall be available for inspection and copying upon request and shall be posted on the city's web site.

2. Public Comment. Any member of the public during Oral Communications may request that corrections or deletions be made to the minutes. These requests may be acted upon by the Planning Commission with appropriate review and deliberation.

3. Method of Documentation. It is the policy of the Planning Commission to retain tape recordings documenting Planning Commission deliberations for two years following the finalization and adoption of written minutes. Written minutes that have been adopted by the Planning Commission shall constitute the official record of the Commission and shall be maintained indefinitely.

F. RULES OF ORDER

The following definitions and rules shall govern the proceedings and order of business of the Planning Commission:

1. Prior to public discussion or Planning Commission deliberation, the presiding officer or other person designated thereby shall describe the item or business before the Planning Commission.
2. Public Discussion.

The presiding officer shall recognize speakers on an agenda item when that item is before the Planning Commission for consideration. (This includes any comments pertaining to the Announcements/Appointments/Presentations/Proclamations section of the agenda.) The presiding officer shall recognize speakers on Public Hearing items at the Public Hearing. The presiding officer shall recognize speakers on matters not on the agenda under the Opportunity for Public Comment portion of the agenda.

Persons addressing the Planning Commission shall do so only at the speakers' rostrum and should begin, but are not required to do so, by stating their name and address for the record. All remarks shall be addressed to the Planning Commission as a body and not to any member thereof, or to staff, or to the public. No person other than a member of the Planning Commission and the person having the floor shall be permitted to enter into any discussion without the permission of the presiding officer. Speakers may not make personal attacks on Planning Commissioners, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.

- a. Recognition. Any person addressing the Planning Commission shall first secure the permission of the presiding officer.
- b. Not a Debate. Public discussion should not be used to elicit a debate between Planning Commission members and the public. Speakers should not be interrupted unless they are out of order.

c. Time Limits. Each speaker shall speak only once on an agenda item and limit his/her remarks to five (5) minutes when speaking at the time of the agenda item or when speaking on non-agenda items under Opportunity for Public Comment, except as otherwise specifically provided for in these Rules or in the Open Government Ordinance, or except as time is extended by the presiding officer with the consent of the majority of the Planning Commission. Each speaker shall avoid repetition of the remarks of prior speakers and speak only to the specific agenda item under consideration.

In accordance with the Open Government Ordinance, the presiding officer may request spokespersons be designated to represent similar views. Spokespersons shall each have fifteen (15) minutes to present their case. Any spokesperson wishing to make a rebuttal shall have 5 (five) minutes to present.

d. Pending Motion. When a motion is pending before the Planning Commission, no person other than a Planning Commission member shall address the Planning Commission without first securing the permission of the Chair to do so.

e. Public Discussion. Public Discussion shall precede Planning Commission deliberation.

f. No discussion shall be permitted, without approval of the Planning Commission, after a motion has been adopted which would terminate further deliberation.

3. Appeals

a. The procedure for the conduct of all appeals to the Planning Commission shall be as set forth in the governing ordinance or resolution.

b. If no procedure is set forth, the staff person shall first present his or her case. The appellant shall then present his or her case. The staff person may then offer a rebuttal. The staff person and appellant may then present closing arguments.

4. Planning Commission Deliberation.

a. Presiding Officer May Deliberate. The presiding officer may deliberate from the chair, subject only to such limitations of deliberation as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Planning Commission by reason of his or her acting as the presiding officer.

b. Conflict of Interest. In situations where there is a conflict of interest under the Political Reform Act, the Open Government Ordinance or other conflict laws, members of the Planning Commission are required to abstain from voting on the item and participating in the decision-making process. The following procedures should be followed:

- i. Declare the conflict of interest.
- ii. State the basis of the conflict of interest.
- iii. Do not discuss or vote on the matter.
- iv. Step down from the podium and leave the room until the item is completed or unless the Political Reform Act allows the member to remain in the room.

c. Getting the Floor - Improper References to be Avoided. Every member desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine himself or herself to the questions under deliberation, avoiding all personalities and indecorous language.

d. Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call said member to order, or as herein otherwise provided. If a member, while speaking, be called to order, said member shall cease speaking until the question of order be determined, and if in order, said member shall be permitted to proceed.

e. Remarks of Commission/Board Member - When Entered in Minutes. Any Planning Commission member may request, through the presiding officer, the privilege of having a written abstract of said member's statement on any subject under consideration by the Planning Commission entered in the minutes. If the Planning Commission consents thereto, such statement shall be entered in the minutes.

f. Motion to Reconsider. A motion to reconsider any action taken by the Planning Commission may be made only on the date such action was taken. It may be made either immediately during the same session; or at a recessed or adjourned session thereof. Such motion must be made by one of the prevailing side, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Planning Commission from making or remaking the same or other motion at a subsequent meeting of the Planning Commission or a motion to rescind.

g. Motion to Table. A motion to lay on the table shall preclude all amendments or deliberation of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority.

- h. Motion to Call for Question or Continue to a Date Specific. A motion to call for the question or continue the matter to a specific date shall preclude all amendments to or deliberation of the subject under consideration and is not debatable.
- i. Statement of Position. When a motion to call for question or table is adopted, each member of the Planning Commission may briefly state his/her position on the matter before roll call or call for the next item of business.
- j. Privilege of Closing Deliberation. The member moving the adoption of a motion or resolution shall have the privilege of closing the deliberations or making the final statement.
- k. Division of Question. If the question contains two (2) or more divisible propositions, the presiding officer may, and upon request of a member shall, divide the same.
- l. Second Required. All motions, except for nominations and a point of order, shall require a second.
- m. Voting. A vote of three (3) members at a properly called meeting shall be necessary for any action of the Planning Commission. Four (4) members of the Planning Commission shall constitute a quorum. If a motion fails to receive the required number of votes to pass or fail, the request of any Planning Commission member would cause the item to be carried over to the next meeting.
- n. Forms of Action. The Planning Commission may act by motion or resolution. All motions shall be recorded in the minutes verbatim. All resolutions shall be in writing and the title shall be recorded verbatim in the minutes as well as the vote thereon.
- o. Miscellaneous. All other matters not covered by these rules shall be decided by a majority of the Planning Commission. Roberts Rules of Order may be used as a guide.

G. ATTENDANCE

It shall be the responsibility of each Planning Commission member to notify the Secretary, who shall thereupon notify the Chair, of an inability to attend a scheduled Planning Commission meeting. Other applicable attendance rules for Commissioners are governed by the Benicia Municipal Code.

H. PREEMPTION

The applicable City of Benicia's policies, resolutions and ordinances and state and federal laws shall prevail where a conflict exists between any of them and these Rules and Procedures.