

MINUTES OF THE  
SPECIAL MEETING – CITY COUNCIL  
DECEMBER 13, 2005

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 7:30 p.m. on Tuesday, December 13, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

COMMUNICATIONS:

WRITTEN:

None

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- Parks, Recreation & Cemetery Commission: 1 unexpired term
- Planning Commission: 1 unexpired term

APPOINTMENTS:

None

PRESENTATIONS:

None

PROCLAMATIONS:

Mayor Messina presented a proclamation in memory of Mr. Bob Silva, former Sports Editor for the Benicia Herald.

Mayor Messina read a proclamation for Mr. John Bunch, honoring his retirement from the City of Vallejo Planning Department.

ADOPTION OF AGENDA:

Ms. McLaughlin stated that Council should discuss whether they want to place X-C on the next Agenda, as it was discussed within the past twelve months. It cannot be voted on until the next Council meeting. Council can have general discussion on the item, but no decision can be made. Council will need to take a vote to put the item on the next agenda. Council Member Patterson asked if she was correct in her understanding that due to rules and procedures, Council will have an opportunity to discuss the items, but will not be voting on them this evening. Specifically, if Council wants to take up an item, they must vote whether they want to reconsider the item if it was voted on in the past year. Ms. McLaughlin verified that Council Member Patterson's understanding was correct.

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

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

COMMUNICATIONS:

WRITTEN:

Various items submitted. Hard copies on file.

PUBLIC COMMENT:

1. Bonnie Silveria – Ms. Silveria stated that she was speaking on behalf of the Historical Society. The Historical Society and the Dominican's have purchased a clock to be placed on the 600 block of First Street (as a Christmas gift). They were hoping to have the clock up by Christmas, but it looks like it will not be up that soon.
2. Joel Fallon – Mr. Fallon stated that the process for picking the candidates for Open Government Commission was flawed. He recommended four additional commissioners be chosen from the list of candidates that Council has received, but not interviewed. He read a portion of the Boards and Commissions application form. He reviewed all applications that were submitted for the Open Government Commission. It is clear that Council's intention for diversity has not been met. Three of the five commissioners get their meat and potatoes from the oil interests, making for an almost certain potential for conflict of interest. Only one of the five complied with direction to 'state why you desire to serve – your own goals and objectives for office.' The timing of the applications indicates a shortfall in the process. Some of the applicants may not have enlisted, but have been drafted. The rejected applicants applied early and met the Council's criteria for diversity and avoidance of conflict of interest. He urged Council to get balance and diversity on the Commission and select four additional commissioners from the list of rejected candidates.
3. Dick Lubin – Mr. Lubin reviewed a recent comment by a member of the public regarding the new Council Members acting honest, ethical, and acting in the best interests of Benicia. He discussed the Police and Fire Department labor negotiations. He discussed the campaign signs placed around the City by the expressing support for Council Members Hughes and Schwartzman by the Police

and Fire Departments. Although the Council Members may not have solicited the endorsements, they used the endorsements on their own advertisements and signs. They used the group's support. They have a responsibility to maintain their integrity and avoid the appearance of impropriety. They should excuse themselves from contract negotiations. The Mayor has set such low standards for what is right and fair. He hopes the new Council Members will set their standards higher. He discussed the toxic waste issue on Rose Drive, the armament in the Tourtelot area, the attempt to have coke domes on the waterfront, and the attempt to cut down 100-year old oak trees to make room for more houses. Those are not actions of an open government. None of that would have taken place if we had a true open government.

4. Marilyn Bardet – Ms. Bardet stated that she wanted to discuss what changing the Rules of Procedure might mean to the public. Congressman Miller was concerned about the issue of changing the rules when he spoke to Benicia. He was alerting us to the developing crisis that was happening in government. The best place to exercise democratic principles is in a small town like Benicia. Who benefits and who will be slighted if meetings are to begin earlier and have limited public comment? She discussed an experience at a School Board meeting where a neighbor was told that she could not speak until the end of the meeting. This woman had a toddler and a 10-month old at home. She is concerned that Council Member Patterson may have to miss some closed sessions if the meeting time were to be earlier. That is a crucial issue for future Council Members as well, not just Council Member Patterson. This is also an issue of an arbitrary action of the Mayor to remove Council Member Patterson from various subcommittees. She has expertise and experience for the subcommittees she is being removed from. She stated that she could see starting the meetings at 7:00 p.m. She urged Council not to limit the time for public comment. She urged Council to reconsider the suggested changes to the Rules of Procedures.
5. Sue Johnson – Ms. Johnson stated that it is important that if Council manipulates the meeting start time and public comment time, the perception of the public will be that Council does not care what the public thinks. This does not sound democratic to her. She was a Peace Corp volunteer in West Africa. She saw lots of corruption and payoff in that government. She thought it was different in the United States. The proposed changes do not make her proud of her government in Benicia. She was disturbed by the actions taken by Council at the last Council meeting with regards to Mr. Lobdell's building permit. She was not allowed to talk after it was stated by City Staff that if the project were brought to the City today, it would be approved. She discussed the issue of the lot line adjustment and building permit. The fact that Staff would approve the project as is if it were brought to the City today is outrageous. The City is ignoring its own municipal code. She urged the public to learn from the Incline Place appeal experiences. Council should not manipulate the rules to discourage the public's participation in government.
6. Shirin Samiljan – Ms. Samiljan stated that she was speaking as a citizen and a member of BUSD. She discovered that the majority of the people speaking at the podium might not be well informed on the details of the decisions being made,

- but have very strong emotions on the issues. Open government remains ‘the issue’ in Benicia. The School Board has looked to Council towards setting the standard for open government. She would like to move the School Board towards a vocal acceptance of open government. She asked that the Council not step back from that commitment. It would help the BUSD if they and Council were on the same page on this issue. Regarding meetings as a whole, she greatly dislikes PowerPoint presentations. She dislikes having special meetings called. It sets off ‘red flags’ that sometimes make the public feel like they are being tricked. Discussing changing the meeting time during a special meeting is dangerous.
7. Bob Craft – Mr. Craft reviewed his concerns (stated at the 12/6 Council meeting) with the proposed changes to the Rules of Procedures. The intent of the changes can only be to limit public comment. Aside from Council, the Planning Commission is the most important body in local government. It is entirely in order for Council to employ a viable and meaningful advice and consent procedure for appointments to that commission. If the Vice Mayor has comments or reservations about the appointee, that should be Sunshined. The procedure in place should be retained. The basket of proposed changes is being marketed as open government. The fundamentals of open government are transparent governmental processes, readily available information, and public participation. None of the proposed changes will enhance open government.
  8. Chuck Maddux – Mr. Maddux stated that he wanted to lambaste the so-called experts that did the study on historical homes in Benicia. He was ashamed and his wife was offended by the lack of true fundamental finding of information of the homes of our City. He has an old home that he is proud of. He discussed the issue of a porch on his house. No effort was made to contact any owner of an historic house to find out what they knew about their own homes. There were two scathing articles in the paper regarding the study that the so-called expert did. He urged Council not to pay the woman \$75,000 until she is held responsible for her misdeeds and actions. He stated that the Historical Society is hoping to oversee future studies as a result of this woman’s study. She did not do her job.
  9. Karen Burns – Ms. Burns referred to Benicia as ‘Benero’ and stated that Benicia and Valero are slowly becoming one. She personally rejects a regime where Council meetings begin at 6:30. It will keep hard working citizens away from the meetings. There are no good reasons to implement the change. There are no redeeming qualities for the change. Removing Council Member Patterson from the committees that she has expertise and past knowledge demonstrates the Mayor’s desire to limit positive growth for Benicia. A deft honest community centered Mayor would place the interest of the citizens above his own political power grab. Dissolving committees which are needed for the proper growth of Benicia is shocking. Will the Arsenal become one housing developing after another? Will it become another project like the one on First Street? What other areas will lack oversight? Why would anyone who claims to have the best interest of the City wish to squelch citizen’s comments? Why are the citizens being told they will be censured? Isn’t it the citizen’s right under the Brown Act to speak openly and within reasonable time limits? Aren’t the citizen’s feelings and

thoughts valuable? Why was the previous appointment process dissolved? Why are we going backwards? She urged Council to support open government.

10. John Woods – Mr. Woods was speaking as himself and as Santa Claus. He placed two signs reading ‘Merry Christmas and Happy New Year’ at the foot of First Street and in the City Park. The signs were professionally made. The signs were placed by the City’s ‘Happy Holiday’s’ signs. The signs were removed sometime before Monday morning. He cannot find out what happened to the signs. In accordance with BMC Title 18 (Signs), he wished to appeal the removal of both signs. He expects the signs to be returned per the ordinance. He requested a hearing be scheduled to determine the legality of the signs being placed in both positions. No one in the Parks knew anything about Title 18. The ordinance has been in effect since 1980. There are hundreds of sign violations in town are covered by the ordinance. All A-frame signs are illegal per the ordinance. The Parks and Community Services Department issued a memo regarding political signs. That memo has zero impact and effect because it was not incorporated in the sign ordinance. He presented the Mayor with a bag of coal so he could forward it to the grinchers that removed his signs.

Vice Mayor Schwartzman asked Mr. Woods if he knew who removed his signs. Mr. Woods stated that the Parks and Community Services Department removed his signs.

Mr. Erickson stated that placing signs in the City Parks require the City’s permission. It is standing City practice to remove signs that are in City Parks.

Council Member Patterson asked what the requirements for anybody putting signs on City property were. Mr. Erickson stated that any sign on City property requires the City’s permission.

Ms. McLaughlin stated that the City could regulate signs by police power and as a property owner itself. The City is not allowed to post religious signs.

Vice Mayor Schwartzman stated that there are numerous sign violations around town. This is an issue that should be addressed in the future.

Ms. McLaughlin stated that the issue of the sign ordinance was placed on Council’s list of priorities.

11. Mary Frances Kelly Poh – Ms. Kelly Poh stated that the CAC has been in Benicia for 37 years. Almost 500 people came to the CAC’s Thanksgiving Dinner. They are working on the Holiday party. They are working on getting presents and toys for children in the community. They are having a difficult time. They have eighteen families left to provide for. They have done approximately sixty families so far. They have ‘adopted out’ all of the senior citizens. They have not received enough toy donations this year. They need a bicycle, gift certificates for teenagers, etc. She pleaded with the community to step up and donate towards this cause.

- Council Member Whitney stated that Benicia has a very giving heart. He urged the community to open up their pocket books and hearts. He suggested Council dip into their own pocket books to donate the much needed bicycle. Ms. Kelly Poh stated that if they received more than they need, they divide the extra funds/toys up to other organizations. She provided Council with a copy of the CAC's most current newsletter. Council Member Whitney stated that citizens could use Script for donations as well. Council Member Whitney told Ms. Kelly Poh to take the bicycle off of the CAC's list because the Council Members would make that donation happen.
12. Cathy Forbes – Ms. Forbes state discussed the proposed changes to the Rules of Procedure with respect to closed session items. This could have an effect on the current and future City Council members. Most citizens do not work in Benicia. They will/would not be able to make it to the earlier start time. Regarding the proposed changes to public comment, it would limit the public comment to approximately six people. That is not enough time for a cross sampling of people to provide input on the issue.
  13. Susan Street – Ms. Street stated that tonight was a historic moment. This is the first time that she has agreed with John Woods on anything. She is accustomed to having signs removed too. She did not know about the sign ordinance. She suggested the City publish the fact that people cannot put private signs on public property. She suggested that the City create a map showing public property and where signs cannot be placed.
  14. Tim Morgan – Mr. Morgan stated that the agenda packet was confusing. He is a commuter and does not usually get home until after 7:00. He agreed with many of the comments regarding concerns about open government. The citizens have to be alert to the potential divergence between Benicia and the refinery.
  15. Jon Van Landschoot – Mr. Van Landschoot stated that he was not going to speak. He was going to place tape over his mouth in protest for what Council may do later tonight. Mr. Van Landschoot then taped his mouth closed and held up signs (not readable). Various citizens joined him.
  16. Jeanine Seeds – Ms. Seeds stated that she wanted to discuss the proposed change to Council meeting start time. Council Member Patterson is the only Council Member that she voted for. How dare anybody limit what they told the citizens was a viable candidate. Council belongs to the citizens. All the processes belong to the citizens. When did it change where the Council tells citizens what to do? She was disappointed that Council Members Hughes and Schwartzman did not ask to see all the candidates for the Open Government Commission. None of the commissioners showed up to any of the meetings for eighteen months. What kind of questions did the Mayor ask the candidates? He did not make them follow the requirement that they write why they were interested in serving on the commission. The Council Members need to do their homework. If they are going to limit public comment time, they need to be available during office hours for their constituency to come talk to them.
  17. Bob Mutch – Mr. Mutch encouraged citizens to hang around when the time comes for alternate ideas and proposals to be shared to actually participate in the process.

The brainpower should not be wasted on complaints, but on ideas to make the processes better.

CONSENT CALENDAR:

None

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

Approval of modification to the application for Regional Measure 2 Funding for the Park/Industrial Intersection and Park-and-Ride Facility Project:  
Dan Schiada, Public Works Director, reviewed the Staff report.

Council Member Whitney asked what timeline the City is looking at with regards to getting the money. Mr. Schiada stated that the City wants to proceed immediately with construction (February/March 2006) on phase one. Council Member Whitney asked if there would be shelter at the Park and Ride. Mr. Schiada stated that phase one would not include a shelter. The shelter would be included in phase two. Council Member Whitney asked why riders would use the bus stop if it were not sheltered. Mr. Schiada stated that they would like to put the shelter in, but for now, they are working with limited room. Staff will take a look at a temporary fix to the issue of shelter through the design process.

Council Member Hughes asked Staff to clarify the budget costs for phase two. Mr. Schiada stated that in phase two, Staff is incorporating a project that was included in the Traffic Mitigation Fund (\$575,000) to supplement some additional RM2 money for the Park and Ride facility. There is not a final cost estimate for phase two. Staff wants to go ahead with phase one to get a good feel for ridership, who it will attract, and utilize that information when developing phase two of the project. Phase two is a couple of years down the road. The Traffic Mitigation Fund can only be spent on certain identified projects. Staff is comfortable that the money set aside for that fund will stay there.

Council Member Patterson stated that Staff used a categorical exemption for CEQA clearance. She asked what the City was doing with regards to storm water management runoff. Mr. Schiada stated that the project is not adding any new drainage facilities. There are existing drainage facilities out there. The City will be moving forward with the citywide storm water management program. With this particular project, the City has not identified specific storm water improvements, other than the relocation of one of the storm drain inlets out there. Council Member Patterson stated that she would like Staff to seriously consider, when looking at phase two, to incorporate the types of landscaping techniques that work for storm water management. That would add to the appearance and making it a more inviting place for people to wait for their rides. For the success of phase one, the City needs to provide the advertising, support, and public notice for the service. Many transit services have failed without that. The City has an amazing Transit Manager, so she wanted to make sure that was institutionalized. She stated that the folks at the

Ferry service in Vallejo might have some suggestions with regards to temporary shelter and suggested Staff look into that.

RESOLUTION 05-195 - A RESOLUTION SUBMITTING A MODIFICATION TO THE APPLICATION TO THE METROPOLITAN TRANSPORTATION COMMISSION FOR ALLOCATION OF REGIONAL MEASURE 2 FUNDING FOR THE PARK/INDUSTRIAL INTERSECTION AND PARK-AND-RIDE FACILITY PROJECT, PHASE I

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

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

NEW BUSINESS:

Mayor Messina suggested that most of the speakers have muddled some of the items together; Council will probably do the same. In terms of decisions, Council can make a number of decisions with regards to the Rules of Procedure. With regards to the proposed ordinances, decisions must be put off until the second meeting.

Ms. McLaughlin stated that regarding item X-A, Council could deal with the re-ordering of the agenda tonight. With regards to the Planning Commission appointments, Council needs to take a vote on how they want to move forward with how they process appointments and put it on a future agenda.

Mayor Messina called for a 5-minute break at 8:50 p.m.  
The meeting resumed at 8:55 p.m.

Mayor Messina stated that he has been Mayor for six years. This is the fourth Council that he has been with. At the beginning of each Council section, they tweak a few of the Rules and Procedures. He has heard a lot over the past two years especially, that Council has not been good at transacting public business. The problem we have is that the main business of the Council is being conducted at later hours, which is not good sunshine. People are not able to participate in important items at such late hours. As a Council, we need to focus on how better they can transact the business of the City.

Revisions to Rules of Procedure for the Conduct of City Council Meetings:

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

First reading of an ordinance amending Section 2.52.030 (Members – Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code:

Heather McLaughlin, City Attorney, reviewed the Staff report and proposed changes for items X-A, X-B and X-C.

Mayor Messina stated that currently, closed sessions begin anywhere from 6:30 forward. Sometimes there are consultants present. Sometimes the closed sessions run as late as 8:30 or so. He tries to end the closed sessions by 7:30. Under the proposed changes, the closed session meetings would always start at 6:30.

Council Member Hughes stated that prior to being elected, he spent a lot of time in the audience. He was always frustrated when the meetings did not start on time. He is not sure why the closed session would not start half an hour earlier to ensure an on-time start for the regular meeting.

Vice Mayor Schwartzman stated that if there is an occasion where consultants are on hand for closed session meetings, and they had to stick around until 10:30 or 11:00 p.m., it could get very expensive, which is not right. He would rather Council try and time the meetings better. If there is going to be a closed session, start it prior to the regular meeting.

Mayor Messina stated that prior to being on the Council, he was displeased that public comment occurred at the end of the Council meeting. Many of the benefits we achieved today were not possible back then. His first act of Mayor was to move public comment to the beginning of the meeting so the public could have a chance to participate. Moving public comment to the end is not fair to the citizens. He wanted to find a way to incorporate all the changes to get Council to be able to conduct the main business of the City.

Vice Mayor Schwartzman stated that he would prefer the closed sessions be held prior to the regular meeting. He would rather have a time period to get the closed session done rather than fracture the meetings. He would feel a lot better if Council got one section of the meeting done at a time. Having one agenda makes sense. There isn't an opportunity for public comment prior to the closed session. He agrees that the public comment should be done at the front, but Council needs to conduct business. He wondered if it would be better to limit public comment up front to items off of the agenda, then allow as many people that want to talk be able to talk. If someone wants to speak publicly on an agenda item, they would wait until that item is discussed. On the initial public comment for items off of the agenda, maybe the time should be limited to three minutes. On the public comment for items on the agenda, the time should be five minutes.

Council Member Hughes stated that Council is trying to attack a balancing act. It would be unfair to the community to allow the public comment to go for three hours and conduct business at 11:00 p.m. Council should begin to take a look at allowing public comment to focus on non-agendized items because there is an opportunity during the regular meeting to provide public comment on the agendized items. There is a lot of passion in the room today. There are many conflicting views and opinions on how much time to allow for public comment. Thirty minutes may not be enough time and two hours

may be too much time. Council needs to meet somewhere in the middle. Maybe three or four minutes would be enough time.

Vice Mayor Schwartzman stated that if Council moves towards limiting the speaking time to three minutes, they should not limit the timeframe on how long it could go on.

Council Member Hughes stated that when he initially heard about the proposed start time of 6:30, he felt it would be more inclusive. At the late hour, the public is not engaged. He too is a commuter. It would not be easy for him to get there earlier, but he could make it work. He suggested starting at 7:00.

Council Member Whitney stated that he commutes from Vallejo. He will be at the meetings when they are scheduled to start. Council needs to craft a solution that will give them an open, honest, and effective business meeting. When the meetings go so late, it is not effective government. The meetings should end by 10:30 p.m. It is important that Council not exclude the unknown citizen watching on TV. A fair compromise to the issue of public comment might be to limit the public comment to non-agendized items and keep it at three minutes.

Vice Mayor Schwartzman stated that Council should strike a fair balance somewhere in the middle. He suggested having the regular meetings be from 7:00 p.m. to 11:00 p.m. The public comment timeframe should not be limited, but limit the time per speaker to three minutes (on non-agendized items). He questions how effective, proper, and efficient the decisions would be when made at such a late hour.

Council Member Hughes asked how the agenda items are prioritized. Mayor Messina stated that the Mayor and City Manager prioritize the agendas. Mr. Erickson stated that items of greater public interest are usually put up front.

Council Member Patterson stated that the prior Council agreed that Council Members would make their requests through the City Manager and copy Department heads to ask questions, seek information, or have a discussion with Staff. The City Manager is responsive and usually lets you know within hours whether or not Staff can get to a requested item.

Public Comment:

1. Bob Mutch – Mr. Mutch stated that Council needs to end meetings earlier on a consistent basis. Council needs to maintain a respective level of citizen participation. The participation needs to be kept concise and focused on the business at hand. He suggested limiting public comment to three minutes. He supports the idea of limiting the public comment should be limited to non-agendized items. He encouraged spokespersons to speak on behalf of a group that has the same views. It might be necessary to add another meeting to each month.
2. Kitty Griffin – Ms. Griffin stated that she was not comfortable with the City Managers comment about having the public comment being at the end of the meeting. The public wants to have input on the items being discussed. She agreed

- that the meetings are going too late. She has been irritated with groups of people taking up two hours delaying the meeting. There needs to be a firm start time for the meeting. She stated that a 7:00 start time would be a good compromise. Cutting the public comment time to three minutes would be difficult for people to adjust to. Maybe a limit of four minutes would work. She suggested adjusting the agendas so that the topics of greater public interest are earlier on the agenda.
3. Susan Street – Ms. Street stated that people need to participate. Starting at 7:30 is a fair time to start. People need their sleep, so ending at 10:30 or 11:00 would be fair. Adding another meeting in the months that have 31 days would work.
  4. Jeanine Seeds – Ms. Seeds asked for clarification on the proposed changes to public comment. Mayor Messina clarified that under the proposed changes, the public could speak on non-agendized items up front, and then they could speak on the agendized items when that item is up for discussion on the agenda.
  5. Chuck Maddux – Mr. Maddux stated that he does not have a problem with starting the meetings at 7:00 p.m. The closed sessions should be held prior to the regular meetings. One of the main reasons the meetings go so late is too many important items are put on any one agenda. Council should adjust the agendas so they reflect a capability to speak at the proper time. Add another meeting if need be. Don't put all the 'hot' items on one agenda.
  6. Constance Beutel – Ms. Beutel stated that democracy is messy. She urged Council not to start the meetings at 6:30. The public would not be able to participate.
  7. Marilyn Bardet – Ms. Bardet stated that Council should keep the closed sessions before the regular meetings. The public comment should not be limited to non-agendized items. Public comment could be limited to four minutes. She suggested Council do a study to see how many people come to the podium for public comment.
  8. Bonnie Silveria – Ms. Silveria stated that she has been coming to Council meetings for twenty-five years. Making decisions at late hours is not such a good idea. She would like to see the public comment period reduced the three minutes on non-agendized items. Maybe there could be an opportunity for people that have to leave have the opportunity to write down their concerns and have someone else read them into the record. Starting the meetings at 7:00 would be nice.
  9. Bob Craft – Mr. Craft stated that he is from the 'if it's not broke, don't fix it' school. When the meetings go late, it is just as much fault of the Council as the public comment. He has heard some really protracted comments on some very meaningless things take place up at the dais. He preferred the meetings start at 7:30 p.m. If Council can't get its business done, meet on all third Tuesdays to discuss mundane items. He is concerned about limiting public comment to three minutes. He is concerned about limiting the public comment to non-agendized items. He has submitted written comments before (when he could not attend the meetings), but unless such comments are absorbed through osmosis, they have zero effect.
  10. Belinda Smith – Ms. Smith stated that she was in favor of 'action items.' She suggested requiring that of the other committees as well. Regarding the 15-minute rule for Staff time, she had some concerns. She was opposed to eliminating the

Vice Mayor's review for Board and Commission applicants. Every Council Member should review the applications submitted for Boards and Commissions. She would be opposed to a 6:30 start time. She suggested adding meetings on the fifth Tuesdays of each month. Better conversations need to occur between Council and Staff on what to be placed on the agenda. She is opposed to a time limit on public comment. It is not required for citizens to submit a card to speak, so that should not be included in any proposed changes.

11. Jon Van Landschoot – Mr. Van Landschoot stated that the EDB changed its start time to 5:30 and not many people show up. Its next meeting will be at 4:00 p.m. The HPRC meetings start too early as well. Council should standardize all commissions and boards. People can't make meetings when they start at 5:30. He suggested adding more Council meetings to the calendar. He pleaded with Council to personally interview all applicants.

Council Member Patterson stated that she heard more than once tonight that the point of public hearings and public meetings is that there will be public comment. She was heartened by the appearance of the public tonight. Council needs to pay attention to what the public is saying. The City has a Sunshine Ordinance. She read the opening goal of the Sunshine Ordinance. That needs to be Council's guidance for making a decision about the suggested changes. To what extent will the changes increase public involvement and enhance public knowledge. To that extent, there are a number of inconsistencies in the current Rules and Procedures that are in conflict with the adopted ordinance. She suggested setting aside most of the suggested changes and have a proper process. Bring the rules and procedures in compliance with the City's ordinance. She suggested having a workshop so the concerned citizens could come and work out some solutions. Council's job is the public's health, safety, and welfare.

Council Member Hughes stated that he respectfully disagreed with Council Member Patterson's first point. Council represents 28,000+ citizens, not just the ones that show up to the meetings. There are a lot of people that cannot make it to the meetings, which is why the meetings are televised. He will continue to bring back to Council the feedback that he receives from citizens. He feels comfortable Council can reach agreement on many of the issues tonight.

Council Member Whitney concurred with Council Member Hughes. You can get paralysis by analysis. There will never be total harmony on all issues in town. Council had some relative agreement tonight that it would be okay to start the meetings at 7:00 p.m. He thought there was some agreement that the public comment should be limited to non-agendized items since the public can come up and talk on any agendized item when the item is brought forward. He is open to the idea of limiting the time to three or four minutes. It would work for the benefit of all. Ending the meetings at 10:30 or 11:00 p.m. is okay with him.

Vice Mayor Schwartzman stated that he was comfortable with starting the meetings at 7:00. He is comfortable with ending them at 11:00, since Council can make a motion to continue to start new business or continue the meeting.

Council Member Hughes stated that he was comfortable with 7:00 as long as it was a fixed time. He supported closed sessions beginning at 6:30, not 7:00.

Mayor Messina stated that he was comfortable with a 7:00 start time. He was curious to see what Council thought about start times for closed sessions.

Council Member Hughes stated that he was okay with a start time of 6:00 or 6:30 for closed sessions.

Council Member Whitney stated that it is important that whatever the regular meeting time is, the closed session start before that, so that the regular meetings start on time.

Vice Mayor Schwartzman stated that if the closes sessions started before the regular meetings (which are proposed to start at 7:00), the public might not be able to be present to speak publicly before the closed session begins.

Council Member Patterson stated that the difference between 7:00 and 7:30 start time is very crucial. Parents need the extra time to get home life taken care of before they can go to the meetings. She proposed a 7:30 start time for regular meetings and that closed sessions be held prior to the regular meeting.

Vice Mayor Schwartzman stated that he was comfortable with limiting up front public comment to non-agendized items and limiting the time to three minutes per person, but no time frame for public comment.

Council Member Hughes stated that he was in agreement with Vice Mayor Schwartzman.

Council Member Whitney stated that he agreed with Council Members Hughes and Schwartzman.

Mayor Messina stated that he too was in agreement with Council Members Hughes, Schwartzman, and Whitney.

Council Member Patterson stated that it seems hasty to be making decisions on these issues tonight.

Ms. McLaughlin stated that because of the provisions in the Open Government Ordinance, Council has to go back and amend the ordinance, which is a two-step process. They can be brought up for reconsideration at the next Council meeting.

Council majority agreed that public comment on agendized items should remain at the five-minute limit.

Council Member Patterson stated that she was not comfortable with the labeling of agenda items because the financial items may not be of extreme public interests. The agenda needs to be organized so that the items of extreme public concern are placed

earlier on the agenda. Council has heard that request many times. The proposed ordering of agenda items does not make sense. She suggested Council look at the way other Council's arrange their agendas.

Council Member Hughes stated that Council needs to get the most important things taken care of at the beginning of the meetings.

Council Member Whitney suggested swapping the proposed agenda items IX and X. If there is a financial item that is pressing, it could be moved up.

Council Member Patterson stated that there is a very important agenda item (Valero) that needs to be discussed tonight. Council is spending a lot of time trying to craft something. Would Council want to design an organizational chart in this manner? She suggested going back and getting more input from Staff, do some surveys, and have a more thoughtful presentation. She suggested having a workshop to discuss the proposed changes. In the meantime, let's get to the City's business.

Mayor Messina stated that he would be comfortable going with 'action items' and then 'informational items.' as it would give Council more flexibility. It would be less clear to the public whether there were financial implications or not, but maybe that is the lesser concern.

Vice Mayor Schwartzman stated that combining them and prioritizing them might be a better way to go.

Council majority agreed to combine IX and X and call it 'action items.'

Mayor Messina stated that the issue of opportunity for unfinished public and unfinished closed session goes away (because of the earlier decisions).

Council did not state any issues or problems with 'comments from City Council Members.'

Mr. Erickson stated that the 15-minute rule is a nice guideline to use. It is a conservation of Staff resources. It is a good idea.

Vice Mayor Schwartzman asked if this (staff time) has been an issue. Ms. McLaughlin and Mr. Erickson stated that it had sometimes been an issue in the past.

Council Member Hughes asked if he had a need for Staff to spend more than 15-minutes on an issue, what the procedures he would need to follow are. Mayor Messina stated that request and decision would need to be discussed at an open Council meeting.

Council majority agreed that the 15-minute rule would stay the same.

Mayor Messina stated that regarding the proposed changes to the appointment process and the position of the Vice Mayor in terms of recommendations. Council was flawed in its adoption of the procedure two years ago. All Council Members should feel free to interview any/all applicants/appointments. Limiting the interviews to the Vice Mayor was a mistake. He is trying to propose that all Council Members become more involved in the process.

Council Member Hughes stated that in hindsight, instead of just interviewing the five candidates, he should have interviewed the other nine as well. He would like to see stronger language on #3 on page X-A-23. It is incumbent upon all Council Members to interview all applicants.

Council Member Whitney asked if Council would be on thin ice with regards to comments to the Mayor on the interviews. Ms. McLaughlin stated that it could lead to a violation of the Brown Act. If the Mayor is considering the information that Council provides to him, he could develop the collective concurrence on as to who is the better appointment. If the Mayor does not respond to the comments, technically it would not be a violation. The Mayor would have to disclose all information presented to him when he makes the appointment. Council Member Whitney reiterated that Council needs to be very careful because Council opens itself up to suspect intention. Council, not the public, gives the title of Vice Mayor. He has always had an issue with this because Council is creating powers that were not intended by State law, as the Mayor's powers are. For that reason, he has a problem with this issue. All Council Members receive copies of applications for boards and commissions. He urged citizens to fill the applications out as completely as possible. The Mayor has the appointment power. Council has gone down a path (with regards to appointments) that is very disruptive.

Vice Mayor Schwartzman asked for clarification on a document he had with regards to 'request for policy consideration.' Ms. McLaughlin stated that it was the item where Council can't take action to approve/disapprove the change. On this particular part of the item, Council has to vote (by three members) to continue it to the next meeting. Action can be taken at the next meeting. This is because Council has modified the rule regarding appointments within the last year. It can be discussed, and they can vote if they want to take action on it. If they want to take action on it, it can be placed on the next agenda.

Council Member Patterson stated that she finds Council Member Whitney's comment on the issue of appointments being politicized amusing. The Open Government Commission is a good example of what does not work very well. It was an embarrassment and insult to the community. It did not show good faith in seeking the integrity of the commission. Not because the appointments themselves are poor or bad, but because they don't represent the diversity of the community. When you have one kind of sector of the community represented on the commission, you are not getting the full benefit of the community. The politicization did not start here two years ago, it started a while ago. The defense of having the Vice Mayor doing the interview and formal report to the Council as needed is because of the Brown Act issue. It provided the voice that was not being heard. The process worked well. She worked well with the Mayor. The Mayor appreciated some

of the assessments they had. With the exception of the Planning Commission, they (she and the Mayor) tended to agree. She suggested Council give it a try. Getting rid of this provision would be taking a step back in time.

Vice Mayor Schwartzman has stated all along that it is the power of the Mayor to appoint. It is the responsibility of all Council Members to do their due diligence when looking at applications for boards and commissions. The question is do they interview all applicants. If Council decides to keep things the way they are, he will interview all application and give the Mayor his thoughts and feelings on the issue.

Council Member Hughes stated that he thought it would add a lot of value if all Council Members interviewed all applicants. They would bring their information to the Council meetings, the Mayor could make his appointment, and Council would vote up or down.

Vice Mayor Schwartzman expressed concern about the time required for the applicants to be interviewed by all Council Members. If there are ten applicants, that would mean fifty total interviews. He does not have a decision on this issue tonight.

Mayor Messina stated all Council Members should interview the applicant that the Mayor is proposing be appointed. In terms of the other applicants, if they could provide the Mayor input. If they provided input, and he did not act on it, that would be of value to him. It would be a one-way street and would not violate the Brown Act.

Ms. McLaughlin stated that although the Mayor is making the appointment, the other Council Members have to vote on the appointment, which would make it a Brown Act issue, unless it was agendaized.

Vice Mayor Schwartzman stated that if this continued the way it is, there is no specified manner in which it has to take place. Early on, some of the methods and ways that the information came out were offensive and humiliating to the applicants. He wondered if the manner in which it would be done. His style would be different and might be more palatable. Partially it might be good for someone else to have to interview the applicants.

Council Member Whitney discussed the Mayor's appointment power. Council is swimming upstream on this issue. He does not see the need for this.

Mayor Messina stated that the only action Council can make is to vote to bring this item back to the next meeting for action.

Council Member Patterson asked if this could be voted on due to the way it was listed on the agenda. It does not refer to the item as 'reconsideration.'

Ms. McLaughlin stated that Council could vote on whether to put this on the next agenda. The listing of the agenda item is to give a general idea of what is going on. It does not have to describe each and every action Council will take.

On motion of Council Member Whitney, seconded by Council Member Hughes, Council voted to place this item on the next agenda for consideration, on roll call by the following vote:

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

Noes: Council Member Patterson

Ms. McLaughlin stated that Council did not need to take a vote with regards to the meeting start time being on the next agenda. The start time has not changed in the past year. The start time will be put on the next agenda unless Council directs staff otherwise.

With regards to term limits, Ms. McLaughlin stated that the ordinance has two changes to it: undoing an action done previously by Council this year. Council changed it earlier this year to state that when your time is up (on the Planning Commission), it's up.

Public Comment:

1. Donald Dean – Mr. Dean stated that there are two changes: 1) that the term limit would be eliminated, and, 2) the commissioner would serve until a successor is appointed. The term limit is important. It allows new people to cycle in and maintain the quality of the commission. It would nice to have new people on the Commission but allow people to come back at future dates to serve again. He supports term limits. Regarding the issue of a successor, Council should not consider changing the rules because of an isolated case. It compounds the problem. The seat should be vacant until Council fills it. If they have the ability to serve indefinitely, Council is allowing a lame duck to continue indefinitely. How does that resolve the issue of getting a new person to serve on the commission who can serve a full term?

Council Member Whitney discussed the difficulty Council had in appointing a planning commissioner earlier this year. Mr. Dean stated that the issue was that there was a stubborn Mayor and stubborn Council.

2. Belinda Smith – Ms. Smith stated that she is in favor of term limits. It provides the diversity and is representative of the change in the demographics of the community. Regarding continuing after the term is expired, when she staffed commissions, it was an incentive to staff when the position was vacant, to be more aggressive to fill the position.
3. Jon Van Landschoot – Mr. Van Landschoot asked why Council would want to aggregate a power. Why would they not want to review someone after two or four years of service? Why would they not want to say that they want to vote on that person again? Why would they aggregate their authority?

Vice Mayor Schwartzman asked Staff to clarify the changes to the terms by the previous Council. Theoretically, if someone fills an expired term, could they still have two consecutive full terms? Ms. McLaughlin stated that the language in the BMC states that states that no member maybe serve more than two consecutive terms. It does not say anything about 'full, partial, or unexpired' terms. Vice Mayor Schwartzman stated that he

was fine leaving that the way it is. If the object is to fill the commission, it might be better to start the ‘standoff’ earlier than later.

Council Member Hughes stated that he was in favor of term limits. He is fine with allowing a member to serve until a successor is appointed. He was embarrassed at how political the last go-around went. He was embarrassed by the entire Council that it went that far. He hopes this Council will not allow things to go that far again.

Council Member Whitney is okay with the term limits.

Mayor Messina stated that he does not support term limits for boards and commission, but supports a member of a board or commission serving until they are replaced.

Vice Mayor Schwartzman stated that the flip side of that would be that there would be term limits for Council, which he would be okay with.

Ms. McLaughlin stated that Council could not take action on the term limits. It should be carried over to the next meeting. In order to do the successor issue, Council needs to vote by three.

On motion of Council Member Whitney, seconded by Council Member Hughes, Council voted to place the issue of term limits on the next Council agenda, on roll call by the following vote:

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

Noes: Vice Mayor Schwartzman

Council Member Patterson requested that Council update the Rules and Procedures so that they are consistent with the Open Government, specifically on page X-A-8.

Mr. Erickson stated that one of the things that the Rules and Procedures state that matters to be placed on the Agenda need to get to the City Managers office on the Friday prior to the Wednesday agenda packet distribution. It takes Staff two and a half days to look at an item and do an appropriate Staff report, etc. He suggested Council and Staff exercise agenda management prerogative to say that if it is a policy matter, that it go on the agenda for information the first time around and for action the second time.

Council Member Patterson stated that with regards to a comment made by Council Member Hughes, there are some instances that the source of public input to Council Members needs to be told. The public and Council should have the knowledge about who you got the information from. It is very important in a decision making process. That is why exparte exists in state law. Regarding the comments on the politicization of the appointment process, there should be a little bit of embarrassment about that. The open government appointment process was an embarrassment. She appreciated Council Member Hughes’ comments about his hindsight of wishing he’d interviewed all of the candidates. Many of the applicants for the open government were simply shut down. It is a very unfair attack on the prior Council in trying to open up appointments to the

commissions. There were a lot egregious actions taken. The new Council will be independent in their judgment. Their judgment should be an informed independence, not based on the idea that it was a politicization based on three members of the Council. It was not. She suggested calling the posting of names of the appointments the ‘Memorial Rubay Reminder’ as she is the person that brought that to Council’s attention.

Due to the late hour, Council Member Hughes made a motion to continue with the meeting. Vice Mayor Schwartzman seconded the motion.

Council discussed whether to continue with the meeting, due to the late hour.

Vice Mayor Schwartzman retracted his second to continue the meeting.

On motion of Council Member Hughes, seconded by Mayor Messina, Council did not vote to continue with the meeting, on roll call by the following vote:

Ayes: Council Members Hughes

Noes: Council Members Patterson, Schwartzman, Whitney, and Mayor Messina

Authorization of a six month extension of the Letter Agreement with the Valero Refining Company pertaining to the Utility Users Tax  
Continued to the 12/20 Council meeting.

REPORTS FROM CITY MANAGER:

None

REPORTS FROM CITY COUNCIL COMMITTEES:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:35 p.m.

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Lisa Wolfe, City Clerk