

MINUTES OF THE
SPECIAL MEETING – CITY COUNCIL
DECEMBER 19, 2006

The special meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 6:30 p.m. on Tuesday, December 19, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

OPPORTUNITY FOR PUBLIC COMMENT:

None

PUBLIC HEARING:

Appeal of Rose Center Building Permit:

Mr. Charlie Knox, Community Development Director, reviewed the staff report.

Mr. Schiada stated that the traffic report for this project indicated impacts from additional traffic generated from this project, of which the improvement plans approved. It shows improvements on this project side of Columbus Parkway, where we have added an additional eastbound lane, turn lanes in the median island, and improvements to Rose Drive. They did accommodate and mitigate the additional impacts on the project. Future impacts from not only this project, but from area-wide projects will be covered by the traffic impact fee and posed on this particular project.

Mayor Messina stated that there was an issue raised regarding the applicants standing. It had to do with the section of the BMC that refers to the party of interest and the aggrieved party. The City received correspondence from the opponent and it called out that there might not be standing in this issue. Because they raised it, we need clarification. He asked Mr. Erickson if Staff had researched that issue. Mr. Erickson stated that Ms. Wellman, Contract City Attorney, would be the best person to address that issue. Ms. Wellman stated that the appeal section does not refer to standing. It talks about a person aggrieved by an administrative action. It is a little vague and is not as clear as the standing concepts that are referred to by Mr. Carey in his letter, which are judicial

court proceedings. In judicial court proceedings, it is very clear when a person has standings. In administrative hearings, that is not the case. In this case, there are a few reasons why Ms. Wika may be considered to be a person aggrieved. One reason is that in the City's planning decisions, we are much more lenient when we allow a person to make comments. Usually those who receive notices about projects are considered to be people who would be concerned about how a project goes through the process. Secondly, Ms. Wika has been coming forward and giving public comment in just about every public forum that she (Ms. Wellman) is aware of. Ms. Wika was told that the only chance she would have to appeal this issue was with the issuance of the building permit. She was specifically noticed when the permit was issued and given the chance to decide whether or not she wanted to appeal it, even though it is a ministerial decision.

Mayor Messina referenced the first page of the staff report regarding a person aggrieved. To him, it is pretty clear that you have to be an aggrieved person in order to appeal in this case. He asked if Ms. Wellman was suggesting that because she was advised of her right to appeal, that was specially provided. Ms. Wellman stated that it has already been determined that she would have the right to make the appeal because she was advised that would be her opportunity. This is an appeal of the issuance of the building permit. This is a ministerial, not a discretionary act. If all the conditions were met for issuance of the building permit, Council has no choice but to deny the appeal. Going back to the word 'aggrieved' – she believed the same provision was used by the citizens of Benicia to appeal an issuance of a building permit in other cases. There is precedent of allowing this particular section to be used.

Council Member Whitney stated that he would like to get on with this. He was crystal clear on what the City Attorney is advising Council to do. He would like to hear Ms. Wika's comments and then have Council make a decision.

Vice Mayor Schwartzman stated that he has heard publicly, in this forum, that this would be Ms. Wika's only time for appeal. It would be extremely unfair not to allow her that opportunity. If Council feels that these types of appeals are not proper, then it should tighten up the BMC.

Council Member Patterson echoed Vice Mayor Schwartzman's comments. She added that Mr. Fulton has been aware of all the months of this dialogue with Ms. Wika. Based on good faith, and the fact that it would take less time to hear her out, and have Council rule on the very limited area that Council could rule on, because it is ministerial and not discretionary that the City should proceed.

Mayor Messina stated that he was uncomfortable, but sensed that the majority of Council wanted to proceed, so Council will proceed.

Appellant:

Ms. Wika read the following statement: "I want to address four points: 1) My standing to appeal the building permit under BMC 1.04.100, 2) The project is subject to the conditions of approval for several use permits needed for the project, as established by

the Planning Commission on July 10, 2003, 3) The failure of the City to require compliance with Condition (4 & 5) prior to issuance of a building permit, and 4) The failure of the City to require compliance with Condition 19 prior to issuance of a building permit.

STANDING

I believe that the Community Development Director's authorization of the building permit is the type of action intended to be appealed under BMC Section 1.04.100 and that I am an aggrieved party with standing to appeal. Please consider the following: A) BMC Section 1.04.100 allows administrative actions by city officials to be appealed, B) The action of the Community Development Director determining that all the conditions of approval were satisfied and advising the Building Official that the building permit could issue, was not a written determination, had no findings and was not generally available, unlike other decisions of the Director. It clearly is an administrative action, which even the Director has called ministerial, C) BMC Section 1.104.100 provides for a longer appeal period precisely because with administrative actions, there is not the usual mechanisms for affected parties to find out about the Community Development Director's decision and there is no appeal notification, and D) The developer suggests that I lack standing to appeal under Benicia Municipal Code (BMC) Section 1.104.100 because I am not "aggrieved." "Aggrieved person" is not defined in Benicia's regulations. However, it is defined in the codes for many other cities. The definition has also been addressed by the courts. In a decision by the Supreme Court (Orange County, Sensible Highways and Protected Environments, Inc. (Shape) v. North Carolina Department of Transportation) the court discussed the definition of "a person aggrieved: as follows: "The expression "person aggrieved" has no technical meaning. What it means depends on the circumstances involved. It has been variously defined, adversely or injuriously affected, damnified, having a grievance, having suffered a loss or injury, or injured, or prejudiced, also having cause for complaint. More specifically the words may be employed meaning adversely affected in respect of legal rights, or suffering from an infringement or denial of legal rights."

Next, the legal opinion (City of Hickory Legal Opinion Memorandum No. 00—3) defines an aggrieved person being fulfilled by anyone who is in proximity to the property involved and who objects to the action being pursued.

I am an aggrieved person. I own a business in a commercial center directly across from the proposed development. My business is within 500' of the project area, and the proposed project has the potential to significantly affect access in the area, which has direct consequences for the success/viability and profitability of my business. If people cannot get to my business, they will readily go elsewhere. For these reasons I believe I have been aggrieved by the City's administrative action of the issuance of the building permits when all of the conditions of approval were not satisfied.

THE REVISED PROJECT IS SUBJECT TO THE CONDITIONS OF APPROVAL

The Rose Center Project originally required four use permits:

1) For an Automotive Service Station with Automobile Washing (BMC 17.28.020), 2) for reduced parking (BMC 17.74.060), 3) for two separate fast food restaurants (BMC 17.28.020). All four use permits were approved by a single resolution and therefore all the conditions apply to all four use permits, except where they are clearly specific to one use. An example is Condition 9, regarding a no loitering sign to be posted at the convenience market. Since there is no longer a convenience market, that condition clearly no longer applies. The only use permit no longer required for the revised project is the one for an Automotive Service Station with Automobile Washing. However, the other three Use Permits are still required for the project, including the one for reduced parking use permit. The revised project must comply with the conditions of Planning Commission, which was upheld by the City Council on appeal. The fact that the revisions to the project substitute a use which is permitted for the gas station/car wash does not mean that the overall project does not have to comply with the conditions of approval for the other three use permits. I was not able to appeal the Community Development Director's decision that the proposed changes in the project were "insubstantial," because I was away dealing with my father's death. I certainly expected that the conditions of approval originally established for the project to be fulfilled.

COMPLIANCE WITH CONDITION #5:

Condition #4 approves a reduction in parking to 144 spaces for the development approved by the Planning Commission and Design Review Commission in 2003. Condition #5 states, "that any alteration of the approved plans that would increase the square footage of any use would require an amendment to this approval of use permits." This was a safeguard that the Commission approved to allow for further review should the size of the project change. Please refer to the minutes of the Design Review Commission hearing of Aug 28, 2003 (copy attached and highlighted), which was held after the Planning Commission approved the four use permits. The former Community Development Director explained to the architect of the Rose Center, Mr. Boe, that the addition of mezzanines in the office buildings would be an increase in floor area and would require amendment of the use permit under Condition #5. The developers revised plan has increased square footage of building space by approximately 13,000 sq ft by replacing the convenience market, car wash and canopy and gas pumps with the Long's Store. The footprint of a gas station and car wash cannot be found to be equivalent of the footprint of the Long's Drugs Store for a number of reasons. 1) The canopy over the gas pumps does not count as square footage as defined by the BMC, and 2) a gas station and a drugstore serve customers differently. At a gas station, customers in their cars generally do not use parking. They pull up to pumps underneath the canopy, within the gas station footprint, to receive services. The drugstore customers must find parking outside of building footprint.

Many more people are in a retail use at any one time than are at a gas station, and their time in the store is greater than the time someone is at a gas station. Therefore, Long's has a significantly greater impact on parking than the uses it replaces. Clearly, the increase in square footage of development triggers Condition #5. The Community Development Director does not have the authority to pick and choose which conditions to comply with.

If the project is entitled to rely on Condition #4 for reduced parking, then Condition #5 must also apply.

COMPLIANCE WITH CONDITION #19

Part (a) of Condition #19 requires the applicant to prepare improvement plans for the widening of Columbus Parkway to a minimum curb-to-curb distance of 70 feet with raised landscaped Median Islands along the entire frontage. This condition clearly requires the full 70 ft. width improvements to Columbus Parkway. This was based on the mitigations set out in the EIR, which was used as the environmental review for the project in 2003.

The Community Development Director in his report states that Use Permit Conditions are intended to require developers to construct the portions of rights of way adjacent to development sites necessary to accommodate projected future traffic associated with the development. He states that in this case, that is half the street width because the development is a) only on one side of any street and b) that is the amount necessary to serve the additional traffic generated by the development. He goes on to state that the developer is required to pay fees to cover traffic impacts on streets if needed in the future. Please consider the following: A) The conditions for the Rose Center project show that the city knows how to specify improvements for only the project side of the road if that was what was intended. Condition #19 part B requires widening Rose Drive/State Park Rd to a half street width of 26 feet. Condition #19 part (a) clearly requires full widening of the road; B) This project affects both sides of the road. There is an opening in the median in Columbus Parkway to provide left turn access from the opposite side of the road into the project for traffic westbound on Columbus Parkway. The EIR for the Gateway annexation identifies the need for four thru lanes with the addition of turning lanes to accommodate development resulting from the annexation. Improvements to only one side of the road will result in significant degradation of traffic flow, C) Mr. Knox may be correct that this condition may be excessive. However, the applicant did not choose to object to this condition in 2003 and may not now object to it. However, the applicant may apply to have this condition removed or altered, but only by seeking an amendment to the Use Permit conditions. The Community Development Director cannot pick and chose which condition apply nor unilaterally alter conditions of approval for the project.

CONCLUSION

Business owners and residents need to be able to count on projects being held to full compliance with the conditions that we saw debated and required of a project. Yes, I did lose on appeals of the project in 2003. And at that time I did choose not to pursue the issue in court, in part because of the conditions of approval imposed to ensure the project will not have traffic and parking impacts. I had no reason to believe that the project would not be held to these requirements until the building permit was allowed to be issued in October 2006 without all the conditions being met. It is critical for the City to have trust and credibility with people in Benicia to ensure that what was required of projects actually occurs / results. Anything less means that we have to engage in constant vigilance and mistrust of city actions.

I am appealing to the Council to keep faith with the community. I ask that you make sure that when conditions are required of a project, and we accept that development will proceed relying on an expectation that the conditions will be complied with, that they truly are met.

The developer states that he was vested and that he immediately commenced construction in reliance on these permits and has made substantial expenditures. The developer was fully aware that he was not complying with the above conditions; therefore, he chose to move forward in violation of the conditions.

The conditions of approval have not been complied with 100% on the Rose Center Project. The work on this project should stop immediately until the project is in full compliance with the conditions of approval.”

Opponent:

Mr. Dirk Fulton stated that he clearly think the developer has complied with all of the conditions of approval for this project. Most of the issues were heard on the three appeals that we had - some of which some of the current Council Members were involved in three years ago. Alternatively, if they were to be raised, they should have been raised in June under BMC 17.124 following Mr. Knox’s administrative decision. The developer agreed that Staff’s interpretation of all of the conditions is correct. His project team and Staff knew there was the prospect of an appeal of the issuance of the building permit, even though it was just on ministerial grounds. They were very careful in making sure each and every one of the 58 conditions was complied with. The buildings were plan checked and re-plan checked and readied for building permits to be issued. There was a hold that was placed on them until City staff could carefully review, painstakingly, every detail to assure all conditions were met prior to issuance of the building permit. Upon issuance of permits, they immediately started work and activated the use permits, relied on the permits, spent funds commencing work. He believes he has vested rights to complete the project as established. He thinks the issues of parking, traffic, etc. are germane to discretionary decisions that were made three years ago and are not appropriate to review the ministerial actions of issuing the building permits.

Rebuttal:

Ms. Wika stated that Mr. Fulton had said that she should have appealed this earlier. How was she to know, when thought the last few months she was told that they would be 100% compliant? Until he did this action, she could not appeal. There was no way to appeal it back in June when the conditions of approval were not met. Mr. Knox promised her day after day that the project would not issue until they were met. She could not have raised the appeal prior to October. Mr. Fulton has a bit of an edge on her when it comes to public speaking. He is an attorney and a business major; although she does not think he did that great tonight. However, she is very accurate and the law that stands reaffirms the facts that she has brought forward in her appeal. There is no question that she is an aggrieved party to the action by the Community Development Director of issuing the building permits for the Rose Center Project. Her business is within 500 ft. of the project area and will be greatly impacted by the lack of compliance to the mitigation required by

the conditions of approval that were to be included in the build out of this particular project. There is no question that the revised project is subject to the conditions of approval. All four use permits were approved by a single resolution, therefore all conditions apply to all four use permits. There is no question that the request to reduce parking to 144 spaces was for the 2003 proposal. The Community Development Director released the building permits in conflict with condition #5. Condition #5 required an amendment if there was square footage added – was to keep the reduction related to the project reviewed in 2003. The revised project adds the additional 13,000 of building space to the project, therefore triggering condition #5. If condition #4 applies to the project, condition #5 also applies and the applicant needs to amend the use permit. There is no question that the Community Development Director released the building permits in conflict with condition #19. With all the facts brought forward tonight, Council's only option is to reverse the decision of the Community Development Director. All work on the project must be stopped immediately until all conditions of approval are in full compliance.

Public Comment:

1. Phyllis Wika – Ms. Wika stated that she has managed Benicia Coffee Company with Mary Wika for the past 13 years. Prior to that, she was an elected official. She worked for over 40 years as the County Clerk and Ex-Officio Superior Court Clerk. She has a great deal of respect for the law and for those who follow it. However, there are some people who believe they are above the law and don't have to follow the laws, codes, and regulations that are set forward by the books that we must honor. There is some of this taking place here. There are those who seem to think they can change the law to suit themselves. It is amazing and disturbing for her to see this, as it should be to everyone. She has followed the Rose Center Project from the beginning and she is disappointed in how it has been dealt with by the City of Benicia. It appears that some citizens are treated as though they have some kind of entitlement, and some citizens are not treated equally. She is referring to the Rose Center and its developer, Mr. Dirk Fulton. She has seen the code violations that were allowed on his other project – Parkway Plaza. There is a great similarity to the way he submitted and had plans approved for both projects. After approval, he started making changes that infringed on certain conditions of approval. Now, the Benicia Coffee Company and other tenants of Parkway Plaza must live with these violations. It substantially impacts businesses in the center. When there is not adequate parking, customers will go elsewhere. Why would the City allow this developer to go across the street and do the same thing in the new development? It will greatly impact everyone in the whole area – businesses and residents alike. The City has the responsibility to enforce the conditions of approval on all projects, no matter who the developer is. She feels the Rose Center Project developer has been given preferential treatment over other developers. The fourth finding in the draft resolution on tonight's agenda is wrong. It should be changed if this appeal is denied. The developer came in at the last minute and submitted changes. The changes were approved by the Community Development Director within a few days. After being alerted that the developer was in conflict with the condition of approval set by the DRC, the

- Community Development Director contacted the developer and alerted him of the fact. After this, City Staff assured everyone that the developer had to be 100% in compliance before the permits would be issued. The permits were issued at the last minute before the developer's extension was up. Now here we are. The permits have been issued and the developer has commenced work on the project. The developer is not in compliance with all conditions of approval for the project. It is disgusting to say the least. The citizens need to be able to trust their City government to enforce the codes and laws and apply them accordingly.
2. Tony Weston – Mr. Weston stated that he is a General Engineering Contractor, specializing in sewer work. He received the Rose Center improvement plans. The size of the sewer line raised a red flag for him. He inspected the manhole. He discovered the main line is only 8 inches. The main line always is at least equivalent and usually larger than the lateral line. He assumed the City overlooked this problem. He talked with Mike Roberts. He was told there was no problem tying a 10-inch lateral into an 8-inch mainline – it is common practice in the City of Benicia. Mr. Roberts stated that he had a professional report stating such. Mr. Weston stated that he had his office call City Staff and request documentation on other locations where this scenario exists. He was told he would have the report by the following Monday. Mr. Roberts refused to give Mr. Weston any examples of such scenarios because he had prior commitments to City Council and did not have time. Mr. Roberts later called Mr. Weston and told him he would leave a utility map for the entire City of Benicia and he could find it himself. Mr. Weston stated that he did not think he would find anything, because he did not think it was common practice. An engineer at Mr. Weston's business stated that downsizing sewer lines was not common practice – he had never heard or seen this being done. It is the developer's responsibility to upsize the line all the way to the sewer lift station. In this case, Mr. Fulton is leaving the City approximately 1,000 feet short of the lift station. This is a cost of approximately \$500,000. This project needs to be investigated. There needs to be an internal investigation within the City of Benicia. The project was based on a 4% slope. When Mr. Weston looked at the mainline, it is falling on less than ½ % slope. This sewer system will not work. It looks like Mr. Fulton is trying to save money and not have to make it to the lift station. Downsizing on the sewer line is not common practice.
 3. Karen Posey – Ms. Posey stated that she has stated her concerns at various City Council meetings in the past few months. Her biggest concern is the safety of citizens who will encounter the Rose Drive and Columbus Parkway intersection. She has read the EIR that was used for the project. She was astounded that the developer was allowed to use an EIR that was 20 years old. If the City followed the Western Gateway EIR, this area would not be in the shape it is in today. Council is making a decision tonight to ignore this EIR from 1988 again. It is stated in that document that Columbus Parkway must be widened to at least four through lanes, in addition to turn lanes, and traffic lights, which must affect the impact on the roadway. Ms. Posey stated that she was totally offended by comments the City Manager made at the last Council meeting. He stated that the developer was 100% compliant with the conditions of approval. That is not true.

It makes her extremely uncomfortable that a City official would stand before the Council and make such a dishonest claim. The Community should not have to check these projects to make sure they are in compliance. That is the City Staff's job. If Staff cannot do this correctly, we need to get someone else in place that can. She has spent entirely too much time looking into this project to be sure that Mr. Fulton is not slipping through the cracks as he did with the mess at Parkway Plaza. Mr. Fulton's attorney wrote a letter to the City trying to convince it to turn its back on the fact that he is not compliant with the conditions of approval because Ms. Wika is not an aggrieved person to this decision. Ms. Wika is an aggrieved person and all citizens who drive or walk through the area are aggrieved citizens. The City needs to stop the project from going any further. This project needs to be treated as a new application.

4. Jeanine Seeds – Ms. Seeds stated that she was at the initial meeting when this project was first presented in 2003. She did not know that the project would go from what was presented that night to becoming a whole new project. If a project changes that much, there should be additional noticing and posting. As far as the 144 parking spaces, that is ludicrous. No matter what he does with the project, there will be 144 spaces. There needs to be some correlation between the uses. She has questions about the drive through pharmacy at Longs. What type of emissions will be occurring? She has concerns about the size of the sewer line. She has concerns about the ½ road issue. It will cause problems.
5. Tom Carey – Mr. Carey stated that he wanted to address the issue of the standing of the appellant to raise this appeal under the BMC. He does not raise this issue because he is in love with his argument, but because the notion of aggrievement and standing in the framework of the BMC is important to reflect on in terms of focusing Council on what the issues are. In this case, the ministerial actions of Staff and approving a building permit. The reason the issue of standing is important is that if Council was to allow the general appeal provision to be a wide open prospect, you have the potential for essentially allowing anybody in the community an infinite number of bites at the apple on a particular project. In reference to comments made regarding the EIR – that is clearly an issue that was settled and cannot be raised in this forum. Regarding the issue of parking – conditions # 4-5. Those conditions were arrived at in a discretionary manner under proper procedures with a separate appeal procedure for that decision. That is significant. The appellant has said in her submittal that she was aware of that appeal right and decided not to go with that appeal. So, that ground for appeal is not proper before Council in this forum. With respect to conditions #18-19, the developer had the standards properly reviewed by the Public Works Department, and was found to be in compliance with the conditions. As a matter of law, that action of Staff was properly made in this forum. It is important in Council's deliberation tonight to only focus on the questions before it, which are whether the ministerial actions of Staff in issuing building permits were proper. He stated that he had every confidence that is what will be done tonight.
6. Barbara Wood – Ms. Wood stated that she was looking at the bicycle safety aspect of this project. Her concern is that this is the route for bicycle travel from Benicia to Vallejo. She is concerned about the bridge access here. She brought

this issue up 3-1/2 years ago. At that time, the developer readily agreed that there would not be a problem widening the bridge to accommodate traffic. She is not seeing that happen now.

7. Mary Wika – Ms. Wika stated that she wanted to respond to Mr. Fulton’s attorney (Tom Carey). She thinks she made it clear that she was not here to address the EIR. Regardless of her appeal, it is the City’s responsibility to follow the EIR and the conditions of approval. She is not contesting the EIR. She relies on the City to follow the conditions of approval. That is the decision the City has to make.
8. Jim Erickson – Mr. Erickson stated that City Staff had examined the plans for conformance with the conditions of approval, good design and engineering practice, and with the City’s codes. Staff has done that in good faith. They are professionals. They have no interest other than to see to it that the City gets the best project possible to serve this community.

Vice Mayor Schwartzman asked Mr. Schiada to comment on the issue of downsizing on the sewer line? Mr. Schiada stated that the term lateral is typically applied to a single family home. In a typical situation, a lateral is smaller or is at least no bigger than the main line it ties into. However, there are numerous situations, of which this is one, where you have a main line that ties into, or is an extension of a main line. In Benicia, we have main lines, which are not their ultimate size in older neighborhoods where we require the developer to put in a size larger than the existing main line. Then the City, as part of its ongoing Capital Improvement Plan works on upsizing its main lines around town. In this situation, an 8-inch main extends from a manhole on Columbus Parkway/Rose Drive that goes to an existing lift station. The size of that line is sized appropriately to accommodate future sewage from this development. The reason the 10-inch line was put in was that there were some slopes that were flatter than the standards for an 8-inch line. The registered civil engineer designed the system to comply with the standards of a 10-inch line. This 10-inch line, which will tie into a City manhole, will be the responsibility of the project when it is completed. It will remain as a private sewer system. The decision of the applicant not to put in a sewer pump station, but put in a 10-inch flatter sloped main was perfectly acceptable to Staff’s review and approval. The City’s concern is that the 8-inch was sized appropriately to accommodate the new effluent that would be discharged there, which it is.

Vice Mayor Schwartzman asked Staff to comment on condition #18. Mr. Schiada stated that the overall statement is that Staff required the developer to prepare improvement plans prepared by a registered engineer to do the design for the widening of Columbus Parkway, the improvements to Rose Drive, the water, sewer, utility, and storm drain improvements that were to be reviewed and approved by the City. It needed to include specifics – one of which was the widening of Columbus Parkway curb to curb width to 70 ft. with raised median islands along the entire frontage. The wording, in hindsight, should have been worded a little more clearly. The intent was that the raised median islands were to be along the entire frontage. The curb-to-curb width was mentioned was so that the median islands would work with the future 70 ft. curb to curb with the City intended to have out there. When you read this, and you are not familiar with the work Staff has done with the civil engineer on this project, it comes across as blindly requiring

a 70 ft. curb width. That was not the City's intent. The intent was to mitigate the traffic from this project. When Mr. Schiada looked back through the Planning Commission's minutes and staff report from July 2003, he found that it had a description of the proposal. It helped confirm the intent of the project. The conditions of approval that accompanied that description were intended to implement that part of the project description.

Council Member Patterson stated that previously, she and Mayor Messina met with Vallejo City Staff to try to get them to pick up the remainder of the improvement in the area - because of the work being done on the Bordoni Project. That was actually in writing as part of the City of Benicia's response to the Bordoni Project EIR. The condition might not be clearly written, but it was very clear on the City of Benicia's written response to the Bordoni Project EIR that Benicia did not have the intent to have that area widened from curb to curb.

Mr. Schiada clarified that the wording in the condition in question was to accommodate that future widening. The Rose Center Project is in addition to doing the frontage improvements, and the widening and the median island, will be hit with about \$120,000 in traffic impact fees. The purpose of the City's Traffic Impact Fee Program is for each project to pay their incremental share for future improvements. The City will be getting improvements from the Bordoni Project; it will have money that is paid from this project that could go towards the area and/or the bridge.

Council Member Patterson stated that she was now confused on the widening of the road issue. She asked if the traffic calming plans were part of the approved plans that were submitted, supposedly meeting condition #18.

Mr. Schiada stated that was not entirely the case. Part of the improvement plans submitted call for the landscaping to include trees in the median islands, walkways that meander away from the curb, etc. Some of these concepts are consistent with traffic calming concepts. What the City was looking for was when it works with Vallejo for the ultimate widening improvements, to finish off that concept. What is required of this project are intersection modifications, which may include high visible crosswalks to help with the traffic calming concepts.

Council Member Patterson stated that the problem she still has is that some of the issues that have been raised consistently are the concerns with traffic bicycling safety. Traffic calming measures would help to diminish those risks. She was not clear where in the conditions that it gives Staff discretion to say that it could wait to do the traffic calming.

Mr. Schiada stated that when Staff goes through project review and approval, it has discretion as far as implementing traffic calming measures. While not specifically addressed in the conditions of approval, issues such as tree placements, etc. can be done as part of the project design review and approval process.

Council Member Patterson stated that she had ex parte contact and email from Mr. Fulton and Ms. Wika. She did not learn any more information from the contacts, however, pursuant to the Open Government Ordinance, was required to report the contact. She stated that she was put off by that the argument over the issue of ‘aggrieved person.’ There is a concerned citizen and group of citizens commenting on and being affected by the project. You just don’t blow a citizen off. She was offended by that. She wanted to reiterate the point Ms. Seeds made about the issue of noticing. She wants to fix the issue of needing better noticing. She appreciated the clarification on the issue of lateral sewer lines.

Council Member Hughes thanked Ms. Wika for bringing this issue forward. In the year that he has been on this Council, he has yet to see anyone who has been more compassionate, thorough, and comprehensive in his or her analysis. Because of her participation and input, the project is better today than it would have been. He did not disagree with all of her comments. In a layman’s perspective, it looks like the project changed substantially. However, in talking with Staff, it was very difficult to find anything where the developer was legally out of compliance. He asked for clarification on the issues of parking spaces, Planning Commission decisions, and Design Review Commission decisions.

Mr. Knox stated that initially, the project as approved in 2003 would have required 237 spaces. The Planning Commission went through a thorough discussion at the meeting where the use permit was approved, and whether or not those spaces were appropriate. It looked at a determination that was done on shared parking between businesses. It believed that on the issue of shared parking, use permit parking process in the BMC; it concluded that 144 spaces were appropriate. The new plan has 146 spaces. Parking numbers are based on standardized nationwide traffic generation standards that go with each kind of use.

Council Member Hughes asked if this was consistent with other types of projects – the change in the number of parking spaces. Mr. Knox stated that the Planning Commission decided to reduce the parking to a reasonable number what would still work, and increase more public space in the center. Council Member Hughes stated that his concerns that there are already other places in town where the parking is insufficient.

Mr. Knox stated that the Planning Commission came to the decision that would not be the case with this project.

Council Member Whitney asked Staff for clarification on the attachment that Ms. Wika sent with her email today. Mr. Knox stated that he generally agreed with the statement that the use permit approval couldn’t be applied to approving a use that does not require use permit approval. The use that does not require use permit approval is not the purview of the Planning Commission during the use permit process. He disagreed with Ms. Wika’s interpretation of that statement. What the statement says is that if you are going to increase the size of a project, you may need to increase the parking – this was prior to the DRC making a decision. If DRC felt that more parking was needed because of an

increase in size, that is one issue. It is not an issue of whether a use permit should or should not be granted for a use that does not require a use permit. Longs Drug Store did not require a use permit approval.

Council Member Whitney stated that the City Attorney has pointed out to Council that this is a ministerial issue. There have been some good points brought up. There may be some holes in the process that may or may not need to be looked at.

Council Member Patterson asked how the City could get the traffic calming in place sooner than later. She would like to vote on the Resolution and give direction that the traffic calming be put into place sooner than later.

Council Member Whitney, as the maker of the motion stated that he would not amend his motion.

RESOLUTION 06-184 – A RESOLUTION DENYING AN APPEAL BY MARY WIKA OF A BUILDING PERMIT FOR THE ROSE CENTER COMMERCIAL PROJECT AT 2100 COLUMBUS PARKWAY

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: None

Mayor Messina stated that although Ms. Wika did not get the answer she wanted tonight, he wanted to applaud her for her tenacity and perseverance. Council Member Hughes said that very well earlier. It is Council's job to look after the citizens and listen. She caused Council to do that. He thanked her for her efforts.

ADJOURNMENT:

Mayor Messina adjourned the meeting at 7:55 p.m.

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 19, 2006

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 8:00 p.m. on Tuesday, December 19, 2006, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

Openings on Boards and Commissions:

- People Using Resources Efficiently (PURE) Committee:
One immediate opening
- Open Government Commission:
One unexpired term to November 30, 2009
- Historic Preservation Review Commission:
Two full terms to February 28, 2011
- Human Services and Arts Board
One unexpired term to June 2009

APPOINTMENTS:

Vice Mayor Schwartzman stated that he found it very curious that when the previous appointment was made to the Planning Commission (Kyle Daley), there were 18 applications on file. At that time, Mayor Messina felt that Mr. Daley would be most appropriate. Vice Mayor Schwartzman stated that he had some concerns at that time. What is curious about this now is that Mr. Ioakimedes just recently put his application in. Vice Mayor Schwartzman stated that he knows that Mr. Ioakimedes intends to run for City Council next year. To him, the curious aspect is the timing of it all. He knows that Mr. Daley has similar intentions. It makes him feel uncomfortable that the Chair in the middle is using the chair in the middle to be able to bring forth political appointments like this. That left him with a conundrum in his own mind. It makes the individuals more

available and have more of a forum if you will. Mr. Daley is wonderful, however, there was a strong lack of experience for the Planning Commission at a time when there are some major projects coming forward. With Mr. Ioakimedes, he has to wonder about the timing. Here is a gentleman who has years of experience owning and running a business Downtown, as well as a lot of experience on different commissions (EDB). While he dislikes what he feels is an appointment that perhaps is being made to help somebody have a forum to get his or her name out for possible election to the Council. He has to go back on a comment he made to a few people after Mr. Daley's appointment. He stated that he found that the City needed experience. Mr. Ioakimedes has experience that he thinks will be needed with the projects that are coming forward.

Mayor Messina reminded Vice Mayor Schwartzman that he (Mayor Messina) appointed him (Vice Mayor Schwartzman) to the Planning Commission when he knew he would be running for office. Vice Mayor Schwartzman stated that he was on the Planning Commission for six years. The Mayor did not know that he would be running because he himself did not even know at that time.

Council Member Hughes stated that he completely understood what Vice Mayor Schwartzman was saying. However, he was very impressed with Mr. Ioakimedes' experience and will be voting yes.

Council Member Patterson stated that the last couple of meetings have been interesting in that it has more difficult to vote 'yes' for appointments where she has usually been voting no because the nominations' lack knowledge, experience, or diversity. She believed for the last decision that Mr. Daley's appointment would bring a representative of youth to the commission and provide decisions that reflect his generation and that it would be a good experience. She has encouraged Mr. Ioakimedes' political future. She values his knowledge and experience, although he is a little shy on the diversity aspect. However, because of his tremendous service to the community, she will vote yes.

RESOLUTION 06-185 – A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF MIKE IOAKIMEDES TO THE PLANNING COMMISSION TO AN UNEXPIRED TERM ENDING OCTOBER 7, 2007

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

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

Noes: None

Council Member Patterson stated that regarding Ms. Foster's appointment, she would be voting no because she was looking for people who have had considerable experience in government and governmental affairs regarding the public's interest.

Vice Mayor Schwartzman stated that he was a little surprised at Council Member Patterson's comment, because of the people that she has approved before, such as Mr. Daley.

Council Member Whitney stated that it was regrettable that Council keeps asking people to come forward and then it runs them down. He is opposed to that process.

RESOLUTION 06-186 – A RESOLUTION CONFIRMING THE MAYOR’S APPOINTMENT OF ANTOINETTE FOSTER TO THE OPEN GOVERNMENT COMMISSION TO AN UNEXPIRED TERM ENDING NOVEMBER 30, 2007

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: Council Member Patterson

Council Member Patterson stated that this gave her an opportunity to explain the issue with the Open Government Commission. The City has many applications on file from people who have tremendous experience in providing the public interest on open government. Mr. Whitehead has development interests in town. There has been major controversy over this. She does not see the public’s interest in this nomination.

Council Member Whitney stated that just because someone is a developer they do not have to be put on the ‘bad’ list. It seems to him that we have to give people a chance. The Mayor is doing the very best he can and will support this appointment.

RESOLUTION 06-187 – A RESOLUTION CONFIRMING THE MAYOR’S APPOINTMENT OF ROBERT WHITEHEAD TO THE OPEN GOVERNMENT COMMISSION TO AN UNEXPIRED TERM TO NOVEMBER 30, 2008

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: Council Member Patterson

RESOLUTION 06-188 – A RESOLUTION CONFIRMING THE MAYOR’S APPOINTMENT OF DALE GILLIAM TO THE SKY VALLEY OPEN SPACE COMMITTEE TO A FULL TERM ENDING SEPTEMBER 30, 2010

The above Resolution was adopted, on roll call by the following vote:
Ayes: Council Members Hughes, Patterson, Schwartzman, Whitney, and Mayor Messina
Noes: None

PRESENTATIONS:
None

PROCLAMATIONS:
None

ADOPTION OF AGENDA:

Mr. Erickson stated that item IX-D would need to be continued. Mr. Woods is ill and could not attend tonight's meeting. Staff suggested Council hear item IX-B to go before IX-A and IX-C.

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

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

OPPORTUNITY FOR PUBLIC COMMENT:

WRITTEN:

Various documents received.

PUBLIC COMMENT:

1. Jeanine Seeds – Ms. Seeds stated that she was concerned about the debacle in West Manor with the 3-story 3,000 sq. ft. house being built. Why do we keep having these problems? She wondered if the reason the project was approved was because Mr. Donohue (Planning Commissioner) is the contractor. She knows of certain individuals who have sent their applications for Planning Commission and were not interviewed. She thinks one of the most important things someone could have is an understanding of the process and being able to come to a decision in a legal process. She knows people who have a legal background that the Mayor is not allowing to come forward to serve. The house in West Manor is obnoxious and she wants to know how it happened. Where was the process of letting the neighbors know about what was going on? She cannot make any sense out of this building.
2. Chuck White – Mr. White read an email his son sent him regarding the holiday season. He hoped it would lighten the serious tone the meeting had taken.
3. Jon Van Landschoot – Mr. Van Landschoot stated that the whole issue with Ms. Wika should not have happened. It took an enormous amount of everyone's time. The same thing happened with the Incline Place project. It will probably happen with the building on Buena Vista as well. He suggested Council complete a homework assignment. It needs to do something about this. If there are issues with view corridors or design review, people should speak out, possibly Council Member Hughes or Patterson could take this on. This town likes its neighborhoods. We ought to solve this issue with a series of meetings if we just get people involved. Secondly, a lot of people apply for commission but don't get interviewed. If a person steps forward, they deserve the honor of being interviewed. There are two openings on the HPRC. He has applied six or seven times and has only been interviewed twice – once in person and once over the phone. He hopes to be called for one of the current openings. This City needs to come into the 21st century and start using story poles.

- Mayor Messina stated that he goes out of his way to interview every candidate who applies to a commission. If he has missed someone, they should let him know and he will interview them.
4. Council Member Patterson - Council Member Patterson commended Staff on the new sign. The new sign is an elegant solution to a controversy. It is more inclusive and it should have been done earlier. She thanked Mr. Woods because he brought this to the City's attention. She also hoped that people have noticed that the weeds have been cut down on one side of the off ramp on East Second Street. The landscaping maintenance issue was sort of being addressed by Cal Trans. She has been working with Assembly Member Lois Wolk to see if the City could get all the weeds cut down along I-780 and the entrances and gateways into the City. She requested a presentation by Cal Trans on this later in the year on the plans for the planting to replace the trees that were removed. Finally, she wanted to say that one of the first things she will be addressing in January 2007 is the issue of noticing. The current process is broken and does not work.
 5. Vice Mayor Schwartzman – Vice Mayor Schwartzman stated that regarding Ms. Seeds concerns with the West Manor issue, he remembered that when the issue of Incline Place was going on, Council wanted to change things so this type of problem did not keep happening. He does not think Mr. Donahue's involvement had any kind of influence on the decision. He agrees it is time to take a look at the issue of noticing.
 6. Jim Erickson – Mr. Erickson invited anyone who wanted to review the plans for the West Manor project to do so. To the best of his knowledge, the property owner is completely in compliance with the rules of the road. He is not suggesting that everyone should be delighted with every project that comes through the building department, but every plan is checked for conformity with the codes. He has specifically asked Staff about this project and he was reassured it conformed to code. A few years ago, Council had a priority; #31 – Design Review – the City has done something to address that. The City is in the middle of setting priorities at this time. That is the time that this subject could get put on the priority list.
 7. Vice Mayor Schwartzman stated that he wanted to make sure that he did not intend to make it sound like he did not think the project was allowable. He believes the project is allowable.
 8. Mayor Messina – Mayor Messina stated that regarding the signs – he applauded Staff's efforts. The signs are inclusive and much better than the ones that were there before. It goes a long way in resolving the controversy that was stirred up. In terms of the execution, he was not happy with how they came out. The red letters turn to black at night and they are hard to read. In the rush to implement the solution, it could have been done more user friendly. We have a whole year to work on this and would like to see some energy put into that.
 9. Council Member Hughes – Council Member Hughes stated that Council had pushed Staff to work quickly on this issue. Staff did a terrific job on the signs. He was challenged by a citizen to drive by the sign at the legal speed and try to read the signs. As it turns out, he was not able to read the signs at night. Based on the timing and push that Council gave Staff, they did a great job. Maybe the design could be looked at for next year.

CONSENT CALENDAR:

Council pulled items VII-C and VII-D.

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

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

Noes: None

Council approved the minutes of December 5, 2005.

Council approved the denial of the claim against the City by Tom and Nancy Clothier and referral to insurance carrier.

RESOLUTION 06-189 - A RESOLUTION AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO EXECUTE CONTRACT CHANGE ORDERS WITH ANDERSON PACIFIC ENGINEERING CONSTRUCTION FOR THE MARINA AREA STORM DRAIN PROJECT AFFIRMING STAFF-AUTHORIZED CHANGE ORDERS AND APPROPRIATING \$64,020 FROM THE GENERAL FUND RESERVES FOR THE PROJECT

RESOLUTION 06-190 - A RESOLUTION ACCEPTING THE EAST H STREET OVERLAY PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

RESOLUTION 06-191 - A RESOLUTION ACCEPTING THE EAST 5th STREET OVERLAY PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

RESOLUTION 06-192 - A RESOLUTION ACCEPTING THE EAST 2nd STREET OVERLAY PROJECT AS COMPLETE, AUTHORIZING THE CITY MANAGER TO SIGN THE NOTICE OF COMPLETION, AND AUTHORIZING THE CITY CLERK TO FILE SAID NOTICE WITH THE SOLANO COUNTY RECORDER

Council approved the review of the investment report for the quarter ended September 2006.

Council approved the lease with Bay Area Ship Services for Fifth Street Pier.

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Introduction and first reading of an ordinance to make minor changes to Title 4 (Open Government):

Council Member Patterson stated that as one of the principal authors of the Open Government Commission Ordinance, she has a background and understanding on some of the intents and purposes of what was provided. For instance, in section two that is being amended. At the last Open Government Commission meeting that she attended, Kyle Daley requested that the commission's meeting start time be changed from 5:00 p.m. to 7:00 p.m. Three of the public members in attendance commented that the reason people were not attending the meetings was because they were not able to get to the meeting by 5:00 p.m. To have this ordinance amended to read that 'unless prescribed by Council ordinance' would not work. This allows the Council to thwart the intent of the ordinance provision for evening meetings. We can't have public participation unless we recognize this. Secondly, on page VII-C-4- (a)-(i) – the language being proposed adding 'unless prescribed by Council Ordinance' – you could nit pick away one commission at a time to erode the public's need to know when they are going to be meeting and have them meet at a regular time. The other changes in the ordinance are fairly minor, but the two she has mentioned are not. She would like to hear the public testimony and then move to have those two changes struck from the proposed changes.

Mayor Messina stated that the issue of start time was debated by Council and other commissions. There are some individuals who work outside of the City. Other people have small children or are seniors. No matter what is done, some segment of the population will be disadvantaged. It is a hard issue. One of the strategies was to allow the boards and commissions some flexibility in dealing with this. There is no magic answer to satisfy everyone.

Public Comment:

1. David Ernst – Mr. Ernst stated that he agreed with Council Member Patterson. He was attending the meetings until recently, as his work schedule had changed. He spoke against having the meetings start at 5:00 p.m. He is still against it. It severely limits public participation. The meeting time is very inconvenient.
2. Jon Van Landschoot – Mr. Van Landschoot stated that he agreed with Mr. Ernst and Council Member Patterson. He used to attend the meetings, and was usually the only citizen. The time became too inconvenient as well as they were just not doing very much. It has been over a year and not much has been done.
3. Kathy Carriage – Ms. Carriage stated that starting a meeting at 5:00 p.m. when a lot of citizens are commuting is not workable. Starting a meeting before 6:30 p.m. is too early.

Council Member Whitney stated that he voted for the Sunshine Ordinance, so that makes him one of the authors as well. When Council brought this forward, one of the things that was discussed was allowing the commission to come back and report on suggested changes. He is a little torn – he understands the issue of the start time. He does not know if this is as major of an issue as it is being made out to be. If the commission is open to changing the start time, they should be allowed to do that. If someone has a concern, they

should attend the meeting and voice those concerns. He has an issue with Council Members attending commission meetings. That has an impact, not always a positive one. It impacts the environment of the meetings. Mayor Messina stated that was a little bit off point.

Council Member Patterson stated that the Open Government Commission did change the start time to 7:00 p.m.

Council Member Hughes asked Council Member Patterson to clarify her changes.

Council Member Patterson stated that the change was not to add the language 'unless prescribed by Council Ordinance'. If the changes are made, it takes the control away from the commissions and the Open Government requirement that meetings be conducted in the evening. The second change is essentially the requirement that to the best of their ability, they have an annual schedule.

Vice Mayor Schwartzman stated that he did not know the Open Government Commission had changed the start time to 7:00 p.m. It sounds like the commission is listening to the people. Maybe that is the flexibility that is needed.

Mayor Messina stated that Council charged the commission with looking at the rules and proposing changes as it sees fit. The suggested changes seem innocuous to him. Taking it out might not remove the conundrum. He could support Council Member Patterson's suggested changes, but does not really see the point.

Council Member Whitney asked Ms. Wellman if the Commissions have the ability to have flexibility with the schedules. Ms. Wellman confirmed that was correct.

ORDINANCE 06- - AN ORDINANCE AMENDING VARIOUS SECTIONS IN TITLE 4 (OPEN GOVERNMENT) OF THE BENICIA MUNICIPAL CODE REGARDING PUBLIC ACCESS TO MEETINGS AND PUBLIC RECORDS, PUBLIC ETHICS AND ESTABLISHMENT OF AN OPEN GOVERNMENT COMMISSION

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above Introduction and First Reading of an Ordinance was approved, on roll call by the following vote:

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

Noes: Council Member Patterson

Approval of a new City Emergency Operations Plan:

Vice Mayor Schwartzman stated that he was out of town last week and did not have the opportunity to read through the entire plan. He asked Chief Hanley to review the changes in the plan.

Council Member Whitney stated that he read through the plan. One of the comments he previously made to Chief Hanley was that the plan was pretty thorough and lays out a strategy for emergency operations. He thought it would be key for the community to be

able to take a look at the plan. Knowing the plan would be helpful. He would like to have some type of public meeting so the City could bring the community's awareness up.

Council Member Patterson asked if she could get a sense of the lessons learned from the flooding incident last January and how it influenced the preparation of the plan. Secondly, to what degree do we have hazard mitigation planning, what is the process, and how is the public involved? Thirdly, how will the City deal with the catastrophic loss of water supply in the event of a seismic event when we go beyond 3-4 days of emergency water supply from Lake Herman? Next, it was unclear to her how BERT was involved. She inquired about having a current and active reliable list of medical professionals and how the City would go about establishing that list. Lastly, she was glad to see an element on pets.

Mr. Erickson stated that the plan is an 'all hazard' plan. It covers a series of generic reactions, with checklists, etc. There are annexes for particular events; the main heart of this is 'all hazard' coverage. The generic piece could be adopted and Staff could be directed to come back with various particular things such as the items that have been suggested tonight.

Council Member Whitney stated that there might be a way to combine the suggestions made tonight with the comments made at a future informal public meeting. He does not have a problem with approving the plan as it is and taking questions that the public or Council may have into consideration in the future.

Council Member Patterson stated that she was okay with that.

RESOLUTION 06-193 – A RESOLUTION ADOPTING A NEW CITY EMERGENCY OPERATIONS PLAN

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

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

Mayor Messina called for a 3-minute break at 8:57 p.m.
The meeting resumed at 9:00 p.m.

PUBLIC HEARINGS:

None

ACTION ITEMS:

Introduction and first reading of an ordinance adding a new Chapter 1.36 (Voluntary Code of Fair Campaign Practices) to Title 1 (General Provisions) of the Benicia Municipal Code:

Mayor Messina introduced Ms. Carol Langford and Mr. Stephen Churchwell, the experts the City hired to assist in this process. Ms. Langford and Mr. Churchwell reviewed their professional history and accomplishments.

Mr. Erickson stated that Council held a workshop on November 18, 2006 to discuss the Ordinances that have been introduced. At that meeting, in addition to the comments from Council, there were comments from the public. The Ordinances that are being presented tonight reflect the comments from that workshop.

Mayor Messina stated that Council is taking baby steps. These ordinances are a result of concerns based on things that came up over the last election or two. We will only know the true effectiveness of these ordinances after we have gone through an election. He believes Council will have to go back and do a little bit of tweaking after the next election. The things that he and Vice Mayor Schwartzman tried to go with were things that had already been done in other municipalities. They also tried to present situation that would not require a lot of maintenance. He applauded efforts of Ms. Langford and Mr. Churchwell. It was unfortunate that Council Member Patterson was not able to attend the workshop and did not have the opportunity to participate in the dialogue. He applauded her efforts in contacting citizens to let them know it was important for them to be here tonight. He asked if Ms. Langford and Mr. Churchwell had the opportunity to review the changes Council Member Patterson had suggested.

Council Member Patterson stated that she had her light on to be recognized by the Chair for quite some time. She had a request. Mayor Messina stated that he would acknowledge her in a few moments. Council Member Patterson continued that she could not see Ms. Langford and asked if she could move so that she (Council Member Patterson) could better see her. Ms. Langford and Mr. Churchwell stated that they had a chance to review the suggested language changes that Council Member Patterson had suggested.

Vice Mayor Schwartzman stated that he and the Mayor had a difference of opinion. The optimism was that they would be able to reach a consensus and move forward. He stated that on this ordinance, the experts recommended changing the wording on the actual form from California to Benicia, which makes sense to him. The question is when Council was previously relating to a candidate voluntarily agreeing to abide by the California code, which meant that if the California code changed, then that code would automatically change. If the City is now going to change the language to the 'City of Benicia' what will happen if the California code changes? How does the City make sure those changes are incorporated in the City's codes? Ms. Langford stated that what would have to be done is look at it as a living document; look at the changes in California's code and decide if the City wanted to make those changes. If the City wants to make the changes, it could add or delete to its code. It is up to the City. These ethics codes change as situations change. Vice Mayor Schwartzman wondered how the other Council Members would feel about putting in an automatic review clause in the ordinance. The content of the actual ordinance makes sense to him.

Council Member Patterson stated that any State statute would apply to the City. She wondered about having PACS, unions, etc. sign this. She thought the City of Livermore had something to that effect. Ms. Langford stated that she remembered looking at the City of Livermore's provisions. She believed they were a lot more extensive and different than this. When you start applying this to unions, etc, you have to seriously look this over and possibly even have a separate code for that. The City may want to see how this one works and then consider applying it to additional people. She thought the City had decided to start small and see how this all worked. Council Member Patterson stated that she did not want to extend this and drag it out. Part of the problem was that the City had some PACS and other groups that did some things that could be considered unethical and unfair, and were not well received by some citizens.

Mr. Churchwell stated that if this were made to be a mandatory code as opposed to a voluntary code, you could only regulate city PACS. That just happened in the City of Tracy, California. You have to ask yourself if making it mandatory would address the problem you are trying to target. Ms. Langford stated that it could be looked into and is not something that is impossible. She did not think that this specifically goes to the PACS, but the candidates. The City could have more than one ethics code.

Vice Mayor Schwartzman stated that he did not understand the City of Livermore to have it as an ordinance. He saw it to be for education to the voters. He did not know if it was used in the last election. Ms. Langford stated that what Benicia is doing is more of a true ethics code than what the City of Livermore did.

Council Member Hughes stated that he fully supported the ethics code and the changes that were made. He asked for clarification on page IX-B-5 – top of the page – 'immediately and public repudiate the actions' - how would a candidate go about satisfying this action? Ms. Langford stated they would repudiate the actions in public or in the media – per section 6 of the code. That portion was added as a result of comments that came out in the November workshop. Council Member Hughes stated that he liked Vice Mayor Schwartzman's suggestion to have an automatic review clause put in. That may accomplish some of the things that Council Member Patterson was asking for.

Vice Mayor Schwartzman stated that on #6 it talks about immediately and publicly repudiating the actions in writing and in the media. He stated that 'in the media' it is clear, but in writing, whom would that go to? Ms. Langford stated that was not stated specifically. She would think it would go to the Mayor. If you want to specify whom it goes to, that could be done. Vice Mayor Schwartzman asked if it would be satisfactory to put it in writing to the specific group or individual, or does it need to be distributed wider – like the media? Ms. Langford stated that it depended on how broad Council wanted it to be.

Mayor Messina suggested putting the statement in writing and then give it to the media. Ms. Langford stated that you would not want to make it too heavy a burden. You don't want to punish anyone who is trying to repudiate an action.

Council Member Whitney stated that the approach, which was to phase these in, sounded reasonable. He clarified that PACS, unions, etc. would be doing this voluntarily. Ms. Langford confirmed that was correct – it would be a voluntary code.

Public Comment:

1. Kathy Carriage – Ms. Carriage stated that she was not able to attend the first meeting. She would like to have another workshop on this issue. It is a very important issue for the public. She was shocked about the amount of money spent on the last campaign. It had a corrosive impact on the community. She feels a little lost right now and would like another workshop. It is a bad night to have this discussion because it is the week before Christmas and there is not a lot of public input. There needs to be a whole different way to approach the outside PACS, unions, etc. as that seems to be a big problem.

Ms. Langford stated that there were a lot of people at the workshop who were very vocal. She and Mr. Chrchwell took notes and did their best to include the comments and suggestions into the new ethics code. You have to be very careful with an ethics code. In trying to do an omnibus one you will never be able to come out with a code. Reviewing the code as suggested by Vice Mayor Schwartzman and Council Member Patterson is a great idea. You try it out, see what worked and what did not work, and make changes as needed.

Ms. Carriage stated that her inclination was to have everything mandatory and not voluntary, but she does not know if that would be legal.

2. Mary McGill – Ms. McGill stated that she attended the workshop. It was said three times that what the City was suggesting was different than what the citizens wanted and required. What they requested was not to have outside money come into the town and buy an election and then pass the can up at Pappa's restaurant and give money, put in a phone bank, and say that I don't even have to register with their political practice. That happened with a citizen in this town. We saw an election unfairly bought. We want to address that. One of the things the citizens want desperately is that if a corporation has its home office outside of the City, it cannot come into the town to put money in a City Council election and buy the town. There were two sources of revenue – big oil Valero and Seeno Developer, and then the firefighters joined in. Neither Seeno nor Valero have any right to buy the election. It was unfair. The ethics code does not even begin to say what the citizens wanted. There were three emails on the back table that say coming to this point tonight is much too early. It was hurried and was not what the citizens asked for.
3. Norma Fox – Ms. Fox seconded what the last two public speakers stated. This is much too hasty. We need to get back to the drawing board and give this adequate study as well as adequate citizen input. The ordinances presented either don't address the issues presented, or very inadequately address some of them. The main concern is out of district money. She questions whether the experts' statement regarding mandatory codes would be illegal. There are jurisdictions that do have out of district requirements. She resented that the citizens are being asked to

come up and talk for five minutes about ordinances that don't even address the issues. The ordinances are not ripe or ready for tweaking. Back in March, Council stated that it was too soon to enact the spending limits because there needed to be more community input. Then the community was only given two hours on a Saturday morning to provide input. She asked Council to honor what it said and have more community input. There needs to be more workshops and an ongoing citizens working group to address this issue. She did not know how the citizens could address the ordinances when they are not even available to look at. The ethics problem that came up in the last election was not the candidates, but the outside groups. There is no time in five minutes to even begin to address these ordinances.

4. Jim Erickson – Mr. Erickson stated that the documents have been available to the public for the past six days, as well as on the City's website, which is the standard publication and distribution for the City.
5. Sabina Yates – Ms. Yates stated that they spent two hours on November 18th talking about 136 – which was a new idea thrown at them. It had nothing to do with what they were asking for. Let's get on with the real reason that we need a public workshop and more public input. The other ordinances 128 and 140 are really boilerplate. They were superficial and did not have the guts or meat that is needed to help in our election. She hopes we can move on to 128 and 140.

Ms. Langford stated that she disagreed that the ethics portions were not ready. They are ready and they are as ready as they are going to get. They included a lot of comments that were made at the workshop. They made a lot of changes. She did not think more public comment would get us any further along. They got to a lot of the issues that were brought up. You have to take baby steps. You should not jump into a huge ethics code. You have to start small, see how it works, and make changes if needed. This ethics code is ready. She is not talking about the fair campaign practice, that is Mr. Churchwell's portion, but the ethics code is ready.

Vice Mayor Schwartzman stated that back in March, the majority of Council wanted to wait because there was legislation moving through the State, which would have, if passed, had a direct effect on this. Secondly, when he and the Mayor were discussing this, they purposely separated them out into three ordinances so they could be taken a look at individually and differently. As a correction, he believed that the Saturday workshop lasted for at least three hours or almost four. He is ready to make a motion on this particular ordinance, with one change – Item 6 – 'I shall immediately and publicly repudiate in writing to the media, support deriving from any individual, etc.' The change is to insert 'to the media.' Ms. Langford stated that she agreed with that change.

Council Member Whitney stated that he agreed with the approach of breaking this down into three ordinances. Having been on the Council for a long time, there have been workshops where there had been Council, Staff, and nobody else on large public work projects. This is obviously an important issue and the November 18 workshop was well attended. There was a lot of discussion. It is wrong to say that all your thoughts were

totally discounted. He wanted to hear what the public had to say. He knows there will be more to talk about tonight. He received an email from someone who he would say was active in the community - Ms. Griffin. One statement in that email stated 'the workshop was well staffed and well attended, with many points made by people who care about these things and she does not think another workshop would add much to what came out of the first one.' Obviously there are some people that would disagree with that statement. He believed that there has been some discussion on this as was indicated. This is not the end of the road. On many occasions, Council has revisited ordinances; such as it did tonight with the Sunshine Ordinance. Council is not trying to obstruct anyone's ability to have comment. It is trying to take a first step, which he thinks is a good one, which is why he will second the motion.

Council Member Hughes stated that he supported Ms. Langford's comment that the ethics portion is ready to go.

Council Member Patterson stated that earlier, there was interest in having a clause added that would require an automatic review of the ordinance. Vice Mayor Schwartzman stated that he thought about that, but after Ms. Langford's comments, he changed his mind. If the California code changes, then Council is going to necessarily have to review this ordinance. It does not mean that Council could not review it at any time. It could be called back for review any time. He did not feel compelled to add that in.

Council Member Patterson stated that she believed this was a straightforward motion to have the pledge as a requirement. The other issues are in the other ordinances that will be discussed tonight. She agrees with the comments made regarding the other two ordinances not being ripe. She also agreed that additional community discussion should take place in those two cases. But in this case, she thought this was ready to move forward, and it will actually affect some of the corporations and committees in town, even if it does not apply to them. She is hopeful.

ORDINANCE 06- - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA ADDING A NEW CHAPTER 1.36 (VOLUNTARY CODE OF FAIR CAMPAIGN PRACTICES) TO TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

On motion of Vice Mayor Schwartzman, seconded by Council Member Whitney, the above Introduction and First Reading of an Ordinance was approved as amended, on roll call by the following vote:

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

Mr. Erickson stated that he wanted to correct his earlier statement about the ordinances being available to the public for the past six days. The documents have actually been available for the past 20 days on the City's website. In addition, emails were sent to people who attended the workshop, the press, etc. on November 30.

Introduction and first reading of an ordinance amending Chapter 1.28 (Voluntary Expenditure Limits for all Municipal Candidate Elections) to Title 1 (General Provisions) of the Benicia Municipal Code

Mr. Churchwell stated that at the November 18 workshop, they had a very spirited discussion on this item. It was helpful to him in going back to make some changes. He referred to the redlined version in the packet. This is a voluntary expenditure limit. The Supreme Court has said that you cannot mandate expenditure limits. There was a case in New England where they challenged that. The ordinance was overturned. This ordinance reflects the legal reality of voluntary expenditure limits.

Council Member Patterson stated that she had submitted some amendments to the proposed ordinance. She asked him to comment on the changes. She then asked him to explain if there was a problem with going forward with the amendments in light of the fact that we have an Open Government Ordinance and how it applies. Mr. Churchwell stated that he deals with the Brown Act a lot; however, he is not an expert. His opinion was that they could not be considered tonight, as there has not been adequate notice, however, he would defer to the City's counsel on that. Ms. Wellman stated that she would not disagree with that, but there is a factual finding that we generally leave with the Council. If the substantial supplemental information is received, the body shall either automatically continue the item to the next regular or special meeting, or decide that there was adequate notice to allow consideration of the additional information. Council just heard the opinion of the attorney it hired (Mr. Churchwell) that he considered them substantive changes, yet it still Council's determination. Mayor Messina stated that if Council had received new information – these are actually proposed amendments. That is not new substantial information. Council does that all the time. If Council Member Patterson wanted to review her changes, she could do that.

Vice Mayor Schwartzman stated that he was at a loss as to what is 'substantial' in Council Member Patterson's proposed amendments.

Council Member Patterson stated that her main concern was that based on communications she received from the public; they were interested in the amendments she was proposing. The problem is the public does not have the document before them. On 1.28.040 – she proposed the dollar amount be changed from \$1/voter to \$0.65/voter, which calculates to \$17,757 expenditure limit. On the 1.28.080 – violation of voluntary expenditure limits – she would like it added that a Fair Campaign Fund be established for the express purpose of administration of campaign reporting, expenditures, and other expenses associated with informing the public about City election, candidate ethics, fundraising and expenditures, and fair campaigning. Then, back to her procedural question, is Council still in good standing with moving forward with this? Ms. Wellman deferred to Mr. Churchwell on this issue.

Mayor Messina stated that Council commonly makes changes to ordinances. That should not trip Council up on this issue.

Vice Mayor Schwartzman stated that he agreed with the Mayor's analysis. He was okay with the issue of directing funds to a Fair Campaign Fund. Regarding the expenditure limit – he is okay with a limit but it has to be reasonable. If it is too low, there will be people who will not agree to abide by that limit. They will go out and spend whatever they want to spend. If the intent of this is to set a limit, it has to be reasonable so a person can run a fair campaign. On page IX-A-3 and IX-A-4 regarding purposes – during the workshop, Ms. Silveria talked about people with disabilities being able to run for office. If this is artificially low and the people with disabilities not being able to get out and go door to door, we need to give them an opportunity – which is to be able to spend a reasonable amount of money on mailers, etc. to reach the voters. He would like to add 'to allow a greater diversity of candidates to participate in the electoral process including those with disabilities.' Back to the expenditure limits – it has to be a reasonable amount. He understands that not everyone will be able to raise the same amount of money. He researched back to 1992. There have been large dollar amounts spent that far back. He wants to be able to get everyone to sign on to this, but again, it has to be reasonable. He believes Council Member Patterson's amended limit is too low. It costs money to run a campaign. He believes \$1/voter is a fair amount of money. He would like to leave the dollar amount the same, add language to address those with disabilities, and was fine with directing the funds to a Fair Campaign Fund.

Council Member Whitney stated that at the workshop, there was a gentleman who brought up an interesting point. He compared a vote to the price of a soda. He does not know where we come up with the numbers. He is willing to play by the rules that are set. People should be careful what they wish for. You start to insulate the incumbents because they have recognition. It will make it easier for the incumbents to win. He wished there was a better way to deal with outside money. He is not sure how to regulate that issue. If the limit is too low, the outside money will have even more of an impact. His proposal is to set the limit at \$7,500. He could run a campaign on that amount, although it will be very different than it has been in the past.

Council Member Hughes referred to IX-A-3 – the findings section – He took exception to some of the statements. First, on (b) and (d) – what are these statements/fact is this based on? He is not a big fan of expenditure limits – they will create huge advantages for incumbents. He had to spend more money during his campaign because his name was not as well known as other incumbents. If there are not reasonable limits, the independent expenditures will increase. If Council does go that route, he would support \$1/voter.

Public Comment:

1. Jon Van Landschoot – Mr. Van Landschoot stated that he thinks some Council Members may have misspoken. If the limit were \$1/voter, the total limit would be \$16,000. If you go with \$27,000, you would be paying \$1/every citizen including children. He thought they might have meant \$1/citizen. He did not think that \$27,000 was reasonable. For a lot of people in town, that is equal to their take home annual pay. The message that would send is that unless you can raise \$30,000 don't apply. You would not be setting the limit, but setting the floor. He thinks the group 'Group for Responsible Government' was misspelled. It should

- have been called 'Group for Responsive Government.' They give money and something happens. The independent expenditures will be here whether we spend \$7,500 or \$27,000. He does not think we should pay for 5 year olds to vote. If you want to spend \$1/voter, that is fine. There was a report that showed election costs. It averaged out to be almost \$14/vote that was cast. Mr. Whitney, Schwartzman, and Hughes will be painted as big money guys. He guessed that he believed Council Member Hughes did not know the money was there. However, the perception is that someone knew the money was there. The idea of an invalid who wants to run is a red herring. However, \$27,000 is the working income for some people. Don't spend money on 5 year olds, they can't vote.
2. Chuck White – Mr. White urged Council to slow down. He devoted the last three years of his life to the issue of clean money. He could be considered an expert of sorts. He is sick of what goes on in Washington and sometimes Sacramento. He does not have those bad feelings about Benicia. However, the public does not trust politicians. Politicians live in bubbles. Where are the people? It is Christmas week and the City has rushed this through. The November workshop, which could have been well noticed, but the public only received 2 days notice, was a travesty. The public needs to be informed as to what is going on. He is very interested in the legislation and finally got copies of it on the back table. He is not ready to delve into the detail and does not think Council is either. Something that is really important about clean money is that it is the most important thing in this country. If we take money out of politics, we can do anything and everything. This is nothing to rush through. There needs to be a public hearing on this in January. The legislation needs to be fully covered in the press, with people in a big workshop session. Tonight's showing shows that the workshop did not get the job done. The City needs to work on this some more, take it to the public, have another hearing, and vote on it in February.

- Mayor Messina asked Mr. White if he had a fair dollar amount in mind for the expenditure limit. Mr. White stated that it was a compromise somewhere between \$17,000 and \$27,000.
3. Norma Fox – Ms. Fox stated she was confused about the vote on the first ordinance. Mayor Messina explained how first and second readings of ordinances were handled. Ms. Fox stated that people come to Council and can't find a copy of what is being discussed. There is no copy of the ordinances here. Shouldn't it be printed up so people could look at it, read it, and comment about it in a meaningful way? She wanted to discuss the last ordinance. Mayor Messina stated that she needed to stick to the current item being discussed. Ms. Fox stated that regarding what a reasonable amount of money to spend on a campaign is. There are some cities that have a spending limit of \$.50 or less per voter. She thinks Benicia should check with those cities to see how it is working for them. She feels Benicia could do that too. That would allow other people to run for office. Regarding the meetings last March, everyone said there needed to be more community input about this. Even Vice Mayor Schwartzman said we probably even needed two workshops. What about Council's commitment to that?

4. Council Member Patterson – Council Member Patterson asked Ms. Wellman if there was a provision in the Open Government Ordinance that talks about written materials being provided at meetings. She would like Ms. Wellman to look into that while the rest of the public spoke.
5. Pete Herbo – Mr. Herbo stated that the discussion on an expenditure limit is a waste of time because it is voluntary. It would be more significant if we had, during an election, each candidate report contributions to their campaigns to the Benicia Herald on a weekly basis. That would be important. When the election is run and a candidate has big signs and mailers that is who he is suspicious of. This ordinance is a waste of time.
6. Kathy Carriage – Ms. Carriage stated that there was attention here because it is a voluntary limit. There is a big difference between \$17,000 - \$27,000. That is a prohibitive factor. It is more realistic to talk about a limitation of \$15,000 - \$17,000. She would like Council to begin thinking about ways to get information out to the public that is unbiased. The newspaper coverage is pathetic. The voter pamphlet information is useless. There is not good information out there.
7. David Lockwood – Mr. Lockwood stated that he hurried down to tonight's meeting. He did not receive any information as a person who attended the workshop regarding the fact that this legislation had been drafted for a vote. He felt betrayed. He spent his time providing input at the workshop and he has heard nothing about it. The fact is this is no limit at all. It is a facade. Anyone who wants to contribute simply has to play the game. Valero was a big contributor during the last campaign. They placed at least three people on this board to hopefully get a vote for the business park up in the hills of Southampton. Maybe we ought to say to those three to excuse themselves from this discussion. This is just a waste of time and very disingenuous to every voter in the City.
8. Jim Erickson – Mr. Erickson stated that he could inform Council of which citizens the email was sent that contained information on tonight's meeting. Mayor Messina stated that unfortunately, if Mr. Lockwood did not receive a notice, it did not make a difference.
9. Kyle Daley – Mr. Daley apologized for getting to the meeting late. He spent the least in the last election, and he is not on the Council. If everyone spent the same amount, who knows what would have happened. What we need to do is look at dollars, cents, and reporting them. He wants to see an ordinance that requires every dollar and cent reported to the public. Reporting should be every week during an election cycle. The City should establish a website publishing the information. People would be fine with that because it is a fair and open process. Limiting candidates to \$27,000, \$7,500, etc. really limits freedom of speech. What this is all about is who is spending the money, and who is spending the most. It helps the incumbent when there is a limit. His recommendations was to allow all candidates to sit at the dais every Wednesday after a Council meeting, have them broadcast on channel 27, and discuss the same information Council discussed the night before. The City could schedule more debates as well. He asked when the ordinance would go into effect.

Mr. Churchwell stated that some of the amendments that came out of the workshop addressed that. The issue is when the money is spent – in section 070 – any time up to the election, including the date of the election, shall be considered expenditures for that election. It works – he represents people in the senate and it is working quite well.

10. Pete Herbo – Mr. Herbo asked if you raise \$100,000 and only spend \$25,000, the rest is gravy.

Mayor Messina stated that his sense listening to tonight's dialogue was that Council was going to have a terrible time with this. Council is not going to be able to get three votes for any specific dollar amount. He admitted he was intrigued by the concept of not having a limit and doing some if it through reporting to the public on a more frequent basis. To him, that may be the way to go if Council could not agree on a dollar limit.

Council Member Patterson stated that she was hearing from the public that they want to sit down at the table with Staff, consultants, and Council Members and review the next ordinance. The amendments she proposed in the next ordinance deal with electronic reporting, etc. She would like to be guided by what the public wants in the way of a campaign. What she heard is that \$.50 cents was a general amount. How do we get from that to \$1/voter? She proposed \$.065/voter as a compromise. She liked Mr. Daley's idea regarding some of the mock programs. The public wants to compare what is being done here with what will be done later. How can we meet the public's need so they don't feel betrayed and the do feel like they were part of the process?

Vice Mayor Schwartzman stated that some intriguing things came out in tonight's discussion. The real issue he heard is the outside money. He does not know what could be done about that, but he is willing to explore ideas. He is also willing to explore additional reporting requirements. There is some interesting stuff that was submitted by Council Member Patterson. If there will be a limit, he would stick to his \$1/voter. He arrived at that number because he knows how much he spent and knows what a campaign costs. He is fine with his number or no limit at all. He was much more concerned with outside money, how to report, notifications to the public, etc. Those are the real issues.

Council Member Whitney stated that not too long ago, there was a campaign where Mr. Gizzi locked horns with Mr. Artiaga. Mr. Artiaga won by one single vote. Mr. Artiaga spent \$600 in that campaign. It is not what any specific candidate is doing. He thinks that it is insulting to the voters to say that it is all about the dollars. It is saying that the doors they knock on, interviews they give, etc. mean absolutely nothing. He could live with a \$7,500 limit. He has no problem with absolute sunshine and openness in his campaigns. The majority of contributions to his campaign were \$99 or less. He would either support the low dollar limit, or no limit with weekly reporting.

Council Member Hughes stated that he is closer to the page Vice Mayor Schwartzman was on. If there has to be a limit, it has to be reasonable to be able to run an effective campaign. Regarding the \$27,000 limit, he does not know if that is the right amount, but

it is more right than the \$17,000. He was prepared to vote for the \$27,000 expenditure limit.

Ms. Langford stated that the \$.065/voter limit sounded low to her. She thought the reporting is what people are trying to get at. Council may want to try the suggested no limit with more frequent reporting out. Again, it goes back to being a living document. If that does not work, the City could go back and change it. Also, it sounded like the people want people who don't have a lot of money to be able to run for office. There are two separate ways of going about this that have been brought up. They are going to have to be brave, try it out, and see what happens. They will not know until they try it out.

Public Comment:

1. Chuck White – Mr. White stated that it does not need to be a choice, it should be both. We need to have another workshop.
2. Natalie Miller – Ms. Miller stated that there should be another workshop. Her concern is about the outside money coming in.

Vice Mayor Schwartzman stated that he would make a motion to approve the Ordinance, with the amendments referring to people with disabilities, leaving the dollar amount as written (\$1/voter), and establishing the Fair Campaign Fund as suggested by Council Member Patterson.

Mayor Messina asked Council Member Patterson who would be responsible for setting up the Fair Campaign Fund. Council Member Patterson stated that the next ordinance to be heard deals with that. It would be assigned to the City Clerk. The City Clerk would be responsible for tracking how the money is spent, where it is spent, etc. She stated that would be spelled out in detail. In the ordinance that Council may take up tonight, there are duties and responsibilities assigned to the City Clerk. That would be clarified when the fund was established. The point is that the City Clerk is given responsibilities for electronic filing, etc. and would need funding for that. Mayor Messina stated that it gave him angst to vote on something that was not defined.

Council Member Patterson stated that she would be voting no because she had angst about the fact that the public had been asking for an opportunity for a dialogue – not this back and forth discussion. In the interest of what the public has been asking for, she could not possibly vote for this without giving the public that opportunity.

Vice Mayor Schwartzman stated that Council needs to work on an additional ordinance to address some of the issues raised tonight.

ORDINANCE 06- - AN ORDINANCE AMENDING CHAPTER 1.28 (VOLUNTARY EXPENDITURE LIMITS FOR ALL MUNICIPAL CANDIDATE ELECTIONS) OF TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

On motion of Vice Mayor Schwartzman, seconded by Council Member Hughes, the above amended Introduction and First Reading of an ordinance was not approved, on roll call by the following vote:

Ayes: Council Member Hughes and Schwartzman

Noes: Council Members Patterson, Whitney, and Mayor Messina

Introduction and first reading of an ordinance adding a new Chapter 1.40 (Clean Money Contributions and Reporting for all Municipal Elections) to Title 1 (General Provisions) of the Benicia Municipal Code

Mayor Messina stated that this ordinance essentially restates a lot of what is in the State code regarding how reporting for elections is handled. After hearing tonight's discussion he would be interested in going beyond what is in the current ordinance in terms of frequency of reporting and dollar amounts. He thinks every dollar spent should be reported.

Vice Mayor Schwartzman stated that this ordinance does not go far enough. He agreed that there has been testimony and information that had come out tonight that could be added to it. Council Member Patterson submitted a lengthy sample ordinance that addresses some of these things. If Council were going through this one, it would be talking about substantial changes. This one needs to have more input. This would be a good topic for another workshop. This is the ordinance that is going to make the other ordinances work.

Council Member Patterson asked Ms. Wellman if she had been able to find anything in the Open Government Ordinance regarding requiring availability of written information at meetings. Ms. Wellman stated that she thought she saw something requiring full agenda packets. She asked the City Manager if the proposed ordinances were available on the back table. She stated that the intent of the ordinance was to have the information available. Clearly, the agenda packet needs to be available to the public.

Council Member Patterson stated that during the Open Government workshops it was clearly desired that materials would be provided. Some people do a better job than others. What she was submitting was not a sample ordinance. She was submitting amendments to the ordinance that was in the agenda packet. She would like to read the title of the provisions so the public who was there could hear the information. Council Member Patterson read the following headings: 1) Purpose, 2) Prohibited Campaign Contributions, 3) Transfer of Committee Funds, 4) Limitation of Anonymous Contributions, 5) Additional Pre-Election Campaign Statements Friday Before Election and Late Contribution Reports, and 6) Adds and Television Promotions to State By Whom Authorized the Add, 7) Disclosure by Primarily Formed Committee, 8) Disclosure During Unsolicited Campaign Calls to Benicia Residents, 9) Limits on Contributions by Corporations, 10) Record Keeping, 11) Restriction on Expenditures, 12) Pre-Election Campaign Statements by Candidates and Non-Candidates, 14) Report on Filing Requirements, 15) Electronic Filing, 16) Online Disclosure of Large Contributions, etc. This is called a clean money ordinance. This has nothing to do with public financing. The title was changed to Benicia Campaign Fairness and Public Reporting of Contributions

and Expenditures. She went on to list 17) Record Retention, 18) Public Access to Reports, and 19) Retention of Documents. She stated that the finding remained the same. She read her changes B-G. She stated that the document was 24 pages long and it was not fair to go through it at this time, as the public could not follow it. She would be happy to go through it with a PowerPoint presentation in the future. She suggested taking this item, having a study session on the fourth Tuesday of January. The ordinance in the agenda packet is not ripe. She was interested in what Council and the public have to add to it.

Public Comment:

1. Pete Herbo – Mr. Herbo stated that we need to know who the organizations really are. We don't want the pseudo groups come in that disguise who they are, what their intentions, roles, and responsibilities really are. The ordinance needs to spell that out very clearly.

Mr. Churchwell stated that the City of Orange, against his advice, passed an ordinance on how much could be spent by way of independent expenditures. They were sued in court. The judge went out of his way for them to appeal. They ended up settling the case. The attorney fees were \$230,000 just to have the ordinance struck down. It is a huge problem. Until the U.S. Supreme Court says that spending money is not protected at the core of the First Amendment, it can't be done. The two issues are disclosure and limits. The courts don't like limits. In the last 17 days before an election, anyone who spends \$1,000 or more has to report that within 24 hours. The City of Petaluma has its own schedule. It is tough to track. Regarding disclosure, he would not recommend lowering it below the current limit of \$100. The Courts will not allow us to do too much to the independent groups.

Mayor Messina clarified that the proposed ordinance is legal and enforceable. To some degree, the City could dictate what the candidates could do, but not the outside groups. If anything, the City could look at the reporting amount. Mr. Churchwell stated that he was fine with the third ordinance as is. This issue is one that has to be revisited a lot. Mayor Messina stated that maybe Council should go with something it knows is safe and make changes if needed.

Vice Mayor Schwartzman asked if the City could regulate more frequent reporting from the outside groups. Mr. Churchwell confirmed that it could. Vice Mayor Schwartzman stated that the biggest concern seems to be the outside expenditures. This ordinance does not go far enough. Beyond tweaking it, maybe more needs to be added to it.

Council Member Patterson asked Mr. Churchwell if he was aware of the City of Novato's reporting ordinance. They have not been sued and it has been in place for a couple of years. The reporting portion really gets at the issues the City is having.

Public Comment:

1. Norma Fox – Ms. Fox stated that the term outside money usually refers to the candidates. There is another term 'out of district'. She wants to see some language regarding out of district money.

Mr. Churchwell discussed the issue of disclosure. He would provide examples of what has been done, what works, and what does not.

Ms. Fox stated that regarding requiring independent groups to report to the City Clerk within 24 hours, she has seen cities that simply scan the document and post it on their website. Mayor Messina pointed out that the problem with that is not everyone has a computer.

2. David Lockwood – Mr. Lockwood stated that at the workshop there was a lot of discussion on outside groups. You cannot control that. He wondered if that was worth everyone's time. There are other more important things that we could spend time on. Let's get on with those things.
3. Norma Fox – Ms. Fox stated that the real issue was not outside money; it was out of district money. Many jurisdictions are controlling out of district money.
4. Pete Herbo – Mr. Herbo stated that it was meaningless to have an ordinance that is voluntary. If people don't have to abide by it, they won't do it. He likes the idea about more frequent reporting.
5. Jon Van Landschoot – Mr. Van Landschoot stated that he liked the issue of early and often reporting. Maybe everyone does not have a computer, but almost everyone has a television, and the information could be put on channel 27. He believes the City could have a reporting system – reporting is the key.

Mayor Messina stated that he was okay with what is being proposed for the candidates. He recognized it does nothing to address the independent expenditure committees. That might be worth more exploration, but as a separate piece. He proposed putting the ordinance as is up for a vote tonight. If we need to tweak it a little more often, that could be done.

Council Member Whitney asked if Mayor Messina would entertain a workshop in the 4th Tuesday of January. Mayor Messina confirmed he would support that. Council Member Whitney asked about out of district money. Mr. Churchwell stated that was a tough question, deciding what is actually out of district. He discussed how the State of Oregon handles the issue. It is a huge problematic issue.

Council Member Patterson stated that she would vote no on this ordinance. She does not understand the bum's rush on this. She had 24 pages of amendments that should be taken into consideration. It would be more beneficial to her to have a response on her proposed amendments, a response to the community's concerns, etc. Unless this is political grandstanding, she does not understand it.

ORDINANCE 06- - AN ORDINANCE ADDING A NEW CHAPTER 1.40 (CLEAN MONEY CONTRIBUTIONS AND REPORTING FOR ALL MUNICIPAL ELECTIONS) TO TITLE 1 (GENERAL PROVISIONS) OF THE BENICIA MUNICIPAL CODE

On motion of Mayor Messina, seconded by Council Member Whitney, the Introduction and First Reading of the above Ordinance was not approved, on roll call by the following vote:

Ayes: Mayor Messina

Noes: Council Members Hughes, Patterson, Schwartzman, and Whitney

Vice Mayor Schwartzman stated that Council needed to have an additional workshop on this.

Mayor Messina stated that due to the hour, Council could not introduce any new items.

Review of Holiday Sign Appeal
Continued.

INFORMATIONAL ITEMS:

Reports from the City Manager:

None

Council Member Committee Reports:

1. Mayors' Committee Meeting (Mayor Messina) Next Meeting Date: December 20, 2006
2. Association of Bay Area Governments (ABAG) (Mayor Messina) Next Meeting Date: January 18, 2007
3. Audit & Finance Committee (Vice Mayor Schwartzman and Council Member Hughes) Next Meeting Date: January 5, 2007
4. League of California Cities (Mayor Messina) Next Meeting Date: January 25, 2007
5. School District Liaison (Council Members Whitney and Hughes) Next Meeting Date: January 18, 2007
6. Sky Valley Area Open Space (Council Members Patterson and Whitney) Next Meeting Date: January 3, 2007
7. Solano EDC Board of Directors (Mayor Messina) Next Meeting Date: December 21, 2006
8. Solano Transportation Authority (STA) (Mayor Messina) Next Meeting Date: January 10, 2007
9. Solano Water Authority/Solano County Water Agency (Mayor Messina) Next Meeting Date: January 11, 2007
10. Traffic, Pedestrian and Bicycle Safety Committee (Council Members Patterson and Hughes) Next Meeting Date: January 18, 2007
11. Tri-City and County Regional Parks and Open Space (Council Member Whitney) Next Meeting Date: February 21, 2007
12. Valero Community Advisory Panel (CAP) (Council Member Hughes) Next Meeting Date: January 25, 2007
13. Youth Action Task Force (Vice Mayor Schwartzman and Council Member Whitney) Next Meeting Date: January 24, 2007
14. ABAG/CAL FED Task Force/Bay Area Water Forum (Council Member Patterson) Next Meeting Date: January 22, 2007

COMMENTS FROM COUNCIL MEMBERS:

Consideration of whether an individual should be permitted to serve on more than one City board and/or commission:

Continued

ADJOURNMENT:

Mayor Messina adjourned the meeting at 11:48 p.m.

Lisa Wolfe, City Clerk