

MINUTES OF THE
REGULAR MEETING – CITY COUNCIL
DECEMBER 20, 2005

The regular meeting of the City Council of the City of Benicia was called to order by Mayor Steve Messina at 9:21 p.m. on Tuesday, December 20, 2005, in the City Council Chambers, City Hall, 250 East L Street, complete proceedings of which are recorded on tape.

ROLL CALL:

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

Absent: None

PLEDGE OF ALLEGIANCE:

Mayor Messina led the pledge to the flag.

FUNDAMENTAL RIGHTS:

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

ANNOUNCEMENTS/APPOINTMENTS/PRESENTATIONS/PROCLAMATIONS:

ANNOUNCEMENTS:

APPOINTMENTS:

Appointment to the Planning Commission – One Unexpired Term - Richard Bortolazzo:

Mayor Messina stated that he would like to hold off on the appointment of Mr. Bortolazzo until the Rules of Procedure are discussed tonight.

Appointment to the Parks, Recreation and Cemetery Commission – One Unexpired Term - Rufus Bunch:

Council Member Hughes stated that he has worked with Mr. Bunch for many years. As an ex-member (Council Member Hughes) of the Parks, Recreation and Cemetery Commission, he thinks Mr. Bunch will be an excellent addition to the Commission.

Vice Mayor Schwartzman stated that he was confused as to which rules Council was going under. Under the current rules, the Vice Mayor is supposed to be doing reviewing and advising. He kind of protests that Council is having an appointment before it settles on the rules. However, there were only two applicants. He was able to speak with both applicants and he was comfortable with each of them.

Council Member Patterson asked for clarification. The practice was that there was a verbal report to Council if there was disagreement with the proposed appointment by the Mayor for the Commissions. She asked Vice Mayor Schwartzman if it was correct that he

felt comfortable with the appointments and there was no disagreement. Vice Mayor Schwartzman confirmed that was correct.

RESOLUTION 05-196 - A RESOLUTION CONFIRMING THE MAYOR'S APPOINTMENT OF RUFUS BUNCH TO THE PARKS, RECREATION AND CEMETERY COMMISSION TO AN UNEXPIRED TERM ENDING JANUARY 4, 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

PRESENTATIONS:

None

PROCLAMATIONS:

None

ADOPTION OF AGENDA:

Mayor Messina stated that he would like to move the appointment of Mr. Bortolazzo until the Rules of Procedure are discussed tonight.

Council Member Patterson stated that she was voting against the adoption of the agenda because it has been a very messy process. It does not serve the interests of open government nor the public.

Vice Mayor Schwartzman stated that he would vote for the adoption of the agenda, but Council needs to get the rules straightened out.

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

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

Noes: Council Member Patterson

COMMUNICATIONS:

WRITTEN:

- Letter from Mr. John Woods (copy on file)
- Memo from the City Attorney on a claim item on that is on the agenda (copy on File)

PUBLIC COMMENT:

1. Bob Craft – Mr. Craft discussed the changes to the Rules of Procedure. He stated that he sat in a restaurant this week and heard someone refer to the people opposed to the changes as ‘whako’s.’ He is apparently one of the ‘whako’s.’ He has not changes his mind in being opposed to the changes to the Rules of Procedures. A meeting start time of 7:30 would be more convenient for the public. More convenient equals more

people involved. He understands limiting public comment to three minutes, although five minutes would be better. He does not agree that the open and public comment should be restricted to non-agendized items. That would be inconvenient for some citizens. Who are the served and who are the servants? The changes are supposedly about a better use of time. Additional regular meetings on the third Tuesday of the month could cure this. He discussed intelligent design. It is time to practice intelligent agenda design. The Valero item on tonight's agenda should have been taken care of two meetings ago. It has hung around for too long. The easy and time sensitive items should be put at the front of the agenda. They should be placed accordingly. The appointment to the Planning Commission is very important. All Council Members led by the Vice Mayor should participate on a very proactive basis. No single individual should be 'all powerful.' He urged Council to stick with the term limits.

2. Gretchen Burgess – Ms. Burgess stated that it was Christmas time. As a professional political speech consultant and teleprompter, she found that her favorite agenda item 'public comment' has a great big lump of coal in its stocking. For all action, there is an equal and opposite reaction. There is every possibility that instead of creating a shorter Council session, the meetings could become longer and create a more aggressive forum. If someone feels their issue is being buried at the end of the agenda, they could contact various media formats to address their issues. When people feel like they are not being heard, small issues quickly become large issues. She is surprised the new Council Members would follow mind to this. It is well known that the first and last years in politics are the most publicly scrutinized. Do they really want the first thing they do when they come into office is put a gag on the public? She learned in the veterinary field that the person that applies the muzzle is the one most likely to be bitten. Limiting public comment to from five minutes to three minutes could cut the time for public comment in half. But, many citizens have to get up early for work. He urged Council to work with and listen to the citizens. Her words are intended as a gift.
3. Marilyn Bardet – Ms. Bardet discussed the proposed changes to the Rules of Procedure. She urged Council not to make hasty decisions on such important issues. An earlier start time would make it very difficult for many people to attend. She recommended Council be very cautious about changes that will affect public participation.
4. Todd Matthews – Mr. Matthews discussed the issue of broken promises. He stated that the last Council broke a lot of promises with regards to employee compensation. He urged Council to give Bill Avery direction to pay the Firefighters the average wage and retain the firefighters. He asked Human Resources how many applicants the City has for the open position at the Fire Station. The City has only received ten applications. They are getting ready to watch one very experienced Firefighter walk out the door because of the broken promises. The Fire Department has been looking for applicants for over two months. He urged Council to do the right thing.
5. Jon Van Landshoot – Mr. Van Landschoot discussed the appointment process. The Zucker Report was commissioned two years ago. The Zucker Report states that the Planning Department needed training. The Planning Commission did not represent all factions in the community. It could not address that issue, but it (the report) suggested that possibly a wider variety of people and experience be put on the Planning

Commission. He urged Council to reread that section of the report and take it into consideration when making Planning Commission appointments.

6. Jason Fein – Mr. Fein stated that he has logged more time at the Council meetings lately than he has used for sick leave in five years. Mr. Fein urged Council to place the Police Department project high on its list of priorities. The Firefighters are at day 173 without a contract. The Fire Department will be losing one of its most experienced Firefighters. He thinks the floodgates are opening. He hopes Council has the courage to close those gates.
7. John Furtado – Mr. Furtado asked if he could speak on an agenda item when that item is discussed. Mayor Messina confirmed he could.
8. Jim Erickson – Mr. Erickson stated that regarding ‘broken promises’ with regards to employee compensation, one issue has to do with financial condition and capacity.

CONSENT CALENDAR:

Council pulled items VII-A.

On motion of Council Member Whitney, seconded by Council Member Patterson, 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

Council approved the denial of claims against the City by Jeff and Kathy Valente, Cesar Cabezas, and Ashley Vazquez:

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

(END OF CONSENT CALENDAR)

Council took the following actions:

Approval of Minutes of December 6, 2005

Council Member Schwartzman stated in the minutes on page VII-A-9, when he stated his reasons for the appointments being continued, he would like it added that he was specific that he did not know which rules Council was going by. Later on in the agenda, Council would be discussing the rules. He thought it would appropriate to wait until afterwards.

Council Member Patterson reviewed her proposed changes to the minutes, all of which will be implemented.

On motion of Council Member Patterson, seconded by Vice Mayor Schwartzman, the minutes were approved, on roll call by the following vote:

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

Noes: None

PUBLIC HEARINGS:

None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

Authorization of a six month extension of the Letter Agreement with the Valero Refining Company pertaining to the Utility Users Tax – Continued from December 13, 2005 Special City Council Meeting:

Rob Sousa, Finance Director, reviewed the Staff report.

Mr. Chris Howe, Director, Community Relations, and Government Affairs, Valero Refining Corporation, reviewed why a fixed payment would benefit both Valero and the City. A fixed payment can help to dramatically reduce some of the swings that are inevitable in both the price of energy as well as consumption. A fixed payment would allow them to predict that expense and allow the City to forecast income on a ratable basis. Energy is one of the largest expenses Valero incurs; they have a great desire to reduce it regularly. As they reduce consumption, it would include a reduction in income to the City. A fixed payment with some of the protection Valero and the City desire should allow a steady income stream coming to the City. They believe they can work out something that can incorporate some safeguards for future changes; inflation and increases in prices as well. Valero is committed to that. Valero believes it is fair to increase its annual payment to \$1.2 million. Once negotiations are concluded, they have agreed to retroactively adjust whatever was paid to the terms of the new agreement. They believe the number is fair, but asked that it be incorporated into the resolution that there is a possibility of a lower payment.

Vice Mayor Schwartzman asked Mr. Howe what the additional criteria was that necessitated stretching this out. Mr. Sousa stated that a consumer price index be included, develop consumption formulas, encourage continued investment in plant equipment, minimum and maximum limits be set, and have renegotiation clauses be built into the new agreement. Vice Mayor Schwartzman asked if the City knew what Valero's energy consumption was and how it related to the listed 4%. Mr. Howe stated that they are reviewing the history and trying to make comparisons. The figures would be available with the co-generator on line.

Council Member Whitney asked if the agreement would be open-ended or closed like the last one. Mr. Howe stated that Valero has not come to that conclusion yet. It needs to be fair to both sides. It seems fair that there would be an opener at some point.

Council Member Patterson stated that she has not discussed this with Mr. Howe or anyone at Valero. She is interested in a fair resolution to this issue. It has to be fair to the citizens of Benicia. She is looking for some brief history in terms of economics. She asked that Staff provide Council with an economic history that takes into consideration that if there had been no resolution capping the UUT and one million dollars, what would have been the projected income without the cap? She would like the report to provide the discussion on the dispute on the co-generation and provide both sides of the issue. It would be easier for her to say to the public that the proposed resolution is a fair and just resolution.

RESOLUTION 05-197 - A RESOLUTION AUTHORIZING A SIX-MONTH EXTENSION OF THE LETTER AGREEMENT PERTAINING TO THE UTILITY USERS TAX WITH THE VALERO REFINING COMPANY

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

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

Noes: None

Revisions to Rules of Procedure for the Conduct of City Council Meetings – Continued from December 13, 2005 Special City Council Meeting:

Heather McLaughlin, City Attorney, reviewed the Staff report.

Public Comment:

1. John Furtado – Mr. Furtado stated that he has some serious concerns as to what the term limits were and what the recipe was for employing a new commissioner. He encouraged Council to look at the process for appointing planning commissioners. It seems to him that the Mayor is currently given the appointment rights. He suggested that Council rotate the position of Mayor on an annual basis. He suggested two Council Members interview the top candidates based on the requirements needed. The top applicants are then presented to Council. He discussed the issue of citizens becoming involved with the commissions. Because of some of the rules and perceptions, it is thought that if you are not in the ‘in crowd’ you will not have the opportunity to be on the boards and commissions.
2. Gretchen Burgess – Ms. Burgess asked when and who decides if someone get three or ten minutes for public comment. Who decides which ten people get to speak? Who decides how many times they are allowed to speak. Who cuts off a citizen who is being repetitious? Who decides which items have large or small support?
3. Jon Van Landschoot – Mr. Van Landschoot stated that this agenda item should have been talked about earlier in the evening. He discussed the appointment process in Fairfield. Fairfield has a good appointment system. There are ‘in’ and ‘out’ people in the City. Mr. Bortolazzo is one of the ‘in’ people. Everyone should be the same. Council should start interviewing applicants for commissions two months before the term is up. The month before the appointment the selection is made.
4. Susan Street – Ms. Street reaffirmed a statement made by Mr. Craft regarding adding extra meetings to the Council agenda. There are four extra Tuesdays in the year that could be used for Council meetings.
5. Bob Mutch – Mr. Mutch stated that there is a part of the Benicia population that does not agree with the proposed changes to the Rules of Procedure. There is a possibility that the proposed changes would work. The meetings could become more effective. He urged Council to proceed with the reasonable recommended changes so business can be conducted.
6. David Ernst – Mr. Ernst stated that he was in favor of having more than one person review the commission applicants. He is not happy that the Open Government Commissioners were pushed through at the last minute.

Mayor Messina reviewed the responsibilities and rights of the office of Mayor with regards to appointments. He suggested Ms. McLaughlin provide Mr. Ernst with the State Law with

regards to appointments. The City Attorney is awaiting the opinion from the Attorney General on this issue. Mr. Ernst asked that if the Attorney General came back with a ruling contradictory to what Council is doing, would they go back and correct things. Mayor Messina stated that if the Attorney General comes back with a different opinion, Council absolutely would.

Council Member Patterson discussed practices used by surrounding cities with regards to appointments.

Mr. Ernst stated that the citizens don't feel like they are getting a fair shake. This discussion would not be occurring if they didn't feel that way.

Council Member Hughes stated that he had an ex-parte discussion with Mr. Van Landschoot about a number of the proposed changes.

Mayor Messina stated that he wanted to review the changes one by one and get Council's feedback.

Announcements/Appointments/Presentations/Proclamations:

Council Member Patterson stated that studies showed that the average attention span is seven minutes. She did not know how you could codify a presentation. Some presentations should not be rushed through. Council should be flexible on this.

Council Member Hughes suggested using the words 'presentations should be limited to ten minutes.'

Council decided on the amended language 'presentations should be limited to 10 minutes.'

Public Comment time limit of 3-minutes:

There is conflict with the Sunshine Ordinance. This would have to come back for review if/when the Sunshine Ordinance is amended.

Council Member Patterson stated that she was very troubled by the 3-minute limit. It is a major mistake to make. It has been suggested that a good remedy would be to have a better-scheduled agenda. Additional scheduled meetings are another good option. She is totally opposed to the 3-minute limit on public comment.

Council Member Hughes stated that it was his recollection that the limit was being put on 'non-agendized' items. He suggested a limit of 4 minutes.

Council Member Whitney stated that he would like to make the limit for non-agendized items. He is okay with the suggested 4-minute limit.

Vice Mayor Schwartzman stated that he too would be okay with the 4-minute limit on non-agendized items.

Mayor Messina stated that he sits on a lot of commissions. Most of those commissions have a five-minute limit. He is okay with five minutes for public comment. He finds it difficult that Council often loses the public's participation when they leave meetings due to the late hour. It is not serving the greater public good.

Council Member Whitney stated that if it becomes an issue, Council could revisit it.

Council Member Patterson discussed the First Amendment Coalition and open government. Benicia is one of few small cities in California with an Open Government Commission. Overall, the public comment time has not been a problem. Open government is access to the Council. Council should not put constraints on access.

Vice Mayor Schwartzman stated that he would prefer to have public comment on an item when it is agendaized. He is okay with the five minutes.

Council Member Hughes concurred with Vice Mayor Schwartzman. He would compromise on the time, but not on the agendaized/non-agendaized issue.

Ms. McLaughlin stated that Council would hold off on this change unless and until Sunshine Ordinance is changed.

Agenda topics:

No comments from Council.

Limits

This will be cleaned up when/if the Sunshine Ordinance is cleaned up.

Memberships and selections:

Vice Mayor Schwartzman stated Council needs to fix the process. There needs to be opportunity for Council Members to interview the applicants and provide some type of input to the Mayor prior to the appointments being made. The process is flawed. Prior to an appointment, Council Members need time to interview the applicants and if they want to, make a recommendation to the Mayor.

Council Member Hughes asked for clarification on whether the rules apply to commissions other than Planning Commission. Mayor Messina stated that all Council Members should feel free to interview all applicants for commissions. The Mayor will make appointments for all commissions and boards except the Planning Commission. In terms of providing advice to the Mayor, there could be Brown Act problems if various Council Members approach the Mayor with opinions. If that is the case, the duty of the Council Members is to interview the appointments. Council Member Hughes wanted to make it clear that there was no language at all in the current version for non-Planning Commission appointments. He is not sure if that was a mistake or not.

Council Member Patterson clarified that the rules and procedures were not included in the agenda packet. She hoped Council Member Hughes was suggesting this item be continued so the public could review the adopted rules and procedures and proposed changes.

Council Member Hughes stated that he was not suggesting the item be continued. He just wanted clarification. He expressed the importance of the Council Members talking with the applicants. He asked if Council Members could have one-way communication with the Mayor prior to the appointment to provide feedback on interviews with the applicants.

Ms. McLaughlin stated that if it were truly a one-way communication, it is not so bad. The problem is that most people have body language, etc. that reflects what they are thinking. Most people can't simply say 'thank you' without sharing thoughts. Regarding written communications, the Brown Act prohibits developing the collective concurrence on what action will be taken. Mayor Messina felt that written communication becomes a public document, which creates a problem.

Public Comment:

1. Bob Mutch – Mr. Mutch stated that this issue is being over complicated. They Mayor has the right to appoint. Council has the right to vote yes or no on the appointment.
2. John Furtado – Mr. Furtado stated that it appears that there is a conflicting sense of information. There needs to be an organized interview session for commissioners. There needs to be checks and balances. There should be organized interviews.

Council Member Whitney stated that the suggestion of beginning the application process two months in advance is a good idea. He believes that having only the Vice Mayor involved in the interview process leaves the door open for a Brown Act violation. The Vice Mayor is not an elected position. Having all Council Members talk with each application is okay.

Council Member Hughes would prefer a method or process that allows Council Members to provide comments on applicants to the Mayor. He encouraged Council Members to talk with all applicants. He spoke with 14 out of 15 of the Planning Commission applicants, as one person was unavailable.

Public Comment:

1. Susan Street – Ms. Street stated that if the Mayor is going to appoint, it does not matter who the Council Members interview until they vote for or against the appointment. It is getting complicated for no reason.

Vice Mayor Schwartzman stated that if he does not interview other people, then he does not know if there is a better candidate.

2. Bonnie Silveria – Ms. Silveria stated that she has been appointed to the Commissions five times. She has only been interviewed twice. Consider the person who is up for the appointment. It would be very embarrassing for the person up for the appointment to be voted down in public. Commissioner's work on a voluntary basis. Don't embarrass the people who are up for appointment.

Mayor Messina asked if Council could decide what to do with non-Planning Commission and Planning Commission appointments.

Council Member Patterson suggested that on non-Planning Commission appointments, the City require the applicants be filled out thoroughly and completely. The application could be improved so there is a check box (checklist) at the top for the qualifications. Each Council Member should be allowed to interview the applicants. The application period should be a closed period. She likes the way the Vice Mayor process of interviewing applicant has worked.

Mayor Messina stated that at the end of the day, the Mayor makes the appointment. State law does not allow anything else. We have some Council Members who are trying to get around the state law. It is a power grab on their part.

Council Member Patterson stated that the Mayor's statement about the Mayor having total appointment power creates issues with trust and perception. There is no room to acknowledge that all people are welcome and have equal access to the boards and commissions. She would like to see some effort on the Mayor's part to let the public know that we encourage people from different areas to apply for the boards and commissions. All she hears is power grabbing and that is difficult for the community.

Mayor Messina stated that the process the City has in place has been working for many years. State law prescribes the system the City is using.

Vice Mayor Schwartzman stated that Council Member Whitney mentioned that the Vice Mayor interviewing applicants is not an open process. The process the Mayor is putting forth is not open. It is up to the Mayor to decide whether the process is open or not. He wondered if there was any kind of semblance of openness. If there was a way, he could be accepting of it. Regarding the Vice Mayor interviewing process, (he is not looking for power) it might be a good idea for someone else having to take a look at the applicants and make a recommendation. He is okay with the current rule with the way it is. He is willing to do it if Council wants him to do it. He will accept the responsibility. It opens up the process a little bit without taking away the Mayor's authority to make the appointments.

Council Member Hughes stated that it was important for the Mayor to have feedback on the applicants, without violating the Brown Act.

Mayor Messina stated that before he was Mayor, no one knew who the appointments would be until the night the Mayor made the appointment. The process is much more open than before. He stated that the language 'except appointments to the Planning Commission' would most likely need to be withdrawn.

Council Member Patterson stated that it is not consensus. It is a 3-2 vote. The two new Council Members have concerns. The complete stubbornness from the Mayor is not giving credit to the new Council Members who are trying to find a process that is more accommodating to changing times.

Council Member Whitney asked Ms. McLaughlin for clarification on the appointment process. Ms. McLaughlin reviewed both the current and proposed appointment processes. She confirmed that the rules in question were not in effect when Commissioner Strawbridge was appointed.

Council Member Patterson stated that she would be willing to bet that the Attorney General is not going to rule against the cities that are using the other appointment processes. Democratization usually does not get shut down, but expanded. Right now, we have a process that is encouraging to the public to participate and she would like to keep it to give it a chance to work.

Vice Mayor Schwartzman stated that the Planning Commission is an important Commission. He would like a little more openness on it as far as the appointment process goes. He would prefer to go back to have the Vice Mayor interviews. It is a simple, straightforward process.

Council Member Whitney stated that it should be put back to the way it was until Council hears back from the Attorney General.

Council Member Hughes stated that he was not sure why the Planning Commission is being singled out. He prefers to have all Council Members interview the applicants. Any Council Member could put forth a nomination. He is fine with the suggested change - all Council Members be encouraged to interview and anyone can put forth a nomination. The Mayor would not have any priority with regards to nominations.

Vice Mayor Schwartzman suggested two Council Members (Mayor plus one Council Member (preferably the Vice Mayor)) interview, and the Mayor make the appointment for the Planning Commission.

On motion of Council Member Whitney, seconded by Mayor Messina, Council voted to return to the current procedures, where Mayor talks with at least one Council Member, and makes the appointment to the Planning Commission, which is then voted on by Council, unless Council hears otherwise from the Attorney General, on roll call by the following vote:
Ayes: Council Members Hughes, Whitney, and Mayor Messina
Noes: Council Members Patterson and Schwartzman

Ms. McLaughlin stated that the problem is that Council cannot amend the ordinance on Planning Commission appointments. The item before Council is the Rules of Procedure. In order to implement Council's proposal, they will need to amend the ordinance on Planning Commission appointments. In order to do that, according to the Rules of Procedures, it is a two-step process.

Mayor Messina stated that that the process is that this issue will be brought back in the appropriate form.

Ms. McLaughlin stated that the item would be placed on an upcoming agenda. In the meantime, the existing rules or procedures apply for Planning Commission appointments. (As listed in the 12/19 memo)

Ms. McLaughlin stated that in order to make a Planning commission appointment tonight, language on X-B-22 and X-B-23 #3 would need to be revised. If we strike the last sentence on X-B-23, the appointment could be made tonight.

Council Member Patterson asked for clarification on posting procedures for nominations and appointments.

Council Member Patterson stated that if the process had been adhered to, Council would not be in such a pickle. It is the disrespect of an adopted process. Not even a college effort was made to follow the rules and procedures of the City of Benicia.

Mayor Messina stated that the name of the appointment has been out there for a long time.

Council Member Patterson expressed her extreme displeasure with the process and conduct regarding appointments. It is disingenuous to speak about the nomination being out there for a long time. The new Council was not advised of the appointment process. In the Mayor's rush to make a lot of major changes for the new Council's Rules of Procedure, he failed to take into account the adopted Rules of Procedures. Ignoring 'little' rules and procedures is a slippery slope. Trying to isolate her into being this 'wacky person who follows procedures' isn't going to work.

Vice Mayor Schwartzman stated that he did not think Council Member Patterson was wacky. This is getting crazy. Council did not follow the rules. He was going by the rule in the book. He was given the memo on what the rule actually was. Council voted on one aspect of the rule. The rule has not changed yet. The vote that was just taken was that the Mayor will talk to one other Council Member and then make the appointment. If that is the way it is going to, he does not know why Council needs to wait on the appointment until the next meeting. Council will vote it up or down.

Council Member Whitney stated that it is 11:50 p.m., and after this item is voted on, the meeting should be adjourned.

Council Member Hughes stated that he is fine with the language, but feels that games are being played to support the appointment to the Planning Commission. He does not want to change what he feels comfortable with to support one appointment. He would not support striking the last sentence. He would like to add that if the Mayor's nomination does not get three votes, any of the Council Members could nominate someone. He does not want to get stalled like Council did three months ago. If the last sentence were kept, the nomination would not be able to be voted on until the following Council meeting.

Vice Mayor Schwartzman stated that he could go along with that.

Council agreed to give direction to Staff to change the language on the ordinance to reflect the above vote, but add in the 'if the Mayor's nomination does not get three votes, any of the Council Members could nominate someone.'

Ms. McLaughlin stated that the ordinance would need to be changed. Staff will draft changes and bring them back to the next meeting. Ms. McLaughlin stated that if Council wants to vote on the Planning Commission appointment tonight, they would need to delete the last sentence, as referenced above.

Council Member Hughes stated that the language made sense to Council, which is why it is in the Rules of Procedure. Why would they want to change it just to accommodate one appointment?

Council agreed not to strike the last sentence.

Ms. McLaughlin summarized that the action Council is taking is that they are keeping the language as proposed in the Staff report for now, but they are giving Staff direction in the future to change it. The change cannot be made until the ordinance is changed.

Time:

Council majority agreed that the ending time for meetings should be 11:00 p.m.

Council Member Patterson stated that she would be voting against the changes. There are some things she does not agree with.

Vice Mayor Schwartzman stated that he would be voting for the changes; however, the amendments are not perfect. Council needs to get going and move along. There are some things that he wishes were different, but he is not going to get his way, so he wants to move along.

RESOLUTION 05-198 - A RESOLUTION ADOPTING THE RULES OF PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS

On motion of Council Member Whitney, seconded by Council Member Hughes, the above Resolution was adopted as amended, on roll call by the following vote:
Ayes: Council Members Hughes, Schwartzman, Whitney, and Mayor Messina
Noes: Council Member Patterson.

First reading of an ordinance amending Section 2.04.010 (Meeting Time and Place) of Chapter 2.04 (City Council) of Title 2 (Administration and Personnel) of the Benicia Municipal Code – Continued from December 13, 2005 Special City Council Meeting:
Continued

First Reading of an ordinance amending Section 2.52.030 (Members – Term of Office) of Chapter 2.52 (Planning Commission) of Title 2 (Administration and Personnel) of the Benicia Municipal Code Continued from December 13, 2005 Special City Council Meeting:
Continued

Reconsideration of the Open Government (Sunshine) Ordinance provisions regarding public comment on agenda items:
Continued

REPORTS FROM CITY MANAGER:

None

REPORTS FROM CITY COUNCIL COMMITTEES:

None

ADJOURNMENT:

Mayor Messina adjourned the meeting at 12:05 a.m.

Lisa Wolfe, City Clerk