

REGULAR MEETING OF THE
BENICIA CITY COUNCIL

REPORTER'S PARTIAL TRANSCRIPT OF RECORDED PROCEEDINGS
IN RE VALERO CRUDE BY RAIL PROJECT

PUBLIC COMMENTS AND STAFF DIRECTION

Date and Time: Tuesday, June 7, 2016
7:02 p.m. - 12:02 a.m.

Location: Council Chamber
250 East L Street
Benicia, California

Transcribed By: Annie Doezie, CSR No. 8478
Certified Shorthand Reporter

Job No. 7599

A P P E A R A N C E S

CITY COUNCIL:

MAYOR, Elizabeth Patterson

VICE MAYOR, Mark C. Hughes

COUNCILMEMBER, Tom Campbell

COUNCILMEMBER, Alan M. Schwartzman

COUNCILMEMBER, Christina Strawbridge

CITY STAFF:

CITY ATTORNEY, Heather McLaughlin

CITY MANAGER, Brad L. Kilger

ACTING CITY MANAGER, Anne Cardwell

FINANCE DIRECTOR, Karin Schnaider

ECONOMIC DEVELOPMENT MANGER, Mario Giuliani

COMMUNITY DEVELOPMENT DIRECTOR, Christina Ratcliffe

POLICE CHIEF, Erik Upson

FIRE CHIEF, Jim Lydon

CITY CLERK, Lisa Wolfe

1 BENICIA, CALIFORNIA; TUESDAY, JUNE 7, 2016

2 PARTIAL TRANSCRIPT OF PROCEEDINGS

3 [00:23:37]

4 MAYOR PATTERSON: Our next item is the
5 opportunity for public comment.

6 This is the time for public comment on any
7 item that's not on the agenda, and we ask that you
8 stay within five minutes. You don't have to take the
9 full five minutes.

10 We're eager to hear from you. So please feel
11 free to come up. You don't have to have a card;
12 although, I do have a few cards tonight.

13 We do ask that you not make personal attacks
14 on the councilmembers, staff, or members of the
15 public, or make comments which are slanderous or which
16 may invade an individual's personal privacy.

17 And as a reminder, we don't discuss or
18 comment, necessarily, on your comments, because we're
19 prevented by law, but we can ask questions, and we can
20 give some sort of direction to staff to work further
21 with you, if you have a particular item.

22 So having said that, the first card I have
23 for public comment is Ms. Beutel.

24 Constance?

25 MS. BEUTEL: Thank you very much, mayor,

1 councilmembers, and departing city manager.

2 Constance Beutel, 1501 Shannon Court.

3 I'd like to just refresh and -- and keep in
4 front of us the tragic oil -- crude-by-rail oil train
5 disaster in Oregon, and, fortunately, it hasn't
6 happened here in Benicia.

7 But let's hope that dithering on a decision
8 to ban crude by rail in Benicia is not delayed further.

9 Thank you.

10 (Applause)

11 MAYOR PATTERSON: Thank you very much.

12 Uhm --

13 (Applause)

14 MAYOR PATTERSON: So the other thing that I
15 didn't anticipate, having to repeat the rule that we
16 have for behavior in the council chambers, there is no
17 applause, booing, hissing. I'd like to have your
18 laughter kept to a minimum.

19 And the reason we do that is that people
20 aren't intimidated, so that they have the freedom, the
21 sense that they can come up and say what they want to
22 say. So if you would respect that.

23 And then a very wonderful habit came out of
24 the planning commission, which we've adopted. If you
25 agree with the speaker, you can simply raise your

1 hands like this, and then it's a quiet recognition
2 that you agree with the speaker.

3 And I don't have any other cards for public
4 comment. So anybody else wishing to address the
5 council on a nonagendized item?

6 MS. BARDET: Good evening, council, mayor.

7 I'm here to echo what Constance just referred
8 to. If you felt you needed more information to vote
9 to deny the Valero crude-by-rail project, you now have
10 the most dramatic evidence on the West Coast, from the
11 UPRR derailment and explosive fire in Mosier, Oregon,
12 that occurred this past Friday, June 3rd.

13 As it stands right now, council has enough
14 information to deny the project permit and, certainly,
15 to reject certification of the Final EIR for lack of
16 full disclosure.

17 The UPRR derailment in Oregon absolutely
18 demonstrates the level of risk and real threats posed
19 to the well-being of this city should you decide to
20 permit the Valero project.

21 The Mosier derailment of the UPRR oil train
22 tells you why Valero's proposal would be no good for
23 Benicia, not now or anytime in the future.

24 Let's look at some of the facts that were
25 emerging since Friday. An investigation by UPRR and

1 the City is ensuing.

2 In the town of Mosier, in the Columbia River
3 Gorge, 16 tank cars derailed of a UPRR 96-car train,
4 traveling slowly along a straight stretch of flat
5 track, no curves, as we have in our industrial park,
6 bordering the town and the river.

7 The Union train was carrying explosive Bakken
8 crude, as Valero plans to bring here. Tar sands,
9 stilbites are also explosive.

10 UPRR tank cars were upgraded 1232s, and they
11 were traveling slowly, but those tank cars can
12 puncture if they're traveling over 10 miles per hour
13 when they derail.

14 So one car -- so 14 or 16 cars is -- I'm not
15 quite sure of those figures, I think it's 16, four of
16 which were punctured and one exploded into flames, and
17 the other three also caught fire.

18 Then the fire had to burn out because, as the
19 firefighters up there learned, you cannot put out the
20 fire, as we've known with the 15 other derailments.

21 They don't put out these fires; they let them
22 burn, and then the foam is used afterwards to suppress
23 any embers or any other burning containers, tanks.

24 However, wherein, this instant they had to
25 spray, at 150,000 gallons a minute, water on the other

1 tank cars that were nearby the four that were on fire
2 to prevent combustion of the gasses inside those tank
3 cars should they reas- -- reach a point of flash
4 volatility and ignition.

5 So you have to say, "Well, they had a river
6 there. They could pump the water in to extinguish
7 that fire."

8 A local firefighter interviewed -- and this
9 is on -- easily found online, declared that he had
10 been neutral on the subject of CBR safety and its --
11 also, its record of derailments since 2013, but seeing
12 the inferno in his own town, he now believed that it
13 was absolutely insane to carry oil by rail.

14 The other thing that saved Mosier from a
15 greater catastrophe, besides the fact that they could
16 water down those other cars, it was a windless day.

17 And you know westerly winds on our West Coast
18 would bring all that wind down the Columbia River
19 Gorge, just like down our river, and that wind would
20 carry heat from the burning cars to the other cars.
21 That's why they had to cool those cars off.

22 But the plume of black smoke went straight
23 up. So the emissions didn't blow over the town, quite
24 possibly. That doesn't mean hydrocarbon ash wouldn't
25 be floating over the town for days.

1 So they missed the catastrophe they could
2 have had, as the firefighter recognized, because there
3 was no wind to heat the other cars up and possibly
4 cause combustion.

5 A school and surrounding communities had to
6 be evacuated. Oil got into a pipeline that connected
7 to the sewer treatment plant. So there were toilets
8 couldn't be used, and water couldn't be used in town,
9 and they evacuated everybody within a mile of the
10 blast zone. It's not over.

11 So I would recommend to you, you do have
12 enough information now to make a decision.

13 If you compare the circumstances there to
14 what our industrial park offers us in terms of a
15 tight -- a tight area that these trains have to travel
16 through, with curves, et cetera, businesses along the
17 track, off-load -- the off- -- I-680 off-ramp to
18 Benicia Road coming right down to the curve where
19 that -- where the rail spur goes into the refinery and
20 heads for -- you know, to the refinery through
21 Park Road intersection, I'd say it's a disaster waiting
22 to happen.

23 Thank you.

24 MAYOR PATTERSON: Are there any questions of
25 Ms. Bardet?

1 Okay. Anybody else wishing to address the
2 council on any item that's not on the agenda?

3 MR. YOUNG: Mayor Patterson, members of
4 council, Steve Young, West 11th Street.

5 I'd like to follow up a little bit on what
6 Marilyn and Constance talked about with that Oregon
7 train derailment.

8 One of the things that has come out as a
9 result of the investigation so far is that the cause
10 of the derailment was put to be a loose fastener on
11 one of the rail line -- rail ties, and engineer -- the
12 engineers union for U.P. is questioning that,
13 wondering, well, how a single loose tie can cause the
14 derailment of a 99-car train.

15 Regardless, the interesting thing is that
16 U.P. had inspected that section of track only three
17 days before, and we heard at the planning commission
18 how diligent U.P. was in their review and inspection
19 of the -- of the tracks, and, yet, this derailment
20 happened three days after one of their inspections.

21 The other interesting point, or relevant
22 point, that I hope you will remember as you take
23 back -- take this project back up, is the U.P.
24 spokesman who has been working with the media on this,
25 although he apologized for the accident, refused to

1 answer the question about whether or not the oil had
2 been degasified or stabilized before it was loaded on
3 the train.

4 And this is an important issue. It's a
5 question that we tried to get answers from U.P. and
6 Valero at the planning commission, without success.

7 And part of the reason may be that there's a
8 reluctance to degasify the -- the oil because they can
9 sell those gasses and vapors when they arrive at the
10 refinery. They can remove them and use them as -- as
11 a product that they can sell.

12 The -- the firefighter that Marilyn talked
13 about was actually the fire chief of Mosier, and he
14 had, in this interview, talked about how he had been
15 reassuring the townspeople about U.P.'s safety record
16 and that he did not have any concerns prior to this
17 accident, but that now, he had completely turned
18 around on this, having gone through this experience of
19 trying to deal with this fire disaster.

20 And the -- one of the quotes that he used in
21 this interview was that "Shareholder value does not
22 outweigh the lives of this community," and I think
23 that's something to bear in mind as we look at this
24 project, going forward.

25 So I know this project will be coming back

1 before you in September, hopefully for a vote, if not
2 before, and that perhaps I would urge you to use these
3 intervening weeks to look closely at some of these
4 issues, because this is serious business we're talking
5 about here.

6 And it's probably the most significant
7 proposal that has come before this council in a long
8 time, and there's a lot of concern in the community
9 about this project, and I hope that you will take
10 those concerns to heart and act accordingly.

11 Thank you.

12 MAYOR PATTERSON: Thank you, Mr. Young.

13 Are there any questions?

14 All right. Seeing none.

15 Anybody else wishing to address the council
16 on any item that's not on the agenda?

17 ALLEN: Does it automatically reset?

18 MAYOR PATTERSON: There you go.

19 ALLEN: Hi. I'm new to the community, so I
20 haven't had a chance to really review to comment
21 intelligently.

22 So, you know, it just seems from the speakers
23 in line before me, I just really picked up a lot of
24 new information I was not aware of, and, you know, it
25 makes me think even more than what I was going to say.

1 It -- it really deserves the attention.

2 A really detailed planning study needs to
3 take a comprehensive look at this thing, because
4 they're bringing up some real serious issues here that
5 are health, life-safety, et cetera.

6 And you can't put a price tag on somebody's
7 life. I mean, I just learned that. I think everybody
8 here can nod a head on that one.

9 So with that being said, I wish I had all
10 that information previously, but I'm also thinking
11 that, you know, the -- if we can extend the commenting
12 period maybe 30 days, seems reasonable to me, but two
13 weeks is definitely -- if you're not getting paid to
14 read this thing, you really want to pay attention and
15 read it correctly.

16 Yeah, I could pull NEPA, CEQA, ESA, but all
17 the environmentalists probably did it for me.

18 What else? Oh, comprehensive water plan.

19 I think we need to look at an integrated
20 comprehensive water plan. It's different than an
21 urban public water plan because you have to look at
22 rainwater and catchment as well. It's very important.

23 I think the city council should look into
24 federal funding for some of these studies, because a
25 study that would look at what the trains are carrying,

1 I mean, that's going to be a pretty detailed, intense
2 study. You're going to need to get a lot of agencies
3 involved.

4 So I would see if there's any grants
5 available for a study like that, maybe EPA. I don't
6 know -- I don't know where I'd apply for a grant, but
7 just do your research.

8 I "suggest." Sorry about that.

9 And that's all I have to say. Thank you.

10 MAYOR PATTERSON: So, Allen, since you're new
11 to town, you probably haven't had a chance to look at
12 the record, and if you go to the City's website, there
13 is -- under "Planning Department," on the right-hand
14 side -- well -- yeah, right-hand side, there's a whole
15 section on Valero --

16 ALLEN: Uh-huh.

17 MAYOR PATTERSON: -- and there's a lot of
18 material that's been submitted, as well as the EIR,
19 which has gone through that whole review process, and
20 so it's just -- we're sort of waiting for council
21 decision.

22 But you have time until September, which is
23 when we're expected to have the response back from the
24 Surface Transportation Board whether or not they're
25 going to take up the petition by Valero, for getting

1 the STB, "Surface Transportation Board," to declare a
2 federal preemption of local land use authority.

3 So there's a lot of stuff to read, takes a
4 really long time, but I think that would be helpful.

5 ALLEN: All right. Thank you very much. I
6 appreciate that.

7 MAYOR PATTERSON: Sure.

8 Anybody else wishing to address the council
9 on any item that's not on the agenda?

10 MS. SULLIVAN: Hi. I'm Judith Sullivan. I'm
11 a Benicia resident, and I echo Marilyn and Steve and
12 Constance.

13 But I also have something else to add that I
14 haven't spoken about before that concerns me deeply,
15 and that is the emotional cost of these kind of
16 accidents, particularly on the towns where they happen
17 and anywhere along the line that people live near the
18 lines.

19 I've been a counselor for many years and have
20 dealt with people who have gone through disasters, and
21 realize this -- and even though there's a financial
22 cost, which seems to be what the emphasis has been on,
23 there's a severe emotional cost for somebody who
24 experiences this kind of trauma.

25 I'm concerned about this town having these

1 trains come in next week and knowing it can happen
2 again. I'm concerned about the children, what they
3 witnessed.

4 We have a school within the blast zone,
5 Robert Semple School. Although I have no children
6 there, I was one of the people that helped start the
7 school garden there. So I know a lot of kids there.

8 I work at Art Day there. I'm connected to
9 the school. I'm the children, in that way, and I
10 stand for them. I'm concerned.

11 I'm hoping that, once again, that you do
12 not -- that you deny this project and that you also
13 look at this, how it affects people, the aftermath.

14 Even just having an accident near their town,
15 the people in Hood River were involved, the Columbia
16 River, a very sacred waterway. This can happen
17 anywhere at any time. We have no control.

18 And the hopelessness of knowing -- of those
19 people who live along these lines, knowing that they
20 have no say and maybe don't have the money to move.

21 People living near the tracks aren't
22 usually the wealthiest people in town. They don't
23 always have the choice to relocate, and they have to
24 try and sleep every night knowing these trains are
25 going to keep on going through. So I hope you keep

1 that in mind.

2 Thank you.

3 It's keeping me up at night.

4 MAYOR PATTERSON: Thanks.

5 MS. SULLIVAN: Thank you.

6 MAYOR PATTERSON: Any questions for
7 Ms. Sullivan?

8 Hearing none, anybody else wishing to address
9 the council on any item that's not on the agenda?

10 MS. TOTH-SMITH: Hi. I'm Pat Toth-Smith.

11 Hi, all of you. I'm actually going to
12 comment on the disaster, the Oregon disaster, the
13 crude-by-rail disaster.

14 I guess U.P.'s involvement is the same
15 railroad that will be bringing the crude oil here. So
16 that especially affects me because this is who we're
17 relying -- we're putting everything on U.P. because
18 they're going to be transporting it safely. They're
19 going to be having the cars.

20 And I guess I -- after I've read is
21 every- -- all the articles I've read, and I
22 appreciated -- I agree with what Marilyn has said,
23 these were the CP-1232 version, which Valero plans to
24 use. It was the Bakken crude. It's all of our worst
25 nightmares that we talked about, and it just happened

1 here on the West Coast.

2 It's -- it happened in a flat area. It
3 didn't happen in the Donner Pass grade. It didn't
4 happen, you know, along the Feather River Canyon.
5 They had to put water on these tank cars to keep them
6 from igniting.

7 And, you know, if it happened in the Sierras,
8 if it happened along the Feather River, are they going
9 to be able to pump gallons and gallons of water to
10 keep the other cars from igniting? They may not even
11 get to it right away.

12 So I guess it -- it's just a very scary
13 reminder of what can be happening here. It was a flat
14 area. They were able to get in there.

15 So I -- I guess -- I guess the other issue
16 that really struck me with this is these cars were
17 left to burn, and I sat here through many, many
18 meetings, talk- -- and everybody was talking about the
19 foam, how we need more foam.

20 They could not use the foam. The fire was
21 too hot for foam to be used. So we shouldn't even be
22 talking about foam. We should be talking about the
23 idea this fire is going to burn in our town for
24 24 hours, possibly two days.

25 We're going to be evacuating people, right

1 and left, in our city, not to mention the people that
2 will be affected from the explosion, where they can't
3 put it out.

4 And I guess, you know, that -- there would
5 have been many, many more cars on fire had they not
6 watered down these other tank cars.

7 And where -- where is our water source to do
8 that, you know, if -- if it happened here in the
9 industrial park? Do we have the Columbia River that
10 we can suction water from to put it out? We don't.

11 And I guess -- I guess that's the kinds of
12 things that we can all look at with our x- -- with
13 our -- with our vision now, in retrospect, and say,
14 "Do we have what they had in Oregon to put it out and
15 to make it not as big of an issue?" We don't.

16 I don't know where we could get that kind of
17 water, where we would have that kind of access if it
18 happened into the -- in the industrial park.

19 So I guess the other side of it, it did leak
20 into the Columbia River, and they're -- they did set
21 up booms around the leakage, but it's -- it's the
22 start of the sockeye salmon run, which, you know, is
23 probably going to affect that, and they said that.

24 There's endangered species in the -- in the
25 Columbia River that could be affected by this.

1 So there's a lot of other issues that go
2 along with this, and I just think it's something that
3 we all could look at and help us make better decisions
4 about this.

5 Thank you.

6 MAYOR PATTERSON: Thanks.

7 Are there any questions of Ms. Toth Roth [sic]?

8 All right. Kathy Kerridge?

9 MS. KERRIDGE: Hi. Kathy Kerridge,
10 West I Street in Benicia.

11 I wanted to amplify just a little bit about
12 some of the things that the fire chief said because
13 one of them was a really good explanation of why the
14 foam was useless.

15 Now, keep in mind this is a fire chief who
16 initially had been very neutral who'd reassured his
17 community that Union Pacific was safe; there are not
18 going to be any problems.

19 He said that the foam was of relatively
20 little use for the first 10 hours after the spill. It
21 could not be applied directly to the railcar that was
22 on fire.

23 Quote, "The rationale that was explained to
24 me by the Union Pacific fire personnel is that the
25 metal is too hot, and the foam will land on the

1 white" -- "white-hot metal and evaporate without any
2 suppression effect. That was kind of an eye-opener
3 for me," he said.

4 They spent -- Appleton, the fire chief said
5 the crews spent eight to ten hours cooling down the
6 adjacent cars with water before the final burning car
7 was cool enough to be extinguished.

8 It was a chaotic scene. They had difficulty
9 getting into the site because of traffic tie-ups.

10 The chief said, "I hope this becomes a death
11 knell for the kind" -- "for this mode of shipping. I
12 think it's insane."

13 I want you to think about a car like this
14 that could be in -- on fire in the vicinity of our
15 refinery. Think about the location of where these
16 tracks are, where the loading racks are going to be
17 and the curve going into Benicia;

18 And the fact that if one of these railcars
19 explodes -- you had two derailments, I believe, within
20 the industrial park in pretty recent memory, like
21 within the last couple years.

22 You can't do anything with it. It's just
23 going to burn. And you're going to have it burning in
24 an area where all kinds of huge tanks can be catching
25 on fire.

1 This is the same kind of scenario that
2 happened at the Valero refinery in Texas, where,
3 basically, the half of the refi- -- I don't know what
4 percentage, but a huge amount of the refinery caught
5 on fire.

6 You're putting something that can't be put
7 out for 10 hours, or more, into a highly flammable
8 situation. I'm just going to leave you with the words
9 of one of the -- the head of the hazmat crew.

10 "It looked like the Apocalypse."

11 MAYOR PATTERSON: Thank you very much.

12 Any questions?

13 The next speaker on any item that's not on
14 the agenda?

15 MS. SENSI-ISOLANI: Giovanna Sensi-Isolani,
16 and I have a business here in Benicia, and I live
17 here. I have lived here for 23 years.

18 And I want you to really carefully listen to
19 the previous speakers because things like this happen
20 for a reason. They are a message to you, and to all
21 of us, that this is too hazardous for us to get
22 involved in, and there is no reason, really, to wait
23 until September.

24 I think, as our representatives, it's
25 important that you take this message to heart and act

1 soon and quickly before something like this can happen
2 in our community.

3 Thank you.

4 MAYOR PATTERSON: Thank you very much.

5 Anybody else wishing to address the council
6 on any item that's not on the agenda?

7 MS. ELIAS: Hi, mayor and city councilmembers.

8 My name is Ghada Elias. I've been visited of
9 Benicia [sic] for more than 35 years and have a
10 business in Benicia for more than 25 years.

11 At the Benicia City Council, their
12 discussions on CBR, representatives of Valero and UPR
13 repeatedly belittled the risk of accidents and said,
14 "Don't worry. Our fire -- fire departments can handle
15 any fire and accident."

16 Last Friday, this Mosier accident in Oregon,
17 the derailment and the fire of the rail tanks that
18 occurred carrying Bakken crude, the conditions were
19 daylight, slow speed, no wind, no earthquake, no
20 landslides, tracks inspected repeatedly, including
21 three days before the accident.

22 So when Valero/UPR [sic] talk about CBR, they
23 put up an air of confidence, but we citizens of
24 Benicia don't have confidence in them to protect us
25 against such a serious incident, as was obvious from

1 the Mosier accident.

2 Also, after the Mosier accident in Oregon,
3 the city council of Mosier passed a resolution asking
4 U.P. not to use the tracks for freight trains until
5 they pick up all damaged cars on side of the track.

6 But U.P. ignored the city council, and they
7 have been running trains through, in spite of the
8 city council's resolution, for the last three days,
9 with an excuse that lots of business are depending on
10 these trains passing through.

11 So in Benicia, if CBR is approved, it's not
12 "if" but "when" an accident occurs.

13 You, the city council, have no say or
14 influence on UP- --PR [sic]. So best for Benicia not
15 to put ourselves at the mercy, goodwill -- or goodwill
16 of UPR or STB.

17 Also, after the Mosier incident, the
18 government of Oregon and the senator of Oregon have
19 requested from U.P. not to use CBR freight trains on
20 tracks till they find out what caused the accident in
21 the first place.

22 But U.P. was -- is not committed and have not
23 agreed to that principle. So that leaves the city,
24 the state, and the people exposed to a repetition of
25 this accident.

1 So it is very important that you protect us
2 and protect your rights as city council by denying CBR
3 when it comes to you next time around for discussion.

4 Thank you very much

5 MAYOR PATTERSON: Thanks very much.

6 Any questions?

7 All right. Next speaker on any item that's
8 not on the agenda?

9 MS. BENNETT: I actually signed up for the
10 agenda item 16.B, but I think I misunderstood what it
11 was. So I'd like to speak now.

12 My name is Kathy Bennett. I'm a Benicia
13 resident, a homeowner, and a resident -- a registered
14 voter.

15 I attended the city planning council meetings
16 about the Valero CBR project and the previous city --
17 I'm sorry -- the commission -- planning commissioner
18 meetings, as well as the city council meetings, and I
19 strongly oppose the Valero CBR project.

20 I do not believe that it's necessary for you
21 to delay your determination on this. I think you have
22 all the data that you could possibly need to make this
23 decision.

24 I've witnessed a consistent and urgent
25 feedback that you've received from your constituents,

1 from your neighbors, from your up- and down-rail
2 fellow politicians, as well as from your expert
3 consultants and public agencies.

4 The recent crude-by-rail-related disasters
5 underscore your need to stop this now, before it's no
6 longer stoppable.

7 Valero has promised that the railcars that
8 will be used will be upgraded to meet the current
9 safety standards by 2018, but Valero cannot keep such
10 a promise. Valero can only control what is in
11 Valero's control. The railroad companies and the
12 shipping companies that own the railcars control this.

13 Currently, about 225 out of nearly 110,000
14 railcars have been upgraded and retrofitted. At this
15 rate, it will take nearly 500 years to retrofit the
16 entire fleet of railcars to meet the current safety
17 codes.

18 There are many tragic examples of crude by
19 rail but none more horrific than the 2013
20 crude-by-rail tragedy that happened in a small Quebec
21 town that killed 47 people and destroyed most of the
22 small town businesses and homes.

23 After all the attorneys for the oil refinery,
24 the railroad companies, and the shipping companies
25 were done, the town, its citizens, and its businesses

1 had to split \$450 million settlement.

2 Now, that may seem like a lot, but remember
3 Flint, Michigan? Remember their water crisis, where
4 the local and state politicians failed to protect the
5 health and safety of its citizens, and the entire city
6 water system was compromised?

7 The City of Flint received \$400 million in
8 funds just to re- -- to repair and restore the water
9 infrastructure alone. They didn't have any deaths.
10 They didn't have any businesses that were destroyed or
11 homes that were destroyed.

12 That was just to repair their water
13 infrastructure, and they claim that that was not
14 enough. They claim that they need twice as much as
15 that.

16 So what I wonder is how will Benicia fair? I
17 mean, we're a small -- we're small change.

18 When you compare the financial reserves and
19 resources that our city has access to, to the deep
20 pockets of big oil and the railroads, in any kind of
21 dispute between Benicia and Valero or Benicia and the
22 railroads or the shipping companies that control these
23 railcars, how much money is Benicia going to get to
24 rebuild itself if there's a disaster? Not much.

25 Things go wrong. Railcar safety, the

1 condition of the tracks, human error, add to that that
2 we live in earthquake country.

3 I'm a BERT-certified member. I long for the
4 day when I used to worry about just the "Big One," but
5 now, with the prospect of having two 50-car oil trains
6 carrying Bakken crude through our city perimeter on a
7 daily basis, that just makes the "Big One" seem like
8 "Apocalypse."

9 I didn't sign on for the massive crude by
10 trail -- crude-by-rail trains putting us even at more
11 jeopardy.

12 I hope you'll make the right decision, and I
13 think you have every bit of information that you need
14 to make that decision. Making the right decision is
15 easy. Making the wrong decision is hard. Please do
16 the right thing.

17 MAYOR PATTERSON: Thank you.

18 Ms. Bennett, do you want me to keep the card
19 for the 16.B item?

20 MS. BENNETT: No, because I obviously
21 misunderstood the item.

22 MAYOR PATTERSON: Okay.

23 MS. BENNETT: Thank you.

24 MAYOR PATTERSON: Okay. Thanks.

25 Anybody else wishing to address the council

1 on any item that's not on the agenda?

2 And I have to tell you, though, I really
3 appreciate the speakers not repeating one another.
4 You're -- the new information is appreciated.

5 And so if you do agree with a speaker, as our
6 previous speaker did, I appreciate it when you
7 indicate that as well.

8 All right.

9 DONNA HORST: I am very new to the city
10 council meetings and very naive about the process.
11 I've been a resident here for about nine years.

12 So if this is on the agenda, I'll sit down
13 and come back up. It's Prop 218, the water.

14 MAYOR PATTERSON: That is on the agenda.

15 MS. HORST: It is on the agenda?

16 MAYOR PATTERSON: Yes.

17 MS. HORST: Okay. Then I'll sit back --

18 MAYOR PATTERSON: And if you want to make
19 sure you get on the right thing, I'll call your name
20 if you want to put a card in.

21 MS. HORST: Okay.

22 MAYOR PATTERSON: You don't have to put a
23 card in --

24 MS. HORST: How do I do that?

25 MAYOR PATTERSON: -- but you can put a card

1 in, and then when the item comes up, I'll be able to
2 call your name.

3 MS. HORST: Okay.

4 MAYOR PATTERSON: Okay?

5 MS. HORST: And how do I put a card in?

6 MAYOR PATTERSON: You know, it's -- there are
7 a lot of experienced people here. Maybe -- you could
8 just --

9 Could someone help her, please?

10 UNIDENTIFIED SPEAKER: (Inaudible.)

11 MS. HORST: Oh.

12 MAYOR PATTERSON: Thanks.

13 Okay. Next speaker on any item that's not on
14 the agenda?

15 MS. KIBBE: Sue Kibbe. I live in Benicia.
16 I've lived here for 18 years.

17 I apologize. This is a bit of a repetition,
18 but I wanted to emphasize one thing that Steve Young
19 pointed out.

20 This is that Union Pacific claims that they
21 inspected those tracks weekly and that they had just
22 inspected them two days before. This means that these
23 inspections should not reassure anyone.

24 Do not be complacent about this because,
25 obviously, they cannot predict when there's going to

1 be a derailment.

2 Thank you.

3 MAYOR PATTERSON: Thank you very much.

4 Anybody else wishing to address the council
5 on any item that's not on the agenda?

6 MR. LUCCA: Good evening. My name is --
7 excuse me -- Jan Lucca.

8 I'd like to talk to you about your economic
9 development program process or, my opinion, lack
10 thereof. I've been trying to get a project done in
11 this town for 18 months. It's been a nightmare.

12 So I'm asking you, as a council, to talk to
13 your staff, have them be engaged with people who are
14 trying to get projects done in this town, don't be
15 obstructionists, stop putting up stop signs to
16 everything that comes up.

17 Absolute nightmare. I would not recommend to
18 anyone to try to do a project in this city.

19 That's about all I had to say, and,
20 hopefully, some day, my project will actually get
21 approved in this town.

22 Thank you.

23 MAYOR PATTERSON: Thank you, Mr. Lucca.

24 I have a very different take on our staff on
25 their processing. I'm sorry that you're having the

1 difficulty. I'm happy to meet with you.

2 I do know -- I can't discuss it with you
3 right now, but I do know some of the issues, and our
4 staff, I have -- as I said, I have 100 percent
5 confidence in their professionalism and what they're
6 doing.

7 I'm just sorry that you're having a problem,
8 and I think everyone is sorry that you're having a
9 problem. So why don't we --

10 MR. LUCCA: Uh --

11 MAYOR PATTERSON: -- not discuss it now
12 and --

13 MR. LUCCA: Let's not discuss it now --

14 MAYOR PATTERSON: -- talk after this; all right?

15 MR. LUCCA: -- but thank you for, again,
16 backing up your staff. That's all you people seem to
17 do is tell everybody how wonderful they are as they
18 stop my project and other projects in this town.

19 MAYOR PATTERSON: I think your project is a
20 great idea. Everybody is --

21 MR. LUCCA: Well, then why isn't it done?

22 MAYOR PATTERSON: -- excited about your
23 project.

24 MR. LUCCA: Why isn't it open?

25 MAYOR PATTERSON: I'll talk to you after the

1 meeting.

2 Anybody else wishing to address the council
3 on any item that's not on the agenda?

4 MS. INGERSON: Mayor, councilmembers, my name
5 is Phyllis Ingerson. I have a scratchy voice. I'm
6 not supposed to talk, but I'm going to talk anyway.

7 I happened to be on the internet when the
8 fire occurred in Mosier, Oregon, and there was a
9 newscaster there live, with a live feed. He was up on
10 the hill, and it started out with a small puff of
11 smoke, and he stood there for 20 minutes broadcasting,
12 20 minutes.

13 They couldn't get to those tank cars to put
14 that fire out, and because of that -- because of the
15 traffic on the freeway, because of it being in a
16 gorge, because of the evacuation of the trailer park,
17 because of the evacuation of the elementary school,
18 they couldn't get to the gorge to the tank cars. My
19 understanding, six of them caught fire.

20 I watched him stand there, and there was a
21 small puff of smoke.

22 I was also here when Valero did their little
23 fire that they said that they could put out. Well,
24 it's a totally different story when it's real.

25 They couldn't use the foam; we've heard that.

1 They had to pump water out of the river to be able to
2 cool the other cars off, and they were saying had the
3 wind been blowing like the day before, 25 miles an
4 hour, all 96 of those cars would have went up.

5 If 96 cars go up, that's going to level
6 Benicia. We don't have access to those railcars to
7 put out a fire if they had to let those burn for
8 10 hours because it was too hot and they couldn't use
9 foam on them. We have holding tanks right there. We
10 also have the other cars lined up.

11 What are we going to do? How are we going to
12 stop something like that in our town? How is Valero
13 going to do it?

14 You have the fire chief of a city that backed
15 Mosier in saying there wasn't a problem with the
16 railcars that now is saying it's insane.

17 I do not believe in coincidences. I believe
18 everything happened for a reason, and I think that
19 happened to show you what can happen here.

20 I think there's enough information available
21 to our city council, who is supposed to protect us, to
22 vote "no," like our planning commission did.

23 There is no reason to go forward with this
24 project, none at all, in my opinion, and I thank you
25 for listening.

1 MAYOR PATTERSON: Thank you very much.

2 Any questions?

3 Anybody else wishing to address the council
4 on any item that's not on the agenda?

5 All right. Going once.

6 Seeing no one coming forward, then that's the
7 end of public comment.

8 I also want to mention that for written
9 comments, we have a copy of information that's not
10 relevant to -- that is relevant to the meeting, after
11 the council packet is prepared and copied and made
12 available to the public, on the side table against the
13 wall, right over here.

14 So there are seven handouts. The first one
15 is "Maintenance and Engineering Organization
16 Assessment Report." It's a PowerPoint presentation,
17 which you'll see if you stay;

18 "Update on Water Reuse Project Feasibility
19 Study," PowerPoint presentation, which you will also
20 get to see if you stay. I hope you do;

21 And the adoption of the "2015 Urban Water
22 Management Plan," PowerPoint presentation. Again, I
23 really want you to stay for that;

24 And the "First Responders' Fee Overview,"
25 PowerPoint presentation, help clarify some

1 misunderstanding. That would be good.

2 And then we also have an e-mail from
3 Mr. Bob Berman, re the agenda item 16.H, which is the
4 issue with whether or not the City should respond to
5 the petition by Valero for the Surface Transportation
6 Board to make an opinion about our land use authority.

7 And then the next item is "Tesoro Petition
8 for the Surface Transportation Board Declaratory
9 Order"; and the next item is a copy of Resolution 1648,
10 which was referenced in the agenda.

11 So the next item on our -- on our agenda is
12 the consent calendar...

13 [01:04:22]

14 * * *

15 [01:56:20]

16 MAYOR PATTERSON: Okay. The next item on the
17 agenda is, "Provide direction on whether to file a
18 response to Valero's petition to the Surface
19 Transportation Board's related" -- or, "related to the
20 Crude By Rail Project and preemption."

21 Ms. McLaughlin?

22 MS. McLAUGHLIN: So Valero has filed their
23 petition with the Surface Transportation Board, and
24 city council never gave me direction to file some sort
25 of response or reply to their petition. So this is

1 the item before you.

2 Do you want me to hire outside counsel to
3 assist me with filing a response of some sort?

4 There's two different kinds of responses,
5 basically, that we could file. We could just file a
6 letter which expresses our views, or we can get a
7 little bit more formal in being included as a party of
8 record.

9 I think our -- the City's position, thus far,
10 has been less aggressive than Valero's in terms of
11 preemption. So it may -- I think it may be worthwhile
12 in restating that position to the Surface
13 Transportation Board.

14 MR. CITIZEN SPEAKER: Can you speak up,
15 please?

16 MS. CITIZEN SPEAKER: We can't hear a thing.

17 MAYOR PATTERSON: Yeah, it -- it -- it was
18 pretty hard to hear. So...

19 You want to try that again?

20 MS. McLAUGHLIN: I can try it again.

21 So Valero has filed their petition with the
22 Surface Transportation Board, and the city council has
23 not given me direction to file any sort of response,
24 in terms of a reply brief or a letter, to the Surface
25 Transportation Board. So that's the decision before

1 you tonight.

2 Do you want to give me direction to do so?

3 In order to do so, I'll hire outside counsel
4 to assist me with this, and there's two different ways
5 we can go about it. We can file a letter, which is
6 sort of a more informal way of responding, or we can
7 be more formal and become a party of record.

8 MAYOR PATTERSON: All right.

9 So that -- and I will say that I requested
10 this and was advised by the city attorney that we
11 would not have to go through the two-step process to
12 get counsel direction on the three issues.

13 One is whether we should file anything at
14 all; the second would be the nature of that filing,
15 which would be -- my preference would be party of
16 interest [sic]; and then the third is the outside
17 attorney.

18 So -- and the reference that Ms. McLaughlin
19 was making, that we differ with Valero in terms of the
20 preemption on land use, it's a single quote in a staff
21 report, and I would like to read it.

22 "The City has the right to regulate onsite
23 development and impacts, as long as they do not
24 directly or indirectly regulate rail operations."

25 And that's the basis of the disagreement with

1 Valero. So that's the item before us.

2 Let's take comments and questions from
3 councilmembers, starting with Councilmember Campbell,
4 then Schwartzman, and then Vice Mayor Hughes.

5 COUNCILMEMBER CAMPBELL: Okay.

6 The first one I have is, where are we going
7 to go with this? You know, how far are we going to go
8 with this?

9 Do we get direction to say, you know, "We
10 don't agree with the preemption, period," or, "We
11 don't agree with Valero's claim," which seems to be
12 that, even though they said, I think on page 16 of
13 their petition, that this is not aimed at our planning
14 and zoning, and what have you, at all?

15 But then the next sentence says if you deny
16 it, then, you know, whether you're using zoning or
17 planning, or whatever, you're in violation of,
18 you know, the Commerce Clause, which you're really in
19 violation of.

20 And so, you know, that being the case,
21 you know, I think council has at least set some level
22 of general parameters on, you know, how far we go with
23 this, because we could go all the way to the extreme
24 as saying, "Yeah. Well, you know, we generally agree
25 with Valero," all the way to the far extreme in

1 saying, "No, this is a bunch of hooey."

2 So we -- I think we can't just say go out
3 there and, you know, write a letter or -- or whatever.
4 You know, we have to have at least some general range
5 that we give our city attorney and whoever we hire.

6 Because this looks like this is a -- Valero's
7 asked for a straight-on collision with the
8 Tenth Amendment and, you know, the Commerce Clause,
9 you know, at least the way I'm reading, you know, the
10 petition.

11 So, you know, where do we go?

12 MAYOR PATTERSON: An excellent question.

13 Councilmember Schwartzman?

14 COUNCILMEMBER SCHWARTZMAN: Well, I think
15 this is a perfect opportunity for us to be able to go
16 on as a party of record and -- and seeing what we can
17 do, if there's anything we can do, to narrow the
18 definition.

19 I have a big issue with the broad definition,
20 and so I would like to do everything we can to put any
21 information in that we can to see if we can narrow
22 that definition, because I think, in the long run,
23 that would help us.

24 MAYOR PATTERSON: Okay.

25 And then Vice Mayor Hughes?

1 VICE MAYOR HUGHES: I agree with the two
2 councilmembers.

3 I think, at a minimum, that we -- we need to
4 send a letter that indicates that we don't agree with
5 Valero's interpretation of preemption with respect to
6 onsite operations. I think, at a minimum, we need to
7 do that.

8 And a question to the city attorney would be,
9 is it more influential or impactful for us to send a
10 letter versus become a formal party of record?

11 Is it -- do we get more bang for the buck?

12 MS. McLAUGHLIN: More bang for our buck if we
13 come -- become a party of record, and the cost
14 estimates are not really that different.

15 VICE MAYOR HUGHES: Okay.

16 MAYOR PATTERSON: Councilmember Strawbridge?

17 COUNCILMEMBER STRAWBRIDGE: Yes, some ex parte.

18 I had a meeting with Marilyn Bardet. It's
19 probably been a month ago.

20 I went out to Ruszel Work -- Woodworks and
21 met with Jack and Ed. Ed gave me a tour of their
22 business, which I had never been to, as well as a tour
23 of the industrial park and the rail situation out
24 there.

25 We visited the golf cart company; talked to

1 those folks.

2 Also, in the meantime, I was at a meeting
3 with the former head of the PUC. I've known her a
4 long time. And she was asking how the crude by rail
5 was going, and, of course, I said, "Hmm. It's been
6 very interesting."

7 So she recommended that I look into the PUC
8 as far as their oversight in oil-by-rail safety, which
9 I did do.

10 I've been doing a lot of -- on the internet,
11 but I also talked to the deputy director of safety for
12 the PUC and actually wrote him today that we were
13 having this meeting, because one of the things that I
14 found in my research is that oil-by-rail safety is a
15 big thing with the PUC.

16 They've acknowledged the impact that rail is
17 having -- or the -- the oil transport is having.

18 They have now formed a reconnaissance team
19 with the governor on proactively monitoring crude oil
20 projects, before they come online, by identifying and
21 seeking remediation on all regulated and nonregulated,
22 potential, perceived and existing, risks and by
23 providing independent safety oversight and guidance to
24 the railroads.

25 So I guess my question was -- and I did make

1 some calls to staff about, is the PUC preempted by
2 the -- the Surface Transportation Board?

3 And in talking to the deputy director of
4 safety, he acknowledged that the PUC has been around
5 a lot longer than the Surface Transportation Board or
6 the actual FRA and that they do things together so
7 that there isn't a -- a preemption between the two.

8 So what I'm looking at, I think that we've
9 all lost -- have lost faith in Union Pacific,
10 especially after the last week's occurrence, and I'm
11 looking for possibly the PUC to weigh in on this
12 project.

13 It is not only impacting Benicia, but it's
14 also impacting California and the rest of the
15 United States.

16 And as I said before, I think that Benicia
17 has been made the example here of what our direction
18 is going to be, and I think that this gives us an
19 opportunity to get information from a -- the -- the
20 PUC, which is obviously the State of California.

21 MAYOR PATTERSON: Okay. So we'll get some
22 clarification in a little bit and then public
23 testimony, but, Councilmember Campbell, did you have
24 another comment?

25 COUNCILMEMBER CAMPBELL: Maybe. You know, it

1 can wait till after public comment, but there are a
2 few things, specifically, I would like whoever we have
3 as our attorney of record to do this.

4 I'd like them to look at specific points in
5 this petition and rebut them is what I'd like. I -- I
6 can do it now or wait until after public comment.

7 MAYOR PATTERSON: All right. Thanks.

8 Can we have anybody interested in commenting
9 on this item come forward, please?

10 I don't have any cards.

11 MS. BARDET: Good evening again, council.

12 I just would like to make a few comments
13 about this option you have to pursue petitioning the
14 STB.

15 I believe that the Valero's STB petition,
16 having read it, presents a biased and inaccurate view
17 of federal preemption.

18 A decision in Valero's favor could have
19 far-reaching consequences for the city. It could
20 diminish the City's authority over any project that
21 even tangentially involves rail.

22 If the council chooses to submit a petition
23 to STB, it's in the City's own best interests to weigh
24 in with the STB to protect its land use authority, but
25 it should also do so after obtaining a truly

1 independent legal advice.

2 The advice the City has received so far, we
3 believe, has harmed its interests. The City should
4 hire an attorney that will assert its land use
5 authority to the fullest.

6 And I have to say that I did review the three
7 attorneys that were listed in the staff report. So I
8 looked them up, read their bio's and -- bio's and saw
9 what they have -- who they've worked for, and,
10 certainly, they've worked for rail.

11 I considered the short list of attorneys
12 recommended to draft that position for the City, and
13 in doing so, I wonder what would be the purpose of
14 hiring an outside counsel again at \$20,000, plus, if
15 it was just to repeat the well-known, by now, opinions
16 of the city attorney and staff and the guidance
17 provided by Mr. Hogin, the previous outside counsel.

18 And I would not support that approach if you
19 were going to go to the -- and be a party of record
20 with the STB, because what we have to assert is our
21 authority, and what our job is -- to do here is to
22 protect the safety of the community from undue harm,
23 and that involves land use decisions in this case.

24 And I believe that to spend \$20,000 on an
25 outside counsel that would just simply, in effect,

1 tacitly endorse what Valero's position is, with a
2 little bit of variation, would be to surrender our
3 land use authority.

4 And it may show the STB that you really are
5 in league with, in a sense -- or would agree to the
6 surrender of your authority, or the greater part of
7 your authority, to regulate onsite of Valero property.

8 And one of my greatest fears about allowing
9 more rail spurs to be constructed on Valero's own
10 refinery property is once you have ceded local land
11 use authority on that property to the railroads in
12 perpetuity, you allow federal government preemption on
13 a refinery property.

14 And I'm telling you that means that you could
15 have the effect of creating a Trojan horse on the
16 property for future flexible uses of the property,
17 even as an oil terminal, where they just simply import
18 oil, store it there, and ship it out by -- you know,
19 bring it in by rail, ship it out by ship.

20 And if you don't think about that for a
21 minute, what the long-range future can be should you
22 allow federal government authority over an easement on
23 that property any further than -- further than they
24 already have by having rail spurs on the property,
25 then we haven't really looked at all the full meaning

1 of flexibility for the refinery with regard this
2 project.

3 That's why your defense of your land use
4 authority is so important.

5 Thank you.

6 MAYOR PATTERSON: All right. Any questions?

7 Anybody else wishing to address the council
8 on this item?

9 MR. YOUNG: Mayor Patterson, members of the
10 council, I'd like to expand a little bit on what
11 Marilyn has said.

12 I agree with her that this issue is really
13 about local land use authority.

14 The Surface Transportation Board is a federal
15 entity whose purpose, according to their website, is
16 to "settle disputes between shippers and railroads,"
17 and in this case, the shipper would be Valero; the
18 railroad would be U.P.

19 But there is no dispute between U.P. and
20 Valero. They're on the same side on this issue. So
21 when they come forward with the same argument, the
22 likelihood is that the STB will say, "Well, what's the
23 issue? You're both saying the same thing. Move on.
24 We'll agree with you and put it to bed."

25 If you're going to spend \$20,000 on an

1 attorney -- I noticed that one of the attorneys that
2 was in the staff report is Mr. Hogin. Well, we know
3 what Mr. Hogin's position is. We've heard it; we've
4 read it. There's really no point in paying him an
5 additional \$20,000 to say the same thing again. He
6 agrees with Valero, with one small exception.

7 I have not reviewed the other attorney that
8 Marilyn did, but I trust her analysis.

9 I think it is important that you have an
10 independent counsel, but more importantly, that you
11 give them pretty clear direction on what you're
12 looking for and what your position is.

13 And if your position is to try to protect and
14 enhance local land use authority, then there probably
15 is a reason to hire an in- -- an independent, outside
16 counsel to assist you in doing that.

17 But I haven't heard, with -- with some
18 exceptions, I -- I -- I did listen to what the council
19 people have said here, but I think it's really
20 important that the direction -- that the public
21 understand what the direction is that you're going to
22 give this attorney and whether it's to support
23 Valero's view of indirect preemption -- which has not
24 been settled anywhere and will probably only be
25 settled in a court of law and not at the STB -- or is

1 it to actually act in the defense of your local land
2 use authority?

3 And so that's what I would hope to see some
4 discussion of.

5 Thank you.

6 MAYOR PATTERSON: Thank you very much.

7 Any questions?

8 Anybody else wishing to address the council
9 on this item?

10 MS. KERRIDGE: Hi. Kathy Kerridge, once
11 again.

12 As you know, I practiced law for almost
13 20 years and did a considerable amount of litigation
14 during that time.

15 Based on my experience, I would recommend
16 that the City hire attorney -- an attorney to
17 represent it, but only under the conditions that both
18 Steve Young and Marilyn Bardet have said.

19 We want to have a strong advocate for the
20 City's ability to regulate its land use and to limit
21 the preemption.

22 It matters in front of a Court how the facts
23 and how the law is presented. If that didn't matter,
24 there would be no point for there to be lawyers.

25 The City first needs to correct Valero's

1 misrepresentations of the facts in this case. Valero
2 says the planning commission rejected was -- rejection
3 was based substantially on findings of adverse rail
4 transportation impacts, and it ignores the other
5 substantial reasons for denial.

6 In fact, the number one reason that the
7 planning commission gave for denial was that the
8 project's location was not consistent with Benicia's
9 General Plan and that it was detrimental to the
10 health, safety, and welfare of the adjoining neighbors
11 and cities, as well as up-rail communities, but it was
12 not just based on up-rail communities or rail
13 operations.

14 In addition, there was voluminous expert
15 testimony, both oral and written, before the
16 city council about the increase in air pollution and
17 the real risk of explosions and fires in the refinery
18 and industrial park due to the location of the
19 project.

20 None of that has anything to do with rail
21 transportation, but you would not know that from
22 Valero's recitation of the facts.

23 Valero also conveniently left out that one of
24 the reasons for the planning commission's denial was
25 that the project was in a floodplain. There's no

1 mention of that at all in Valero's brief.

2 Valero says a lot about how much gas it
3 produces and its need to be competitive, but it
4 conveniently ignores the fact that the demand for its
5 project has gone down substantially over the last few
6 years.

7 With the elimination of the export ban on
8 oil, we could really be looking at Valero producing
9 for a foreign market.

10 After getting the facts straight, the next
11 thing a lawyer has to do is determine how the law
12 applies to them, and a strong advocate will make sure
13 that they have cases and interpretations of cases to
14 strengthen their position.

15 Cases can often be distinguished on the
16 facts, and just because Valero interprets it one way
17 doesn't mean there aren't other interpretations or
18 other cases.

19 Regardless about how you feel about this
20 project, you want the City to be able to be in control
21 of its land use decisions. That's one of your key
22 functions as a local government.

23 What Valero is advocating would strip you,
24 and local government across the country, of authority
25 to protect the health and economic well-being of our

1 cities.

2 It's really important to hire a strong
3 advocate who will put forth these positions, and I
4 think from what I've heard, you, on the council, are
5 recognizing that.

6 Hiring Hogin would go in exactly the opposite
7 direction. He's already stated, very publicly, what
8 he feels about this, and it's not what your position
9 should be.

10 Looking at the other two attorneys, I don't
11 know if I'm pronouncing their name right, it's
12 Spitulnik and Crenna. It looks like they have a lot
13 of experience in this area, but I'm not quite sure
14 what they're advocating.

15 Maybe a better choice could be Churchwell or
16 looking at recommendations from some of the local
17 environmental groups who are actually fighting this
18 same battle in many different cities around the
19 country.

20 So I believe that you should hire a strong
21 advocate for your position, that preemption should be
22 limited, as limited as possible, and that you should
23 have as much control as possible over your land use.

24 And if -- if you can't get that across, if
25 you can't make sure that whoever you hire, that that's

1 not right in their representation agreement and that's
2 not their specific instructions, then I don't think it
3 would matter.

4 But I think if you don't weigh in this at
5 all, it -- it will give the impression that you don't
6 care, and that would not be good for local control.
7 Hiring the wrong attorney to represent you would be
8 the worst thing you could do.

9 So I think you need to give the staff firm
10 direction on this point, and I think you really need
11 to make sure that you hire a strong advocate for local
12 control and limited preemption and that that attorney
13 is representing and protecting not only this city, but
14 cities throughout the country in this battle, because
15 this is going on all over the country now, in all
16 different kinds of rail facilities.

17 Thank you.

18 MAYOR PATTERSON: Thanks.

19 Any questions?

20 Thank you very much.

21 Anybody else wishing to address the council
22 on this item?

23 MS. SULLIVAN: Again, Judith Sullivan,
24 Benicia resident.

25 And I'd like to mention, in Valero's

1 Declaratory Order to the STB, there was a dishonest
2 statement in there.

3 In the environmental impact checklist, when
4 it asked the question, "Is this in" -- "Is the
5 construction site in a flood -- in a flood zone?" they
6 checked "No."

7 I hope that's in the -- it's in the paperwork
8 that you received, it's on the website, and I'd like
9 you to look at that and see that. It is a direct lie,
10 and -- and we already know this. We already know it's
11 in a hundred-year flood zone. So there may be other
12 discrepancies in this report.

13 And you might want to note that -- if you do
14 write a letter or you do have a lawyer take on this
15 case, read that very carefully. That was an obvious
16 dishonest statement. There may be others in there
17 that I didn't catch. I've only read it once.

18 Also, I agree with Marilyn and Steve and
19 Kathy, and I hope that you do find someone to
20 represent our city that is concerned about cities
21 having their rights.

22 I'm concerned that the council did not look
23 at the onsite issues before moving in this direction,
24 because I strongly believe we have onsite issues that
25 are valid for turning this project down.

1 And both Hoag -- Hogin also said that if you
2 have onsite issues, the railroad preemption issue
3 isn't even an issue. So you already have enough to --
4 to deny this project.

5 I hope that you look -- re- -- re-look at
6 that. I know this has already -- this -- this has
7 already started, it's -- it's already in motion, but I
8 still think you can reevaluate the other reasons why
9 this can be denied.

10 I looked at your lawyers -- your lawyers
11 also, looked at their bio's, their -- and I -- I did
12 not find any of them that I thought were particularly
13 suitable for someone to stand for the City rights.

14 So I hope that if you do choose to hire a
15 lawyer, you look beyond the ones you've -- you're
16 already checking out.

17 And I'm very pleased to see that the
18 environmental groups have put in a Declaratory Order,
19 also.

20 Thank you.

21 I don't know which way you should go on this.
22 It's -- it depends on what kind of lawyer you can
23 find, but I hope you're very careful in your
24 selection.

25 Thank you.

1 MAYOR PATTERSON: All right. Thanks very much.
2 Any questions?

3 Anybody else wishing to address the council
4 on this matter?

5 MR. FARROUZ: Hello. My name is Amir Farrouz,
6 and I have already e-mailed you some comments, some
7 repeated comments, on the Valero petition, and I will
8 not -- there's just a few things, because most of the
9 things I wanted to say is already in that package.

10 One of the things that Marilyn alluded to is
11 that attorneys are supposed to be advocates. That's
12 to say advocating for the position and interest of
13 their client, but that presupposes that the client has
14 a coherent position or a common understanding of what
15 their interests are.

16 Unfortunately, that's not the impression I
17 got from your last meeting, when you allowed Valero to
18 go to STB. I felt that some of you really don't know
19 whether you have a right to deny the project and you
20 were looking for direction from STB, and that was
21 really disappointing.

22 Whether the city councilmembers like the
23 merit, quote/unquote, of the CBR of Valero or not, it
24 is, of course, important. What also matters whether
25 they genuinely are interested in defending City's

1 right to run its own affairs, not to be dictated to
2 from someone in Washington, like a bankrupt
3 municipality run by a taker -- run by a caretaker.

4 If the majority of the city councilmembers
5 cannot agree to defend the principle of Benicia, they
6 should have the final say in the decision-making
7 regarding Valero project, then they should not hire an
8 attorney to -- to represent them at STB since in this
9 case, there is no "them." You are different people
10 with different interests.

11 Let STB rule in favor of the Valero without
12 the help from city -- Benicia city council attorney,
13 and let the City spend the \$20,000, or more, for
14 something more worthy.

15 Ezra Ledderer (sounds like), he has stated in
16 the petition, the Benicia refinery is not an isolated
17 case limited for Benicia, but is an issue that has
18 ramification all over California and other states.

19 Since the stronger and richer party to the
20 argument, Valero is seeking allies all over the
21 nation, STB and federal government, to augment its
22 power and fortify its argument.

23 I do not understand why the smaller and
24 financially richer party, Benicia, is not doing
25 likewise by appealing officially to other cities, the

1 state government, or even other states.

2 It seems to me this inaction by the City of
3 Benicia government to be foolhardy and dereliction of
4 duties by the city officials.

5 Remember the adage, "A house divided against
6 itself."

7 Thank you.

8 MAYOR PATTERSON: Thank you very much for
9 your comments.

10 Anybody else wishing to address the council
11 on this item?

12 MS. SENSI-ISOLANI: Me again,
13 Giovanna Sensi-Isolani.

14 I attended a lot of meetings on this issue,
15 and I would like you to please look back at the final
16 statements of the planning commission, because each
17 one of them took a very long time to come up with a
18 statement that pointed towards your rights to protect
19 us here in the city.

20 All of them outlined -- each one of them
21 outlined exactly what you need to look at about these
22 issues, the rights that you have to protect us.

23 It had nothing to do with the -- the state,
24 even though we all know that -- that we have to
25 protect everybody, but it really talked about your

1 rights in the city to protect us right here.

2 So I'm asking you to look through those
3 statements, because each one of those people gave you
4 the right answer right there.

5 Thank you.

6 MAYOR PATTERSON: Okay.

7 Anybody else wishing to address the council?

8 MR. RUSZEL: Hi. I'm Jack Ruszel.

9 I would have to agree with the last speaker.
10 Your planning commissioners did their job, and they
11 did it well. They spent three years going through
12 reams of paper to look at what the truth was in this,
13 and the truth was not in those reams of paper.

14 What was in those reams of paper was huge,
15 twisted -- twisted information to allow the oil
16 companies to continue moving in the direction that
17 they wished to.

18 As our city council, I really am hoping that
19 you will not continue in this direction. You do not
20 need clarification. Preemption is not the reason that
21 you must approve this project. Preemption is
22 precisely the reason that you must deny it.

23 Once you allow a project like this to go into
24 your city, you have lost all control of your city, and
25 you will be an oil shipping port. I do not want to

1 live here once you do that. I do not want to run my
2 city -- or I do not want to run my business here. I
3 will not be able to be part of this city.

4 I don't think that you should spend \$20,000
5 on additional questions about putting this before the
6 Surface Transportation Board. It's a waste of money.

7 If you want to spend money, spend money
8 protecting yourself from the lawsuit that Valero will
9 no doubt put in place once you deny the project.

10 The project needs to be denied. Deny the
11 project and go from there.

12 Thank you very much.

13 MAYOR PATTERSON: Thank you.

14 Anybody else wishing to address the council
15 on this matter?

16 I don't see anyone coming forward. So we're
17 going to close the comment and come back for council.

18 And, Councilmember Campbell, did you want to
19 go back to your points?

20 COUNCILMEMBER CAMPBELL: Three points and
21 then I'll probably be quiet for the rest of the time
22 here.

23 These are a couple things I'd -- I'd like
24 whatever counsel we finally have to address, and in
25 particular, on the petition Valero submitted, it's on

1 page 13, and it says, "State and local laws that deny
2 a rail carrier the ability to provide service or deny
3 a shipper the right to receive rail carrier service
4 are preempted."

5 You know, because that -- that one kind of
6 goes at, again, our ability to decide on building
7 permits, and what have you.

8 And then -- you know, although, at the bottom
9 of page 16, it says, "Valero does not seek, by this
10 petition, an order declaring that the City of
11 Benicia's permitting authority over the construction
12 and operation of the unloading rack itself is subject
13 to ICCTA preemption.

14 "However, the EIR and permit denials impinge
15 on board jurisdiction, regulate rail transportation,
16 and unreasonably burden interstate commerce."

17 What they're saying right there is if we vote
18 "yes," we aren't doing any preemption. If we vote
19 "no," well, then, you know, we're preempted from
20 discussing it there.

21 So you see the sort of contradiction of
22 position there? "Yes," that it's okay, and, "no,"
23 well, we -- we all agree it obviously preempted
24 interstate commerce.

25 So those are the -- the two points which sort

1 of stick out there because they're going straight at
2 the argument that, ultimately, the unloading racks are
3 preempted from us even looking at them.

4 No different whether you're talking about in
5 the actual refinery or if they decided, say, in a
6 residence on West K Street, or something like that, to
7 put in -- to buy the land and put in a -- instead of
8 unloading docks -- well, you know, the same argument
9 can be made exactly on that, that, you know, we're
10 restricting their ability to unload and to receive any
11 sort of oil.

12 So those are the two points I'd like looked at.

13 The other one goes to the choice of the
14 attorney. You know, our city attorney knows way, way
15 more than I do about the law and people to choose, and
16 all that. So I have no intention of arguing who she
17 decides on.

18 But what I -- I would like to consider is not
19 someone who necessarily knows anything about rails or
20 ICCTA, any of that. I -- I kind of think this is more
21 for a constitutional lawyer, someone along those
22 lines.

23 Because like I was saying before, this looks
24 like this petition is hitting toward a collision
25 between the Interstate Commerce Clause, the

1 Constitution, and the Tenth Amendment, which is where
2 all our, you know, state's rights for, you know,
3 health and safety of a people in a community exist.

4 So that being the case, it's pretty -- you
5 know, they've taken a pretty broad shot right here,
6 and this may be, you know, something for someone that
7 knows the Constitution a little bit more than just
8 knows rails; although, I guess, they could actually be
9 the same type of person.

10 But, you know, this one does look like this
11 one's something for maybe someone who specializes
12 straight in the Constitution.

13 Thank you.

14 MAYOR PATTERSON: Okay. My thoughts were
15 that we would want to get a land use attorney who
16 really understands the principles of police power and
17 land use, with some experience in dealing with federal
18 preemption.

19 There are many in the state, because this is
20 not a rare argument or issue, at least a dozen, and
21 none of them signed up. None of them responded.

22 I think one could pick the phone up and
23 actually call some of the law firms that are on record
24 for dealing with land use and police powers, and I
25 would like a really strong advocacy, because federal

1 interference with the local land use decision-making
2 goes to the heart of the debate.

3 In fact, as it was summarized by the planning
4 commissioner chair, Don Dean, when he said he could
5 not approve the -- he talked about the EIR a little
6 bit but deferred to the other commissioners for most
7 of their assessment of the adequacy.

8 But, he said, at the end of the day, it's
9 really a zoning issue, and this land use is
10 inappropriate for the designations in both the
11 General Plan as well as the zoning code, and it's --
12 it's clear -- it's -- it's crystal clear as that.

13 And -- and to get to -- I -- I want to
14 address the PUC because I think it's a distraction.

15 It's a -- first of all, when the
16 California -- State of California -- I testified in
17 the Senate to support the legislation that was being
18 proposed to add additional inspectors for the PUC.

19 And under law -- under the ICC and under
20 current law, federal law, it's allowed to have
21 additional state inspectors if there aren't adequate
22 inspectors, and there are a few other things. There
23 was also a charge for spills, dealing with land rather
24 than just the water.

25 And they were sued, and the say -- and the

1 State defended it, but -- so it's not as if this isn't
2 a new issue. It's a longstanding issue with the City.

3 The PUC does not regulate land use. The PUC
4 does not regulate the rails. They have an agreement
5 that they can participate in some of the safety issues
6 and that they will enforce the spill provisions and
7 the -- and the response.

8 So I'm -- I want to set the PUC aside because
9 I really do feel that it -- it's a distraction. So
10 putting Benicia first is essential and putting
11 Benicia's land use goals is essential.

12 And we said in the industrial park what we
13 wanted to see, which was diversification of
14 businesses, and by permitting what appears to be a
15 terminal is -- first of all, it's a land use issue;

16 And, secondly, it is contrary to looking at
17 the diversification of other businesses because of the
18 level of activity that occurs at that terminal. That
19 is a land use decision that one can make.

20 And then there are the other issues that I
21 actually think the attorney can argue for the record,
22 and that is the issue of public health. It's really
23 critical, and that is one of the state's rights. It's
24 our responsibility. We're even given that
25 responsibility.

1 And it's a dereliction of the fed- -- federal
2 government right now in that it is not enforcing the
3 very thing that they have a duty to do and that is to
4 protect us.

5 So -- so for that, I would like to see a
6 direction to the city attorney that we do file for a
7 decision of record, that we do seek an attorney with
8 that experience, and that -- I'm not too sure the
9 choices we have before us meet that criteria; and that
10 we focus on -- very strongly focus on the interference
11 with the City's police powers.

12 And if there's no objection to that comment,
13 maybe we could -- I guess we would take an action for
14 that.

15 Councilmember Schwartzman?

16 COUNCILMEMBER SCHWARTZMAN: So I actually
17 agree with what you said, and I agree with what you
18 said (pointing in Councilmember Campbell's direction).

19 I think that this is -- it's got the makings
20 of something that really kind of goes for a major
21 decision and, obviously, to a court case at some
22 point. So constitutionally, I think we have that
23 issue.

24 And the issues you brought up, I think, are
25 very -- very germane and very appropriate. So I think

1 we need the strongest advocate we can find.

2 MAYOR PATTERSON: So did you want a motion
3 for that or...

4 I'm just looking at my crib notes here.

5 We're giving direction to staff.

6 Is there concurrence on direction to staff?

7 Vice Mayor Hughes?

8 VICE MAYOR HUGHES: Well, I -- I don't
9 disagree with what the three of you are saying.

10 My question to the city attorney would be, do
11 you think, in short order, we'd be able to find an
12 attorney that meets those -- meets that definition?

13 It sounds like we're looking for an attorney
14 that has land use expertise, constitutional or maybe
15 Tenth Amendment expertise, and also has some
16 experience with federal preemption issues.

17 MS. McLAUGHLIN: Yeah. I think the folks
18 that responded, and I've got another attorney who
19 responded as well, do have the expertise within their
20 firms, or whatever, to pull something together.

21 I think not everybody responds because they
22 have conflicts. So there may be a lot of firms out
23 there that have worked for the environmental groups or
24 worked for this side or the other side, and they don't
25 respond because they have clients that would be taking

1 a different position than perhaps we would be taking.

2 So I think we've got enough folks to select
3 from.

4 MAYOR PATTERSON: Okay.

5 And then -- so that -- there's a concurrence
6 and direction to staff, and then you will keep us
7 informed about who and how and what the draft is.

8 And there is a time-sensitive aspect about
9 this.

10 MS. McLAUGHLIN: Correct.

11 MAYOR PATTERSON: Okay.

12 With the request by the environmental group
13 for the additional time would be beneficial to us.

14 Do we want to -- there were two other
15 comments that were made that I thought were of
16 interest. I hadn't thought about it, and thank you
17 for your comments.

18 One is contacting the League of Cities and
19 seeing if they would join us in this petition; and the
20 second is joining the environmental groups for asking
21 for that continuation or that additional time.

22 Is that doable?

23 MS. McLAUGHLIN: Yeah, I think that's doable.

24 MAYOR PATTERSON: Okay. And are there any --
25 besides the League of Cities, is it beneficial to

1 contact the attorney general's office and see --
2 they -- they certainly have argued this. Actually,
3 they argued it a different sort of way, but they've
4 argued this issue, on land use.

5 MS. McLAUGHLIN: And contact them and let
6 them know that this is going out?

7 MAYOR PATTERSON: Right.

8 And I -- I thought the comment was made is
9 that a unified effort showing that land use is
10 extremely important to the State of California, as
11 well as to the City of Benicia, and that -- and that's
12 the -- that's the narrow point that I think that we
13 want to argue.

14 MS. McLAUGHLIN: Yeah. I don't know that a
15 unified approach is the strongest approach. You know,
16 I know the Benicians for a Safe and Healthy Community
17 are filing something. They filed the request for the
18 extension.

19 So I think probably the more people that
20 weigh in make it a more important project for them to
21 pay attention to.

22 MAYOR PATTERSON: Okay. Thanks.

23 THE CLERK: Mayor Patterson --

24 MAYOR PATTERSON: I'll take that under
25 advisement. So its direction --

1 THE CLERK: I know the city attorney is
2 clear, but can you clarify, for the record, what the
3 direction is?

4 MAYOR PATTERSON: So -- sorry.

5 The direction is to seek an outside attorney
6 with expertise in land use and to argue, as a matter
7 of -- on record, not just a letter, with the issue of
8 the police powers for land use.

9 And, probably, if you go back and listen to
10 the tape, you'll hear it more clearly.

11 And to -- and then -- we had concurrence on
12 that, and then I also suggested that we seek the
13 support with the League of Cities.

14 COUNCILMEMBER SCHWARTZMAN: Follow-up?

15 COUNCILMEMBER STRAWBRIDGE: Can I --

16 MAYOR PATTERSON: And, Councilmember Strawbridge?

17 COUNCILMEMBER STRAWBRIDGE: I appreciate your
18 point of view on the PUC. I still would like to get
19 some kind of response from them, mainly because, again,
20 they are monitoring throughout the state what is going
21 on with rail safety as it -- as it has to do with
22 crude by rail.

23 So I've -- as I said, I've written the deputy
24 director. They don't think it's a distraction. I
25 think that any body as important as the PUC should

1 weigh in on this.

2 MAYOR PATTERSON: Well, this is a land use,
3 and the PUC doesn't do land use. So --

4 COUNCILMEMBER STRAWBRIDGE: They do safety.
5 They're doing the safety of the rail.

6 MAYOR PATTERSON: That's transportation.
7 That is not land use --

8 COUNCILMEMBER STRAWBRIDGE: What --

9 MAYOR PATTERSON: -- and --

10 COUNCILMEMBER STRAWBRIDGE: -- what I'm
11 talking about is the safety of crude by rail.

12 MAYOR PATTERSON: That's transportation. It
13 is a surface main --

14 COUNCILMEMBER STRAWBRIDGE: I'm still
15 standing on what I said. I'd like the PUC to be part
16 of this response, too.

17 Thank you.

18 MAYOR PATTERSON: So I would actually like to
19 have concurrence on that.

20 I do consider that a distraction. There is
21 absolutely no question in law about what their
22 jurisdiction is, and it is not land use.

23 COUNCILMEMBER STRAWBRIDGE: It has to do with
24 safety.

25 MAYOR PATTERSON: It's rail safety, which is

1 a federal preemption activity. Our concerns about
2 preemption -- and I think we have agreement, that our
3 concern about preemption is with land use.

4 We are not debating the preemption authority
5 of the federal government when it comes to
6 transportation on rail.

7 COUNCILMEMBER STRAWBRIDGE: I thought that's
8 what we were doing, with this letter.

9 MAYOR PATTERSON: No. This letter -- no.
10 This letter is focused on the alleged preemption that
11 federal -- that Valero has made to the STB of land use
12 authority, that it -- and we disagree.

13 We even disagreed in a very brief statement
14 in the staff report on March 15th, but we would like
15 to expand on that disagreement because it goes to the
16 heart of our police powers of land use. The PUC
17 jurisdiction does not deal with land use.

18 COUNCILMEMBER STRAWBRIDGE: I didn't say it
19 did.

20 MAYOR PATTERSON: Well, why don't -- maybe if
21 the council agrees, what we'll say is that further
22 discussions with the city attorney can be clarified.

23 COUNCILMEMBER STRAWBRIDGE: Okay.

24 MAYOR PATTERSON: But I did have concurrence
25 on the land use.

1 Councilmember Campbell?

2 COUNCILMEMBER CAMPBELL: Well, how about,
3 you know, we just send a letter to the PUC with a copy
4 of the petition, and they can decide what they want to
5 do? If they don't want to do it, they don't want to
6 do it.

7 Just like I think that's what we should do to
8 the -- for the attorney general's office. You know, I
9 don't know if they know this thing has happened yet,
10 but, you know, I'm real sure that the California
11 attorney general is going to want to --

12 MAYOR PATTERSON: Okay.

13 COUNCILMEMBER CAMPBELL: -- make some comment
14 in there.

15 MAYOR PATTERSON: Those are good suggestions.
16 I'm --

17 COUNCILMEMBER CAMPBELL: Let's give them --
18 (Overlapping speakers)

19 MAYOR PATTERSON: -- without objection,
20 that's a recommendation.

21 COUNCILMEMBER SCHWARTZMAN: (Inaudible.)

22 MAYOR PATTERSON: And then,
23 Councilmember Schwartzman?

24 COUNCILMEMBER SCHWARTZMAN: Yeah.

25 I -- I appreciate your -- your issue. You're

1 talking about an attorney with land use, but I still
2 want to try to find somebody -- because we talked
3 about somebody who may be good at Tenth Amendment,
4 constitutional-related issues, too.

5 So I just wanted to get that in there, that
6 in addition to that, if possible, to find an attorney,
7 counsel, that has experience in all of that.

8 MAYOR PATTERSON: That -- that is -- the
9 Tenth is land use. That's exactly the police powers
10 that are --

11 COUNCILMEMBER SCHWARTZMAN: Well, I want to
12 clarify that.

13 MAYOR PATTERSON: -- granted by the City.

14 COUNCILMEMBER SCHWARTZMAN: Okay.

15 MAYOR PATTERSON: Okay. No further
16 objection.

17 I think we can move on to the next item,
18 which is 16.C.

19 [02:42:31]

20 (End of Reporter's Partial Transcript of
21 Recorded Proceedings)

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing recorded proceedings were furnished via digital medium, reported by me stenographically, and later transcribed into typewriting under my direction; that the foregoing is an accurate transcription of the recorded material.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney or any of the parties.

IN WITNESS WHEREOF, I have subscribed my name this date: June 24, 2016.

ANNIE DOEZIE, CSR NO. 8478