



**AGENDA ITEM
CITY COUNCIL MEETING DATE – JULY 17, 2018
BUSINESS ITEMS**

TO : City Council

FROM : City Attorney

SUBJECT : **REQUEST FOR REHEARING OF COUNCIL DECISION
RELATED TO SECOND STEP OF MAYOR PATTERSON'S 2-
STEP PROCESS REQUEST TO DISCUSS ADOPTING AN
INDUSTRIAL SAFETY ORDINANCE**

EXECUTIVE SUMMARY:

On June 19, 2018, the City Council discussed Mayor Patterson's "two-step request" to direct staff to prepare an Industrial Safety Ordinance (ISO). The Council voted to delay action related to an ISO until November 2018 in order to provide time for Valero to install air monitoring equipment. On June 28, 2018, the City Clerk received a request for rehearing of the City Council's vote as permitted under Benicia Municipal Code section 1.44.050. Only the decision of whether or not to rehear the matter is brought forward for Council determination tonight. If Council decides to rehear the matter, that action will be scheduled for a future meeting.

RECOMMENDATION:

Discuss the application submitted for rehearing of the decision and vote conducted by the City Council on June 19, 2018, in conjunction with Mayor Patterson's two-step request for consideration of an Industrial Safety Ordinance.

BUDGET INFORMATION:

There is no additional financial cost associated with determining whether or not to hold a rehearing of Council's decision made on June 19, 2018 related to the Industrial Safety Ordinance two-step request.

BACKGROUND:

Two-Step Process

The *City Council Rules of Procedure* include a two-step process for individual City Council members to bring forward matters for full Council consideration (Attachment 1). Step 1 is to request a matter be placed on an agenda to determine if the City Council is interested in discussing it at a later meeting with proper notice. If there is interest, the item comes back to the Council (Step 2) for more detailed discussion and possible staff direction.

During this two-step process, City staff have typically done little or no work on the matter since

the Council has not determined whether or not to assign resources to it. During Step 2 of the process, the Council has great latitude in giving direction to staff to respond to the Two-Step Request.

Mayor Patterson's Two-Step Request

In May 2017, Mayor Patterson submitted a two-step request that asked the Council to consider adoption of an Industrial Safety Ordinance (Attachment 2). The City Council heard the issue as a Step 1 request on May 23, 2017, and directed staff to bring it back for further discussion.

The issue (Step 2) was agendaized for June 19, 2018. On June 12, 2018, Mayor Patterson submitted an amended Two-Step Request (Attachment 3) as well as the "Benicia ISO Work Group Draft Ordinance" (Attachment 4). The amended request and the draft ordinance were included with the staff report for Council consideration but not addressed directly in the report due to the nature of the issue (Step 2 of the process) and timing (received a day before the publication of the agenda packet).

At its June 19, 2018, meeting, the City Council discussed Mayor Patterson's two-step process request to consider adoption of an Industrial Safety Ordinance (ISO). (A copy of the full staff report can be found here: https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/202659/Staff_Report_-_Step_Request_for_Industrial_Safety_Ordinance_Patterson_Final.pdf.)

City Council's Vote on June 19, 2018

The Council voted to take no action related to the Industrial Safety Ordinance (ISO) at that time and instead directed staff to return with an update on Valero's progress to install air quality monitors according to a plan approved by BAAQMD. The update was specified to be scheduled for the Council's November meeting. If Valero failed to meet the City Council's expectations by that date, the Council would revisit its decision related to developing an ISO.

Process for Considering Application for Rehearing

On June 28, 2018, Mayor Patterson submitted an application for rehearing of the Council's decision related to the two-step request for an Industrial Safety Ordinance (Attachment 5). Staff reviewed the process for Council's consideration of the application. The Mayor's request cites both the rehearing procedures as well as the reconsideration procedures. Benicia Municipal Code (BMC) Section 1.44.050¹ sets forth the procedures for rehearing and for reconsideration of items.

¹ 1.44.050 Procedure for rehearing.

A. Any interested person, or the city council or any council member, may within the time limits set forth in BMC [1.44.060](#) file an application for rehearing with the city clerk. The application shall contain sufficient information to identify the party, its interest in the matter, and the reasons for requesting a rehearing.

B. The application shall be considered at the first regular meeting which follows filing of the application by 14 or more days, or shall be considered within 14 days if the person or body to whom the application is made does not hold regular meetings.

C. To justify a rehearing the applicant must show in the application that there is new, relevant evidence which, in the exercise of reasonable diligence, could not have been produced, or which was improperly excluded, at the earlier hearing, or that the person or body failed to comply with the law, which contention was not asserted at the earlier hearing. The person or body may in its discretion decide whether to hear additional evidence than what is contained in the application. The decision whether to grant the rehearing is final and may not be appealed or reheard.

BMC Subsection 1.44.050 E specifically applies to policy and legislative matters. Since the request is about drafting an Industrial Safety Ordinance, it is governed by BMC Subsection 1.44.050 E.

Pursuant to BMC Subsection 1.44.050 E the City Council adopted a process for reconsidering policy items. It is found in the *City Council Rules of Procedure*. Section II.D states:

D. REVIEW OF POLICY ITEM CONSIDERED IN PREVIOUS YEAR. City Council Members may request that the full City Council review a policy matter that has been decided in the last year by following the procedures set forth in Section II.B. A brief write-up of the matter and the date of last action must be included on the Council Member Requested Agenda Item form (Appendix A). The request for review will be placed in the appropriate section of the agenda.

Section II.B is the two-step process:

B. TWO-STEP PROCESS. City Council Members may request that a policy matter be considered by the City Council using the Two-Step Process. A Council Member submits the Council Member Requested Agenda Item form (Appendix A) to the City Manager. The Council Member shall fill out the form as completely as possible and indicate a desired date for agendization of Step 1 and for Step 2. Once Step 1 is agendized, the City Council shall vote whether or not to pursue study or action on the policy matter. If there is interest by a majority of the City Council, the policy proposal shall be directed to the Policy Calendar Process for scheduling a study session (see Section II.E below) or to an upcoming agenda for action if the subject of the request is time sensitive (Step 2). The Council Member submitting the request shall inform the Council if the item is time sensitive.

As a result, the City Council's first action is the initial determination as to whether there should be a reconsideration of the Industrial Safety Ordinance action. The second step, if the Council decides there should be a rehearing, is for the actual reconsideration of the item. The second step requires a separate meeting. From the known vacation schedule of the Council and key staff, it appears that the next regular meeting that the full Council could hear this item would be on October 2, 2018.

Application Reasons for Rehearing Request

The application of rehearing included four reasons for the request. Each is listed below; staff offers a short response on the first two.

A. "Staff Had Not Adequately Prepared the Council for the Hearing"

D. If the person or body concludes the applicant has met the burden of justifying the rehearing, the rehearing will be scheduled for the next regular meeting which allows sufficient time for the giving of notice as required by BMC [1.44.090](#).
E. No application for rehearing is required to be filed by any member of the city council to allow the council to take any new or different action on an item of city policy or a purely legislative function or decision, which does not involve a specific property owner, application, license or permit. The city council may establish reasonable rules to restrict the number of times a particular policy or legislative decision may be considered by the city council.

The Two-Step Process is designed to give Council members an opportunity to discuss new ideas and requests with their colleagues prior to determining whether or not City resources should be allocated toward them. As a consequence, staff work in preparing reports for these types of items has typically been very limited.

This approach to two-step requests is consistent with the *City Council Rules of Procedure* (Section VII. Staff Support) that says “Staff support for requests from individual council members shall be limited to 15 minutes of staff time. Research, report writing, compilation of materials, etc., in excess of 15 minutes shall not be undertaken unless approved by a majority of the City Council.”

Staff had collected some background information and provided it with the report to support the Council’s discussion but no analysis or other in-depth work had occurred. Staff had adequately prepared Council for the hearing based on the type of hearing that was scheduled to occur.

B. “Failure to Address Past Settlement Agreement and Obligations Regarding Air Quality Monitoring”

As described above in the response to Reason A, staff had adequately prepared for the hearing based on the type of discussion that was scheduled to occur.

C. “New Evidence Exists The Necessity of “Fence Line” As Well As Community-Based Air Quality Monitors That is Not Adequately Addressed By The Planned BAAQMD Monitors”

Staff offers no response to this reason for rehearing.

D. “The Decision to Defer Decision Pending Installation of BAAQMD Monitors is Uncertain and Vague and Does Not Present a Viable Plan”

Staff offers no response to this reason for rehearing.

NEXT STEPS:

Implement Council’s direction on whether or not to schedule a rehearing of its vote made on June 19, 2018.

ALTERNATIVE ACTIONS:

None.

General Plan	The overarching goal of the General Plan is Sustainability
	Goal 4.1: Make community health and safety a high priority for Benicia.
	Goal 4.9: Ensure clean air for Benicia residents.

Strategic Plan	Strategic Issue #1: Protecting Community Health and Safety
	Strategy #3: Provide a high state of preparedness for disasters/emergencies
	Strategy #5: Promote community and personal health
	Strategic Issue #2: Protecting and Enhancing the Environment
	Strategy #4: Protect air quality

CEQA Analysis	The proposed action is not a Project per Section 15378 of the California Environmental Quality Act (CEQA), because it will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.
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Attachments:

1. City Council Rules of Procedure
2. Mayor Patterson’s two-step process request - May 2017
3. Mayor Patterson’s amended two-step process request – June 2018
4. Benicia ISO Work Group Draft Ordinance
5. Email: Request for Rehearing of Vote Cast 6/19/18 concerning the Industrial Safety Ordinance

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