

SUMMARY

BERKELEY CITY COUNCIL REGULAR MEETING

TUESDAY, NOVEMBER 19, 2002

Preliminary Matters

Roll Call: 7:00 p.m. – all present.

Ceremonial Matters:

- 1) Recognition and comments for Mayor Dean and Councilmember Armstrong.
- 2) Recognition of National Association for Peace and Democracy delegation from Japan.

Comments from the City Manager:

- 1) The Berkeley Police Department and Booster Club will be holding their annual Turkey Basket Giveaway on Tuesday, November 26, 2002. For further information, call 981-5900.
- 2) On behalf of the City, service pins were presented to outgoing Mayor Dean and Councilmember Armstrong.

Comments from the Public: 11 speakers.

Consent Calendar

Action: Moved, Seconded, carried (Armstrong/Worthington) to adopt the Consent Calendar in one motion except as indicated:

1. **Correction to the Zoning Ordinance Addressing Permits Required for Additions and Enlargements to Properties That are Lawfully Non-Conforming** (*First vote – Unanimous*)

From: City Manager

Recommendation: Adopt second reading of an Ordinance amending the Berkeley Municipal Code (BMC) Section 23C.04.070 to correct a section of the ordinance that was unintentionally altered during the zoning ordinance revisions process to require a variance, rather than a use permit, for additions or enlargements of properties with legal non-conforming lot coverage, floor area ratio or density.

Contact: Carol Barrett, Planning 981-7400

Action: Adopted Ordinance No. 6718–N.S.

2. **Vehicle Towing from Designated Parking Spaces** *(First vote – Unanimous)*
From: City Manager
Recommendation: 1) Adopt second reading of an Ordinance to amend Berkeley Municipal Code (BMC) Section 6.24.200 to allow removal of vehicles from City parking lots and garages when any vehicle is parked or left standing when such parking or standing is restricted or prohibited by ordinance or resolution of the City and signs are posted giving notice of such removal.
Contact: Peter Hillier, Transportation 981-7000
Action: Adopted Ordinance No. 6719–N.S.
3. **Contract: Electrical Modifications for Public Safety Building**
From: City Manager
Recommendation: Adopt a Resolution approving plans and specifications for electrical modifications at the Public Safety Building; waiving the building permit fees; accepting the bid of Contra Costa Electric, Inc.; and authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$29,900.
Contact: John Rosenbrock, Capital Projects, 981-6331; Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 61,834–N.S.
4. **Contract: Civic Center Café**
From: City Manager
Recommendation: Adopt a Resolution approving the plans and specification for the construction of the Café at the Civic Center Building; rejecting the bid of Norcal Construction Co.; and authorizing the City Manager to negotiate a contract on the open market.
Contact: John Rosenbrock, Capital Projects, 981-6331; Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 61,835–N.S. with a request by Councilmember Spring that vegan options be offered on the café’s menu.
5. **Contract: Emergency Services for Residents with Severe Disabilities**
From: City Manager
Recommendation: 1) Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Easy Does It to charge a \$6 fee for transportation calls; and 2) authorizing the expenditure of up to \$8,100 for reimbursement to Easy Does It for providing no cost tickets to riders for period of June 30, 2002 through June 30, 2003.
Contact: Phil Kamlarz, City Manager, 981-7000
Action: Adopted Resolution No. 61,836–N.S.

6. Grant: Public Health Infrastructure

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to accept a grant from Alameda County Public Health Department for funds in the amount of \$30,800 for the period of July 1, 2002 through June 30, 2003 to enhance the City public health infrastructure; to execute the resultant revenue agreements and any amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.

Contact: Fred Medrano, Health and Human Services, 981-5100

Action: Adopted Resolution No. 61,837–N.S.

7. Contract: Public Health Laboratory Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the California Department of Health Services, Microbial Disease Laboratory to provide laboratory services for the period July 1, 2002 through June 30, 2003 in an amount not to exceed \$213,953.

Contact: Fred Medrano, Health and Human Services, 981-5100

Action: Adopted Resolution No. 61,838–N.S.

8. Contract: Public Employees Union Local One

From: City Manager

Recommendation: Adopt two Resolutions: 1) approving a new six-year Memorandum Agreement with Public Employees Union (PEU) Local One with a term of July 7, 2002 through June 28, 2008 and authorizing the City Manager to execute and implement the new labor agreement that includes a salary adjustment retroactive to July 7, 2002; and 2) approving a new salary Resolution for Representation Units M, P-1 and P-2 that implements the new salary levels negotiated in the new labor agreement and rescinding Resolution No. 60,051–N.S.

Contact: Ron Brown, Human Resources 981-6800

Action: Adopted Resolution No. 61,839–N.S. and Resolution No. 61,840–N.S.

9. Trust Agreement : Self Directed Brokerage Account

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute and implement a Trust Agreement and any amendments with Allfirst Trust Company, National Association, for Hartford Life's Self-Directed Brokerage Account Option under the City's Internal Revenue Code (IRC) Section 457 Deferred Compensation Plan.

Contact: Ron Brown, Human Resources, 981-6800

Action: Adopted Resolution No. 61,841–N.S.

- 10. Equity Salary Adjustment for Selected Unrepresented Classifications**
From: City Manager
Recommendation: Adopt a Resolution amending the Classification/Salary Resolution to provide equity salary adjustments for selected classifications in Units Z-1 (Confidential Executive and Management Classifications), Unit Z-2 (Confidential Professional Classifications) and Unit Z-3 (Confidential Clerical Classifications), for the period July 7, 2002 through June 28, 2008.
Contact: Ron Brown, Human Resources, 981-6800
Action: Adopted Resolution No. 61,842–N.S.
- 11. Workers’ Compensation Analyst Classification and Salary Revision**
From: City Manager
Recommendation: Adopt a Resolution amending the Classification and Salary Resolution for Unrepresented Employees, to increase the salary range for the Workers’ Compensation Analyst to \$4,117- \$4,947 per month, effective March 9, 2000.
Contact: Ron Brown, Human Resources, 981-6800
Action: Adopted Resolution No. 61,843–N.S.
- 12. Grant: California Department of Boating and Waterways Abandoned Watercraft Abatement Fund**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the California Department of Boating and Waterways in an amount not to exceed \$50,000 in Fiscal Year 2003 for the removal and disposal of abandoned watercrafts; authorizing the City Manager to accept the grant and execute any resultant revenue agreements and amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.
Contact: Lisa Caronna, Parks Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 61,844–N.S.
- 13. Purchase Order: Replacement of Utility Boxes at the Bay Trail Project Site**
From: City Manager
Recommendation: Adopt a Resolution increasing the purchase order with Pacific Bell by \$29,697 for the period of April 22, 2002 to December 31, 2002, for replacement of utility boxes at the Bay Trail project site.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No 61,845–N.S.

- 14. Contract: Sanitary Sewer Replacement Project**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving plans and specifications for the sanitary sewer project located at Delaware Street, Francisco Street, Virginia Street, Martin Luther King Jr. Way, Milvia Street, Channing Way, Kittredge Street, Bancroft Way, Durant Avenue, Spruce Street, and LeConte Avenue; 2) accepting the bid of McNamara and Smallman Construction, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$943,311 for the period of 220 calendar days.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 61,846–N.S.
- 15. Pedestrian Safety**
From: Public Works Commission
Recommendation: Fully fund and staff the interdepartmental collaborative program as set forth in the “BAPS” report.
- a. From: City Manager**
Recommendation: Request no action be taken until I have had an opportunity to respond at the meeting of January 21, 2003.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Approved City Manager recommendation.
- 16. Barden vs. City of Sacramento**
From: Councilmember Armstrong
Recommendation: Ask the City Manager to direct the City Attorney to decline to join with the City of Sacramento as amicus curiae in the case of Barden vs. City of Sacramento, to advise other cities of its opposition, and to strongly suggest to the City of Sacramento that it withdraw its Supreme Court certiorari proceedings in the case.
Contact: Polly Armstrong, Councilmember District 8, 981-7180
Action: Approved recommendation.
- 17. Post 9/11 Public Safety**
From: Councilmember Armstrong
Recommendation: Ask the City Manager to report on any steps the City has taken to increase citizen safety in the 14 months since September 11.
Contact: Polly Armstrong, Councilmember District 8, 981-7180
Action: Approved recommendation.
- 18. Editorial Employees of ANG Newspapers**
From: Councilmember Worthington
Recommendation: Adopt a Resolution in support of the editorial employees of ANG newspapers.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 61,847–N.S.

**19. Fee Waiver: 19th Annual Telegraph Avenue Holiday Street Fair
From Councilmember Worthington**

Recommendation: Adopt a Resolution: a) waiving event, sound and insurance fees associated with the fair and allow an exemption to Berkeley Municipal Code (BMC) section 20.24.040, to allow a generic holiday banner to be hung across Telegraph Avenue and generic holiday vertical banners on light poles; b) extending the sound permit from 11 a.m. to 6 p.m; c), closing Telegraph Avenue from Dwight to Bancroft to allow only cross traffic through; and d) approving in-kind services for the Holiday event: 4 portable toilets , dumpster and solid waste services, traffic signage and traffic engineering services, and assistance in the hanging of banners.

Contact: Kriss Worthington, Councilmember District 7, 981-7170

Action: Adopted Resolution No. 61,848–N.S. revised by Councilmember Worthington to remove the recommendation for an exemption to Berkeley Municipal Code (BMC) section 20.24.040 to allow a generic holiday banner to be hung across Telegraph Avenue.

**20. Comments on the Draft Eastshore State Park Plan
From: Councilmember Spring**

Recommendation: 1) Authorize the City Manager to include in the letter to the California State Parks Commission the City Council’s strong support for protecting bird and wildlife and for creating additional habitat for birds, wildlife, threatened and endangered species, especially in the Meadow, Albany Bulb, Neck, and Beach, and the North Basin Cove areas of the proposed East Shore State Park; and 2) that the Council waive its rules and take action on this matter on November 19th because of the December 6th deadline for comments.

Contact: Dona Spring, Councilmember District 4, 981-7140

Action: Approved recommendation. (Noes – Councilmember Hawley)

Action Calendar – Public Hearings

21. Tobacco Retail Licensure (CF-205-01)

From: City Manger

Recommendation: Conduct a public hearing and upon conclusion: 1) Adopt the first reading of an Ordinance adding Chapter 9.80 to Berkeley Municipal Code (BMC) Title 9, Business Licenses and Regulations, requiring the licensure of tobacco retailers in the City; and 2) Adopt a Resolution establishing fees for the administration, monitoring, and enforcement of a program and appropriation of funding related expenses.

Contact: Fred Medrano, Health and Human Services, 981-5100

Public Testimony: The Mayor opened the public hearing. 5 speakers. Moved, seconded, carried (Spring/Maio; Absent - Worthington) to close public hearing.

Actions: Moved, seconded, carried (Spring/Maio; Absent - Worthington) to adopt first reading of Ordinance with revised language to Numbers 1, 2, 3 and 4 of Section 9.74.090 replacing the word “shall” with “may” and adding the words “up to”. Second reading scheduled for December 10, 2002. Adopted Resolution No. 61,849–N.S.

22. Appeal: Landmark Designation for 2018-2036 University Avenue

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution designating the UC Theater as a City Landmark, upholding the designation of the exterior features of the building and removing the references in the designation to the interior building features from the statement of significance to eliminate the inconsistency with the Landmarks Preservation Ordinance.

a. Appeal filed by Jim Novosel, Bay Architects of the Landmark Designation

b. Communication

1. Robert A. Ellsworth, President-Rue-Ell Enterprises

Public Testimony: The Mayor opened the public hearing. 3 speakers. Moved, seconded, carried (Maio/Armstrong; Absent - Hawley) to close public hearing.

Actions: Moved, seconded, failed (Worthington/Spring; Noes – Armstrong, Hawley, Maio, Olds, Shirek, Dean; Abstain – Breland) a substitute motion to adopt a Resolution revised to eliminate whereas clauses 10 and 11 and include wording “that attention should be paid to the interior features of the building when considering any future development proposals as recommended by the Landmarks Preservation Commission.”

Moved, seconded, carried (Maio/Olds; Abstain - Breland) a main motion to adopt Resolution No. 61,850-N.S. upholding the designation of the UC Theater as a City of Berkeley landmark and removing the reference in the designation to the interior building features from the statement of significance to eliminate inconsistencies with the Landmarks Preservation Ordinance and eliminating whereas clause 11.

Moved, seconded, carried (Maio/Spring; Abstain – Olds, Worthington) to request that the owner of the property consider the interior features of the building in their development plans.

23. **Appeal: Zoning Adjustments Board and The Landmarks Preservation Commission on 2004, 2006- 2008 University Avenue (To be delivered)**

From: City Manager

Recommendation: 1) Conduct a public hearing to consider decisions by: a) the Zoning Adjustments Board approving a 35-unit (7 affordable units) mixed use project at 2006-2008 University Avenue; and b) the Landmarks Preservation Commission designating the existing building at 2004 and 2008 University Avenue as a Structure of Merit and non-approval of the demolition permit and 2) adopt a Resolution affirming the decision of the Zoning Adjustments Board and reversing the decision of the Landmarks Preservation Commission and adopting findings.

Contact: Carol Barrett, Planning, 981-7400

a. City Manager Report of October 22, 2002 (See agenda packet of 10/22/02)

Recommendation: Recommending the Council set a public hearing: 1) on the appeal of the Zoning Adjustment Board's decision to approve a 35 unit (7 affordable units) mixed use project at 2006-2008 University Avenue; and 2) to review the decision of the Landmarks Preservation Commission designating the existing building as a Structure of Merit and not approving the demolition permit.

Contact: Carol Barrett, Planning, 981-7400

b. Appeal filed by Herbert Friedman of the July 11, 2002 Zoning Adjustment Board's approval to construct a 35 unit (7 affordable units) mixed use project. (See agenda packet of 10/22/02)

c. Appeal filed by the Berkeley Architectural Heritage Association of the July 11, 2002 Zoning Adjustment Board's approval to construct a 35 unit (7 affordable units) mixed used project. (See agenda packet of 10/22/02)

d. Appeal filed Christopher Hudson and Victor Touriel of the February 4, 2002 Landmarks Preservation Commission's decision to: 1) designate the building as a Structure of Merit designation; and 2) not approve a demolition permit. (See agenda packet of 10/22/02)

Contact: Sherry Kelly, City Clerk 981-6900

e. Communications (See agenda packet of 10/22/02)

1. Herbert Friedman (3)
2. Christopher Hudson

f. Communications

3. Christopher Hudson, Touriel Building, LLC-dated October 14, 2002
4. Christopher Hudson, Touriel Building, LLC -dated November 8, 2002
5. Herbert J. Friedman, President HJ Friedman Corp-dated November 11, 2002
6. Herbert J. Friedman, President HJ Friedman Corp-dated November 12, 2002
7. Arthur J. Friedman, Steefel Levitt & Weiss-dated October 22, 2002
8. Howie Muir-dated October 22, 2002

Public Testimony: The Mayor opened the public hearing. 10speakers. Moved, seconded, carried (Olds/Shirek; Absent - Worthington) to close public hearing.

Action: Moved, seconded, carried (Olds/Hawley; Abstain – Maio, Spring; Absent – Worthington) to adopt Resolution No. 61,851–N.S. affirming the decision of the Zoning Adjustments Board and reversing the decision of the Landmarks Preservation Commission and adopting findings.

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

Action Calendar – Presentations

24. **Presentation on “Street Smarts”, a proposed Regional Pedestrian Safety Awareness Campaign**
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Rescheduled to December 17, 2002.

Information Reports

25. **Free Holiday Parking** (*To be delivered*)
From: City Manager
Contact: Phil Kamlarz, City Manager, 981-7000
Actions: Moved to the Action Calendar by Councilmember Spring. Received and filed.
26. **Formal Bid Solicitations and Request for Proposals**
From: City Manager
Contact: Fran David, Finance, 981-7300
Action: Received and filed.
27. **Buy Berkeley Local Business Preference Program (CF 192-00)**
From: City Manager
Contact: Fran David, Finance, 981-7300
Action: Received and filed.
28. **Landmarks Preservation Commission Notice of Decision for 2484 Shattuck Avenue**
(*To Be Delivered*)
From: City Manager
Contact: Carol Barrett, Planning, 981-7400
Action: Received and filed.

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations.

Measure O

1. Bill Martinez

1045 Page Street *(Dean, Maio, Breland, Worthington)*

2. Lou MacMillan

60 The Plaza *(Dean, Worthington)*

3. Jon S. Tigar

Muir Communicatons *(Worthington)*

4. Howie Muir (2 correspondence)

Eastshore State Park *(Breland)*

5. Robert Cheasty, President-Citizens for the Eastshore State Park

Roundabout and Parkland Alternative at Ashby Interchange *(Maio, Spring, Worthington)*

6. Norman La Force, Chair-Sierra Club, East Bay Public Lands Committee

Tobin Tax for Everybody

7. Paul R. Bottis Sr.

Proposed Tobacco Sales License *(Maio)*

8. Dick Riemann, Proprietor-Top Dog

Supplemental Reports and Communications #1

Item 19

Fee Waiver: 19th Annual Telegraph Avenue Holiday Street Fair

9. Rachel Rupert

Item 20

Comments on the Draft Eastshore State Park Plan

10. Norman La Force

Item 21

Tobacco Retail Licensure *(Breland)*

11. Mohamed Ahmed Alqassari

Item 23

Appeal: Zoning Adjustments Board and the Landmarks Preservation Commission on 2004, 2006-2008 University Avenue

12. Angela Chabot (2)

Supplemental Reports and Communications #2

Ceremonial Matters

Recognition and Comments for Mayor Dean and Councilmember Armstrong

13. Nancy Bickel (2)

Item 23

Appeal: Zoning Adjustments Board and the Landmarks Preservation Commission on 2004, 2006-2008 University Avenue

14. Revised Resolution

15. Sally Sachs

16. Michael Corbett

17. Angela Chabot

Adjournment

Adjourned at 12:08 a.m.