

SUMMARY

BERKELEY CITY COUNCIL REGULAR MEETING

TUESDAY, JANUARY 22, 2002

Preliminary Matters

Roll Call: 7:02 p.m. Mayor Dean – excused absence

Ceremonial Matters: Vice-Mayor Shirek recited an excerpt from the writings of Martin Luther King, Jr.

Comments from the City Manager: No Comments

Comments from the Public: 10 speakers heard.

Consent Calendar

Action: Moved, seconded, carried (Worthington / Maio; Absent-Dean) to adopt the Consent Calendar in one motion except as indicated:

1. **Extension of the Task Force on Telecommunications**

From: City Manager

Recommendation: Adopt a Resolution authorizing an extension of the Task Force on Telecommunications from January 31, 2002 to June 30, 2002.

Contact: Phil Kamlarz, Deputy City Manager, 981-7000

Actions: Removed from the Consent Calendar by Councilmember Hawley.

Moved, seconded, carried (Worthington/Maio; Absent-Dean) to adopt Resolution No. 61,426 – N.S. to extend the Task Force to June 30, 2002.

Moved, seconded, failed (Worthington/Maio; Noes – Armstrong, Maio, Olds, Shirek, Spring, Worthington; Absent – Dean) severed from the main motion to either make the Task Force a permanent commission or abolish it at the end of the term extension.

2. **Agreement: Low-income Energy Program Revenues**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a Low-Income Home Energy Assistance Program (LIHEAP) revenue agreement and any amendments with the State Department of Community Services and Development, in the amount of \$33,069, for the period January 1, 2002 through December 31, 2002, to provide bill payment assistance and weatherization assistance to eligible residents of Berkeley, Albany and Emeryville.

Contract: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 61,427–N.S.

3. **Cleanup Amendment to Business License Tax Administrative Appeal** (*first reading 01/15/02 – Unanimous; second reading – Absent - Dean*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance repealing Berkeley Municipal Code (BMC) Section 9.04.270.E to clean up administrative appeal process.
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Adopted Ordinance No. 6673–N.S. Effective February 22, 2002.
4. **Marina Ordinance Amendment** (*first reading 01/15/02 – Unanimous; second reading – Absent –Dean*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance adding Section 6.20.170-C to the Berkeley Municipal Code (BMC) to correct an administrative error.
Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Adopted Ordinance No. 6674–N.S. Effective February 22, 2002.
5. **Carry-out and Quick Service Restaurants on San Pablo Avenue (CF-222-00)** (*first reading 01/15/02 –Unanimous; second reading – Absent - Dean*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending the Berkeley Municipal Code (BMC) Section 23E.64.040.E and adding Section 23E.64.090H to prohibit food service drive-throughs on San Pablo Avenue and requiring additional findings for any Administrative Use Permit or Use Permit for Carry-Out Food Store or Quick Service Restaurant use on San Pablo Avenue.
Contact: Carol Barrett, Planning and Development, 705-8102
Action: Adopted Ordinance No. 6675–N.S. Effective February 22, 2002.
6. **Zoning Ordinance Correction** (*first reading 01/15/02 – Unanimous; second reading – Absent - Dean*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending the Berkeley Municipal Code (BMC) Sections 23C.04.060.A.3 and 23C.12.040.E.1 to correct typographical errors.
Contact: Carol Barrett, Planning and Development, 705-8102
Action: Adopted Ordinance No. 6676–N.S. Effective February 22, 2002.
7. **Temporary Employment Agency Services (TAC Staffing)**
From: City Manager
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$35,000 for TAC Staffing Services for the period of July 1, 2001 to June 30, 2002 to provide temporary services to the Planning and Development Department.
Contact: Wendy Cosin, Planning and Development, 705-8102
Action: Adopted Resolution No. 61,428–N.S.

8. **General Plan Completion Schedule**
From: City Manager
Recommendation: Endorse the following schedule for City Council adoption of the remaining elements of the draft General Plan: February 11, 2002 Council submits proposed amendments to remaining elements; March 12, 2002 Council consideration of proposed amendments to remaining elements; and March 19, 2002 Final Council action on remaining elements.
Contact: Carol Barrett, Planning and Development, 705-8102
Action: Approved recommendation.

9. **Contract: Emergency Sewer Replacement Projects**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend the contract with McNamara and Smallman Construction, Inc. for emergency sewer replacement projects by increasing the amount \$203,000 and extending the period by 100 calendar days.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 61,429–N.S.

10. **Storm Sewer Easement Deed Agreement at Wildcat Canyon Road**
From: City Manager
Recommendation: Adopt first reading of an Ordinance accepting an easement deed agreement for storm sewer drainage facilities, with Shlomo I. Rosenfeld and Ilana Rosenfeld at 632 Wildcat Canyon Road.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted first reading of Ordinance. Second reading scheduled for February 5, 2002.

11. **Storm Sewer Easement Deed Agreement at Vistamont Avenue**
From: City Manager
Recommendation: Adopt first reading of an Ordinance accepting an easement deed agreement for storm sewer drainage facilities, with Sam Oliver and Mariko Smiley, Hiroshi Morimoto and Leba Morimoto and Mark Springer and Karen Michalka-Springer at 619, 621, and 623 Vistamont Avenue.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted first reading of Ordinance. Second reading scheduled for February 5, 2002.

12. **Contract Amendment: Vistamont Storm Drain Construction**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with KJ Woods Construction, Inc. for Storm Sewer Improvement, Sanitary Sewer Rehabilitation, and Street Reconstruction on Vistamont Avenue, in an amount not to exceed \$20,000 for additional urgent storm drain sewer work at 632 Wildcat Canyon Road, reconstruct failed pavement areas on portions of the 500 block of Vistamont Avenue, and replace steel sanitary sewer pipe; and extending the period an additional seven calendar days.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 61,430–N.S.

13. **“Parks 2002” Ballot Measure K, March 5, 2002 Election**
From: Mayor Dean
Recommendation: Support Measure K, proposed by the East Bay Regional Park District, that will be on the March 5, 2002 ballot, notify the Park District and the Sierra Club, and issue a press release.
 Contact: Shirley Dean, Mayor, 981-7100
Action: Approved recommendation.
14. **Assessment of the Needs of Berkeley’s Young People for Access to Recreation Facilities**
From: Councilmember Hawley and Vice Mayor Shirek
Recommendation: Request that the City Manager work with the Youth Commission, the Parks and Recreation Commission, Berkeley Unified School District and other appropriate groups to assess the needs for and availability of recreation opportunities for young people. The assessment should focus primarily on access to informal recreation opportunities for middle school and high-school students after school, on the weekends, and on school holidays.
 Contact: Miriam Hawley, District 5, 981-7150 and Maudelle Shirek, District 3, 981-7130
Action: Approved recommendation as amended by Councilmember Maio to refer points raised during the public comment period to the Parks and Recreation Commission and further amended by Councilmember Breland to also refer points raised to the Youth Commission and the City Manager.
15. **Appointment to Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution appointing Kathleen Gresher and James Rinaldi to the Mental Health Commission, General Public Interest Category, and Edward Webster to the Mental Health Commission, Special Public Interest Category for three-year terms beginning January 23, 2002 and ending January 22, 2005.
 Contact: Harvey Tureck, Secretary, 664-8562, Ext. 213
a. City Manager Report
Recommendation: The City Manager concurs with the content and recommendation of the Commission.
 Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 61,431–N.S.
16. **Protest Inclusion of Rodeos in the Salt Lake City Winter Olympics**
From: Humane Commission
Recommendation: Send a letter to the Salt Lake Organizing Committee and the U.S. Olympic Committee to protest the inclusion of rodeos in any part of the Winter Olympics, on the grounds that rodeos are cruel and stressful and often result in animal deaths.
a. City Manager Report
Recommendation: The City Manager concurs with the content and recommendations of the Commission’s Report.
 Contact: Weldon Rucker, City Manager, 981-7000
Action: Approved recommendation.

Presentations

17. **Parent Coalition for Equity and Excellence in Our Schools**
Contact: Margaret Breland, Councilmember District 2, 981-7120
Action: Heard presentation by the Parent Coalition, Board of Education President Issel, and Superintendent Lawrence.

Public Hearings

18. **Public Safety Building Communications Tower** (*to be delivered*)
- a. Slide Presentation of the visual impacts of the Public Safety Building antennae**
- b. City Manager Report**
Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution authorizing the City Manager to put into use as designed, the Public Safety Building's current tower and attached antennas, based on recommendations in the two MACRO Corporation reports dated August 1, 2001 and October 26, 2001.
Contact: Rene Cardinaux, Public Works, 981-6300
- c. Councilmember Spring Report**
Recommendation: Direct the City Manager to honor its use permits and commitment to public processes and dismantle the current public safety antenna tower and commit to one of two scenarios: 1) locate the communication tower/s on top of the City Center building at 2180 Milvia; or 2) as a second preference erect two "flag pole" designed antennas which are more visually appropriate for Berkeley's historic Civic Center and residential neighborhood.
Contact: Dona Spring, District 4, 981-7140

Public Testimony: The Vice-Mayor opened the public hearing. 38 Speakers heard. Moved, seconded, carried (Maio/Armstrong; Absent-Dean) to close the public hearing.

Actions: Moved, seconded, failed (Spring/Worthington; Noes – Armstrong, Hawley, Olds, Shirek; Absent – Dean) a substitute motion to table the discussion to the meeting of February 5, 2002 and to direct staff to come back with information on what type of generator and/or other equipment or system would need to be put in place to maintain the existing antenna and communication system(s) during power outages.

Moved, seconded, carried (Armstrong/Olds; Noes – Spring, Worthington; Absent – Dean) the main motion to direct the City Manager to immediately activate the Public Safety Building's tower and attached antennas to adequately respond to on-going public safety concerns.

Councilmember Spring presented a report and a written motion that she indicated she would be returning with for the meeting of February 5, 2002 regarding the issue of further study and options for removal, relocation or replacement of the tower.

Action Calendar

Old Business:

19. **National Tritium Labeling Facility Decontamination** (*amendments held over by Councilmember Worthington from 12/11/01*)
From: Councilmember Worthington
Recommendation: Support Resolution to ensure the National Tritium Labeling Facility (NTLF) at Lawrence Berkeley National Laboratory (LBNL) and affected environs, including the Lawrence Hall of Science, be properly decontaminated, and all cutting, chipping and shipping of trees contaminated with tritium to Korean and Japanese paper mills or elsewhere cease.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Held over to February 5, 2002 at the request of Councilmember Worthington.

20. **Promoting Berkeley Businesses** (*held over by Councilmember Maio from 12/11/01*)
From: Councilmember Maio
Recommendation: Request the City Manager, working with Chamber and the Visitor's Bureau, set up a website link directly from the City's homepage to a list of Berkeley businesses that do internet commerce to assist supporters from across the country who wish to affirmatively patronize Berkeley businesses.
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Held over to February 5, 2002.

21. **Contract: Study for Old City Hall Master Plan** (*held over by Councilmember Olds from 01/15/02*)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with ELS Architects to provide a study for a seismic retrofit and a master plan for Old City Hall, in an amount not to exceed \$100,000 for all services and reimbursable expenses for the period January 17, 2002 through December 31, 2002.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Moved to the Consent Calendar by Councilmember Olds and adopted Resolution No. 61,432-N.S. amended to include a study on the feasibility of utilizing the Veterans Building for council chamber and meeting room purposes, if there is sufficient funding to do it as part of this contract, and if not, a request that the City Manager report back on the cost of performing such a study.

22. **Reallocating Funds for North Shattuck Beautification** (*held over by the City Manager from 01/15/02*)
From: Councilmember Spring
Recommendation: Adopt a Resolution reallocating \$25,000 once intended for a mural art project in North Shattuck, to landscaping permanent barriers in North Shattuck area on Cedar Street at Milvia and Grant Streets.
Contact: Councilmember Spring, 981-7140
Action: Held over to February 5, 2002.

23. **Reject Inclusion of Anonymous Letters in Council Packet** *(held over by Councilmember Worthington from 01/15/02)*
From: Mayor Dean and Councilmember Olds
Recommendation: Adopt a policy that anonymous letters sent to the Council on any subject will not be included in the Council packet when it is published and distributed.
 Contact: Shirley Dean, Mayor, 981-7100; Betty Olds, Councilmember District 6, 981-7160
Action: Held over to February 5, 2002.
24. **San Francisco Airport Expansion** *(held over by Councilmember Olds from 01/15/02)*
From: Waterfront Commission
Recommendation: Oppose any expansion of SFO Airport that involves placing fill in the Bay.
 Contact: Cliff Marchetti, Secretary, 644-6376 x224
a. City Manager Report
Recommendation: The City Manager takes no position concerning the recommendations of the Commission.
 Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Moved to Consent Calendar by Councilmember Armstrong with an amendment by Councilmember Spring that letters be sent to the San Francisco Airport Commission, Port Authority and San Francisco Bay Conservation and Development Commission opposing any expansion that involves placing fill in the Bay.

New Business:

25. **Contracts: Loans from the Housing Trust Fund Allocation FY2001-02**
From: City Manager
Recommendation: Adopt a Resolution approving fund reservations for the total amount of \$2,312,888 from the FY2001-02 Housing Trust Fund and authorizing the City Manager to execute loan agreements and any amendments with the following applicants: 1) BOSS, McKinley House (\$190,000); 2) Resources for Community Development, Adeline St. Apartments (310,000); 3) Resources for Community Development, BuiLD House (65,780); 4) Affordable Housing Associates, Outback Senior Homes (\$874,000); and 5) Jubilee Restoration & Resources for Community Development, Jubilee Senior Apartments (\$873,108).
 Contact: Stephen Barton, Housing, 981-5400
Actions: Moved, seconded, carried (Worthington/Maio; Absent - Dean) to adopt Resolution No. 61,433-N.S. approving fund reservations and authorizing loan agreements for applicants 1, 2, 3 and 5 and to also take the following actions regarding funding for the Ursula Sherman Village project: a) reserve \$150,000 from FY 2001-02 Housing Trust Fund; b) refer the project to the Housing Advisory Commission and the City Manager for a recommendation to the Council on conditions of approval that specify the detailed uses of the funds and ensure their appropriate use; and c) direct the City Manager to report back should present conditions required for release of funds, a program for the use of funds and Council resolution authorizing a loan agreement.

Moved, seconded, carried (Worthington/Maio; Noes – Olds; Absent – Dean) as part of a severed motion to adopt Resolution No. 61,434-N.S. approving fund reservations and authorizing loan agreements for the Affordable Housing Associates' Outback Senior Homes project.

26. **Free Speech and Civil Liberties**

From: Peace and Justice Commission

Recommendation: Send a letter to President George W. Bush regarding the hysteria that has swept the nation stifling open debate and eroding civil liberties; and send copies of the letter to various elected officials and news organizations.

Contact: Manuel Hector, Secretary, 981-5110

a. City Manager Report

Recommendation: That City staff work with the Peace and Justice Commission to develop a strategic advocacy approach for distributing policy recommendations that the Council endorses to the decision makers.

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

Action: Held over to February 5, 2002.

27. **Request to Question Named Individuals**

From: Peace and Justice Commission

Recommendation: Adopt a Resolution establishing a policy that the City will cooperate only with constitutionally valid requests from Attorney General John Ashcroft to question named individuals, and all actions by the Berkeley Police Department will remain in accord with Amendments 4-8 of the United States Constitution, the due process clauses of the California Constitution, and the United Nations Charter Article 55.

Contact: Manuel Hector, Secretary, 981-5110

a. City Manager Report

Recommendation: That no action be taken on the recommendation of the Commission. In December 2001, the Berkeley Police Department (BPD) received a letter from Attorney General John Ashcroft asking the Department to voluntarily interview two individuals. BPD was also given discretion in the questions that were to be asked of these individuals. BPD conducted a preliminary investigation and discovered that the two individuals no longer lived in Berkeley, and were therefore outside of BPD's jurisdiction. Nothing in the Attorney General's request was unconstitutional.

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

Action: Held over to February 5, 2002.

Information Reports

28. **Clarification of Remaining "Development Rights" on the North Basin Strip of the Berkeley Waterfront (CF 111-01)**

From: City Manager

Contact: Manuela Albuquerque, City Attorney, 981-6950

Action: Held over by Councilmember Spring for placement on the March 12, 2002 Action Agenda with a request that Norman La Force of the Sierra Club speak on this item.

29. **City Council Meetings Schedule – Managing the Agenda**
From: City Manager
 Contact: Phil Kamlarz, Deputy City Manager, 981-7000
Action: Received and Filed.
30. **Formal Bid Solicitations and Request for Proposals**
From: City Manager
 Contact: Frances David, Finance, 981-7300
Action: Received and Filed.
31. **Sather Gate Garage**
From: City Manager
 Contact: Frances David, Finance, 981-7300
Action: Received and Filed.
32. **Taxi Scrip Riders Bill of Rights: Resolution of Measures (CF 137-01)**
From: City Manager
 Contact: Frances David, Finance, 981-7300; Fred Medrano, Health and Human Services, 981-5100; Stephen Barton, Housing, 981-5400
Action: Received and Filed.
33. **Fee Deferral Request for 1719 University Avenue**
From: City Manager
 Contact: Carol Barrett, Planning, 705-8105
Action: Moved to the Action Calendar by Councilmember Worthington and held over to February 5, 2002.
34. **Fee Deferral Request for Expansion of Harrison House**
From: City Manager
 Contact: Carol Barrett, Planning, 705-8105
Action: Moved to the Action Calendar by Councilmember Worthington and held over to February 5, 2002.

Communications

Action: The following communications were read, noted, and filed, unless otherwise noted:

Page No.

1. Bruce Riggs, regarding Afghanistan resolution.
2. Leuren Moret, regarding National Tritium Labeling Facility
3. Barbara Wilke, regarding Meeting Notice Language
4. Regarding Ed Roberts Campus
 - a) Diane Dew

- b) Ralph Hager
 - c) Patricia Kirkpatrick
 - d) Peter Pfaelzer
 - e) Ann Sieck
 - f) Linda De Lucchi
 - g) Zachary M. Pine
5. Terry Cochrell, regarding fire safety in residences after earthquakes. **Worthington, Breland**
6. Patrick Kennedy, regarding population growth and development in California; text of a speech given by Anthony Downs titled “Nimbyism and the Future of California.”
Breland
7. Regarding low-income housing for seniors.
- a) Charlie Betcher, Chair, Commission on Aging and
Lenora Young, Chair, COA Housing Sub-committee **Breland, Worthington**
8. Regarding the Public Safety Building antenna
- a) Rose Green
 - b) Robin McDonnell
 - c) Chris G. Knudsen
 - d) David Kamola
 - e) Steven Saylor
 - f) Joanne Kowalski
 - g) Erica Etelson
 - h) Andrea DuFlon and the MAGNAA neighbors
 - i) Keith Nickolaus
 - j) Deborah Green
 - k) Bob Marsh
 - l) Dave Williamson
 - m) David Burke
 - n) Rob Browning
 - o) Kent A. Davidson
 - p) Wendy Alfsen
 - q) Vito Lab
 - r) Charlotte Sumura
 - s) Victor Bull
 - t) Maija Williams
 - u) Julie Luifoy
 - v) Janet Levenson
 - w) Gary Stensen and Andrea DuFlon
 - x) Josh Maddox and Kathi Pugh
 - y) Don Ross
 - z) Marilyn Ziebarth and Werner Pavlovich
 - aa) Kirk McCarthy and Linda Walls
 - bb) Marc Albert article, Berkeley Voice

- cc) Judith Scheer articles, Daily Planet
- dd) Cecily Burt article, Oakland Tribune
- ee) Tony Hicks article, West County Times
- ff) Debra Levi Holtz article, San Francisco Chronicle
- gg) Dan Greenman article, Daily Planet
- ff) Zoe Kalkanis

SUPPLEMENTAL COMMUNICATIONS AND AGENDA REPORTS

Public Safety Building Communications Tower

- 9. Jim Davis
- 10. Leonard Schwartzburd, Ph.D.
- 11. Tower Committee (2 additional Submissions presented at the Meeting)
- 12. Micahel Dove
- 13. Stephany Ruch-Sills
- 14. Stephanie Lesh **Breland**
- 15. Harry Weiner and Anita White
- 16. Krys and Steve Upstill

Assessment of the Needs of Berkeley's Young People for Access to Recreation Facilities

- 17. Stephen Swanson **Breland, Hawley, Worthington**

Free Speech and Civil Liberties

- 18. Maureen Horowitz

Loans from the Housing Trust Fund Allocation FY2001-02

- 19. Elizabeth D. Campos **Breland, Worthington (last sentence of the letter only)**
- 20. Helene Hunter **Breland**
- 21. boona cheema
- 22. City Manager Recommendations for BOSS request for funding for the Ursula Sherman Village project

Adjournment

Actions: Moved, seconded, carried (Worthington/ Maio; Absent-Dean) to extend the meeting to 11:30 p.m. to complete specific agenda items.

Moved, seconded, carried (Worthington/Maio; Absent – Dean) to extend the meeting to 11:45 p.m. to complete specific agenda items.

Adjourned at 11:45 in honor of Tania Mandel.