

AGENDA

BERKELEY CITY COUNCIL MEETING

TUESDAY, SEPTEMBER 16, 2003 – 7:00 P.M.

City Council Chambers, 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call

City Manager Comments: *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

Public Comment: *A total of 30 minutes is scheduled. Each speaker is limited to a maximum of 3 minutes.*

Council Action: *The City Council may take action related to any subject listed on the Agenda.*

Consent Calendar

The Council will consider removal and addition of items to the Consent Calendar prior to voting on the Consent Calendar. All items remaining on the Consent Calendar will be approved in one motion. Items removed from the Consent Calendar will be carried over to the next regular meeting.

1. Lease: 1769 Alcatraz Avenue

From: City Manager

Recommendation: Adopt second reading of an Ordinance authorizing the City Manager to exercise the option to extend the lease agreement with Thomas Goetzl for the real property located at 1769 Alcatraz Avenue for an additional period from November 1, 2003 through October 31, 2005 in an amount not to exceed \$25,000 for the purpose of office space and utilities for the Women, Infant and Children Expanded Breastfeeding Program.

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

2. Lease: 1950 Addison Street

From: City Manager

Recommendation: Adopt second reading of an Ordinance authorizing the City Manager to accept a continued month-to-month tenancy with 1950 Addison Associates, LLC, for that portion of 1950 Addison Street used for the operation of the Berkeley WorkSource One Stop Career Center, as set forth in the letter of confirmation from Seagate Properties, Inc; and ratifying the payment of back rent and operating expenses in the amount of \$23,505.

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

- 3. Dangerous and/or Sharp Material on Fences**
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending the Berkeley Municipal Code (BMC) Section 23D.08.060.A(1) to prohibit the use of dangerous and/or sharp material in or on top of fences in residential districts and amortize existing uses under a schedule.
Contact: Dan Marks, Planning, 981-7400
- 4. Conflict of Interest Code**
From: City Manager
Recommendation: Adopt a Resolution approving a revised Conflict of Interest Code and rescinding Resolution No. 61,818-N.S. (2002 Conflict of Interest Code).
Contact: Sherry Kelly, City Clerk, 981-6900
- 5. Massage Parlor Permits**
From: City Manager
Recommendation: Adopt first reading of an Ordinance eliminating the Berkeley Municipal Code (BMC) 9.32.060, since “therapeutic massage parlor establishments” uses are already restricted to commercial districts in the Zoning Ordinance and, thereby, allow “therapeutic massage business services” which serve their clients in their homes to conduct business in residential districts.
Contact: Manuela Albuquerque, City Attorney, 981-6950
- 6. Settlement Agreement: Claim of Katherine Gardner**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement agreement of the personal injury claim brought by Katherine Gardner in the amount of \$25,000.
Contact: Manuela Albuquerque, City Attorney, 981-6950
- 7. Grant: Pre-Disaster Mitigation Application**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an application for a Pre-Disaster Mitigation Grant to the Governor’s Office of Emergency Services in the amount of \$3 million with a 25% match to reconstruct the seismically unsafe facilities maintenance building at the Corporation Yard.
Contact: Arietta Chakos, City Manager, 981-7000
- 8. Bed and Breakfast Establishments in Residential Areas (CF 22-03)**
From: City Manager
Recommendation: Adopt first reading of two Ordinances: 1) adding a new Chapter 23C.06 to the Berkeley Municipal Code (BMC) and amending Chapter 23F.04.010, regarding bed and breakfast establishments (B&B) operating in owner-occupied private homes in residential zoning districts, and 2) amending Section 7.36.040, exempting customers of B&Bs from transient occupancy taxes (TOT).
Contact: Fran David, Finance, 981-7200

- 9. Contract: Wheelchair-Van Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to a contract with Friendly Transportation, Inc. to: (1) increase the amount by \$38,000 to a total not to exceed \$62,000; and (2) extend the term to June 30, 2005.
Contact: Stephen Barton, Housing, 981-5400
- 10. Contract: Financial Software Maintenance**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into an agreement with H.T.E. Inc. for maintenance software for the City's financial system, FUNDS\$, for a total amount not to exceed \$250,000, for the period July 1, 2003 to June 30, 2005.
Contact: Chris Mead, Information Technology, 981-6500
- 11. Remand of Landmark Preservation Commission Notices of Decision**
From: City Manager
Recommendation: Adopt a Resolution remanding the Notices of Decision for Parcel 057-2024-02100 (1952-1958, 1976½ , and 1978 University Avenue) and Parcel 057-2024-02000 (1960, 1964, 1966, 1980A and 1980B University Avenue) to the Landmarks Preservation Commission for clarification of the significant features on the site and to work with the owner in ascertaining these.
Contact: Dan Marks, Planning, 981-7400
- 12. Contract: Engineering Services for Marina Landfill Gas Energy Recovery Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$125,000 for a period of 180 calendar days with ConneXsys Engineering, Inc., to provide engineering services for the construction of a micro-turbine plant using landfill gas for the marina landfill Gas Energy Recovery Project located at Cesar Chavez Park.
Contact: Rene Cardinaux, Public Works, 981-6330
- 13. Grant: Crosswalk Safety Project**
From: City Manager
Recommendation: Adopt a Resolution accepting from the State Office of Traffic Safety (OTS) a \$68,500 grant for a crosswalk safety project for the period October 1, 2002 to September 30, 2004.
Contact: Peter Hillier, Transportation, 981-7010

- 14. Contract: Worker's Compensation Review**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute and implement a contract and any amendments with Bickmore Risk Services for: 1) an analysis of the workers' compensation program administrative practices; 2) a workers' compensation claims audit; 3) a financial review; 4) the annual actuarial review; and 5) benchmarking the workers' compensation program with other cities in the metropolitan Bay Area for the period of September 1, 2003 through June 30, 2004 for a total cost not to exceed \$65,000.
Contact: Nicki Spillane, Human Resources, 981-6807
- 15. Purchase Order: Cabling for 1947 Center Street**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to issue a purchase order to AMS.NET Inc. for the purchase of Cisco networking equipment for cabling for 1947 Center Street in an amount not to exceed \$150,000.
Contact: Chris Mead, Information Technology, 981-6500
- 16. Audit: Information Systems General Controls**
From: City Auditor
Recommendation: Request the City Manager report back no later than February 17, 2004, regarding the implementation status of each of the Auditor's recommendations in the attached report, and to set a date for a follow up report to Council if any recommendations remain unimplemented at that time.
Contact: Ann-Marie Hogan, City Auditor, 981-6750
- 17. In-Kind Support for the North Shattuck Association "Spice of Life" Festival**
From: Councilmembers Hawley and Spring
Recommendation: Adopt a Resolution providing in-kind support and services for the North Shattuck Association's "Spice of Life" Festival scheduled for Sunday, October 19, 2003.
Contact: Miriam Hawley, Councilmember District 5, 981-7150 and Dona Spring, Councilmember District 4, 981-7140
- 18. Truck Limit Weights on Residential Streets**
From: Councilmember Worthington
Recommendation: Request that the City Manager and Transportation officials establish a 3 or 3½ ton truck limit on severely impacted residential streets adjacent to ongoing major traffic generators, through a temporary pilot program and/or creation of a permanent Heavy Truck Traffic Policy.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- 19. Fee Waiver: Youth Support Program at Willard Middle School**
From: Councilmembers Worthington and Breland
Recommendation: Adopt a Resolution supporting the Youth Support Program at Willard Middle School and waiving the \$106 fee for the annual BBQ kick-off for the academic monitoring program.
Contact: Kriss Worthington, Councilmember District 7, 981-7170

20. **Oppose: State Proposition 53 – Infrastructure Funding**
From: Councilmembers Hawley, Maio, Worthington and Wozniak
Recommendation: Oppose State Proposition 53 regarding infrastructure funding which has been placed on the ballot for the October 7, 2003 election.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
21. **Proclamation: National Coming Out Day 2003**
From: Councilmember Worthington
Recommendation: Waive Council Rules to allow for a proclamation to be presented at this meeting for National Coming Out Day 2003 to be celebrated on October 11, 2003 in Berkeley.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
22. **Support H.R. 1684 and S 1545 permitting Access to Higher Education and Legalization for Immigrant Students**
From: Councilmembers Worthington, Breland and Spring
Recommendation: Adopt a Resolution supporting H.R. 1684 and S 1545 permitting access to higher education and legalization for immigrant students.
Contact: Kriss Worthington, Councilmember District 7, 981-7170;
23. **University of California Long Range Development Plan’s New 2020 Land Use Plan**
From: Councilmember Worthington
Recommendation: Provide comments from the City regarding the University of California Long Range Development Plan’s new 2020 Land Use Plan for the EIR scoping session on September 22, 2003, to be conducted from 5 to 9 p.m. at Krutch Theater at the Clark Kerr Campus.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
24. **Proclamation Honoring Kent Nagano**
From: Councilmembers Spring, Worthington, Wozniak and Mayor Bates
Recommendation: 1) Host events in connection with the support of Arts and the Arts District; 2) issue a proclamation honoring the 25th Anniversary of Kent Nagano, world renowned symphony conductor of the Berkeley Symphony; and 3) request the City Manager hang banners in downtown Berkeley relating to the events.
Contact: Dona Spring, Councilmember District 4, 981-7140
25. **A.B. 1077: Expanded Methods for Filing Complaints Against Police Officers**
a. From: Police Review Commission
Recommendation: Support A. B. 1077 requiring expanded methods for filing complaints against police officers, and send a letter to the bill’s author, Assembly Speaker Herb Wesson informing him of the City’s position
Contact: Barbara Attard, Police Review Commission Officer, 981-4950
b. From: City Manager
Recommendation: The City Manager takes no position.
Contact: Weldon Rucker, City Manager, 981-7000

26. A.B. 1119 Early Intervention Systems

a. From: Police Review Commission

Recommendation: Support A. B. 1119 requiring early intervention systems for all California law enforcement agencies, and send a letter to the bill's author, Assembly Speaker Herb Wesson informing him of the City's position.

Contact: Barbara Attard, Police Review Commission Officer, 981-4950

b. From: City Manager

Recommendation: The City Manager takes no position.

Contact: Weldon Rucker, City Manager, 981-7000

27. A. B. 1331: Whistleblower Protection Program

a. From: Police Review Commission

Recommendation: Support A.B. 1331 establishing a whistleblower program for police officers, and send a letter to the bill's author, Assembly Speaker Herb Wesson informing him of the City's position.

Contact: Barbara Attard, Police Review Commission Officer, 981-4950

b. From: City Manager

Recommendation: The City Manager takes no position.

Contact: Weldon Rucker, City Manager, 981-7000

Action Calendar – Public Hearing

28. Appeal: 1600 Shattuck Avenue

a. From: City Manager

Recommendation: Conduct a Public Hearing, allowing each of the two appellants and the applicant five minutes each to summarize their position, and continue the hearing until October 21, 2003 to allow adequate time for public view of an engineering report providing independent evaluation of technical aspects of the proposed project.

Contact: Dan Marks, Planning, 981-7400

b. From: City Manager (from June 17, 2003)

Recommendation: Open the public hearing, allow each of the two appellants and the applicant five minutes each to summarize their position, and continue the hearing until July 15, 2003 to allow completion of an engineering report providing independent evaluation of technical aspects of the proposed project.

Contact: Phil Kamlarz, Planning, 981-7400

c1. Communications (from June 17, 2003– numbering follows original sequence)

1. Frances Strassman (2)
2. Shahram Shahruz (10)
3. Appellants: Strassman, Shahruz, Reynolds, Gaddini, Cloud, Wolfe
4. Libby Kelley
5. Jon-Erik Beckjord
6. L.G.
7. Carol Suveda
8. Marsha Hiller
9. Vida Bateau

Action Calendar – Public Hearing

c2. Supplemental Communications 1 *(from June 17, 2003– numbering follows original sequence)*

10. Supplemental Report submitted by City Manager
11. Shahram Shahruz
12. Dennis Martin, Applicant Response to Appeals

c3. Supplemental Communications 2 *(from June 17, 2003– numbering follows original sequence)*

33. Michael Fried

d. Communications (from September 16, 2003)

1. Shahram Shahruz (24)
2. 107 Signed Petitions
3. Mark Rhoades
4. Leonard Schwartzburd (2)
5. Doug Loranger (2)
6. Vida Bateau (2)
7. Robert Riedlinger
8. Radiation Free Gourmet Ghetto (2)
9. Ruth S. Clifford
10. Helena Bautin
11. K. Arianpour
12. Jingang Yi, PhD
13. Susan Clarke (2)
14. Daniel Wolfe
15. Val Peters
16. Scott Wheeler
17. Joan Levinson (2)
18. Greg Bowman
19. Ayn Lowry
20. Jordan Rothstein
21. Kathie Taylor and Neill Bourke
22. Marianne Robinson
23. Sarah Jones (2)
24. Rand Knox
25. Michael Marchant
26. Connie and Kevin Sutton
27. Helena Bautin
28. Zach Cowan
29. Carrie Olson
30. Leonard Schwartzburd (3)
31. Kriss Worthington
32. Shahram Shahruz
33. Frieda Feen
34. Frank Harris
35. Andrew Packard
36. La Chanteuse
37. PhoeBe ANNE (thomas/sorgen)
38. Barb Wilkie
39. Petitions from Kate Bernier, Rose Vekony, Andrew Joron and Barbara Guest
40. Frances Strassman

Action Calendar – Public Hearing

29. Rental Housing Safety Program Fees (CF 34-03 and 44-03)

From: City Manager

Recommendation: Conduct a Public Hearing and upon conclusion: 1) adopt a Resolution rescinding Resolution No. 62,186 – N. S. and establishing a new housing code inspection fee schedule for the Rental Housing Safety Program (RHSP); 2) adopt a separate Resolution re-establishing the flat per unit fee of \$17 per unit for all residential rental buildings, and \$8.50 per room for residential hotels and boarding houses with five or more rooms in support of the RHSP; 3) acknowledge staff plans to impose administrative penalties for repeated failures to correct housing code violations consistent with the procedures and fine schedules as provided by the citywide administrative citation process, and establish the policy that any revenue collected from the issuance of administrative citations go to support the RHSP after subtracting the City's administrative overhead costs; and 4) reaffirm commitment to a policy that provides a rebate to property owners in the form of a reduced flat per unit/room fee in FY 2004-2005 should FY 2003-2004 RHSP revenues exceed the RHSP expenditure budget.
Contact: Stephen Barton, Housing, 981-5400

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 – Old Business

30. Initial Study Related to Proposed Uses at Aquatic Park Main Lagoon (Held over from 9/9/03)

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to prepare an Initial Study to determine any environmental impacts related to use of the Main Lagoon at Aquatic Park by a proposed lease with the Berkeley High School (BHS) Women's Crew and by the existing use of the Lagoon by the Berkeley Rowing Club and the Berkeley Waterski Club.
Contact: Lisa Caronna, Parks Recreation and Waterfront, 981-6700

31. Inquiry into Death of Americans in Middle East (Held over from 9/9/03)

From: Councilmembers Olds and Hawley

Recommendation: Direct the City Manager to send a letter to President Bush, Senators Boxer and Feinstein and Representative Lee calling on the United States Government to undertake a full, fair and expeditious investigation into the deaths and/or injuries sustained by all Americans since September 28, 2000 in Israel, the West Bank and Gaza due to ongoing conflicts, and urge the adoption of an amendment to House Concurrent Resolution 111 that would expand the inquiry to involve an investigation into all such tragic incidents.

Action Calendar – Old Business

Contact: Betty Olds, Councilmember District 6, 981-7160 and Miriam Hawley, Councilmember District 5, 981-7150

Action Calendar – New Business - Budget

32. **FY 2004 Budget Amendments** *(to be delivered)*
From: City Manager
Recommendation: Adopt a Resolution approving budget balancing measures totaling \$1,433,000 and amending the FY 2004 Budget .
Contact: Paul Navazio, Budget Manager, 981-7000
33. **FY 2004 Budget Reallocation of Community Agency Funding** *(to be delivered)*
From: City Manager
Recommendation: Adopt a Resolution reallocating funding to community agencies.
Contact: Paul Navazio, Budget Manager, 981-7000

Information Reports

34. **Update on the Berkeley Alliance** *(CF 33-03)*
From: City Manager
Contact: Weldon Rucker, City Manager, 981-7000
35. **UC Berkeley's Long Range Development Plan and Fiscal Impact Study**
From: City Manager
Contact: Arietta Chakos, City Manager, 981-7000
36. **Finance-Treasury Cash Receipts/Cash Handling Audit Recommendations** *(CF 159-02)*
From: City Manager
Contact: Fran David, Finance, 981-7300
37. **Implementation of Customer Service Cash Receipts/Cash Handling Audit Recommendations** *(CF 12-03)*
From: City Manager
Contact: Fran David, Finance, 981-7300
38. **Formal Bid Solicitations and Request for Proposals**
From: City Manager
Contact: Fran David, Finance, 981-7300
39. **Fee Deferral: Transitional Housing at 711 Harrison Street**
From: City Manager
Contact: Dan Marks, Planning, 981-7400

Communications

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

Enviros Who Back Gridlock, Loss of Habitat

1. Patrick Kennedy

Notice of Preparation Environmental Impact Report

2. Thomas E. Lollini, Capital Projects - University of California, Berkeley

Community Development Block Grant

3. Bekah Cutler, George O. Proper, Kathryn S. McCarthy – University Students' Cooperative Association

Berkeley Bowl Election Process

4. Glenn Yasuda

Berkeley Unified School District for West Campus

5. Rachel Boyce

Adjournment