

SUMMARY

BERKELEY CITY COUNCIL MEETING TUESDAY, OCTOBER 14, 2003 – 7:00 P.M. Council Chambers, 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call: 7:12 p.m. All present.

Ceremonial Matters:

1. Proclamation declaring October as Fire Prevention Month
2. Proclamation declaring October 30th as National Weatherization Day
3. Proclamation honoring BANANAS for 30 years of service on behalf of children and families
4. Proclamation for Domestic Violence Awareness Month.

Action: Presented proclamations.

City Manager Comments: None

Public Comment: 11 speakers. Comments from Jodi Mosley regarding field trip by Oakland Tech to UC Berkeley and actions by Berkeley Police Department referred to the City Manager for a report.

Youth Comments: 6 speakers.

Consent Calendar

Moved, seconded and carried (Wozniak/Worthington) to adopt the Consent Calendar in one motion except as indicated:

1. Massage Parlor Permits

From: City Manager

Recommendation: Adopt second 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

Action: Adopted Ordinance No. 6,772 – N.S. Effective November 13, 2003.

Consent Calendar

2. **Bed and Breakfast Establishments in Residential Areas** (*CF 22-03*) (*First Reading – Abstain – Olds*)
From: City Manager
Recommendation: Adopt second 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
Action: Adopted Ordinance No. 6,773 – N.S. and Ordinance No. 6,774 – N.S. Effective November 13, 2003.
3. **Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for Council meetings of September 9, 2003 (special and regular), September 11, 2003 (special) and September 16, 2003 (regular).
Contact: Contact: Sherry Kelly, City Clerk, 981-6900
Action: Approved minutes for September 11, 2003 (special) and September 16, 2003 (regular). Minutes of September 9, 2003 (regular) removed from the Consent Calendar by Councilmember Maio and held over to November 4, 2003.
4. **Needle Exchange**
From: City Manager
Recommendation: Adopt a Resolution reviewing and confirming the continued existence of a local emergency with regard to HIV transmission from use of HIV-Infected Needles among injection drug users, and authorizing the local health officer to take steps to enable the operation of Needle Exchange Emergency Distribution.
Contact: Sherry Kelly, City Clerk, 981-6900
Action: Adopted Resolution No. 62,234 – N.S.
5. **Cost for Removing Graffiti on Private Property** (*CF 60-02 and 192-02*)
From: City Manager
Recommendation: Adopt first reading of two Ordinances: 1) adding a new chapter to the Berkeley Municipal Code (BMC) Chapter 13.98 entitled, “Graffiti On Property Prohibited” and 2) amending Berkeley Municipal Code (BMC) Sections 1.24.140 and 1.24.205 to allow for the costs of abatement of graffiti to be placed as a lien on the vandal’s property, or if the vandal is a minor, on the property of his/her guardian.
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Removed from the Consent Calendar by Councilmember Maio. Moved, seconded, carried (Maio/Worthington; Abstain – Shirek) to adopt first reading of the ordinances. Second readings scheduled for October 21, 2003. Councilmember Maio requested that the City Manager develop a community education and outreach campaign and report back to Council.

Consent Calendar

- 6. Settlement Agreement: Stuart, et al. v. City of Berkeley, et al.**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. 2001 028436 entitled Stuart, et al. v. City of Berkeley, et al. in an amount of \$16,250.
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Adopted Resolution No. 62,235 – N.S.
- 7. Unauthorized Removal of Newspapers (CF 39-03)**
From: City Manager
Recommendation: Adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 13.54 to prohibit the unauthorized removal of free newspapers from news racks or other locations.
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Adopted first reading of the ordinance. Second reading scheduled for October 21, 2003.
- 8. Contract: North Shattuck Association Business Improvement District**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the North Shattuck Association for \$240,303 to implement the Management District Plan and approved work plan for the North Shattuck Business Improvement District for FY 2004.
Contact: Tom Myers, Economic Development, 981-7530
Action: Adopted Resolution No. 62,236 – N.S.
- 9. Contract: Janitorial Services for Mental Health Facilities**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute amendments to the contract with Universal Building Services for the provision of janitorial services at the Berkeley Mental Health facilities to increase the amount by \$15,000 for a total not to exceed \$50,000; and to extend the period to June 30, 2004.
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 62,237 – N.S.
- 10. Grant: One-Stop Career Center**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: 1) accept a grant from the Alameda County Workforce Investment Board for funds in the amount of \$214,090 to provide employment services to adults at the Berkeley Worksource One-Stop Career Center for the period of July 1, 2003 to June 30, 2004; 2) execute the resultant revenue agreement and any amendments; and 3) implement the programs and appropriation of funding for related expenses.
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 62,238 – N.S.

- 11. Contract: Winter Voucher and Winter Shelter Programs**
From: City Manager
Recommendation: Adopt a Resolution authorizing: 1) the allocation of \$40,000 for the purpose of providing emergency vouchers to homeless households for shelter at local motels; 2) a contract amendment with the Women's Daytime Drop-in Center in an amount not to exceed \$5,086 for administration of the Winter Voucher Program; 3) a payment of \$56,000 to the City of Oakland Community and Economic Development Agency, representing the City's pro-rata share of direct program operating costs related to the Joint Winter Shelter Program at the Oakland Army Base; 4) payment in an amount not to exceed \$42,000 to Bay Area Rapid Transit (BART) for Winter Shelter Program related transportation costs; and 5) a contract amendment with the Berkeley Food and Housing Project in the amount of \$5,914 to provide Winter Shelter Program client referral and coordination services.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 62,239 – N.S.
- 12. Grant Application: State Local Housing Trust Fund Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: 1) apply for \$1 million in funding from the California Department of Housing and Community Development (HCD) Local Housing Trust Fund Program (LHTFP) program to match funds currently available in the Housing Trust Fund for the purpose of developing and increasing the supply of affordable housing; 2) commit to using LHTFP and matching funds on projects where at least 30% of the units will be restricted to extremely low income households and 30% for special needs population; and 3) authorizing the City Manager to execute all agreements, documents and amendments as necessary to commit specific local government resources as proposed to HCD and take all other necessary action to facilitate the proposed program.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 62,240 – N.S.
- 13. Predevelopment Loan Agreement: Jubilee Restoration, Inc.**
From: City Manager
Recommendation: Adopt a Resolution approving a fund reservation for \$50,000 from the Housing Trust Fund with conditions for the Jubilee Village Development and authorizing the City Manager to execute a predevelopment loan agreement and any amendments and all other related documents with Jubilee Restoration, Inc.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 62,241 – N.S.
- 14. Classification: Accounting Manager**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 61,840-N.S., Classification and Salary Resolution for Local One Employees, to revise the classification of Accounting Manager and adjust the salary range effective October 1, 2003.
Contact: Nicki Spillane, Human Resources, 981-6800
Action: Adopted Resolution No. 62,242 – N.S.

Consent Calendar

- 15. Classification: Community Service Officer and Police Service Assistant Classes**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 61,807–N.S., Classification for SEIU Local 790 Employees: 1) combining the Community Service Officer and Police Service Assistant class specifications under the Community Service Officer job title with Police Service Assistant salary range; 2) establishing Community Service Officer Supervisor; and 3) abolishing the Police Service Assistant and Senior Police Service Assistant classes.
Contact: Nicki Spillane, Human Resources, 981-6800
Action: Adopted Resolution No. 62,243 – N.S.
- 16. Classification: Public Works Solid Waste Division**
From: City Manager
Recommendation: 1) Adopt a Resolution amending Resolution No. 61,807–N.S., Classification and Salary Resolution for SEIU, Local 790 Employees revising and re-titling Public Waste Solid Waste Division classification; and 2) adopt a Resolution amending Resolution No. 61,840–N.S., Classification and Salary Resolution for Local One Employees revising and re-titling Public Works Solid Waste Management Division classifications.
Contact: Nicki Spillane, Human Resources, 981-6800
Action: Adopted Resolution No. 62,244 – N.S. and Resolution No. 62,245 – N.S.
- 17. Employee Supplemental Retirement Plan**
From: City Manager
Recommendation: Adopt a Resolution amending the Supplemental Retirement Plan to extend coverage beyond those employees represented by the Berkeley Fire Fighters Association/I.A.F.F. Local 1227 to career benefited employees in all bargaining units to unrepresented career benefited and regular at will employees.
Contact: Nicki Spillane, Human Resources, 981-6800
Action: Adopted Resolution No. 62,246 – N.S.
- 18. Contract: Portable Toilet Rental and Service**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Portosan for the provision of portable toilet rental and service to increase the amount by \$35,000 for a total amount not to exceed \$250,000 and extend the term to April 30, 2004.
Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Adopted Resolution No. 62,247 – N.S.
- 19. Contract: University Avenue Median Landscaping Renovations -Phase 2**
From: City Manager
Recommendation: Adopt a Resolution approving the plans and authorizing the City Manager to execute a contract and any amendments with Cleary Brothers Landscape, Inc. for the University Avenue Median Landscaping Renovations-Phase 2 for the period November 2, 2003 to November 2, 2004 in an amount not to exceed \$697, 630.
Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Adopted Resolution No. 62,248 – N.S.

Consent Calendar

20. **Threat of a Sudden Oak Death Epidemic (CF 101-02)**
From: City Manager
Recommendation: 1) Direct all public inquiries on Sudden Oak Death (SOD) to the website, www.suddenoakdeath.org, and include a link on City web pages; 2) refrain from taking further action, including forming an advisory group, until more is known about the disease; and 3) continue to monitor the disease and review the need for a committee and an expanded communication plan, if the condition escalates.
Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Removed from the Consent Calendar by Councilmember Olds. Moved, seconded, carried (Olds/Worthington; Absent – Maio) to approve recommendation.
21. **Grants: 2002 Resources Bond Act: California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002**
From: City Manager
Recommendation: Adopt two Resolutions authorizing the City Manager to submit applications; execute any related grant agreements and amendments; and accept grant funds for the State of California Department of Parks and Recreation for available grant funding through the 2002 Resources Bond Act (Proposition 40) for: 1) the Per Capita Grant Program and 2) the Roberti-Z' Berg-Harris (RZH) Urban Space and Recreation Grant Program.
Contact: Lisa Caronna, Parks and Waterfront, 981-6700
Action: Adopted Resolution Nos. 62,249 – N.S. and 62,250 – N.S.
22. **Contracts: Juvenile Accountability Incentive**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: 1) execute a grant agreement and any amendments with the State Governor's Office of Criminal Justice Planning (OCJP) to promote greater accountability of juveniles in the justice system for the period July 1, 2003 through September 30, 2003 in an amount not to exceed \$12,439 and for the period October 1, 2003 through June 30, 2004 in an amount not to exceed \$37,318; 2) authorize matching funding in the amount of \$5,528; and 3) execute a contract and any amendments with Donald P. McCullum Youth Court Inc. for the period July 1, 2003 through September 30, 2003 in an amount not to exceed \$10,684 and for the period October 1, 2003 through June 30, 2004 in an amount not to exceed \$32,052.
Contact: Roy Meisner, Police, 981-5700
Action: Adopted Resolution No. 62,251 – N.S.
23. **Contract: 1947 Center Street Tenant Improvements**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with ProTech Consulting and Engineering for tenant improvements, increasing the existing contract by \$15,000 for a total amount not to exceed \$50,000.
Contact: Rene Cardinaux, Public Works, 981-6330
Action: Adopted Resolution No. 62,252 – N.S.

Consent Calendar

- 24. Contract: Design of Underground Supporting Structure**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with SBC California (SBC) in an amount not to exceed \$26,400 to provide engineering services for design of the underground support structure for the Thousand Oaks Heights Applicant Financed Utility Underground District No. 1, for a design period of no more than 90 days from the notice to proceed.
Contact: Rene Cardinaux, Public Works, 981-6330
Action: Adopted Resolution No. 62,253 – N.S.
- 25. Contract: James Kenney Recreation Center Renovation**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving plans and specifications for renovation of the James Kenney Recreation Center; 2) waiving permit fees; 3) accepting the bid of Kin Wo Construction, Inc.; and 4) authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$772,604.
Contact: Rene Cardinaux, Public Works, 981-6330
Action: Removed from Consent Calendar by Councilmember Spring and held over to October 21, 2003.
- 26. Contract: Sanitary Sewer Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with McNamara and Smallman Construction, Inc. for a sanitary sewer project, increasing the existing contract amount by \$196,000 for a total amount not to exceed \$1,328,690, and extending the period 75 calendar days.
Contact: Rene Cardinaux, Public Works, 981-6330
Action: Adopted Resolution No. 62,254 – N.S.
- 27. Notification Period on No-Parking Signs**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 14.08.090 to extend the notification period on no-parking signs from 24 hours to 72 hours.
Contact: Rene Cardinaux, Public Works, 981-6330
Action: Adopted first reading of ordinance. Second reading scheduled for October 21, 2003.
- 28. Ceremonial Matters**
From: Mayor Bates
Recommendation: Waive Council Rules of Procedure to allow for ceremonial matters to be placed on the Council agenda of October 21, 2003.
Contact: Tom Bates, Mayor, 981-7100
Action: Approved recommendation.

Consent Calendar

- 29. Fee Waiver and Co-Sponsorship for Veterans Day Event in Civic Center Park**
From: Mayor Bates
Recommendation: Adopt a Resolution co-sponsoring and waiving park usage, sound permit, and other fees associated with a Veterans Day event scheduled for Tuesday, November 11, 2003.
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 62,255 –N.S.
- 30. Proclamation: Honoring Fire Department Captain Wayne Dismuke**
From: Councilmember Breland
Recommendation: Approve a Proclamation honoring Fire Department Captain Wayne Dismuke for his lifelong dedication to his post and the community.
Contact: Margaret Breland, Councilmember District 2, 981-7120
Action: Approved proclamation.
- 31. Oppose US Senate Bill 150, “The Internet Tax Nondiscrimination Act of 2003”**
From: Councilmember Hawley
Recommendation: Ask the City Clerk to send a letter to California Senators Feinstein and Boxer with a copy to Senator John McCain, Chair of the Senate Committee on Commerce, Science and Transportation, expressing concern over S. 150, “the Internet Non-Discrimination Act,” and request that: 1) the legislation be clarified to preserve local governments’ ability to collect both utility taxes and franchise fees related to telecommunications and cable television even if those services offer access to the Internet; 2) the legislation include a sunset; and 3) Senators Boxer and Feinstein oppose the legislation unless these clarifications are included.
Contact: Miriam Hawley, Councilmember District 5, 981-7150
Action: Approved recommendation.
- 32. Berkeley Unified School District Environmental Review of School District Sites**
From: Councilmember Maio and Mayor Bates
Recommendation: 1) Request Berkeley Unified School District (BUSD) engage in an environmental study of all major changes in the use of school district sites and that the District work collaboratively with the City on jointly mitigating traffic impacts to the neighborhood surrounding the Franklin School, including continual pursuit of the San Pablo driveway curb cut. 2) Council make a commitment to provide high priority traffic calming measures for the Franklin School neighborhood based on staff’s recommendation.
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Removed from Consent Calendar by Councilmember Olds. Moved, seconded, carried (Worthington/Maio; Abstain – Olds, Breland) to approve recommendation as revised by Councilmember Maio as noted above.
- 33. Creation of Homeless Storage Lockers**
From: Councilmember Worthington
Recommendation: Support continued exploration of the creation of homeless storage lockers at service agency location(s).
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Held over by Councilmember Worthington to October 21, 2003.

Consent Calendar

- 34. Fee Waiver: Willard Neighborhood Association's Annual Picnic**
From: Councilmember Worthington
Recommendation: Adopt a Resolution retroactively waiving the permit fee for Willard Neighborhood Association's (WNA) Annual Picnic.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 62,256 –N.S.
- 35. Proclamation: Honoring Japanese Visitors**
From: Councilmember Spring
Recommendation: Approve a proclamation honoring our Japanese visitors, the delegation from the ZENKO National Assembly for Peace and Democracy of Japan, working on behalf of peace; proclaiming October 21 through October 26, 2003 as "Berkeley-Nihon Heiwa Torikaeru Jidai (Berkeley-Japan Peace Exchange Days) in the City of Berkeley; and waiving Council rules to present the proclamation at the Council meeting of October 21, 2003.
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Approved proclamation.
- 36. No Smoking in Bus Shelters**
- a. From: Commission on Aging and Commission on Disability**
Recommendation: Direct the City Manager to amend Berkeley Municipal Code (BMC) Section 12.70.030 to include no smoking in bus shelters.
Contact: Lisa Ploss, Secretary, 981-5178 and Paul Church, Secretary, 981-6342
- b. From: City Manager**
Recommendation: The City Manager concurs with the content and recommendations of the report.
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Approved recommendation.
- 37. General Provisions Ordinance Amendment to Include Saturdays as Business Days**
- a. From: Citizens Humane Commission**
Recommendation: Adopt first reading of an Ordinance amending the Berkeley Municipal Code (BMC) Section 1.04.080 to include Saturdays as a business day for the Animal Shelter in order to speed up the adoption process timelines governed by state law.
Contact: Katherine O'Connor, Secretary, 981-6601
- b. From: City Manager**
Recommendation: The City Manager concurs with the content and recommendations of the report.
Contact: Jim Hynes, Assistant to City Manager, 981-2489
Action: Adopted first reading of ordinance. Second reading scheduled for October 21, 2003. Councilmember Wozniak asked staff to review the ordinance to ensure that this change would not accelerate the euthanization of animals and if necessary provide an amendment that would provide for a longer holding period.

Consent Calendar

38. Donation: Rotary Club for Shorebird Park Improvements

a. From: Waterfront Commission

Recommendation: Adopt a Resolution accepting a donation from the Rotary Club in an amount exceeding \$1,000; and approve signage in Shorebird Park acknowledging the donation.

Contact: Deborah Chernin, Secretary, 981-6715

b. From: City Manager

Recommendation: The City Manager concurs with the content and recommendation of the report.

Contact: Lisa Caronna, Parks and Waterfront, 981-6700.

Action: Adopted Resolution No. 62,257 –N.S.

Action Calendar – Public Hearing

39. Appeal: 1936 Delaware Street

a. From: City Manager (*October 14, 2003*)

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving the proposed project subject to findings and conditions that incorporate certain parameters set forth in a neighborhood agreement and dismissing the appeal.

Contact: Dan Marks, Planning, 981-7400

b. From: City Manager (*September 9, 2003*)

Recommendation: Continue the hearing to October 14, 2003.

Contact: Dan Marks, Planning, 981-7400

c. From: City Manager (*July 8, 2003*)

Recommendation: Continue the public hearing to either July 15, 2003 or September 16, 2003 in an effort to reach an agreement between the parties.

Contact: Phil Kamlarz, Planning, 981-7400

d. City Manager Supplemental Report (*June 17, 2003*)

Recommendation: Grant the request of the applicant and appellant to continue the public hearing, without taking testimony, to July 8, 2003, and waive Council rules to schedule a public hearing on a non-public hearing night.

Contact: Phil Kamlarz, Planning, 981-7400

e. From: City Manager (*May 13, 2003*)

Recommendation: Adopt a Resolution affirming the Zoning Adjustments Board's approval of Use Permit #02-10000060, to add two dwellings by enlarging an existing single-family dwelling by raising it one story and by constructing a second two-story building, and dismissing the appeal.

Contact: Carol Barrett, Planning, 981-7400

f. Appeal (*May 13, 2003*)

1. Ted Kluger

Action Calendar – Public Hearing

g. Communications (*May 13, 2003*)

1. Jane and Ted Kluger (3)
2. Patricia Hom
3. David Levy, Morrison & Foerster
4. Rena Rickles

h. Supplemental Communications (*May 13, 2003*)

20. Ted Kluger (2)
21. Petition with 46 Signatures, submitted by Jayne Kluger
22. Rena Rickles
23. James Mellgren
24. Sydney Turnshek

i. Supplemental Communications (*May 13, 2003*)

39. Sydney Turnshek
40. James Mellgren

j. Communications (*June 17, 2003*)

1. Ted Kluger (2)
2. David C. Levy, Morrison & Foerster LLP (2)
3. Sydney Turnshek

k. Supplemental Communications (*June 17, 2003*)

4. Rena Rickles (2)

l. Communications (*October 14, 2003*)

5. David C. Levy, Morrison & Foerster LLP
6. Rena Rickles

Public Testimony: The Mayor opened the public hearing. 1 speaker. Moved, seconded, carried (Maio/Breland) to close the public hearing.

Action: Moved, seconded, carried (Maio/Breland; Absent – Hawley, Olds) to adopt Resolution No. 62,258 –N.S. approving the project subject to findings and conditions and dismissing the appeal.

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

40. **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

Action: Held over to October 21, 2003 by the City Manager.

Action Calendar – New Business

41. **Voting Delegates – Congress of Cities**

From: City Manager

Recommendation: Designate a voting delegate and alternate to act on behalf of the City at the Annual Business Meeting at the National League of Cities' Congress of Cities and direct the City Clerk to transmit the names of the delegates to the League no later than October 15, 2003.

Contact: Sherry Kelly, City Clerk, 981-6900

Action: Moved, seconded carried (Worthington/ Breland) to designate Councilmember Maio.

42. **Wheelchair and Pedestrian Safety on Ashby Avenue**

From: Councilmember Spring

Recommendation: Refer to the City Manager recommendations for improving safety on Ashby Avenue for disabled people, those using wheelchairs and other pedestrians, as follows: 1) replace and widen the sidewalks on the north side of Ashby Avenue between Martin Luther King Jr. Way and Ellis Street; 2) conduct a study of other pedestrian safety improvements needed on Ashby; 3) write to Caltrans demanding they fund pedestrian safety improvements on Ashby which currently poses a very dangerous threat to the lives of disabled people; 4) review the City's legal options to compel Caltrans to improve pedestrian safety on Ashby; and 5) refer the request for an amendment of the Berkeley Municipal Code (BMC) to permit wheelchair users the same rights as bicycle users to drive on Berkeley's residential streets and to make it a crime for vehicles to hit disabled or other pedestrians who may be effectively forced out onto the street because of lack of crosswalks or impassable sidewalks; 6) diligently pursue grant funding for the purpose of funding visibility improvements for individual residents electric wheelchairs and other disabilities; and 7) the October 14th meeting be closed in honor and remembrance of Fred Lupke.

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

Action: Moved, seconded carried (Spring/Maio) to approve recommendations including referring to the Commission on Disability issues of making visibility improvements to wheelchairs and directing staff to provide a status report in three months. The Mayor offered to work with Assemblymember Hancock regarding the responsibility and responsiveness by Caltrans to pedestrian safety, crosswalks, and curb cuts.

43. Precautionary Principle Policy

From: Councilmembers Worthington and Breland

Recommendation: Adopt a Resolution adopting the Precautionary Principle and referring to staff the development of a Precautionary Principle Ordinance, an Environmentally Preferable Purchasing Policy (EP3), and a timetable for implementing EP3 elements.

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

Action: Moved, seconded carried (Worthington/Maio; Noes – Olds) to adopt Resolution No. 62,259 –N.S. amended by Councilmember Hawley.

44. Fee Waiver: 20th Annual Telegraph Avenue Holiday Street Fair

From: Councilmember Worthington

Recommendation: Adopt a Resolution waiving event, sound and insurance fees associated with the fair; allowing an exemption to Berkeley Municipal Code (BMC) Section 20.24.040, thereby allowing generic holiday vertical banners on light poles; extending the sound permit from 10 am to 6 pm; and allowing only cross traffic through on Telegraph Avenue from Dwight to Bancroft.

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

Action: Moved to Consent Calendar by Councilmember Olds to adopt Resolution No. 62,260 –N.S.

45. Taxi Permits for Wheelchair Accessible Taxis

a. From: Commission on Disability

Recommendation: Direct the City Manager to issue up to 10 additional permits to be used exclusively for wheelchair accessible taxi service.

Contact: Paul Church, Secretary, 981-6342

b. From: Commission on Aging

Recommendation: Support the proposal from the Commission on Disability for the issuance of up to 10 additional taxi permits to be used exclusively for wheelchair accessible taxi service.

Contact: Lisa Ploss, Secretary, 981-5178

c. From: City Manager

Recommendation: Defer action on the request from the Commission on Disability and the Commission on Aging to issue 10 additional taxi permits for accessible taxis; and allow the City Manager to return on November 25, 2003 with a specific proposal for implementation.

Contact: Rene Cardinaux, Public Works, 981-6330 and Fran David, Finance, 981-7200

Action: Moved, seconded carried (Maio/Olds) to approve the City Manager recommendation.

46. Living Wage Ordinance Wage Rate Increases

a. From: Commission on Early Childhood Education

Recommendation: Adopt a Resolution placing a moratorium on the implementation of the Living Wage Ordinance wage rate increases for Fiscal Year 2004 for the non-profit organizations affected, and create a task force of non-profit organizations and City Councilmembers to review the consequences of these increases and devise a realistic implementation schedule.

Contact: Errol Johnson, Secretary, 981-5417

b. From: City Manager

Recommendation: Defer action until November 4, 2003 allowing the City Manager to study the consequences for the non-profits of implementing the living wage increases.

Contact: Stephen Barton, Housing, 981-5400

Action: Moved to Consent Calendar by Councilmember Maio to approve the City Manager recommendation.

47. Policy for Naming Public Facilities (CF 127-02)

a. From: Parks and Recreation Commission

Recommendation: Adopt a Resolution approving a policy for naming and renaming public facilities.

Contact: Deborah Chernin, Secretary, 981-6715

b. From: City Manager

Recommendation: The City Manager takes no position concerning the recommendations of the Commission.

Contact: Lisa Caronna, Parks and Waterfront, 981-6700

Action: Moved, seconded carried (Maio/Worthington) to refer to a Council Subcommittee consisting of Mayor Bates and Councilmembers Maio, Olds, and Worthington.

48. Funding for Traffic Circles

a. From: Councilmember Worthington (held over from 9/09/2003)

Recommendation: Designate \$140,000 in additional traffic circle funding to be specified for use for traffic circles on bicycle boulevards, as a compromise between use of funds for unspecified bicycle projects, versus use of funds for unspecified traffic circles.

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

b. From: City Manager

Recommendation: Make available up to \$140,000 of FY 2003-2004 Bike Implementation Plan General Fund for the installation of traffic calming circles on streets that are not Bicycle Boulevards or other primary bicycle routes or facilities. The specific locations, other than in the LeConte neighborhood, are to be determined during the development of traffic management plans and required approval by the Council.

Contact: Peter Hillier, Transportation, 981-7010

Action Calendar – New Business

c. From: Transportation Commission

Recommendation: 1) Support the Council compromise motion to designate the \$140,000 recently shifted from the Bicycle Fund to Traffic Calming to be earmarked explicitly for use for traffic circles on Bicycle Boulevards; and 2) reaffirm previous action on installing semi-permanent traffic circles. In addition, at its meeting of March 20, 2003, the Transportation Commission adopted a motion stipulating that those neighborhoods requesting extensively landscaped traffic circles be funded through private contributions or additional City appropriations rather than the existing traffic calming funds which are currently designated for low-cost designs.

Contact: Peter Hillier, Secretary, 981-7010

Actions: Moved, seconded, failed (Maio/Worthington; Noes – Breland, Shirek, Hawley, Wozniak; Absent – Olds) a substitute motion to approve Councilmember Worthington's recommendation.

Moved, seconded carried (Hawley/Wozniak; Noes – Maio, Spring, Worthington, Absent – Olds) a main motion to approve the City Manager recommendation

Information Reports

49. Formal Bid Solicitations and Request for Proposals

From: City Manager

Contact: Fran David, Finance, 981-7300

Action: Received and filed.

50. Landmarks Preservation Commission Notices of Decision: 2161 Shattuck Avenue - Landmark Designation

From: City Manager

Contact: Dan Marks, Planning, 981-7400

Action: Received and filed.

51. Landmarks Preservation Commission Notices of Decision: 3075 Telegraph Avenue - Landmark Designation *(to be delivered)*

From: City Manager

Contact: Dan Marks, Planning, 981-7400

Action: Held over to October 21, 2003 by the City Manager.

52. Public Access to Megan's Law CD Rom *(CF 32-03)*

From: City Manager

Contact: Roy Meisner, Police, 981-5900

Action: Received and filed.

Communications

Popeye's Chicken (*Maio*)

1. Patricia Monahan
2. Michele DiTomas
3. Modesto Covarrubias
4. Pam Ormsby
5. Marina Barnett
6. Paul Shain
7. David Stevens
8. Laurence Miller
9. Karen Watts-Zagha

Noise Disturbances at 2724 College Avenue

10. Anne Marselis Whyte (2)

Legal Consequences of Lead Paint Poisoning

11. Anne Marselis Whyte

China's Hippies Find Their Berkeley

12. Anne Marselis Whyte

Landmarks Preservation Commission

13. Ken Stein

Franklin School (*Breland*)

14. Shirley Dean
15. Joy Flaherty

Car-free Paris

16. Hank Resnik

Biomed Firm Employees Targeted at Home

17. Jim Ristrem

Free the Cuban Five

18. Rene Gonzalez Schwerert c/o Gloria La Riva

Condemn Animal Declawing

19. Richard Schumacher, California Veterinary Medical Association

Appeal of Administrative Use Permit for 2921 Fulton Street

20. Tim and Marley Lyman

Homeless Locker Program

21. Jim Hultman

Residential Project at 1698 University Avenue

22. Mary Ann Botner
23. Walter Wood

The Effects of Mountain Biking on Wildlife and People

24. Mike Vandeman

Rowing at Aquatic Park

25. J. Andrew Helmlinger (*Breland*)

Lights On Afterschool

26. Rosemary Obeid and Angie Garling (*Breland*)

Residential Housing Safety Program

27. Theodore R. Edlin

Driving with Hand-held Cell Phones

28. Karen Craig

Automatic Door Openers – Hand and Foot Plates for the Disabled

29. Karen Craig

Wheelchair Access: Northwest Corner of Cedar & Martin Luther King, Jr. Avenue

30. Karen Craig (*Hawley, Spring*)

Permit Center Building: 3rd Floor Bathroom Doors

31. Karen Craig

Support for Precautionary Principle Resolution

32. Martin Bourque

33. Lena Brook

34. Lorie Brillinger

35. Davis Baltz, M.S.

36. Charles M. Hancock

37. Tom Lent

38. Ellen Kramer

39. Ed Gulick

40. Rachelle Padgett

41. Karen Hipkins

42. Neil Gendel

43. Barbara Brenner

Berkeley Landmarks Website

44. Daniella Thompson (*Maio, Spring*)

Posting of Building Permits

45. Alan Goldfarb (*Maio, Hawley, Spring*)

Resignation from Commission on Aging

46. Annette T. Goldberg

Wheelchairs in Bicycle Lanes and on Roadways

47. Jason Meggs (3)

48. Roger Marquis

49. John Eldon

50. David Coolidge

51. Dan Gutierrez

Supplemental Reports and Communications #1

Item 31: Oppose US Senate Bill 150, “The Internet Tax Nondiscrimination Act of 2003”

52. Councilmember Miriam Hawley

Item 39: Appeal: 1936 Delaware

53. Rena Rickles

Item 42: Wheelchair and Pedestrian Safety on Ashby Avenue

54. Background information to Council Report, submitted by Councilmember Dona Spring

55. Councilmember Dona Spring

56. Michael Katz

57. Jason Meggs

58. Elizabeth Campos

Item 43: Precautionary Principle Policy (*Breland*)

59. Polly Strand

60. Lindsay Vurek

61. Greg VanMechelen, Architects/Designers/Planners for Social Responsibility

Long Range Development Plan - Molecular Foundary Project at LBNL

62. Leuren Moret

Supplemental Reports and Communications #2

Item 43: Precautionary Principle Policy

63. Robert M. Gould, Physicians for Social Responsibility

64. Signed Petitions in support of the Precautionary Principle

Item 44: Fee Waiver: 20th Annual Telegraph Avenue Holiday Street Fair

65. Signed Petition in Support of the Fair from Telegraph Avenue Merchants

Motion to Defend the Equality and Dignity of Oakland Students

66. Oakland Education Association Rep Council

Adjournment

Adjourned at 11:08 p.m. in honor of Fred Lupke and Julianne Beckendorf.