

SUMMARY

BERKELEY CITY COUNCIL MEETING TUESDAY, NOVEMBER 18, 2003 – 7:00 P.M. Council Chambers, 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call: 7:00 p.m. All present.

City Manager Comments: On November 25, 2003 at 7:00 a.m. at the Public Safety Building, Berkeley and UC Police officers and volunteers will be assembling holiday meal baskets for distribution to needy families over the Thanksgiving and Christmas holidays.

Public Comment: 7 speakers.

Consent Calendar

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

- Duties and Functions of the Waterfront Commission** (*First reading- Absent- Breland – November 4, 2003*)
From: Waterfront Commission
Recommendation: Adopt second reading on an Ordinance amending Berkeley Municipal Code (BMC) Section 3.36.060 (B) to delete “Aquatic Park” from the duties and functions of the Waterfront Commission.
Contact: Cliff Marchetti, Secretary, 644-6376 x224
Action: Adopted Ordinance No. 6,781 –N.S. Effective December 18, 2003.
- Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for Council meetings of September 9 (regular) and November 4, 2003 (regular).
Contact: Sherry Kelly, City Clerk, 981-6900
Action: Approved minutes.(Abstain – Breland on minutes of November 4, 2003).

- 3. Contract: Enterprise Content Management System**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with ImageSource, Inc. for software and services to implement an Enterprise Content Management System for the period November 30, 2003 to June 30, 2009 for a total Phase I amount not to exceed \$300,000.
Contact: Sherry Kelly, City Clerk, 981-6900
Action: Adopted Resolution No. 62,283 – N.S.
- 4. LEED™ Green Building Standards for City-owned and Operated Projects**
From: City Manager
Recommendation: Adopt a Resolution adopting policies and actions requiring the use of US Green Building Council's LEED™ Green Building Standards for City-owned and operated building projects.
Contact: Tom Myers, Economic Development, 981-7530
Action: Adopted Resolution No. 62,284 – N.S.
- 5. Fiscal Year 2004 Tax Revenue and Anticipation Notes**
From: City Manager
Recommendation: Adopt a Resolution providing for the borrowing of funds and the sale and issuance of Fiscal Year 2004 Tax Revenue and Anticipation Notes.
Contact: Fran David, Finance, 981-7200
Action: Adopted Resolution No. 62,285 – N.S.
- 6. Revised Petty Cash and Change Fund**
From: City Manager
Recommendation: Adopt a Resolution increasing the petty cash funds and change funds and rescinding Resolution No. 53,509–N.S. and all amendments.
Contact: Fran David, Finance, 981-7200
Action: Adopted Resolution No. 62,286 – N.S.
- 7. Advance Payment to Building Opportunities for Self-Sufficiency**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to release early an advance payment in the amount of \$119,732 to Building Opportunities for Self-Sufficiency (BOSS), representing the fourth quarter payment of their total contract amount of \$478,929.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 62,287 – N.S.
- 8. Lease Agreement: Women's Daytime Drop In Center**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with the Women's Daytime Drop In Center for City-owned property for the purposes of providing transitional housing for homeless women and children.
Contact: Stephen Barton, Housing, 981-5400

Consent Calendar

Action: Adopted first reading of Ordinance. Second reading scheduled for November 25, 2003.

9. Contract: Occupational Health Medical Examinations

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with U.S. HealthWorks for occupational health medical examinations including pre-employment and annual physicals, and drug and alcohol sample collection for the period of November 1, 2002 through June 30, 2005 in an amount not to exceed \$150,000. Contact: Nicki Spillane, Human Resources, 981-6800

Action: Adopted Resolution No. 62,288 – N.S.

10. Equity Salary for Health Officer Classifications

From: City Manager

Recommendation: Adopt a Resolution amending Classification/Salary Resolution No. 61,812–N.S. to correct the effective date the new salary ranges were established for the Health Officer and Health Officer (Certified) classifications, to reflect a 12.5% salary adjustment, to be effective on January 14, 2003, and rescind Resolution No. 61,906–N.S. Contact: Nicki Spillane, Human Resources, 981-6800

Action: Adopted Resolution No. 62,289 – N.S.

11. Contract: Cabling for 1947 Center Street

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend the agreement with Capitol Communications, Inc. increasing the amount by \$70,000 to cover the internal cabling of the remaining floors of 1947 Center Street, for a total amount not to exceed \$95,000, and extending the term to June 30, 2005.

Contact: Chris Mead, Information Technology, 981-6500

Action: Adopted Resolution No. 62,290 – N.S.

12. Sports Fields Joint Powers Agreement (to be delivered)

From: City Manager

Recommendation: Adopt a Resolution approving a Joint Powers Agreement for the purpose of developing, maintaining and operating sports fields.

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

Action: Adopted Resolution No. 62,291 – N.S.

13. Contract: Fleet Consultant for Vehicle Maintenance

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Maximus to conduct a Fleet Management Review for a term of 180 calendar days and in an amount not to exceed \$35,000.

Contact: Rene Cardinaux, Public Works, 981-6300

Action: Adopted Resolution No. 62,292 – N.S.

Consent Calendar

- 14. Contract: Marina Restrooms, Showers and Laundry Facilities**
From: City Manager
Recommendation: Adopt a Resolution: 1) approving the plans and specifications for the Marina Restrooms, Showers and Laundry Facilities; 2) accepting the bid of Alpha Bay Builders; 3) waiving permit fees; and 4) authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$685,300 for a period of 200 calendar days.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Removed from the Consent Calendar by Councilmember Wozniak. Moved, seconded, carried (Hawley/Maio; Noes – Wozniak; Absent – Breland, Olds) to adopt Resolution 62,293 – N.S.
- 15. Contract: Restrooms and Lobby Renovations at the Mental Health Clinic**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with the Eternal Construction, Inc. for the Restrooms and Lobby Renovations at the Mental Health Clinic, increasing the existing contract by \$30,000 for a new total not to exceed \$127,920.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 62,294 – N.S.
- 16. Contract: Center Street Garage Analysis and Design Study**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with International Parking Design, Inc. to add \$50,000 for a total not to exceed \$74,500 for a more detailed Center Street Garage site analysis and preliminary design study to include the Freight and Salvage Parcel Garage Addition, and extend the contract expiration date to June 30, 2004.
Contact: Peter Hillier, Transportation, 981-7010
Action: Adopted Resolution No. 62,295 – N.S.
- 17. Study of Parking Utilization and Fee Options for the Center Street Garage**
From: Mayor Bates and Councilmember Spring
Recommendation: Direct the City Manager to examine current utilization and alternative pricing options for the Center Street Garage, including a lower flat rate for morning and afternoon periods when usage is lower.
Contact: Tom Bates, Mayor, 981-7100 and Dona Spring, Councilmember District 4, 981-7140
Action: Approved recommendation as revised by Mayor Bates and Councilmember Spring to include all city-owned garages.

18. Time Limits for Spay/Neuter of Feral Cats

From: Councilmembers Hawley and Olds

Recommendation: Request that the City Attorney amend Berkeley Municipal Code (BMC) section 10.04.088 to change the term “harboring” to “sheltering”, and expand the same ordinance by adding language that would: 1) require that a person feeding or sheltering feral cats, and actively working to spay and neuter them, complete sterilization of the animals within three months; 2) allow Animal Services bi-monthly visits to the site to check documentation of procedures; 3) and after three months, require citations for every remaining unsterilized cat, and allow cumulative fines levied in accordance with the spay-neuter ordinance.

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

Action: Approved recommendation as amended by Councilmembers Hawley and Olds to refer this item to the Humane Commission who will then return to the Council with a recommendation by January 24, 2004.

19. Compliance of Berkeley Development Projects

From: Councilmember Spring

Recommendation: Request the City Manager prepare an information report answering a series of questions regarding compliance of Berkeley development projects which were identified in the November 4, 2003 staff report; and in addition the Pioneer building: 1) more specific regarding costs and payments of fees and assessments; 2) state and federal funding requirements; 3) compliance with the provision of 20% low income housing; 4) cultural space in return for an extra story in height; and 5) the destruction of public trees in the public right of way by these projects.

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

Action: Approved recommendation as amended to include expanding the review as recommended by Councilmember Olds in her report listed in the supplemental packet.

20. Rental Fee Reduction and Waiver of Insurance: Storytelling Women Event

From: Councilmember Spring

Recommendation: Adopt a Resolution reducing the rental fees and waiving insurance costs fees for the Storytelling Women Event to be held on a weekend in March 2004 at Live Oak Park.

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

Action: Removed from Consent Calendar by Councilmember Wozniak. Moved, seconded, carried (Wozniak/Maio; Noes- Olds, Wozniak; Absent - Breland) to adopt Resolution No. 62,296 – N.S.

21. Update on LBNL Long Range Development Plan – Notice of Preparation

a. From: Councilmember Spring

Recommendation: Adopt the Community Environmental Advisory Commission’s (CEAC) unanimous recommendations on Lawrence Berkeley National Laboratory Notice of Preparation for its proposed Long Range Development Plan and request the City Manager send appropriate letters.

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

Consent Calendar

Action: Removed from the Consent Calendar by Councilmember Wozniak and held over to November 25, 2003.

b. City Manager

Recommendation: Direct the City Manager to prepare an official response to LBNL's Long Range Development Plan (LRDP) Notice of Preparation (NOP) for their Environmental Impact Report (EIR) by November 26, 2003 unless the deadline is extended.

Contact: Arrietta Chakos, City Manager, 981-7000

Action: Approved recommendation.

22. Amendment to Ellis Implementation Ordinance

a. From: Rent Stabilization Board

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) sections 13.77.055 and 13.77.056 (Ellis Implementation Ordinance) to harmonize references in these sections with recent modifications to section 13.77.050.

Contact: James Kelekian, Secretary, 644-6128

b. From: City Manager

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

Contact: Phil Kamlarz, City Manager, 981-7000

Action: Adopted first reading of Ordinance. Second reading scheduled for November 25, 2003 (Noes – Wozniak).

Public Hearings – Ballot Measures for March 2, 2004

23. Ballot Measure – Special Tax Measure for Fire Services

a. From: City Manager (to be delivered)

Recommendation: Conduct a public hearing, review and comment and give final direction on the revised ballot title, City Attorney analyses and text of ballot measure related to a proposed special tax for fire protection and prevention services.

Contact: Phil Kamlarz, City Manager, 981-7000

b. Communications

1. Lucy Smallsreed
2. Diana L., Mei Byrns, Chih L., Bruce H., Peter S., Steffe L, Wen L.
3. Mary Kay Stuvland
4. Barbara Gilbert
5. Karl Reeh, Le Conte Neighborhood Association
6. Paul Rabinow
7. Pamela Speich
8. Michael Fretz

Public Testimony: The Mayor opened the public hearing. 32 speakers. Moved, seconded, carried (Worthington/Breland) to close the public hearing.

Action: Council directed staff to return with additional revisions to the text of the measure on November 25, 2003.

Public Hearings – Ballot Measures for March 2, 2004

24. Ballot Measures – Charter Amendment - Runoff Elections, Instant Runoff Voting, Candidate Filing Fees

a. From: City Manager

Recommendation: Conduct a public hearing, review and comment and give final direction on the ballot titles, City Attorney analysis and texts of charter amendments related to: a) changing the date of runoff elections from four weeks after the general municipal election to the first Tuesday after the first Monday in February of the odd-numbered years and reducing the percent required to be nominated to the office of auditor, mayor or council member from 45% to 40%; b) providing for instant runoff voting when the Council determines it to be feasible; c) requiring candidates running for a council district office to be nominated by registered voters within the district and establishing a filing fee of \$150 or signatures in-lieu of a filing fee in addition to current requirements to run for any local office.

Contact: Manuela Albuquerque, City Attorney, 981-6950

b. Communications

1. PhoeBe (sorgen)
2. Jeffrey McKnight
3. Richard E. DeLeon

Public Testimony: The Mayor opened the public hearing. 12 speakers. Moved, seconded, carried (Wozniak/Maio) to close the public hearing.

Action: Council directed staff to return with final ballot language on November 25, 2003.

Public Hearings – Business Improvement Districts

25. Solano Avenue Business Improvement District

From: City Manager

Recommendation: Conduct a public hearing on the proposed establishment of the Berkeley Solano Avenue Business Improvement District and upon conclusion: 1) delay action as necessary to allow the City Clerk to tabulate any written protests against formation of the proposed District received before or during the public hearing; and 2) if no majority protest exists, adopt the first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 7.97 establishing the District and levying assessments on businesses within the District for calendar year 2004.

Contact: Tom Myers, Economic Development, 981-7530

Public Testimony: The Mayor opened the public hearing. 3 speakers.

Action: Moved, seconded, carried (Maio /Olds; Noes – Hawley, Worthington, Wozniak) to continue the public hearing to December 9, 2003 to allow additional time for submission of any written protests.

Public Hearings – Business Improvement Districts

26. **Contract: Downtown Berkeley Business Improvement District Assessment**

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt two Resolutions: 1) confirming the year 2004 Annual Report of the Downtown Business Improvement District (BID), and levying an annual assessment for the Downtown Berkeley BID for calendar year 2004; and 2) authorizing the City Manager to execute a contract and any amendments with the Downtown Berkeley Association (DBA) Main Street Program for \$265,000 of Downtown BID funds to support Downtown revitalization.

Contact: Tom Myers, Economic Development, 981-7530

Public Testimony: The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Maio/Worthington) to close the public hearing.

Action: Moved, seconded, carried (Maio/Shirek) to adopt Resolution No. 62,297 – N.S. and Resolution No. 62,298 – N.S.

Public Hearings – Appeals – *This public hearing will not be heard before 8:30 p.m.*

27. **Appeal: 1326 Allston Way**

a. From: City Manager (*October 21, 2003*)

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board, based on findings and conditions, to approve Use Permit 02-100000008 for 1326 Allston Way, City of Berkeley Corporation Yard, to allow demolition of non-residential buildings, construction of storage buildings, installation of 7,368 square feet of modular offices and relocation of certain non-essential services and staff offsite and dismissing the appeal.

Contact: Dan Marks, Planning, 981-7400

b. Appeal by:

1. Tamara and Daniel Horodysky
2. Nancy Hunt
3. Gerardo Moreno
4. Judith and Steven Sager
5. Patricia Jones
6. Judith Olson
7. Muni and Tania Schwieg
8. Bruce Simon
9. Michele Manning
10. Letti Glavde
11. Jessica Phrogus

c. Communications (*November 18, 2003*)

1. Martin Gugino
2. George Collins
3. Mary Magocsy

Public Testimony: The Mayor opened the public hearing. 5 speakers. Moved, seconded, carried (Shirek/Breland) to close the public hearing.

Action: Held over for discussion and a decision on November 25, 2003.

Public Hearings – Appeals

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 §5009(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.*

Information Reports

28. Formal Bid Solicitations and Requests for Proposals

From: City Manager

Contact: Fran David, Finance, 981-7200

Action: Received and filed.

29. Use of Housing Trust Fund to Resolve Issues Related to the California Disaster Assistance Program (CALDAP) (CF 189-01)

From: City Manager

Contact: Stephen Barton, Housing, 981-5400

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.

Regulating Boarding Houses

1. Barbara Gilbert

Deep Poetry Project

2. Carol Denney

Bay Trail Extension to the Berkeley Marina

3. Maris Arnold

Safety Line Painting in Roads

4. David WeberShapiro

Proposed University and MLK Development

5. Kris Eggen

First-time Homebuyer's Assistance Program

6. Kent Brown

Communications

High Cost of Berkeley's Traffic Circles

7. Hank Resnik
8. Mark Foy
9. Matt Eckerle
10. Tracey Iglehart
11. William Dennehy
12. Matt Melnicki
13. Eryn Hughes
14. David Rich
15. Bob Muzzy
16. Phil Morton
17. Eric M. Roberts
18. Nora Goodfriend-Koven
19. Annie Decker
20. Ed Gulick
21. Erico Forno

Prisons as Mental Institutions

22. Anne Marselis

Free Speech Zone

23. Mark A. Goldman

Equal Rights for Transsexuals

24. Barbara Ann Berwick

Escaped Property Taxes

25. Gale Garcia (*Spring*)

Supplemental Reports and Communications #1

Item 17: Study of Parking Utilization and Fee Options for the Center Street Garage

26. Revised Report, submitted by Mayor Bates and Councilmember Spring

Item 18: Time Limits for Spay/Neuter of Feral Cats

27. Revised Report, submitted by Councilmembers Hawley and Olds

Item 19: Compliance of Berkeley Development Projects

28. Supplemental Recommendations by Councilmember Olds

Item 21: Update on LBNL Long Range Development Plan – Notice of Preparation

29. Jeff Philliber, LBNL Environmental Planning Group
30. Leuren Moret (2)
31. Carole Schemmerling, Urban Creek Council of California Board of Directors
32. Jim Sharp & Daniella Thompson
33. Jennifer Pearson
34. Phillip Price and Juliet Lamont

Item 23: Ballot Measure – Special Tax Measure for Fire Services

Supplemental Reports and Communications #1

35. Supplemental Information, submitted by City Manager
36. Barbara Gilbert
37. Sedge Thomson and Family
38. Art Goldberg
39. Bruce H. Feingold
40. Morton McDonald, Roy McDonald Associates, Inc.
41. Wendy Alfsen, McKinley Addison Allston Grant Neighborhood Association
42. John Caner, Willard Neighborhood Association (2)
43. Walter Wood
44. Marie Bowman, Berkeley Alliance of Neighborhood Associations
45. Marie Bowman, Council of Neighborhood Associations
46. Robert Baum, Blake and California Streets Neighborhood Association
47. Sharon Hudson
48. Susan Kuchinskas
49. Tim Hansen
50. Bonneau Dickson
51. Ellen Gorman Winters
52. Jeffrey De Puy
53. Gregory Harper, Am Amnuaydejorn, Robin Wright, Laura Menard, Jay Tharp, Kent Brown, Akane Nobusa, Darryl Gruen, Guy Michele, Joan Cariquan, Suzanne Baptiste

Item 24: Ballot Measures – Charter Amendment - Runoff Elections, Instant Runoff Voting, Candidate Filing Fees

54. Revisions to Instant Runoff Voting text, submitted by City Attorney
55. Lindsay Vurek

Item 25: Solano Avenue Business Improvement District

56. George Kanakis and Elaine Kanakis, Stoll Custom Framing and Gallery
57. Darlene Badmanyar

Item 27: Appeal: 1326 Allston Way

58. Toni Horodysky, Corporation Yard Neighbors for a Better Berkeley
59. Shawn George Weikerta, Corporation Yard Neighbors for a Better Berkeley
60. Regina E. Gurst, Corporation Yard Neighbors for a Better Berkeley

Supplemental Reports and Communications #2

Item 19: Compliance of Berkeley Development Projects

61. Gale Garcia

Item 24: Ballot Measures – Charter Amendment - Runoff Elections, Instant Runoff Voting, Candidate Filing Fees

62. Sennet Williams
63. Marie Bowman, Board of Directors of the Council of Neighborhood Associations

Item 27: Appeal: 1326 Allston Way

64. Memorandum, submitted by Public Works

Adjournment

Adjourned at 11:45 p.m.