

SUMMARY

BERKELEY CITY COUNCIL MEETING TUESDAY, DECEMBER 16, 2003 – 7:00 P.M. Council Chambers, 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call: 7:15 p.m. Absent - Breland

Ceremonial Matters: Presented commendation for Barricaded Subjects/Hostage Negotiation Team and Mental Health Mobile Crisis Team to City staff.

City Manager Comments:

1. The community is welcome to attend a Kwanzaa celebration on December 28, 2003 beginning at 4:30 p.m. at the South Berkeley Senior Center.

Public Comment: 12 speakers.

Consent Calendar

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

1. **City Manager's Contract Authority** (*First reading 12/9/03 – Noes – Spring, Worthington; Second reading – Noes – Spring, Worthington; Absent - Breland*)

From: City Manager

Recommendation: Adopt second reading of an Ordinance: 1) amending the Berkeley Municipal Code (BMC) Section 7.18.010B to increase the City Manager's expenditure authority for capital improvements, including playground improvements and equipment, to \$100,000; 2) adding BMC Section 7.18.010C to increase the City Manager's general expenditure authority for supplies, equipment, and materials to \$50,000; and 3) amending BMC Section 7.18.020A to increase the City Manager's emergency expenditure authority for materials, supplies and equipment to \$50,000 and for public construction projects, playground improvements and equipment to \$100,000.

Contact: Fran David, Finance, 981-7200

Action: Adopted Ordinance No. 6,786–N.S. Effective January 15, 2004.

Consent Calendar

2. **Solano Avenue Business Improvement District** (*First reading 12/9/03; Noes – Olds; Second reading – Noes – Olds; Absent - Breland*)
From: City Manager
Recommendation: Adopt second 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
Action: Adopted Ordinance No. 6,787–N.S. Effective January 15, 2004.
3. **Lease: City-Owned Property at 711 Harrison Street** (*First reading 12/9/03- Unanimous; Second reading – Absent - Breland*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with Building Opportunities for Self-Sufficiency (BOSS) to lease City property on a parcel of property to be created at 711 Harrison Street as a site for transitional housing.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Ordinance No. 6,788–N.S. Effective January 15, 2004.
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. 62,328 – N.S.
5. **Grant: Federal Emergency Management Agency Assistance to Firefighters Grant Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant and any amendments, from the Federal Emergency Management Agency (FEMA) Fire Preventative and Safety Grant in the amount of \$696, 832 to fund fire prevention and safety activities. (Project costs - \$995,473; Revenue from federal grant - \$696,832; Local match - \$298,641 from Parks, Recreation and Waterfront, Fire, and Public Works Solid Waste.)
Contact: Reginald Garcia, Fire, 981-5500
Action: Adopted Resolution No. 62,329– N.S.
6. **Contract: Lighting Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Community Energy Services Corporation for lighting audits and installation services to increase the amount by \$22,211 for a total amount not to exceed \$1,089,818 and extend the expiration date to March 31, 2004. (PUC Grant \$1.95 million)
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No.62,330 – N.S.

Consent Calendar

7. Grant and Contract: Low-Income Energy Revenues

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to: 1) execute a contract and any amendments with the State Department of Community Services and Development for the Low-Income Home Energy Assistance Program (LIHEAP) to receive revenues and provide weatherization and bill payment assistance to eligible residents for Berkeley, Albany, and Emeryville, in an amount not to exceed \$180,000 for the approximate period January 1, 2004 through December 31, 2004; 2) approve the program priority plans; and 3) designate a representative to sign required fiscal and programmatic reports. (DCSD Grant - \$180,000; local match – none.)

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 62,331 – N.S.

8. Grant: Homeless Management Information Systems

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to accept Community Services Block Grant (CSBG) in the amount of \$40,000, and execute any resultant agreements and amendments for the implementation of a Homeless Management Information System (HMIS) for the period November 1, 2003 to October 31, 2004. (CSBG Grant - \$40,000)

Contact: Stephen Barton, Housing, 981-5400

Action: Removed from the Consent Calendar by Mayor Bates and held over to January 13, 2004.

9. License Agreement: Kite Sales and Rentals at Cesar Chavez Park

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a license agreement and any amendments with Tom McAlister, dba Highline Kites, to operate a van selling and renting kites and other wind-powered equipment at the end of Spinnaker Way adjacent to Cesar Chavez Park for a five-year period from January 1, 2004 through December 31, 2008. Upon mutual consent and provided Highline Kites is not in default, the agreement allows for extension of the license for up to five additional years. (Revenue - \$2,100 year to Marina Enterprise Fund)

Contact: Marc Seleznow, Parks, Recreation and Waterfront, 981-6700

Action: Adopted Resolution No. 62,332 – N.S.

10. Grant: Alcoholic Beverage Control - University of California Partnership Grant

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a grant contract and any amendments with the State of California in order to accept \$50,000 a Department of Alcoholic Beverage Control (ABC) – University of California (UC) Partnership Grant and appropriate these funds for the enforcement of underage drinking laws and to reduce alcohol consumption by UC students. (State Grant - \$50,000)

Contact: Roy Meisner, Police, 981-5900

Action: Adopted Resolution No. 62,333 – N.S.

Consent Calendar

- 11. Contract: Mattress Recycling and Disposal Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a sole-source contract and any amendments with St. Vincent de Paul Society for mattress recycling and disposal services for the period of February 1, 2004 through January 31, 2007, in an amount not to exceed \$250,000. (Refuse Fund - \$250,000.)
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Removed from the Consent Calendar by Councilmember Maio and held over to January 13, 2004.
- 12. Accounts Payable Audit**
From: City Auditor
Recommendation: Request the City Manager to report back on April 20, 2004, regarding the implementation status of each of the Auditor's recommendations, and every six months thereafter, until all recommendations have been implemented.
Contact: Ann-Marie Hogan, City Auditor, 981-6750
Action: Approved recommendation.
- 13. 4x4 Joint Task Force on Housing**
From: Mayor Bates
Recommendation: Adopt a Resolution: 1) reactivating the 3x3 Joint Task Force on Housing with the Rent Stabilization Board; changing the composition to include four members each from the City Council and Rent Stabilization Board to form a 4x4 committee; and 3) appointing Mayor Bates, Councilmembers Maio, Spring and Wozniak to represent the Council.
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 62,334 – N.S.
- 14. Options to Purchase Real Property at Dwight and Martin Luther King Jr. Way**
From: Councilmember Spring
Recommendation: Request that the City Manager come back with options for acquiring the property that currently sites the recycling center at Dwight and Martin Luther King Jr. Way.
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Removed from the Consent Calendar by Councilmember Olds. No action taken.
- 15. Contract: Expanded Winter Shelter**
a. From: Homeless Commission
Recommendation: 1) Request the Berkeley Unified School District (BUSD) and the University of California (UC) at Berkeley make available an appropriate facility to use as an emergency shelter in inclement weather (including the old alternative High School site) or the City should identify another appropriate site owned by or under City control for expanded winter shelter; and 2) if an appropriate site is located, adopt a Resolution identifying funds for an emergency winter shelter in an amount not to exceed \$25,000.
Contact: Jane Micallef, Secretary, 981-5426

Consent Calendar

b. From: City Manager

Recommendation: Adopt a Resolution: 1) creating the Berkeley Emergency Storm Shelter (BESS) Project and 2) authorizing an amendment of the existing contract with Dorothy Day House to include the BESS project in its scope of work, increasing the contract amount by \$23,725 for a total amount not to exceed \$54,613 for the period July 1, 2003 through June 20, 2004. (General Fund- \$23,725 one time expenditure from carryover savings.)

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 62,335 – N.S.

Public Hearing

16. Appeal: 3045 Shattuck Avenue

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, direct staff to prepare a Resolution declaring the property at 3045 Shattuck a public nuisance.

Contact: Dan Marks, Planning, 981-7400

b. Appeal

1. Christina Sun

c. Communications

1. Christina Sun
2. Robert Lauriston, Neighbors' representative
3. Jennifer Elrod

Public Testimony: The Mayor opened the public hearing. Testimony and cross examination was conducted. Moved, seconded, carried (Olds/Hawley; Absent – Breland) to close the public hearing.

Action: Moved, seconded, carried (Spring/Olds; Noes – Shirek; Abstain – Wozniak; Absent - Breland) directing staff to prepare a resolution upholding the decision of the Zoning Adjustments Board and declaring the property a public nuisance.

Moved, seconded, failed (Wozniak/Hawley; Noes – Spring, Olds, Worthington, Bates; Absent – Breland) waiving fees associated with proceeding with this application before the Zoning Adjustments Board.

17. Extend Residential Permit Parking Program

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution amending Sections 25C and 25N of Resolution No. 56,508-N.S. by adding subsections to extend residential permit parking on Bancroft Way, between California Street and Jefferson Street; and on Virginia Street, between Chestnut Street and West Street; and authorizing the use of \$1,200 to cover implementation costs. (General Fund - \$1,200)

Contact: Peter Hillier, Transportation, 981-7010

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

Public Hearing

Action: Moved, seconded, carried (Maio/Worthington; Noes – Wozniak; Abstain – Bates; Absent - Breland) to adopt Resolution No. 62,336 – N.S. extending residential permit parking as recommended.

18. **Contract: Implement Automated Red-Light Photo Enforcement System**

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution implementing an automated traffic enforcement program and authorizing the City Manager to execute an agreement and any amendments with Transol USA to install a red light enforcement system at certain intersections for period December 20, 2003 to December 31, 2005.

Contact: Peter Hillier, Transportation, 981-7010 and Roy Meisner, Police, 981-5900

Public Testimony: The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Maio/Olds; Absent – Breland) to close the public hearing.

Action: Moved, seconded, carried (Wozniak/Hawley; Absent - Breland) to adopt Resolution No. 62,337 – N.S.

19. **Franchise Agreement: Cable Television Rates and Charges**

a. From: City Manager

Recommendation: Conduct a public hearing to receive any oral or written comments on the recent rate increase for basic cable television service and upon conclusion, take no action, thereby allowing the rate increase to stand.

Contact: Chris Mead, Information Systems, 981-6500

b. Communications

1. Barbara Gilbert

Public Testimony: The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Olds/Maio; Absent – Breland) to continue the public hearing to January 20, 2004 at the request of Comcast.

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 - Budget

20. Implementation Plan for Budget Crisis Recovery Strategy (*Discussion and report presented at special meeting at 5pm*)

From: City Manager

Recommendation: Approve implementation of short and long term fiscal measures that address the Council's adopted recovery strategy and immediate state budget cuts.

Contact: Phil Kamlarz, City Manager, 981-7000

Actions: Moved, seconded, carried (Hawley/Maio; Noes – Worthington; Absent – Breland) to approve all the City Manager recommendations with the exception of the recommendation related to fire and emergency services.

Moved, seconded, failed (Spring/Hawley; Noes – Maio, Olds, Worthington, Wozniak; Absent – Breland) to approve the recommendation to take one fire truck out of operation during daytime hours for a savings of \$250,000 in overtime costs in the Fire Department and to report back to Council on this impact in two months.

Moved, seconded, failed (Hawley/Spring; Noes – Olds, Worthington, Wozniak; Abstain – Maio; Absent – Breland) to rotate the closure of a fire station during the daytime hours for a savings of \$250,000 in overtime costs in the Fire Department.

Moved, seconded, carried (Spring/Maio; Noes – Olds, Worthington; Absent – Breland) to direct the City Manager to work with the Fire Department management and union to come up with recommendations for cuts from the Fire Department budget in the amount of \$250,000 and to give the City Manager discretion to make any necessary reductions to balance the budget.

21. Amendment to FY 2004 Annual Appropriations Ordinance (*Held over from 12/9/03. Discussion continued at special meeting at 5pm*)

a. From: City Manager

Recommendation: Adopt first reading of an Ordinance amending the FY 2004 Annual Appropriations Ordinance No. 6,752–N.S. for FY 2004 based upon recommended re-appropriation of unexpected FY 2003 funding and other adjustments authorized since July 1, 2003, in the amount of \$69,205,375.

Contact: Paul Navazio, Budget, 981-7000

b. From: Councilmember Spring

Recommendation: Approve allocation of \$2500 of unspent funds from North Shattuck Walnut Square music events FY 2003 last year's allocation to be rolled over to FY 2004 budget.

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

Action: Moved, seconded, carried (Wozniak/Worthington; Absent - Breland) to give direction to the City Manager to prepare an amendment to the appropriation ordinance for first reading in January which would include: 1) approval of all encumbered rollovers as recommended by the City Manager; and 2) approval of unencumbered carryovers as recommended by the City Manager with the exception of: a) Fund 10, General Fund Discretionary, b) Fund Series 400; c) Fund 610 Capital Improvement Fund; and d) Funds 820 through 881. The City Manager will bring forward additional recommendations for consideration in January 2004.

New Business

22. Submission of Permit Task Force Report

From: Mayor Bates

Recommendation: Direct the City Manager to: 1) return with a work plan for reviewing and implementing the recommendations of the Permit Task Force; and 2) set a special work session to review the work plan, discuss the recommendations, and take public comment.

Contact: Tom Bates, Mayor, 981-7100

Action: Moved to the Consent Calendar by Councilmember Olds to approve recommendation.

Time Critical

23. Suspension of The Lanterman Development Disabilities Services Act

From: Councilmember Spring

Recommendation: Request the City Manger write a letter in opposition to the Governor's attempt to suspend *The Lanterman Development Disabilities Act* and massive cuts to people with disabilities and seniors and fax this letter to our elected state representatives and to members of the Senate Subcommittee conducting budget hearings on health and human services.

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

Action: Moved to the Consent Calendar by Councilmember Olds to approve recommendation.

Information Reports

24. Update on Employment Programs (CF 58-03)

From: City Manager

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

Action: Received and filed.

25. Withdrawal of Use Permit Application – 2514 and 2516 Benvenue Avenue

From: City Manager

Contact: Dan Marks, Planning, 981-7400

Action: Received and filed.

26. Non-Support for Funding Events Not on Approved List

From: Councilmember Maio

Contact: Linda Maio, Councilmember District 1, 981-7110

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.

Broken Water Line (*Spring, Maio, Hawley*)

1. Glen, Gean and Kathleen Winger (2)

Cost-effective Traffic Circle Calming (*Spring, Maio*)

2. Hank Resnik
3. Pawsey

Further Investigation of Fred Lupke Accident (*Spring*)

4. Jason Meggs

Supplemental Reports and Communications #1

Item 16: Appeal: 3045 Shattuck Avenue

5. Areas of Questioning to Explore for Nuisance Abatement Proceeding for 3045 Shattuck, submitted by City Manager, Planning Department
6. David Steichen
7. Robert Lauriston, Neighbors' Representative (2)
8. Irma Harris

Item 17: Extend Residential Permit Parking Program

9. Lennon Hamilton (2)
10. Edith Sher, Maureen Kamiya and Opal Starling
11. Petition, 12 Signatures

Items 20 & 21: Implementation Plan for Budget Crisis Recovery Strategy and Amendment to FY 2004 Annual Appropriations Ordinance (*Spring – communications related to warm water pool and curb cuts only*)

12. Shirely Dean
13. Vonnie Gurgin
14. Wayne Huber
15. StClair Cameron
16. Barbara Gilbert
17. George Oram, Berkeley Can Do Better
18. Rachel Heyman Resnikoff
19. Anita C. Eblé
20. Joan Lester
21. Gale Garcia (2)
22. Martha Nicoloff
23. Larry Riley
24. Doris Willingham
25. Amy Loebel

Supplemental Reports and Communications #1

26. Lisa Bullwinkel–Solano Avenue Assn, Karen Hester–Scarlet Letter Productions, John Solomon–Caffe Voenezia, Devorah Badhia–Downtown Berkeley Association, Heather Hensley–North Shattuck Association, Rolan Peterson–Telegraph Area Business Improvement District, Barbara Hadenfeldt and Kathy Berger–Telegraph Area Association.
27. Kuniko Weltin-Wu
28. Irene Winston
29. Sharon Rollins Singer
30. Frank Virsik
31. Alma Gardner and Chester M. Weseman
32. Jo Ann and Tom Moseley
33. Carole Rochlin
34. Susan and John Prausnitz
35. Ned Dairiki
36. Michelle Pellegrin
37. Michael Luby
38. Fadhillah Bradley
39. Councilmember Dona Spring (2)
40. Patrons' comments regarding BHS Warm Water Pool, submitted by Councilmember Dona Spring
41. Terry Cochrell
42. Mark W. Hendrix
43. Josephine Arasteh
44. Pat Phillips, Telegraph Avenue Association
45. Jeff Goldberg
46. Andy Katz
47. Keith A. Russell
48. Bruce Miller
49. Anu Joshi
50. Loc Huynh
51. Barbara Hadenfeldt
52. Henry L. Snyder

Item 22: Submission of Permit Task Force Report

53. Sharon Hudson

Supplemental Reports and Communications #2

Item 16: Appeal: 3045 Shattuck Avenue

54. Robert Lauriston, Neighbors' representative

Items 20 & 21: Implementation Plan for Budget Crisis Recovery Strategy and Amendment to FY 2004 Annual Appropriations Ordinance

55. Supplemental report and attachments, submitted by City Manager

56. Presentation materials, City Manager

57. Marie Bowman, Council of Neighborhoods Associations (CNA)

58. Trudy Washburn

59. Petition for Warm Water Pool, 48 Signatures

Adjournment

Adjourned at 12:03 a.m. in memory of Ruby M. Scarver.