

# AGENDA

## BERKELEY CITY COUNCIL MEETING TUESDAY, NOVEMBER 9, 2004 – 7:00 P.M. Council Chambers, 2134 Martin Luther King Jr. Way

### Preliminary Matters

#### Roll Call

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**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.*

**Youth Comments:** *A total of 15 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 taken up after the "Action Calendar" unless the Council reorders the agenda.*

- 1. Double Fines in School Zones** *(First Reading October 19, 2004 – Unanimous)*  
**From:** City Manager  
**Recommendation:** Adopt second reading of an Ordinance amending the Berkeley Municipal Code (BMC) Title 14 Vehicles and Traffic, by adding Chapter 14.66 “Double Fines” Section 14.66.010 “Purpose of Program”, 14.66.020 “Fine Enhancement: Passing a School”, 14.66.030 “Double Fine School Zone”, and 14.66.040 “Sunset”.  
Contact: Peter Hillier, Transportation, 981-7010

## Consent Calendar

**2. Minutes for Approval**

**From: City Manager**

**Recommendation:** Approve the minutes for Council meetings of October 4, 2004 (closed), October 12, 2004 (closed, special, and regular); October 18, 2004 (closed) and October 19, 2004 (special and regular).

Contact: Sherry Kelly, City Clerk, 981-6900

**3. 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

**4. Esther Flores v. City of Berkeley**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. RG 03 114159 entitled Esther Flores v. City of Berkeley in the amount of \$30,000.

**Financial Implications:** Public Liability Fund – \$30,000.

Contact: Manuela Albuquerque, City Attorney, 981-6950

**5. Formal Bid Solicitations and Requests for Proposals**

**From: City Manager**

**Recommendation:** Approve new invitations for bids and requests for proposals (RFP) that will be, or are planned to be, issued; that have been issued and received due to extenuating circumstances; or that have been sent out (opened) but not yet received (closed).

**Financial Implications:** Various sources – \$80,000.

Contact: Fran David, Finance, 981-7300

**6. Local Emergency from Influenza Vaccine Shortage**

**From: City Manager**

**Recommendation:** Adopt a Resolution reviewing and confirming the continued existence of a local emergency concerning limited influenza vaccine supplies.

**Financial Implications:** None.

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

**7. Contract: HIV Prevention and Education Services**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with the Pacific Center for Human Growth for HIV prevention and education services to increase the amount by \$31,500 for a total not to exceed \$86,500 and to extend the term to June 30, 2005.

**Financial Implications:** State Office of AIDS Grant – \$31,500.

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

## Consent Calendar

8. **Contract: HIV Screening Laboratory Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract amendment with UNILAP to perform the HIV screening laboratory services to increase the amount by \$57,000 for a total not to exceed \$233,000 and to extend the term to June 30, 2005.  
**Financial Implications:** Various Grants – \$57,000.  
Contact: Fred Medrano, Health and Human Services, 981-5100
9. **Cost of Living Adjustment for Employees Represented by Public Employees Union, Local 1**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with Public Employees Union, Local 1, to amend terms and conditions of the Memorandum of Understanding (MOU) to reduce salaries by 2.54 % from the salaries scheduled for increase on July 4, 2004, for 10.5 months, until May 22, 2005.  
**Financial Implications:** General Fund – \$96,209 savings.  
Contact: David Hodgkins, Human Resources, 981-6800
10. **Police Substation Lease**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Ordinance No. 6,670–N.S. to remove expenditure limitation capping lease payments, thereby enabling the City Manager to pay past due rent in the amount of \$30,197 to Huck Rorick and Associates for the Police Substation located at 3140 Martin Luther King Jr. Way/3192 Adeline Street.  
**Financial Implications:** Parking Meter Fund – \$30,197.  
Contact: Roy Meisner, Police, 981-5700
11. **Contract: Cooling of Civic Center Building Server Room**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the cooling of the Civic Center Building Server Room; accepting the bid of Bay Point Control, Inc. (dba Marina Mechanical); waiving building inspection fees; and authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$145,000 for a period of 45 calendar days.  
**Financial Implications:** Measure S – \$77,000; General Fund – \$68,000.  
Contact: Rene Cardinaux, Public Works, 981-6300
12. **Contract: Sanitary Sewer Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution: 1) approving plans and specifications for the Sanitary Sewer Project located at Bancroft Way, Kittredge Street, Allston Way, Terminal Place, Dwight Way, Byron Street, Chaucer Street and Corona Court; 2) accepting the bid of McNamara and Smallman Construction, Inc.; and 3) authorizing the City Manager to execute a contract and any amendments in an amount not to exceed \$848,537 for the period of 220 calendar days.  
**Financial Implications:** Sewer Capital Improvement Project Fund – \$848,537.  
Contact: Rene Cardinaux, Public Works, 981-6300

**13. Purchase Order: Digger Derrick Truck**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting the Modesto Irrigation District's bid procedures to satisfy the requirement of Berkeley Charter Section 67, and authorizing the City Manager to execute a purchase order with Terex Utilities West in an amount not to exceed \$163,000 to purchase a Digger Derrick Truck for the Public Works Department.

**Financial Implications:** Equipment Replacement Fund – \$163,000.

Contact: Rene Cardinaux, Public Works, 981-6300

**14. Grant: West Street (Santa Fe Right of Way) Multipurpose Bike Path and Pedestrian Crossing**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to accept a grant of \$822,940 from the State of California Department of Transportation (Caltrans) for construction of the West Street (Santa Fe Right of Way) Multipurpose Bike Path and Pedestrian Crossing between University Avenue and Delaware Street.

**Financial Implications:** Grant Revenue – \$822,940; Matching Funds: Parks Capital Funds – \$8,223, General Fund – \$26,000, and Bicycle/TDA Fund – \$80,777.

Contact: Rene Cardinaux, Public Works, 981-6300

**15. City Government Performance**

**From: Mayor Bates**

**Recommendation:** Request that the City Auditor and City Manager review annual City Government report cards from Palo Alto and Portland for possible implementation in Berkeley.

Contact: Tom Bates, Mayor, 981-7100

**16. Civilianization of Police Department Functions**

**From: Councilmember Hawley**

**Recommendation:** Request the Agenda Committee schedule a Council work session to: 1) receive a report from the City Manager and Police Chief on progress toward implementing the Auditor's recommendations for hiring non-sworn personnel to staff certain police functions; and 2) enable Council to consider issues involved in replacing sworn officers with non-sworn personnel, particularly to evaluate the best ways of balancing the community's public safety needs under emergency conditions with available resources. This discussion could help in developing the Council's priorities regarding the upcoming recruitment for a Police Chief.

Contact: Miriam Hawley, Councilmember District 5, 981-7150

## Action Calendar – Appeals

### 17. 1650 La Vereda Road

#### a. From: City Manager

**Recommendation:** Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Administrative Use Permit 02-20000125: 1) under Section 23D.16.030 of the Zoning Ordinance for a major residential addition; 2) under Section 23C.04.070.B of the Zoning Ordinance to extend an existing non-conforming front yard (five feet where 20 are normally required); and 3) under Section 23E.96.070.C of the Zoning Ordinance to reduce front yard under provisions of Hillside Overlay District; reduction results from proximity of addition to existing carport (not distance from property line to addition, which is same as or greater than existing house) for property located at 1650 La Vereda Road.

Contact: Dan Marks, Planning, 981-7400

#### b. Appeal

1. Brian E. Viani

#### c. Communications

1. Ruth Rosen and Wendel Brunner.

**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

### 18. University Avenue Strategic Plan Height and Setback Standards and Review Consistency (Held over from October 19, 2004) (First Reading October 12, 2004: Noes – Maio, Spring, Worthington; Abstain – Breland)

#### a. From: City Manager

**Recommendation:** 1) Adopt the second reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 23E.36 to implement the University Avenue Zoning Overlay in order to establish specific Height and Setback standards as provided for in the University Avenue Strategic Plan (UASP); and 2) authorize the Office of Transportation and Department of Public Works to define a scope of study for consideration of funding to prepare a Comprehensive Parking Study and Plan for Streetscape Improvements in the University Avenue corridor, as recommended in the UASP.

**Financial Implications:** See report.

Contact: Dan Marks, Planning, 981-7400

## Action Calendar – Old Business

**b. From: City Manager** *(November 9, 2004 Report)*

**Recommendation:** Adopt second reading of the Ordinance and authorize the Office of Transportation and Department of Public Works to define a scope of study for consideration of funding to prepare a Comprehensive Parking Study and Plan for Streetscape Improvements in the University Avenue Corridor, as recommended in the University Avenue Strategic Plan (UASP).

Contact: Dan Marks, Planning, 981-7400

**19. Creeks Ordinance** *(Held over from October 19, 2004)*

**a. From: City Manager** *(October 12, 2004 Report)*

**Recommendation:** Provide direction to staff on work program options presented in staff report.

Contact: Dan Marks, Planning, 981-7400

**b. From: Mayor Bates and Councilmembers Hawley and Maio** *(October 19, 2004 Supplemental Report)*

**Recommendation:** 1) Establish a temporary Creeks Task Force: a) to include a representative appointed by each member of the Council and one member appointed by the Planning Commission, Public Works Commission, Community Environmental Advisory Commission and the Parks and Recreation Commission; and b): Planning Department will provide staff support to the Task Force with assistance from other departments as needed; 2) All Task Force reports, recommendations and ordinance changes will be submitted to the Planning Commission for their comments and recommendations prior to being forwarded to the Council; 3) The Task Force to recommend a scope, work plan, and budget to the Planning Commission no later than April 1, 2005. The Planning Commission review and recommendation must reach Council in time for FY 2006 budget process; and 4) Set a deadline of May 2006 for revisions to the Creeks Ordinance and as part of this deadline, direct the City Manager to return to Council with an ordinance that will implement this proposal with a provision that the Task Force recommendations are still not forthcoming by the deliverable date, the current culvert protections in the Creeks Ordinance will be indefinitely suspended on May 1, 2006 until such time that a new ordinance is adopted.

Contact: Tom Bates, Mayor, 981-7100; Miriam Hawley, Councilmember District 5, 981-7150; and Linda Maio, Councilmember District 1, 981-7110

**c. From: Councilmembers Wozniak and Olds** *(November 9, 2004 Report)*

**Recommendation:** Consider a compromise as proposed by Neighbors on Urban Creeks.

Contact: Gordon Wozniak, Councilmember District 8, 981-7180; Betty Olds, Councilmember District 6, 981-7160

**d. From: Public Works Commission** *(November 9, 2004 Report)*

**Recommendation:** Designate the Public Works Commission as a key commission to advise the Council on policy areas involving the City's Storm Drain System and Creeks Ordinance.

**Financial Implications:** None.

Contact: Jeffrey Egeberg, Secretary, 981-6406

## Action Calendar – Old Business

20. **HUD Section 108 Loan Guarantee for the Jubilee Village** (*Held over from October 19, 2004*)
- a. From: City Manager** (*October 19, 2004 Report*)  
**Recommendation:** Adopt a Resolution: 1) approving participation in the U.S. Housing and Urban Development (HUD) Section 108 Loan Guarantee Program; 2) authorizing the use of current and future Community Development Block Grant funds to secure a loan for the Jubilee Village development in an amount up to \$3,008,000 and not to exceed eighty percent (80%) of the appraised value of the property; 3) that the findings of HUD's recent monitoring be resolved to the City Manager's satisfaction prior to closing on the Section 108 loan and a report be brought to City Council on November 9, 2004 for final review; and 4) rescinding Resolution No. 62,215-N.S.  
**Financial Implications:** See report.  
Contact: Stephen Barton, Housing, 981-5400
- b. From: City Manager** (*October 19, 2004 Supplemental Report*)  
**Recommendation:** Adopt a Resolution: 1) directing the City Manager to take no further action concerning the City's participation in the U.S. Department of Housing and Urban Development's (HUD) 108 Loan Guarantee Program for the Jubilee Village project; 2) authorizing the City Manager to only reimburse Community Economics for the financial services in the amount of \$3,960 that it has provided to Jubilee Village project to date; and 3) rescinding Resolution No. 62,241-N.S.  
Contact: Stephen Barton, Housing, 981-5400
- c. Update from City Manager** (*November 9, 2004 Report*)  
Contact: Stephen Barton, Housing, 981-5400
21. **Benvenue Neighbors Association Proposal on American Baptist Seminary of the West** (*held over from July 20, 2004*)
- a. From: Councilmember Worthington** (*held over from July 20, 2004*)  
**Recommendation:** Refer to the City Manager the Benvenue Neighbors Association WIN-WIN-WIN proposal to address concerns about American Baptist Seminary of the West (ABSW).  
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- b. From: City Manager** (*November 9, 2004*)  
**Recommendation:** Direct the City Manager to provide any technical assistance requested by the Benvenue Neighbors Association and the American Baptist Seminary of the West that may assist the parties to arrive at a settlement of their dispute.  
**Financial Implications:** See report.  
Contact: Dan Marks, Planning, 981-7400

## Action Calendar – Old Business

### 22. Encroachment Permit: UC Pedestrian Bridge over Hearst Avenue (Foothill Bridge)

*(held over from July 13, 2004)*

#### a. From: City Manager *(July 13, 2004 Report)*

**Recommendation:** Adopt a Resolution authorizing the City Manager to issue a major encroachment permit to the University of California for a pedestrian bridge crossing (Foothill) over Hearst Avenue east of La Loma Avenue on the following conditions: 1) an improved bridge design is submitted and approved by the Public Works Director, in consultation with the Design Review Committee; 2) any detrimental effects on the immediate community are offset by contributing to specified pedestrian safety and public infrastructure improvements in the “Hearst Corridor,” in the amount of \$200,000; and 3) all plan check comments and other technical issues are resolved to the satisfaction of the Public Works Director.

**Financial Implications:** See report.

Contact: Rene Cardinaux, Public Works, 981-6300

#### b. From: Public Works Commission *(July 13, 2004 Report)*

**Recommendation:** Deny the application from the University of California for an encroachment permit, either a Conditional or a Full Permit, for a Pedestrian Bridge over Hearst Avenue near La Loma Avenue.

Contact: Jeffrey Egeberg, Secretary, 981-6406

#### c. From: Public Works Commission *(November 9, 2004 Report)*

**Recommendation:** Should Council pursue the option of issuing a permit with mitigations, the following language should be adopted: “Whereas this project and its application for an encroachment permit have a unique history, therefore this permit does not create a precedent for future requests for such permits; and in the future, any such encroachment permits should be secured before any part of intended construction is begun.”

**Financial Implications:** None.

Contact: Jeffrey Egeberg, Secretary, 981-6406

## Action Calendar – New Business

### 23. Sustainable Business Action Plan

**From: Mayor Bates**

**Recommendation:** 1) Accept the “Sustainable Business Action Plan” Preliminary Report in principle as a guide to help build Berkeley’s green economy, without specifically approving each policy or initiative; 2) refer the report to the City Manager for review and analysis to examine how these goals and actions line up with the City’s work plan.

Contact: Tom Bates, Mayor, 981-7100

## Information Reports

24. **Customer Service Cash Receipts/Cash Handling Audit (CF 25-04)**  
**From: City Manager**  
Contact: Fran David, Finance, 981-7300
25. **Unrepresented Temporary Employees**  
**From: City Manager**  
Contact: David Hodgkins, Human Resources, 981-6800
26. **Comcast Cable Discount (CF 3-04)**  
**From: City Manager**  
Contact: Chris Mead, Information Technology, 981-6500
27. **Implementation of Information Systems General Controls Audit Recommendations (CF 51-03)**  
**From: City Manager**  
Contact: Chris Mead, Information Technology, 981-6500
28. **Landmarks Preservation Commission Notice of Decision – Approval of Structural Alteration Permit: 147 Tunnel Road, 2288 Fulton Street, 1820 Scenic Avenue**  
**From: City Manager**  
Contact: Dan Marks, Planning, 981-7400
29. **City Auditor's Annual Report for FY 2004**  
**From: City Auditor**  
Contact: Ann-Marie Hogan, Auditor, 981-6750
30. **FY 2004 Business License Tax Program Audit Report**  
**From: City Auditor**  
Contact: Ann-Marie Hogan, Auditor, 981-6750

## Communications

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

### **Creeks Ordinance**

1. Franca Cioria
2. Susan Schwartz, Friends of Five Creeks
3. Diane Tokugawa
4. Katherine L. Bowman

### **In-Home Support Services (IHSS) Funding**

5. Governor Arnold Schwarzenegger

### **Berkeley Can Be Sued for Sidewalks Dangerous to Handicapped**

6. Anne Whyte

## Communications

### **Herstory**

7. Helen Rippier Wheeler

### **Court Conditions at Live Oak Park**

8. Petition with 23 signatures

### **UC Police/Unfair Ticket**

9. Brett Alan Brooks (4)

### **Poet Laureate**

10. Mary Rudge

### **Marin Avenue Reconfiguration**

11. Barbara Gilbert

### **Ed Roberts Campus, 3075 Adeline Street**

12. Guy W. Thomas
13. Kenneth Stein
14. Caleb Dardick
15. Diane Dew
16. Deborah McIntyre

### **Resolution to Oppose CAFTA**

17. Diana Malin

### **Operation of the Drop-In Center**

18. Manuchehr Shirmohamadi
19. Robin Wright
20. Davida Coady

### **Creeks Ordinance, Stormwater Property Tax (revised heading)**

21. L A Wood

## Adjournment