

SUMMARY

BERKELEY CITY COUNCIL MEETING TUESDAY, DECEMBER 14, 2004 – 7:00 P.M. Council Chambers, 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call: 7:03 p.m. All present.

Ceremonial Matters:

1. Proclamation presented to the Black Repertory Theater for their 40th anniversary.
2. Presentation made by Rebuilding Together to recognize Hatty Carpenter's home restoration.

City Manager Comments: A ribbon-cutting ceremony for Spud's Pizza, located at the corner of Alcatraz and Adeline, will be held on Wednesday, December 15, 2004 at 4:00 P.M.

Public Comment: 11 speakers.

Consent Calendar

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

1. **Amendment to the FY 2005 Annual Appropriations Ordinance** (*First Reading December 14, 2004, Absent – Spring*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending the FY 2005 Annual Appropriations Ordinance No. 6808 for fiscal year 2005 based upon recommended re-appropriation of committed FY 2004 funding and other adjustments authorized since July 1, 2004, in the amount of \$49,087,624.
Financial Implications: See report.
Contact: Tracy Vesely, City Manager, 981-7000
Action: Adopted Ordinance No. 6,834–N.S. Effective January 13, 2005.
2. **Appointment to Alameda County Mosquito Abatement District**
From: City Manager
Recommendation: Adopt a Resolution reappointing Dr. Jan Washburn to the Board of Trustees of the Alameda County Abatement District for a two-year term.
Financial Implications: None.
Contact: Sara T. Cox, City Clerk, 981-6900
Action: Adopted Resolution No. 62,744–N.S.

Consent Calendar

- 3. Extension of Voluntary Time Off Program and Temporary Closure of Select City Offices**
From: City Manager
Recommendation: Adopt a Resolution designating five additional Voluntary Time Off (VTO) days in 2005 and authorizing the City Manager to temporarily close certain City offices and non-essential services for those days during Fiscal Year 2004-2005, permitting staff to voluntarily take time off resulting in immediate cost savings to the City of Berkeley.
Financial Implications: See report.
Contact: Grace Maguire, City Manager, 981-7000
Action: Adopted Resolution No. 62,745–N.S.
- 4. Donation: Bayer HealthCare to Animal Care Shelter**
From: City Manager
Recommendation: Adopt a Resolution accepting a donation from Bayer HealthCare to the Animal Shelter in the amount of \$2,500.
Financial Implications: Donation – \$2,500.
Contact: Jim Hynes, City Manager, 981-7000
Action: Adopted Resolution No. 62,746–N.S.
- 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 Funds – \$1,856,000.
Contact: Fran David, Finance, 981-7300
Action: Approved recommendation.
- 6. Contract: Xerox Multifunction Office Copiers**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Xerox Corporation for all City copier leases, maintenance agreements and per copy charges from October 1, 2004 through January 31, 2010, at an annual amount not to exceed \$350,000.
Financial Implications: Various Funds – \$350,000 annually.
Contact: Fran David, Finance, 981-7300
Action: Adopted Resolution No. 62,747–N.S.

7. Program Changes for Paratransit Services

From: City Manager

Recommendation: Adopt a Resolution: 1) establishing income eligibility criteria for the Berkeley Paratransit Services' Taxi Scrip Program and a system to distribute taxi scrip at no cost to the consumer; and 2) rescinding Resolution No. 56,512–N.S.

Financial Implications: Reduction in program costs.

Contact: Stephen Barton, Housing, 981-5400

Action: Removed from Consent Calendar by Councilmember Worthington. Moved, seconded, carried (Spring/Maio; Absent - Olds) to adopt Resolution No. 62,748–N.S. as amended by Councilmember Spring to provide free East Bay Paratransit tickets on a limited basis to program participants.

8. Seniors and Disabled Home Rehabilitation Loan Program

From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 62,912–N.S. so that the maximum loan amount of \$70,000 that can be extended to senior and disabled households under the Senior and Disabled Home Rehabilitation Loan Program (SDHRLP) can be obtained from either CDBG or CalHome funds or a combination of both, or any other future funds designated for the program.

Financial Implications: CDBG Funds and CalHomes Funds – Undetermined savings.

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 62,749–N.S.

9. Rate Increase: Delta Dental Plan

From: City Manager

Recommendation: Adopt a Resolution: 1) approving a 9.85% rate increase for the Delta Dental Plan for all coverage groups effective January 1, 2005 through December 31, 2005; and 2) rescinding Resolution No. 62,350–N.S.

Financial Implications: Benefits Delta Fund – \$398,900 increase.

Contact: David Hodgkins, Human Resources, 981-6800

Action: Adopted Resolution No. 62,750–N.S.

10. Rate Increase: Health Plan

From: City Manager

Recommendation: Adopt two Resolutions: 1) approving a 12.3% rate increase for the Kaiser Foundation Health Maintenance Organization (HMO) health plan; and 2) approving a rate increase of 21% for the Health Net Health Maintenance Organization (HMO) health plan and Point of Service (POS) plan for City employees effective January 1, 2005 through December 31, 2005, and rescinding Resolution No. 62,352–N.S. and Resolution No. 62,353–N.S.

Financial Implications: Payroll Deduction Trust Fund – \$2,116,000 increase over FY 2004.

Contact: David Hodgkins, Human Resources, 981-6800

Action: Adopted Resolution No. 62,751–N.S. and Resolution No. 62,752–N.S. as amended.

11. Grant: Tree Planting Project

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to submit an application for an Environmental Enhancement and Mitigation Program (EEMP) grant from the State of California Resources Agency in the amount of \$248,327.

Financial Implications: Grant Revenue – \$248,327.

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

Action: Adopted Resolution No. 62,753–N.S.

12. Grant: Waste Tire Playground Cover

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to: 1) submit a grant application to the California Integrated Waste Management Board (CIWMB) for the Fiscal Year 2004-2005 Waste Tire Playground Cover Grant Program in an amount not to exceed \$25,000; 2) accept the grant; 3) to execute any resultant revenue agreements and amendments; and 4) authorize the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.

Financial Implications: Grant Revenue – \$25,000; Parks Tax CIP fund – \$12,500 matching funds.

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

Action: Adopted Resolution No. 62,754–N.S.

13. Contract: Mitigation Monitoring for Alta Bates Use Permit

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 6231 with Chandler Lee for Mitigation Monitoring services for the Alta Bates Use Permit to increase the hourly rate from \$100 to \$110 and increase the contract amount by \$6,000 for a total contract amount not to exceed \$12,295.

Financial Implications: None. \$6,000 from Alta Bates.

Contact: Dan Marks, Planning, 981-7400

Action: Adopted Resolution No. 62,755–N.S.

14. Contract: Plan Checking Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute contracts and any amendments with Linhart Petersen Powers Associates (LP2A) and Telesis Engineers to provide plan checking services for the period of January 1, 2005 through January 1, 2007 in an amount not to exceed \$120,000 each.

Financial Implications: Permit Service Center Fund – \$240,000.

Contact: Dan Marks, Planning, 981-7400

Action: Adopted Resolution No. 62,756–N.S.

- 15. Contract: PG&E – Cable and Equipment – Thousand Oaks Heights AFUUD No. 1**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Pacific Gas and Electric Company (PG&E) in an amount not to exceed \$375,000 to furnish and install electrical cable and associated equipment for the Thousand Oaks Heights Applicant Funded Utility Underground District No. 1 (AFUUD No.1) for a term in accordance with the District’s timelines as specified in Resolution No. 62,659–N.S.
Financial Implications: See report.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 62,757–N.S.
- 16. Special Handling Rate for Television Sets and Computer Monitors**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No.62,492–N.S., Section 21(c), to remove the special handling rate for television sets and computer monitors, effective January 1, 2005.
Financial Implications: Refuse Fund net revenue – \$13,000 per year.
Contact: Rene Cardinaux, Public Works, 981-6300
Action: Adopted Resolution No. 62,758–N.S.
- 17. New Locations for Metered Parking**
From: City Manager
Recommendation: Adopt first reading of an Ordinance amending Section 14.52.010 of the Berkeley Municipal Code (BMC) to add new parking meter zones on Fourth Street south of Virginia, on Hearst Avenue between Third and Fifth Streets, and the north side of Hearst Avenue between Oxford and Walnut Streets.
Financial Implications: Parking Meter Fund – \$131,000 annual increased revenue.
Contact: Peter Hillier, Transportation, 981-7010
Action: Adopted first reading of Ordinance. Second reading scheduled for January 11, 2005.
- 18. Remarks by Mayor Bates on Goals and Opportunities for 2005**
From: Mayor Bates
Recommendation: Schedule a 20 minutes presentation by Mayor Bates to make comments on the challenges and opportunities facing the City at 6:30 p.m. prior to the start of the Council meeting on January 11, 2005.
Contact: Tom Bates, Mayor, 981-7100
Action: Approved recommendation.

- 19. Loan: Elmwood Theater Seismic Retrofit**
From: Mayor Bates and Councilmember Wozniak
Recommendation: Direct the City Manager to make a loan of approximately \$90,000 from the Citywide Business Loan Fund program to the Elmwood Theater Foundation to complete the seismic retrofit of the Elmwood Theater, with the terms and conditions of said loan to be negotiated between the Elmwood Theater Foundation and City staff.
Contact: Tom Bates, Mayor, 981-7100 and Gordon Wozniak, Councilmember District 8, 981-7180
Action: Councilmember Capitelli announced he is a member of the Board of Directors of the Elmwood Theater Foundation and would recuse himself. Adopted Resolution No. 62,759–N.S. (Recused – Capitelli)
- 20. Oppose SBC’s Privacy Disclosure Policies and Request Legislative Action**
From: Councilmember Maio
Recommendation: Communicate to SBC opposition to its punitive privacy disclosure and discount policies, and request that our state legislators pursue hearings on the matter and consider strengthening regulation to protect consumer privacy.
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Removed by Councilmember Maio and referred to the Agenda Committee for rescheduling.
- 21. Presentation: Oakland/Berkeley Asthma Hospitalization Report**
From: Councilmember Maio
Recommendation: Schedule a presentation with Poki Namkung to discuss and answer questions about the “Oakland/Berkeley Asthma Hospitalization Report” prepared by the Oakland Berkeley Asthma Coalition.
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Approved recommendation.
- 22. Extend Service at the Winter Emergency Shelter**
From: Councilmember Worthington
Recommendation: Extend the number of nights of service at the winter emergency shelter to help protect homeless individuals and families during harsh winter nights.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Approved recommendation.
- 23. Support Review of Tibetan Trulku Tenzin Delek Rinpoche’s Case and Urge for the Halt of his Planned Execution**
From: Councilmember Worthington
Recommendation: Adopt a Resolution supporting the immediate review of Tibetan Trulku Tenzin Delek Rinpoche’s case and urging for the halt of his planned execution.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 62,760–N.S.

24. Support Sutter Employees and Patients

From: Councilmembers Worthington, Maio and Moore

Recommendation: Adopt a Resolution in support of Sutter employees and patients.

Contact: Kriss Worthington, Councilmember District 7, 981-7170, Linda Maio, Councilmember District 1, 981-7110 and Darryl Moore, Councilmember District 2, 981-7120

Action: Adopted Resolution No. 62,761–N.S.

25. Investigation of 2004 Election Irregularities

a. From: Peace and Justice Commission

Recommendation: Adopt a Resolution: 1) supporting the request of United States Representatives John Conyers, Jr., Jerrold Nadler, Robert Wexler, Robert C. Scott, Melvin Watt, Rush Holt and several others, “that the Government Accountability Office immediately undertake an investigation of the efficacy of voting machines and new technologies used in the 2004 elections, how election officials responded to difficulties they encountered, and what we can do in the future to improve our election systems and administration”; 2) directing the City Manager to send a letter to the City’s representatives on the Alameda County Board of Supervisors, in the State Legislature, and in Congress expressing Berkeley’s endorsement of seventeen measures to improve access to and fairness of elections; and 3) sending copies of this Resolution to Alameda County Registrar of Voters Bradley Clark, California Secretary of State Kevin Shelley, California Senate Majority Leader Don Perata, California Assemblymember Loni Hancock, United States Representatives Barbara Lee and John Conyers, Jr., United States Senators Barbara Boxer and Dianne Feinstein, and United Nations High Commissioner for Human Rights Louise Arbour.

Contact: Manuel Hector, Secretary, 981-5110

b. From: City Manager

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

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

c. From: Councilmember Spring

Recommendation: Adopt the Peace and Justice Commission’s Resolution supporting an investigation of 2004 Election Irregularities.

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

Action: Adopted Resolution No. 62,762–N.S. as amended to remove the clause containing comments by Henry Norr.

26. Representatives of the Poor

a. From: Human Welfare and Community Action Commission

Recommendation: Adopt a Resolution certifying the results of the November 17, 2004 selection of Mr. Derek Fontenot (District 1), Ms. Catherine Davenport (District 2), and Mr. Gregory R. Brinkley (District 3) as representatives of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the remaining elected representatives of the poor, and that their terms expire on December 30, 2008.

Financial Implications: See report.

Contact: Kristen Lee, Secretary, 981-5427

Consent Calendar

b. From: City Manager

Recommendation: The City manager concurs with the content and recommendations of the report.
Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 62,763–N.S.

Action Calendar – Appeals

27. Appeal: 2961-2963 College Avenue

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit under Section 23E.44.050 of the Zoning Ordinance to combine a 1,585 square foot storefront with an adjacent 1,227 square foot storefront and dismissing the appeal.

Financial Implications: None.

Contact: Dan Marks, Planning, 981-7400

b. Appeal:

1. Jason Wayman

c. Communications

1. Jason Wayman

Action: Councilmember Capitelli announced he has a financial interest within 300 feet of this location and would recuse himself. Moved, seconded, carried (Wozniak/Olds; Noes – Worthington; Recused – Capitelli) to adopt Resolution No. 62,764–N.S. affirming the decision of the Zoning Adjustments Board to approve a Use Permit under Section 23E.44.050 of the Zoning Ordinance to combine a 1,585 square foot storefront with an adjacent 1,227 square foot storefront and dismissing the appeal and referring the issue of quotas to the Planning Commission.

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

28. Minutes for Approval (Held over from December 7, 2004 by Councilmember Spring) (To be delivered)

From: City Manager

Recommendation: Approve the minutes for Council meetings of November 9, 2004 (regular).

Contact: Sara T. Cox, City Clerk, 981-6900

Action: Held over to January 11, 2005 by City Manager.

Action Calendar – New Business

- 29. Exclusive Negotiating Rights Agreement for the Development of Oxford Lot**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to extend a new Exclusive Negotiating Rights Agreement (ENRA) with Resources for Community Development and Equity Community Builders (RCD/ECB) for the development of the Oxford Lot for the period of twelve months ending December 15, 2005.
Financial Implications: Housing Department budget – \$20,000.
Contact: Stephen Barton, Housing, 981-5400
Action: Moved to Consent Calendar by Councilmember Worthington (Abstain – Olds). Adopted Resolution No. 62,765–N.S.
- 30. Mills Act Contract: 2426 Fulton Street**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a Mills Act Contract and any amendments with Dajun Yu for the restoration of historic property at 2426 Fulton Street in order to obtain property tax reduction for a period of ten years.
Financial Implications: See report.
Contact: Dan Marks, Planning, 981-7400
Action: Councilmember Capitelli announced he would recuse himself. Moved to Consent Calendar by Councilmember Olds (Recused – Capitelli). Adopted Resolution No. 62,766–N.S.
- 31. Marin Avenue Reconfiguration**
From: City Manager
Recommendation: Adopt a Resolution adopting a Negative Declaration for the Marin Avenue Reconfiguration Project and directing staff to proceed toward implementation of the project and submit a combined funding application to the Measure B Countywide Bicycle-Pedestrian Discretionary Fund, Transportation Development Act (TDA) Article 3, BAAQMD Transportation Fund for Clean Air Program Manager Fund in January 2005.
Financial Implications: Various Grants – \$30,000.
Contact: Peter Hillier, Transportation, 981-7010
Action: Moved, seconded, carried (Capitelli/Maio) a motion to: 1) hold the matter over to January 18, 2004; 2) direct the City Manager to schedule a public hearing on that date to include an informational presentation by staff, and; 3) to request that the scope of the Marin Avenue project include before and after traffic counts on potentially impacted neighborhood streets to be specified after the public hearing.
- 32. Arts and Culture Plan, Work Plan for 2005 (CF 47-04)**
a. From: Civic Arts Commission
Recommendation: Adopt the policies recommended for the first year of the Arts and Culture Plan as adopted by Council on July 13, 2004, Resolution No. 62,599–N.S.
Financial Implications: See report.
Contact: Mary Ann Merker, Secretary, 981-7533

Action Calendar – New Business

b. From: City Manager

Recommendation: Refer the recommendations from the Commission with financial implications to the FY 2006 budget process.

Contact: Tom Myers, Economic Development, 981-7530

c. Information Report: Responses to Questions Raised by Council

From: Civic Arts Commission

Contact: Mary Ann Merker, Secretary, 981-7533

Action: Moved to the Consent Calendar by Councilmember Olds. Approved the City Manager and Civic Arts Commission recommendations and referred to the budget process by Councilmember Worthington.

Information Reports

33. Cash Receipts/Cash Handling Audit: Employment Compliance

From: City Manager

Contact: David Hodgkins, Human Resources, 981-6800

Action: Received and filed.

34. Update: Implementation of FUNDS Change Management Audit Recommendations (CF 33-04)

From: City Manager

Contact: Chris Mead, Information Technology, 981-6500

Action: Received and filed.

35. Sanitary Sewer System Study (CF 06-03)

From: City Manager

Contact: Rene Cardinaux, Public Works, 981-6300

Action: Received and filed. Referred to the Public Works Commission by Councilmember Wozniak.

Communications

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

New Locations for Metered Parking (Maio, Spring, Worthington)

1. Jim Hultman

Marin Avenue Reconfiguration

2. Deborah Moore and Adam Dawson

Building Inspections and Permits

3. Anne Whyte

Transportation and Land Use

4. Hank Resnik

Tax Measures and Budget Situation

5. Willard Neighborhood Association

Supplemental Reports and Communications #1

Item 7: Program Changes for Paratransit Services

6. Information report, submitted by Commission on Disability

Item 22: Extend Service at the Winter Emergency Shelter

7. Revised report, submitted by Kriss Worthington

Item 23: Support Review of Tibetan Trulku Tenzin Delek Rinpoche's Case and Urge for the Halt of his Planned Execution

8. Resolution to report, submitted by Councilmember Worthington

Item 24: Support Sutter Employees and Patients

9. Resolution to report, submitted by Councilmember Worthington

Item 27: Appeal: 2961-2963 College Avenue

10. Petition with 54 signatures, submitted by Jeremy M. Kidson
11. Jeremy Kidson
12. Rena Rickles

Item 31: Marin Avenue Reconfiguration

13. Public comments, submitted by Transportation
14. Michael Katz
15. Bryce Nesbitt (2)
16. Hank Resnik
17. Juliet Lamont
18. Jerry Landis
19. David Coolidge
20. Benjamin Grant
21. Rob Wrenn, Chair, Transportation Commission
22. Raymond A. Chamberlin
23. Mark Abrahams

Supplemental Reports and Communications #2

Item 20: Oppose SBC's Privacy Disclosure Policies and Request Legislative Action

24. Barbara Leslie, Director, External Affairs, SBC

Item 31: Marin Avenue Reconfiguration

25. Proposal Regarding Marin Avenue Reconfiguration, submitted by Councilmembers Capitelli, Olds and Maio

Human Rights Now! Newsletter of the Meiklejohn Civil Liberties Institute

26. Ann Fagan Ginger

No Need for Condos

27. Anonymous

Adjournment

Adjourned at 8:45 p.m.