

AGENDA

BERKELEY CITY COUNCIL MEETING

TUESDAY, APRIL 26, 2005

7:00 P.M.

**Council Chambers, 2134 Martin Luther King Jr. Way
Teleconferencing Location – 1636 Channing Way, Berkeley, CA**

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953, Teleconferencing. Any member of the public may attend this meeting at either the Council Chambers or at the teleconference location. Questions regarding this matter may be addressed to Sara T. Cox, City Clerk, 981-6900.

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.*

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. Amendments to Subdivision Ordinance Regarding Tenancies in Common** *(First Reading April 12, 2005; Noes – Worthington; Abstain - Anderson, Spring)*

From: City Manager

Recommendation: Adopt second reading of an Ordinance amending and repealing various sections of BMC Chapter 21.28 to eliminate regulation of tenancies in common and limit fees for conversion of rental units to condominiums to ten percent of the sales price of each unit. This cap on the affordable housing mitigation fee to expire October 26, 2005.

Financial Implications: None.

Contact: Manuela Albuquerque, City Attorney, 981-6950 and Stephen Barton, Housing, 981-5400

Consent Calendar

- 2. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for Council meeting March 22, 2005 (special).
Contact: Sara Cox, 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: Sara Cox, City Clerk, 981-6900
- 4. Grant: Smokefree Babies Project**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a grant from the March of Dimes-San Francisco Chapter for funds in the amount of \$25,000 to support the Smokefree Babies Project for FY 2005 and FY 2006; to execute any resultant revenue agreements and amendments; and authorizing implementation of projects and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: S.F. Foundation Grant Revenue– \$25,000; Health (General) Fund – State allocated 3:2 matching funds.
Contact: Fred Medrano, Health and Human Services, 981-5100
- 5. Supporting AB 457- Removing Barriers to Needle Exchange**
From: City Manager
Recommendation: Adopt a Resolution supporting AB 547 which makes it possible for cities, counties and their named agents to conduct needle exchange as a part of a comprehensive program of prevention services without being required to declare a health state of emergency every two weeks.
Financial Implications: None.
Contact: Fred Medrano, Health and Human Services, 981-5100
- 6. Contract: Clean Energy Fund Development**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the Power Factors, LLC for the development of a clean energy fund in the amount of \$52,500 for April 27, 2005 through December 31, 2005.
Financial Implications: General Fund – \$52,500.
Contact: Stephen Barton, Housing, 981-5400 and Fran David, Finance, 981-7300

7. Correct an Administrative Error Affecting Two Resolutions Concerning Supplemental Military Leave Compensation and the Berkeley Hills Fire Station

From: City Manager

Recommendation: Adopt a Resolution to correct an administrative error that affects two Resolutions as follows: 1) amend Resolution No. 62,648–N.S., the City’s Supplemental Military Leave Compensation Policy, to rescind Resolution No. 61,960–N.S. and all Resolutions amendatory thereto; and 2) reinstate Resolution No. 61,690–N.S. that certified that the final Environmental Impact Report on the Berkeley Hills Fire Station complies with the California Environmental Quality Act (CEQA) and adoption of findings regarding impacts, mitigation measures, alternatives and other matters in accordance with CEQA and approve Use Permits and a Variance for the Berkeley Hills Fire Station located at 3000 Shasta Road retroactively to September 21, 2004.

Financial Implications: None.

Contact: David Hodgkins, Human Resources, 981-6800

8. Purchase Order: Protective Body Armor for Police Department Employees

From: City Manager

Recommendation: Adopt a Resolution approving the purchase of 188 Armorlite LFT ballistic vests from Protective Products International to replace protective body armor currently worn by Police Department employees, and which has exceeded, or is about to exceed its warranty life; or is constructed from possibly defective materials in an amount not to exceed \$94,564.

Financial Implications: General Fund – \$94,564.

Contact: Douglas N. Hambleton, Police, 981-5900

9. Contract Amendment: Community Conservation Center

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to extend the Community Conservation Center (CCC) contract for one year, from July 1, 2005 through June 30, 2006 in an amount not to exceed \$238,000.

Financial Implications: Refuse Fund – \$238,000.

Contact: Rene Cardinaux, Public Works, 981-6300

10. Contract Amendment: Ecology Center

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend the contract with Ecology Center (EC) for recycling services for one year, from July 1, 2005 through June 30, 2006 in an amount not to exceed \$1,728,722.

Financial Implications: Refuse Fund – \$1,728,722.

Contact: Rene Cardinaux, Public Works, 981-6300

Consent Calendar

- 11. Contract Amendment: Urban Ore**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to extend the Urban Ore contract for one year, from July 1, 2005 through June 30, 2006 in an amount not to exceed \$28,750.
Financial Implications: Refuse Fund – \$28,750.
Contact: Rene Cardinaux, Public Works, 981-6300
- 12. Land Sale: 2114 & 2140 McKinley Avenue**
From: City Manager
Recommendation: Adopt the first reading of an Ordinance authorizing the City Manager to execute all necessary documents required to sell the real property located at: 1) 2140 McKinley Avenue, Berkeley, in the amount of \$266,000; and 2) 2114 McKinley Avenue, Berkeley, in the amount of \$507,000.
Financial Implications: General Fund Revenue – \$773,000.
Contact: Rene Cardinaux, Public Works, 981-6300
- 13. Purchase Order: John Deere 244J Wheel Loader**
From: City Manager
Recommendation: Adopt a Resolution accepting the State of California Contract No. 4-98-38-0004A bid procedures to satisfy the requirement of Berkeley Charter Section 67, and authorizing the City Manager to execute a purchase order with Pape Machinery in an amount not to exceed \$81,124 for the purchase of a John Deere 244J wheel loader.
Financial Implications: Equipment Replacement Fund – \$81,124.
Contact: Rene Cardinaux, Public Works, 981-6300
- 14. City Sponsorship of the Solano Avenue Chocolate & Chalk Art Festival**
From: Councilmember Capitelli
Recommendation: Adopt a Resolution to cosponsor, in collaboration with the Solano Avenue Association, the Chocolate and Chalk Arts Festival to be held on Solano Avenue during Memorial Day weekend, Saturday, May 28, 2004, from 9:00 a.m. to 5:00 p.m.; and that the City of Berkeley allow the use of Peralta Park during that day.
Financial Implications: None.
Contact: Laurie Capitelli, Councilmember District 5, 981-7150
- 15. Updating Environmental Procedures**
From: Councilmember Spring
Recommendation: Adopt a Resolution requesting the City Manager to amend the City of Berkeley Environmental Procedures and post this document on the City of Berkeley web page as part of the land use/environmental procedures.
Financial Implications: None.
Contact: Dona Spring, Councilmember District 4, 981-7140

Consent Calendar

- 16. Proclamation: Armenian Genocide Commemoration Day**
From: Councilmember Worthington
Recommendation: Approve a proclamation declaring April 24, 2005 Armenian Genocide commemoration day in Berkeley to be presented at the April 26, 2005 council meeting.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- 17. Proclamation: Holocaust Remembrance Day**
From: Councilmember Worthington
Recommendation: Approve a proclamation recognizing Holocaust Remembrance Day.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- 18. Restaurant Moratorium for Northside (Euclid) Commercial District**
From: Councilmember Worthington
Recommendation: Request that the City Manager take appropriate steps towards the creation of a land use moratorium on new restaurant uses in the Northside (Euclid Avenue) commercial business district, pending study of a land use quota system for the Northside commercial business district.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- 19. Support AB781**
From: Councilmember Worthington
Recommendation: Adopt a Resolution urging the California State Legislature to approve Assembly Bill 781 requiring ownership of rental property for five years before removing it under the Ellis Act.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
- 20. Support SB20 California Low Cost Auto Insurance Program**
From: Councilmember Worthington
Recommendation: Support SB20 California Low Cost Auto Insurance Program.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170

Action Calendar – Appeals

21. 1340 Sixth Street: Appeal of Zoning Adjustments Board’s Adoption of a Mitigated Negative Declaration and Denial of Use Permits

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board’s (ZAB) actions regarding Use Permit #02-10000026 wherein ZAB adopted a mitigated negative declaration, approved the demolition of existing structures, and denied a portion of the permit to allow constructing an approximately 10,500-square foot building with warehouse and live/work uses, and dismissing the appeals.

Financial Implications: None.

Contact: Dan Marks, Planning, 981-7400

b. Appeal

1. Ken David
2. Paul Cox

c. Communications:

1. Ken David
2. Mahmood Pourzand, Levitch Associates, submitted by Ken David

Action Calendar – Public Hearing

22. Allocation of Community Development Block Grant, Emergency Shelter Grant, Community Services Block Grant, Home, Anti-Poverty General Fund, Homeless General Fund and Other General Fund for FY 2006, and the Proposed Five-Year Consolidated Plan and First-Year Annual Action Plan

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution: 1) approving proposals for funding under the Fiscal Year 2006 CDBG, ESG, and HOME Community Housing Development Organization (CHDO) operating expense programs; 2) authorizing the execution of resultant agreements and amendments for the FY 2006 CDBG, ESG, and HOME CHDO operating expense funds (5%) with conditional two-year contracts for CDBG-funded community agency projects in the Public Services category; 3) allocating 85% of the FY 2006 HOME funds in the Housing Trust Fund and the remaining 10% for HOME program administration; and 4) authorizing the City Manager to submit the 2005-2010 Five-Year Consolidated Plan and First-Year Annual Action Plan to the U.S. Department of Housing and Urban Development (HUD) which includes the applications for CDBG, ESG, and HOME funding and all resulting agreements with HUD to accept the funds.

Financial Implications: See report.

Contact: Stephen Barton, Housing, 981-5400

Action Calendar – Public Hearing

23. 2040 Fourth Street (720 University Avenue/Irwin Paint Company/Boy Scout Headquarters/Celia’s Restaurant) – Appeal of Landmarks Preservation Commission Decision to Designate as a Structure of Merit

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution reversing the designation of 2040 Fourth Street (“Celia’s Restaurant”) by the Landmarks Preservation Commission as a Structure of Merit.

Financial Implications: None.

Contact: Dan Marks, Planning, 981-7400

b. Appeal

1. Dan Deibel, Urban Housing Group, care of Rene Rickles

c. Communications

1. Stephen Block

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

24. Sewer Service Charges For Fiscal Year 2006 (Held over from April 12, 2005)

From: City Manager

Recommendation: 1) Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Sections 17.04.010, Rates for Designated Premises, and 17.04.015, Appeals; and 2) adopt a Resolution establishing sewer service charges for FY 2006, effective May 18, 2005.

Financial Implications: See report.

Contact: Rene Cardinaux, Public Works, 981-6300

25. Encroachment Permit: UC Pedestrian Bridge over Hearst Avenue (Foothill Bridge) (Held over from April 12, 2005)

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

d. From: Councilmember Spring *(April 12, 2005 Report)*

Recommendation: Request that the University of California fund alternatives to the proposed Foothill Pedestrian Bridge: 1) a seismically safe, base isolated pedestrian tunnel; and 2) upgrade and install pedestrian and bicycle activated traffic signals in the North and East campus area for increased public safety.

Financial Implications: None.

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

e. From: Commission on Disability *(April 12, 2005 Report)*

Recommendation: Approve the application from the University of California for the encroachment permit to build a pedestrian bridge over Hearst Avenue near La Loma Avenue.

Contact: Paul Church, Secretary, 981-6342

f. Communications (July 13, 2004 – Numbering follows original sequence)

9. Edward J. Denton, Facilities Services - University of California, Berkeley

g. Supplemental Communications 1 *(November 9, 2004 – Numbering follows original sequence)*

118. David Mandel, Facilities Services, Physical and Environmental Planning at U.C. Berkeley, care of Jeff Egeberg, Public Works Department

119. Daniella Thompson

120. Jan Robitscher

121. Wendy P. Markel (2)

122. Sharon Hudson

123. Carl F. Friberg

h. Supplemental Communications 2 *(November 9, 2004 – Numbering follows original sequence)*

137. Doug Buckwald

138. Roger Van Ouytsel, Carl Friberg and Jed Parsons

i. Supplemental Communications 3 *(November 9, 2004 – Numbering follows original sequence)*

143. Tom Myers

144. Petition with 1073 signatures, submitted by Dan Woodard, University of California Residence Hall Assembly

145. University Avenue Neighborhoods’ Network

Action Calendar – Old Business

- j. Communications** (*December 7, 2004 – Numbering follows original sequence*)
 - 4. Sara Shumer
 - 5. Leonard Cottrell
 - 6. Elfi Z. Tarazona
 - 7. Daniella Thompson
 - 8. Martin Freedman
 - 9. Hank Mooney
 - 10. Wendy Markel, Berkeley Architectural Heritage Association
- k. Supplemental Communications 1** (*December 7, 2004 – Numbering follows original sequence*)
 - 28. Bayard and Nancy Allmond
 - 29. Wendy Alfsen, Walk&Roll Berkeley
- l. Supplemental Communications 2** (*December 7, 2004 – Numbering follows original sequence*)
 - 35. Proposed amendment, submitted by Councilmember Anderson
 - 36. Petition with 11 signatures, U.C. Berkeley Beverly Clearly Hall Executive Committee
 - 37. Petition with 7 signatures, U.C. Berkeley Cunningham Hall Association Committee
 - 38. Petition with 8 signatures, U.C. Berkeley Stern Residence Hall Executive Committee
 - 39. Petition with 10 signatures, U.C. Berkeley Norton Hall Association Executive Committee
 - 40. Valerie Escalante, Griffiths Hall Association Executive Committee
 - 41. Petition with 12 signatures, U.C. Berkeley La Loma Hall Association Executive Committee
 - 42. Petition with 12 signatures, U.C. Berkeley Cheney-Deutsch Hall Association Executive Committee
 - 43. Petition with 14 signatures, U.C. Berkeley Foothill Hillside Hall Association Executive Committee
 - 44. Petition with 8 signatures, U.C. Berkeley Ehrman Hall Association Executive Committee
- m. Communications** (*January 18, 2005*)
 - 20. Alan R. Seher, Esq., Weiss & Weissman, Inc., Counsel for NEDS
- n. Communications** (*April 12, 2005*)
 - 1. Alan R. Seher, Esq., Weiss & Weissman, Inc., Counsel for NEDS
- o. Supplemental Communications 1** (*April 12, 2005 – Numbering follows original sequence*)
 - 15. Alan R. Seher, Esq., Weiss & Weissman, Inc., Counsel for NEDS
 - 16. Michael Katz
 - 17. Northside Neighborhood Association and Berkeleyans for a Livable University Environment
- p. Supplemental Communications 2** (*April 12, 2005*)
 - 24. Question and Answer Sheet, submitted by Thomas Lollini, Assistant Vice Chancellor, UC Berkeley Physical and Environmental Planning
 - 25. David Snippen
 - 26. Sara Shumer
- q. Communications** (*April 26, 2005*)
 - 1. None.

Action Calendar – Old Business

26. **Contract: Telephone Equipment Replacement** *(Held over from April 12, 2005 by City Manager)*
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Nexus Inc. for telephone equipment replacement components and related services in the amount of \$50,000 per year, for a total amount not to exceed \$120,000 for the period April 1, 2005 through June 30, 2007.
Financial Implications: General Fund – \$120,000.
Contact: Chris Mead, Information Technology, 981-6500
27. **Status Update on 651 Addison Street (Drayage)** *(Held over from April 19, 2005 by Councilmember Moore)*
From: City Manager
Contact: Phil Kamlarz, City Manager, 981-7000

Action Calendar – New Business

28. **Warm Water Pool**
From: City Manager
Recommendation: Adopt a Resolution requesting that the Berkeley School Board refrain from taking action on the permanent disposition of the Warm Water Pool.
Financial Implications: Measure R Funds – \$3,250,000.
Contact: Rene Cardinaux, Public Works, 981-6300

Information Reports

29. **2209–2211 Fifth Street, Certification and Review of Planning Commission Approval of Tentative Tract Map 7591**
From: City Manager
Contact: Dan Marks, Planning, 981-7400
30. **Landmarks Preservation Commission Notice of Decision: 720 University Avenue (Brennan’s Restaurant) – Landmark Designation**
From: City Manager
Contact: Dan Marks, Planning, 981-7400
31. **Landmarks Preservation Commission Notice of Decision: 2140 Durant Avenue – Approval of Structural Alteration Permit**
From: City Manager
Contact: Dan Marks, Planning, 981-7400

Communications

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

Green Clippings at 2729 Fulton Street

1. Robert Schonberger

Customer Service

2. Robert Schonberger

North Oakland Crime Details on the Web

3. Laura Menard

Condominium Conversions and Vacancy Rates

4. Barbara Gilbert

Adjournment