

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, SEPTEMBER 27, 2005

7:00 P.M.

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

Preliminary Matters

Roll Call: 7:01 p.m. All present.

Ceremonial Matters:

1. Proclamation presented to the Tejada Family honoring their continued community service to the City.
2. Proclamation presented to Indigenous Peoples Day Committee honoring Indigenous People's Day on October 8, 2005.

City Manager Comments: No Comments.

Public Comment: 11 speakers.

Consent Calendar

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

1. **Lease Agreement: 1769 Alcatraz Avenue** (*First Reading September 20, 2005 – Unanimous*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance authorizing the City Manager to execute a lease agreement with Thomas Goetzl for real property located at 1769 Alcatraz Avenue, in an amount not to exceed \$24,000, for the purpose of leasing office space for the Black Infant Health Program for the period November 1, 2005 to October 31, 2007, with an option to extend for an additional two year period.
Financial Implications: Health Fund - \$24,000
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Ordinance No. 6,877–N.S. Effective October 27, 2005.

Consent Calendar

2. **Amendment to the Condominium Conversion Ordinance** (*First Reading as amended September 20, 2005; Noes – Worthington*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 21.28, Condominiums, Community Apartments, Stock Cooperatives and Tenancy in Common Projects.
Financial Implications: Unknown
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Ordinance No. 6,878–N.S. (Noes – Worthington). Effective October 27, 2005.
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 T. Cox, City Clerk, 981-6900
Action: Adopted Resolution No. 63,062–N.S.
4. **Veterans Memorial Building - Operating Costs**
From: City Manager
Recommendation: Submit to the mid-year budget review process proposed funding options for FY 2006 and FY 2007 for unbudgeted operating costs associated with keeping the Veterans Memorial Building (VMB) open year round.
Financial Implications: General Fund and Building Maintenance Fund - \$98,923
Contact: Phil Kamlarz, City Manager, 981-7000
Action: Moved to Action by Councilmember Worthington. Moved, seconded, carried (Maio/Capitelli) as amended by Councilmembers Worthington and Maio to refer to the City Manager to bring a recommendation back to Council that incorporates historical obligations and allows ongoing free use of the single room office and shared use of the first floor conference room.
5. **Grant: Youth Focused Bicycle and Pedestrian Injury Prevention Program** (*To be delivered*)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to: 1) submit a grant application to the California Office of Traffic Safety for funds in the amount of \$406,621 in FY 2006 to develop a youth focused bicycle and pedestrian injury prevention program and outreach to youth and families; and 2) accept the grant and execute any resultant revenue agreements and amendments; and 3) authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: Grant Revenue - \$406,621
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 63,063–N.S.

6. Additional Funding for the McKinley House Rehabilitation

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the development loan agreement with Building Opportunities for Self-Sufficiency (BOSS) for renovation of McKinley House at 2111 McKinley Avenue increasing it by \$40,000 for an amount not to exceed \$230,000.

Financial Implications: Housing Trust Fund - \$40,000

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,064–N.S.

7. Use of Veterans Memorial Building: Men’s Shelter and Multi-Agency Service Center

From: City Manager

Recommendation: Adopt first reading of an Ordinance: 1) making findings and declarations of a continuing homeless shelter crisis; 2) authorizing continuation of use of the Veterans Memorial Building basement by the Men’s Overnight Assistance Center (the Men’s Shelter) and Multi-Agency Service Center (MASC); and 3) suspending applicable local laws which might otherwise regulate, apply to or govern the continued operation of the Men’s Shelter and the MASC.

Financial Implications: None

Contact: Stephen Barton, Housing, 981-5402

Action: Moved to Action by Councilmember Worthington. Adopted first reading of Ordinance. Second reading scheduled for October 18, 2005.

8. Contract: Plan Checking Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to contracts with Linhart Peterson Powers Associates and Telesis Engineers for plan checking services to increase each contract amount by \$120,000 for a total amount not to exceed \$240,000 for each contract.

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

Contact: Dan Marks, Planning and Development, 981-7400

Action: Adopted Resolution No. 63,065–N.S.

9. Appointment of Adolf Moody to Berkeley Housing Authority

From: Mayor Bates

Recommendation: Confirm the Mayor’s appointment of Adolf Moody to the vacant Tenant Commissioner position on the Berkeley Housing Authority (BHA) and appoint Mr. Moody to a two-year term commencing on September 27, 2005 and ending on September 27, 2007.

Financial Implications: None.

Contact: Tom Bates, Mayor, 981-7100

Action: Adopted Resolution No. 63,066–N.S.

Consent Calendar

- 10. Analysis of the Security of the Kinder Morgan Energy Partners Pipeline in West Berkeley**
From: Councilmember Maio and Moore
Recommendation: Request that the City Manager inquire of Kinder Morgan Energy Partners (KMEP) specifically what they have done and what they intend to do to ensure their pipelines' integrity in West Berkeley.
Financial Implications: Staff time.
Contact: Linda Maio, Councilmember District 1, 981-7110 and Darryl Moore, Councilmember District 2, 981-7120
Action: Approved recommendation.
- 11. Presentation: Technologies and Arts for Disabled Children and Adults**
From: Councilmember Spring
Recommendation: Schedule up to 20 minutes at a Council meeting in late October or November 2005 for a presentation by Dmitri Belsher, Executive Director of the Center for Accessible Technology, on technology and art for disabled children and adults.
Financial Implications: None.
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Approved recommendation.
- 12. Proclamation: Mario and Rosalinda Tejada Day**
From: Councilmember Worthington
Recommendation: Approve a proclamation for Mario and Rosalinda Tejada Day on October 10th in Berkeley in honor of their continued community service to the City.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Approved proclamation.
- 13. Support ASUC Safety Week**
From: Councilmember Worthington
Recommendation: Support ASUC Safety Week, to be held from October 10-14, 2005.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170.
Action: Approved recommendation.
- 14. Support Marriage Equality (AB 897) and Oppose Two Anti-Gay Groups' Initiatives to Ban Marriage Equality and Domestic Partnerships**
From: Councilmember Worthington
Recommendation: Send a letter to the Governor to not veto Marriage Equality (AB 849) and to strongly oppose two anti-gay groups' proposed initiatives to ban marriage equality and domestic partnerships, and ask him to work to defeat these immoderate measures just like Ronald Reagan did in coming out publicly and strongly against the anti-gay Briggs initiative in the 1970's.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Approved recommendation as amended to include Councilmembers Worthington and Moore as co-sponsors.

Consent Calendar

15. Homeless People With Vehicle Impoundments (CF 22-05)

a. From: Homeless Commission

Recommendation: Adopt a Resolution committing Council to establishing permanent housing for the homeless as its first priority; allocating funding for solutions to homelessness; and addressing the loss of a vehicle through no-cost strategies including: 1) establishing a legal place for homeless people to park; 2) waiving time limits for working off fines through the performance of community service; and 3) establishing a mechanism to prevent compounding of unpaid fines.

Financial Implications: None

Contact: Jane Micallef, Secretary, 981-5426

b. From: City Manager

Recommendation: Refer Commission recommendations to the work session on anti-poverty and homeless programs currently scheduled for November 29, 2005.

Contact: Stephen Barton, Housing, 981-5400

Action: Moved to Action by Councilmember Wozniak. Moved, seconded, carried (Wozniak/Worthington) to approve City Manager's recommendation to refer the Commission recommendations to the November 29, 2005 work session on anti-poverty and homeless programs.

Action Calendar - Appeals

16. 2750 Adeline Street - Appeal ZAB Decision Use Permit #03-7000006

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit #03-70000064, to eliminate a live/work unit, add a fourth-floor and construct up to two-dwelling units, and dismissing the appeal.

Financial Implications: None

Contact: Dan Marks, Planning and Development, 981-7400

b. Appeal

1. Natasha Shawver

c. Communications:

1. Stephen Rood
2. Sasha and Merideth Shamszad

Action: Moved, seconded, carried (Anderson/Maio; Noes – Worthington) to adopt Resolution No. 63,067–N.S. affirming the decision of the ZAB to approve Use Permit #03-70000064, to eliminate a live/work unit, add a fourth-floor and construct up to two-dwelling units, and dismissing the appeal.

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

17. **Support Proposition 80 Ballot Measure in the Special Election** (*Held over from September 20, 2005*)
From: Councilmember Worthington
Recommendation: Support Proposition 80 in the special election, which would place electric service providers in the State of California under control and regulation by the California Public Utilities Commission and will also require all electric sellers to increase their renewable energy resource procurement by 1% per year to a level of 20% by 2010.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Moved to Consent by Councilmember Worthington. Adopted Resolution No. 63,068–N.S. (Abstain – Spring, Capitelli, Wozniak).
18. **Revisions of the Elmwood Business District Quotas** (*Held over from September 20, 2005*)
From: Councilmember Wozniak
Recommendation: Request that the City Manager refer recommended revisions of the Elmwood Business Quota Committee to the Planning Department and the Planning Commission so that they can be incorporated into the zoning ordinance, including: 1) to simplify the current seven category quota system by replacing it with a two quota system (Barber/Beauty and Food Service establishments); and 2) to maintain business diversity by prohibiting businesses from expanding into adjacent business spaces.
Financial Implications: Administrative costs
Contact: Gordon Wozniak, Councilmember District 8, 981-7180
Action: Before adoption Councilmember Wozniak amended his recommendation to state, “There are many merchants and neighbors who feel that the quotas should be updated to reflect present business reality...”

Moved, seconded, carried (Wozniak/Worthington) to approve the recommendation from Mayor Bates in a memorandum dated September 27, 2005, to: 1) refer recommendations presented by Councilmembers Wozniak and Worthington at the September 27, 2005 meeting to the Planning Commission, without preference and that the two items be added to the Council’s existing referral on quota reviews with the request that the Elmwood review be prioritized; and, 2) request the City Manager return to the Council with ideas on how to add a review of the Elmwood quotas to the Planning Commission workplan this year or next.

Action Calendar – New Business

19. **Downtown Area Plan Work Program and Public Participation Process**
a. From: City Manager
Recommendation: Adopt a Resolution appointing a Downtown Area Plan Advisory Committee.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400

Action Calendar – New Business

b. From: Transportation Commission (*Held over from September 20, 2005*)

Recommendation: Request that Council: 1) direct the Transportation Commission to appoint a transportation representative to serve on any Downtown Area Plan (DAP) Committee or Task Force that may be established; 2) appoint the Office of Transportation (OOT) and Transportation Commission (TC) to be the lead City agencies for the development of transportation policies related to any new Downtown Area Plan and that the OOT and the TC review any proposed transportation policies before consideration by the Planning Commission or by Council and before inclusion in any Plan; and 3) create the Downtown Area Plan Committee/Task Force based upon the Hotel/Convention Center Task Force/Downtown Berkeley Plan model and include representatives of appropriate stakeholder groups.

Financial Implications: None

Contact: Peter Hillier, Secretary, 981-6300

c. From: City Manager (*Held over from September 20, 2005*)

Recommendation: Refer the recommendations of the Transportation Commission to the larger process to come back to Council at the September 27, 2005 meeting; take into consideration suggestions regarding the Commission's membership on a potential Downtown Area Plan Task Force; and conduct a review of transportation policies as a work plan is developed.

Financial Implications: None

Contact: Claudette Ford, Public Works, 981-6300

Action: Moved, seconded, carried (Wozniak/Maio; Noes – Anderson, Spring, Worthington) a substitute motion to adopt Resolution No. 63,069–N.S. as amended in the Mayor's recommendation, presented at the September 27, 2005 meeting, appointing a Downtown Plan Advisory Committee comprised of two appointments per Councilmember and a three-member subcommittee of the Planning Commission as amended by Councilmember Capitelli to "hold joint workshops with commissions."

Moved, seconded (Spring/Anderson) a main motion to refer back to the Planning Commission for analysis and public input using the hotel task force model and report back to Council with recommendations.

20. Disappearing Newsracks and the Constitutionality and Practicality of the Interpretation and Implementation of Newsrack Regulations

From: Councilmember Worthington

Recommendation: Refer to the City Manager to review city ordinances, interpretations, and operations in regards to Newsrack regulation. As one part of this review, to invite persons responsible for distribution of newspapers to identify problem areas, including but not limited to the disappearance of newsracks without notification to the newspapers, possibly eliminating the part of the City ordinance that allows City removal of newsracks with zero notice, and making sure that the City is not creating impediments to fair placement for all publications.

Financial Implications: Staff time.

Contact: Kriss Worthington, Councilmember District 7, 981-7170

Action: Held over to October 18, 2005 by Councilmember Worthington.

Communications

Conflict of Interest

1. Jim Molmen

Local Governments' Liability in Cell Tower Disputes

2. Peter Teichner

Public Records Act Request

3. Jane Welford, SuperBOLD (Berkeleyans Organizing for Library Defense), submitted by Gene Bernardi

Humane Commission Minutes

4. Barbara Gilbert *(Worthington)*

AB 1690 and the City/UC Settlement

5. Barbara Gilbert

Supplemental Reports and Communications #1

To Be Delivered Item 5: Grant: Youth Focused Bicycle and Pedestrian Injury Prevention Program

6. Report, submitted by Health and Human Services

Item 16: 2750 Adeline Street - Appeal ZAB Decision Use Permit #03-7000006

7. Natasha Shawner

Item 19: Downtown Area Plan Work Program and Public Participation Process

8. Getting to Work on Our Downtown Plan, submitted by Mayor Bates
9. Robert Johnson, Landmarks Preservation Commission
10. Wendy Alfsen
11. Paul Rabinow
12. Karl Reeh, LeConte Neighborhood Association
13. Jerry and Kaye Miller

Supplemental Reports and Communications #2

Ceremonial Item 2: Proclamation presented to Indigenous Peoples Day Committee

14. 14th Annual Celebration of Indigenous Peoples Day flyer, submitted by Venetia Moore

Items 4: Veterans Memorial Building - Operating Costs

15. Amendment to report, submitted by Councilmember Worthington
16. 1988 Letter from Darlene A. Smith, General Services Agency, submitted by Councilmember Worthington

Item 7: Use of Veterans Memorial Building: Men's Shelter and Multi-Agency Service Center

17. Amendment to report, submitted by Councilmember Worthington
18. 1988 Letter from Darlene A. Smith, General Services Agency, submitted by Councilmember Worthington

Supplemental Reports and Communications #2

Item 18: Revisions of the Elmwood Business District Quotas

19. Amendment to report, submitted by Councilmember Worthington
20. Amendment to report, submitted by Councilmember Wozniak
21. Amendment to report, submitted by Mayor Bates
22. David Salk, Focal Point Opticians, Elmwood Merchants Association and Elmwood Theater Foundation

Item 19: Downtown Area Plan Work Program and Public Participation Process

23. Amendments to resolution, submitted by Mayor Bates

Adjournment

Adjourned at 9:44 p.m.