

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 18, 2005

7:00 P.M.

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

Preliminary Matters

Roll Call: 7:06 p.m. All present.

Ceremonial Matters:

1. Proclamation presented to Fred Medrano, Director of Health and Human Services, and Fire Chief Debra Pryor, in recognition of Exemplary Public Service to the Hurricane Katrina Relief Efforts.
2. Certificates of Appreciation presented to City staff who participated in Hurricane Katrina relief efforts.
3. Proclamation presented in recognition of the United Nations' 60th Anniversary Celebration Events.
4. Announcement of the City of Berkeley 2005 Workplace Giving Campaign

City Manager Comments: None.

Public Comment: 15 speakers.

Youth Comments: No speakers.

Consent Calendar

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

1. **Use of Veterans Memorial Building: Men's Shelter and Multi-Agency Service Center**
(First Reading September 27, 2005 – Unanimous)
From: City Manager
Recommendation: Adopt second 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: Adopted Ordinance No. 6,879–N.S. Effective November 17, 2005.

Consent Calendar

2. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of September 13, 2005 (regular), September 19, 2005 (closed), September 20, 2005 (special joint and regular), and September 27, 2005 (special and regular).

Financial Implications: None

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

Action: Approved minutes with the exception of September 19, 2005 (closed), which were held over to October 25, 2005 by the City Clerk.

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. 63,070–N.S.

4. 2005 City Council Meeting Schedule

From: City Manager

Recommendation: Adopt a Resolution revising the 2005 Council Meeting Schedule to cancel the November 8 (Special Election Day) and November 22, 2005 (Thanksgiving Week) meetings; add a regular meeting on November 29, 2005; cancel the December 6, 2005, 5:00 p.m. work session; and rescind Resolution 62,641-N.S.

Financial Implications: None.

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

Action: Adopted Resolution No. 63,071–N.S.

5. 2006 City Council Meeting Schedule

From: City Manager

Recommendation: Adopt a Resolution establishing a calendar for regular City Council meetings for Calendar Year 2006 with starting times of 7:00 p.m. and special meetings for work sessions to be scheduled for 5:00 p.m. prior to regularly scheduled Council meetings.

Financial Implications: None

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

Action: Adopted Resolution No. 63,072–N.S.

6. Contract: Provide Animal Care Services for the City of Albany

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the City of Albany for Berkeley Animal Care Services to provide animal shelter and field services for the City of Albany in an amount not to exceed \$26,127, to be paid by the City of Albany in FY 2006.

Financial Implications: General Fund - \$26,127 revenue

Contact: Jim Hynes, City Manager, 981-7000

Action: Moved to Action by Councilmember Olds. Vote consolidated with Items 7 and 26. Moved, seconded, carried (Worthington/Spring) to adopt Resolution No. 63,073–N.S.

7. Contract: Provide Animal Care Services for the City of Piedmont

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the City of Piedmont for Berkeley Animal Care Services to provide animal shelter services for the City of Piedmont in an amount not to exceed \$17,505, to be paid by the City of Piedmont in FY 2006.

Financial Implications: General Fund - \$17,505 revenue

Contact: Jim Hynes, City Manager, 981-7000

Action: Moved to Action by Councilmember Olds. Vote consolidated with Items 6 and 26. Moved, seconded, carried (Worthington/Spring) to adopt Resolution No. 63,074–N.S.

8. Downtown Berkeley Business Improvement District

From: City Manager

Recommendation: Adopt a Resolution approving the 2006 Annual Report of the Downtown Berkeley Business Improvement District (BID); declaring Council's intention to levy an annual assessment for the Downtown Berkeley Business Improvement District for calendar year 2006; and directing the City Clerk to schedule a public hearing for November 15, 2005, to consider levying a renewed assessment for the year 2006.

Financial Implications: Downtown BID Funds - \$250,000

Contact: Thomas Myers, Economic Development, 981-7530

Action: Adopted Resolution No. 63,075–N.S.

9. Contract: Implement the Management District Plan for North Shattuck Business Improvement District

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the North Shattuck Association to implement the Management District Plan and approved Work Plan for the North Shattuck Business Improvement District (BID) in an amount not to exceed \$167,572 for FY 2006.

Financial Implications: North Shattuck BID Assessment Funds - \$167,572

Contact: Thomas Myers, Economic Development, 981-7530

Action: Adopted Resolution No. 63,076–N.S.

10. Solano Avenue Business Improvement District

From: City Manager

Recommendation: Adopt a Resolution approving the 2005 Annual Report of the Solano Avenue Business Improvement District (BID); declaring Council's intention to levy an annual assessment for the Solano Avenue BID for calendar year 2006; and directing the City Clerk to schedule a public hearing for November 15, 2005, to consider levying a renewed assessment for the year 2006.

Financial Implications: Solano Avenue BID Funds - \$35,000

Contact: Thomas A. Myers, Economic Development, 981-7530

Action: Moved to Action by Councilmember Capitelli. Held over to October 25, 2005 by the City Manager.

Consent Calendar

- 11. Formal Bid Solicitations and Requests for Proposals**
From: City Manager
Recommendation: Approve the attached list of new invitations for bids and requests for proposals (RFPs) that will be issued upon final approval by the requesting department or division.
Financial Implications: Capital Improvement Fund - \$1,010,000
Contact: Fran David, Finance, 981-7300
Action: Approved recommendation.
- 12. Grant: Tobacco Cessation and Prevention Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$138,000 grant from the Alameda County Public Health Department for tobacco cessation, enforcement, and prevention services for the period July 1, 2005 to June 30, 2007 and execute any resultant revenue agreements and amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: Grant Revenue - \$138,000
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 63,077–N.S.
- 13. Contract: Update of a Community Choice Aggregation Pro Forma**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Navigant Consulting, Inc. to perform an update of a Community Choice Aggregation (CCA) pro forma in the amount of \$4,000, for a total contract amount not to exceed \$28,500.
Financial Implications: General Fund - \$4,000
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Resolution No. 63,078–N.S.
- 14. Abolition of Unused Classifications**
From: City Manager
Recommendation: Adopt a Resolution amending Section 1 of: 1) the Berkeley Police Association Classification and Salary Resolution No. 62,579-N.S.; 2) the Service Employees International Union Local 790 Classification and Salary Resolution No. 61,807-N.S.; 3) the Public Employees Union Local One Classification and Salary Resolution No. 61,840-N.S.; and 4) the Unrepresented Employees Classification and Salary Resolution No. 61,812 - N.S., to abolish 14 unused classifications.
Financial Implications: None
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,079–N.S.

Consent Calendar

- 15. Classification: Contract Administrator**
From: City Manager
Recommendation: Adopt a Resolution amending Section 1 of Resolution No. 61,840-N.S., Classification and Salary Resolution for Public Employees Union Local 1, to add the classification and salary range of Contract Administrator.
Financial Implications: General Fund - \$120,853
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,080–N.S.
- 16. Design Development Plans - Gilman Street Playing Fields**
From: City Manager
Recommendation: Adopt a Resolution supporting Design Development Plans for the Gilman Street Playing Fields Project in order to proceed with construction drawings
Financial Implications: State Parks Grants - \$325,881
Contact: Marc Seleznow, Parks Recreation & Waterfront, 981-6700
Action: Adopted Resolution No. 63,081–N.S.
- 17. Contract: Assessment and Analysis of Berkeley Creeks and Watershed**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Balance Hydrologics, Inc. to provide assessment and analysis of Berkeley creeks and watershed for a term of one year in an amount not to exceed \$100,000.
Financial Implications: Capital Improvement Fund - \$100,000
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Resolution No. 63,082–N.S.
- 18. Contract: Public Safety Building Janitorial Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Universal Building Services to provide janitorial services at the Public Safety Building in an amount not to exceed \$103,720 for the period November 1, 2005 to June 30, 2006; and approving options to extend the contract for two additional one-year periods in an amount not to exceed \$129,464 for FY 2007, and \$129,464 for FY 2008.
Financial Implications: Building Maintenance Fund - \$103,720 (FY 2006); \$258,928 (FY 2007-2008)
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,083–N.S. (Noes – Anderson, Worthington) as amended correcting the contract amounts to \$124,464 for FY 2007 and FY 2008.

19. Grant: Citywide Bicycle Parking Program

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to the County Program Manager Fund of the Bay Area Air Quality Management District's Transportation Fund for Clean Air (TFCA) grant program for funds in the amount of \$24,625 in FY 2006 for the City of Berkeley Citywide Bicycle Parking Program, accept the grant, and execute any resultant agreements and amendments.

Financial Implications: Grant Revenue - \$24,625; no matching funds required

Contact: Claudette R. Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,084–N.S.

20. Sale of Real Property: 2334 Sixth Street (*To be delivered*)

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 2344 Sixth Street to LifeLong Medical Care, Inc., for a sale price of \$2.2 million.

Financial Implications: See report

Contact: Claudette R. Ford, Public Works, 981-6300

Action: Adopted first reading of Ordinance. Second reading scheduled for October 25, 2005.

21. Support for the Coastal Environmental Motor Vehicle Mitigation Program

From: Councilmember Maio

Recommendation: Support and ask Governor Schwarzenegger to sign SB658 (Kuehl), the Coastal Environmental Motor Vehicle Mitigation Program.

Financial Implications: None

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

Action: Approved recommendation.

22. Disaster Preparedness

From: Councilmember Spring

Recommendation: Request: 1) the City Manager to invite the Disaster Preparedness Task Force to the November 15, Council workshop on disaster preparedness; 2) request that particular attention be directed to the special needs of the disabled, elderly and hospitalized residents in case of severe disasters; 3) request a representative of Easy Does It, to present what this organization is doing to assist the severely disabled in the case of disaster; and 4) request that the City Manager widely advertise this presentation as well as other planned classes and workshops on this topic to the public.

Financial Implications: None

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

Action: Councilmember Spring announced that the Disaster Preparedness Task Force workshop date has been rescheduled for December 6, 2005. Approved recommendation as amended.

23. Questions Regarding Radio Frequency Identification Devices

From: Councilmember Spring

Recommendation: Request the City Manager to send a letter to the City of Berkeley Library Director and the Library Board of Trustees requesting: 1) a response to the September 21, 2005 letter asking for a list of the actual and estimated costs of the Radio Frequency Identification Devices(RFID), including staff positions cut or unfilled since 2002; 2) questioning why the existing barcode system is not being used in lieu of RFID technology; and 3) requesting that the Library Board of Trustees seriously evaluate whether it is in the public's interest to continue with RFID technology in the Berkeley library.

Financial Implications: None.

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

Action: Moved to Action by Councilmember Wozniak. Held over to November 15, 2005 by Councilmember Spring.

24. Finance Customer Service Center Number Waiting System

From: Councilmember Worthington

Recommendation: Refer to the City Manager to evaluate the feasibility of installing a number waiting system so that the public, especially elderly and disabled persons, can wait in comfort at the Finance Customer Service Center.

Financial Implications: None

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

Action: Approved recommendation.

25. Proclamation Observing United Nations Day

From: Councilmember Worthington

Recommendation: Approve a proclamation in observance of United Nations Day 2005 on October 24, 2005.

Financial Implications: None

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

Action: Approved proclamation.

26. Status of the Elmwood Quota System

From: Councilmember Worthington

Recommendation: Refer the City Manager's report on the status of the Elmwood Quota System to the Planning Commission and include clarification of what is included in the Worthington referral to the Planning Commission.

Financial Implications: None

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

Action: Moved to Action by Councilmember Capitelli. Vote consolidated with Items 6 and 7. Moved, seconded carried (Worthington/Spring) to approve recommendation.

- 27. Support Commission Diversity**
From: Councilmember Worthington
Recommendation: Adopt a Resolution to: 1) encourage City Councilmembers to actively seek to fill vacant positions with consideration of the needs and benefits of a more representative and diverse commission roster; and 2) implement semi-annual reviews of its progress to determine if additional steps should be taken to ensure that these goals are met.
Financial Implications: None
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Moved to Action by Councilmember Wozniak. Held over to November 15, 2005 by Councilmember Worthington.
- 28. Support Sutter Health Employees**
From: Councilmember Worthington
Recommendation: Adopt a Resolution in support of Sutter Health employees at the California Pacific Medical Center and the Federal Mediator's proposed Settlement Agreement.
Financial Implications: None
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Held over to November 15, 2005 by Councilmember Worthington.
- 29. Demolition of B51 and the Bevatron at Lawrence Berkeley National Laboratory**
From: Councilmembers Wozniak, Moore and Maio
Recommendation: Recommend 1) that the City Council reaffirm its support for the full decommissioning, deconstruction and removal of the Bevatron; and 2) refer to the City Manager for review the Peace & Justice Commission resolution on the proposed demolition of B51 and the Bevatron and the Draft Environmental Impact Report (DEIR), when it is released later in the Fall of 2005. For this review, staff would have the benefit of the comprehensive analysis of the associated environmental and historical impacts in the DEIR.
Financial Implications: None.
Contact: Gordon Wozniak, Councilmember District 8, 981-7180; Darryl Moore, Councilmember District 2, 981-7120; Linda Maio, Councilmember District 1, 981-7110
Action: Held over October 25, 2005 by Councilmember Wozniak.
- 30. Revisions to the Proposed Land Use Posting Requirements**
From: Councilmember Wozniak
Recommendation: Recommend that the City Manager direct the Planning Department and the Planning Commission to consider modifying the public noticing requirements for proposed land-use actions in a manner such that effective notice to the public is maintained, but does not contribute to urban blight via unnecessary clutter on street light poles and other public places.
Financial Implications: See report.
Contact: Gordon Wozniak, Councilmember District 8, 981-7180
Action: Held over to October 25, 2005 by Councilmember Worthington.

Consent Calendar

31. Concert for Peace

a. From: Peace and Justice Commission

Recommendation: Adopt a Resolution endorsing the Concert for Peace to celebrate the United Nations 60th Anniversary and the 100th Anniversary of Dag Hammarskjöld's birth to be held October 23, 2005 at the Paramount Theatre at 7:00 p.m.

Financial Implications: None

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

Action: Adopted Resolution No. 63,085–N.S.

Action Calendar – Appeals

32. 1323 Kains Avenue

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Administrative Use Permit #04-20000171, to allow an 816 square-foot, second story addition to an existing single family residence, and dismissing the appeal.

Financial Implications: None

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

b. Appeal

1. Laura Riggs

c. Communications

1. Laura Riggs

Action: Moved, seconded (Maio/ Spring) to schedule a public hearing.

Moved, seconded, carried (Anderson/Olds; Noes – Maio, Spring, Wozniak; Abstain – Worthington) a substitute motion to adopt Resolution No. 63,086–N.S. affirming the decision of the Zoning Adjustments Board to approve Administrative Use Permit #04-20000171, to allow an 816 square-foot, second story addition to an existing single family residence, and dismissing the appeal.

33. 2901 Otis Street

a. From: City Manager

Recommendation: Review the appeal of the Zoning Adjustments Board decision regarding 2901 Otis Street, to approve: 1) a permit to remove roof and more than 50 percent of exterior walls of existing dwelling; 2) a permit to construct two additional dwelling units; and 3) an Administrative Use Permit to locate two parking spaces within 10 feet of rear windows of proposed building, and set for a public hearing.

Financial Implications: None

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

b. Appeal

1. David Ramin, Shari Ser and D. Mayeron

Action Calendar – Appeals

c. Communications

1. David Ramin, Shari Ser, D. Mayeron and Ross Blum

Action: The Mayor announced the votes for Items 33 and 34 would be consolidated. Moved, seconded, carried (Capitelli/Maio) a motion to set the appeal of the Zoning Adjustments Board and Landmarks Preservation Commission decisions for a public hearing on November 15, 2005.

34. 2901 Otis Street - Landmarks Preservation Commission Designation as Structure of Merit

a. From: City Manager

Recommendation: Review the appeal of Landmarks Preservation Commission decision to designate the building at 2901 Otis Street as a Structure of Merit, and set the matter for public hearing on November 15, 2005.

Financial Implications: None

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

b. Appeal

1. Eric Geleynse, Xin Jin and Danny Tran

Action: The Mayor announced the votes for items 33 and 34 would be consolidated. Moved, seconded, carried (Capitelli/Maio) a motion to set the appeal of the Zoning Adjustments Board and Landmarks Preservation Commission decisions for a public hearing on November 15, 2005.

35. 2170 Shattuck Avenue (To be delivered)

a. From: City Manager

Recommendation: Adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Administrative Use Permit #04-20000173 to establish a new quick-service restaurant at 2170 Shattuck Avenue with Modification #05-70000023 to eliminate required parking, and dismissing the appeal.

Financial Implications: None

Contact: Dan Marks, Planning and Development 981-7400

b. Appeal

1. Chris Tan

c. Communications

1. Chris Tan, GMSX LLC

Action: The City Manager's recommendation was moved to Consent by Councilmember Maio. Adopted Resolution No. 63,087–N.S. affirming the Zoning Adjustments Board (ZAB) decision to approve Administrative Use Permit #04-20000173 to establish a new quick-service restaurant at 2170 Shattuck Avenue with Modification #05-70000023 to eliminate required parking, 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 – Public Hearing

36. 2615 Marin Avenue - Appeal ZAB Decision Use Permit #03-10000069

a. From: City Manager *(September 13, 2005)*

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

b. From: City Manager *(July 19, 2005)*

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) approval of Use Permit #03-10000069, to construct a single-family dwelling, and dismissing the appeal.

Financial Implications: None.

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

c. Appeal

1. Matthew White
2. Kimberly Kline and Stephen Branam
3. Daphne and Georg Kalmar
4. Arvalea Nelson

d. Communications *(October 18, 2005)*

1. Matthew White
2. Bill Richmond
3. Daphne and George Kalmar

e. Supplemental Reports and Communications #1 *(September 13, 2005)*

52. Daphne and Georg Kalmar
53. Nora E. Wagner
54. Albert and Marian Magid
55. Daphne Kalmar and Kim Kline
56. Margot Klopp
57. Hap Klopp
58. John Lennie and Else C. Vellinga
59. Ann K. Bowman
60. Julie Gutzwiller
61. Gunnar Bjorklund
62. Robert and Jordan Stark
63. Paul and Cynthia Lane
64. Kimberley Kline (2)
65. Daphne Kalmar (3)

f. Communications *(July 19, 2005– numbering follows original sequence)*

1. Tom Cosgrove
2. David Richmond and Kelly Klopp Richmond
3. Matthew White
4. Arvalea Nelson
5. Kimberly Kline

Action Calendar – Public Hearing

g. Supplemental Reports and Communications #1 (*July 19, 2005– numbering follows original sequence*)

29. Georg and Daphne Kalmar, Kimberly Kline and Stephen “Hopper” Branam (3)
30. Kimberly Kline and Georg Kalmar
31. Kimberly Kline (3)
32. Herbert and Emilie Steiner
33. Dave Richmond
34. Rena Rickles
35. Petition with 64 signatures, submitted by Kimberly Kline

Public Testimony: The Mayor opened the public hearing. Nine speakers. Moved, seconded, carried (Anderson/Worthington) to close the public hearing.

Action: Councilmember Capitelli announced that he would recuse himself. The City Attorney noted that Councilmember Capitelli had voted on this matter when he was on the Zoning Adjustments Board. Moved, seconded, carried (Spring/Maio; Abstain – Moore, Anderson; Absent – Capitelli) to adopt Resolution No. 63,088–N.S. as amended by Councilmember Spring to reduce the maximum elevation one foot; and, retain all conditions specified by the Zoning Adjustments Board (ZAB) when it approved Use Permit #03-10000069, to construct a single-family dwelling, 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*

37. Amendments to the General Plan Housing Element Appendix Per Council Resolution No. 61,955-N.S.

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending the General Plan Housing Element Appendix as recommended by the Planning Commission.

Financial Implications: Minor administrative costs.

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

Public Testimony: The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Wozniak/ Worthington) to close the public hearing.

Action: Moved, seconded, carried (Wozniak/Worthington; Noes – Spring) to adopt Resolution No. 63,089–N.S. amending the General Plan Housing Element Appendix as recommended by the Planning Commission.

Action Calendar – Public Hearing

38. Gilman Street Playing Fields: Waterfront Specific Plan/General Plan/Zoning Ordinance Amendments, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan
From: City Manager

Recommendation: Conduct a public hearing and upon conclusion: 1) adopt a Resolution: a) adopting the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Plan (MMRP) for the proposed General Plan/Waterfront Specific Plan Amendment, Zoning Ordinance Amendment and proposed Gilman Street Playfields Project; and b) amending the Berkeley Waterfront Specific Plan and by reference the Berkeley Waterfront Plan Amendment to the City's Master Plan, and thereby amending the General Plan (which incorporates these documents by reference), establishing an "as of right" use for public or commercial recreation sports facilities and establishing that this use would be exempt from the requirements for a Master Development Plan (MDP); and 2) adopt the first reading of an Ordinance amending the Zoning Ordinance, Berkeley Municipal Code (BMC) Section 23E.88.030, to clarify that where the Specific Plan exempts a permitted use from the requirements of a Master Development Plan and Use Permit, the use is subject to Zoning Conformance procedures as set forth in BMC Chapter 23B.20.

Financial Implications: See report

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

Public Testimony: The Mayor opened the public hearing. One speaker. Moved, seconded, carried (Wozniak/Worthington) to close the public hearing.

Action: Moved, seconded, carried (Wozniak/Maio) to adopt Resolution No. 63,090–N.S. and to adopt the first reading of Ordinance. Second reading scheduled for October 25, 2005.

Action Calendar – Old Business

39. Disappearing Newsracks and the Constitutionality and Practicality of the Interpretation and Implementation of Newsrack Regulations (*Held over from September 27, 2005*)

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 November 15, 2005 by Councilmember Worthington.

Action Calendar – New Business

40. Amendment to the Condominium Conversion Ordinance

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 21.28, Condominiums, Community Apartments, Stock Cooperatives and Tenancy in Common Projects.

Financial Implications: See report.

Contact: Stephen Barton, Housing, 981-5400

Action: Moved, seconded, failed (Capitelli/Wozniak; Noes – Maio, Anderson, Spring, Worthington, Bates; Abstain – Moore) a substitute motion to adopt first reading of the Ordinance and incorporate “Tenant Protection Alternative No. 1” and include the disabled in this language.

Moved, seconded, carried (Worthington/Maio; Noes – Capitelli, Olds, Wozniak) to adopt first reading of the Ordinance incorporating “Duplex Alternative No. 2” and “Tenant Protection Alternative No. 2” provided they comply with tenant protection section 21.28.050A. Second reading scheduled for October 25, 2005.

41. Potentially Hazardous Soft, Weak, or Open Front Story Buildings

From: City Manager

Recommendation: Adopt first reading of an Ordinance amending the Berkeley Municipal Code (BMC) to add Chapter 19.39, establishing an Inventory of Potentially Hazardous Soft, Weak, or Open Front Story Buildings and adopting Chapter A4 of the 2003 International Existing Building Code and Amendments.

Financial Implications: See report

Contact: Dan Marks, Planning and Development 981-7400

Action: Moved, seconded, carried (Olds/Maio) to adopt first reading of Ordinance. Second reading scheduled for October 25, 2005.

42. Commission Websites

a. From: Parks and Recreation Commission

Recommendation: Direct the City Manager to direct staff to encourage all willing commission chairpersons to allow electronic posting of their email addresses to the City website.

Financial Implications: Staff time

Contact: Virginia Aiello, Secretary, 981-5158

b. From: City Manager

Recommendation: Refer this issue to the City Manager for consideration and response at a later date.

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

Action: The City Manager’s recommendation was moved to Consent by Councilmember Wozniak.

Information Reports

43. **Support for Mayor's FY2006 Budget Amendments**
From: Homeless Commission
Contact: Oscar Sung, HAC Secretary, 981-5410 and Kristen Lee, HWCAC Secretary, 981-5427
Action: Received and filed.
44. **Unrepresented Temporary Employees Information Report**
From: City Manager
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Received and filed.

Communications

Gilman Street Playing Fields: Waterfront Specific Plan/General Plan/Zoning Ordinance Amendments, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan

1. Supplemental report, submitted by Planning and Development

AB 1690 and the City/UC Settlement

2. Julie Sinai, Office of the Mayor

Radiofrequency in Berkeley Public Libraries Program

3. SuperBerkeleyans Organizing for Library Defense

Thank You Letter to President Hugo Chavez

4. Leuren Moret

Train Noise

5. Seth Fleisher

Brown Act Violations

6. Jane Welford, SuperBOLD

California Records Act Request

7. Jane Welford, SuperBOLD

Dovers Sales/Precision Technical Coatings Site Cleanup

8. Gilman Alliance (3)

Unfunded Pension Liability

9. Barbara Gilbert

Hurricane Katrina and the Role of Government

10. Barbara Gilbert

Realtor Business License Tax

11. Barbara Gilbert (*Spring*)

UC Berkeley Salaries

12. Barbara Gilbert

Communications

Former Councilmember Maudelle Shirek

13. Barbara Gilbert

Withdrawal of California National Guard Troops from Iraq – Response to September 13, 2005 Council Item

14. Congressman Henry A. Waxman

New York City Preservation of Single-Family Homes and Neighborhoods

15. Barbara Gilbert

Amendments to the General Plan Housing Element Appendix Per Council Resolution No. 61,955-N.S.

16. Martha Nicoloff

ACA 5: PERS Defined Contribution – Response to April 25, 2005 Council Item

17. Senator Don Perata

Potentially Hazardous Soft, Weak, or Open Front Story Buildings

18. Andrew T. Merovich, Structural Engineers Association of Northern California, submitted by Ken Miles

Supplemental Reports and Communications #1

Item 2: Minutes for Approval

19. Revised September 19, 2005 minutes (closed), submitted by the City Clerk's Office

Item 16: Design Development Plans - Gilman Street Playing Fields

20. Rio Bauce

Item 23: Questions Regarding Radio Frequency Identification Devices

21. Nancy Schimmel

22. Cynthia Johnson, Social Justice Committee of the Berkeley Unitarian Universalists Fellowship Social Justice Committee

23. Charlene Woodcock

Item 25: Proclamation Observing United Nations Day

24. Letter of support, submitted by the Peace and Justice Commission

Item 27: Support Commission Diversity

25. Sharon Hudson

Item 30: Revisions to the Proposed Land Use Posting Requirements

26. Sharon Hudson (see communication number 23)

Item 32: 1323 Kains Avenue

27. Borja Family

Item 33: 2901 Otis Street

28. Robert Lauriston

Item 36: 2615 Marin Avenue - Appeal ZAB Decision Use Permit #03-10000069

29. John Lennie and Else C. Vellinga

Supplemental Reports and Communications 1

Item 39: Disappearing Newsracks and the Constitutionality and Practicality of the Interpretation and Implementation of Newsrack Regulations

30. Sharon Hudson (see communication number 23)

Item 41: Potentially Hazardous Soft, Weak, or Open Front Story Buildings

31. Keith Knudsen, Earthquake Engineering Research Institute, Northern California Chapter

Supplemental Reports and Communications #2

Item 23: Questions Regarding Radio Frequency Identification Devices

32. Rebecca Penn

Item 36: 2615 Marin Avenue - Appeal ZAB Decision Use Permit #03-1000069

33. Kimberly Kline

Item 40: Amendment to the Condominium Conversion Ordinance

34. Recommendation, submitted by the Rent Stabilization Board

Supplemental Reports and Communications #3

Item 27: Support Commission Diversity

35. Resolution, submitted by Councilmember Worthington

Item 32: 1323 Kains Avenue

36. Laura Riggs

Item 36: 2615 Marin Avenue - Appeal ZAB Decision Use Permit #03-1000069

37. Daphne Kalmar

Item 38: Gilman Street Playing Fields: Waterfront Specific Plan/General Plan/Zoning Ordinance Amendments, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan

38. L A Wood

Adjournment

Adjourned at 12:22 p.m. in honor of Anna Kael Wallace.