

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 25, 2005

7:00 P.M.

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

Preliminary Matters

Roll Call: 7:32 p.m. All present.

Ceremonial Matters:

1. Proclamation declaring October 23 through October 29, 2005 National Childhood Lead Poisoning Prevention Week in the City of Berkeley.
2. Mayor Bates announced that the City of Berkeley will celebrate Veterans Day on November 11, 2005.

City Manager Comments:

1. A town hall meeting will be convened on November 10, 2005 at the St. Paul AME Church, 2024 Ashby, to discuss health and programs focused on high blood pressure.
2. On October 22, 2005 the City conducted a successful disaster preparation workshop. Additional workshops will be held on November 5, 2005 from 10-12 at the West Berkeley Senior Center and on December 10, 2005 from 10-12 at the North Berkeley Senior Center.

Public Comment: 11 speakers.

Consent Calendar

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

1. **Sale of Real Property: 2344 Sixth Street** (*First Reading October 18, 2005 – Unanimous*)
From: City Manager
Recommendation: Adopt the second 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 Ordinance No. 6,880–N.S. Effective November 24, 2005.

Consent Calendar

- 2. Gilman Street Playing Fields** *(First Reading October 18, 2005 – Unanimous)*
From: City Manager
Recommendation: Adopt second 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:
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Ordinance No. 6,881–N.S. Effective November 24, 2005.
- 3. Amendment to the Condominium Conversion Ordinance**
(First Reading as amended October 18, 2005. Noes – Capitelli, Olds and Wozniak)
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 as amended to incorporate “Duplex Alternative No. 2” and “Tenant Protection Alternative No. 2” provided they comply with tenant protection section 21.28.050A.
Financial Implications: See report.
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Ordinance No. 6,882–N.S. Effective November 24, 2005.
- 4. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meeting of September 19, 2005 (closed).
Financial Implications: None.
Contact: Sara T. Cox, City Clerk, 981-6900
Action: Approved minutes.
- 5. Borrowing of Funds and the Sale and Issuance of FY 2006 Tax and Revenue Anticipation Notes**
From: City Manager
Recommendation: Adopt a Resolution providing for the borrowing of \$25,000,000 and the sale and issuance of FY 2006 Tax and Revenue Anticipation Notes.
Financial Implications: General Fund - \$25,000,000
Contact: Fran David, Finance, 981-7300
Action: Adopted Resolution No. 63,091–N.S.
- 6. Formal Bid Solicitations & Request for Proposals**
From: City Manager
Recommendation: Approve the attached request for proposal that will be, or is planned to be, issued upon final approval by the requesting department or division.
Financial Implications: Measure Q Funds - \$500,000
Contact: Fran David, Finance, 981-7300
Action: Approved recommendation.

7. Contract: Shelter Plus Care Grant for the Homeless

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a revenue contract and any subsequent amendments with the Alameda County Housing and Community Development Department for the purposes of receiving Federal Department of Housing and Urban Development (HUD) funds to implement a new Shelter Plus Care grant for chronically homeless individuals in Berkeley in an amount not to exceed \$747,120 for a five-year period beginning with the date of execution of a contract with Alameda County Housing and Community Development Department.

Financial Implications: Grant Revenue - \$747,120

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,092–N.S.

8. Winter Homeless Shelter Programs

From: City Manager

Recommendation: Adopt a Resolution authorizing: 1) the City Manager to enter into a Memorandum of Understanding with the City of Oakland Department of Human Services and execute subsequent amendments as necessary for the Winter Shelter Program at the Oakland Army Base; 2) payment not to exceed \$42,000 for transportation for residents to and from the Winter Shelter; and 3) payment of up to \$14,642 to provide vouchers to homeless households for emergency housing at local motels and the Berkeley YMCA.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,093–N.S.

9. License: Use of Building at 91 Bolivar Drive, Aquatic Park, by Fix Our Ferals

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a license with Fix Our Ferals for short-term use of the Rod and Gun Club, a vacant Aquatic Park building at 91 Bolivar Drive, as a pre and post sterilization recovery room for free-roaming cats for the period November 1, 2005 to March 31, 2006.

Financial Implications: Minimal

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

Action: Moved to Action by Councilmember Moore. Moved, seconded, carried (Moore/Worthington; Absent – Maio). Adopted Resolution No. 63,094–N.S. with a stipulation by Councilmember Moore to limit the lease to a six-month period.

10. Contract: On-Call Traffic Engineering Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Korve Engineering for on-call traffic engineering services in an amount not to exceed \$40,000 for the period November 1, 2005 to October 31, 2007.

Financial Implications: Capital Improvement Fund - \$40,000

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

Action: Adopted Resolution No. 63,095–N.S.

Consent Calendar

- 11. Contract Amendment and Purchase/Operations Agreement: Phase 2 of the Parking Pay Station Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment of \$242,172 plus \$50,000 per year over five years to the agreement with Cale Parking Systems USA, Inc., for Phase 2 implementation of parking pay stations, to install pay and display stations in the North Shattuck and Southside areas, and cover associated costs for the 5-year term of the agreement.
Financial Implications: Parking Meter Fund - \$292,172 plus \$50,000 over five years
Contact: Claudette R. Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,096–N.S.
- 12. Purchase Order: Vehicle Replacement**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with San Francisco Toyota in an amount not to exceed \$137,854 to purchase six Toyota Prius Hybrid vehicles for the City of Berkeley fleet.
Financial Implications: Equipment Replacement Fund - \$137,854
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,097–N.S.
- 13. Transportation Commission: Comments on the Gilman at Curtis Intersection (CF 14-05)**
From: City Manager
Recommendation: Concur with Transportation Commission recommendation supporting improvements made by staff in 2005 to enhance pedestrian and bicycle safety by highlighting the crosswalks at the Gilman Street and Curtis Street intersection.
Financial Implications: None
Contact: Claudette R. Ford, Public Works, 981-6300
Action: Approved recommendation.
- 14. Proposed Amendment No. 1 to Alameda County Measure B Expenditure Plan**
From: City Manager
Recommendation: Adopt a Resolution endorsing the Alameda County Transportation Authority's (ACTA) proposed Amendment No. 1 to the 1986 Alameda County Measure B Transportation Expenditure Plan, which is required by law to be approved by 14 ACTA member cities representing a majority of the County population.
Financial Implications: None
Contact: Claudette R. Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,098–N.S.

Consent Calendar

15. Improve Healthy Food and Physical Activity Options

From: Mayor Bates

Recommendation: Adopt a Resolution endorsing the Strategic Alliance "Taking Action for a Healthier California: Recommendations to Improve Healthy Food and Activity Options" and beginning implementation of the following two recommendations: 1) ensure that a significant percentage of prepared and vending machine foods sold at worksites are healthy and affordable; and 2) encourage physical activity through such practices as encouraging stairway use, providing bike racks, providing lockers and showers, and offering flextime or breaks for physical activity.

Financial Implications: See report

Contact: Tom Bates, Mayor, 981-7100

Action: Adopted Resolution No. 63,099–N.S.

16. Tobacco Prevention Policies

From: Mayor Bates

Recommendation: Refer the following three issues to the Community Health Commission for further investigation, with a request to return to Council by June 2006 with specific policy recommendations that would reduce the life threatening impacts of smoking and second-hand smoke and tobacco industry promotions to young adults: 1) eliminate tobacco industry bar nights in Berkeley; 2) include second-hand smoke in Berkeley's General Nuisance ordinance; and 3) require new, publicly funded, multi-unit housing developments to be smoke-free, and request that the City Attorney research and inform the Council on whether it has the legal authority to prohibit smoking in cars that are transporting children in the city limits.

Financial Implications: Staff time

Contact: Tom Bates, Mayor, 981-7100

Action: Moved to Action by Mayor Bates. Moved, seconded, carried (Worthington/Moore; Absent – Maio) to approve the recommendation as amended to include Police Department review.

Action Calendar – Appeals

17. 1732-34 La Vereda Road - Appeal ZAB Decision Use Permit # 03-20000117

a. From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Administrative Use Permit 03-20000117 to construct a single-story, 977 square-foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road and dismissing the appeal.

Financial Implications: None

Contact: Dan Marks, Planning and Development, 981-7411

b. Appeal

1. Leo Simon, Michael Weiss and Lynn Knight, Bob and Sharon Zentner, and Jan and Jeanne de Vries

c. Communications

1. None.

Action: Councilmember Capitelli announced that he voted on this item as a member of the Zoning Adjustments Board, and he would recuse himself. Moved to Consent by Councilmember

Action Calendar – Appeals

Worthington (Absent – Maio, Capitelli) to adopt Resolution No. 63,100–N.S. affirming the decision of the Zoning Adjustments Board (ZAB) to approve Administrative Use Permit 03-20000117 to construct a single-story, 977 square-foot accessory structure (3 car garage with two spaces in tandem to serve 1732 La Vereda Road) on a vacant lot at 1734 La Vereda Road 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

18. Potentially Hazardous Soft, Weak, or Open Front Story Buildings (*First Reading October 18, 2005 – Unanimous*)

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt second 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

Public Testimony: The Mayor opened the public hearing. 1 speaker. Moved, seconded, carried (Anderson/Worthington) to close the public hearing.

Action: Moved, seconded, carried (Spring/Worthington; Abstain – Capitelli; Absent – Maio) to adopt Ordinance No. 6,883–N.S.

Action Calendar – Old Business

19. Solano Avenue Business Improvement District (*Held over as amended from 10/18/05*)

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 Consent by Councilmember Worthington. Adopted Resolution No. 63,101–N.S. (Absent - Maio).

Action Calendar – Old Business

20. **Revisions to the Proposed Land Use Posting Requirements** *(Held over from 10/18/05)*

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: Moved, seconded, carried (Wozniak/Capitelli; Absent – Maio) a motion to refer the item to the City Manager and Planning Commission to consider modifying public noticing requirements by creating an official requirement for yellow signs and suggestions included in a letter from Steve Wollmer dated October 25, 2005.

Action Calendar – New Business

21. **Amending “By Right” Residential Additions and Definition of a Story in the Zoning Ordinance**

From: Councilmembers Olds and Wozniak

Recommendation: Refer to the Planning Commission the following issue for discussion and return to the City Council within 120 days with recommendations for proposed modifications to the language of the Zoning Ordinance: 1) an addition of up to 700 sq. ft within the required setbacks be permitted on the first floor of a residence, by right with a zoning certificate; 2) an addition of up to 500 sq ft. to a second story and higher stories require an Administrative Use Permit; 3) clarify the language in the Zoning Ordinance on how many feet constitute a story in residential construction.

Financial Implications: None.

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

Action: Referred to the City Manager to research issues involving the preparation and implementation of an interim moratorium until the Planning Commission comes back to the City Council with a recommendation, and held over to the meeting of November 15, 2005.

22. **Bevatron at Lawrence Berkeley National Laboratory**

a. From: Councilmembers Wozniak, Moore and Maio *(Held over from October 18, 2005)*

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 Calendar – New Business

b. From: Peace and Justice Commission (*October 25, 2005*)

Recommendation: Adopt a Resolution recommending that the City Council request: 1) the Department of Energy, the Lawrence Berkeley National Laboratory and their managing agency, the University of California, to continue with their original plan to preserve the Bevatron Facility as a place of merit on the National Register of Historic Places for the benefit of future interested individuals and students of science, history and architecture; and 2) that the \$85 million budgeted for the demolition of the Bevatron be primarily redirected to the decontamination of toxic underground plumes at Lawrence Berkeley National Laboratory as promised with enough spared to complete the conversion of the accelerator facility for safe public access.

Financial Implications: None

Contact: Manuel Hector, Secretary, 981-5110

c. From: City Manager (*October 25, 2005*)

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

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

Action: Moved, seconded, carried (Worthington/Wozniak; Absent – Maio) to refer the City Manager and Peace and Justice recommendations back to the City Manager to provide an opportunity to review the Draft Environmental Impact Report and report back to council with a recommendation.

Information Reports

23. Transfer Station Cash Receipts/Cash Handling Audit Status Report

From: City Manager

Contact: Fran David, Finance, 981-7300

Action: Received and filed.

24. Landmarks Preservation Commission Notice of Decision: 91 Shattuck Square - Approval of Structural Alteration Permit

From: City Manager

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

Action: Received and filed.

25. 2113-2119 Delaware Street, Certification of Tentative Tract Map 7575

From: City Manager

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

Action: Received and filed.

26. 1728 - 1730 Hearst Avenue, Certification of Tentative Tract Map 7587

From: City Manager

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

Action: Received and filed.

Communications

The Ephemeral City

1. Barbara Gilbert

Train Noise

2. Mark Gilbert

Antennae on the Oaks Theater

3. Connie and Kevin Sutton

Downtown Area Plan Committee *(Spring)*

4. Sylvia McLaughlin, Citizens for East Shore Parks; Jane and Tom Kelly, Kyoto USA, Robert Hass, UC Berkeley; John Steere, Berkeley Partners for Parks; Martin Bourque, Ecology Center, Susan Schwartz, Friends of Five Creeks; Kitty McLean, Sierra Club, SF Bay Chapter; Hank Resnik, Bicycle-Friendly Berkeley Coalition; Mark Baldrige, Watershed Environmental Poetry Festival; Kirstin Miller, Eco City Builders; Zelda Bronstein; Ernest Callenbach; John Coveney; Arjun and Diana Divecha; Sue Olive; Fran Segal, Friends of Westbrae Commons; Juliet Lamont, Sierra Club Bay Chapter; and Elyce Judith, Committee to Restore Strawberry Creek, submitted by Elyce Judith

Supplemental Reports and Communications #1

Item 3: Amendment to the Condominium Conversion Ordinance

5. Revised Ordinance, submitted by the Housing Department
6. Stephen Wollmer

Item 9: License: Use of Building at 91 Bolivar Drive, Aquatic Park, by Fix Our Ferals

7. Revised Exhibit A, submitted by Parks Recreation and Waterfront

Item 17: 1732-34 La Vereda Road - Appeal ZAB Decision Use Permit # 03-20000117

8. Jeannie de Vries
9. Rena Rickles

Item 18: Potentially Hazardous Soft, Weak, or Open Front Story Buildings

10. Jeanne Perkins, on behalf of the Association of Bay Area Governments Earthquake and Hazards Program

Item 21: Amending "By Right" Residential Additions and Definition of a Story in the Zoning Ordinance

11. Andy Katz

Item 22: Bevatron at Lawrence Berkeley National Laboratory

12. Senta Pugh Chamberlain on behalf of Owen Chamberlain

Supplemental Reports and Communications #2

Item 5: Borrowing of Funds and the Sale and Issuance of FY 2006 Tax and Revenue Anticipation Notes

13. Revised Resolution, submitted by the Finance Department

Item 15: Improve Healthy Food and Physical Activity Options

14. Strategic Alliance Promoting Food and Activity Environments

Item 17: 1732-34 La Vereda Road - Appeal ZAB Decision Use Permit # 03-20000117

15. Rena Rickles
16. Dan Miller

Item 18: Potentially Hazardous Soft, Weak, or Open Front Story Buildings

17. Dana C. Tsubota, Miller Starr & Regalia

Item 20: Revisions to the Proposed Land Use Posting Requirements (Held over from 10/18/05)

18. Stephen Wollmer

Adjournment

Adjourned at 9:03 p.m. in honor of Rosa Parks.