

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, DECEMBER 6, 2005

7:00 P.M.

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

Preliminary Matters

Roll Call: 7:09 p.m. All present.

Ceremonial Matters:

1. Proclamation honoring Sherry Smith, former chair of the Civic Arts Commission, for her advocacy of the arts in Berkeley.
2. Proclamation honoring the 25th anniversary of the library's Berkeley Information Network.
3. An event honoring Maudelle Shirek will be held on December 10, 2005 at St. Paul Church.
4. A series of Community Emergency Response Training sessions will be held during the months of January and February.

City Manager Comments: None.

Public Comment: 16 speakers.

Youth Comments: 13 speakers.

Consent Calendar

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

1. **Amendment to FY 2006 Annual Appropriations Ordinance** (*First Reading November 29, 2005 – Unanimous*)

From: City Manager

Recommendation: Adopt second reading of an Ordinance amending the FY 2006 Annual Appropriations Ordinance No. 6,862–N.S. for FY 2006 based upon recommended re-appropriation of committed FY 2005 funding and other adjustments authorized since July 1, 2005, in the amount of \$47,798,568 (gross) and \$45,204,917 (net).

Financial Implications: See report

Contact: Phil Kamlarz, City Manager, 981-7000

Action: Adopted Ordinance No. 6,886–N.S. Effective January 5, 2005.

Consent Calendar

- 2. Administrative Fees - Inclusionary Housing Program** (*First Reading November 29, 2005 – Unanimous*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 23C.12.100, which authorizes the City Council to set fees by Council Resolution.
Financial Implications: None
Contact: Stephen Barton, Housing, 981-5400
Action: Adopted Ordinance No. 6,887–N.S. Effective January 5, 2005.
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meeting of November 15, 2005 (regular).
Financial Implications: None.
Contact: Sara T. Cox, City Clerk, 981-6900
Action: Approved minutes.
- 4. 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. 63,136–N.S.
- 5. Initiating a Two-Year Civic Arts Grant Cycle**
From: City Manager
Recommendation: Adopt a Resolution initiating a two-year Civic Arts Grant Cycle instead of the current one-year cycle.
Financial Implications: None
Contact: Thomas A Myers, Economic Development, 981-7530
Action: Adopted Resolution No. 63,125–N.S.
- 6. Emergency Standby Officers and Designated Line of Succession for Director of Emergency Services**
From: City Manager
Recommendation: Adopt two Resolutions: 1) confirming the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 62,317-N.S.; and 2) approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 62,318-N.S.
Financial Implications: None
Contact: Debra Pryor, Fire and Emergency Services, 981-3473
Action: Adopted Resolution No. 63,126–N.S. as amended and Resolution No. 63,127–N.S.

- 7. Lease: 1013 Pardee Street, No. 105**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing a new one-year lease from September 1, 2005 to August 31, 2006 for an existing warehouse at 1013 Pardee Street, No. 105 (alternate address of 2700 10th Street) that has been rented by the City on a month-to-month basis since the original multi-year lease expired with Asia Young Fountain Group Inc. for the storage of fire and police equipment, emergency supplies and equipment.
Financial Implications: Bond Measure Q - \$128,844
Contact: Debra Pryor, Fire and Emergency Services, 981-3473
Action: Adopted first reading of Ordinance. Second reading scheduled for December 13, 2005.
- 8. Purchase Order: Self Contained Breathing Apparatus**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order and any amendments with Scott Health and Safety to purchase Self Contained Breathing Apparatus equipment for the Berkeley Fire Department through a Federal Emergency Management Agency grant from August 18, 2005 through August 17, 2006 in an amount not to exceed \$320,000.
Financial Implications: FEMA Grant - \$214,884; General Fund - \$105,116
Contact: Debra Pryor, Fire and Emergency Services, 981-3473
Action: Adopted Resolution No. 63,128–N.S.
- 9. Contract: Services for Sustainable Berkeley**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract amendment with Natural Logic, Inc. to increase the amount by \$12,000, for a new amount not to exceed \$36,000, for consulting services to assist the City in leveraging resources to meet its stated sustainability goals from September 30, 2005 to December 31, 2006.
Financial Implications: General Fund - \$12,000
Contact: Stephen Barton, Housing, 981-5400
Action: Removed from Consent by Councilmember Spring. Moved, seconded, carried (Spring/Worthington) to adopt Resolution No. 63,129–N.S.
- 10. Infrastructure Maintenance Manager Revised Salary Range**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 61,812–N.S., Classification and Salary Resolution for Unrepresented Employees, to increase the salary range of Infrastructure Maintenance Manager and repeal the salary recommendation portions of Resolution No. 63,006–N.S.
Financial Implications: Sanitary Sewer Operation Fund - \$25,474
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,130–N.S.

Consent Calendar

11. Side Letter of Agreement - Hazardous Materials Specialist II

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with SEIU Local 535 to modify existing terms and conditions of employment and to provide a 2 percent salary differential to employees in the classification of Hazardous Materials Specialist II who obtain and maintain an International Codes Council Underground Storage Tank Inspector certificate effective September 1, 2005.

Financial Implications: Certified Unified Program Agency Fund - \$7,500

Contact: David W. Hodgkins, 981-6805

Action: Adopted Resolution No. 63,131–N.S.

12. Grant Extension: 9th Street Bicycle Boulevard Extension

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to sign a Cooperative Work Agreement with Caltrans, extending the City's \$500,000 Bicycle Transportation Account grant for construction of the 9th Street Bicycle Boulevard Extension until 2011.

Financial Implications: See report

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

Action: Adopted Resolution No. 63,132–N.S.

Action Calendar – Public Hearing

13. 1532 Martin Luther King, Jr. Way - Use Permit No. 04-1000079

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 04-1000079 to demolish an existing dwelling unit in order to construct three dwelling units, and dismissing the appeal.

Financial Implications: None

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

b. Appeals

1. Kiran and Laura Singh, Emma Davenport, Gabriel and Jennifer Griego, Kim Kruckel and Danny Baptista, Gus Baldauf and Ashley Hamlett

c. Communications

1. Wallace Whittier

Public Testimony: The Mayor opened the public hearing. 10 speakers. Moved, seconded, carried (Anderson/Moore) to close the public hearing.

Action: Moved, seconded, failed (Spring/Maio; Noes–Moore, Capitelli, Olds, Wozniak, Bates; Abstain–Anderson, Worthington) a substitute motion to hold over the Council's decision to the meeting of December 13, 2005 to allow both parties the opportunity to discuss the possibility of reducing the size of the second story unit to lessen the impacts of shadowing to the property located at 1530 Martin Luther Kind, Jr. Way.

Moved, seconded, carried (Wozniak/Olds; Noes–Maio, Spring) to adopt Resolution No. 63,133–N.S. affirming the decision of the Zoning Adjustments Board to approve Use Permit

Action Calendar – Public Hearing

No. 04-10000079 to demolish an existing dwelling unit in order to construct three dwelling units, and dismissing the appeal with the following conditions: 1) all efforts be made to ensure the survival of the lemon tree at the rear of the property; 2) directing the Zoning Officer to determine the precise dimensions sufficient to provide the property owner at 1530 Martin Luther King, Jr. Way the ability to open a car door on the property's driveway; 3) providing a six-month period from the beginning of construction to allow the owner of the property at 1530 Martin Luther King, Jr. Way to consider the offer of the builder to install a skylight in the home; and 4) striking the language "because they are located in the Berkeley flatlands" from Section D of the General Non-Detriment Finding portion of the staff report.

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

14. Survey to Identify Sources for Increasing Fees for Lead Abatement Services (*Held over as amended from November 15, 2005*)

From: Councilmember Olds

Recommendation: Discuss the request from the Alameda County Lead Abatement Program to contribute \$10,000 to the cost of a survey to be conducted by Tramutola and Godbe research to identify voter sentiment on raising fees for lead abatement programs in Alameda County.

Financial Implications: \$10,000

Contact: Betty Olds, Councilmember District 6, 981-7160

Action: Discussion held. Moved, seconded, carried (Moore/Anderson) to hold over to the budgetary discussion scheduled for the meeting of December 13, 2005.

Action Calendar – New Business

15. Renaming Old City Hall (*To be delivered*)

From: Councilmembers Anderson and Moore

Recommendation: Adopt a Resolution renaming Old City Hall in honor of Maudelle Shirek.

Financial Implications: None

Contact: Max Anderson, Councilmember District 3, 981-7130 and Darryl Moore, Councilmember District 2, 981-7120

Action: Moved to Consent by Councilmember Anderson. Adopted Resolution No. 63,134–N.S.

16. Derby Street Athletic Field

a. From: Parks and Recreation Commission

Recommendation: Adopt a Resolution endorsing the Berkeley Unified School District's request to work together to close Derby Street between Martin Luther King Jr. Way and Milvia Street in order to create a multipurpose athletic field, including a regulation baseball diamond.

Financial Implications: None

Contact: Virginia Aiello, Secretary, 981-5158

b. From: City Manager

Recommendation: Adopt a Resolution: 1) supporting in concept playing fields on the East Campus site; 2) advising the Berkeley Unified School District that the City cannot take formal action on the closure of Derby Street until the District has completed its environmental review of the playing fields project; 3) encouraging the District to proceed with options for closing Derby Street and leaving it open; 4) informing the District of the City's street vacation process; 5) agreeing to work with the District and the community to raise funds and reduce the costs of the project; and 6) supporting a phased approach to playing field development.

Financial Implications: No City funds are currently budgeted for this project.

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

Action: Moved, seconded, carried (Worthington/Maio) to approve the City Manager's recommendation. Adopted Resolution No. 63,135–N.S. as amended to replace the enabling clause as proposed by the Mayor in a supplemental report and further amended as follows: 1) changing the language in Clause 7 to "Recognizing the important civic and educational accomplishments of the South Berkeley Farmers Market and advising the Berkeley Unified School District to accommodate plans that encourage the farmers market needs if there is a change in use;" 2) inserting the words "and/or multi-purpose field" after the words "baseball field" in Clause 2; and 3) replacing the words "securing funding" with "outlining a program for securing funding" in Clause 6.

17. Nanotechnology Safety Procedures at Lawrence Berkeley Lab

a. From: Community Environmental Advisory Commission

Recommendation: Direct the City Manager to request that the Lawrence Berkeley National Laboratory (LBNL) provide updated information to the community regarding future nanotechnology activities that will take place at LBNL's Molecular Foundry.

Financial Implications: None

Contact: Nabil Al-Hadithy, Secretary, 981-7461

b. From: City Manager

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

Contact: Dan Marks, Planning, 981-7400

Action: Moved, seconded, failed (Worthington/Spring; Noes–Olds, Wozniak, Bates; Abstain–Maio, Moore, Capitelli) a substitute motion to include both the questions recommended by the Community Environmental Advisory Commission and those proposed by the Mayor in a supplemental report.

Moved, seconded, carried (Wozniak/Moore) to approve the recommendation substituting the original questions provided by the Community Environmental Advisory Commission with those proposed by the Mayor in a supplemental report.

Action Calendar – New Business

18. Transportation Services Fee (CF 69-01)

a. From: City Manager

Recommendation: Discuss the proposal to establish a requirement that applicants for residential and commercial development projects located throughout the City mitigate a portion of the project's impacts on transportation facilities and services through payment of a Transportation Services Fee; and set a public hearing date for adoption of the Transportation Services Fee at the Council meeting on February 21, 2006.

Financial Implications: Increased revenue

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

b. From: Transportation Commission

Recommendation: Approve the Transportation Services Fee Nexus Study Report (October 2005) and set a public hearing, with a goal of Council adoption of the fee in February 2006 and consider the following: 1) levy the Transportation Services Fee (TSF) on a per-trip basis based on average weekday PM peak hour motor vehicle trips; 2) approve the full TSF Expenditure Plan; 3) assess the fee per average weekday PM peak hour motor vehicle trip at \$5,811; 4) exempt second housing units from paying the fee; 5) reduce the fee to \$2,034 per trip for affordable housing and for childcare facilities; and 6) other land uses should pay the fee of at least \$5,811.

Financial Implications: Increased revenue

Contact: Peter Hillier, Secretary, 981-6300

Action: Moved, seconded, carried (Maio/Capitelli) to approve the City Manager's recommendation as amended to change the public hearing date to April 25, 2006 and referring the issue to the Planning Commission and office of Economic Development.

Information Reports

19. Unrepresented Temporary Employees

From: City Manager

Contact: David W. Hodgkins, Human Resources, 981-6800

Action: Received and filed.

20. 2005 Employee Transportation Survey Results

From: City Manager

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

Action: Received and filed.

21. Purchase Order Audit: Select Public Works Divisions at the Corporation Yard

From: City Manager

Contact: Claudette Ford, Public Works, 981-6300

Action: Received and filed.

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.

Nanotechnology Safety Procedures at Lawrence Berkeley Lab

1. Minority Report, submitted by Robert Clear, Community Environmental Advisory Commission
2. Barbara Gilbert

Traffic Plan for Marin Avenue

3. Joyce and Jan deVries (*Capitelli*)

Lack of Board of Library Trustee Financial Guidelines

4. Jane Welford, SuperBerkeleyans Organizing for Library Defense (*Worthington*)

Educational Testing

5. Barbara Gilbert
6. George Oram

Don's Auto Clinic

7. Anne Marselis Whyte (5) (*Worthington*)

Supplemental Reports and Communications 1

Item 6: Emergency Standby Officers and Designated Line of Succession for Director of Emergency Services

8. Revised Report and Resolution, submitted by the Fire Department

Item 13: 1532 Martin Luther King, Jr. Way - Use Permit No. 04-10000079

9. Rena Rickles (3)
10. Phillip Dedlow
11. Geoffrey Lomax
12. Kiran Singh
13. Laura Singh
14. Emma Davenport and Emily Davenport-Rogers

Item 16: Derby Street Athletic Field

15. Karl Reh
16. Martin Bourque, Ecology Center
17. Philip Morton
18. Mel Martynn
19. Stephen Swanson

Item 17: Nanotechnology Safety Procedures at Lawrence Berkeley Lab

20. Therese Powell

Supplemental Reports and Communications 2

Item 13: 1532 Martin Luther King, Jr. Way - Use Permit No. 04-10000079

21. John Gilkey

Item 14: Survey to Identify Sources for Increasing Fees for Lead Abatement Services

22. Alameda County Lead Poisoning Prevention Program materials, submitted by Councilmember Olds

To Be Delivered Item 15: Renaming Old City Hall

23. Report and Resolution, submitted by Councilmembers Anderson, Moore and Wozniak

Item 16: Derby Street Athletic Field

24. Amended Resolution, submitted by Mayor Bates

25. Juliet Lamont

26. Phil Price

27. Doug Fielding

28. Petition cards, submitted by Sol Buzcner

Item 17: Nanotechnology Safety Procedures at Lawrence Berkeley Lab

29. Modified questions, submitted by Mayor Bates

30. Nanotech Makes your Brown Eyes Blue article, submitted by Councilmember Wozniak

31. American Chemical Society Committee on Chemical Safety

32. Pamela Sihvola

The BIN – Berkeley Information Network

33. Informational packet, submitted by Jane Scarsllebun

Adjournment

Adjourned at 11:43 p.m.