



Office of the City Manager

ACTION CALENDAR

July 18, 2006

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Fran David, Director, Finance

Subject: Discuss options for funding a new warm water pool.

RECOMMENDATION

Direct the City Manager to take specific actions, and define the schedule for the specified actions, related to the possible financing and construction of a new warm water pool at the Berkeley High School (BHS) Tennis Court site¹, including, but not limited to:

1. Developing a full-scale project that can be fully and accurately planned and costed on which to base financing options;
2. Not preparing a ballot measure for November 2006;
3. Exploring the option of a special mail-in ballot election in 2007; and
4. Authorizing the City Manager to expend the necessary funds from the General Fund monies already set aside for the warm water pool, to accomplish Council's direction.

FISCAL IMPACTS OF RECOMMENDATION

In 2000, the City received voter authorization for \$3,250,000 in general obligation bonds to renovate the existing warm water pool located at the BHS South Campus. The bond measure anticipated a pairing with the Berkeley Unified School District (BUSD).

Potential costs associated with the analysis and ballot measure to gain approval for a newly constructed warm water pool at the BHS Tennis Court site are projected below. If Council chooses to move forward, these costs would come out of the \$1,000,000 of General Fund money already set aside for the warm water pool effort:

1. \$150,000 to \$200,000 for a special mail-in ballot election.
2. Legal costs of bond or Certificates of Participation (COP) development, and for bond issuance.

¹ The BHS Tennis Courts are located on Milvia Street, across from the Girl's Gymnasium, between Bancroft Way and Durant Avenue.

3. Legal counsel to assist in negotiating and structuring the actual deal with BUSD.
4. Project development assistance to work with community, the City, BUSD, and facility users to define an actual physical project that can be fully and accurately costed based on a complete set of project plans.
5. Completing environmental review and other California Environmental Quality Act (CEQA) requirements

The following table summarizes a comparison of Measure R from 2000 to a totally new ballot measure for new construction on the Tennis Court site.

TABLE I

Action	Total	Max per \$100,000 AV	Avg over 30 Years per \$100,000 AV
Funding \$3.25 million under the original authorization of Measure R starting with FY2001 assessed value	\$3,250,000	\$5.20	\$2.70
Funding \$3.25 million in FY2007 starting with FY2006 assessed value	3,250,000	2.02	1.37
Funding \$10,000,000 million in FY2007 today starting with FY2006 assessed value	10,000,000	6.39	4.76

NOTE: Assessed valuation in Berkeley has increased from \$6.6 billion in FY2001 to \$10.4 billion in FY 2007. Similarly, interest rates have decreased in that period. It should be noted that these are averages and will differ significantly between a property protected by Proposition 13 and one with ownership transferred on the recent market, or recently revalued by the County. Finally, please note that the actual annual tax rates will vary as each year's actual AV is calculated.

If the issue is placed on a special election in 2007, the additional election costs of approximately \$150,000 to \$200,000 could be split among any other ballot issues included in that election (e.g., an advisory vote to Council on Community Choice Aggregation.)

Currently, BUSD pays for most maintenance costs and some utilities. Under the Tennis Court site scenario, the City of Berkeley will be responsible for all operating costs, which will be significantly higher for a new, fully equipped warm water pool facility. These costs have not yet been fully developed by staff, but must be incorporated into our final decision.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley and the BUSD currently operate a warm water pool at BHS South Campus. The Natatorium receives approximately 344 weekly average "visits"² compared to approximately 2,000 weekly average visits for the Willard Pool.

² Use is tracked in "visits" rather than individual users as many visits are by the same user. Therefore, actual number of discrete users will be less than the number of visits per week.

In 2000, City of Berkeley voters approved Measure R as follows: *“To reconstruct, renovate, repair and improve the warm water pool facility at Berkeley High School (including restrooms and locker space), in order to prepare the facilities for greater community use by seniors, disabled adults, and disabled children, some of whom use the pool for physical therapy, shall the City of Berkeley issue general obligation bonds in an amount not to exceed \$3,250,000, at an interest rate not to exceed the legal limit?”*

The 2000 voter-approved bonds were not issued based on concerns that the existing building may not be salvageable for long-term use³; and most likely cannot be used on any other site or for new construction without additional voter approval. Council has expressed desire to continue providing a warm water facility for disabled and senior use if financially feasible.

On July 11, 2006, Council directed staff to return on July 18, 2006 with an analysis of possible alternatives for continuing a warm water facility in the long-term. The analysis was to include possible funding scenarios (e.g., General Obligation bonds or Certificates of Participation), the feasibility of completing a thorough and responsible work product in time for the November 2006 ballot, and related alternatives. Analysis was to focus on the BUSD Tennis Court site⁴. This report provides that requested analysis.

Advisability Of Placing A Measure On The November 2006 Ballot: A decision to place a bond measure on the ballot to fund and construct a specific facility at a specific site requires environmental review under the California Environmental Quality Act (CEQA). This would be the case even if the particular site was not identified in the bond measure, but was known. The existing concept for a new warm water pool at the Tennis Court site involves an approximately 12,000 square foot building, which is contemplated to be sited to accommodate a parking garage on the same site as defined in the BUSD Master Plan.

While such a project would likely not require an environmental impact report, it would require some lesser level of environmental review, which could not be completed in time to place it on the November 2006 ballot. At a bare minimum, even to make a determination as to whether the project is exempt from CEQA, the City would need to evaluate traffic, noise, and air quality (chlorine venting) impacts, as well as at least a phase 1 hazardous materials investigation. A more conservative and responsible approach would be to prepare an initial study, which would have to be circulated for public comment for 21 days. In either event, and under the best of circumstances, the required investigation could not be completed by August 11, 2006; making it impossible for any bond measure tied to a specific site to be placed on the November 2006 ballot.

There are a number of substantive and procedural barriers to placing this on the ballot in November 2006. First there is the issue that all parties concur that the City cannot utilize the

³ See study completed by Glass Architects in April 2005, particularly the Appendix A, “A Seismic and Structural Evaluation Report” completed by DASSE Design as part of the Glass report.

⁴ Please see pages 29-32 of the April 2005 Glass report, “Option 3 – Construct New Natatorium on BHS Tennis Court Site”

existing financing authority to move forward on new construction of a warm water pool facility at a site different than that approved by the voters in 2000. Therefore, any new ballot measure would have to carefully deal with “canceling” or in some way “converting” this prior authority to new authority while at the same time almost tripling the amount to be financed. This is legally and very complex, and will require further detailed study and analysis to make certain it is done correctly and with minimum risk for the City and/or any participants in the bond or Certificate of Participation.

In addition, there are many unknowns concerning BUSD’s intent and legal restraints regarding the use and/or disposal of the Tennis Court site land. The 2000 ballot measure authorizing the rehabilitation of the existing warm water pool envisioned a partnership with BUSD as landlord. The Tennis Court site is another matter. New construction of a City facility on this site involves one or more of the following; (1) a lessee-lessor relationship between the City and BUSD; (2) purchase of the land by the City from BUSD; (3) giving of the land by BUSD to the City; (4) other possibilities. Currently there is little clarity around BUSD’s intent for the land or their options in leasing, selling, or gifting the land. Given the complexities and uncertainties of this matter, it is an inadvisable and high-risk action to rush to construct a ballot measure for the November 2006 ballot.

BACKGROUND

Renovation vs. New Construction: The Berkeley High School (BHS) South Campus Natatorium houses two swimming pools, bleachers, and the pool mechanical equipment room. The existing warm water pool is located in the south portion of the Natatorium. Access to the building’s south entry door is provided via stairs and an accessible ramp. There are no complying handicapped accessible parking spaces, nor is there a safe, accessible path of travel to the public street.

The Natatorium building is approximately 10,000 square feet in a reinforced concrete structure with exposed trusses and a wood-frame roof. The structure has had little or no maintenance for many years, except for partial roof replacement in 1999. Most all of the wooden features and structures associated with the Natatorium show signs of significant decay. Other parts of the structure are in similar state of maintenance and decay (e.g., the tile decking, interior wall surfaces, steel window frames, concrete spalling, dangerous wiring, and substantial rusting and erosion of the structural steel trusses, plates, and embedded columns).

In spring of 2005, DASSE Design completed a new seismic and structural evaluation report. The report found that the building was in a worn condition following approximately 70 years of service. Damage and wear include considerable rust on structural steel roof trusses, wood decay, spalling of concrete at rusted reinforcement, and cracking of concrete headers above windows, all of which represent potential falling debris hazards. The report states that the hazards of the natatorium building extend well beyond the immediate falling hazards; and concludes that the building has nearly reached the end of its useful life; and that the long-term use of this building is not viable.

BUSD Tennis Court Site: The April 2005 Glass Report, which contained the DASSE Design study, discussed several alternatives: (1) renovate the existing BHS South campus Natatorium;

(2) demolish and replace the existing Natatorium; (3) construct a new Natatorium on BHS tennis Court site; and (4) construct a new natatorium at BHS West Campus Swim Center. The report concluded that the existing building structure is not suitable for renovation as a long-term solution. During various Council discussions, there has been an expressed preference for the BUSD Tennis Court site. Therefore, this report focuses primarily on that site.

Use of Existing Voter Financing Authority: The city's financial advisor, Northcross, Hill, and Ach have stated "The original authorization specifically provides for the City's ability to 'reconstruct, renovate, repair and improve the warm water pool facility at Berkeley High School...'...The original authorization provides for repairs to the existing facility. There is no reference to the replacement or construction of a new pool. In our opinion, the existing bond authorization could not be used for the construction of a new pool, even if it was located on the Berkeley High School campus..."

In addition to the above, staff engaged outside bond counsel as requested by the City Attorney to render an authoritative, expert opinion on whether or not it was legal or appropriate to use the \$3.25 million authorized by the voters in 2000 for construction of a new facility on a site different from the existing location approved in the 2000 ballot measure. At the request of staff, Brian D. Quint, of Quint and Thimmig LLP⁵, has reviewed the situation and has rendered an opinion, which states, "*I am in agreement with Craig's [of Northcross, Hill, & Ach)] conclusions. The original authorization was 'to reconstruct renovate, repair and improve the warm water pool facility at Berkeley High School,' and does not authorize the construction of a new pool there or elsewhere. It is my opinion that a new authorization from the voters would be required for any alternative use, including change in location or new construction.*" (See Attachment 1: Email from Brian Quint.)

Alternative To Placing A Measure On The November 2006 Ballot: An alternative to forcing the issue onto the November 2006 ballot would be to set a date for a special election in 2007. This would provide sufficient time for staff and Council to gather a full set of data and complete responsible and complete analysis of the situation around the warm water pool facility as it might be constructed at the Tennis Court site. This allows time for both the City and BUSD to assess the alternatives around partnering on this project; allows time to complete the required CEQA process, if any; allows time to determine legal and financial risk of alternatives; provides for opportunity to develop a political strategy for success of the measure; and allows staff time to develop the best or preferred funding scenario.

⁵ Quint & Thimmig LLP, One Embarcadero Center, Suite 2420, San Francisco CA 94111-3737. This firm was also the City's bond counsel on the 2002 General Obligation Refunding Bonds for \$17,865,000.

As stated earlier, we currently have very little understanding of BUSD's intent for the land or their options in leasing, selling, or gifting the land. Staff has received verbal confirmation, and has requested written confirmation, from BUSD that **there are no plans to demolish or close the existing warm water pool facility at South Campus for at least two years.** (See Attachment 2: Letter to BUSD Superintendent Michelle Lawrence.) Therefore, delaying the possible ballot measure until 2007 does not jeopardize user's access to the warm water pool in that period. .

Council is already considering the possibility of a special election in order to gain community advice and direction on the formation of a Community Choice Aggregation with Oakland and Emeryville. Adding this possible ballot measure would not add to that cost, but would make the cost of the special election more justifiable and efficient. This is the alternative recommended by staff.

A second alternative as discussed by Council is the possibility of approving the issuance of Certificates of Participation⁶ to secure authority for the needed funds for new construction of the warm water pool facility. Because this "comes off the top" of the General Fund, it is not a preferred way to finance a project that does not have the projected ability to be self-sustaining (i.e., reliably generate the revenue stream to meet the annual debt service payments of the COP.)

If the City were to pursue a general fund-type financing such as a COP, the annual debt service for a \$10,000,000 project cost would be \$750,000. This assumes the entire project is funded with a COP. The total financing amount would be approximately \$11,750,000 and would include a reserve fund and capitalized interest through the construction period. Staff is not recommending use of COP financing for this project.

Detailed Discussion of Fiscal Considerations: The original authorization anticipated a maximum annual tax of 0.52 cents per \$100 of assessed value ("A.V."). This equates to \$5.20 per \$100,000 of A.V. The average annual tax was estimated at \$2.70 per \$100,000 of A.V. The bonds have not

⁶ Certificate of Participation is a type of Lease Revenue Bond. It is a financing method that allows a municipality to utilize a lease structure to borrow funds on a long-term basis and repay the loan annually. This structure enables a city to finance certain capital projects (acquisition, new construction, modernization and new equipment) and repay the loan with general fund moneys. By borrowing money in this form, a city is not required to go to the voters for approval because the loan is not pledging any type of ad valorem or special tax. By use of a lease type of repayment structure, the monies needed to fund these building projects do not, by State law, constitute a public debt (even though some may be payable over periods in excess of 20 years). Unlike bonds, the COPs are not guaranteed by the City's taxing power, so the interest rate paid is slightly higher than bonds.

All repayments are made from revenues on hand as backed by the security of the capital investment and the General Fund. COP's are considered "lease financing" because a city usually sets up a relationship with a third party, typically a nonprofit corporation or joint powers authority. This third party will lease from the city the project or some other asset owned by the city (asset transfer) for a single up-front payment. This lease payment will be the equivalent of the proceeds from the loan. The city will in-turn lease the property back from the third party. The lease payments associated with the leaseback are equivalent to the annual payment on the original loan.

been issued, and most likely cannot be used on any other site or for new construction without additional voter approval.

Costs to construct a new warm water pool on the current site of the BHS Tennis Courts are roughly projected to be from \$9,000,000 to \$10,000,000, including construction, financing, and land acquisition costs. Assuming a total cost of \$10,000,000 and the current 2006-07 assessed value numbers, the maximum new annual tax would be \$6.39 per \$100,000 of A.V. The average over the 30-year period would be around \$4.76 per \$100,000 of A.V. This projection is extremely rough in that critical information about the site remains unknown until appropriate environmental and other reviews are actually completed. In addition, annual projected increases in assessed values were conservatively estimated at 3% versus an actual average of approximately 7.5% over the past six years.

Costs have escalated over the original estimation made for the previous bond measure due to (a) having to include possible land acquisition costs (estimated at roughly \$1,000,000;) and (b) increased costs of construction over the last two years, which has been estimated by the engineering consultant to the Public Works-Engineering staff at approximately 14%, including both labor and materials. (See Attachment 3: "Warm Water Pool" memo to Council from the City Manager, dated 7/11/06.)

ALTERNATIVE ACTIONS CONSIDERED

An alternative action would be to consider other sites for the warm water pool, such as BUSD's West Campus Pool, which would be at a lesser cost than the one currently under consideration at the BUSD Tennis Court site.

CONTACT PERSON

Fran David, Director of Finance, 510.981.7300
Zach Cowan, Assistant City Attorney, 510.981.6950

Attachments:

- 1: Email from Brian Quint of Quint & Thimmig LLP
- 2: Letter to BUSD Superintendent Michelle Lawrence
- 3: 7/11/06 "Warm Water Pool" memo to Council from Phil Kamlarz, City manager

ATTACHMENT I

From: Brian Quint [mailto:bquint@qtilp.com]
Sent: Thursday, July 13, 2006 8:26 AM
To: David, Fran
Cc: Craig Hill
Subject: Pool Financing

Hi Fran:

I have review the original GOB authorization and the memorandum from Craig Hill of Northcross Hill & Ach relating to the use of the original authorization for the replacement of the pool at Berkeley High School or at another location.

I am in agreement with Craig's conclusions.

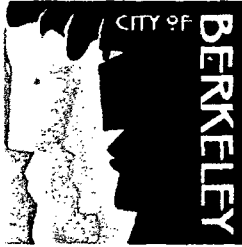
The original authorization was "to reconstruct renovate, repair and improve the warm water pool facility at Berkeley High School," and does not authorize the construction of a new pool there or elsewhere. It is my opinion that a new authorization from the voters would be required for any alternative use, including change in location or new construction. Also, the original authorization is limited to \$3,250,000. Even if the original authorized project was to be completed, no higher amount (over \$3,250,000) would be permissible without additional voter authorization.

I hope the foregoing has been responsive to your inquiry. If you have any other questions, please feel free to contact me. Through 7/24/06, please call me on my cell phone (415-272-8100).

Brian

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ATTACHMENT II



Office of the City Manager

July 13, 2006

Ms. Michele Lawrence
Superintendent
Berkeley Unified School District
2134 Martin Luther King, Jr. Way
Berkeley, California 94704

Reference: Warm Water Pool at the BHS Tennis Court Site

Dear Michele:

I am writing to inform you that the City Council took action on Tuesday night, July 11, 2006, to pursue the construction of the Warm Water Pool on the site of the existing tennis courts at Berkeley High School. This site is in keeping with the location proposed in your EIR process currently underway for the Berkeley High School Master Plan.

We are reviewing possible methods of financing, including both a ballot measure seeking voter approval (likely to be a mail-in ballot in the Spring of 2007) and a certificate of participation (COP) to pay for the estimated \$9 million project. We are collecting information as quickly as possible so we can make a recommendation to the City Council and they can make an informed decision. Since the property is owned by BUSD, we need a few critical pieces of information so that our analysis is accurate.

First, our understanding is that the existing pool building at the current location **will not be demolished** within the next two years (through July 2008). Please confirm that is the case.


Second, we are in the process of investigating financing of the pool through voter-approved bonds or a COP. In exploring options, we are considering both leasing and owning the property. For the purpose of financing, **we may be required to own the land**. Should this be the case, we need to know if the school district can either gift or sell for a nominal price (one dollar) the land to the City for a facility that could be used by and benefit BUSD students. If a gift or nominal fee is not an option, we need to understand the criteria for land disposition and costs related to the purchase of BUSD property.

Each of these items is critical in planning for possible construction of a new warm water pool facility. A speedy reply would be most appreciated, as we are on deadline to respond.

July 13, 2006

Please call me, or Lisa Caronna, Deputy City Manager, with any questions.

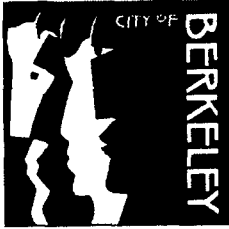
Sincerely,



Phil Kamlarz
City Manager

Cc: Mayor and Council
Lisa Caronna, Deputy City Manager
Fran David, Finance Director
Zach Cowan, Deputy City Attorney


ATTACHMENT III



Office of the City Manager

Date: July 11, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Subject: WARM WATER POOL

Councilmember Spring has asked that I forward the analysis of the warm water pool construction options. Some Councilmembers have already received this report.

Since the completion of the analysis, in recognition of escalating prices, I have asked the consultant to update the analysis and costs.

The updated current costs are:

Option 1	Renovate Existing Structure	\$4.3 million
Option 2	Demolish and Replace Existing Structure	8.5 million
Option 3	Tennis Court Site (no land costs)	8.6 million
Option 4	West Campus	
	(a) Small	5.3 million
	(b) Larger	8.1 million

Attachment

cc: Lisa Caronna, Deputy City Manager
Marc Seleznow, Director of Parks, Recreation and Waterfront
Sara Cox, City Clerk