

Kelly, Sherry

From: Bgilbertca@aol.com
Sent: Friday, October 13, 2006 6:56 PM
To: Anderson, Maxwell; Clerk; Wozniak, Gordon; Worthington, Kriss; Berkeley Mayor's Office; Olds, Betty; Spring, Dona; Maio, Linda; Englund, Sandy; Capitelli, Laurie; Moore, Darryl
Subject: 1201 San Pablo/1100 Harrison

To Mayor, Council and Manager:

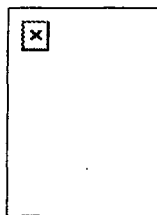
I just checked the October 17 meeting materials on the Harrison Street project and noted that the developer and developer attorney have withdrawn the infamous 11th hour affordable housing wrench. Have the prior project "concessions" been put back on the table?

Whew, I'm sure glad to see that the operating instructions are back in force and that the development machine will again run smoothly.

What did you do to those poor attorneys?

Sincerely, Barbara Gilbert

***Barbara Gilbert
An Independent Voice for District 5 and the Entire Berkeley Community
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Berkeley, CA 94707***



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(Please forward if you wish or advise if no e-mails desired)

To contact City Council write to clerk@ci.berkeley.ca.us, gwozniak@ci.berkeley.ca.us, worthington@ci.berkeley.ca.us, mavor@ci.berkeley.ca.us, olds@ci.berkeley.ca.us, spring@ci.berkeley.ca.us, maio@ci.berkeley.ca.us, manager@ci.berkeley.ca.us, lcapitelli@ci.berkeley.ca.us, manderson@ci.berkeley.ca.us, dmoora@ci.berkeley.ca.us

To contact Berkeley Unified School District write to: john_selawsky@berkeley.k12.ca.us, deborah_turner@berkeley.k12.ca.us, mlawrence@berkeley.k12.ca.us, joaquin_rivera@berkeley.k12.ca.us, terry_doran@berkeley.k12.ca.us, nancy_riddle@berkeley.k12.ca.us, boardofed@berkeley.k12.ca.us, publicinfo@berkeley.k12.ca.us

Kelly, Sherry

From: Bgilbertca@aol.com
Sent: Friday, October 13, 2006 6:11 PM
To: Anderson, Maxwell; Clerk; Wozniak, Gordon; Worthington, Kriss; Berkeley Mayor's Office; Olds, Betty; Spring, Dona; Maio, Linda; Englund, Sandy; Capitelli, Laurie; Moore, Darryl
Subject: Berkeley Council Bushwhacked by Developer Attorney and City Attorney

To Mayor, Council, and Manager:

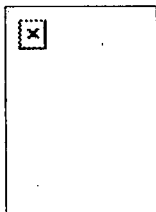
The October 10 Council discussion of the 1201 San Pablo/1100 Harrison project was deliciously amusing. Your favorite developer attorney and campaign contributor forgot the machine operating instructions and threw a clever and deeply cynical legal clog into the machine just prior to election time, while spouting on about developer good deeds and affordable housing. Our own City Attorney seemed to support her weaselly legal compatriot.

I hope that Ms. Rickles gets the shunning she deserves for behaving so badly and ignoring the operating instructions.

Meanwhile, I forward the below article for your reading pleasure on the method one City Council is using to outwit its own City Attorney.

Sincerely, Barbara Gilbert

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City Council Gets Its Own Attorney

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Some see the move as a rebuke of City Atty. Rocky Delgadillo, whose office provides legal advice to the panel.

By Steve Hymon and Patrick McGreevy, Times Staff Writers

October 13, 2006

In an unusual move widely viewed as a swipe at City Atty. Rocky Delgadillo, the Los Angeles City Council is getting a lawyer to provide it with independent legal advice, officials confirmed Thursday.

The attorney was hired by and will work for the chief legislative analyst, an office that answers directly to the council.

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The move, according to several sources, is largely motivated by some council members' frustration over Delgadillo's mixed record in defending council legislation in court, the quality of his office's advice and, to a lesser degree, the settlements his office negotiates in lawsuits against the city.

"Frequently we weren't getting ordinances out fast enough, and sometime we were getting inconsistent legal advice," said Councilman Greig Smith, who spearheaded the efforts to hire another attorney.

Officials with the analyst's office downplayed the addition as just another "legislative analyst" for an office that already provides some legal analysis to the council. Officials declined to identify the new hire.

Delgadillo, through spokesman Jonathan Diamond, declined to comment.

Diamond said that his understanding is that the person who was hired will not serve as the legal counsel to the council.

"The city attorney is the legal counsel for the municipal corporation,"

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Diamond said. "Our role is clearly defined."

The relationship between the council and the city attorney is by its nature sometimes adversarial in the same way that a client and an attorney may not always agree.

But the move by the council suggests that the officials who control the branch of city government that creates laws have lost some faith in the branch charged with vetting and enforcing them.

Some say the hiring could undermine the city attorney's role as legal advisor to the council.

"What happens when the city attorney gives legal advice and the attorney in the CLA's office gives counter legal advice?" said Erwin Chemerinsky, law professor at Duke University and chairman of a charter reform commission in Los Angeles in the late 1990s.

In his five years in office, Delgadillo has emerged as one of City Hall's more ambitious officials. Delgadillo's political advisors are known as "Tea 1600" — a reference to the White House's address — and last year he filed to run for state attorney general eight days after winning reelection to his city job.

Delgadillo heads a department with 520 attorneys and a budget of about \$95 million. The office prosecutes thousands of misdemeanor criminal cases each year.

Several council members and staffers were reluctant to discuss the new position publicly for fear of further straining their relationships with Delgadillo.

"If you're married to someone and your spouse suddenly hires their own attorney, wouldn't that give you a reason for pause?" said one chief of staff for a council member, who requested anonymity to avoid jeopardizing work in the district involving the city attorney's office.

Councilman Tony Cardenas stressed that the new attorney will not be the council's legal counsel — Delgadillo's office will continue in that role. "We're not going to eliminate the relationship with the city attorney," Cardenas said. "This is just an enhancement."

In recent months, the council and the city attorney's office have clashed several times.

Councilwoman Jan Perry last month hired her own attorneys to seek advice on how the city should proceed in a lawsuit brought by the American Civil Liberties Union over the city's sidewalk-sleeping ban. The council agreed with Perry's attorneys and rejected a settlement worked out

between Delgadillo's office and the ACLU.

"I felt that I needed a consultant who would be able to advise me free of any political perspective and help me stay focused on the technical aspects of engaging in a settlement discussion," Perry said.

Delgadillo also angered the council when he released a legal opinion that clearly spelled out the vulnerabilities of a ballot measure that would ease term limits for the council but not the city attorney. A Los Angeles resident sued over the legality of the ballot measure, and a Superior Court judge found the measure unconstitutional last month. It has remained on the Nov. 7 ballot but will be reviewed by an appeals court in late November.

Council members have also received complaints from constituents who do not feel the city attorney is doing enough to protect apartment dwellers from condominium conversions.

Smith said the move should not be seen as a vote of no-confidence in Delgadillo. Rather, he said that deputy city attorneys are often too overloaded with work to promptly serve elected officials.

The last straw for Smith involved a contract, negotiated by Delgadillo's office, between the city and the Sunshine Canyon Landfill above Granada Hills that Smith believed favored the dump's owner.

"Legal counsel said it was a great contract, and the council tore it to shreds," Smith said.

Similar frustrations about the timeliness and quality of legal advice from the city attorney were cited when the city Ethics Commission recently considered hiring its own attorney. The plan was dropped when Delgadillo objected.

"There is an argument for having an elected city attorney who advises the mayor and council. The argument is to keep a check on the council and mayor," said Xandra Kayden, a senior fellow at the UCLA School of Public Affairs.

However, Kayden thinks the council should be able to seek independent legal advice on issues when the council wants to move quickly and the city attorney appears to be throwing up roadblocks.

*

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October 13, 2006

Stephen Wollmer
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Mayor Bates and Berkeley City Council

Invocation of 65589.5 for affordable housing project at 1201 San Pablo Avenue

Although I understand that there is a tentative agreement with the neighbors of this project I believe that is important for you to be aware that invoking State law section 65589.5 imposes significant constraints and costs that were not addressed in the comments of Ms Rickles or the City Attorney at your October 10th meeting. To qualify for the protections in Section 65589.5 a project must meet 65589.5(h)'s definition of an affordable housing project:

First: The applicant must accept use permit conditions that permanently limit commercial rentals to 'primarily neighborhood serving' uses as required and defined in Section 65589.5(h)(2)(B)¹, restrictions beyond the stringent limits on ground floor uses in C-W nodes under Berkeley Ordinance 23.64.040.E².

Second: Section 65589.5(h)(3)³ limits coverage to projects which offer at least 20% of units at an affordable housing cost of 30% of 60% of AMI or 100% of units at an affordable housing cost of 30% of 100% of AMI. Although Ms Rickles' letter was unclear on this point, I believe that she intended to claim coverage under the former (20% at 30% of 60%) and was not recasting 1201 San Pablo as a 100% affordable project.

The term 'affordable housing' is portrayed as a generic social good, but in fact has significantly different meanings for tenants and developers depending on program followed. I believe there are four possible scenarios under City and State statutes and ordinances that 1201 San Pablo might follow:

1. Re-submit a project without a fifth-floor and pay the City mandated in-lieu fee at the time of sale that amounts to 12.5% of the difference between actual sales price and the City's inclusionary price for each unit (column 5 of table 1).
2. Re-submit a project without a fifth-floor and with an equitable dispersion of affordable units; accept the City's inclusionary price (column 5 of table 1) for 20% of project units.
3. Claim coverage under the State Density bonus law for incentives and concessions compelling the City to grant a variance for a fifth-floor and an uneven distribution of the affordable units, but take no density bonus units and wait until threatened legal action is resolved. If the City's right to grant incentives and concessions without density bonus units is upheld, sell 20% of project units at a price to yield an affordable housing cost (per 25CCRs6920⁴) no more than column 6 of table 1.
4. Claim coverage under the State Density bonus law for incentives and concessions compelling the City to grant a variance for a fifth-floor and an uneven distribution of affordable units, but without taking any density bonus units. Invoke Section 65589.5 to compel City approval. Accept use-permit restrictions on commercial rentals and sell 20% of project units at a price to yield an affordable housing cost (per 25CCRs6920⁴) no more than column 7 of table 1.

Sincerely yours,

Stephen Wollmer

¹ 65589.5(h)(2)(B) Mixed-use developments consisting of residential and **nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses** and to the first floor of buildings that are two or more stories. As used in this paragraph, **"neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.**

² 23.64.040.E. The ground floor of buildings in designated nodes shall only be used for retail sales, personal/household services, banks, food and alcohol service, lodging, entertainment and assembly uses, gasoline/automobile fuel stations, enclosed auto repair uses, new car dealers, enclosed used car dealers and required access to and lobbies serving upper-story uses. No food service drive-through is permitted on San Pablo.

³ 65589.5(h) (3) "Housing for very low, low-, or moderate-income households" means that either (A) **at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code**, or (B) **100 percent of the units shall be sold or rented to moderate-income households** as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. **Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income** with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. **Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income** with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

⁴ 25CCRs6920. Housing Cost of a Purchaser.

"Housing cost" of a person or family purchasing a housing unit shall include all of the following associated with that housing unit:

(a) **Principal and interest on a mortgage loan** including any rehabilitation loans, **and any loan insurance fees** associated therewith.

(b) **Property taxes and assessments.**

(c) **Fire and casualty insurance covering replacement value of property improvements.**

(d) **Property maintenance and repairs.**

(e) **A reasonable allowance for utilities**, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuels. Utilities does not include telephone service. Such an allowance shall take into consideration the cost of an adequate level of service.

(f) **Homeowner association fees.**

(g) Space rent, if the housing unit is situated on rented land.

Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve months.

Table 1

1201 San Pablo Avenue: Sales Price and Affordable Housing Costs under City and State laws:

| Floor Nbr | Unit Nbr | Unit Type (BRs) | Unit Size (ft2) | City of Berkeley Sales Price (3x120% AMI) | 65915 (SDBL) Affordable Housing Cost* (35% X 110% AMI) | 65589.5 (NIMBY) Affordable Housing Cost* (30% X 60% AMI) |
|-----------|----------|-----------------|-----------------|---|--|--|
| 2 | 1 | 1 | 717 | \$241,200 | \$2,151 | \$1,006 |
| 2 | 2 | 2 | 864 | \$271,400 | \$2,420 | \$1,131 |
| 2 | 3 | 2 | 864 | \$271,400 | \$2,420 | \$1,131 |
| 2 | 4 | 2 | 864 | \$271,400 | \$2,420 | \$1,131 |
| 2 | 5 | 1 | 859 | \$271,400 | \$2,151 | \$1,006 |
| 2 | 6 | 2 | 850 | \$271,400 | \$2,420 | \$1,131 |
| 2 | 7 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 2 | 8 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 2 | 9 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 2 | 10 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |

| | | | | | | |
|---|----|---|-----|-----------|---------|---------|
| 3 | 11 | 1 | 717 | \$241,200 | \$2,151 | \$1,006 |
| 3 | 12 | 2 | 808 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 13 | 2 | 808 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 14 | 2 | 808 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 15 | 1 | 803 | \$241,200 | \$2,151 | \$1,006 |
| 3 | 16 | 2 | 850 | \$271,400 | \$2,420 | \$1,131 |
| 3 | 17 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 18 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 19 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |
| 3 | 20 | 2 | 839 | \$241,200 | \$2,420 | \$1,131 |

| | | | | | | |
|-----|----|--------|------|-----------|---------|---------|
| 4 | 21 | Studio | 555 | \$218,800 | \$1,882 | \$880 |
| 4 | 22 | 1 | 676 | \$226,300 | \$2,151 | \$1,006 |
| 4 | 23 | 1 | 676 | \$226,300 | \$2,151 | \$1,006 |
| 4 | 24 | 1 | 676 | \$226,300 | \$2,151 | \$1,006 |
| 4 | 25 | 1 | 671 | \$226,300 | \$2,151 | \$1,006 |
| 4-5 | 26 | 2 | 1171 | \$301,700 | \$2,420 | \$1,131 |
| 4-5 | 27 | 2 | 1194 | \$301,700 | \$2,420 | \$1,131 |
| 4-5 | 28 | 2 | 1194 | \$301,700 | \$2,420 | \$1,131 |
| 4-5 | 29 | 2 | 1194 | \$301,700 | \$2,420 | \$1,131 |
| 4-5 | 30 | 2 | 1194 | \$301,700 | \$2,420 | \$1,131 |

* Must include principal, interest, mortgage insurance, property taxes, homeowner's insurance, HOA, and utilities except for telephone and cable.

Kelly, Sherry

From: swollmer [swollmer@mail.pcmagic.net]
Sent: Sunday, October 15, 2006 7:44 PM
To: Clerk
Cc: Prakash Pinto; Cowan, Zach
Subject: Re: Constraints implicit in invoking Section 65589.5



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Letter for distribution at October 16th City Council meeting.

Sorry about the late submittal but I was out of town, let me know if you require me to bring copies to the meeting.

steve

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