

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, NOVEMBER 14, 2006

7:00 P.M.

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

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953, Teleconferencing. Any member of the public may attend this meeting at either location. Questions regarding this matter may be addressed to Sherry M. Kelly, City Clerk, 981-6900.

Preliminary Matters

Roll Call: 7:21 p.m.

Ceremonial Matters

1. Proclamation presented in honor of the 7th Annual Transgender Day of Remembrance and in memory of Rita Hester and all victims of transgender hate crimes.
2. Proclamation declaring the year 2006 The Year Of The Museum and requesting that all citizens join in this observation.

City Manager Comments

1. Recognition of the contributions made to the beautification of Berkeley by 1100 University students.
2. Tonight is the last City Council meeting for Assistant City Clerk Cheryl Morse who has accepted the position of City Clerk with the City of El Cerrito.

Public Comment: 27 speakers.

Consent Calendar

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

1. **City Auditor's Duties and Authority** (*First reading – October 24, 2006 – Unanimous*)
From: City Auditor
Recommendation: Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 2.24 giving all auditor job classifications the authority to issue administrative citations for violations of City ordinances.
Financial Implications: See report
Contact: Ann-Marie Hogan, City Auditor, 981-6750
Action: Adopted Ordinance No. 6,952–N.S. Effective December 14, 2006.

Consent Calendar

- 2. Specified Standards for Care of Dogs Kept Outdoors** (*First reading – October 24, 2006 – Unanimous*)
From: Citizens Humane Commission
Recommendation: Adopt second reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 10.04.140, specifying requirements for minimum standards of care for owners/guardians who keep dogs outdoors.
Financial Implications: None
Contact: Kate O'Connor, Secretary, Citizens Humane Commission, 981-6601
Action: Adopted Ordinance No. 6,953–N.S. Effective December 14, 2006.
- 3. 2007 Commission Meeting Schedule**
From: City Manager
Recommendation: Adopt a Resolution approving a commission meeting schedule for calendar year 2007.
Financial Implications: None
Contact: Sherry M. Kelly, City Clerk, 981-6900
Action: Adopted Resolution No. 63,472–N.S.
- 4. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of October 3, 2006 (joint City Council / Police Review Commission special closed), October 10, 2006 (joint City Council/Police Review Commission special closed), October 10, 2006 (regular), October 16, 2006 (special) and October 24, 2006 (regular).
Financial Implications: None
Contact: Sherry M. Kelly, City Clerk, 981-6900
Action: Approved minutes as submitted.
- 5. Appointment of City Clerk**
From: City Manager
Recommendation: Adopt a Resolution confirming the appointment of Pamyla C. Means as City Clerk effective December 4, 2006.
Financial Implications: See report
Contact: Phil Kamlarz, City Manager, 981-7000
Action: Adopted Resolution No. 63,473–N.S.

Consent Calendar

6. **Downtown Berkeley Business Improvement District**

From: City Manager

Recommendation: Adopt a Resolution approving the 2007 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 2007; and directing the City Clerk to schedule a public hearing for December 5, 2006, to consider levying a renewed assessment for the year 2007.

Financial Implications: See report

Contact: Michael Caplan, Economic Development, 981-7000

Action: Removed from the Consent Calendar by Councilmember Spring. Adopted Resolution No. 63,474–N.S.

7. **Solano Avenue Business Improvement District**

From: City Manager

Recommendation: Adopt a Resolution approving the 2006 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 2007; and directing the City Clerk to schedule a public hearing for December 5, 2006, to consider levying a renewed assessment for the year 2007.

Financial Implications: See report

Contact: Michael Caplan, Economic Development, 981-7000

Action: Adopted Resolution No. 63,475–N.S.

8. **Contract: Community Relationship Management Software**

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Lagan Technologies Inc. to provide comprehensive Community Relationship Management (CRM) software and support for the period of December 1, 2006 through November 30, 2009, for an amount not to exceed \$430,000.

Financial Implications: General Fund - \$430,000

Contact: Robert Hicks, Finance, 981-7300

Action: Adopted Resolution No. 63,476–N.S.

9. **Formal Bid Solicitations and Request for Proposals**

From: City Manager

Recommendation: Approve the attached request for proposals (RFP) that will be, or is planned to be, issued upon final approval by the requesting department.

Financial Implications: Various Funds - \$2,377,750

Contact: Robert Hicks, Finance, 981-7300

Action: Approved recommendation.

Consent Calendar

- 10. Classification: Environmental Compliance Specialist**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 61,805-N.S., Classification and Salary Resolution for Service Employees International Union (SEIU) Local 535, to establish the classification of Environmental Compliance Specialist effective December 1, 2006.
Financial Implications: See report
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,477–N.S.
- 11. Contract: Dependent Care Assistance Plan Third Party Administrator**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with HealthComp Inc. in an amount not exceed \$5,000 to provide administrative services for the City of Berkeley's Dependent Care Assistance Plan for January 1, 2006, through December 31, 2007.
Financial Implications: Payroll Deduction Trust Fund - \$5,000
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,478–N.S.
- 12. Fee Assessment - State of California Self-Insurance Fund**
From: City Manager
Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2007 fees assessed for administering the Workers' Compensation Program, in an amount not to exceed \$125,000.
Financial Implications: Workers' Compensation Self-Insurance Fund - \$125,000
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,479–N.S.
- 13. Contract: Plan Checking Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contracts with Linhart Peterson Powers Associates (LP2A) and Telesis Engineers for plan checking services, increasing each contract by \$60,000 for a total amount not to exceed \$420,000 for LP2A and \$300,000 for Telesis and extending the term from January 1, 2007 to March 1, 2007.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Resolution No. 63,480–N.S.

- 14. Dorothy Bolte Park Safety and Accessibility Improvements**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to reject all bids and direct staff to re-scope and re-bid Dorothy Bolte Park Safety and Accessibility Improvements Project.
Financial Implications: None
Contact: Marc Seleznow, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 63,481–N.S.
- 15. Contract: Security Services for Marina**
From: City Manager
Recommendation: Adopt a Resolution: 1) authorizing the City Manager to execute a contract amendment with Securitas Security Services USA, Inc. (Securitas) to add security guard services for the Marina; 2) increasing the contract amount by \$72,000 for a total contract amount not to exceed \$242,375, for the period from September 1, 2006 to June 30, 2007; and 3) approving the option to extend the contract for two additional one-year periods, with the costs adjusted in accordance with the Consumer Price Index (CPI), not to exceed 3%.
Financial Implications: Marina Fund - \$72,000
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,482–N.S.
- 16. Grant: Seismic Work at Corp Yard**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a grant from the State Office of Emergency Services in the amount of \$2,887,735 and authorize 25% City matching funds of \$962,633, to reconstruct the seismically unsafe Facilities Maintenance Building at the Corporation Yard.
Financial Implications: See report
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,483–N.S.
- 17. Small-Scale Electric Vehicle Dealerships**
From: Mayor Bates and Councilmember Spring
Recommendation: Direct the Planning Commission to amend the CSA zoning on South Shattuck Avenue to permit small-scale electric vehicle dealerships.
Financial Implications: See report
Contact: Tom Bates, Mayor, 981-7100
Action: Approved recommendation as amended by Councilmember Worthington.

Consent Calendar

- 18. Installation of Surveillance Cameras**
From: Councilmember Maio
Recommendation: Direct the City Manager to investigate installing several surveillance cameras in those City parking areas that are out of sight and where there are frequent car thefts and break-ins, to determine if this is an effective approach.
Financial Implications: To be determined
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Approved recommendation. (Abstain – Worthington)
- 19. Centennial Celebration of San Pablo Park**
From: Councilmember Moore
Recommendation: Approve City sponsorship of the San Pablo Park Centennial Celebration.
Financial Implications: None
Contact: Darryl Moore, Councilmember District 2, 981-7120
Action: Approved recommendation.
- 20. Water Meter for the Community Orchard**
From: Councilmember Moore
Recommendation: Refer to the budget process a request for \$8,000 to be used to purchase a water meter for the Berkeley Community Orchard.
Financial Implications: General Fund - \$8,000
Contact: Darryl Moore, Councilmember District 2, 981-7120
Action: Approved recommendation.
- 21. Save the Oaks at UC Stadium**
From: Councilmembers Spring and Olds
Recommendation: Adopt a Resolution supporting the protection of the oak woodland located just west of UC Memorial Stadium and opposing the plans of the University of California to cut down any of the trees in the grove.
Financial Implications: None
Contact: Dona Spring, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 63,484–N.S.
- 22. Housing Advisory Commission Representation on the Joint Density Bonus Subcommittee**
From: Housing Advisory Commission
Recommendation: Adopt a Resolution appointing Steve Wollmer of the Housing Advisory Commission (HAC) to the Joint Density Bonus Subcommittee.
Financial Implications: None
Contact: Oscar Sung, Secretary, Housing Advisory Commission, 981-5400
Action: Adopted Resolution No. 63,485–N.S.

Consent Calendar

23. Appointment to the Mental Health Commission

From: Mental Health Commission

Recommendation: Adopt a Resolution appointing Luvenia Jones to the Mental Health Commission, as a representative of the Special Public Interest Category, for a three-year term beginning November 15, 2006 and ending November 14, 2009.

Financial Implications: None

Contact: Carol Patterson, Secretary, Mental Health Commission, 981-5217

Action: Adopted Resolution No. 63,486–N.S.

Action Calendar – Public Hearings

24. Amendments to Creeks Ordinance

a. From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, approve the Negative Declaration and adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 17.08, Preservation and Restoration of Natural Watercourses, with one of the following options for BMC Section 17.08.050D, which regulates development of a vacant lot within 30 feet of an open creek centerline or expansion of an existing structure within the first 25 feet of the centerline. Alternative 1 – requires a variance and Alternative 2 requires a use permit.

Financial Implications: See report

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

b. From: Planning Commission

Recommendation: Support adopting amendments to the Creeks Ordinance with Alternative 2, requiring a use permit, with amended wording regarding definitions and rebuilding, and with concerns regarding the cost of the culvert requirements on homeowners.

Financial Implications: None

Contact: Jordan Harrison, Secretary, Planning Commission, 981-7484

c. Information Report from: Public Works Commission

Contact: Jeffrey Egeberg, Secretary, Public Works Commission, 981-6400

Public Testimony: Combined with Item No. 25. The Mayor opened the public hearing. 41 speakers. Moved, seconded, carried (Capitelli / Maio) to close the public hearing.

Action: Moved, seconded, failed (Wozniak / Olds; Noes – Maio, Anderson, Spring, Bates; Abstain – Moore, Worthington) a substitute motion to hold over to the meeting of November 28, 2006 and conduct a straw poll on four key provisions as suggested by Mayor Bates.

Moved, seconded, carried (Spring / Maio; Noes – Olds, Wozniak; Abstain – Capitelli) to adopt the City Manager's recommendation to approve the Negative Declaration and the Ordinance amending Chapter 17.08, Preservation and Restoration of Natural Watercourses, including adoption of Alternative 1 as proposed by the City Manager and the Creeks Task Force, to require a variance under BMC Section 17.08.05D, which regulates development of

Action Calendar – Public Hearings

a vacant lot within 30 feet of an open creek centerline or expansion of an existing structure within the first 25 feet of the centerline.

25. Amendments to Zoning Ordinance

a. From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) by adding Section 23C.04.100 regarding rebuilding after a disaster and amending Section 23B.44.010 regarding modifications to zoning regulations by use permit to comply with the creeks ordinance.

Financial Implications: See report

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

b. From: Planning Commission

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) by adding Section 23C.04.100 regarding rebuilding after a disaster, with the attached modification of language, and amending Section 23B.44.010 regarding modifications to zoning regulations by use permit to comply with the creeks ordinance.

Financial Implications: None

Contact: Jordan Harrison, Secretary, Planning Commission, 981-7484

Public Testimony: Combined with Item No. 24. The Mayor opened the public hearing. 41 speakers. Moved, seconded, carried (Capitelli / Maio) to close the public hearing.

Action: Moved, seconded, carried (Maio / Moore; Noes – Olds; Abstain – Capitelli, Wozniak) to adopt first reading of an ordinance adding BMC Section 23C.04.100 regarding rebuilding after disaster, with the language of Section 23C.04.100(A)(1) as recommended by the City Manager, and amending BMC Section 23B.44.010 regarding modifications to zoning regulations by a Use Permit to comply with the Creeks Ordinance. Second reading scheduled for November 28, 2006.

Action Calendar – Old Business

26. 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements (*to be delivered*)

From: City Manager

Recommendation: Adopt a Resolution establishing performance standards for use of cultural space at the Gaia Building, terminating Zoning Adjustments Board proceedings, and establishing a reporting schedule.

Financial Implications: See report

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

Action: Moved, seconded, carried (Maio / Worthington; Abstain – Olds, Wozniak) to hold over to a future meeting at the request of Councilmember Maio.

Action Calendar – New Business

27. Oxford Plaza and Brower Center *(to be delivered)*

From: City Manager

Recommendation: Provide direction to staff on a number of unresolved issues including Section 108 loan terms and potential cost overruns on the Oxford Plaza and Brower Center development project.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Moved, seconded, carried (Worthington /Maio; Noes – Olds, Wozniak) to 1) Authorize the staff to submit proposed terms of the 108 loan recommended by the staff to HUD and 2) request that the City Manager return to the Council in December with an analysis of project construction and other costs and a recommendation as to whether or not the City should agree by December 21, 2006 to move ahead with approval of the project along with an estoppel certificate which provides, among other things, that the sequenced evaluations provided for in the Disposition and Development Agreement between the Developer and the City, establish to the City's satisfaction that its exposure and financial risk will not exceed a sum to be determined by the staff.

28. Loan for Allston House *(to be delivered)*

From: City Manager

Recommendation: Adopt a Resolution committing \$789,546 from the Housing Trust Fund (HTF) as a permanent loan for Allston House, a 47-unit preservation project for very low and low-income families, accompanied by a commitment to loan City general funds to the HTF if necessary to make up any HTF shortfall in this amount in January 2008 when the permanent loan is needed.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Moved, seconded, carried (Worthington/Moore) to adopt Resolution No. 63,487–N.S.

Information Reports

29. Status Report: Warm Water Pool at the Berkeley High School Tennis Court Site

From: City Manager

Contact: Phil Kamlarz, City Manager, 981-7000

Action: Moved to Action at the request of Councilmember Wozniak. Discussion held.

30. 1310 Campus Drive Complaint

From: City Manager

Contact: Claudette Ford, Public Works, 981-5400

Action: Moved to the November 28, 2006 Action Calendar at the request of Councilmember Worthington.

Information Reports

31. Phase Out of Tritium Signs

From: City Manager

Contact: Claudette Ford, Public Works, 981-5400

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.

Item 7: Solano Avenue Business Improvement District

1. Susan Powning
2. James W. Slaten

Item 24: Amendments to Creeks Ordinance

3. David Daniels
4. L. Darlene Pratt
5. David Rinaldo
6. Nancy Ribak
7. Janusz Bajsarowicz
8. Charles and Carolyn Reese
9. Dominique Philippine
10. Dick Norgaard
11. Peter Klatt
12. Robert and Elizabeth Burrell
13. Michael Eisenberg (2)
14. Virginia Tibbals
15. Eric Wasserman
16. Patricia Boyar
17. Evan R. Meyer
18. Robert B. Reich
19. John H. Fingado
20. Jenna Olsen
21. Carol and Garret G. Thunen
22. Tom Kelly
23. Alan Gould
24. Fran Block

Item 26: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

25. Anna de Leon

Item 30: 1310 Campus Drive Complaint

26. Rozalina Gutman

Development of the 700 Block of University Avenue

27. Livable Berkeley, submitted by Mike Friedrich, Chair of the Board of Directors

Vote NO on Prop 87

28. Charlie Peters

Communications

Sea Scouts

29. Kelly Rummeler

Lack of Transparency & Public Participation in Library Director Selection Procedures

30. Jane Welford, SuperBOLD Executive Secretary

Discrepancies in California Student Test Results

31. Barbara Gilbert

Aquatic Park Coastal Conservancy Grant

32. Citizens for East Shore Parks, submitted by Mark Liolios

Public Hearing Regarding the Future of the PRC

33. Petition with 84 signatures, Police Review Commission, submitted by Victoria Urbi

Trader Joes

34. May Kandarian

Milo on Solano Avenue

35. Barbara Gilbert

Strawberry Creek Plaza

36. William E. Woodcock

Crime Information

37. Barbara Gilbert

Landmarks Preservation Ordinance

38. Daniella Thompson

Measure H: Impeachment of President Bush and Vice President Cheney

39. Dbkbrokers@*****.com

Disabled Access

40. Jane Lundin

Sustainable Berkeley

41. L. Darlene Pratt

Cell Phone Risks

42. Mike Vandeman

Supplemental Communications 1

Item 7: Solano Avenue Business Improvement District

43. David Lee

44. Josef Sarshar

Item 21: Save the Oaks at UC Stadium

Numerous email communications submitted in a substantially similar format are on file in the City Clerk Department.

Supplemental Communications 1

Item 24 and 25: Amendments to Creeks Ordinance and Zoning Ordinance

45. Nancy Lemon, Blaine Devine, Robert Levine, and Adelle Lemon
46. Brett D. and Nina M. Combs
47. Mary Ann Brewin
48. Kristen Quay (2)
49. Yvonne and Jules Weiss
50. Josephine A. Perry
51. M. Elizabeth Martin
52. Abigail Fateman, submitted on behalf of the Urban Creeks Council
53. Jennifer Mary Pearson
54. Gus Yates
55. Phillip Price (2), Creeks Task Force member
56. Pamela Rudd
57. Patricia and Merrill Shanks
58. Creeks Task Force Minority Report, submitted by Diane R. Crowley
59. Geoffrey and Patricia Chandler
60. Wayne Spevak
61. Susan Schwartz, President, Friends of Five Creeks
62. Joan Sprinson
63. John Prosis
64. Jerry Landis
65. Miriam and David Wilson
66. Aroza Simpson
67. Ann Kadyk
68. Diane Tokugawa
69. Sheila and Lloyd Andres
70. Gail Saari
71. Ervin Somogyi
72. Jacqueline Riskin
73. renee.watkins@*****.com
74. Katherine Buss
75. Carolyn Corbelli
76. Katie Pilat
77. Ramsay Breslin
78. Peter Stern
79. David Loeb
80. Carolyn Kolka
81. Neighbors on Urban Creeks, submitted by Shirley Dean
82. Stephanie Thomas
83. Eric Wasserman
84. Barbara Oliver
85. Phil Kamlarz (Comments from California Regional Water Quality Control Board)

Item 26: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

86. Anna de Leon

Supplemental Communications 1

Item 27: Oxford Plaza and Brower Center

- 87. Christine Carr
- 88. Marie Bowman
- 89. Barbara Gilbert

Supplemental Communications and Reports 2

Item 24: Amendments to Creeks Ordinance

- 90. Carole Schemmerling
- 91. Kristin Van Dam
- 92. Ellen Gorman Winters and Pier Luigi Forlani

Item 26: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

- 93. Anna de Leon

Item 27: Oxford Plaza and Brower Center

- 94. Supplemental report, submitted by the Housing Department

Item 30: 1310 Campus Drive Complaint

- 95. Rozalina Gutman

Cell Towers

- 96. Michael B.
- 97. Unidentified

Adjournment

Adjourned at 12:45 a.m. in memory of Esther Owens, Berkeley's Oldest Citizen and William Taylor.

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.