




Office of the City Manager

CONSENT CALENDAR

November 14, 2006

To: Honorable Mayor and
Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Sherry M. Kelly, City Clerk
Subject: Minutes for Approval

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).

CONTACT PERSON

Sherry M. Kelly, City Clerk, City Clerk Department, 981-6900

Attachments:

- 1: October 3, 2006 Joint Special Closed City Council / Police Review Commission Minutes
- 2: October 10, 2006 Joint Special Closed City Council/Police Review Commission Minutes
- 3: October 10, 2006 Regular City Council Minutes
- 4: October 16, 2006 Special City Council Minutes
- 5: October 24, 2006 Regular City Council Minutes

MINUTES

BERKELEY CITY COUNCIL AND POLICE REVIEW COMMISSION
JOINT SPECIAL CLOSED MEETING
TUESDAY, OCTOBER 3, 2006

Preliminary Matters

Roll Call: 5:00 p.m.

Present: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates. Commissioners Bryant, Edwards, Kidd, Ritchie, Sherman, Smith and White.

Absent: Commissioner Radisch

Public Comment: Judith Scherr, Zachary Running Wolf, Mark Schlosberg, Andrea Prichett, Elizabeth Gill, Jake Gelender, Jonathan Wong

Closed Session

The City Council and Police Review Commission recessed into closed session to meet with its attorneys concerning the following matters:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a):

Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569.

Action: Discussion held.

Adjournment

Adjourned at 6:40 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the special closed meeting of October 3, 2006 as approved by the Berkeley City Council.

Sherry M. Kelly, City Clerk

MINUTES

BERKELEY CITY COUNCIL AND POLICE REVIEW COMMISSION

JOINT SPECIAL CLOSED MEETING

TUESDAY, OCTOBER 10, 2006

Preliminary Matters

Roll Call: 5:00 p.m.

Present: Councilmembers Anderson, Capitelli, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates. Commissioners Bryant, Kidd, Ritchie, Sherman, and Smith.

Absent: Councilmember Maio and Commissioners Edwards, Radisch, and White

Public Comment: Jake Gelender

Closed Session

The City Council and Police Review Commission recessed into closed session to meet with its attorneys concerning the following matters:

CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a):

Berkeley Police Association v. City of Berkeley, et al., Alameda County Superior Court Case No. 2002 057569.

Action: Discussion held.

Open Session

Report from Closed Session: Moved, seconded, carried (Anderson/Capitelli; Absent – Maio, Olds, Worthington) to authorize the City Attorney to defend the City in Berkeley Police Association v. City of Berkeley, et. al. and to approve the stipulation for order shortening time to brief and hear petitioner’s motion for summary judgment scheduled for November 14, 2006.

Moved, seconded, carried (Ritchie/Smith; Absent – Edwards, Radisch, Bryant, White) to authorize the City Attorney to defend the City in Berkeley Police Association v. City of Berkeley, et. al. and to approve the stipulation for order shortening time to brief and hear petitioner’s motion for summary judgment scheduled for November 14, 2006.

Adjournment

Adjourned at 5:45 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the special closed meeting of October 10, 2006 as approved by the Berkeley City Council.

Sherry M. Kelly, City Clerk

MINUTES

BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 10, 2006

7:00 P.M.

Council Chambers, 2134 Martin Luther King Jr. Way

Teleconference Location – Maui Banyan, 2575 S. Kihei Rd., Kihei, HI (Maui)

Preliminary Matters

Roll Call: 7:02 p.m

Present: Councilmembers Anderson, Capitelli, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Absent: Councilmember Maio teleconferenced on Item 15, absent for the remainder of the meeting.

Ceremonial Matters: Proclamations or awards presented.

1. Proclamation recognizing 35th Anniversary of Bay Area Women Against Rape (BAWAR).

City Manager Comments:

1. Individuals aged 60 years and over or who have specific high risk chronic diseases can obtain flu shots from the City of Berkeley on the following dates: 10/23 North Berkeley Senior Center; 10/26 West Berkeley Senior Center; 10/31 St. Johns Church; and 11/1 South Berkeley Senior Center.
2. In celebration of Health Month the City will be holding a Health Fair on Saturday, October 15, 2006 from 12-5 at St. Joseph the Worker Church, 2125 Jefferson St.
3. Early Voting will be available in the City Clerk's Office from 8-5, October 16 through Election Day. Voting will be available on election day from 7 am to 8 pm.

Public Comment: Jason Kaldis, Katy McDonald, Linda Epley, Jaine Gilbert, Roger Marquis, Andy Sabhlok, Jerome Solberg, Dan Bristol, George Simpson, Emma Fazio, Laili Falatoonzadeh, Laurie Bright, Judith Epstain, Corrine Goldstick, Gene Bernardi, Jake Gelender, Jane Welford, Doug Buckwald, Zachary Runningwolf, and Andrew Smith.

Consent Calendar

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

1. **FY 2008 and FY 2009 Biennial Budget Schedule**

From: City Manager

Recommendation: Approve the schedule for adoption of the FY 2008-2009 Biennial Budget.

Financial Implications: None

Contact: Tracy Vesely, Budget Manager, 981-7000

Action: Approved schedule.

- 2. Borrowing of Funds and the Sale and Issuance of Fiscal Year 2006-07 Tax and Revenue Anticipation Notes**
From: City Manager
Recommendation: Adopt a Resolution approving the borrowing of \$25,000,000 and the sale and issuance of FY 2006-07 Tax and Revenue Anticipation Notes.
Financial Implications: General Fund - \$25 Million
Contact: Robert Hicks, Finance, 981-7300
Action: Adopted Resolution No. 63,445–N.S.
- 3. Winter Homeless Shelter Programs**
From: City Manager
Recommendation: Adopt a Resolution authorizing: 1) the City Manager to enter into a Memorandum of Understanding (MOU) with the City of Oakland, Department of Human Services, in an amount not to exceed \$64,000 for the Winter Shelter Program at the Oakland Army Base; 2) an increase of \$8,000 to the FY 2007 allocation to the City of Oakland to assist in financing repair work at the new winter shelter facility; 3) payment not to exceed \$45,000 for transportation for residents to and from the Winter Shelter facility; and 4) payment not to exceed \$34,888 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. 63,446–N.S.
- 4. Parking Enforcement Mission and Policy Statement**
From: City Manager
Recommendation: Adopt a Resolution endorsing the mission and policy statement which provides a clear message and direction to the residents of Berkeley, the Police Department and the Department of Public Works relative to parking enforcement goals.
Financial Implications: None
Contact: Douglas Hambleton, Chief of Police, 981-5700
Action: Withdrawn by the City Manager.
- 5. License Agreement: Berkeley Folk Dancers, Inc.**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a license agreement and any amendments with the Berkeley Folk Dancers, Inc. (Folk Dancers) to conduct dance classes at the Live Oak Recreation Center for period July 1, 2006 through June 30, 2008.
Financial Implications: See report
Contact: Marc Seleznow, Parks Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 63,447–N.S.
- 6. Funding for Ecology Center’s Environmental Summit**
From: Mayor Bates
Recommendation: Adopt a Resolution authorizing \$500 from the Mayor’s discretionary budget to the Ecology Center to help fund their first annual Environmental Summit.
Financial Implications: Mayor’s Office Budget - \$500
Contact: Tom Bates, Mayor, 981-7100
Action: Held over to October 24, 2006 by Mayor Bates.

7. Funding for Ecology Center

From Councilmember Maio

Recommendation: Adopt a Resolution authorizing \$2,000 in FY 2006 carryover funds from Councilmember Maio's office budget to the Ecology Center for general operating expenses of Berkeley EcoHouse.

Financial Implications: Councilmember Maio's Office Budget - \$2000

Contact: Linda Maio, Councilmember District 1, 981-7110

Action: Held over to October 24, 2006 by Mayor Bates.

8. Traffic Circle - Mathews Street and Oregon Street

From: Councilmember Moore

Recommendation: Reaffirming that a traffic circle at the intersection of Mathews Street & Oregon Street will be included in next phase of traffic calming measures.

Financial Implications: See report

Contact: Darryl Moore, Councilmember, District 2, 981-7120

Action: Approved recommendation.

9. Traffic Mitigation Measures

From: Councilmember Anderson

Recommendation: Adopt a Resolution approving the entire plan of nine traffic calming circles, initially installing five of the nine. Construction of standard traffic circles would occur at the intersections of California & Fairview, California & Harmon, California & Prince, Ellis & Fairview, Ellis & Harmon, Ellis & Woolsey, King & Woolsey, King & Harmon and King & Fairview.

Financial Implications: See report

Contact: Max Anderson, Councilmember District 3, 981-7130

Action: Adopted Resolution No. 63,448-N.S.

10. Solar Panel Permit Fees

From: Councilmember Spring

Recommendation: Adopt a policy waiving permit fees on solar panels as a local incentive to encourage solarization with funding for the waivers to come from utility users tax revenues.

Financial Implications: See report

Contact: Dona Spring, Councilmember District 4, 981-7140

Action: Held over to October 24, 2006 by Councilmember Spring.

11. Catalytic Converter Theft Prevention

From: Councilmember Worthington

Recommendation: Refer to the City Manager to prepare an informational piece to notify neighbors and automobile owners about recent catalytic converter thefts and to publicize local businesses who can weld the converter to the vehicle.

Financial Implications: None

Contact: Kriss Worthington, Councilmember District 7, 981-7170

Action: Approved recommendation.

Consent Calendar

12. **Violation of 1994 International Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment**
From: Councilmember Worthington
Recommendation: Adopt a Resolution urging California Senators and Congressmembers to not violate the U.S. Constitution by ignoring the U.S. signed 1994 International Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment.
Financial Implications: None
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 63,449–N.S.
13. **City Manager Evaluation**
From: Councilmember Worthington
Recommendation: Schedule a date in January for a City Manager evaluation review process.
Financial Implications: None
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Approved recommendation.
14. **Confirming the Appointment of an Elected Representative of the Poor**
From: Human Welfare and Community Action Commission
Recommendation: Adopt a Resolution confirming the appointment of Jill Messing (District 3) as an elected representative of the poor on the Human Welfare Community Action Commission (HWCAC), for a term ending November 15, 2006.
Financial Implications: None
Contact: Kristen Lee, Secretary, 981-5427
Action: Adopted Resolution No. 63,450–N.S.

Action Calendar – Old Business

15. **1201 San Pablo Avenue / 1100 Harrison Street** (*Public hearing closed on September 19, 2006. Council expected to take action at this meeting.*)
- a. **Supplemental Report** (*July 18, 2006*)
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
- b. **From: City Manager** (*July 18, 2006*)
Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 05-10000029 to construct a 30-unit, mixed-use project, and dismissing the appeal.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
- c. **Appeal** (*July 18, 2006*)
1. Susan Pinto and Kain/Stannage Neighbors who also join in the appeal.
- d. **Communications** (*July 18, 2006*)
1. James E. Hart
 2. 1201 San Pablo Appellants

Action Calendar – Old Business

- e. **Communications** (*September 19, 2006*)
 - 1. Stephen Wollmer
- f. **Supplemental Communications** (*September 19, 2006*)
 - 1. Jim Hart – Revised Proposal
 - 2. 1201 San Pablo/1100 Harrison Appellants (2)
 - 3. Stephen Wollmer
 - 4. Scott, Kelli and Nathan Bodensteiner
 - 5. Jim Hart – Drawing
 - 6. Mary Wyand
- g. **Supplemental Communications** (*September 26, 2006*)
 - 1. Jim Hart – Revised Application
 - 2. Prakash Pinto
 - 3. Daniel W. Corvello
 - 4. Mary Wyand
 - 5. Beth Bernstein
 - 6. Jean Molesky
 - 7. Yvette Bozzini
 - 8. Uile Cuileannain
 - 9. Mary Wyand for Erika Lamm
 - 10. Jim Hart
 - 11. Rena Rickles
 - 12. Don Mill
 - 13. Rempel Architects
- h. **Communications** (*October 10, 2006*)
 - 1. Jim Hart

Action: Moved, seconded, carried (Maio/Moore) to reopen the public hearing for limited purposes of discussing procedures and allowing the appellant and applicant to speak to the process. Moved, seconded, carried (Maio/Wozniak; Abstain – Anderson, Spring) to continue this matter to a special meeting on October 16, 2006 at 7:00 p.m.

16. Funding For A Campus Neighborhood Watch Program (*held over from September 19 and September 26, 2006 by Councilmember Worthington*)

a. From: Councilmember Worthington

Recommendation: Adopt a Resolution committing matching funding of \$7,500 to support the Cal Campus Neighborhood Watch Program.

Financial Implications: \$7,500

Contact: Kriss Worthington, Councilmember District 7, 981-7170

b. Oral Report from: City Manager

Contact: Phil Kamlarz, City Manager, 981-7000

Action: Held over to October 24, 2006 by Councilmember Worthington.

Action Calendar – Old Business

17. **Funding to Non-Profit Organizations** (*Held over from 9/26/06 by Councilmember Olds*)
From: Councilmember Olds
Recommendation: Adopt a Resolution approving funding from Councilmember Olds' office budget to several non-profit organizations as stated in the report.
Financial Implications: See report
Contact: Betty Olds, Councilmember District 6, 981-7160
Action: Held over to October 24, 2006 by Councilmember Olds.

Action Calendar – New Business

18. **Affordable Housing Mitigation Fee**
From: City Manager
Recommendation: Adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 21.28.065.B. to establish a sliding scale reduction in the maximum affordable housing mitigation fee for conversion of rental property to condominiums by owner-occupants.
Financial Implications: See report
Contact: Stephen Barton, Housing, 981-5400
Action: Moved to the Consent Calendar by Councilmember Moore and adopted first reading of Ordinance. Second reading scheduled for October 24, 2006.
19. **2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements**
From: City Manager
Recommendation: Accept the June 13, 2006 letter from Panoramic Interests as the implementation plan to prioritize cultural uses at the Gaia Arts Center, terminate the Zoning Adjustments Board's revocation proceedings, and direct staff to report on the schedule of events in one year.
Financial Implications: None
Contact: Dan Marks, Director, Planning & Development, 981-7400
Action: Held over to October 24, 2006 by Mayor Bates.
20. **Major Residential Additions**
From: Councilmember Worthington
Recommendation: Adopt first reading of an Ordinance amending Ordinance No. 6,949-N.S. to exempt certain residential additions.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Action: Moved to the Consent Calendar by Councilmember Moore and adopted first reading of Ordinance to include revised language. Second reading scheduled for October 24, 2006.

Action Calendar – New Business

21. Discussion of Draft Sunshine Ordinance

From: Mayor Bates and Councilmember Worthington

Recommendation: Discuss the attached draft Sunshine Ordinance and provide guidance to staff on possible changes and improvements.

Financial Implications: None

Contact: Tom Bates, Mayor, 981-7100; Kriss Worthington, Councilmember District 7, 981-7170

Action: Heard from members of the public and held Council discussion. Referred to the Agenda Committee to set a date for a public hearing and workshop.

Information Reports

22. FY 2006 and FY 2007 Budget Update

From: City Manager

Contact: Tracy Vesely, Budget Manager, 981-7000

Action: Received and filed.

23. Quarterly Report: Crime In Berkeley

From: City Manager

Contact: Douglas N. Hambleton, Chief of Police, 981-5700

Action: Received and filed.

Time Critical

24. Application for CSBG Discretionary Funding

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to apply for \$75,000 in Community Services Block Grant (CSBG) Discretionary Funding to the State of California Department of Community Services and Development to facilitate a community process to agree upon meaningful and measurable outcomes for community agencies receiving City funding.

Financial Implications: Revenues - \$75,000

Contact: Stephen Barton, Housing, 981-5400

Action: Moved to the Consent Calendar by Councilmember Moore and adopted Resolution No. 63,451–N.S.

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 4: Parking Enforcement Mission and Policy Statement

1. Barbara Gilbert

Communications

Item 21: Discussion of Draft Sunshine Ordinance

2. Julie Craig
3. Joan Levinson
4. Mary A. Clegg

UC Memorial Stadium Renovation

5. Seth Walter

Save the Oaks – UC Memorial Stadium

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

Transportation Services Fee

6. Dennis Cohen *(referred by Councilmember Moore)*

Lorin District – Adeline Police Office

7. James
8. Dan and Anona Bristol
9. Andrew Beretvas
10. Linda Epley

Two-Way Streets on Southside

11. Hank Resnik

Free Steering Wheel Locks

12. Alan Travis

Local Restrictions on Dorm-Type Living Arrangements

13. Barbara Gilbert

Milo Foundation

14. Barbara Gilbert

Supplemental Communications 1

Item 4: Parking Enforcement Mission and Policy Statement

15. Barbara Gilbert

Item 9: Traffic Mitigation Measures

16. Hock W. Yeo
17. Robin Wright
18. Linda Epley
19. Jennifer Millar
20. Dan and Anona Bristol
21. Barbara Gilbert
22. Allen Myers
23. Stansamsuz@aol.com

Item 15: 1201 San Pablo Avenue / 1100 Harrison Street

24. 1201 San Pablo / 1100 Harrison Appellants
25. Mary Wyand
26. Jim Hart

Supplemental Communications 1

- 27. Steven Donaldson
- 28. Mary Wyand

Item 16: Funding For A Campus Neighborhood Watch Program

- 29. Barbara Gilbert

Item 19: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

- 30. Anna de Leon
- 31. Gloria Atherstone

Item 21: Discussion of Draft Sunshine Ordinance

- 32. Mathew Hirsch – Freedom of Information Committee
- 33. Phoebe Anne Sorgen

Supplemental Communications 2

Item 15: 1201 San Pablo Avenue / 1100 Harrison Street

- 34. Rena Rickles

Item 20: Major Residential Additions

- 35. Jason Kaldis

Adjournment

Adjourned at 9:42 p.m.

***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.*

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of October, 10, 2006 as approved by the Berkeley City Council.

Sherry M. Kelly, City Clerk

MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, OCTOBER 16, 2006

7:00 P.M.

2180 Milvia Street, 6th Floor, Redwood Conference Room
Teleconference Location – 1636 Channing Way, Berkeley, CA

Preliminary Matters

Roll Call: 7:03 p.m.

Present: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Absent: None.

Action Calendar – Old Business

1. **1201 San Pablo Avenue / 1100 Harrison Street** (*Public hearing closed on September 19, 2006. Re-opened on October 10, 2006 for the narrow purpose of hearing from a representative of both the applicant and the appellants as to the procedure to be followed. Continued to this meeting to determine whether to re-open and re-notice the hearing to consider issues raised by applicant's October 10, 2006 letter or proceed to take action.*)
 - a. **Supplemental Report** (*July 18, 2006*)
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
 - b. **From: City Manager** (*July 18, 2006*)
Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 05-1000029 to construct a 30-unit, mixed-use project, and dismissing the appeal.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
 - c. **Appeal** (*July 18, 2006*)
 - 1 Susan Pinto and Kain/Stannage Neighbors who also join in the appeal.
 - d. **Communications** (*July 18, 2006*)
 1. James E. Hart
 2. 1201 San Pablo Appellants
 - e. **Communications** (*September 19, 2006*)
 1. Stephen Wollmer

Action Calendar – Old Business

f. Supplemental Communications (*September 19, 2006*)

1. Jim Hart – Revised Proposal
2. 1201 San Pablo/1100 Harrison Appellants (2)
3. Stephen Wollmer
4. Scott, Kelli and Nathan Bodensteiner
5. Jim Hart – Drawing
6. Mary Wyand

g. Supplemental Communications (*September 26, 2006*)

1. Jim Hart – Revised Application
2. Prakash Pinto
3. Daniel W. Corvello
4. Mary Wyand
5. Beth Bernstein
6. Jean Molesky
7. Yvette Bozzini
8. Uile Cuileannain
9. Mary Wyand for Erika Lamm
10. Jim Hart
11. Rena Rickles
12. Don Mill
13. Rempel Architects

h. Communications (*October 10, 2006*)

14. Jim Hart

i. Supplemental Communications (*October 10, 2006*)

15. 1201 San Pablo / 1100 Harrison Appellants
16. Mary Wyand
17. Jim Hart
18. Steven Donaldson
19. Mary Wyand
20. Rena Rickles

Action: Moved, seconded, carried (Capitelli/Maio) to reopen and continue the public hearing to October 24, 2006 for the purpose of having staff and the appellants consider the compromise proposal submitted by the applicant and worked out with several of the appellants. Applicant to submit plans to the City by Friday and to all of the appellants for review and approval.

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.*

Communications

None.

Supplemental Reports and Communication

1. City Manager Supplemental Report
2. Jim Hart (Revised compromise plan)

Adjournment

Adjourned at 8:07 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of October, 16, 2006 as approved by the Berkeley City Council.

Sherry M. Kelly, City Clerk

MINUTES

BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 24, 2006

7:00 P.M.

Preliminary Matters

Roll Call: 7:04 p.m.
Present: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.
Absent: None.

Ceremonial Matters:

1. Proclamation declaring October 24, 2006 United Nations Day.
2. Proclamation presented to George Smoot, of Lawrence Berkeley National Laboratory, commending his award of the 2006 Nobel Prize in Physics and declaring December 10, 2006 George Smoot Day.
3. Proclamation declaring November 2006 as *Help the Homeless by Dining Out Month*.

City Manager Comments:

1. Registered voters may vote in the City Clerk Office from now through Election Day.
2. This Saturday, October 28, City staff and neighbors are having an All Crew Day to clean out storm drains, 9:00 a.m. to noon at the Corp. Yard.
3. On October 31, at 1:30 p.m., there will be a ribbon cutting ceremony at the new fire station at 3000 Shasta Road.
4. On November 8, the school district and City are co-sponsoring an event on how families can address alcohol and drug abuse issues. 6:30 p.m., 2701 Martin Luther King Way.
5. On Saturday, November 11th, there is an all-day, ASUC-sponsored event, called the Berkeley Project, where a thousand students are volunteering at various city services.
6. Recognition and thanks to Tom Myers, who is retiring this Friday, for the many years of dedicated service to the City.

Public Comment

Consent Calendar

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

1. **Affordable Housing Mitigation Fee** (*First reading October 10, 2006. Absent – Maio*)

From: City Manager

Recommendation: Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 21.28.065.B. to establish a sliding scale reduction in the maximum affordable housing mitigation fee for conversion of rental property to condominiums by owner-occupants.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Ordinance No. 6,950–N.S. Effective November 23, 2006.

Consent Calendar

- 2. Major Residential Additions** (*First reading October 10, 2006. Absent – Maio*)
From: Councilmember Worthington
Recommendation: Adopt second reading of an Ordinance amending Ordinance No. 6,949-N.S. to exempt certain residential additions.
Financial Implications: None.
Contact: Kriss Worthington, Councilmember District 7, 981-7170
Actions: Removed from the Consent Calendar by Councilmember Maio. Moved, seconded, (Worthington/Moore) a main motion to rescind the first reading with the intent of adopting a new first reading with a revised date of October 26, 2006. Moved, seconded, carried (Capitelli/Maio – Noes – Moore, Anderson, Worthington; Abstain – Spring) to adopt Ordinance No. 6,951–N.S. as written. Effective November 23, 2006.
- 3. Minutes for Approval**
From: City Manager
Recommendation: Approve minutes of the following meetings: a) September 18, 2006 (closed); b) September 19, 2006 (regular); c) September 26, 2006 (closed); d) September 26, 2006 (regular).
Financial Implications: None
Contact: Sherry M. Kelly, City Clerk, 981-6900
Action: Approved minutes.
- 4. Contract: Meter and Pre-sort Services for Outgoing Mail**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments with Quick Sort Mailing Services for metering and pre-sort service for outgoing mail from November 1, 2006 through June 30, 2009, for a total amount not to exceed \$400,000.
Financial Implications: See report
Contact: Robert Hicks, Finance, 981-7300
Action: Adopted Resolution No. 63,452–N.S.
- 5. Contract: Uniform Rental and Laundry Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract and any amendments with Aramark Uniform Services to provide rental and laundering of uniforms, walk-off mats, towels, and miscellaneous items for various departments, as needed from July 1, 2006 through June 30, 2008, in an amount not to exceed \$150,000 per year.
Financial Implications: Various Funds - \$150,000
Contact: Robert Hicks, Finance, 981-7300
Action: Adopted Resolution No. 63,453–N.S.
- 6. Formal Bid Solicitations and Request for Proposals**
From: City Manager
Recommendation: Approve the request for proposals (RFP) that will be issued upon final approval by the requesting department.
Financial Implications: Various Funds - \$245,000
Contact: Robert Hicks, Finance, 981-7300
Action: Approved recommendation.

7. National Incident Management System

From: City Manager

Recommendation: Adopt a Resolution approving the National Incident Management System (NIMS) as the City's official all-hazards incident response system to prevent, prepare for, respond to, and recover from disasters, regardless of cause, size or complexity.

Financial Implications: None.

Contact: Debra Pryor, Fire Chief, 981-5500

Action: Adopted Resolution No. 63,454–N.S.

8. Contract: Financial Advisory and Technical Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with The National Development Council (NDC) for financial advisory and technical services to increase the contract amount by \$21,000 for an amount not to exceed \$45,500.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,455–N.S.

9. Contract: Financial Consulting Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Seifel Consulting, Inc. for financial consulting services to increase the contract amount by \$60,000 for an amount not to exceed \$150,000

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,456–N.S.

10. Contract: Peer Review Construction Cost Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with Dabri, Inc. for financial peer review services to increase the contract amount by \$36,480 for an amount not to exceed \$50,580.

Financial Implications: See Report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,457–N.S.

11. Contract: Peer Review Waterproofing Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with McGinnis Chen Associates, Inc. for peer review services to increase the contract amount by \$18,000 for an amount not to exceed \$36,000.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Adopted Resolution No. 63,458–N.S.

12. Personnel Rules and Regulations

From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 60,776-N.S, the Personnel Rules and Regulations, to add language in Section 9 (Method of Filling Vacancies) to establish an administrative procedure for internal promotion through a non-competitive personnel action for employees working in classification series that require professional licensure, certification or registration.

Financial Implications: None

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

Action: Adopted Resolution No. 63,459–N.S.

13. Grant Application: Workforce Housing Reward Program

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to accept a \$242,626 Workforce Housing Reward Program grant from the State of California, Department of Housing and Community Development; and to execute the resultant revenue agreement and any amendments for community improvements, including Francis Albrier Center.

Financial Implications: See report

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

Action: Adopted Resolution No. 63,460–N.S.

14. Contract: Marina Dock H-I Replacement Project *(to be delivered)*

From: City Manager

Recommendation: Adopt a Resolution approving plans and specifications for the Berkeley Marina Dock H-I Replacement Project, Specifications No. 05-10011-C (rebid); accepting the bid of Bellingham Marine Industries, Inc.; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$3,569,366 for a period of 240 calendar days from the date of the execution of the contract.

Financial Implications: Various Funds - \$3,569,366

Contact: Claudette Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,461–N.S.

15. Contract: On-Call Storm Drain Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the contract with J. F. Pacific Liners, Inc., adding to the scope of services, increasing the amount from \$24,500 to an amount not to exceed \$50,000, and extending the term to December 31, 2007.

Financial Implications: Capital Improvement Fund - \$25,100

Contact: Claudette Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,462–N.S.

- 16. Major Encroachment Permit for David Brower Center Solar Panels**
From: City Manager
Recommendation: Adopt a Resolution authorizing the issuance of a major encroachment permit to Equity Community Builders, L.L.C., to encroach upon the public right-of-way on the north side of Allston Way for the installation of solar panels for the David Brower Center, conditional to acceptance of design and approval by the City Engineer.
Financial Implications: None
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,463–N.S.
- 17. 2006-2007 Volunteer Champions Campaign**
From: Mayor Bates
Recommendation: Refer to the City Manager the development of an annual campaign that promotes and publicizes employee volunteerism in the community, especially volunteerism with Berkeley’s youth and families.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
Action: Approved recommendation.
- 18. Opposition To New Homeland Security Rules Regarding “No Match” Letters**
From: Mayor Bates and Councilmember Worthington
Recommendation: Adopt a Resolution opposing new Department of Homeland Security rules that would hold employers liable for violating immigration law if they continue to employ workers who receive “no-match” letters from the Social Security Administration.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100, Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 63,464–N.S.
- 19. Funding for Ecology Center’s Environmental Summit** (*held over from October 10, 2006 by Mayor Bates*)
From: Mayor Bates
Recommendation: Adopt a Resolution authorizing \$500 from the Mayor’s discretionary budget to the Ecology Center to help fund their first annual Environmental Summit.
Financial Implications: Mayor’s Office Budget - \$500
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 63,465–N.S.
- 20. Funding for Ecology Center** (*held over from October 10, 2006 by Mayor Bates*)
From Councilmember Maio
Recommendation: Adopt a Resolution authorizing \$2,000 in FY 2006 carryover funds from Councilmember Maio’s office budget to the Ecology Center for Berkeley EcoHouse.
Financial Implications: Councilmember Maio’s Office Budget - \$2000
Contact: Linda Maio, Councilmember District 1, 981-7110
Action: Adopted Resolution No. 63,466–N.S.

Consent Calendar

21. City Auditor's Duties and Authority

From: City Auditor

Recommendation: Adopt first 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 first reading of Ordinance. Second reading scheduled for November 14, 2006.

22. Appointment to the Mental Health Commission

From: Mental Health Commission

Recommendation: Adopt a Resolution appointing Robin M. Williams to the Mental Health Commission, as a representative of the General Public Interest Category, for a three-year term beginning October 25, 2006 and ending October 24, 2009.

Financial Implications: None

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

Action: Adopted Resolution No. 63,467–N.S.

23. Regional Composting Facility

From: Zero Waste Commission

Recommendation: Support and participate in a proactive countywide process to identify appropriate in-county locations for future composting facilities.

Financial Implications: None

Contact: Tania Levy, Secretary, Zero Waste Commission, 981-6368

Action: Approved recommendation.

Action Calendar – Old Business

24. 1201 San Pablo Avenue / 1100 Harrison Street *(Public hearing closed on September 19, 2006. Re-opened on October 10, 2006 and October 16, 2006 and continued to this meeting.)*

a. Supplemental Reports from City Manager

1. October 24, 2006 *(to be delivered)*
2. October 16, 2006
3. July 18, 2006

Contact: Dan Marks, Planning and Development, 981-7400, Manuela Albuquerque, City Attorney, 981-6950

b. From: City Manager *(July 18, 2006)*

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 05-1000029 to construct a 30-unit, mixed-use project, and dismissing the appeal.

Financial Implications: None

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

c. Appeal *(July 18, 2006)*

1. Susan Pinto and Kain/Stannage Neighbors who also join in the appeal.

Action Calendar – Old Business

- d. Communications** (*July 18, 2006*)
 - 1. James E. Hart
 - 2. 1201 San Pablo Appellants
- e. Communications** (*September 19, 2006*)
 - 1. Stephen Wollmer
- f. Supplemental Communications** (*September 19, 2006*)
 - 1. Jim Hart – Revised Proposal
 - 2. 1201 San Pablo/1100 Harrison Appellants (2)
 - 3. Stephen Wollmer
 - 4. Scott, Kelli and Nathan Bodensteiner
 - 5. Jim Hart – Drawing
 - 6. Mary Wyand
- g. Supplemental Communications (September 26, 2006)**
 - 1. Jim Hart – Revised Application
 - 2. Prakash Pinto
 - 3. Daniel W. Corvello
 - 4. Mary Wyand
 - 5. Beth Bernstein
 - 6. Jean Molesky
 - 7. Yvette Bozzini
 - 8. Uile Cuileannain
 - 9. Mary Wyand for Erika Lamm
 - 10. Jim Hart
 - 11. Rena Rickles
 - 12. Don Mill
 - 13. Rempel Architects
- h. Communications** (*October 10, 2006*)
 - 1. Jim Hart
- i. Supplemental Communications** (*October 10, 2006*)
 - 1. 1201 San Pablo / 1100 Harrison Appellants
 - 2. Mary Wyand
 - 3. Jim Hart
 - 4. Steven Donaldson
 - 5. Mary Wyand
 - 6. Rena Rickles
- j. Supplemental Communications** (*October 16, 2006*)
 - 1. Jim Hart- (Revised compromise plan)
- k. Communications** (*October 24, 2006*)
 - 1. Barbara Gilbert
 - 2. Stephen Wollmer

Action: Moved, seconded, carried (Capitelli/Maio) to adopt Resolution No. 63,468–N.S. affirming the decision of the Zoning Adjustments Board with amended conditions of approval and denying the appeal.

Action Calendar – Appeals

25. Zoning Adjustments Board Appeal: 1017 Miller Avenue**a. From: City Manager**

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board to adopt a Mitigated Negative Declaration for the proposed project at 1017 Miller Avenue, and approving the Use Permit #06-10000010 for the proposed single family residential structure with an accessory dwelling unit and two parking spaces and dismissing the appeal.

Financial Implications: None

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

b. Appeal

1. Leo and Ingrid Vallely

c. Communications

1. Ellen Rodin
2. Karen and Mark Springer
3. Michael Irwin and Charlene Stern
4. Peter Hirschfeld
5. Sarita Waite
6. Ellen Rodin
7. Joan Martin
8. Gerd H. Ilg

Action: Moved to the Consent Calendar by Councilmember Moore and adopted Resolution No. 63,469–N.S. affirming the decision of the Zoning Adjustments Board and denying the appeal.

Action Calendar – Public Hearing

26. UC Memorial Stadium Landmark Designation California Memorial Stadium**From: City Manager**

Recommendation: Open the public hearing on the Appeal of the Landmarks Preservation Commission Notice of Decision (NOD) for the University of California (UC) Memorial Stadium Landmark Designation, and upon conclusion, adopt a Resolution denying the Landmark Designation without prejudice, and send the landmark application back to the Landmarks Preservation Commission with specific direction to change the area of the site identified as within the "Boundary of Proposed Landmark Site", to make any text adjustments needed to reconcile the text with the new boundaries, and to consider changes to address the three text differences identified in Table 1.

Fiscal Implications: None

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

Public Testimony: The Mayor opened the public hearing. Wendy Markel, John English, Leslie Emmington Jones, Michael Kelly, Janice Thomas, Jesse Arreguin, John McBride, Joanna Dwyer, and William Barclay C. Moved, seconded, carried (Olds/Worthington) to close the public hearing.

Action Calendar – Public Hearing

Action: Moved, seconded, carried (Wozniak/Worthington) to adopt Resolution No. 63,470–N.S. affirming the decision of the Landmarks Preservation Commission based on the findings made by the LPC, adopted by reference.

Action Calendar – Old Business

27. **2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements** (*held over from October 10, 2006 by Mayor Bates*)
From: City Manager
Recommendation: Accept the June 13, 2006 letter from Panoramic Interests as the implementation plan to prioritize cultural uses at the Gaia Arts Center, terminate the Zoning Adjustments Board's revocation proceedings, and direct staff to report on the schedule of events in one year.
Financial Implications: None
Contact: Dan Marks, Director, Planning and Development, 981-7400
Actions: Moved, seconded, (Spring/Anderson) a main motion to remand the matter to the Zoning Adjustments Board to come up with definitions and work out details of an implementation plan. Moved, seconded, carried (Maio/Capitelli; Noes – Worthington; Abstain – Moore, Spring, Olds) continuing the matter to November 14, 2006.
28. **Solar Panel Permit Fees** (*held over from October 10, 2006 by Councilmember Spring*)
From: Councilmember Spring
Recommendation: Adopt a policy waiving permit fees on solar panels as a local incentive to encourage solarization with funding for the waivers to come from utility users tax revenues.
Financial Implications: See report
Contact: Dona Spring, Councilmember District 4, 981-7140
Action: Moved to the Consent Calendar by Councilmember Moore and approved referring to the budget process.

Action Calendar – New Business

29. **Borrowing Funds and Sale and Issuance of FY 2007 Tax and Revenue Anticipated Notes**
From: City Manager
Recommendation: Adopt a Resolution ratifying Council's action on October 10, 2006 adopting Resolution No. 63,455-N.S. approving the borrowing of \$25,000,000 and the sale and issuance of FY 2006-07 Tax and Revenue Anticipation Notes.
Financial Implications: General Fund - \$25 Million
Contact: Robert Hicks, Finance, 981-7300
Action: Moved to the Consent Calendar by Councilmember Moore and adopted Resolution No. 63,471–N.S.
30. **Specific Standards For Care of Dogs Kept Outdoors**
a. From: Citizens Humane Commission
Recommendation: Adopt first 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.

Action Calendar – New Business

Financial Implications: None

Contact: Kate O'Connor, Secretary, Citizens Humane Commission, 981-6601

b. From: City Manager

Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) by adding Section 10.04.140, as proposed by the Citizens Humane Commission with minor revisions to Section 10.04.140(G).

Financial Implications: None

Contact: Jim Hynes, Animal Services, 981-7000

Action: Moved to the Consent Calendar by Councilmember Moore and adopted first reading of Ordinance as proposed by the Commission and revised by the City Manager. Second reading scheduled for November 14, 2006.

Information Reports

- 31. Berkeley Alcohol Policy Advisory Coalition (BAPAC) Proposals**
From: City Manager
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Received and filed.
- 32. Investment Report: Quarters Ended June 30, 2006 and September 30, 2006**
From: City Manager
Contact: Robert Hicks, Finance, 981-7300
Action: Received and filed.
- 33. Status Update of Oxford Plaza and David Brower Center** *(to be delivered)*
From: City Manager
Contact: Stephen Barton, Housing, 981-5400
Action: Report not delivered. Removed from the Agenda by the City Manager.
- 34. Quarterly Report on Employee Safety and Workers' Compensation**
From: City Manager
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Received and filed.
- 35. Unrepresented Temporary Employees**
From: City Manager
Contact: David W. Hodgkins, Human Resources, 981-6800
Action: Received and filed.
- 36. Landmarks Preservation Committee Notice Of Decisions: 1) 1 Cyclotron (Landmark) 2) 3027 Adeline (Landmark) 3) 2811 Benvenue (Landmark)**
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
Action: Moved to Action by Councilmember Wozniak. Directed staff to correct address description in Notice of Decision for Bevetron. Received and filed.
- 37. Marin Avenue Traffic Study Report**

Information Reports

From: City Manager

Contact: Claudette Ford, Public Works, 981-6300

Action: Moved to Action by Councilmember Olds. 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.

Save the Oaks – UC Memorial Stadium

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

Berkeley City College

1. Mark McLeod and Deborah Badhia (DBA)

Clean Air Performance

2. Charlie Peters

Educational Standards

3. Barbara Gilbert

New Light Senior Center

4. Joy Holland

Item 18: Opposition To New Homeland Security Rules Regarding “No Match” Letters

5. AFSCME Local 3299, Berkeley Organizing Congregations for Action (BOCA), Xinaxtli, and other community members (206 signatories)

Item 24: 1201 San Pablo Avenue / 1100 Harrison Street

6. Don Mill (final drawing)

Item 26: UC Memorial Stadium Landmark Designation California Memorial Stadium

7. Shirley Dean

Item 27: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

8. Anna de Leon

Item 28: Solar Panel Permit Fees

9. Councilmember Spring

Item 36: Landmarks Preservation Committee Notice Of Decisions: 1) 1 Cyclotron (Landmark)

2) 3027 Adeline (Landmark) 3) 2811 Benvenue (Landmark)

10. L.A. Wood (2)

Supplemental Communications 2

Item 2: Major Residential Additions

11. Alan and Aleyda Swain

Item 24: 1201 San Pablo Avenue / 1100 Harrison Street

12. San Pablo Appellants

Supplemental Communications 2

Item 26: UC Memorial Stadium Landmark Designation California Memorial Stadium

13. John English

14. Wendy P. Markel

Item 27: 2116 Allston Way, Gaia Building: Implementation of Cultural Use Requirements

15. Councilmember Maio (proposed Resolution)

Complaint – 1310 Campus Drive

16. Rosalina Gutman

Action: Referred to the City Manager for a report on November 14, 2006.

Adjournment

Adjourned at 10:09 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of October 24, 2006 as approved by the Berkeley City Council.

Sherry M. Kelly, City Clerk