

SUMMARY

BERKELEY CITY COUNCIL MEETING

TUESDAY, DECEMBER 12, 2006

7:00 P.M.

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

Preliminary Matters

Roll Call: 7:12 p.m. All present.

Ceremonial Matters:

1. Swearing in of elected officials.

City Manager Comments: None.

Public Comment: 14 speakers.

Consent Calendar

Action: Moved, seconded, carried (Worthington/Wozniak) to adopt Consent Calendar in one motion except as indicated: Item 1 was removed for discussion and Item 27 (Action Calendar – New Business) was added to the Consent Calendar.

- 1. Landmarks Preservation Ordinance** (*First reading – December 5, 2006 – Noes – Spring, Olds, Worthington*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance repealing and reenacting Berkeley Municipal Code (BMC) Chapter 3.24, Landmarks Preservation.
Financial Implications: None
Contact: Manuela Albuquerque, City Attorney, 981-6950
Action: Removed from Consent Calendar. Moved, seconded, carried (Wozniak/Maio) to adopt Ordinance No. 6,958–N.S. Effective January 11, 2007.
- 2. Amendment to FY 2007 Annual Appropriations Ordinance** (*First reading – December 5, 2006 - Unanimous*)
From: City Manager
Recommendation: Adopt second reading of an Ordinance amending the FY 2007 Annual Appropriations Ordinance No. 6,935 amending the FY 2007 Annual Appropriations 35 for FY 2007 based upon recommended re-appropriation of committed FY 2006 funding and other adjustments authorized since July 1, 2006.
Financial Implications: See report
Contact: Tracy Vesely, Budget Manager, 981-7000
Action: Adopted Ordinance No.6,959–N.S. Effective January 11, 2007.

Consent Calendar

- 3. Manufactured Nanoparticle Health and Safety Disclosure** (*First reading – December 5, 2006 - Unanimous*)
From: Community Environmental Advisory Commission
Recommendation: Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Sections 15.12.040 and 15.12.050 to add a health and safety disclosure for nanoparticles.
Financial Implications: None
Contact: Nabil A Al-Hadithy, Secretary, Community Environmental Advisory Commission, 981-7400
Action: Adopted Ordinance No. 6,960–N.S. Effective January 11, 2007.
- 4. Confirming the Results of the November 7, 2006 General Municipal Election**
From: City Manager
Recommendation: Adopt a Resolution confirming the results of the November 7, 2006 General Municipal Election and declaring the passage of: Measure E – Rent Board Vacancy Charter Amendment; Measure F – Resolution, General Plan Amendment (Gilman Playing Fields); Measure G – Advisory Resolution, Greenhouse Gas Emissions Reduction; and Measure H – Advisory Resolution, Impeachment of President Bush and Vice President Cheney.
Financial Implications: None
Contact: Pamyla Means, City Clerk, 981-6900
Action: Adopted Resolution Nos. 63,516–N.S. (Canvass returns), 63,517–N.S.(Amendment to the General plan, Waterfront Plan and Waterfront Specific Plan), 63,518–N.S. (Reduction in Greenhouse Emissions) and 63, 519–N.S (Impeachment of President and Vice-President).
- 5. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of November 27, 2006 (joint City Council/Police Review Commission special closed) and November 28, 2006 (regular).
Financial Implications: See report
Contact: Pamyla Means, City Clerk, 981-6900
Action: Approved minutes as submitted.
- 6. Contract: Rescuing/Sheltering Animals**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Home at Last Rescue (HAL) for rescuing/fostering animals from the Berkeley Animal Care Shelter for the period January 1, 2007 through June 31, 2009 in an amount not exceed \$72,750.
Financial Implications: See report
Contact: Kate O’Connor, Animal Services, 981-6601
Action: Adopted Resolution No. 63,520–N.S.

Consent Calendar

7. Contract: Sewer Service Rate Analysis

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to enter into an agreement and any amendments with Harris & Associates in an amount not to exceed \$103,000 to provide a Sewer Service Charge Rate Analysis and conduct resulting rate setting hearings for proposed service charge modifications for the period December 12, 2006 through October 30, 2007.

Financial Implications: Sanitary Sewer Fund - \$103,000

Contact: Tracy Vesely, Budget, 981-7000; Claudette Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,521–N.S.

8. Contract: Turtle Island Monument Artwork

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend contract with Scott K. Parsons for design, development and installation of the Turtle Island Monument at the Civic Center Park Fountain, increasing the amount by \$3,700, for an amount not to exceed \$37,700.

Financial Implications: FY2007 Public Art Fund - \$3,700

Contact: Michael Caplan, Economic Development, 981-7000

Action: Adopted Resolution No. 63,522–N.S.

9. Contract: Sanitary Sewer Project

From: City Manager

Recommendation: Adopt a Resolution 1) approving the plans and specifications for the Sanitary Sewer Project located at San Diego Road, Somerset Place, Halcyon Court and Webster Street; and 2) authorizing the City Manager to execute a contract and any amendments with Darcy and Harty Construction, Inc., in an amount not to exceed \$397,658, for a term of 170 calendar days from the date of the execution of the contract.

Financial Implications: Sewer CIP Fund - \$397,658

Contact: Claudette Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,523–N.S.

10. Grant Application: West Street Path Extension

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to submit an application to Caltrans' FY 07-08 Bicycle Transportation Account (BTA) for a grant in the amount of \$787,500 to complete the West Street Multi-use Path; and authorizing the City Manager to execute related grant agreements and any amendments, and accept these grant funds, if awarded.

Financial Implications: Revenue: \$787,500; Measure B Bicycle and Pedestrian Funds - \$87,500

Contact: Claudette Ford, Public Works, 981-6300

Action: Adopted Resolution No. 63,524–N.S.

- 11. Contract: Expand Pay and Display Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the agreement with Cale Parking Systems USA, Inc., to 1) initiate Phase 3 of the parking pay stations program to include the Berkeley Way and Elmwood parking lots, in an amount not to exceed \$172,000, 2) implement on-line real time credit card processing at current and proposed pay stations in an amount not to exceed \$55,000; and 3) increase the four-year operating costs for Phase 1 to \$242,412, for a new contract total not to exceed \$1,294,044.
Financial Implications: Parking Meter and Off-Street Parking Funds - \$469,412
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,525–N.S.
- 12. Contract: Eco Pass Transit Program**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an agreement and any amendments with the Alameda-Contra Costa Transit District (AC Transit) for the continuation of the Eco Pass Transit Program for City employees in an amount not to exceed \$200,000 for the period January 1, 2007 through December 31, 2008.
Financial Implications: Payroll Deduction Trust Fund - \$200,000
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,526–N.S.
- 13. Partnering for Grants**
From: Mayor Bates and Council members Moore and Maio
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a collaborative agreement with the Berkeley Community Gardening Collaborative (BCGC), Berkeley Partners for Parks (BPPF) and the Rails to Trails Conservancy (RTC) to seek out and write grants for planning the use of the remaining vacant parcels of the Santa Fe Right of Way (SFROW) for a variety of open space uses for consideration by the Council and refer \$5,000 to the mid-year budget process to support this effort.
Financial Implications: See report
Contact: Tom Bates, Mayor, 981-7100; Darryl Moore, Councilmember, District 2, 981-7120; Linda Maio, Councilmember, District 1, 981-7110
Action: Adopted Resolution No. 63,527–N.S.
- 14. Ed Roberts Campus Transportation for Livable Communities**
From: Mayor Bates, Council members Anderson and Worthington
Recommendation: Adopt a Resolution of local support authorizing the filing of an application for federal Surface Transportation Program (STP) and/or Congestion Mitigation and Air Quality Improvement (CMAQ) funding and committing the necessary non-federal match and stating the assurance to complete the project.
Financial Implications: See report
Contact: Tom Bates, Mayor, 981-7100; Max Anderson, Councilmember District 3, 981-7130; Kriss Worthington, Councilmember District 7, 981-7170
Action: Adopted Resolution No. 63,528–N.S.

Consent Calendar

15. **University of California's Southeast Campus Integrated Project**
From: Councilmember Capitelli
Recommendation: Request the City Manager present a brief update at the December 12, 2006 meeting about the public information efforts regarding the City's response to the University of California's Southeast Campus Integrated Project.
Financial Implications: None
Contact: Laurie Capitelli, Councilmember District 5, 981-7150
Action: Continued to January 16, 2007.
16. **Fire Department Flexible Deployment**
From: Council members Wozniak, Olds and Worthington
Recommendation: Refer to the midyear budget review process a recommendation to add sufficient overtime funds to avoid invoking flexible deployment and the temporary closure of fire stations during the remainder of FY06/07.
Financial Implications: \$100,000 per month.
Contact: Gordon Wozniak, Councilmember, District 8, 981-7180; Betty Olds, Councilmember District 6, 981-7160; Kriss Worthington, Councilmember District 7, 981-7170
Action: Referred to budget review process.
17. **Extension of the Waterfront Commission**
From: Waterfront Commission
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 3.36.070 extending the term of the Waterfront Commission to December 31, 2011.
Financial Implications: Minimal.
Contact: Marc Seleznow, Parks, Recreation and Waterfront, 981-6700
Action: Adopted first reading of Ordinance. Second reading scheduled for January 16, 2007.

Action Calendar – Appeals

18. **Zoning Adjustments Board Appeal: 2224 Roosevelt Avenue**
a. From: City Manager
Recommendation: Adopt a Resolution remanding the application of the Zoning Adjustments Board (ZAB) to either: 1) deny the application to construction a new detached dwelling unit as currently proposed, or 2) allow the applicants to revise their application to propose an addition to the existing duplex instead of the current proposal to construct a new detached dwelling unit and converting the duplex to a single family dwelling at 2224 Roosevelt Avenue.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
- b. Appeal**
1. Gale Garcia
- c. Communications**
2. None.
- Action:** Moved, seconded, carried (Spring/Maio) to adopt Resolution No. 63,529–N.S (Option 2).

Action Calendar – Public Hearing

19. Parking Meter And Pay-And-Display Station Fees

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending Berkeley Municipal Code (BMC), Section 14.52.120, Parking Meter and Pay-and-Display Station Fees to increase the rate to \$1.00 per hour, effective March 5, 2007.

Financial Implications: See report.

Contact: Claudette Ford, Public Works, 981-6300

Public Testimony: The Mayor opened the public hearing. 1 speaker.

Action: Moved, seconded, carried (Maio/Worthington) to close the public hearing and adopt first reading of Ordinance. Second reading scheduled for January 16, 2007.

20. Soft Story Ordinance

From: City Manager

Recommendation: Conduct a public hearing, and upon conclusion, adopt the second reading of an Ordinance amending Berkeley Municipal Code (BMC) Chapter 19.39, Soft Story Ordinance, to adopt the American Society of Civil Engineers Standard 31 (ASCE-31) - "Seismic Evaluation of Existing Buildings", 2003 Edition, for the required seismic analysis of a non-wood frame ground story.

Financial Implications: See report.

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

Public Testimony: The Mayor opened the public hearing. 0 speakers.

Action: Moved, seconded, carried (Maio/Capitelli) to close the public hearing and adopt Ordinance No. 6,961–N.S. Effective January 11, 2007.

21. Solano Avenue Business Improvement District (*public hearing continued from December 5, 2006*)

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, 1) adopt a Resolution confirming the 2006 Annual report of the Solano Avenue Business Improvement District (BID) and levying an annual assessment for calendar year 2007 and 2) adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the Solano Avenue Association (SAA) for approximately \$35,000 of BID funds.

Financial Implications: See report

Contact: Michael Caplan, Economic Development, 981-7400

Councilmember Capitelli recused

b. Protest Letters and Tabulation

Public Testimony: The Mayor opened the public hearing. 9 speakers. Moved, seconded, carried (Moore/Anderson) to close the public hearing.

Action: Moved, seconded, carried (Worthington/Maio) to adopt Resolution No. 63,530–N.S. (Abstain – Capitelli) as amended (1) Work plan to be submitted following consultation with affected parties; (2) assessment reduced by 20%; and (3) City Manager to report on expenditures and sole source contract.

Recess 9:17 – 9:32 p.m. Council member Spring left the dais.

Action Calendar – Old Business

22. Cultural Use Requirements, Gaia Building (*held over from November 14, 2006 by Councilmember Maio*)

From: City Manager (*December 12, 2006*)

Recommendation: Adopt a resolution establishing performance standards for use of cultural space at the Gaia Building, terminate ZAB revocation proceedings, and establish a reporting schedule.

Financial Implications: None.

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

Councilmember Maio recused.

Action: Councilmember Spring present via teleconference 9:50 p.m. Moved, seconded, carried (Worthington/Olds) to suspend rules to allow action on the resolution. Moved, seconded, carried (Olds/Wozniak) to adopt Resolution No. 63,531–N.S. (Noes – Anderson, Spring, Worthington; Abstain – Maio) as amended December 12, 2006.

Action Calendar – New Business

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

From: City Manager

Recommendation: Consider options for funding the Oxford Plaza and Brower Center project, including entering into related agreements and taking other related actions.

Financial Implications: See report

Contact: Stephen Barton, Housing, 981-5400

Action: Approved recommendation and adopted Resolutions Nos. 63,532–N.S., 63,533–N.S., 63,534–N.S., 63,535–N.S., 63,536–N.S., 63,537–N.S., 63,538–N.S., 63,539–N.S. (Absent – Moore, Olds, Spring) as submitted in supplementals and as revised at the meeting to include a 3 million dollar cap.

24. Settlement Agreement: University of California - 2020 Long Range Development Plan

From: City Manager

Recommendation: Adopt a Resolution clarifying and reaffirming the Council's intentions with regard to implementation of the Settlement Agreement with the University of California concerning the University's 2020 Long Range Development Plan (LRDP).

Financial Implications: None

Contact: Manuela Albuquerque, City Attorney, 981-6950

Action: Moved, seconded, carried (Wozniak/Anderson) to adopt Resolution No. 63,540–N.S. (Noes – Olds, Spring, Worthington) with minor grammar revision.

Action Calendar – New Business

25. **Prohibition of City Memberships in Organizations Participating in Electoral Politics**
From: Councilmember Spring
Recommendation: Request the City Manager draft a policy that will prohibit City memberships in organizations that participate in electoral politics such as the Berkeley Chamber of Commerce.
Financial Implications: See report
Contact: Dona Spring, Councilmember, District 4, 981-7140
Action: Continued to January 16, 2007.
26. **Term Limits for Commissioners**
From: Council members Capitelli and Olds
Recommendation: Request the City Manager direct the City Attorney to draft language amending Berkeley Municipal Code (BMC) Section 3.02 to: 1) amend the language in Section 3.02.040 to insure that commissioners who have served for eight years on a board or commission take a two-year leave before being reappointed; and 2) limit commissioner's service to one board or commission at any given time.
Financial Implications: None
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150; Betty Olds, Councilmember, District 6, 981-7160
Action: Continued to January 16, 2007.
27. **Information Report: Quarterly Crime Report**
From: City Manager
Contact: Douglas N. Hambleton, Police, 981-5700
Action: Added to Consent Calendar and received and filed.

Information Reports

28. **Audit: Contract Compliance**
From: City Manager
Contact: Robert Hicks, Finance, 981-7300
Action: Received and filed.
29. **Audit: Limited Tuolumne Camp Staff Review**
From: City Manager
Contact: Marc Seleznow, Parks, Recreation and Waterfront, 981-6700
Action: Received and filed.
30. **Landmarks Preservation Commission Notice of Decisions: 1) 2300 Shattuck Avenue; 2) 147 Tunnel Road**
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
Action: Received and filed.

Information Reports

- 31. Landmarks Preservation Commission Notice of Decisions: 1) 2128-2130 Center Street;
2) 1340 Arch Street**
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
Action: Received and filed.
- 32. Fee Deferral: Allston House, 2121 Seventh Street**
From: City Manager
Contact: Dan Marks, Planning and Development, 981-7400
Action: Received and filed.
- 33. Audit: Parking Enforcement Operations**
From: City Manager
Contact: Douglas N. Hambleton, Police, 981-5700
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 22: Cultural Use Requirements, Gaia Building

1. Anna de Leon

Item 24: Oxford Plaza and Brower Center

2. Harrison Fraker

Crowd Noise

3. Sharon Hudson

Harrison House

4. Daryl Bagley and Muang Saepanh

Save the Oaks at UC Stadium

5. Julia Cato

Supplemental Communications 1

Item 22: Cultural Use Requirements, Gaia Building

6. Suzy Thompson, on behalf of Civic Arts Commission
7. Michael Patrick Durkee, Allen Matkins Leck Gamble Mallory & Natsis LLP

Item 26: Term Limits for Commissioners

8. Bonnie Hughes
9. Andy Katz
10. Hank Resnik

Supplemental Communications 2

Item 1: Landmarks Preservation Ordinance

11. Elisabeth Peters O'Malley
12. Stuart M. Flashman, on behalf of Berkeley Neighborhood Preservation Organization

Item 3: Manufactured Nanoparticle Health and Safety Disclosure

13. Will Spurgeon

Item 26: Term Limits for Commissioners

14. Wendy Alfsen
15. Donna Mickleson
16. Charles Siegel

Supplemental Communications and Reports 3

Item 1: Landmarks Preservation Ordinance

17. Jill Korte

Item 21: Solano Avenue Business Improvement District

18. Supplemental report, submitted by Economic Development
19. Ten (10) protest letters
20. Seven (7) letters rescinding previous protests

Item 22: Cultural Use Requirements, Gaia Building

21. Supplemental report, submitted by Planning and Development

Item 23: Oxford Plaza and Brower Center

22. Supplemental reports (3), submitted by Housing

Item 24: Settlement Agreement: University of California - 2020 Long Range Development Plan

23. Anne Wagley

Cell Towers

24. Peter Teichner
25. Mark Longwood

Glendale Path

26. Rozalina Gutman

Downtown Berkeley Association

27. Deborah Badhia

Adjournment

Adjourned at 12:46 a.m.