



Office of the City Manager

ACTION CALENDAR

December 12, 2006

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Manuela Albuquerque, City Attorney

Subject: Settlement Agreement: University of California - 2020 LRDP

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.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

In May 2005 the City entered into a litigation settlement agreement with the Regents of the University of California pursuant to which the City dismissed its litigation against the Regents' approval of the 2020 Long Range Development Plan (2020 LRDP) for the University of California Campus at Berkeley (University) and the City and University agreed to engage in a joint planning process for the downtown area and to other fiscal considerations for the City.

Since that time, it has been suggested that the settlement agreement improperly delegates the City's home rule authority to the University and grants the University a "veto" over the City's planning process with respect to the downtown. The City Manager explained that this perception was erroneous in a September 27, 2005, report concerning the formation of the Downtown Area Plan Advisory Committee. However there are still misconceptions about this issue.

The proposed resolution basically reiterates that in agreeing to collaborate on a joint downtown area plan that both the City and University could adopt, neither the University nor the City was giving up any sovereignty or giving the other party any veto power, but merely establishing a process that they hoped would result in a plan that each party would voluntarily adopt.

BACKGROUND

See above.

RATIONALE FOR RECOMMENDATION

Although the issues addressed in the proposed resolution have been addressed by the City Manager, they have never been addressed directly by an official action of the Council. Moreover, the misconception described above continues to be repeated and is a source of concern for some members of the community, and could undermine the Downtown Area planning process if it is not corrected.

In addition, four individuals have filed a lawsuit on this basis, and it is important for the Council to speak directly to the Court as to its understanding of the settlement agreement as a legislative act of the Council. The Court has given the City until December 15, 2006, to submit any additional materials. Thus, this action needs to be taken at this meeting.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Zach Cowan, Assistant City Attorney, 981-6950

Attachments:

1: Resolution

RESOLUTION NO. ##,### - N.S.

CLARIFYING AND REAFFIRMING PURPOSE AND IMPLEMENTATION OF
SETTLEMENT AGREEMENT WITH UNIVERSITY OF CALIFORNIA CONCERNING 2020
LONG RANGE DEVELOPMENT PLAN

WHEREAS, on May 24, 2005, the Council approved a litigation settlement agreement with the Regents of the University of California pursuant to which the City dismissed its litigation against the Regents' approval of the 2020 Long Range Development Plan (2020 LRDP) for the University of California Campus at Berkeley (University) and the City and University agreed to engage in a joint planning process for the downtown area, additional joint initiatives, and to other fiscal considerations for the City; and

WHEREAS, the City Council recognizes that the University is exempt from local land use regulations when using property under its ownership or control in furtherance of its educational purposes; and

WHEREAS, the Settlement Agreement establishes the rules under which the City and the University will attempt to collaborate on an area plan to be adopted by the City for part of the off-campus area most affected by the 2020 LRDP, to which area plan the City and University hope the University will voluntarily agree; and

WHEREAS, it was the Council's hope and intention in approving the Settlement Agreement that by establishing and agreeing to a joint planning process the Settlement Agreement would provide a forum for resolving City-University disputes that would be more productive than litigation; and

WHEREAS, because the success of this enterprise is not certain, the Settlement Agreement reserves to both parties all of their rights, in case their effort is not successful; and

WHEREAS, it has been suggested that the Settlement Agreement improperly delegates the City's home rule authority to the University; and

WHEREAS it was not the Council's intent to do so and the Council therefore wishes to clarify its intention in approving the Settlement Agreement and its interpretation of the Settlement Agreement, and to further explain how it intends to implement the Settlement Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley as follows:

1. It was the City Council's intention in approving the Settlement Agreement to articulate in summary form how the City and University could voluntarily collaborate on a

Downtown Area Plan (DAP) that would accommodate planned University development downtown in a manner as acceptable as possible to the City, and that both the City and the University could therefore subscribe to.

2. It was the City Council's understanding in approving the Settlement Agreement that the University insisted on reserving, and did reserve, its own sovereign authority.

3. The City Council's understanding of the Settlement Agreement was and is as follows:

a. The Settlement Agreement calls for the creation of a joint DAP, to be created through a collaborative process.

b. The purpose of the DAP is to find the best way to accommodate the approximately 800,000 square feet of new University development in the downtown area approved in the 2020 LRDP, as consistently as possible with existing City plans and policies.

c. The City Council expects that the City and University will be partners in the planning process in order to achieve this goal, and if such an enterprise is to succeed, each side must accommodate the other to some extent, consistent with maintaining its own sovereignty. However in agreeing to participate, and participating, in the joint DAP process, which includes preparation of an Environmental Impact Report (EIR), public hearings before the Planning Commission as required by law and other proceedings, neither the City nor the University is abrogating its own sovereign powers.

d. While the Settlement Agreement anticipates that the City and University will attempt to agree on a joint DAP that meets the needs of both entities, the DAP will be an area plan adopted by the City, the City is the lead agency and is ultimately responsible for the adequacy of environmental review and the content of the DAP. Accordingly, the Settlement Agreement does not require the City to, and the City Council does not intend to, issue or certify an EIR that it does not determine, in its independent judgment, to be adequate, and does not require the City to adopt a DAP with which it is not satisfied.

e. The Settlement Agreement also reserves to the University the right to disengage from the process if it believes its needs, as reflected in the Settlement Agreement, are not being met by the EIR or the DAP, but does not give the University "veto" authority over the DAP EIR or the DAP, or allow it to prevent the City from releasing or certifying a DAP EIR as it sees fit, or adopting a DAP of its own choice.

f. The City Council expects that if the University believes that DAP has been developed in good faith and addresses its fundamental interests, it will voluntarily choose to abide by it and implement it for its properties.

4. The City reaffirms its intention to implement the Settlement Agreement consistent with this Resolution.