

ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
TUESDAY, NOVEMBER 6, 2007

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

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – DONA SPRING

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – BETTY OLDS
DISTRICT 7 – KRISS WORTHINGTON
DISTRICT 8 – GORDON WOZNIAK

Preliminary Matters

Roll Call: 7:22 p.m. All present.

Ceremonial Matters:

1. Proclamations
 - Retirement of Berkeley City Attorney – Manuela Albuquerque
 - Recognition of George Barbero

Public Comment – Consent Calendar Items Only – 4

Public Comment – Items Not Listed on the Agenda – 1

Consent Calendar

Action: M/S/C (Capitelli/Moore) to adopt Consent Calendar in one motion except as indicated. Removed Item 4 for discussion. Item 16 removed from Agenda by City Manager with a new date to be determined.

1. Amendment to FY 2008 Annual Appropriations Ordinance

From: City Manager

Recommendation: Adopt second reading of Ordinance 7,000–N.S amending the FY 2008 Annual Appropriations Ordinance No. 6,935–N.S. for fiscal year 2008 based upon recommended re-appropriation of committed FY 2007 funding and other adjustments authorized since July 1, 2007, in the amount of \$61,848,111 (gross) and \$52,178,359 (net).

First Reading: Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates. Noes: None. Absent: None.

Financial Implications: See report

Contact: Tracy Vesely, Budget Manager, 981-7000

Action: Adopted second reading of Ordinance No. 7,000–N.S. Effective date December 6, 2007.

Consent Calendar

- 2. Lease: 1013 Pardee Street No. 105**
From: City Manager
Recommendation: Adopt second reading of Ordinance 7,001–N.S authorizing a new one year lease from October 1, 2007 to September 30, 2008 for an existing warehouse at 1013 Pardee Street, No.105 (alternate address of 2700 10th Street) for the storage of fire and police equipment, emergency supplies and equipment.
First Reading: Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates. Noes: None. Absent: None.
Financial Implications: Measure Q, Budget Code - \$138,293
Contact: Debra Pryor, Fire, 981-3473
Action: Adopted second reading of Ordinance No. 7,001–N.S. Effective date December 6, 2007.
- 3. Deferred Compensation Plan: Amend Plan to Allow Employees to Purchase Additional Retirement Service**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,002–N.S to amend Ordinance No. 6,749–N.S., the City of Berkeley Deferred Compensation Plan to add a new Article XIII, Purchase of Additional Retirement Service Credit from the California Public Employees' Retirement System (CalPERS).
First Reading: Ayes: Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Bates. Noes: None. Absent: None.
Financial Implications: None
Contact: David Hodgkins, Human Resources, 981-6800
Action: Adopted second reading of Ordinance No. 7,002–N.S. Effective date December 6, 2007.
- 4. Amend Council Rules of Procedure, Article IV Conduct of Meetings, Regarding Comments from the Public**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 62,857–N.S., Council Rules of Procedure, Chapter IV Conduct of Meetings, regarding Comments from the Public, Public Hearings and Work Sessions.
Financial Implications: None
Contact: Pamyla Means, City Clerk, 981-6900
Action: Removed from Consent for discussion . Adopted Resolution No. 63,875–N.S. as amended to modify Section A-1 to call opposition first for public comment on Consent Calendar Items. Vote: Ayes – Maio, Moore, Anderson, Spring, Capitelli, Olds, Worthington, Wozniak, Bates; Noes – None.
- 5. Commission Chair and Vice Chair Training**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 60,531–N.S. relating to commission chair and vice chair training to allow commission officers to complete the required training via online video.
Financial Implications: See report.
Contact: Pamyla Means, City Clerk, 981-6900
Action: Adopted Resolution No. 63,876–N.S.

Consent Calendar

- 6. Contract Amendment: Access Information Management, Commercial Records Center Services**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7421 with Access Information Management for commercial records center services to increase the contract amount by not to exceed \$6,000 to bar code City inventory.
Financial Implications: General Fund - \$6,000
Contact: Pamyla Means, City Clerk, 981-6900
Action: Adopted Resolution No. 63,877–N.S.
- 7. Minutes for Approval**
From: City Manager
Recommendation: Approve the minutes for the Council meetings of October 9, 2007 (closed and regular).
Financial Implications: None
Contact: Pamyla Means, City Clerk, 981-6900
Action: Approved minutes as submitted.
- 8. Adoption of the 2007 California Fire Code with Local Amendments**
From: City Manager
Recommendation:
1) Adopt the first reading of an Ordinance repealing and re-enacting the Berkeley Fire Code Chapter 19.48 and related procedural and stricter provisions;
2) Schedule a public hearing along with the adoption of the Ordinance for November 27, 2007.
Financial Implications: See report
Contact: Debra Pryor, Fire, 981-3473
Action:
1) Adopted first reading of Ordinance No. 7,003–N.S. Second reading scheduled for November 27, 2007.
2) Scheduled public hearing for November 27, 2007.
- 9. Adoption of Revisions to Berkeley Municipal Code 13.46 (Indoor Entertainment Events)**
From: City Manager
Recommendation: Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.46 Indoor Entertainment Events.
Financial Implications: None
Contact: Debra Pryor, Fire, 981-3473
Action: Adopted first reading of Ordinance No. 7,004–N.S. as amended. Second reading scheduled for November 27, 2007.

Consent Calendar

- 10. Classification: Library Administrative Manager**
From: City Manager
Recommendation: Adopt a Resolution to amend Resolution No. 61,812–N.S., Classification and Salary Resolution for Unrepresented Employees, to change the title of Library Financial Manager to Library Administrative Manager and to revise the classification specification effective November 1, 2007.
Financial Implications: None
Contact: David Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,878–N.S.
- 11. Contract Amendment: Gilman Project Permit Process - LSA Associates**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7344 with LSA Associates, Inc. for consulting services for the Gilman Project permit process by \$18,056 for a total not to exceed \$36,336, which includes a 20% contingency, through June 30, 2008.
Financial Implications: General Fund - \$36,336
Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 63,879–N.S.
- 12. Contract No. 7349 Amendment: Gilman Project Environmental Monitoring - Fugro West**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7349 with Fugro West, Inc., for environmental monitoring services by \$23,150, plus a 20% contingency, for an amount not to exceed \$62,035 through June 30, 2008.
Financial Implications: General Fund - \$62,035
Contact: William Rogers, Parks, Recreation and Waterfront, 981-6700
Action: Adopted Resolution No. 63,880–N.S.
- 13. Adoption of Berkeley Building Codes**
From: City Manager
Recommendation:
1) Adopt first reading of an Ordinance repealing and re-enacting the Berkeley Building, Electrical, Mechanical and Plumbing Codes and related procedural and stricter provisions in BMC Chapters 19.28, 19.30, 19.32 and 19.36;
2) Schedule a public hearing, along with the adoption of the Ordinance for November 27, 2007.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action:
1) Adopted first reading of Ordinance No. 7,005–N.S. Second reading scheduled for November 27, 2007.
2) Scheduled public hearing for November 27, 2007.

Consent Calendar

- 14. Contract: Mills Act - 2611 Ashby Avenue**
From: City Manager
Recommendation: Adopt a Resolution to direct the City Manager to enter into a Mills Act contract for 2611 Ashby Avenue.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Resolution No. 63,881–N.S.
- 15. Fee Deferral and Modification of Loan Agreement for Freight and Salvage (Berkeley Society for the Preservation of Traditional Music)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend the existing loan agreement with Freight and Salvage (Berkeley Society for the Preservation of Traditional Music) to increase the loan amount by up to \$350,000 to pay for City building permit fees for the Society's new venue at 2020-2026 Addison Street and to modify the loan terms to allow forgiveness of \$77,000 of the original loan principal when Freight and Salvage receives a Certificate of Occupancy for its new building at 2020-26 Addition.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted Resolution No. 63,882–N.S.
- 16. Contract: East Stockton Transfer Recycle for Construction & Demolition Waste Processing**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to enter into a contract with East Stockton Transfer Recycle to sort construction and demolition waste for an annual amount not to exceed \$1,382,500 in FY 2008 and a total contract amount not to exceed \$5,727,500 for FY 2008, FY 2009 and FY 2010, for the period November 12, 2007 to June 30, 2010.
Financial Implications: Refuse Fund - \$1,382,500
Contact: Claudette Ford, Public Works, 981-6300
Action: City Manager removed item from Agenda. New date will be determined at the November 13, 2007 Agenda Committee Meeting.
- 17. Permit Service Center Surprise Cash Count: Address Long Standing Security and Accountability Concerns**
From: Auditor
Recommendation: Request the City Manager to report back on or before May 15, 2008, and every three months thereafter, regarding the implementation status of the audit recommendations in the attached audit report until each recommendation is fully implemented.
Financial Implications: See report
Contact: Ann-Marie Hogan, Auditor, 981-6750
Action: Approved recommendation.

Consent Calendar

18. **Audit: Nature Center Surprise Cash Count - Controls Over Cash Receipts Need Improvement**
From: Auditor
Recommendation: Request the City Manager to report back during February 2008 regarding the implementation status of each of the City Auditor's recommendations in the attached report, and to report back no later than every six months thereafter, until all recommendations have been implemented.
Financial Implications: See report
Contact: Ann-Marie Hogan, Auditor, 981-6750
Action: Approved recommendation.
19. **Supporting the Jubilee Act of 2007 (H.R. 2634)**
From: Peace and Justice Commission
Recommendation: Adopt a Resolution urging the United States government to pass the Jubilee Act for Responsible Lending and Expanded Debt Cancellation of 2007 (H.R. 2634), and to commence efforts to obtain agreements from the international financial institutions to cancel all debts owed to them by impoverished countries.
Financial Implications: None
Contact: Manuel Hector Jr., Commission Secretary 981-5100
Action: Adopted Resolution No. 63,883–N.S.
20. **Free the San Francisco Eight**
From: Peace and Justice Commission
Recommendation: Endorse the cry of people demanding justice by stating publicly that in the interest of justice, Jerry Brown, Attorney General of the State of California, should dismiss all of the charges against all of the San Francisco 8, and send a letter to Jerry Brown, Attorney General of the State of California, calling on him, in the interest of justice, to dismiss all of the charges against the San Francisco 8.
Financial Implications: None
Contact: Manuel Hector Jr., Commission Secretary 981-5100
Action: Removed from Consent Calendar for discussion. Approved recommendation as amended by Councilmember Maio. Vote: Ayes –Maio, Moore, Anderson, Spring, Capitelli, Olds, Worthington, Bates; Noes – None; Abstain – Wozniak.

Council Consent Items

21. **Schedule Presentation: United in Action on the Subject of the Academic Achievement Gap**
From: Councilmember Moore
Recommendation: Re-schedule a short presentation from United In Action from the November 6, 2007 City Council meeting to the November 27, 2007 City Council meeting.
Financial Implications: None
Contact: Darryl Moore, Councilmember, District 2, 981-7120
Action: Removed from Agenda by City Manager. New date to be determined at the November 13, 2007 Agenda Committee Meeting.

Action Calendar – Old Business

- 22. ZAB Appeal: 2721 Shattuck Avenue - Nextel** *(Carried over from October 23, 2007. where the public hearing was closed. No further public comment will be entertained. No council action taken. If council fails to act within 30 days, the decision of the Zoning Adjustments Board will be approved by operation of law. BMC 23B.32.060)*

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution overturning Zoning Adjustments Board denial and adopting findings for approval of Use Permit No. 04-10000068 for a new wireless telecommunications facility (including six antennas and related equipment) for Nextel Communications at 2721 Shattuck Avenue.

Financial Implications: None

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

b. Appeal

1. Corey Alvin (representative for Nextel Communications, applicant/appellant)

c. Communications *(Received after October 23, 2007)*

Action: M/S/C (Wozniak/Capitelli) to adopt Resolution No. 63,884–N.S. Vote: Ayes – Maio, Capitelli, Olds, Wozniak, Bates; Noes – Anderson; Abstain – Moore, Spring, Worthington.

- 23. ZAB Appeal: 2721 Shattuck Avenue – Verizon** *(Carried over from October 23, 2007. where the public hearing was closed. No further public comment will be entertained. No council action taken. If council fails to act within 30 days, the decision of the Zoning Adjustments Board will be approved by operation of law. BMC 23B.32.060)*

a. From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution overturning Zoning Adjustments Board denial and adopting findings for approval of Use Permit No. 05-10000033 for a new wireless telecommunications facility (including five antennas and related equipment) for Verizon Wireless at 2721 Shattuck Avenue.

Financial Implications: None

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

b. Appeal

1. James Singleton (representative for Verizon Wireless, applicant/appellant)

c. Communications *(Received after October 23, 2007)*

1. Manuela Albuquerque – City Attorney

Action: M/S/C (Wozniak/Capitelli) to adopt Resolution No. 63,885–N.S. Vote: Ayes – Maio, Capitelli, Olds, Wozniak, Bates; Noes – Anderson; Abstain – Moore, Spring, Worthington.

RECESS: 8:41p.m. – 8:55 p.m.

Action Calendar - Appeals

24. **ZAB Appeal: 1365 Summit Road** (*Carried over from October 23, 2007*)
- a. From: City Manager**
Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board to approve Use Permit No. 06-10000105 for the demolition of the existing home at 1365 Summit Road and to permit its replacement with a new single family residence.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
- b. Appeal**
1. Robin Gal
- c. Communications**
None
- Action:** Moved to Consent Calendar and set for public hearing on November 27, 2007.
25. **ZAB Appeal: 634 Woodmont Avenue**
- a. From: City Manager**
Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 07-10000068 for the construction of a new single family residence at 634 Woodmont Avenue.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
- b. Appeal**
1. Nancy Schneider
2. Barbara E. Lena
- c. Communications**
1. Nancy Schneider and George Putris
2. Barbara E. Lena (2)
3. Steven and Judy Lipson
4. William Berland – Law Offices of Ferguson and Berland
5. Elaine Halnan
- Action:** Moved to Consent Calendar and adopted Resolution No. 63,886–N.S.

Action Calendar - Public Hearings

26. **ZAB Appeal: 161 Panoramic Way**
- a. From: City Manager**
Recommendation: Deny the appeals and approve Use Permit No. 04-10000145 to construct a new single family dwelling at 161 Panoramic Way, with modified conditions of approval to address the issues discussed herein.
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
- b. Appeal**
1. Regula Muller
2. Panoramic Hill Association
- c. Communications** (*Received after September 11, 2007*)
None
- Action:** Continued to January 29, 2008.

Action Calendar - New Business

- 27. Voting Delegates - 2007 National League Of Cities' Congress Of Cities**
From: City Manager
Recommendation: Designate a voting delegate and alternate to act on behalf of the City at the Annual Business Meeting at the National League of Cities' Congress of Cities.
Financial Implications: See report
Contact: Pamyła Means, City Clerk, 981-6900
Action: Moved to Consent Calendar and designated Manuela Albuquerque to act on behalf of the City at the Annual Business Meeting at the National League of Cities' Congress of Cities.
- 28. Discussion Regarding Possible Ballot Measures for the November 4, 2008 General Municipal Election** (*Carried over from October 23, 2007- Revised Item To Be Delivered*)
From: City Manager
Recommendation:
 1. Begin discussion and provide general direction regarding the preparation of City initiated ballot measures, including possible revenue measures, to be submitted to the voters at the November 4, 2008 General Municipal Election.
 2. Direct the City Clerk to place the qualified Landmarks Preservation Referendum Petition on the November 4, 2008 ballot as required by law.
 3. Allow a brief presentation on the conceptual design of the Warm Water Pool at the meeting tonight.**Financial Implications:** See report
Contact: Phil Kamlarz, City Manager, 981-7000

Public Comments – 7

Action: Presentation made and discussion held. Future Worksession dates to be determined.
- 29. Revision of the Condominium Conversion Ordinance (BMC Chapter 21.28)**
From: City Manager
Recommendation: Provide direction to staff regarding revision of condominium conversion ordinance, BMC Chapter 21.28.
Financial Implications: None
Contact: Renelda Mary, Housing, 981-5400
Action: Moved to Consent Calendar. Tentative Worksession date of December 11, 2007 to be finalized at the November 13, 2007 Agenda Committee meeting.

Action Calendar – New Council Items

30. Creation of Sustainable Energy Financing District

From: Mayor Bates

Recommendation: Approve the concept of the “Sustainable Energy Financing District” to allow property owners to finance solar installations and energy efficiency improvements as a voluntary assessment on their individual property tax bills and direct staff to continue work developing the program.

Financial Implications: None

Contact: Tom Bates, Mayor, 981-7100

Public Comment -2

Action: M/S/C (Maio/Capitelli) to approve the Mayor’s recommendation to approve the concept of the “Sustainable Energy Financing District” to allow property owners to finance solar installations and energy efficiency improvements as a voluntary assessment on their individual property tax bills and direct staff to continue work developing the program.

Information Reports

31. Status Report: Warm Water Pool - Berkeley High School

From: City Manager

Contact: Phil Kamlarz, City Manager, 981-7000

Action: Received and filed.

32. Miscoding of City of Berkeley Business Licenses

From: City Manager

Contact: Robert Hicks, Finance, 981-7300

Action: Received and filed.

33. Unrepresented Temporary Employees

From: City Manager

Contact: David Hodgkins, Human Resources, 981-6800

Action: Received and filed.

34. Berkeley Public Library Annual Report

From: Board of Library Trustees

Contact: Donna Corbeil, Library, 981-6100

Action: Received and filed.

35. Audit: Follow-Up of Public Works Construction Contracts

From: City Manager

Contact: Claudette Ford, Public Works, 981-6300

Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 4

Adjournment – 10:42 p.m.

Communications – 11/06/07

Item 30: Creation of Sustainable Energy Financing District

1. Helen Green

Reinstating Funding to Berkeley Food and Housing Project

2. Daniel Marlin

Sale of Center Street Garage Setback Easement to SNK

3. Merrillie Mitchell

Fire Prevention

4. David Wall

Proposed Zoning Changes for Automobile Dealerships

5. Ann Chandler, Community Conservation Centers

Earthquakes and Insurance

6. Barbara Gilbert

Commentary on Becky O'Malley

7. Peter Mutnick

Supplemental Communications 1

Item 4: Amend Council Rules of Procedure, Article IV Conduct of Meetings, Regarding Comments from the Public

8. Sharon Hudson
9. Gene Bernardi, Jane Welford and Jim Fisher, on behalf of SuperBOLD

Item 22/23: ZAB Appeal: 2721 Shattuck Avenue – Nextel/Verizon

10. Joan Levinson

Item 25: ZAB Appeal: 634 Woodmont Avenue

11. Steven Ross, Planning & Development (2)

Item 26: ZAB Appeal: 161 Panoramic Way

12. Tom Miller
13. Tom Schrag
14. Ann Reid Slaby (4)
15. Fredrica Drotos
16. Jane Robbins
17. Blanche Sack
18. Catherine Orozco
19. Zuzana Dvorakova and Jan Dvorak
20. Regula Muller
21. William Robbins

Supplemental Communications and Reports 2

Item 20: Free the San Francisco Eight

22. Linda Maio

Item 23: ZAB Appeal: 2721 Shattuck Avenue – Verizon

23. Unknown (2)

24. Michael Barglow

25. Andrew Paige

Item 24: ZAB Appeal: 1365 Summit Road

26. Robin Gal

Item 26: ZAB Appeal: 161 Panoramic Way

- Supplemental material, submitted by Dan Marks, Planning & Development

27. Kathleen Sullivan