

**Peace and Justice Commission
Regular Meeting**

**North Berkeley Senior Center
February 3, 2003**

MINUTES

The meeting convened at 7:00 pm with Chairperson Anne Wagley, presiding.

ROLL CALL

Present: Roya Arasteh, Donald Brody, Leslieann Cachola, Elliot Cohen, Sandy Curtis, Steven Freedkin, John Lavine, Mark McDonald, Robert Rose, Thom Seaton, Michael Sherman, Anne Wagley, David Weinberg

Absent: None

COMMENTS FROM THE PUBLIC

1. Councilmember Dona Spring regarding the Rules Committee.
2. LA Wood regarding Environmental Justice.
3. Leuren Moret with the Environmental Commission regarding War and the "Department of Offense".
4. Michael Diehl with the Berkeley Liberation Radio 104.1 FM regarding the FCC seizing their equipment.

ACTION ON MINUTES

M/S/C (*Sherman, Cohen*) to approve the minutes from the regular meeting of January 6, 2003
Ayes: Arasteh, Cachola, Cohen, Freedkin, Lavine, McDonald; Rose, Seaton, Sherman, Wagley
Abstain: Brody, Curtis, Weinberg; **Absent:** None.

Commissioners Brody, Curtis, and Weinberg abstained from the vote because they were not present at the January meeting.

ACTIONS TAKEN

M/S/C (*Cohen, Weinberg*) to approve the report (ATTACHMENT A) on contracts that are subject to the Nuclear Free Berkeley Act stipulations (*inclusive of which contracts can be approved as a categorical matter because there is no reasonable alternative and what contracts must be reviewed on an individual basis*) and a process to address these issues. **Ayes:** Arasteh, Brody, Cachola, Cohen, Curtis, Lavine, McDonald; Rose, Seaton, Sherman, Wagley, Weinberg; **Noes:** None; **Abstain:** Freedkin; **Absent:** None.

Commissioner Freedkin abstained from the vote because he was not present for the discussion of this item.

M/S/C (*Sherman, Freedkin*) to schedule a special meeting for Monday, February 10, 2003 for a discussion of a Resolution supporting 1) Senate Resolution 28 sponsored by Senator Robert C. Byrd which expresses the sense of the Senate that the United Nations weapons inspectors should be given sufficient time for a thorough assessment of the level of compliance by the Government of Iraq with United Nations Security Council Resolution 1441 (2002) and that the United States should seek a United Nations Security Council resolution specifically authorizing the use of force before initiating any offensive military operations against Iraq, and 2) Senate Resolution 32 sponsored by Senator Edward M. Kennedy that expresses the sense of the Senate with respect to the actions the President should take before any use of military force against Iraq without broad support of the international community; and formulation of a recommendation to the City Council. **Ayes:** Unanimous; **Absent:** None.

Election of Officers

Nominations were opened for chairperson:

- Anne Wagley was nominated and accepted the nomination. No other nominations were made.

M/S/C (*Cohen, Sherman*) that Anne Wagley be elected to serve as chairperson for the Peace and Justice Commission. **Ayes:** Unanimous; **Absent:** None.

Nominations were opened for vice chairperson:

- Elliot Cohen was nominated but declined the nomination.
- Michael Sherman was nominated but declined the nomination.
- Steve Freedkin was nominated and accepted the nomination.

M/S/C (*Sherman, Wagley*) that Steve Freedkin be elected to serve as vice chairperson for the Peace and Justice Commission. **Ayes:** Unanimous; **Absent:** None.

NEXT MEETING

The next regular meeting will be on Monday, March 3, 2003 at 7:00 pm at the North Berkeley Senior Center.

The meeting was adjourned at 10:06 pm.

Respectfully submitted

Manuel Hector Jr., Secretary
Peace and Justice Commission

ATTACHMENT A

On November 14, 2000, the City Council approved a recommendation directing that the Peace and Justice Commission shall confer with staff in order to determine a) what proposals are subject to the Nuclear-Free Berkeley Act, b) what proposals may be approved as a categorical matter because there is no reasonable alternative, and c) what proposals must be reviewed on an individual basis.

TYPES OF PROPOSALS

Section 12.90.030G of the Nuclear Free Berkeley Act states that the University of California is an entity that engages nuclear weapons work.

Section 12.90.070 of that law prohibits the City of Berkeley from contracting with those who engage in work for nuclear weapons, except in limited circumstances.

Civil Code Section 1549 defines a contract as "...an agreement to do or not to do a certain thing," thus agreements to exchange services are clearly contracts within the meaning of the law. Accordingly, any contracts, agreements or understandings between the University of California and the City of Berkeley are legally subject to the Act.

CATEGORICAL APPROVAL OF CONTRACTS

Resolution No. 60,840-N.S. also asked the Commission to examine the issue of whether certain contracts could be approved as a categorical matter. The plain language of the Nuclear Free Berkeley Act states:

"The City of Berkeley shall grant no contract to any person or business which knowingly engages in work for nuclear weapons, unless the City Council makes a **specific recommendation** that no reasonable alternative exists..."

The dictionary defines the word "specific" as follows:

1. Explicitly set forth; definite.
2. Relating to, characterizing, or distinguishing a species.
3. Special, distinctive, or unique: *specific qualities and attributes*.
4. Intended for, applying to, or acting upon a particular thing.

In making our determination, we are guided by Article XIII paragraph 9 of the City Charter, which clearly provides that an ordinance adopted by a vote of the people, cannot be repealed or amended, except by vote if the people. We therefore conclude that a categorical exemption is unlawful and that each waiver of the Act must be the result of "a specific determination".

INDIVIDUAL REVIEW OF CONTRACTS

In addition to determining if contracts may be subject to categorical approval, we were asked to determine what contracts must be reviewed on an individual basis. By law, each agreement must be specific to “a specific determination” that no reasonable alternative exists.

PROPOSED PROCESS

Finally, Resolution No. 60,840-N.S. asked us to propose a process to address how the review of contracts should be done. The proper process for obtaining a waiver is specifically set in the law. It requires three criteria be satisfied before a determination that there is no reasonable alternative to contract with a nuclear vendor of goods or services. Stating there is “no reasonable alternative” to a waiver, without examining the three criteria set in Section 12.90.070 of the Nuclear Free Berkeley Act, which states:

“The City of Berkeley shall grant no contract to any person or business which knowingly engages in work for nuclear weapons, unless the City Council makes a **specific recommendation** that no reasonable alternative exists, taking into consideration the following factors:

1. The intent and purpose of the act;
2. The availability of alternative services, goods and equipment, or other supplies substantially meeting required specifications of the proposed contract; and
3. Quantifiable additional costs resulting from use of available alternatives.

To determine what is meant by the first criteria, “the intent and purpose of the act”, we look to the language of the Nuclear Free Act itself for guidance regarding its intent.

Section 12.90.030 of the Nuclear Free Berkeley Act states “...Since the Nuremberg Principles hold individuals accountable for crimes against humanity, and since nuclear weapons cannot be used without indiscriminately killing civilians and violating accepted international rules of war, then nuclear weapons are illegal, and should be prohibited within the City. We will not remain silent while policies of global death and destruction are carried out in our name.”

Thus three factors used to determine the intent and purpose of the act are:

- a) To make clear the City of Berkeley is not taking action which would be make this city in violation of the Nuremberg Principles by being complicit with the use of development of nuclear weapons.
- b) Not being silent and loudly proclaiming our opposition to nuclear work.
- c) To avoid city investments and contracts that channel funds to institutions engaged in nuclear weapons work. These resources and funds should be redirected toward urgently needed human services such as job training, social services for children, the elderly and disabled, shelter for the homeless, education, housing, health care, public transportation, emergency services and general public assistance. City

investments and contracts with companies that engage in work for nuclear weapons are inconsistent with this goal.

REVIEW UNDER THESE CRITERIA

Since passage of Resolution No. 60,840-N.S., we have reviewed two contracts under the Nuclear Free Berkeley Act. In both such instances this Commission has strived, with varying degrees of success, to follow the criteria as articulated above. Both instances taught us that the City usually brings the need for waiver to the commissions attention at the last minute seeking to pressure us for immediate decision, often times without giving us time to answer questions that could come up. Because the two contracts brought to us have seemed to pass scrutiny under most of the criteria set forth in the act, we recommended waiver of the act, but we feel the City Manager must come up with a system of alerting our commission of contracts with nuclear vendors such as the University of California much earlier in the process than is currently the practice.