

MINUTES

The meeting convened at 7:04 pm with Chairperson Anne Wagley presiding.

ROLL CALL

Present: Roy A Arasteh, Donald Brody, Elliot Cohen, Steven Freedkin John Lavine, Rita Maran, Mark McDonald, Thom Seaton, Michael Sherman, PhoeBe ANNE (sorgen), Anne Wagley, Nicholas Yuen

Absent: None

LOA: Leslieann Cachola

NOTE: Commissioner Cachola was been granted a leave of absence for the meeting of September 8, 2003.

COMMENTS FROM THE PUBLIC

Jan Scantlebury, Berkeley-Palma Soriano Sister City Group, regarding Cuba.

Don Duncan, Alliance of Berkeley Patients, regarding medical cannabis.

David Fogarty, Berkeley-Palma Soriano Sister City Group, regarding Cuban resolution.

ACTION ON MINUTES

M/S/C (Cohen, Seaton) to approve the minutes from the regular meeting of July 7, 2003 with one correction. **Ayes:** *Unanimous*; **Absent:** *Brody*.

ACTIONS TAKEN

MEDICAL MARIJUANA

M/S/C (Cohen, Freedkin) Pursuant to Berkeley Municipal Code Section 3.68.070, the Peace and Justice Commission is charged with advising the City Council regarding issues of peace and social justice and acting as a liaison between the community groups organizing around issues of social justice.

The State of California has declared by Proposition 215 that upon advice of physicians, persons with certain medical conditions may legally be prescribed Marijuana, but the only legal methods to acquire such drug is by growing the plants or purchasing it from Medical Cannabis Collectives. The high cost of purchasing marijuana at Medical Cannabis Collectives poses a

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danger that persons with a legitimate need for the substance may be deprived of necessary medicine.

The only alternative to purchasing the substance is for those with a medical need to grow their own supply. Present Berkeley law allows for the growth of only ten plants per patient. The Community Health Commission originally recommended to the City Council that patients be permitted to grow 144 plants. Oakland law allows the growing of 144 plants annually.

When the recommendation was brought to the Council, the Community Health Commission's recommendation was defeated by one vote. The medical needs that made the Community Health Commission recommend 144 plants per patient has not changed, but the composition of the Council has changed by two members.

The denial of medicine to reduce pain and improve health solely because one cannot afford the purchase of it is a social injustice that can be remedied simply by raising the allowable level of medical marijuana plants that persons are permitted to grow.

Following the Council decision to adopt the ten plant limit, members of the medical cannabis community have worked to draft new language which will accomplish the goal of raising the allowable quantities to a level that will insure patients have an adequate supply of medication or number of plants to meet their medical needs.

Ayes: *Unanimous*; **Absent:** *None*.

LICENSE AGREEMENT: CAL ADVENTURES

M/S/C (*Seaton, Yuen*) that the Peace and Justice Commission finds a waiver of the Nuclear Free Act is appropriate in that it satisfies the three criteria set forth in Section 12.90.070.A of the Act.

First, Cal Adventures provides approximately 3,000 children from Berkeley-Oakland Area schools with their first exposure to boating, thereby providing educational services and services for children, a purpose specifically recognized by Section 12.90.30 E of the Nuclear Free Act.

Second, the availability of alternative services, the second criterion of Section 12.90.070, is satisfied because it is extremely unlikely that another group could equal the services currently available.

Finally, we also find that the third criterion of the Nuclear Free Act is satisfied because the proposed license agreement will provide \$11,500 per year in revenue in the first year compared to \$5000 per year paid by adjacent tenants, the Cal Sailing Club. Rejecting this license agreement would therefore result in quantifiable additional cost to the City of Berkeley.

Therefore, the Peace and Justice Commission recommends that this license agreement be deemed to qualify for a waiver under Section 12.90.070 A of the Nuclear Free Act. **Ayes:** *Arasteh, Freedkin, Lavine, Maran, McDonald, Seaton, Sherman, sorgen, Wagley, Yuen*; **Noes:** *Brody*; **Abstain:** *Cohen*; **Absent:** *None*.

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I (Commissioner Cohen) am abstaining from this recommendation to waive the Nuclear Free Berkeley Act with regard to the Berkeley Mariana lease agreement to protest the unlawful manner in which the City Council completely ignored its obligation to waive the Nuclear Free Act before entering into a previous agreement with the University of California. Under the Nuclear Free Act, the City is generally prohibited from entering into contracts with entities that engage in nuclear weapons work. This general prohibition may legally be waived by the City Council based upon a "specific determination" that the three criteria set forth in section 12.90.070 A of the Nuclear Free Act are satisfied. Since the University of California engages in nuclear weapons work the City Council must approve a waiver of the Nuclear Free law before the City can contract with the University of California

The Peace and Justice Commission recommended a waiver of the Nuclear Free Act so the City could accept an offer by U.C.S.F. to provide rapid HIV testing services. In doing so the Peace and Justice Commission undertook the time and effort to detail how the proposal to accept rapid HIV testing qualified for a waiver pursuant to the three criteria contained in the Nuclear Free Berkeley Act. The first such criteria, is to determine if entering into the contract conforms to the intent and purpose of the Nuclear Free Act. The Peace and Justice Commission determined that directing funds to rapid HIV testing services, provided needed human services involving health care, a purpose specifically mentioned in section 12.90.030 E of the Nuclear Free Act. Since the contract conformed to the intent and purpose of the law the Peace and Justice Commission evaluated the second criteria, which requires a determination of, whether or not alternative sources of the goods or services are available. Because the rapid HIV testing was a new procedure just approved by the FDA it was unlikely that alternative sources of services were available, but, more significantly, even if alternative sources of services were available the Peace and Justice Commission could and did recommend approving the waiver because it also satisfied the third criteria, which requires a determination as to whether or not use of alternative services would result in quantifiable additional cost to the City of Berkeley. Because the services were being offered to the City of Berkeley at no cost to the City, there would clearly have been quantifiable additional cost to the use of alternative services. Accordingly, the Peace and Justice Commission correctly concluded that a waiver of the Nuclear Free Act for the purpose of accepting rapid HIV testing services from the U.C.S.F. was appropriate.

Since there was never any dispute about the fact that the City should accept U.C.'s offer of rapid HIV testing services a City Council vote to waive the Nuclear Free Law should have been a mere legal formality. But the idea of issuing a waiver was objected to by City Council members who believe the University of California and Lawrence Berkeley National Laboratory should be immune for criticism despite the fact they engage in nuclear weapons work that violates both the Berkeley Nuclear Free Zone Ordinance and international law. The Mayor and other members of the Council, faced with the inconvenience of doing their job, choose instead to simply ignore the law.

Shielding the University of California from criticism for engaging in work that is condemned by the international community should be the job of the University's public relations department, not the Berkeley City Council.

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Following the City Council's lawless action I spoke to the Mayor's aide, Cisco DeFreeze, in an effort to have Council approve the waiver. Mr. DeFreeze was confused about the law and told me that the Peace and Justice Commission had issued a waiver. I explained that the Peace and Justice Commission had no legal authority to approve a waiver, and urged him to speak with the Mayor about getting a waiver approved. He never spoke to me about the matter again. Several weeks later I told Mayor Bates that the City Council was acting in violation of the Nuclear Free Act he responded by saying "there is nothing I can do about it."

Since the City Council never approved a waiver of the Nuclear Free Act acceptance of the service contract is technically illegal. But because programs which direct funds to vital health needs clearly conform to the intent and purpose of the act I was unwilling to endanger the acceptance rapid HIV testing services by making an issue of the City Council's unlawful action.

Instead I choose to abstain from voting on tonight's request to waive the Nuclear Free Act to make the point that the City Council should stop acting in a lawless manner and should comply with the Nuclear Free Act by undertaking the effort to waive the law before entering into agreements with those who engage in nuclear weapons work. All the Nuclear Free Act requires is that the City Council have the courage to officially condemn nuclear weapons work, even if it means offending those who wish to enjoy respectability while they pervert the purpose of higher educational to find better ways to maim, kill, and destroy.

It is my hope that in the future the City Council adheres to the will of the electorate and the spirit of the Nuclear Free Act. This abstention illustrates, by reference to the rapid HIV testing contract, how simple it is to apply the criteria set forth in section 12.90.070 of the law, and thereby articulate the reasons for granting a waiver. Almost every contract the City of Berkeley has with the University of California qualifies for a waiver under the Nuclear Free Berkeley Act. Since the City Council has the legal authority to waive the Nuclear Free Act for the purpose of contracting with the University of California, the only practical effect of the Nuclear Free Act is to remind us that entering into contracts with those engaged in nuclear weapons work should not be a routine affair. The Nuclear Free Act seeks to insure that doing business with those who bring nuclear evil to the planet is something we are at least required to think about. That is why the law requires every waiver to undergo a "specific determination" involving the examination of the three criteria stated in section 12.90.070, but the most important feature of the law is that it requires that we "...not remain silent while policies of global death and destruction are carried out in our name. "

What the Nuclear Free Berkeley Act could accomplish, even when the City Council does make a decision to grant a waiver, is to remind us that contracting with unsavory entities that engage in nuclear weapons work is a significant event, that should, if only for the sake of ceremony, be recognized as such, and should not be conducted without taking special notice of the fact.

The ideals expressed by the voters who adopted the Nuclear Free Act in 1986 are immense; in typical Berkeley fashion the law seeks nothing less than to change the world by using Berkeley's voice to speak out in favor of nuclear disarmament, and a redistribution of wealth by channeling military funds to human needs. But the manner in which the Nuclear Free Zone Ordinance seeks

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to bring about such change is modest enough: Signs proclaiming our City is a Nuclear Free Zone, letters officially requesting that those engaging in nuclear weapons work cease and desist, educational efforts, and obtaining a simple waiver as a deterrent to remind us that we should not feel good about doing business with those who engage in nuclear weapons work

In 1986, when the voters adopted the Nuclear Free Act many feared the that a nuclear war between the United States and the former Soviet Union could plunge the planet into a nuclear holocaust. Today that danger seems far behind us, but in many ways the danger of nuclear war may be closer then ever before. Today we are at war with two nations in the most volatile region on the planet; the Bush Administration has used unsubstantiated claims that development of nuclear weapons by Iraq justified one of those wars. Today the soil, water and air in Kosovo, Afghanistan and Iraq are contaminated as a result of the use of tons upon tons of depleted uranium munitions. Today the Bush Administration is threatening to develop new nuclear weapons based on science and technology developed by the University of California and today North Korea claims to be a nuclear power and threatens to test nuclear weapons. Today is not the day for the Berkeley City Council to abdicate their responsibility to enforce the Nuclear Free Zone Ordinance. Today we are at a moment in history when we should redouble our efforts, and call out, louder then ever before, for an end to nuclear weapons research, and end to war.

Speaking out is such a small thing to do. The horrors we seek to prevent is so large. Under such circumstances mustering up the courage to do nothing more then adhere to the provisions of, what is, after all, the law, shouldn't be so difficult for the Berkeley City Council. For the reasons stated above I abstain from this recommendation to waive the Nuclear Free Act, and hope the reasons for that abstention will cause Council Members to think about their responsibility under the law and to adhere more faithfully to the provisions of the Nuclear Free Berkeley Act.

ANTI-PATRIOT ACT RESOLUTIONS

M/S/C (Sherman, Brody) to table the motion on ways to strengthen anti-Patriot Act resolutions. **Ayes:** *Arasteh, Brody, Cohen, Freedkin, Lavine, Maran, Sherman, Wagley*; **Noes:** *Cohen*; **Abstain:** *sorgen, Yuen*; **Absent:** *None*.

Commissioner sorgen abstained from the vote because she feels the item needs more discussion. Commissioner Yuen abstained from the vote because he feels the discussion should continue.

CUBA: HUMAN RIGHTS ABUSES

M/S/C (Arasteh, Cohen) to table the motion on human rights abuses in Cuba. **Ayes:** *Arasteh, Brody, Cohen, Freedkin, Lavine, Maran, Sherman, sorgen, Wagley, Yuen*; **Noes:** *Seaton*; **Abstain:** *McDonald*; **Absent:** *None*.

Commissioner McDonald abstained from the vote because he is disgusted with the process.

DIPLOMAS FOR JAPANESE STUDENTS

M/S/C (Cohen, sorgen) Whereas, the Berkeley Peace and Justice Commission is mandated to help develop proposals for the furtherance of goals of peace and justice and help publicize such actions in the community (Berkeley Municipal Code Section 3.68.070 C); and

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Whereas, Japanese students who were interned during World War II suffered a serious injustices as a result of the discriminatory internment, including the injustice of not being permitting to receive high school diplomas; and

Whereas, the County Board of Education has already authorized the issuance of honorary diplomas for those Japanese internees who were students at the time; and

Whereas, the Berkeley Unified School District is presently undergoing a budget crisis which would make the time consuming and expensive process of locating and notifying each former student of the availability of this opportunity impractical; and

Whereas, merely publicizing the availability of the honorary diploma and creating a simple application to obtain it could go far in healing the pain of injustice, and bring comfort to many elderly Japanese people who suffered during that period.

NOW THEREFORE, BE IT RESOLVED that the Berkeley Peace and Justice Commission hereby recommends that the Berkeley Unified School Board:

- A) Create a simple application procedure to allow internees who were students of Berkeley School system to apply for honorary diplomas;
- B) Publicize the program through advisories to media and local Japanese organizations, along with a phone number that can be called for more information, and;
- C) Advise all persons answering that telephone about the application procedure so they can convey that information to callers.

Ayes: *Unanimous*; **Absent:** *None*.

NEXT MEETING

The next regular meeting will be on Monday, October 20, 2003, at 7:00 pm at the North Berkeley Senior Center.

The meeting was adjourned at 10:11 pm.

Respectfully submitted

Manuel Hector Jr., Secretary
Peace and Justice Commission