





Office of the City Manager

CONSENT CALENDAR
February 12, 2008

To:  Honorable Mayor and Members of the City Council
From:  Phil Kamlarz, City Manager
Submitted by: Pamyla C. Means, City Clerk
Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of December 17, 2007 (special closed), January 7, 2008 (special), January 15 (regular), and January 29 (special and regular).

CONTACT PERSON

Pamyla C. Means, City Clerk, 981-6900

Attachments:

1. December 17, 2007 – Special Closed
2. January 7, 2008 – Special
3. January 15, 2008 – Regular City Council Meeting

MINUTES

BERKELEY CITY COUNCIL SPECIAL MEETING

MONDAY, DECEMBER 17 2007

2180 Milvia Street, 6th Floor, Redwood Conference Room
Teleconference Locations: 1636 Channing Way, Berkeley, CA

Preliminary Matters

Roll Call: 5:00 p.m. Absent: Councilmembers Moore and Anderson.

Public Comment – Limited to items on this agenda only – 9

Closed Sessions:

The City Council convened in closed session concerning the following:

**1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
PURSUANT TO GOVERNMENT CODE SECTION 54956.9(C):**

Initiation of litigation—two cases:

- a. The Berkeley City Council will consider whether to sue in *quo warranto* to have Chris Kavanaugh removed from the City of Berkeley Rent stabilization Board
- b. The Berkeley City Council will consider whether to initiate litigation against Art Maxwell with respect to his ongoing interactions with users of the Becky Temko Tot Lot

Action: No reportable action.

**2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a):**

City of Berkeley v. University of California et.al.
Alameda County Superior Court No. RG. 06302934

Action: No reportable action.

Adjournment – 6:00 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of December 17, 2007 as approved by the Berkeley City Council.

Pamyla Means, MMC, City Clerk

MINUTES

SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

MONDAY, JANUARY 7, 2008

**2180 Milvia Street, 6th Floor, Redwood Conference Room
Teleconference Locations: 1636 Channing Way, Berkeley, CA**

Roll Call – 5:00 p.m. Absent: Councilmembers Max Anderson, Kriss Worthington and Gordon Wozniak.

Public Comment - Limited to items on this agenda only - 0

Closed Sessions:

The City Council convened in closed session to meet with its attorneys concerning the following:

**1. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
PURSUANT TO GOVERNMENT CODE SECTION 54956.9(C):**

Initiation of litigation—two cases:

- a. The Berkeley City Council will consider whether to initiate litigation against Art Maxwell with respect to his ongoing interactions with users of the Becky Temko Tot Lot – no action taken.
- b. The Berkeley City Council will consider whether to join the litigation filed by San Francisco concerning recovery of costs relating to the Cosco Busan oil spill; titled City and County of San Francisco, et al. v. Regal Stone, Ltd. et al; San Francisco County Superior Court Case No. CGC-07-469876 – no action taken.

**2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
PURSUANT TO GOVERNMENT CODE SECTION 54956.9(a):**

City of Berkeley v. University of California et.al.
Alameda County Superior Court No. RG. 06302934 – no action taken.

Adjournment – 5:30 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of January 7, 2008 as approved by the Berkeley City Council.

Pamyla Means, MMC, City Clerk

MINUTES

BERKELEY CITY COUNCIL REGULAR MEETING

TUESDAY, JANUARY 15, 2008

Council Chambers, 2134 Martin Luther King Jr. Way

Teleconference Location – 1636 Channing Way, Berkeley, CA

Preliminary Matters

Roll Call: 7:00 p.m.

Present: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak, and Mayor Bates.

Absent: None.

Ceremonial Matters:

1. Proclamation recognizing the Board of Directors of the Berkeley Unified School District
2. Proclamation declaring National Blood Donor Month

Public Comment on Non-Agenda Matters: 1

Public Comment on Consent Calendar and Information Items Only: 3

Consent Calendar

Action: M/S/C (Worthington/Moore) to adopt Consent Calendar in one motion except as indicated: Moved Items No. 2 (Alcohol Outlet Fees) to coincide with Item No.18 (hearing); Removed Item No.14 (Park Bench Donation Policy) for discussion; moved Items No.17 (ZAB Appeal/2129 Rose Street) and No.20 (Zoning Ordinance Amendment for Public Safety Exceptions) to Consent Calendar.

Recess Consent Items

1. Fee Assessment - State of California Self-Insurance Fund (Workers' Compensation Program)

From: City Manager

Recommendation: Ratifying the action taken by the City Manager during recess authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2008 for administering the Workers' Compensation Program, in an amount not to exceed \$17,104.04.

Financial Implications: Workers' Compensation Self-Insurance Fund - \$17,104.04.
Contact: David Hodgkins, Human Resources, 981-6800

Action: Approved recommendation.

Consent Calendar

- 2. Ordinance Establishing Operating Standards for Alcohol Outlets and Fee Options**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,010–N.S. establishing operating standards and an inspection program for alcohol establishments.
First Reading Vote: Ayes – Maio, Moore, Anderson, Spring, Olds, Worthington, Wozniak, Bates; Noes – None; Absent – Capitelli.
Financial Implications: See report
Contact: Zach Cowan, Acting City Attorney, 981-6950
Action: Moved to consider along with Item No. 18 (Public Hearings). No action taken on second reading and adoption of Ordinance 7,010-N.S.
- 3. Zoning Ordinance, General Plan, and West Berkeley Plan Amendments and Revised Mitigated Negative Declaration to Allow Automobile Sales in the Manufacturing District**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,013–N.S. amending Chapters 23E.72 (Manufacturing District) and 23F.10 (Definitions).
First Reading Vote: Ayes – Maio, Moore, Spring, Capitelli, Olds, Worthington, Wozniak, Bates; Noes – None; Absent – Anderson.
Financial Implications: See report
Contact: Dan Marks, Planning and Development, 981-7400
Action: Adopted second reading of Ordinance No. 7,013–N.S.
- 4. Adoption of Ordinance for Cable Public Access (PEG) Support**
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,014–N.S adding a new chapter to the Berkeley Municipal Code (“BMC”), Chapter 9.58 entitled “Video Franchise Fees, Customer Service and Other Video Related Matters” to enable the City to receive an additional fee equal to one percent (1%) of the gross revenue of a video franchisee to support PEG and to establish customer service standards.
First Reading Vote: Ayes – Maio, Moore, Spring, Capitelli, Olds, Wozniak, Bates; Noes – None; Absent – Anderson, Worthington
Financial Implications: None
Contact: Zach Cowan, Acting City Attorney, 981-6950
Action: Adopted second reading of Ordinance No. 7,014–N.S.
- 5. Annual Commission Attendance Report and Meeting Frequency Schedule**
From: City Manager
Recommendation: Accept annual attendance report and adopt a Resolution approving a revised commission meeting frequency schedule.
Financial Implications: None
Contact: Pamyla Means, City Clerk, 981-6900
Action: Adopted Resolution No. 63,949–N.S.

Consent Calendar

- 6. Resubmission of Medical Marijuana Ballot Measure (Measure R) from 2004**
From: City Manager
Recommendation: Direct the resubmission of the Patient's Access to Medical Cannabis Act (Measure R from 2004) to the voters on the November 4, 2008 General Municipal Election ballot as directed by court order, and direct the City Attorney to submit the original 2004 title and impartial analysis.
Financial Implications: None
Contact: Pamyla Means, City Clerk, 981-6900
Action: Approved recommendation.
- 7. Formal Bid Solicitation and Request for Proposals**
From: City Manager
Recommendation: Approve the new invitation for bid/request for proposal (RFP) that will be, or is planned to be, issued in the next 30 days upon final approval by the requesting department or division.
Financial Implications: See report
Contact: Robert Hicks, Finance, 981-7300
Action: Approved recommendation.
- 8. Kaiser Permanente Grant: Healthy Eating Environments (To be delivered)**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit a grant application to Kaiser Permanente for funds in the amount of \$270,000 to implement activities that increase healthy eating among Berkeley residents by increasing access to healthier food choices in local corner markets and restaurants; to accept the grant and execute any resultant revenue agreements and amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: See report
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted Resolution No. 63,950–N.S.
- 9. Lease: McGee Avenue Baptist Church, 1645 Oregon Street, Black Infant Health Program**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement and any amendments with the McGee Avenue Baptist Church for real property located at 1645 Oregon Street in an amount not to exceed \$12,300, for the purpose of leasing program space for the Black Infant Health Program for the period March 1, 2008 to February 28, 2009 with an option to extend for an additional two-year period.
Financial Implications: See report
Contact: Fred Medrano, Health and Human Services, 981-5100
Action: Adopted first reading of Ordinance No. 7,015–N.S. Second reading scheduled for January 29, 2008.

Consent Calendar

- 10. Classification: Vector Control Technician**
From: City Manager
Recommendation: Adopt a Resolution amending Resolution No. 61,805–N.S., Classification and Salary Resolution for Service Employees International Union (SEIU) Local 1021 (Legacy 535), to revise the classification of Vector Control Technician and establish a 2% Salary Differential effective December 30, 2007 for eligible employees.
Financial Implications: Vector Control Fund - \$3,800
Contact: David Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 63,951–N.S.
- 11. Purchase Order: Western States Oil for Fuel for City Vehicles**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order for Western States Oil for fuel for City vehicles in an amount not to exceed \$1,452,000 for FY 2008, with a 5% escalation for each fiscal year through FY 2013.
Financial Implications: Equipment Maintenance Fund - \$1,452,000
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,952–N.S.
- 12. Purchase Order: Western Truck Parts and Equipment for Three CNG-Fueled Rear Loader Refuse Collection Trucks**
From: City Manager
Recommendation: Adopt a Resolution accepting the County of Sacramento's bid procedures to satisfy the requirements of Berkeley's Charter Section 67, and authorizing the City Manager to execute a purchase order with Western Truck Parts and Equipment in an amount not to exceed \$673,768 for three CNG fueled rear loader refuse collection trucks.
Financial Implications: Equipment Maintenance Fund - \$673,768
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,953–N.S.
- 13. Purchase Order: Western Truck Center for Two Drop Box Trucks**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to purchase two drop box trucks from Western Truck Center for a total amount not to exceed \$451,693.
Financial Implications: Equipment Maintenance Fund - \$451,693
Contact: Claudette Ford, Public Works, 981-6300
Action: Adopted Resolution No. 63,954–N.S.

Consent Calendar

14. **Park Bench Donation Policy**
From: Parks and Recreation Commission
Recommendation: Adopt a Resolution that:
1) Limits park bench donation to sites recommended by staff;
2) Approves the bench donation policy as revised, and establishes a process and conditions for granting both bench memorial and anonymous requests.
Financial Implications: None
Contact: Virginia Aiello, Commission Secretary, 981-6700
Action: Removed for discussion. Referred to Councilmembers Maio and Olds for further discussion and continued to later date (referred to Agenda Committee).
15. **Taxi Scrip Cash Count Audit - Controls Over Cash Handling Need Improvement**
From: Auditor
Recommendation: Request the City Manager to report back during or before March 2008 on the implementation status of the one remaining outstanding recommendation.
Financial Implications: See report
Contact: Ann-Marie Hogan, Auditor, 981-6750
Action: Approved recommendation.

Council Consent Items

16. **Opposition of the Nomination of Richard Honaker to the U.S. District Court for the District of Wyoming**
From: Councilmember Worthington
Recommendation: Send a letter to Senators Barbara Boxer, Dianne Feinstein and the Senate Judiciary Committee opposing the nomination of Richard Honaker to the U.S. District Court for the District of Wyoming.
Financial Implications: None
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation.

Action Calendar – Items Removed from the Consent Calendar

Action Calendar - Appeals

17. **ZAB Appeal: 2129 Rose Street**
a. From: City Manager
Recommendation: Adopt a Resolution affirming the ZAB decision to allow the installation of a skylight and French doors to a building within a non-conforming rear yard setback.
b. Appeals
1 Peter Lomhoff
c. Communications
None
Financial Implications: None
Contact: Dan Marks, Planning and Development, 981-7400
Action: Moved to Consent Calendar and adopted Resolution No. 63,955–N.S. (Noes – Olds, Worthington).

Action Calendar – Public Hearings

18. Fees: Inspection Program For Alcohol Establishments

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution approving an annual inspection program fee (\$467.00) for alcohol outlets and an hourly re-inspection fee (\$221.75) in order to fund and establish an alcohol inspection program.

Financial Implications: See report

Contact: Phil Kamlarz, City Manager, 981-7400

Public Testimony: The Mayor opened the public hearing. 22 speakers. M/S/C (Maio/Worthington) to close the public hearing.

M/S (Capitelli/Worthington) main motion to reject fee proposed. M/S (Spring/Moore) substitute motion to reduce restaurant fee by one-half (approx \$255) and raise liquor store fee (approximately \$1,000-\$1,250) and schedule a new public hearing. Substitute motion withdrawn.

Action: M/S/C (Capitelli/Worthington) main motion to reject fee proposed. Vote: Ayes – Maio, Anderson, Capitelli, Olds, Worthington, Woziak, Bates; Noes – None; Abstain – Moore, Spring). M/S/C (Worthington/Capitelli) referred to Agenda Committee for future scheduling second reading and adoption of Ordinance 7,010-N.S. (Item No. 2 on this agenda) establishing operating standards for alcohol outlets and fee options. M/S/C (Worthington/Moore) established sub-committee to review fees to include Councilmembers Capitelli, Moore and Wozniak and Mayor Bates.

19. Downtown Berkeley Business Improvement District Annual Assessment

From: City Manager

Recommendation:

1) Conduct a public hearing, and upon conclusion, adopt a Resolution confirming the 2008 Annual Report of the Downtown Business Improvement District (BID) and levy an annual assessment for the Downtown BID for calendar year 2008.

2) Adopt a Resolution authorizing the City Manager to execute a sole source contract and any amendments with the Downtown Berkeley Association (DBA) Main Street Program for \$280,168 of Downtown BID funds to support Downtown revitalization.

Financial Implications: See report

Contact: Phil Kamlarz, City Manager, 981-7400

Public Testimony: The Mayor opened the public hearing. 0 speakers. M/S/C (Moore/Maio) to close the public hearing.

Action: M/S/C (Moore/Maio) to adopt:

1) Resolution No. 63,956–N.S. confirming the 2008 Annual Report of the Downtown BID as amended.

2) Resolution No. 63,957–N.S. to execute a sole source contract and any amendments with the Downtown BID (\$280,168).

RECESS 8:48 – 9:04 P.M.

Action Calendar – New Business

20. Amendment to the Zoning Ordinance (ZA 1-07): Public Safety Exceptions for Structural Alterations

From: City Manager

Recommendation: Adopt first reading of an Ordinance altering Berkeley Municipal Code (BMC) Chapter 23C.04 to exempt structural alterations, for the purpose of public safety improvements for buildings subject to BMC Chapter 19.39 - Potentially Hazardous Buildings Containing Soft, Weak or Open Front Stories also known as the Soft Story Ordinance and BMC Chapter 19.38 - Seismic Hazard Mitigation Program for Unreinforced Masonry Buildings (URM), from certain Zoning Ordinance restrictions and some levels of discretionary review.

Financial Implications: None

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

Action: Moved to Consent Calendar and adopted first reading of Ordinance No. 7,016–N.S. Second reading scheduled for January 29, 2008.

21. Warm Water Pool at the Berkeley High School Milvia Street Site

Select either a or b

a. From: Commission on Disability

Recommendation: Place a bond measure on the November 2008 ballot for the construction of a new warm water pool and hire all necessary consultants to insure passage of the bond.

Financial Implications: See report

Contact: Paul Church, Commission Secretary, 981-5400

b. From City Manager

Recommendation: Refer to staff for possible ballot measure discussion for the November 2008 general election.

Financial Implications: See report

Contact: Phil Kamlarz, City Manager, 981-7000

M/S (Spring/Worthington) main motion to refer to City Manager with intent to place a measure on the November 2008 ballot. M/S (Wozniak/Capitelli) substitute motion to refer to staff for possible ballot measure for November 2008. Motions withdrawn.

Public Comment – 2

Action: Continued to February 12, 2008 ballot measure discussion.

Action Calendar – Council Items

22. Approval of East Bay Green Corridor and Joint Green Job Appropriation Request

From: Mayor Bates

Recommendation:

- 1) Formally approve the City's participation in the East Bay Green Corridor Partnership
- 2) Authorize the City to jointly request a federal appropriation for a regional green collar job and workforce development program along with the other city members of the East Bay Green Corridor.

Financial Implications: See report

Contact: Tom Bates, Mayor, 981-7100

Action: M/S/C (Moore/Maio) to approve the Mayor's recommendation.

Information Reports

23. Council Rules of Procedure

From: City Manager

Contact: Pamyla Means, City Clerk, 981-6900

Action: Received and filed.

24. Unrepresented Temporary Employees

From: City Manager

Contact: David Hodgkins, Human Resources, 981-6800

Action: Received and filed.

25. LPC Structural Alteration Permit Notices of Decision for 2411 Fifth St

From: City Manager

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

Action: Received and filed.

Public Comment – Including Items Not Listed on the Agenda: 1

Adjournment – 10:28 p.m. in memory of city employees Sanda Graber, Fred Walker and Erica Madrid and in honor of Martin Luther King Jr birthday

This is to certify that the foregoing is a true and correct copy of the minutes of the regular meeting of January 15, 2008 as approved by the Berkeley City Council.

Pamyla Means, MMC, City Clerk

Communications – 01/15/08

Item 18: Fees: Inspection Program For Alcohol Establishments

1. Marlene DeMarchi

Downtown Redevelopment

2. Don Gosney

National Trust Preservation Funds

3. Marie Bowman

Berkeley Downtown Area Plan (DAPAC)

4. Kent Lewandowski, Sierra Club Northern Alameda County Group

Banning Cheap Booze – REFERRED TO CITY MANAGER

5. Barbara Gilbert

Medicare and COB Employees

6. Barbara Gilbert

LBNL – CRT Project, DEIR Problems

7. John Shively

Supplemental Communications and Reports 1

Item 2: Ordinance Establishing Operating Standards for Alcohol Outlets and Fee Options

8. Robin Wright

Item 14: Park Bench Donation Policy

9. Michael Haag

Item 17: ZAB Appeal: 2129 Rose Street

10. Peter Lomhoff

Item 18: Fees: Inspection Program For Alcohol Establishments

11. Fred Aryan

12. Laleh Heravi-Aryan

Item 21: Warm Water Pool at the Berkeley High School Milvia Street Site

13. Barbara Gilbert

Supplemental Communications and Reports 2

Item 8: Kaiser Permanente Grant: Healthy Eating Environments

- To Be Delivered report, submitted by Health & Human Services

Item 18: Fees: Inspection Program For Alcohol Establishments

14. Deborah Badhia, Downtown Berkeley Association

15. Berkeley Alcohol Policy Advocacy Coalition (BAPAC)

Item 21: Warm Water Pool at the Berkeley High School Milvia Street Site

- To Be Delivered report, submitted by City Manager

16. Barbara Gilbert