

## SUMMARY

### BERKELEY CITY COUNCIL MEETING

TUESDAY, NOVEMBER 29, 2005

7:00 P.M.

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

#### Preliminary Matters

**Roll Call:** 7:21 p.m. All present.

**Ceremonial Matters:** None.

**City Manager Comments:** World Aids Day will be commemorated in Berkeley on December 1, 2005 at the Florence Schwimley Little Theater at Berkeley High School on Allston Way from 8:30 – 4:00. There will be panels, displays, memorial quilts and an expression board.

**Public Comment:** 11 speakers.

#### Consent Calendar

**Action:** Moved, seconded, carried (Maio/ Worthington) to adopt the Consent Calendar in one motion except as indicated:

- 1. Purchase of Property for the Codornices Creek Project** (*First Reading November 15, 2005 - Unanimous*)  
**From:** City Manager  
**Recommendation:** Adopt second reading of an Ordinance authorizing purchase from Alameda County of tax-defaulted real property, Assessor's Parcel Number (APN) 060-2385-10, required for the Lower Codornices Creek Restoration and Site Improvement Project in an amount not to exceed \$2,200.  
**Financial Implications:** Parks Tax Fund - \$2,200  
Contact: Marc Seleznow, Parks Recreation & Waterfront, 981-6700  
**Action:** Adopted Ordinance No. 6,884–N.S. Effective December 29, 2005.
- 2. Ellis Bill Relocation Fees** (*First Reading November 15, 2005. Noes - Olds; Abstain - Wozniak*)  
**From:** Rent Stabilization Board  
**Recommendation:** Adopt second reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 13.77.055 to require relocation allowance payments to all tenants evicted pursuant to California's Ellis Act.  
**Financial Implications:** None  
Contact: Jay Kelekian, Rent Stabilization Board, 644-6128  
**Action:** Adopted Ordinance No. 6,885–N.S. Effective December 29, 2005.

**3. Amendment to FY 2006 Annual Appropriations Ordinance**

**From: City Manager**

**Recommendation:** Adopt first reading of an Ordinance amending the FY 2006 Annual Appropriations Ordinance No. 6,862–N.S. for FY 2006 based upon recommended re-appropriation of committed FY 2005 funding and other adjustments authorized since July 1, 2005, in the amount of \$47,798,568 (gross) and \$45,204,917 (net).

**Financial Implications:** See report

Contact: Phil Kamlarz, City Manager, 981-7000

**Action:** Adopted first reading of Ordinance as amended. Second reading scheduled for December 6, 2005.

**4. Alameda County Election Voting System**

**From: City Manager**

**Recommendation:** Urge the Alameda County Board of Supervisors to: 1) select a new election voting system that supports instant runoff voting (IRV), also known as ranked choice voting (RCV) and 2) require as part of contract negotiations that an instant runoff voting component be available in time for use in the November 2006 elections.

**Financial Implications:** See report

Contact: Phil Kamlarz, City Manager, 981-7000

**Action:** Approved recommendation.

**5. Hurricane Katrina Disaster Fund and Future Disaster Fund**

**From: City Manager**

**Recommendation:** Adopt a Resolution establishing a new fund (Fund 693) for the purpose of accounting for expenditures associated with the Hurricane Katrina disaster, and establishing another fund (Fund 694) to account for expenditures for future disasters for which the City will receive reimbursements from Federal and/or State agencies.

**Financial Implications:** See report

Contact: Fran David, Finance, 981-7300

**Action:** Adopted Resolution No. 63,117–N.S.

**6. Formal Bid Solicitations and Request for Proposals**

**From: City Manager**

**Recommendation:** Approve the attached request for proposals that will be, or are planning to be, issued upon final approval by the requesting department or division.

**Financial Implications:** Various Funds - \$2,908,000

Contact: Fran David, Finance, 981-7300

**Action:** Approved recommendation.

**7. Fee Assessment: State of California Self-Insurance Fund**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for FY 2006 fees assessed for administering the Workers' Compensation Program, in an amount not to exceed \$130,000.

**Financial Implications:** Workers' Compensation Self-Insurance Fund - \$130,000

Contact: David W. Hodgkins, Human Resources, 981-6800

**Action:** Adopted Resolution No. 63,118–N.S. as amended.

- 8. Budget Referral: Facility Rental Funding for BORP**  
**From: Mayor Bates**  
**Recommendation:** Refer to the mid-year budget process this request to authorize \$3,424 this fiscal year and \$3,673 next fiscal year to cover a portion of the increased facility rental costs associated with Bay Area Outreach and Recreation Program's disabled recreation programs at James Kenney Park.  
**Financial Implications:** \$7,097 in one-time funds over two fiscal years  
Contact: Tom Bates, Mayor, 981-7100  
**Action:** Approved recommendation.
- 9. Retention Plan for Clif Bar in West Berkeley**  
**From: Councilmember Maio**  
**Recommendation:** Request that the City Manager work actively with staff to develop a strategy to retain Clif Bar, a homegrown and green business in Berkeley.  
**Financial Implications:** See report  
Contact: Linda Maio, Councilmember District 1, 981-7110  
**Action:** Approved recommendation.
- 10. Rosa Parks Commemoration Day**  
**From: Councilmembers Moore and Anderson**  
**Recommendation:** Adopt a Resolution designating December 1st as “Rosa Parks Commemoration Day.”  
**Financial Implications:** None.  
Contact: Darryl Moore, Councilmember District 2, 981-7120 and Max Anderson, Councilmember District 3, 981-7130  
**Action:** Adopted Resolution No. 63,119–N.S.
- 11. Budget Referral: Center for Accessible Technology**  
**From: Councilmember Spring**  
**Recommendation:** Refer the request for \$10,000 for The Center for Accessible Technology to the midyear budget process.  
**Financial Implications:** \$10,000  
Contact: Dona Spring, Councilmember District 4, 981-7140  
**Action:** Approved recommendation.
- 12. Budget Referral: Habitot**  
**From: Councilmember Spring**  
**Recommendation:** Refer to the mid-year budget process a request for funding Habitot for \$10,000.  
**Financial Implications:** \$10,000  
Contact: Dona Spring, Councilmember District 4, 981-7140  
**Action:** Approved recommendation.

## Consent Calendar

13. **Oppose the execution of Stan "Tookie" Williams**  
**From: Councilmember Worthington**  
**Recommendation:** Oppose the execution of Stan "Tookie" Williams on December 13, 2005, and urge Governor Schwarzenegger to grant executive clemency to Mr. Williams.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember District 7, 981-7170  
**Action:** Approved recommendation.
14. **Support the National Day of Counter-Recruitment**  
**From: Councilmember Worthington**  
**Recommendation:** Endorse the National Day of Counter-Recruitment on December 6, 2005, organized by the Campus Anti-War Network.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember District 7, 981-7170  
**Action:** Approved recommendation.

## Action Calendar - Presentation

15. **Landmarks Preservation Ordinance**  
**From: Mayor Bates**  
**Recommendation:** Presentation, Council discussion and direction to staff regarding modifications to the Landmarks Preservation Ordinance.  
Contact: Tom Bates, Mayor, 981-7100  
**Action:** Presentation made. Held over to January 17, 2006.

## Action Calendar – Public Hearing

16. **Administrative Fees: Inclusionary Housing Program**  
**From: City Manager**  
**Recommendation:** Conduct a public hearing and upon conclusion: 1) adopt first reading of an Ordinance adding Berkeley Municipal Code (BMC) Section 23C.12.100, which authorizes the City Council to set fees by Council Resolution; and 2) adopt a Resolution, to be effective upon the effective date of the Ordinance, approving the Inclusionary Housing Program administrative fees specified in the Resolution and establishing a new fund for the Inclusionary Housing Program.  
**Financial Implications:** None  
Contact: Stephen Barton, Housing, 981-5400  
**Public Testimony:** The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Maio/Moore) to close the public hearing.  
**Action:** Moved, seconded, carried (Worthington/Moore) to adopt: 1) first reading of Ordinance (second reading scheduled for December 6, 2005); and 2) Resolution No. 63,120–N.S.

## Action Calendar – Public Hearing

### 17. Grant: Citizen's Option For Public Safety

**From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution authorizing the City Manager to appropriate \$150,830 in California Citizen's Option For Public Safety (COPS) grant funding for Fiscal Year 2006 to be used for a youth services counselor, volunteer coordinator, police aides, crime analysis, DNA testing, County of Alameda information systems data sharing costs, and other equipment needs; and to appropriate a remaining year-end fund balance of \$91,716 from prior years to be used to pay overtime for basic Community Involved Policing (CIP) training, professional instructors, ongoing CIP update training and activities, property crimes mitigation, and other equipment needs, and make any amendments thereto.

**Financial Implications:** Grant Funds - \$243,431

Contact: Douglas N. Hambleton, Police, 981-5700

**Public Testimony:** The Mayor opened the public hearing. No speakers. Moved, seconded, carried (Worthington/Moore) to close the public hearing.

**Action:** Moved, seconded, carried (Moore/Capitelli) to adopt Resolution No. 63,121–N.S.

## Action Calendar – Old Business

### 18. Support Commission Diversity (*Held over as amended from November 15, 2005*)

**From: Councilmember Worthington**

**Recommendation:** Adopt a Resolution to: 1) encourage City Councilmembers to actively seek to fill vacant positions with consideration of the needs and benefits of a more representative and diverse commission roster; and 2) implement semi-annual reviews of its progress to determine if additional steps should be taken to ensure that these goals are met.

**Financial Implications:** None

Contact: Kriss Worthington, Councilmember District 7, 981-7170

**Action:** Held over to December 13, 2005 by Councilmember Moore.

### 19. Wireless Internet (*Held over as amended from November 15, 2005*)

**From: Councilmembers Capitelli, Maio, Moore and Anderson**

**Recommendation:** Request the City Manger have staff research the possibilities and requirements for a Berkeley citywide wireless internet system, prepare a report and present it to the City Council by March 2006.

**Financial Implications:** See report

Contact: Laurie Capitelli, District 5, 981-7150; Linda Maio, Councilmember District 1, 981-7110; Darryl Moore, District 2, 981-7130; Max Anderson, District 3, 981-7130

**Action:** Moved, seconded, carried (Wozniak/Spring) to approve the recommendation as amended by Councilmember Spring to include an analysis of health effects, number of antennas and electromagnetic radiation.

## Action Calendar – New Business

- 20. 2901 Otis Street - Landmarks Preservation Commission Designation as Structure of Merit**
- a. From: City Manager** (*November 29, 2005*)  
**Recommendation:** Adopt a Resolution overturning the Landmarks Preservation Commission's Structure of Merit designation.  
**Financial Implications:** None  
Contact: Dan Marks, Planning, 981-7400
- b. From: City Manager** (*October 18, 2005*)  
**Recommendation:** Review the appeal of Landmarks Preservation Commission decision to designate the building at 2901 Otis Street as a Structure of Merit, and set the matter for public hearing on November 15, 2005.  
**Financial Implications:** None  
Contact: Dan Marks, Planning and Development, 981-7400  
2901 Otis Street - Landmarks Preservation Commission Designation as Structure of Merit
- c. Appeal**
1. Eric Geleynse, Xin Jin and Danny Tran
- d. Communications** (*November 15, 2005*)
1. D. Mayeron
  2. David Ramin, Shari Ser, D. Mayeron
- e. Supplemental Reports and Communications # 1** (*November 15, 2005 – Numbering follows original sequence*)
16. David S. Ramin
  17. Eric Geleynse
- f. Supplemental Reports and Communications # 2** (*November 15, 2005 – Numbering follows original sequence*)
26. Lesley Emmington
- Action:** Moved to Consent by Councilmember Wozniak. Adopted Resolution No. 63,122–N.S.
- 21. 2901 Otis Street**
- a. From: City Manager** (*November 29, 2005*)  
**Recommendation:** Adopt a Resolution approving Use Permit No. 04-10000090 to construct a three-story triplex at 2901 Otis Street, dismissing the appeal, and approving an additional use permit to remove more than fifty percent of the roof and exterior walls of the existing dwelling.  
**Financial Implications:**  
Contact: Dan Marks, Planning, 981-7400
- b. From: City Manager** (*October 18, 2005*)  
**Recommendation:** Review the appeal of the Zoning Adjustments Board decision regarding 2901 Otis Street, to approve: 1) a permit to remove roof and more than 50 percent of exterior walls of existing dwelling; 2) a permit to construct two additional dwelling units; and 3) an Administrative Use Permit to locate two parking spaces within 10 feet of rear windows of proposed building, and set for a public hearing.  
**Financial Implications:** None  
Contact: Dan Marks, Planning and Development, 981-7400

**c. Appeal**

1. David Ramin, Shari Ser and D. Mayeron

**d. Communications** (*November 15, 2005*)

1. D. Mayeron
2. David Ramin, Shari Ser, D. Mayeron

**e. Communications** (*October 18, 2005*)

1. David Ramin, Shari Ser, D. Mayeron and Ross Blum

**f. Supplemental Reports and Communications #1** (*October 18, 2005 - Numbering follows original sequence*)

28. Robert Lauriston

**g. Supplemental Reports and Communications # 1** (*November 15, 2005 – Numbering follows original sequence*)

16. David S. Ramin
17. Eric Geleynse

**h. Supplemental Reports and Communications # 2** (*November 15, 2005 – Numbering follows original sequence*)

27. Robert Lauriston

**Action:** Moved to Consent by Councilmember Wozniak. Adopted Resolution No. 63,123–N.S.

**22. Affordable Housing Loophole**

**From: Councilmember Worthington**

**Recommendation:** Refer to the Planning Commission to consider whatever policy or policies are needed for closing the "4 + 4 = 4" loophole which is being used to avoid building affordable housing by defining up to four units as live work and up to four units as rental, thereby circumventing the important public priority of the inclusionary requirement that if you build five or more units, twenty percent should be affordable.

**Financial Implications:** Staff time

Contact: Kriss Worthington, Councilmember District 7, 981-7170

**Action:** Moved, seconded, carried (Wozniak/Moore) to approve recommendation.

**23. Response to Draft Environmental Impact Report for Bevatron at Lawrence Berkeley National Laboratory (LBNL)**

**a. From: City Manager** (*November 29, 2005*)

**Recommendation:** Authorize staff to send comments to LBNL on the Draft EIR for demolition of Bevatron and Building 51 regarding cumulative impacts, transportation, air quality, compliance with health and safety regulations, and the need for LBNL to identify additional methods to recognize the site's historic significance; and Request that the LBNL extend the public comment period on the DEIR to January 18, 2006 to allow the City Council adequate public input on the proposed project.

**Financial Implications:** See report

Contact: Dan Marks, Planning, 981-7400

## Action Calendar – New Business

**b. From: Councilmembers Wozniak, Moore and Maio** (*October 18, 2005*)

**Recommendation:** Recommend: 1) that the City Council reaffirm its support for the full decommissioning, deconstruction and removal of the Bevatron; and 2) refer to the City Manager for review the Peace & Justice Commission resolution on the proposed demolition of B51 and the Bevatron and the Draft Environmental Impact Report (DEIR), when it is released later in the Fall of 2005. For this review, staff would have the benefit of the comprehensive analysis of the associated environmental and historical impacts in the DEIR.

**Financial Implications:** None.

Contact: Gordon Wozniak, Councilmember District 8, 981-7180; Darryl Moore, Councilmember District 2, 981-7120; Linda Maio, Councilmember District 1, 981-7110

**c. From: Peace and Justice Commission** (*October 25, 2005*)

**Recommendation:** Adopt a Resolution recommending that the City Council request: 1) the Department of Energy, the Lawrence Berkeley National Laboratory and their managing agency, the University of California, to continue with their original plan to preserve the Bevatron Facility as a place of merit on the National Register of Historic Places for the benefit of future interested individuals and students of science, history and architecture; and 2) that the \$85 million budgeted for the demolition of the Bevatron be primarily redirected to the decontamination of toxic underground plumes at Lawrence Berkeley National Laboratory as promised with enough spared to complete the conversion of the accelerator facility for safe public access.

**Financial Implications:** None

Contact: Manuel Hector, Secretary, 981-5110

**Action:** Moved to Consent by Councilmember Wozniak. Approved the City Manager's recommendation.

**24. Near-Relative Policy for Community Agencies**

**From: City Manager**

**Recommendation:** Adopt a Resolution approving a near-relative policy applicable to community agencies and authorizing the City Manager to implement the policy through immediate voluntary compliance of community agencies; and authorizing the City Manager to include this policy in Community Agency Contract provisions.

**Financial Implications:** None

Contact: Stephen Barton, Housing, 981-5400

**Action:** Moved to Consent by Councilmember Wozniak. Adopted Resolution No. 63,124–N.S.

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.*

**Potential Nanotechnology Risks**

1. Barbara Gilbert (*Spring*)

**Request for Administrative Review of Parking Citation**

2. David Kirwin, Berkeley Unified School District

## Communications

### **City Utility Users Tax**

3. Pei-Chen Jennifer Hsieh

### **Marin Avenue Traffic Plan**

4. Joyce and Jan deVries

### **Inclusionary Housing**

5. Barbara Gilbert

### **Presentation Request**

6. Madeline Oden, The Tatia Oden French Memorial Foundation

### **Public Records Act Request for BUSD: Senior Tax Benefits**

7. Barbara Gilbert

### **Support the Resolution in Solidarity with the People of Haiti** (*Worthington*)

8. Carolyn S. Scarr
9. Jane Stillwater
10. PhoeBe ANNE (sorgen), Peace and Justice Commission
11. Jancis Long

### **Derby Street Athletic Field**

12. Greg Ward
13. Yolanda Huang
14. Jamie Day and Phyllis Orrick

### **Public Health Risk Posed by Cell Towers**

15. Peter Teichner

### **RFID in the Berkeley Public Library**

16. Peter Teichner

### **License Agreement with the Berkeley Historical Society for space at the Veteran's Building**

17. John G. Aronovici and AnaLuisa Coplan, Berkeley Historical Society

### **Crime Reates in Berkeley**

18. Robin Wright
19. Don Oppenheim

## Supplemental Reports and Communications 1

### **Item 3: Amendment to FY 2006 Annual Appropriations Ordinance**

20. Revised Ordinance, Exhibit A and Attachment 2, submitted by the City Manager

## Supplemental Reports and Communications 2

### **Item 15: Landmarks Preservation Ordinance**

21. Presentation materials, submitted by Mayor Bates

### **Item 19: Wireless Internet (PDF, 351 KB)**

22. Corrine Goldstick

## Supplemental Reports and Communications 2

### **Item 20: 2901 Otis Street - Landmarks Preservation Commission Designation as Structure of Merit**

23. **Supplemental Reports and Communications # 1** (*November 15, 2005 – Numbering follows original sequence*)

- 18. David S. Ramin
- 19. Eric Geleynse

24. **Supplemental Reports and Communications # 2** (*November 15, 2005 – Numbering follows original sequence*)

- 26. Lesley Emmington

### **Item 21: 2901 Otis Street**

25. **Supplemental Reports and Communications # 1** (*November 15, 2005 – Numbering follows original sequence*)

- 18. David S. Ramin
- 19. Eric Geleynse

26. **Supplemental Reports and Communications # 2** (*November 15, 2005 – Numbering follows original sequence*)

- 27. Robert Lauriston

## Supplemental Reports and Communications 3

### **Item 7: Fee Assessment: State of California Self-Insurance Fund**

27. Amended Resolution, submitted by Human Resources

### **Item 15: Landmarks Preservation Ordinance**

28. Presentation materials, submitted by Mayor Bates

### **Item 16: Administrative Fees: Inclusionary Housing Program**

29. Andy Katz, Zoning Adjustments Board

### **Item 19: Wireless Internet**

30. Motion, submitted by Councilmember Spring

### **National Historic Preservation Act of 1966**

31. Pamela Sihvola

### **Derby Street Closure**

32. Karl Reeh

## Adjournment

Adjourned at 8:58 p.m.