ACTION CALENDAR
October 25, 2011

To: Honorable Mayor and Members of the City Council
From: Peace and Justice Commission
Submitted by: Eric Brenman, Secretary, Peace and Justice Commission
Subject: Closure of Guantánamo and Justice for Cleared Detainees

RECOMMENDATION
Adopt a Resolution supporting the closure of the prison at Guantánamo Bay Naval Base in Cuba (Guantánamo) in furtherance of our country’s national security interests and supporting justice for cleared detainees including removing Congressional and Homeland Security imposed bans on their movement.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
At its regular meeting on July 11, 2011, the Peace and Justice Commission adopted the following recommendation:

Adopt a Resolution to support the closure of the prison at Guantánamo Bay Naval Base in Cuba in furtherance of our country’s national security interests and supporting justice for cleared detainees including removing Congressional and Homeland Security imposed bans on their movement.

M/S/C: (Maran/Lee)
Ayes: Bohn; Deger (temporary appointee); Kenin; Lee; Maran; Meola; Nicely
Noes: Rabkin; Rueda; Siegel
Abstain: Abdul-Kabir; Lippman; Litman
Absent: Masri (excused)
BACKGROUND
On January 11, 2002, the US Government brought the first of nearly 800 detainees to a prison at Guantánamo and President Obama stated in January 2009 that the prison Guantánamo would be closed by January 2010. Guantánamo remains open as of October 2011, with approximately 40 cleared detainees held without an end date, among them those who could not be sent to their home countries because of post-transfer treatment concerns, or resettled in allied countries.

RATIONALE FOR RECOMMENDATION
The Peace and Justice Commission, consistent with its mandate to promote peace and justice, locally, nationally and internationally, recommends that the Council supports and reaffirms President Obama’s call for the closure of Guantánamo in furtherance of our country’s national security interests; and 2) Reaffirms Council’s moral and humanitarian concerns expressed in earlier resolutions; asserts Council’s unwillingness to turn its back on cleared detainees still being held at Guantánamo; and urges that Congress remove bans on the movement of cleared Guantánamo detainees to the U.S.; and 3) Makes known that upon the lifting of Congressional bans and approval by the Department of Homeland Security, one or more cleared detainees will be offered a welcome to the Berkeley community which has offered private support.

ALTERNATIVE ACTIONS CONSIDERED
None.

CITY MANAGER
The City Manager takes no position on the Commission’s recommendations or the contents of its Report.

CONTACT PERSON
George Lippman, Chairperson, Peace and Justice Commission, 510-843-1160
Rita Maran, Commissioner, Peace & Justice Commission, 510-540-8017
Eric Brenman, Secretary, Peace and Justice Commission, 510-981-5114

Attachments:
1. Resolution
2. Background & Reference materials
3. Appendix
RESOLUTION NO. –N.S.

CLOSING GUANTANAMO AND JUSTICE FOR DETAINEES

WHEREAS, according to the Berkeley Municipal Code, Section 3.68.010 (E), Peace & Justice Commission – Findings: “Peace is inseparable from justice”; and

WHEREAS, according to BMC 3.68.010 (L): “The residents of Berkeley have welcomed to our City those who have been forced into exile, and who have come fleeing torture and death,…" that was affirmed by the Berkeley City Council in Resolution No. 44,784-N.S., 1971, declaring Berkeley a City of Refuge, and later reaffirmed in Resolution No. 52,596-N.S., 1986, relative to Central American refugees; and

WHEREAS, on January 11, 2002, the US Government brought the first of nearly 800 detainees to a prison at Guantánamo Bay Naval Base in Cuba (Guantánamo); and

WHEREAS, President Barack Obama stated in January 2009 that the prison at Guantánamo would be closed by January 2010; and

WHEREAS, despite U.S. Supreme Court rulings on the right to due process in Rasul v. Bush, No. 03-334 (2004); Hamdan v. Rumsfeld, No. 05-184 (2006); and Boumediene v. Bush, No. 06-1195 (2008), Guantánamo remains open as of October 2011, with approximately 40 cleared detainees held without an end date, among them those who could not be sent to their home countries because of post-transfer treatment concerns, or resettled in allied countries (see “Final Report Guantánamo Review Task Force January 22, 2010; Dept. of Justice, Dept. of Defense, Dept. of State, Dept. of Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff”); and

WHEREAS, Guantánamo has become emblematic of the gross human rights abuses perpetrated by the U.S. Government in the name of fighting terrorism; and

WHEREAS, Guantánamo detainees have undergone a wide range of interrogation procedures that constitute torture or maltreatment, including but not limited to sensory deprivation and prolonged isolation; and

WHEREAS, Amnesty International USA states: “…the indefinite and arbitrary nature of the circumstances of their detention has led to a steep decline in the mental health of many incarcerated at Guantánamo…” (email May 12, 2011 from Al USA Chair Carole Nagengast to Peace & Justice Commissioner Rita Maran); and

WHEREAS, Congresswoman Barbara Lee writes: “Guantánamo...has led the world to question America’s commitment to the rule of law, due process, and the rejection of torture as an acceptable interrogation practice…” (Letter of May 26, 2011 to Rita Maran); and
WHEREAS, Amherst, Massachusetts adopted a resolution on Nov. 4, 2009, and Leverett, Massachusetts, adopted a resolution on April 24, 2010, calling upon Congress to repeal the ban on resettlement of detainees in the U.S., and each town declared that it would subsequently welcome publicly said detainees; and

WHEREAS, in light of offers of private support from within the Berkeley community, this Resolution neither requests nor suggests financial implications of any sort for the City of Berkeley.

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley that the Berkeley City Council: 1) Supports and reaffirms President Obama’s call for the closure of Guantánamo in furtherance of our country's national security interests; and 2) Reaffirms Council’s moral and humanitarian concerns expressed in earlier resolutions; asserts Council’s unwillingness to turn its back on cleared detainees still being held at Guantánamo; and urges that Congress remove bans on the movement of cleared Guantánamo detainees to the U.S.; and 3) Makes known that upon the lifting of Congressional bans and approval by the Department of Homeland Security, one or more cleared detainees will be offered a welcome to the Berkeley community which has offered private support.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to President Barack Obama; Attorney General Eric Holder; Senators Dianne Feinstein and Barbara Boxer; Representative Barbara Lee, 9th Congressional District; Amnesty International USA Chair Carole Nagengast; Sister Marianne Farina CSC of the Dominican School of Theology and Philosophy in Berkeley; and United Nations High Commissioner for Human Rights - Judge Navi Pillay. A record copy of said Resolution to be on file in the Office of the City Clerk.
May 12, 2011

Dear Rita,

I support with enthusiasm the resolution to provide non financial humanitarian support for cleared Guantanamo detainees. Amnesty International has long taken a strong stance on the illegality of the United States’ detention facilities at Guantánamo Bay, Cuba, stating that Guantánamo has become emblematic of the gross human rights abuses perpetrated by the U.S. Government in the name of fighting terrorism. At Guantánamo, the U.S. government sought to hold detainees in a place where neither U.S. nor international law applied. But no one can be held outside of the law. Guantánamo must be closed the right way: detainees must both be promptly charged and given fair trials in U.S. federal courts, or be released.

In Rasul v. Bush (2004) the U.S. Supreme Court ruled that federal courts had jurisdiction over detainees in Guantánamo, allowing detainees to file petitions seeking habeas corpus - the centuries old right to challenge the legality of one's detention. In Hamdan v. Rumsfeld (2006) the Court found that Article 3 common to the four Geneva Conventions applied to Guantánamo detainees. In 2006, Congress passed the Military Commissions Act (MCA), which stripped federal courts of the right to hear habeas corpus cases by or on behalf of any Guantánamo detainees. But on June 12, 2008, the U.S. Supreme Court ruled in Boumediene v. Bush that detainees held at Guantánamo are entitled, under the U.S. Constitution, to habeas corpus.

More than nine years after the first detainees were transferred to Guantánamo, only six people have had their cases adjudicated – the majority taking plea deals rather than fighting their case in a courtroom heavily stacked against them. Only a handful of others have even been charged.

Approximately 171 inmates still remain in Guantánamo, some of whom are now in their ninth year of detention. These men have been subjected to a wide range of interrogation tactics that constitute ill-treatment, including stress positions, sensory deprivation, prolonged isolation, the use of 20-hour interrogations, hooding during transportation and interrogation, stripping, forcible shaving, and "using detainees individual phobias (such as fear of dogs) to induce stress."

Incredibly, of those still being held approximately 60 individuals have actually been cleared for release but the United States has either failed to find a safe haven for them or, in the case of 27 Yemenis, refused to return them to their country of origin. The indefinite and arbitrary nature of the circumstances of their detention has led to a steep decline in the mental health of many incarcerated at Guantánamo. There have been numerous suicide attempts and hunger strikes. In June 2006, after the apparent suicides of three inmates, many detainees were moved to isolated cells in "supermax" facilities known as Camp 5 and Camp 6. There, they lost the ability to eat or exercise communally. They have very limited contact with anyone but their jailers and almost no access to sunlight or fresh air. A fourth detainee died of an apparent suicide in March 2007 and a fifth in June 2009.

The detention facilities at Guantánamo Bay have also diminished the United States' reputation, providing a magnet for criticism from allies and enemies alike. In the years since Amnesty
International has called for closure of the detention facilities, a growing number of high-ranking U.S. officials from both political parties, allied governments, and the United Nations have issued calls for the prison's closure.

The detention facility at Guantánamo Bay isn't the only prison where the United States is holding detainees from the "war on terror" - detention facilities in Afghanistan are also used to detain those captured by the U.S. military. Most detainees are held unlawfully, without warrant or charge, and with no legal representation to challenge their detention. Even when Guantánamo is closed, the push for detainee human rights must continue.

With kind regards,

Carole Nagengast
Professor Emerita
Chair, Amnesty International USA

Carole Nagengast,
Chair, AIUSA
Professor Emerita
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cnagenga@gmail.com
June 6, 2011

To: Rita Maran
Lecturer
University of California

Dear Rita,

I am a member of the Congregation of the Sisters of the Holy Cross. The Sisters of the Holy Cross have founded schools and programs in order to provide citizens of the Bay Area communities the means to full human development so that they become contributors to society. In 2006, my Congregation took a Public Corporate Stand on Nonviolence (www.cscsisters.org/aboutus/Pages/stand_nonviolence).

I believe that the continual containment of cleared detainees in Guantanamo Bay is a violate action denying their human rights and is an obstacle to creating right relationships and peace in all our communities. The tremendous injustice that holds these prisoners without charges has an impact not only on them personally but on their families and communities. They are victims of policies that continue to cause them spiritual, mental, and physical harm.

Therefore, I endorse your efforts to seek non-financial humanitarian support for cleared Guantanamo detainees so that the wrong that has been done to them, their families, and their national communities may be righted.

Sincerely,

Sister Marianne Farina, CSC Ph.D.
Congregation of the Sisters of the Holy Cross
"To remember Guantánamo is not to place it in the past. The Administration’s decisions... to uphold military tribunals confirmed that the detention facilities will remain open, its prisoners held there indefinitely. Gitmo is not behind us."

Symposium April 28-29 2011 at Columbia University, Institute for the Study of Human Rights. Presenters included Justice Albie Sachs, South African Constitutional Court; Ruti Teitel, New York Law School; and Aryeh Neier, a founder of Human Rights Watch, former Executive Director of the American Civil Liberties Union, and now President of the Open Society Foundations.

**Prologue**
In February 2011, Council was presented with a resolution concerning cleared Guantanamo detainees. The resolution failed. The present resolution is not the same resolution. Any similarity to the earlier resolution lies only in the focus on Guantánamo.

The present resolution addresses substantively different questions, and utilizes new, authoritative research.

**Introduction**
Guantanamo Naval Base remains open. Rarely are there media reports about the camp or its inhabitants. Policy discussions about Guantánamo that in the past were issued by the Department of Justice, the military, and the White House, are few and far between. Meanwhile, Guantánamo’s cleared detainees, a number of whom were children* at the time of detention, and many of whom have been there since the camp was opened in 2002, are indefinitely banned from leaving.

40 or so** men who have been cleared but not yet released remain, out of a total of about 172. Those 40 were cleared during the Bush administration. Foundational rights such as habeas corpus and due process are not being applied, despite U.S. Supreme Court rulings. The Obama administration has carefully reviewed all the records including those of detainees the government wishes to hold for possible prosecution, to determine which may have committed crimes or engaged in hostilities against the U.S. They have determined that the cleared detainees pose no danger to the U.S. or its allies.

*Report on Children at Guantánamo by the Center for the Study of Human Rights in the Americas, 2011, U.C. Davis, humanrights@ucdavis.edu)
**The figures vary according to when the latest accounting was carried out, and how the categories are re-adjusted.

**Documents - Chronological:**
1. Sept 2004 Combatant Status Review Tribunals (CSRTs) began a military review process that in turn led to the first official release of documents relating to the prisoners in 2006.

2. A document released by the U.S. Department of Defense identified 11 Guantánamo prisoners that were under the age of 18 at the time they were seized: List of individuals Detained by the Department of Defense at Guantánamo Bay, Cuba from January 2002 through May 15, 2006 (posted at

See, also: Guantánamo's Children: The Wikileaks Testimonies  Center for the Study of Human Rights in the Americas ©UC Davis 2005-2011


4. According to Sabin Willett, Attorney, Partner, Bingham McCutcheon LLP, Boston, who led the Bingham team for Uighurs and others seeking release since 2005, and who won the first-ever review of a Guantanamo prisoner’s case under the Detainee Treatment Act in the unanimous decision of Parhat v. Gates, 532 F.3d 834 (D.C. Cir. 2008), some cleared detainees have resettled thus:

4 Uighurs living since 2009 in Bermuda
5 cleared detainees from various countries settled in Albania and Sweden
2 former Bosnians in France
   one in The Netherlands
   some in Switzerland
Overall: between 20 and 40 cleared detainees have resettled in this and other countries.


6. 28 July 2010: Extract of letter from 15 pre-eminent non-governmental organizations urging Members of Congress to oppose any blanket ban on transfer of cleared Guantanamo detainees to the United States:

"... A blanket ban on transfers would restrict the Obama administration's ability to employ what has been one of the most valuable and effective counterterrorism tools available - criminal prosecutions in regular federal courts. It also would make nearly impossible the ability of the United States to transfer to foreign countries those detainees who have been cleared for transfer. The government does not make its transfer decisions lightly. A decision that a detainee can be transferred to another country reflects the unanimous judgment of the Departments of Defense, State, Justice, and Homeland Security, as well as the Joint Chiefs of Staff and the Director of National Intelligence. Adhering to the rule of law both protects human rights and enhances our national security. For these reasons, we strongly urge you to oppose any blanket ban on transfer of Guantánamo detainees to the United States.

Sincerely, (signed)
7. 9 December 2010; Extract of letter from Eric H. Holder, Jr. Attorney General, to Senators Reid and McConnell:
“I write in opposition to Section 1116 of the proposed 2011 Full-Year Continuing Appropriations Act, which would prohibit the use of any funds to transfer detainees from the detention facility in Guantanamo Bay, Cuba, to the United States for any purpose.”


National Defense Authorization Act for Fiscal Year 2011, S. 3454, 111th Cong. (2010), at § 1043. 57 Id. at § 1044. Another proposal, the Prevent Terrorists from Reuniting with Terrorist Cells Act (H.R. 4464), would achieve a similar goal but would defer to State Department decisions. Specifically, it would prohibit the transfer or release of Guantanamo detainees to any country that is “recognized by the Department of State or the Department of Defense as a haven of any manner, kind, or fashion for terrorist activity or that has been classified as a state sponsor of terrorism.” P.58 National Defense Authorization Act for Fiscal Year 2011, H.R. 5136, 111th Cong. (2010), at § 1032. See also Table A-1 in the Appendix to this report. 59 Id. at §§ 1033, 1034. Additional bills, H.R. 4441 and S. 370, would similarly restrict the use of federal funds, without exceptions, to (1) transfer a Guantanamo detainee “to any military or prison installation located in the United States”; or (2) “build, modify, or enhance any facility in the United States for the purpose of housing” Guantanamo detainees.

9. Final Report - Guantanamo Review Task Force  Jan 22, 2010  Departments of: Justice; Defense; State; and Homeland Security; Office of the Director of National Intelligence; and Joint Chiefs of Staff
Sections include: Detainees Approved for Transfer; Detainees Referred for Prosecution; Detainees Approved for Detention; Detainees Approved for Conditional Detention; Detainees Studied and Decisions Approved

10. *Guantanamo Detention Center: Legislative Activity in the 111th Congress*

Sections include: Enacted Laws; Restrictions on Transfer and Release; Restrictions on the Use of Funds to Release Detainees into the United States
