

TUESDAY, APRIL 1, 2003

A regular meeting of the Council of the City of Burbank was held in the Council Chamber of the City Hall, 275 East Olive Avenue, on the above date. The meeting was called to order at 5:03 p.m. by Mr. Laurell, Mayor.

CLOSED SESSION

Present- - - - Council Members Golonski, Murphy, Vander Borgh and Laurell.

Absent - - - - Council Member Ramos.

Also Present - Ms. Alvord City Manager; Mr. Barlow, City Attorney; and, Mrs. Campos, City Clerk.

Oral Communications Mayor Laurell called for oral communications on Closed Session matters at this time.

Citizen Comment Appearing to comment were Mike Nolan, requesting clarification of CBE as listed on the Closed Session agenda, inquiring whether Mr. Kendall is buying property from the Agency, or vice-versa, and requesting additional information on Closed Session items; and Marie Paino, requesting the fee paid by developers for the Art in Public Places program be used for other purposes for the upcoming year in light of the impending budget crisis.

5:10 P.M. Recess The Council recessed at this time to the City Hall Basement Lunch Room/Conference Room to hold a Closed Session on the following:

- a. Conference with Legal Counsel – Existing Litigation:  
Pursuant to Govt. Code §54956.9(a)
  1. **Name of Case:** CBE v. City of Burbank.  
**Case No.:** CV 02-2021DT  
**Brief description and nature of case:** Alleged violations of Clean Air Act.
  2. **Name of Case:** City of Burbank vs. Victor E. Estrada.  
**Case No.:** BC292 157  
**Brief description and nature of case:** Eminent domain action to acquire 461 North Varney Street.
- b. Conference with Legal Counsel – Anticipated Litigation (City as potential defendant):  
Pursuant to Govt. Code §54956.9(b)(1)  
**Number of potential case(s):** 3

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- c. Conference with Labor Negotiator:  
Pursuant to Govt. Code §54957  
**Name of the Agency Negotiator:** Management Services Director/John Nicoll.  
**Name of Organization Representing Employee:**  
Represented: Burbank City Employees Association, Burbank Management Association, International Brotherhood of Electrical Workers, Burbank Firefighters Association, Burbank Firefighters Chief Officer Unit, and the Burbank Police Officers Association; Unrepresented, and Appointed Officials.

Regular Meeting Reconvened in Council Chambers      The regular meeting of the Council of the City of Burbank was reconvened at 6:37 p.m. by Mr. Laurell, Mayor.

Invocation      The invocation was given by Reverend Tania Kleiman, Olive Branch Ministries.

Flag Salute      The pledge of allegiance to the flag was led by Larry Johnson, Chair, Board of Library Trustees.

ROLL CALL

Present- - - -      Council Members Golonski, Murphy, Ramos, Vander Borgh and Laurell.

Absent - - - -      Council Members None.

Also Present -      Ms. Alvord, City Manager; Mr. Barlow, City Attorney; and, Mrs. Campos, City Clerk.

301-1 National Library Week      Mayor Laurell presented a proclamation in honor of National Library Week to Larry Johnson, Chair of the Board of Library Trustees.

6:48 P.M. Hearing 1702 ZTA 2001-11 Regulations for Second Dwelling Units in Single Family Zones      Mayor Laurell stated that "This is the time and place for the hearing on the proposed public hearing on Zone Text Amendment 2001-11 concerning Second Dwelling Units."

Notice Given      The City Clerk was asked if notices had been given as required by law. She replied in the affirmative and advised that no

Staff  
Report

written communications had been received.

Mr. Bowler, Assistant Planner, distributed corrected copies of the staff report to the Council and added copies were made available to the public as well. He stated the first portion of the staff report addressed changes to the ordinance and State Statutory Law, directly mandated by Court decision and the second portion proposed new codified development standards for second dwelling units. He noted changes to the State Statute indicated the City would have to rely entirely on the standards in the Burbank Municipal Code (BMC) for approving or disapproving second dwelling unit applications and that determination could no longer be made based on the Planning Board's or Council's discretion. He explained the changes were a result of a Court decision in April 2001, in the case of Coalition Advocating Legal Housing Options vs. City of Santa Monica, in which the City of Santa Monica's occupancy restrictions were held to violate the California constitutional right to privacy. He stated Burbank's occupancy standards were similar to the City of Santa Monica's, leading staff to conclude that Burbank's standards were unenforceable.

He added the second action that precipitated the amendment was the passage in September 2002 of Assembly Bill (AB) 1866 by the California State Legislature which amended the California Government Code that governs second dwelling unit ordinances to require that after July 1, 2003 applications for second dwelling units must be processed ministerially and without discretionary review or hearing, noting currently the BMC requires a Conditional Use Permit (CUP) which is a discretionary permit. Further, he stated AB 1866 affected almost every section of the BMC second dwelling unit regulations, to the extent that it was necessary to omit references to CUP's and also affected the R-1 and R-1E zone regulations. He added staff was proposing a number of changes to the BMC to conform to the Court ruling and the new State Statute including deleting the occupancy and CUP requirements, and changing second dwelling units from a conditional use to a by-right use in the R-1 zones.

Mr. Bowler added the Planning Board, on January 27, 2003, reviewed and concurred with staff recommendations with the exception of the Planning Board's recommendation to use the Development Review procedure, which may require further modification to the BMC procedures, as opposed to staff's recommendation to process second dwelling unit applications as building permits, which would be reviewed by staff for zoning and code conformance without requiring any new procedures or modifications.

He stated the most significant provisions of the proposed new standards included: changing the minimum lot-size requirement

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for a second dwelling unit from 5,750 square feet (sf) to 6,000 sf, noting the Planning Board recommended a 7,000 sf minimum lot-size which would preclude the valley areas from acquiring second dwelling units; introducing a 500 foot (ft) separation requirement between lots with approved second units, noting the Planning Board recommended a 300 ft separation; requiring the exterior architectural standards be similar to the main unit; limiting detached second units to one story to preserve the privacy of neighboring properties; and requiring a minimum 20 ft separation between R-1H zone properties and approved second units.

Citizen  
Comment

Appearing to comment were David Piroli, in agreement with the letter submitted by Mr. Carlile, inquiring as to the justification for the 300 foot separation between second dwelling units, stating the ordinance should be more liberal, and noting if the City did not comply to address housing needs, the State may impose further restrictions with regard to second dwelling units; Esther Espinoza, stating the City has made it impossible to build second dwelling units; Ron Vanderford, stating there is a shortage of affordable housing in Burbank, that he does not believe the plan submitted will suffice for the long-term solution, and in opposition to the 300 foot separation requirement; and Mike Nolan, noting this action may inconvenience people who are attempting to refinance homes or obtain reverse mortgages, stating some of the provisions submitted by staff will be found unacceptable by the State, referring to past Court decisions with regard to second dwelling units, discussing inconsistencies with regard to requirements for second dwelling units and multiple units on a single lot, stating the proposed provisions are unreasonable and inequitable.

Hearing  
Closed

There being no further response to the Mayor's invitation for oral comment, the hearing was declared closed.

Ms. Murphy noted the concerns expressed by the public and asked for clarification on the criteria to grant second dwelling unit applications in a situation where two property owners who lived side-by-side came in with applications to construct second dwelling units. Mr. Barlow responded that the application which was submitted first would prevail on a first-come-first-serve basis. Mr. Garcia, Assistant City Attorney, stated there was no per-se property right to acquiring a second dwelling unit, and that cities were allowed to zone the property within their jurisdiction to avoid over-concentration of these units in a specific neighborhood and agreed that the

Legislature may at any time impose more stringent requirements.

Mrs. Murphy inquired as to the restrictions imposed by other cities with regard to this legislation and Mr. Bashmakian, Assistant Community Development Director, City Planner, stated most cities were waiting to consider direction taken by other cities anticipating potential litigation, noting Burbank would be taking a lead to address this issue prior to the July 1, 2003 effective date. He also stated the City had existing Floor to Area Ratio (FAR) and lot coverage criteria which would not allow for a second dwelling unit once the lot reached its maximum lot coverage and FAR.

Mrs. Ramos inquired if the City had evidence that owner occupied homes were better at mitigating traffic and noise and Mr. Bashmakian replied there was no such evidence.

Mr. Vander Borcht suggested fine-tuning the State's mandate on a trial basis in an effort to evaluate the results, noting approximately 40 units had been built over the last 20 years and that he did not foresee a rush for applications for these units. He stated this would allow the City time to consider the direction taken by other cities while allowing residents the ability to acquire second dwelling units. He indicated support for the 6,000 sf lot-size requirement that would cover 84 percent of R-1 lots in the City but noted the arbitrary 500 sf separation requirement and stated his preference to pass the ordinance without this criteria.

Mr. Golonski agreed with Mr. Vander Borcht's preference for the minimum lot-size of 6,000 sf, but strongly disagreed that there was not a need to prevent an over-concentration of second dwelling units, acknowledging the challenge of selecting the appropriate separation requirement. He stated with no provision, the City would risk having permanent over-concentration which would negatively impact the neighborhoods but noted the 500 ft separation requirement proposed by staff was not the best means.

Mr. Baker, Deputy City Planner, stated the Planning Board considered several models including linear, acreage and concentrations, and decided the 300 ft separation requirement was the applicable and simplest model that dealt with noise, parking and traffic issues.

Mrs. Ramos inquired if the design review was part of the Development Review (DR) process as recommended by the Planning Board and Mr. Bashmakian responded the Planning Department staff reviewed the design plans regardless of the

use of the DR or building permit process to ensure code compliance. He added the Planning Board recommended approving the units through a DR process involving the 300 sf separation requirement and an opportunity for appeal by any interested individuals and clarified staff recommended the building permit process to avoid raising false hopes for the residents.

Mrs. Ramos discussed the possibility of a pilot project and requested Mr. Vander Borcht clarify his earlier comments in this regard. Mr. Vander Borcht stated he would prefer trying the ordinance for five one-year consecutive periods with the ability for review every year. He added this would limit potential litigation and provide a realistic number of second dwelling unit applications over this period.

Mrs. Ramos indicated support for a yearly review of the ordinance as well as the 6,000 sf lot-size, and the DR process with a final decision to be taken after a specific period of time. Mr. Golonski cautioned against the possibility of creating a permanent impact in a neighborhood while in the process of reaching a final decision. He suggested a combination of linear and radial measures, a 200 sf radial separation along with a 500 sf linear separation. He requested that staff return with a possible list of options for the Council at a future meeting.

Ms. Murphy concurred that staff present a list of options for the Council including notable exceptions, noting the false expectations that would be raised by the DR process.

After Council deliberation, staff was directed to provide a draft "notice" which would be sent out to residents specifically spelling out the limitations of the DR process to avoid creating false hopes. Ms. Alvord stated staff would bring back the item within 30 days, noting the July 1, 2003 deadline.

Reporting on  
Closed Session

Mr. Barlow reported on the items considered by the City Council and the Redevelopment Agency during the Closed Session meetings and added although not discussed in Closed Session, a briefing paper on the Federal Aviation Administration (FAA) decision was made available for public review.

First Period of  
Oral  
Communications

Mr. Laurell called for speakers for the first period of oral communications at this time.

Citizen Comment	Appearing to comment were Mark Barton, making a presentation on the proposed directional signs for downtown Burbank; Howard Rothenbach, commenting on the proposed sewer service charges, and requesting additional information on the staff report when the matter is presented to the Council; and Esther Espinoza, inquiring why part of her comments during oral communications were suppressed during replays of last week's Council meeting.
Staff Response	Members of the Council and staff responded to questions raised.
Second Period of Oral Communications	Mr. Laurell called for speakers for the second period of oral communications at this time.
Citizen Comment	Appearing to comment were Esther Espinoza, in opposition to the approval of an agreement with Michael H. Miller to advise the Civil Service Board, commenting on the Burbank Water and Power monthly operating report and on her personal utility bill; Howard Rothenbach, commenting on the recycling program, inquiring about Burbank's recycling process and questioning whether there was any redemption value given to items which came from other states; and Mike Nolan, requesting clarification of an item listed on the Closed Session agenda, stating he believes the City is not properly identifying the items due to insufficient descriptions of Closed Session items.
Staff Response 8:31 P.M. Recess	Members of the Council and staff responded to questions raised. The Council recessed to permit the Housing Authority to hold its meeting. The Council reconvened at 8:32 p.m. with all members present.
Item Removed From Consent Agenda	The item regarding Approving an Agreement for an Independent Advisor to the Civil Service Board with Michael H. Miller was removed from the consent calendar for the purpose of discussion.
Motion	It was moved by Ms. Murphy and seconded by Mr. Vander Borcht that "the following items on the consent calendar be approved as recommended."
Minutes Approved	The minutes for the regular meeting of January 21, 2003 were approved as submitted.

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907                                    RESOLUTION NO. 26,460:  
801-2                                A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK  
Asset Forfeiture                AMENDING THE FISCAL YEAR 2002-2003 DRUG ASSET  
Fund                                FORFEITURE FUND BUDGET IN THE AMOUNT OF  
  \$142,458.97.

916                                    RESOLUTION NO. 26,461:  
801-2                                A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK  
Dept. of                             AUTHORIZING SUBMITTAL OF THE FUNDING REQUEST FORM  
Conservation,                    FOR THE FY 2003/2004 FUNDING CYCLES OF THE  
Division of                        CITY/COUNTY PAYMENT PROGRAM TO THE DEPARTMENT  
Recycling City/                 OF CONSERVATION, DIVISION OF RECYCLING, AND  
County Payment                 APPROPRIATING THE FY 2003/2004 AMOUNT TOTALING  
Program                            \$28,990.

Adopted                            The consent calendar was adopted by the following vote:

Ayes:       Council Members Golonski, Murphy, Ramos, Vander  
  Borghht and Laurell.  
Noes:       Council Members None.  
Absent:     Council Members None.

202-2                                Mr. Nicoll, Management Services Director, stated the Civil  
213                                    Service Board had an Advisor, a Senior Assistant City Attorney  
Agmt. for an                        from the City Attorney's office, and that in situations where  
Independent                         cases presented to the Civil Service Board may lead to a civil  
Advisor to the                      suit, the Civil Service Board would be perceived as having had  
Civil Service                        a biased advisor. He noted on a case-by-case basis,  
Board with                         determination was made for an outside advisor as opposed to  
Michael H. Miller                 an advocate if there was a possibility that the case could be  
  taken to Court and added this option was less costly to the  
  City.

Motion                             It was moved by Ms. Murphy and seconded by Mr. Vander  
  Borghht that "the following resolution be passed and adopted:"

202-2                                RESOLUTION NO. 26,462:  
213                                    A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK  
Agmt. for an                        APPROVING AN AGREEMENT WITH MICHAEL H. MILLER AND  
Independent                         AMENDING THE FY 2002-03 ANNUAL BUDGET IN THE  
Advisor to the                      AMOUNT OF \$10,000.  
Civil Service                        Board with  
Michael H. Miller

Adopted                            The resolution was adopted by the following vote:



Ayes: Council Members Golonski, Murphy, Ramos, Vander Borgh and Laurell.  
 Noes: Council Members None.  
 Absent: Council Members None.

1503  
 1504  
 BWP Monthly  
 Operation  
 Report

Mr. Davis, General Manager, Burbank Water and Power (BWP), presented the BWP Monthly Operating Report and stated: water quality met or exceeded all State and Federal drinking water standards and the Council's goals; water sales and revenues were on budget, noting staff's efforts to increase security and addressing water quality issues with the regional Chromium Committee; the electric side recorded no power outages in February 2003; on the revenue side, retail sales continued to run below forecast; regarding operating results, Lake One, the new generating unit, was certified by the Air Quality Management District and was operational, permits had been received for the Olive units, the financing of the Magnolia Power Plant had been completed with a 4.9 percent interest rate; telecom staff continued to hook up more members in the media community with bandwidth services; bids had been issued to complete the BenMar Hills Street Lighting Project as well as the Magnolia Power Plant; and that staff had formalized the energy risk management credit policies for energy trading.

The Council noted and filed the report.

201-1  
 Agenda Info.  
 On Real Property  
 Closed Session  
 Discussions

Mr. Barlow reported Mrs. Ramos requested more information be provided on the Agenda identifying Closed Session discussions regarding real property. He added Staff did not do any additional work and requested Council direction. Staff was directed to agendize the item for further discussion at a future meeting.

8:46 P.M.  
 Reconvene  
 Housing  
 Authority  
 Meeting

The Housing Authority meeting was reconvened at this time.

Third Period of  
 Oral  
 Communication

Mr. Laurell called for speakers for the third period of oral communications at this time.

Citizen  
 Comment

Appearing to comment were Ron Vanderford, expressing appreciation to the Council for their decision on second dwelling units, commenting on oral communications criteria, on traffic concerns, and against Mr. Vander Borgh's election; Eden Rosen, commenting on the criteria to determine low and

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moderate-income housing, and inquiring why Burbank's largest studios were not participating in MethodFest; Mike Nolan, in opposition to the proposed increase in Park and Recreation fees, inquiring why the agreement with the City of Los Angeles had not been available for public inspection, commenting on the omission of the property address on a Closed Session item, inquiring when First Street will be open to traffic; and David Piroli, expressing appreciation to the Council for their decision on second dwelling units, on grandfathering in a curfew at Burbank Airport, and on the recent Naples case decision.

Staff  
Response

Members of the Council and staff responded to questions raised.

301-2  
Memorial  
Adjournment

There being no further business to come before the Council, the meeting was adjourned at 9:08 p.m. in memory of Harold Tamkin and to April 9, 2003 at 6:00 p.m. in the Council Chamber, 275 East Olive Avenue, to hold a Budget Study Session.

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Margarita Campos, City Clerk

APPROVED JUNE 10, 2003

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Mayor of the Council  
of the City of Burbank