

Kriss Worthington

Councilmember, City of Berkeley District 7
2180 Milvia Street, 5th Floor, Berkeley, CA 94704
PHONE 510-981-7170 FAX 510-981-7177 worthington@ci.berkeley.ca.us

CONSENT CALENDAR

October 15, 2002

To: Honorable Mayor and
Members of the City Council

From: Councilmember Kriss Worthington

Subject: SUPPORT RESOLUTION OPPOSING PATRIOT ACT, JUSTICE DEPARTMENT
DIRECTIVES, AND EXECUTIVE ORDERS THAT PREVENT THE PROTECTION OF
CIVIL RIGHTS AND LIBERTIES

RECOMMENDATION:

That the Berkeley City Council supports the resolution opposing the Patriot Act, Justice Department directives, and executive orders that prevent the protection of civil rights and liberties.

BACKGROUND:

It appears there has been some confusion regarding the resolution language that was passed at the September 10, 2002 meeting. If, after we clarify what was passed on the September 10, 2002, was the correct language adopted by city council, then we ask the city council to support this resolution that contains the original background and the revised changes of the nine part resolve section.

We feel that by changing the title and removing significant background it severely compromises one of the key intents of any legislation, which is to educate. Also, in the resolve section of the passed resolution, it references executive orders and particular parts of the Patriot act which are not included in the language.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Councilmember Kriss Worthington 981-7170.

RESOLUTION NO. -N.S.

WHEREAS, following the horrific attacks on the United States of America on September 11, 2001 the Congress passed the USA Patriot Act (PL107-56) on October 26, 2001; and

WHEREAS, the citizens of Berkeley are concerned that some executive orders and the resulting actions of the Attorney General of the United States and the U.S. Justice Department since the September 11, 2001 attacks pose significant threats to Constitutional protections in the name of fighting terrorism, and that such undermining of basic civil rights and liberties run the serious risk of destroying freedom in order to save it; and

WHEREAS, the Attorney General asserted before the Senate Judiciary Committee that civil libertarians who criticized the Department's policies "aid terrorists...erode our national unity and diminish our resolve"; and

WHEREAS, we as a city believe that respect for an individual's constitutional rights is essential for the preservation of a democratic society; and

WHEREAS, in a time of concern over foreign or domestic terrorism, our country must find a balance between the needs of national security and needs for the protection of our basic civil rights and liberties and the prevention of discrimination based on race, religion or nationality in the constitutional rights afforded all individuals; and

WHEREAS, several actions recently taken by the federal government, including the adoption of sections of the Patriot Act and several executive orders now threaten these fundamental rights and liberties, including: freedom of speech, religion, assembly and privacy; the rights to counsel and due process in judicial proceedings; and protection from unreasonable searches and seizures, all of which are guaranteed by the Constitution of California, the United States Constitution and its Bill of Rights, and by United Nations Charter Articles 55, which require the United States to promote human rights for all without distinction; and

WHEREAS, many people throughout communities across the nation are concerned that certain provisions in the Patriot Act threaten civil rights and liberties guaranteed under the United States Constitution; and

WHEREAS, the Patriot Act includes "domestic terrorism," so broadly defined as to apply to certain acts of civil disobedience that may include lawful advocacy groups such as Operation Rescue or Greenpeace as terrorists organizations and may inject them to invasive surveillance, wire tapping, harassment, and may criminally penalize them for protected political advocacy; also the Patriot Act grants unchecked power to the Secretary of State to designate domestic groups as "terrorist organizations"; and

WHEREAS, the Patriot Act gives the FBI and the CIA greater rights to wiretap phones, monitor e-mail, survey sensitive medical, mental health, financial and educational records without having to show evidence of a crime and without meaningful judicial review, and break into homes and offices without prior notification; and

WHEREAS, the Patriot Act greatly expands the government's ability to conduct secret searches without warrants; and

WHEREAS, the Patriot Act grants power to the Attorney General to subject non-citizens to indefinite detention without meaningful judicial review even if they have not committed a crime; and

WHEREAS, more than 1,000 people were detained in the weeks following the September 11 attacks, most without being charged, some denied the right to contact lawyers or their families; and

WHEREAS, the Justice Department, under Attorney General John Ashcroft, has issued an order authorizing federal prison officials to eavesdrop on the confidential attorney-client communications of persons in federal custody and their lawyers, without court review; and

WHEREAS, the Justice Department, under Attorney General John Ashcroft, has issued a directive limiting Freedom of Information Act (FOIA) compliance and cites the threat of terrorism as justification; this directive of limiting disclosure of public documents and records covers all government information, much of which has no national security or law enforcement connection; and

WHEREAS, the Justice Department has announced a nationwide effort to locate and interview as many as 8,000 recent immigrants-all men ages 18 to 33, primarily from Middle Eastern nations; guidelines for these interviews include inquiries into individual's political beliefs and the beliefs of families and friends, and whether or not an individual "supports" any cause that terrorists espouse; and

WHEREAS, on May 30, Attorney General John Ashcroft unilaterally and without consultation with Congress eased long standing intelligence guidelines which were put in place in 1976 as a result of gross intelligence abuses by the FBI; and

WHEREAS, the new guidelines allow FBI agents to spy on religious groups, political rallies, and organized meetings without any suspicion that the organization is involved in terrorism or any other criminal activity; and

WHEREAS, this type of unchecked intelligence gathering leads to the gross intelligence abuses of the 1960's including the attempted disruption of the civil rights movement and, as recently reported, the firing of former UC Chancellor Clark Kerr; and

WHEREAS, thirty years ago this November, California voters overwhelmingly amended the Constitution of California to provide a right to privacy, specifically to prevent "the proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms"; and

WHEREAS, an executive order has established secret military tribunals for terrorism suspects, which undermines the U.S. government's ability to denounce atrocities carried out in secret by military tribunals elsewhere in the world; and

WHEREAS, several law enforcement officials, including previous heads of the FBI, have decried the Patriot Act, directives from Attorney General Ashcroft, and particular executive orders as unnecessary to the prosecution of, and protection from, terrorism; and

WHEREAS, the Patriot Act, directives from Attorney General Ashcroft, and particular executive orders seem to target foreign nationals and people of Middle Eastern and South Asian descent, and anyone who may legally speak or act to oppose government policy; and

WHEREAS, we believe that the Patriot Act, Justice Department directives and executive orders threaten the framework of the Nation's Constitution and Bill of Rights; and

WHEREAS the Declaration of Independence of the United States holds as self-evident that all people are created equal and are endowed with the unalienable rights of life, liberty, and the pursuit of happiness; and

WHEREAS the First Amendment of the United States Constitution specifies that no law be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"; and

WHEREAS the Fourth Amendment declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"; and

WHEREAS the Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself"; and

WHEREAS the Sixth Amendment guarantees defendants "the right to a speedy and public trial, by an impartial jury..., and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense"; and

WHEREAS the Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"; and

WHEREAS, The due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution guarantee certain due process and equal protection rights to all residents of the United States regardless of citizenship or immigration status; and

WHEREAS the Fourteenth Amendment prohibits the government from denying any person equal protection by stating "no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws," and pursuant to that clause, human rights and due process must be afforded to all people in the United States regardless of citizenship or immigration status; and

WHEREAS, the policy of the Berkeley Police Department is that all detentions or stops must be supported by reasonable suspicion that a crime has been committed or is about to be committed, and that all arrests and searches of person and/or property by officers in Berkeley must be based on a showing of probable cause, as required by the Fourth Amendment of the U.S. Constitution and the California Constitution; and

WHEREAS, the City of Berkeley has a long and distinguished history of promoting and enforcing civil rights and civil liberties, especially during times of domestic and international conflicts; and

WHEREAS, City of Berkeley includes a diverse community of students and working families, including non-citizens, whose contributions to the community are vital to its character and function; and

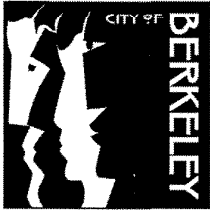
WHEREAS, the City Council of Berkeley, motivated by the commitment to “create a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression,” passed an ordinance in 1998 which established the Peace and Justice Commission of the City of Berkeley; and

WHEREAS, the City Council of Berkeley adopted the Human Rights Ordinance (Ordinance no. 5985) in 1990, specifically committing the city to carry out the United Nation Charter Human Rights Provisions; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley acting in the spirit and history of our community, does hereby:

1. Affirms its strong opposition to any parts of the Patriot Act and implementation of the Patriot Act, Justice Department directives, and any executive orders that weakens or destroys our civil rights and liberties.
2. Has been, and remains, firmly committed to the protection of civil rights and civil liberties for all people including those who are citizens of other nations. We affirm this commitment to embody the spirit of democracy, to embracing and defending the human rights and civil liberties now under siege, to make those liberties viable for all, regardless of citizenship status, gender, racial identification, religious affiliation, age, or country of origin.
3. Calls upon all private citizens-including residents, employers, educators, and business owners-to demonstrate similar respect for civil rights and civil liberties.
4. Affirms for all our departments and employees the following principles: Every person has the right to freedom of speech and association. Every person has the right to freedom of religion. Every person has the right to assembly and privacy. Every person has the right to due process in judicial proceedings. Every person has the right to counsel and attorney-client privilege. Every person has the right to be free from unreasonable search and seizure. Stops or arrests may not be made without establishing reasonable suspicion or probable cause that a crime has been committed or is about to be committed. Every person has a right to equal protection under the law and the right not to be deprived of life, liberty or property without due process of law.
5. Reaffirms its commitment to unbiased policing as expressed in the policies of the Berkeley Police Department and endorses the principle that no law enforcement or other city agency may profile or discriminate against any person on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, marital status, physical or mental disability or religion.

6. Requests Federal and State law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, that they not engage in racial profiling, or permit detentions without charges.
7. Uses all possible leverage to ensure that Federal and State law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, and request that they not engage, to the extent legally permissible, in law enforcement activities that threaten civil rights and civil liberties of the people of Berkeley, such as surveillance, wiretaps, and securing of private information, which the Patriot Act and Executive Orders authorize. Organizations should not be monitored based on their religious or political views. Also, request that no information about political, religious or social views, associations, or activities should be collected unless the information relates to public safety concerns or establishes suspicion of criminal activity or the potential for criminal activity.
8. Requests our United States Congress representatives monitor the implementation of the Patriot Act, directives from Attorney General Ashcroft, and executive orders cited herein and actively work for the repeal of the parts of that Act and withdrawal of those Justice Department directives and executive orders that violate fundamental rights and liberties as stated in the Constitutions of the state of California and the United States and in the UN Charter and the ratified International Covenant on Civil and Political Rights, the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Elimination of Racial Discrimination.
9. The City of Berkeley sends copies of this resolution to the President of the United States and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.



Office of the City Manager

SUPPLEMENTAL AGENDA MATERIAL

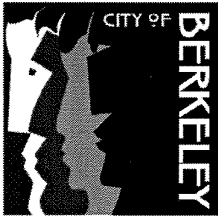
Meeting Date: October 15, 2002

Item Number: 13

Item Description: September 10, 2002 Council Discussion and Action regarding Councilmember Worthington's Item Opposing the Patriot Act, Justice Department Directives and Executive Orders Preventing the Protection of Civil Rights and Liberties

City Manager Signature

(This cover sheet should be used only if the agenda item the material refers to is in addition to or is a revision of the material included in the original report)



Office of the City Manager

INFORMATION CALENDAR
October 15, 2002

To: Honorable Mayor and
Members of the City Council

From: Weldon Rucker, City Manager

Subject: September 10, 2002 Council Discussion and Action regarding Councilmember Worthington's Item Opposing the Patriot Act, Justice Department Directives and Executive Orders Preventing the Protection of Civil Rights and Liberties

INTRODUCTION

At the meeting of October 8, 2002, discussion regarding the approval of the September 10, 2002 minutes left questions regarding the action taken on Item 51 pertaining to Councilmember Worthington's Opposition to the Patriot Act, Justice Department Directives and Executive Orders Preventing the Protection of Civil Rights and Liberties.

CURRENT SITUATION AND ITS EFFECTS

As a result of this concern, staff in the City Clerk Department viewed the videotape of this discussion to ensure the action notated in the September 10, 2002 minutes was correct.

BACKGROUND

At the meeting of September 10, 2002, consideration of the item began with a main motion by Councilmember Worthington, seconded by Councilmember Spring, to move the item. (Exhibit A)

Discussion ensued whereby Councilmember Armstrong read a resolution adopted by the City of Fremont supporting constitutional rights. (Exhibit B)

A substitute motion was made by Councilmember Armstrong, seconded by Councilmember Hawley, to adopt the same resolution as the City of Fremont substituting "Berkeley" in place of "Fremont". After additional discussion, it was decided to consolidate the two resolutions using Fremont's introductory "Whereas" clauses and Councilmember Worthington's "Now Therefore Be It Resolved Clause" including the eleven points. Further discussion led to the removal of points five and eight and slight language amendment to points one, four and seven.

Mayor Dean then summarized the discussion, asked if there was consensus and requested the substitute motion be withdrawn. Councilmembers Armstrong and Hawley agreed. The original main motion, made by Councilmember Worthington and seconded by Councilmember Spring, incorporating the changes agreed upon, was passed unanimously.

The City Clerk Department finalized the action taken by Council in Resolution No. 61,747-N.S. (Exhibit C). This resolution was forwarded to all interested parties as directed in point eleven. The September 10, 2002 minutes of this item are enclosed as Exhibit D.

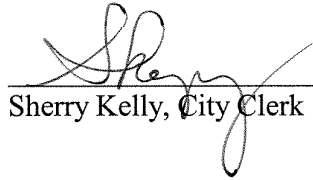
POSSIBLE FUTURE ACTION

Possible future action includes approval of the September 10, 2002 minutes as written or reconsideration of the item.

CONTACT PERSON

Sherry Kelly, City Clerk, 981-6900.

Approved:



Sherry Kelly, City Clerk

Exhibit A



Kriss Worthington

Councilmember, City of Berkeley District 7
 2180 Milvia Street, 5th Floor, Berkeley, CA 94704
 PHONE 510-981-7170 FAX 510-981-7177 worthington@ci.berkeley.ca.us

CONSENT CALENDAR
 July 23, 2002

To: Honorable Mayor and
 Members of the City Council

From: Councilmember Kriss Worthington

Subject: SUPPORT RESOLUTION OPPOSING PATRIOT ACT, JUSTICE DEPARTMENT
 DIRECTIVES, AND EXECUTIVE ORDERS THAT PREVENT THE PROTECTION OF
 CIVIL RIGHTS AND LIBERTIES

RECOMMENDATION:

That the Berkeley City Council supports the resolution opposing the Patriot Act, Justice Department directives, and executive orders that prevent the protection of civil rights and liberties.

BACKGROUND:

Since the devastating and horrifying attacks on the United States of America on September 11, 2001, there have been many alarming actions taken by the federal government which threaten the civil rights and liberties of those citizens it intends to protect. Under the Patriot Act, some Justice Department directives from Attorney General Ashcroft, and certain executive orders, our freedoms are being challenged and undermined. As many individuals, communities, and cities around the country begin to publicly question these acts and directives of the federal government, we must affirm our commitment to the protection of civil rights and liberties for all people.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSON:

Councilmember Kriss Worthington 981-7170.

RESOLUTION NO. -N.S.
RESOLUTION TO OPPOSE THE PATRIOT ACT, JUSTICE DEPARTMENT DIRECTIVES,
AND EXECUTIVE ORDERS THAT PREVENT THE PROTECTION OF CIVIL RIGHTS
AND LIBERTIES

WHEREAS, following the horrific attacks on the United States of America on September 11, 2001 the Congress passed the USA Patriot Act (PL107-56) on October 26, 2001; and

WHEREAS, the citizens of Berkeley are concerned that some executive orders and the resulting actions of the Attorney General of the United States and the U.S. Justice Department since the September 11, 2001 attacks pose significant threats to Constitutional protections in the name of fighting terrorism, and that such undermining of basic civil rights and liberties run the serious risk of destroying freedom in order to save it; and

WHEREAS, the Attorney General asserted before the Senate Judiciary Committee that civil libertarians who criticized the Department's policies "aid terrorists...erode our national unity and diminish our resolve"; and

WHEREAS, we as a city believe that respect for an individual's constitutional rights is essential for the preservation of a democratic society; and

WHEREAS, in a time of concern over foreign or domestic terrorism, our country must find a balance between the needs of national security and needs for the protection of our basic civil rights and liberties and the prevention of discrimination based on race, religion or nationality in the constitutional rights afforded all individuals; and

WHEREAS, several actions recently taken by the federal government, including the adoption of sections of the Patriot Act and several executive orders now threaten these fundamental rights and liberties, including: freedom of speech, religion, assembly and privacy; the rights to counsel and due process in judicial proceedings; and protection from unreasonable searches and seizures, all of which are guaranteed by the Constitution of California, the United States Constitution and its Bill of Rights, and by United Nations Charter Articles 55, which require the United States to promote human rights for all without distinction; and

WHEREAS, many people throughout communities across the nation are concerned that certain provisions in the Patriot Act threaten civil rights and liberties guaranteed under the United States Constitution; and

WHEREAS, the Patriot Act includes "domestic terrorism," so broadly defined as to apply to certain acts of civil disobedience that may include lawful advocacy groups such as Operation Rescue or Greenpeace as terrorists organizations and may inject them to invasive surveillance, wire tapping, harassment, and may criminally penalize them for protected political advocacy; also the Patriot Act grants unchecked power to the Secretary of State to designate domestic groups as "terrorist organizations"; and

WHEREAS, the Patriot Act gives the FBI and the CIA greater rights to wiretap phones, monitor e-mail, survey sensitive medical, mental health, financial and educational records without having to show evidence of a crime and without meaningful judicial review, and break into homes and offices without prior notification; and

WHEREAS, the Patriot Act greatly expands the government's ability to conduct secret searches without warrants; and

WHEREAS, the Patriot Act grants power to the Attorney General to subject non-citizens to indefinite detention without meaningful judicial review even if they have not committed a crime; and

WHEREAS, more than 1,000 people were detained in the weeks following the September 11 attacks, most without being charged, some denied the right to contact lawyers or their families; and

WHEREAS, the Justice Department, under Attorney General John Ashcroft, has issued an order authorizing federal prison officials to eavesdrop on the confidential attorney-client communications of persons in federal custody and their lawyers, without court review; and

WHEREAS, the Justice Department, under Attorney General John Ashcroft, has issued a directive limiting Freedom of Information Act (FOIA) compliance and cites the threat of terrorism as justification; this directive of limiting disclosure of public documents and records covers all government information, much of which has no national security or law enforcement connection; and

WHEREAS, the Justice Department has announced a nationwide effort to locate and interview as many as 8,000 recent immigrants-all men ages 18 to 33, primarily from Middle Eastern nations; guidelines for these interviews include inquiries into individual's political beliefs and the beliefs of families and friends, and whether or not an individual "supports" any cause that terrorists espouse; and

WHEREAS, on May 30, Attorney General John Ashcroft unilaterally and without consultation with Congress eased long standing intelligence guidelines which were put in place in 1976 as a result of gross intelligence abuses by the FBI; and

WHEREAS, the new guidelines allow FBI agents to spy on religious groups, political rallies, and organized meetings without any suspicion that the organization is involved in terrorism or any other criminal activity; and

WHEREAS, this type of unchecked intelligence gathering leads to the gross intelligence abuses of the 1960's including the attempted disruption of the civil rights movement and, as recently reported, the firing of former UC Chancellor Clark Kerr; and

WHEREAS, thirty years ago this November, California voters overwhelmingly amended the Constitution of California to provide a right to privacy, specifically to prevent "the proliferation of government snooping and data collecting [that] is threatening to destroy our traditional freedoms"; and

WHEREAS, an executive order has established secret military tribunals for terrorism suspects, which undermines the U.S. government's ability to denounce atrocities carried out in secret by military tribunals elsewhere in the world; and

WHEREAS, several law enforcement officials, including previous heads of the FBI, have decried the Patriot Act, directives from Attorney General Ashcroft, and particular executive orders as unnecessary to the prosecution of, and protection from, terrorism; and

WHEREAS, the Patriot Act, directives from Attorney General Ashcroft, and particular executive orders seem to target foreign nationals and people of Middle Eastern and South Asian descent, and anyone who may legally speak or act to oppose government policy; and

WHEREAS, we believe that the Patriot Act, Justice Department directives and executive orders threaten the framework of the Nation's Constitution and Bill of Rights; and

WHEREAS the Declaration of Independence of the United States holds as self-evident that all people are created equal and are endowed with the unalienable rights of life, liberty, and the pursuit of happiness; and

WHEREAS the First Amendment of the United States Constitution specifies that no law be made "respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances"; and

WHEREAS the Fourth Amendment declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized"; and

WHEREAS the Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself"; and

WHEREAS the Sixth Amendment guarantees defendants "the right to a speedy and public trial, by an impartial jury..., and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense"; and

WHEREAS the Eighth Amendment states that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"; and

WHEREAS, The due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution guarantee certain due process and equal protection rights to all residents of the United States regardless of citizenship or immigration status; and

WHEREAS the Fourteenth Amendment prohibits the government from denying any person equal protection by stating "no state shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of its laws," and pursuant to that clause, human rights and due process must be afforded to all people in the United States regardless of citizenship or immigration status; and

WHEREAS, the policy of the Berkeley Police Department is that all detentions or stops must be supported by reasonable suspicion that a crime has been committed or is about to be committed, and that all arrests and searches of person and/or property by officers in Berkeley must be based on a showing of probable cause, as required by the Fourth Amendment of the U.S. Constitution and the California Constitution; and

WHEREAS, the City of Berkeley has a long and distinguished history of promoting and enforcing civil rights and civil liberties, especially during times of domestic and international conflicts; and

WHEREAS, City of Berkeley includes a diverse community of students and working families, including non-citizens, whose contributions to the community are vital to its character and function; and

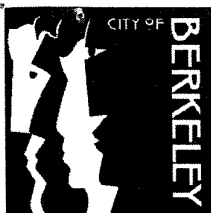
WHEREAS, the City Council of Berkeley, motivated by the commitment to "create a world community in which the relations between people are based on equality, respect for human rights, and the abhorrence of exploitation and all forms of oppression," passed an ordinance in 1998 which established the Peace and Justice Commission of the City of Berkeley; and

WHEREAS, the City Council of Berkeley adopted the Human Rights Ordinance (Ordinance no. 5985) in 1990, specifically committing the city to carry out the United Nation Charter Human Rights Provisions; and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley acting in the spirit and history of our community, do hereby request that:

1. The City of Berkeley affirms its strong opposition to the Patriot Act, Justice Department directives, and executive orders that weakens or destroys our civil rights and liberties.
2. The City of Berkeley has been, and remains, firmly committed to the protection of civil rights and civil liberties for all people including those who are citizens of other nations. We affirm this commitment to embody the spirit of democracy, to embracing and defending the human rights and civil liberties now under siege, to make those liberties viable for all, regardless of citizenship status, gender, racial identification, religious affiliation, age, or country of origin.
3. The City of Berkeley calls upon all private citizens-including residents, employers, educators, and business owners-to demonstrate similar respect for civil rights and civil liberties.
4. The City of Berkeley calls upon local law enforcement to join the city in affirming the following principles: Every person has the right to freedom of speech and association. Every person has the right to freedom of religion. Every person has the right to assembly and privacy. Every person has the right to due process in judicial proceedings. Every person has the right to counsel and attorney-client privilege. Every person has the right to be free from unreasonable search and seizure. Stops or arrests may not be made without establishing reasonable suspicion or probable cause that a crime has been committed or is about to be committed. Every person has a right to equal protection under the law and the right not to be deprived of life, liberty or property without due process of law.
5. To the extent legally possible, no City of Berkeley employee or department shall officially assist or voluntarily cooperate with investigations, interrogations, or arrest procedures, public or clandestine, that are judged to be in violation of individuals' civil rights or civil liberties as specified in the above Amendments of the United States Constitution. Also, request that no Berkeley Police officer shall spy on or gather information on religious or political meetings or rallies in the absence of some evidence that the organization is involved in terrorism or some other illegal activity.

6. The City of Berkeley reaffirms its commitment to unbiased policing as expressed in the policies of the Berkeley Police Department and endorses the principle that no law enforcement or other city agency may profile or discriminate against any person on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, marital status, physical or mental disability or religion.
7. The City of Berkeley requests Federal and State law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, that they not engage in or permit detentions without charges or racial profiling in law enforcement.
8. The U.S. Attorney's Office, the Office of the Federal Bureau of Investigation and California Highway Patrol, and local law enforcement authorities and city departments regularly and publicly report to the City Council and the Berkeley Commission on Peace and Justice the extent and manner in which they have acted under the Patriot Act, new Executive Orders, or COINTELPRO-type regulations, including disclosing the names of any detainees held in western California or any Berkeley residents detained elsewhere as an "enemy combatant".
9. The City of Berkeley uses all possible leverage to ensure that Federal and State law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, and request that they not engage, to the extent legally permissible, in law enforcement activities that threaten civil rights and civil liberties of the people of Berkeley, such as surveillance, wiretaps, and securing of private information, which the Patriot Act and Executive Orders authorize. Organizations should not be monitored based on their religious or political views. Also, request that no information about political, religious or social views, associations, or activities should be collected unless the information relates to public safety concerns or establishes suspicion of criminal activity or the potential for criminal activity.
10. Our United States Congress representatives monitor the implementation of the Patriot Act, directives from Attorney General Ashcroft, and executive orders cited herein and actively work for the repeal of the parts of that Act and withdrawal of those Justice Department directives and executive orders that violate fundamental rights and liberties as stated in the Constitutions of the state of California and the United States and in the UN Charter and the ratified International Covenant on Civil and Political Rights, the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Elimination of Racial Discrimination.
11. The City of Berkeley sends copies of this resolution to the President of the United States and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.



Office of the City Manager

Exhibit B

DATE: September 10, 2002

TO: Honorable Mayor and
Members of the City Council

FROM: Weldon ~~W~~ucker, City Manager

RE: **CITY OF FREMONT – APPROVAL OF A RESOLUTION IN SUPPORT
OF CONSTITUTIONAL RIGHTS**

Attached, for your information, is a copy of a City Council agenda item from the City of Fremont at its September 3, 2002 meeting entitled Human Relations Commission Referral – Continuation of a Referral from Human Relations Commission Recommending Council Approval of a “Resolution in Support of Constitutional Rights” from the July 2, 2002, City Council Agenda.

When we receive a copy of the action taken by the Fremont City Council, I will forward that information on to you.

Attachment

cc: Sherry Kelly, City Clerk

5.1 HUMAN RELATIONS COMMISSION REFERRAL

Continuation of a Referral from Human Relations Commission Recommending Council Approval of a "Resolution in Support of Constitutional Rights" from the July 2, 2002, City Council Agenda.

Contact Person:

Name:	Suzanne Shenfil	Dan Schoenholz
Title:	Human Services Director	Deputy Human Services Director
Dept.:	Human Services	Human Services
Phone:	510-494-4551	510-494-4848
E-Mail:	sshenfil@ci.fremont.ca.us	dschoenholz@ci.fremont.ca.us

Executive Summary: At its meeting on July 2, 2002, the Fremont City Council received a resolution from the Human Relations Commission regarding concerns related to recent Federal anti-terrorism law and policy, following the tragedy of September 11, 2001. The Council also heard from approximately 20 speakers, most of whom supported the resolution.

After hearing public input and discussing the issues, the City Council continued Item 5.1, a Referral from the Human Relations Commission regarding a Resolution for the Preservation of Civil Liberties and Constitutional Rights. Council directed staff to bring back a modified version of the resolution that would be consistent with Council policy and would affirm the constitutional rights of all Fremont citizens.

Staff has drafted a new resolution that is consistent with existing policy and affirms the City's support for the Constitutional Rights of all Fremont citizens. Staff recommends that Council 1) confirm that it wishes to retain its policy of not taking positions on human rights issues and 2) adopt the new resolution.

BACKGROUND:

City's Longstanding Emphasis on Unity: The City of Fremont has worked diligently over the years to foster understanding and unity among all residents. Through the City Council, the Human Relations Commission, other City boards and commissions, and City staff, the City of Fremont has created many opportunities to strengthen understanding and unity among diverse cultural and ethnic groups. Further, when there have been instances of hate crimes or actions against an ethnic group in the community, the City of Fremont has taken action. For example, after anti-Semitic graffiti was found sprayed on the walls of Washington High School and the local synagogue, the Human Relations Commission and City staff organized an event to unify the community and denounce hate and racism; all City Councilmembers participated in the event. In another example, in response to racist defacement of books at the local library, the Human Relations Commission and City staff organized a series of Town Hall meetings. An annual "Unity Day" has been sponsored by the City of Fremont's Human Relations Commission for the past several years to celebrate Fremont's diversity. Through its Police Department, the City has responded swiftly in times of adversity to ensure that the safety and rights of all individuals in Fremont have been protected. Following September 11th, police were immediately dispatched to mosques, temples and other places of worship to safeguard the rights of those wishing to use these facilities.

Council Policy Related to Human Rights Issues: It is the policy of the Fremont City Council to not take positions on human rights issues that do not directly affect the City because such positions can be divisive within the community, take up considerable Council time and ultimately have little impact on the resolution of those issues. This policy has been in place for many years and was adopted by Council in November, 2000. The policy has not precluded the Council from making more general statements of values: for example, Council has passed resolutions declaring the City's zero tolerance of hate and condemning the 9/11/01 terrorist attacks.

The Fremont City Council is not a judicial body and is not able to make judgments or decisions regarding the constitutionality of Federal laws. The City encourages individuals to exercise their Democratic rights by seeking remedies through the courts or repeal of laws through the Federal legislative process if they believe that a Federal law is unconstitutional.

Council Direction Regarding Human Relations Commission Referral: At the July 2, 2002 meeting, Councilmembers recognized the feelings of the individuals who believe they are being focused on by Federal law enforcement and new Federal laws following the September 11, 2001 tragedy. At the same time, several Councilmembers indicated that they would not support a resolution that would be in conflict with existing Council policy. Council directed staff to draft a resolution that would focus on the Council's fundamental value of ensuring Constitutional rights for all residents, rather than use the specific language being proposed by the Human Relations Commission.

Question Raised Regarding Council Policy in Relation to a Resolution: At the Council meeting of July 9, 2002, the City Council heard from a speaker at Oral Communication questioning the procedure by which the City Council may change its policy on taking positions on human rights issues. The question may be restated as follows: When the Council has adopted an operating procedure, what steps must it take before it (a) revises its operating procedure; (b) changes the operating procedure in one instance but retains the procedure (grants itself an exemption from the procedure); or (c) eliminates the procedure? The answer depends on the formality of the adoption of the policy. Unless the procedure was adopted by ordinance, the City Council need only decide on a course of action at a scheduled meeting on whose agenda the change, exemption or elimination has been properly noticed. In other words, the City Council need only comply with the Brown Act agenda requirements to modify its own operating procedures. An agenda item must briefly describe the proposed action and no action may be taken unless the item appears on the agenda. If the agenda item raises a potential change of policy the City Council may make that change at that meeting. If the change in policy were not fairly raised by the agenda, the decision would be put over until another meeting.

Proposed Resolution: City staff has drafted the following Resolution in Support of Constitutional Rights in response to Council direction. This resolution is consistent with existing Council policy because it is a broad statement of values.

Resolution in Support of Constitutional Rights

WHEREAS, a great crime against humanity occurred on September 11, resulting in new federal laws and enforcement powers;

WHEREAS, a principle of American liberty is defending and protecting our freedoms and Constitutional rights; and

WHEREAS, the Fremont City government has a history of providing leadership in upholding Constitutional rights and prevention of the abuse of civil rights of its citizens, which has included adoption by the City Council of a resolution of zero tolerance for discrimination.

THEREFORE BE IT RESOLVED, that the Fremont City Council reaffirms the importance of Constitutional rights and civil liberties and believes that all levels of government shall assure that all enforcement and administrative proceedings are conducted consistent with due process of law and Constitutional principles.

ENCLOSURES: Staff Report from July 2, 2002 Referral from Human Relations Commission Recommending Council Approval of a "Resolution for Preservation of Civil Liberties and Constitutional Rights."

RECOMMENDATION:

1. Reaffirm City Council's policy to not take positions on human rights issues that are outside the jurisdiction of the City municipal government.
2. Adopt revised Resolution for Constitutional Rights.

RESOLUTION IN SUPPORT OF CONSTITUTIONAL RIGHTS

WHEREAS, a great crime against humanity occurred on September 11, 2001, resulting in new federal laws and enforcement powers; and

WHEREAS, a principle of American liberty is defending and protecting our freedoms and Constitutional rights; and

WHEREAS, the Berkeley City government has a history of providing leadership in upholding Constitutional rights and prevention of the abuse of civil rights of its citizens, which has included adoption by the City Council of a resolution of zero tolerance for discrimination.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley reaffirms the importance of Constitutional rights and civil liberties and believes that all levels of government shall assure that all enforcement and administrative proceedings are conducted consistent with due process of law and Constitutional principles.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley acting in the spirit and history of our community, does hereby:

1. Affirms its strong opposition to any parts of or implementation of the Patriot Act, Justice Department directives, and executive orders that weakens or destroys our civil rights and liberties.
2. Has been, and remains, firmly committed to the protection of civil rights and civil liberties for all people including those who are citizens of other nations. We affirm this commitment to embody the spirit of democracy, to embracing and defending the human rights and civil liberties now under siege, to make those liberties viable for all, regardless of citizenship status, gender, racial identification, religious affiliation, age, or country of origin.
3. Calls upon all private citizens – including residents, employers, educators, and business owners – to demonstrate similar respect for civil rights and civil liberties.
4. Affirms for all its divisions and employees the following principles: Every person has the right to freedom of speech and association. Every person has the right to freedom of religion. Every person has the right to assembly and privacy. Every person has the right to due process in judicial proceedings. Every person has the right to counsel and attorney-client privilege. Every person has the right to be free from unreasonable search and seizure. Stops or arrests may not be made without establishing reasonable suspicion or probable cause that a crime has been committed or is about to be committed. Every person has a right to equal protection under the law and the right not to be deprived of life, liberty or property without due process of law.

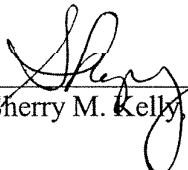
5. Reaffirms its commitment to unbiased policing as expressed in the policies of the Berkeley Police Department and endorses the principle that no law enforcement or other city agency may profile or discriminate against any person on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, marital status, physical or mental disability or religion.
6. Requests federal and state law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, that they not engage in racial profiling or permit detentions without charges.
7. Uses all possible leverage to ensure that Federal and State law enforcement officials acting within the City work in accordance with the policies of the Berkeley Police Department, and in cooperation with the Department, and request that they not engage, to the extent legally permissible, in law enforcement activities that threaten civil rights and civil liberties of the people of Berkeley, such as surveillance, wiretaps, and securing of private information, which the Patriot Act and Executive Orders authorize. Organizations should not be monitored based on their religious or political views. Also, request that no information about political, religious or social views, associations, or activities should be collected unless the information relates to public safety concerns or establishes suspicion of criminal activity or the potential for criminal activity.
8. Requests our United States Congress representatives monitor the implementation of the Patriot Act, directives from Attorney General Ashcroft, and executive orders cited herein and actively work for the repeal of the parts of that Act and withdrawal of those Justice Department directives and executive orders that violate fundamental rights and liberties as stated in the Constitutions of the State of California and the United States and in the UN Charter and the ratified International Covenant on Civil and Political Rights, the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Elimination of Racial Discrimination.
9. Directs that copies of this resolution be sent to the President of the United States and the United Nations High Commissioner for Human Rights in Geneva, Switzerland.

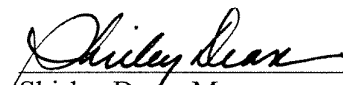
The foregoing Resolution was adopted by the Berkeley City Council on September 10, 2002 by the following vote:

Ayes: Councilmembers Armstrong, Breland, Hawley, Maio, Olds, Shirek, Spring, Worthington and Mayor Dean.

Noes: None.

Absent: None.

Attest: 
Sherry M. Kelly, City Clerk


Shirley Dean, Mayor

49. Certification of Selection for Representative of the Poor

From: Human Welfare and Community Action Commission

Recommendation: Adopt a Resolution certifying the results of the June 19, 2002 selection of Corita Jenkins as Representative of the Poor to the Human Welfare and Community Action Commission (HWCAC) for District 2, term ending December 30, 2002.

Contact: Marianne Graham, Secretary, 981-5416

a. From: City Manager

Recommendation: The City Manager concurs with the content and recommendations of the Human Welfare and Community Action Commission.

Contact: Stephan Barton, Housing, 981-6400

Action: Adopted Resolution No. 61,745–N.S.

Action Calendar–Appeals

50. Approval of Use Permits–2961 Shasta Road

a. Appeal filed by W. Charles Bryant of the May 9, 2002 Zoning Adjustment Board's approval of permit for a fence height of eight feet where six feet is normally permitted.

Contact: Sherry Kelly, City Clerk, 981-6900

b. City Manager Report

Recommendation: Adopt a Resolution affirming the Zoning Adjustment Board's approval of permits for: 1) a fence height of eight feet where six feet is normally permitted; and 2) to enclose a carport located in a front yard setback, and dismissing the appeal.

Contact: Carol Barrett, Planning, 981-7400

c. Communications

1. David and Nancy Jackovich
2. Charles Bryant

Contact: Sherry M. Kelly, City Clerk, 981-6900

Action: Moved to Consent Calendar by Councilmember Worthington. Adopted Resolution No. 61,746–N.S. affirming the Zoning Adjustments Board's decision and dismissing the appeal.

Action Calendar – Old Business

51. Oppose the Patriot Act, Justice Department Directives and Executive Orders Preventing the Protection of Civil Rights and Liberties (Held over by Worthington from 07/23/02)

From: Councilmember Worthington

Recommendation: Adopt a Resolution opposing the Patriot Act, Justice Department directives and executive orders that prevent the protection of civil rights and liberties.

Contact: Kriss Worthington, District 7, 981-7170

a. Information Report from Police Review Commission

Contact: Barbara Attard, Secretary, 981-4960

Actions: Moved, seconded, carried (Worthington/Spring) to adopt Resolution No. 61,747–N.S. amended to add and delete specific wording.

52. Arctic Wildlife Refuge Resolution *(Held over by Olds from 07/16/02 and 07/23/02)*

From: Councilmember Spring

Recommendation: Refer to the City Manager a selective purchasing resolution requiring the City to refrain from knowingly purchasing goods or services from a company that purchases, leases or develops oil fields in the coastal plain of the Arctic National Wildlife Refuge; 2) request that the City Manager write a letter to the head of the four companies that want to drill in the refuge informing them of the Council's opposition to drilling in the Arctic National Wildlife Refuge; and 3) send a letter to Berkeley's federal elected officials urging them to support the Arctic Refuge Wilderness bill and designate the coastal plain as a protected wilderness area.

Contact: Dona Spring, District 4, 981-7140

Action: Moved to the Consent Calendar by Councilmember Olds. Approved recommendation.

Action Calendar – New Business

53. Administrative Penalty Ordinance and Resolution Establishing Penalties

From: City Manager

Recommendation: 1) Adopt first reading of and Ordinance adding Chapter 1.28 to the Berkeley Municipal Code (BMC) authorizing administrative penalties for violations of City Ordinances and amending Section 1.20.020 relating to violations; and 2) adopt a Resolution establishing administrative penalties for violation of City Ordinances.

Contact: Manuela Albuquerque, City Attorney, 981-6950

Action: Moved to the Consent Calendar by Councilmember Armstrong. Adopted first reading of Ordinance. Second reading scheduled for September 17, 2002. Adopted Resolution No. 61,748–N.S.

54. Voting Delegates: Congress of Cities

From: City Manager

Recommendation: Designate a voting delegate and alternate to act on behalf of the City at the Annual Business Meeting at the National League of Cities' Congress of Cities and direct the City Clerk to transmit the names of the delegates to the League.

Contact: Sherry Kelly, City Clerk, 981-6900

Action: Moved to the Consent Calendar by Councilmember Armstrong with the understanding that any Councilmember attending the conference will be the delegate and if no Councilmember attends, the City Manager may designate a staff person.