

# AGENDA



## BERKELEY CITY COUNCIL MEETING

TUESDAY, OCTOBER 2, 2012

7:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – GORDON WOZNAK

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, CMC, Acting City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Five persons selected by lottery will have two minutes each to address matters not on the Council agenda. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a name card to the City Clerk in person at the meeting location and prior to commencement of that meeting. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Up to three speakers will be entitled to two minutes each to speak in opposition to or support of a Consent Calendar Item. The Presiding Officer will ask additional persons in the audience to stand to demonstrate their respective opposition to or support of the item.*

*In the event that there are more than three persons wishing to speak either in opposition to or support of a "Consent" item, the Presiding Officer will move the item to the beginning of the Action Calendar. Prior to moving the item, the Presiding Officer will fully inform those persons in the audience of this process.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## **Consent Calendar**

*The Council will first determine whether to move items on the agenda for action or "Information" to the "Consent Calendar", or move "Consent Calendar" items to action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

*After hearing from public speakers regarding items remaining on the Consent Calendar, any Council Member may move any Information or Consent item to "Action", however no additional items can be moved onto the Consent Calendar at that point. Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items removed from the Consent Calendar to the Action Calendar for additional public comment, at the time the matter is taken up during the Action Calendar, public comment will be limited to persons who have not previously addressed that item during the Consent Calendar related public comment period.*

### **1. Zoning Ordinance Amendment: Chair Massage**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,258–N.S. amending Berkeley Municipal Code sections 23C.20.010 and 23F.04.010 to define Chair Massage and allow it as an exempted accessory use to retail uses.

**First Reading Vote:** Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Absent – Maio.

**Financial Implications:** None

Contact: Eric Angstadt, Planning and Development, 981-7400

### **2. Lease Agreement: Friends of the Berkeley Public Library for a Used Bookstore at 2431 and 2433 Channing Way**

**From: City Manager**

**Recommendation:** Adopt second reading of Ordinance No. 7,259–N.S. authorizing the City Manager to execute a lease agreement with Friends of the Berkeley Public Library for the purpose of operating a used bookstore at 2431 and 2433 Channing Way in the Telegraph Channing Garage shops.

**First Reading Vote:** Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Absent – Maio.

**Financial Implications:** See report

Contact: Andrew Clough, Public Works, 981-6300

## Consent Calendar

- 3. Contract: Berkeley East Bay Humane Society for Veterinary Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with the Berkeley East Bay Humane Society (BEBHS) for an amount not to exceed \$95,000 for in-house veterinary services for Berkeley Animal Care Services (BACS) for FY 2013 with an option to continue with the veterinary services for another two-year period. The extension of this contract will be for \$95,000 per year for FY 2014 & FY 2015 for a total not to exceed \$285,000 and subject to the city's annual appropriation process.  
**Financial Implications:** General Fund - \$95,000  
Contact: Kate O'Connor, Animal Care Services, 981-6600
- 4. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on October 2, 2012**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** General Fund - \$265,000  
Contact: Robert Hicks, Finance, 981-7300
- 5. Donation Solicitation to Support the City of Berkeley Senior Nutrition Programs**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to solicit donations from Berkeley residents and businesses through an annual appeal letter to support Meals on Wheels and congregate lunch program's unfunded costs.  
**Financial Implications:** Fundraising Activities: Donation Solicitation  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
- 6. Contract No. 7008 Amendment: Hanson Bridgett Marcus Vlahos Rudy LLP for Legal Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend the existing Contract No. 7008 with Hanson Bridgett Marcus Vlahos Rudy LLP (hereinafter "Hanson Bridgett") by increasing expenditure authority in an amount not to exceed \$40,000 for legal services pertaining to federal and state tax issues.  
**Financial Implications:** General Fund - \$40,000  
Contact: David Hodgkins, Human Resources, 981-6800
- 7. \*\*Removed from Agenda by the City Manager\*\* Recognized Obligation**  
**Payment Schedule: January 1 - June 30, 2013**  
Contact: Eric Angstadt, Planning and Development, 981-7400

## Consent Calendar

8. **Contract: AJW Construction, Inc. for Alcatraz/Baker and Alcatraz/Idaho Valley Gutter**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Alcatraz/Baker and Alcatraz/Idaho Valley Gutter Project, Specification 13-10688-C; accepting the bid of AJW Construction, Inc. and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$414,462.  
**Financial Implications:** Various Funds - \$414,462  
Contact: Andrew Clough, Public Works, 981-6300
9. **City Auditor's Annual Report Fiscal Year 2012**  
**From: Auditor**  
**Recommendation:** Request the City Manager:  
1. Make timely implementation of audit recommendations a high priority, particularly the recommendations regarding fraud prevention, such as the 1998 grants audit and the 2011 adjusting journal entries audit. These recommendations aim to increase the Finance Department's oversight of practices in the departments.  
2. Disclose internal control risks of recommended budget cuts in future budget reports.  
**Financial Implications:** See report  
Contact: Ann-Marie Hogan, Auditor, 981-6750

## Council Consent Items

10. **Proclamation Declaring October 2012 as Homelessness Awareness Month**  
**From: Councilmember Arreguin**  
**Recommendation:** Approve the attached proclamation declaring October 2012 as Homelessness Awareness Month in the City of Berkeley.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
11. **Referral to the Community Health Commission Regarding the Use of Anthropogenic Mercury Within the City of Berkeley**  
**From: Councilmember Capitelli**  
**Recommendation:** Request that the Community Health Commission research major sources of anthropogenic mercury in the environment and strategies used by other municipalities to reduce its use; return to Council with a draft resolution regarding this pollutant and recommendations for reduction of use within the City of Berkeley.  
**Financial Implications:** None  
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150
12. **Berkeley Community Fund: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Wengraf**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$75 per Councilmember to the Berkeley Community Fund with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Wengraf and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Fund - \$75  
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

## Council Consent Items

- 13. Coro Center for Civic Leadership: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Worthington**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including an amount not to exceed \$1,000 from Councilmember Worthington, to the Coro Center for Civic Leadership with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Worthington and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Fund - \$1,000  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 14. Letter in Support of Hyatt Hotel Workers and Housekeepers**  
**From: Councilmember Worthington**  
**Recommendation:** Send the Hyatt Hotels Corporation a letter urging its leadership to take necessary precautions to protect its workers and housekeepers in the workplace.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 15. Letter to California Department of Labor on Whistleblower Program Flaws**  
**From: Councilmember Worthington**  
**Recommendation:** Send the Division of Labor Standards and Enforcements (DLSE) a letter urging the DLSE to conduct thorough investigations into retaliation complaints by "whistleblowers".  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 16. Proclamation in Honor of the Center of Agroecology and Sustainable Food Systems (CASFS) City Day of Appreciation**  
**From: Councilmember Worthington**  
**Recommendation:** Adopt a proclamation that October 7 is Center of Agroecology and Sustainable Food Systems (CASFS) City Day of Appreciation in Berkeley.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 17. Proclamation Honoring Halcyon Neighborhood Association on the 20th Anniversary of its Creation**  
**From: Councilmember Worthington**  
**Recommendation:** Adopt a proclamation honoring Halcyon Neighborhood Association on the 20th anniversary of its creation.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

## Action Calendar

After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up. Where an item was moved from the Consent Calendar to Action no speaker who has already spoken on that item would be entitled to speak to that item again.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

## Action Calendar – Old Business

18. **a. Community Choice Aggregation (Continued from September 11, 2012)**  
**From: Energy Commission**  
**Recommendation:** Request the East Bay Municipal Utility District (EBMUD) to address the issues identified in Attachment 1 as part of its examination of community choice aggregation (CCA).  
**Financial Implications:** See report  
Contact: Neal DeSnoo, Commission Secretary, 981-7400
- b. Communication**
1. Al Weinrub, on behalf of Community Choice Energy Working Group, Berkeley Climate Action Coalition
- c. Amended Community Choice Energy Letter to East Bay Municipal Utility District**  
**From: Councilmember Worthington**  
**Recommendation:** Amend the community choice energy letter to the East Bay Municipal Utility District (EBMUD).  
**Financial Implications:** None.  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
19. **a. D&FSC Comments on City Manager's Information Reports of May 1, 2012 (Continued from September 11, 2012)**  
**From: Disaster and Fire Safety Commission**  
**Recommendation:** Review and consider the Commission's comments on the City Manager's Information Reports of May 1, 2012.  
**Financial Implications:** See report  
Contact: Gil Dong, Commission Secretary, 981-5501
- b. Staff Response to DFSC Comments to the May 1, 2012 Report (Continued from September 11, 2012)**  
**From: Fire and Emergency Services**  
**Recommendation:** Consider the staff update along with the Disaster Fire and Safety Commission's (DFSC) request that additional funds be allocated for disaster preparedness and community emergency response training (CERT) programs, and direct the City Manager to report back with budget recommendations in January 2013 as part of the FY 2014 budget process.  
**Financial Implications:** See report  
Contact: Debra Pryor, Fire, 981-3473

## Action Calendar – New Business

**20. Refunding of 1999 Lease Revenue Bonds and 2003 Certificates of Participation**  
**From: City Manager**

**Recommendation:**

1. Adopt a Resolution approving and authorizing execution of a Joint Exercise of Powers Agreement relating to the California Municipal Finance Authority and the Amended and Restated Joint Exercise of Powers Agreement for the JPFA and execution by the City of both agreements.
2. Adopt a Resolution approving documents and actions relating to the refinancing of 1999 Lease Revenue Bonds and 2003 Certificates of Participation.

**Financial Implications:** See report

**Contact:** Robert Hicks, Finance, 981-7300

**21. Recommendations for Disaster Preparation for Vulnerable and Underserved Populations**

**a. From: Disaster and Fire Safety Commission**

**Recommendation:** Adopt a Resolution directing the City Manager to commit, out of Measure GG funds, a total of \$300,983 to fund the following recommended personnel and services:

1. Fund a position in the Public Health Division dedicated solely to disaster preparedness in the vulnerable and underserved populations of the City, with emphasis on South and West Berkeley.
2. Fund a position in the Office of Emergency Services to report to and assist the CERT Program Manager in developing workable options to increase disaster preparedness for the target populations and implement them.
3. Dedicate and set aside a specific amount that would cover the costs of additional emergency preparedness classes, both those already in existence and those that may be developed under Recommendation Two.

**Financial Implications:** See report

**Contact:** Gil Dong, Commission Secretary, 981-5501

**b. Staff Response to DFSC Recommendations for Disaster Preparation for Vulnerable and Underserved Populations**

**From: City Manager**

**Recommendation:** Refer the Disaster and Fire Safety Commission's recommendations to staff for additional comment and include the Commission's recommendations as part of the FY 2014 budget process.

**Financial Implications:** See report

**Contact:** Debra Pryor, Fire, 981-3473

## Information Reports

**22. Tentative Map Tract No. 8107: 1337 Henry Street**

**From: City Manager**

**Contact:** Eric Angstadt, Planning and Development, 981-7400

**23. Status Report: Activities of Public Library**

**From: Board of Library Trustees**

**Contact:** Donna Corbeil, Library, 981-6100

# Public Comment – Including Items Not Listed on the Agenda –

## Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc., 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

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Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of the civic center located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.ci.berkeley.ca.us/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department  
2180 Milvia Street  
Tel: 510-981-6900  
TDD: 510-981-6903  
Fax: 510-981-6901  
Email: [clerk@ci.berkeley.ca.us](mailto:clerk@ci.berkeley.ca.us)

Libraries:  
Main - 2090 Kittredge Street  
Claremont Branch – 2940 Benvenue  
North Branch – 1170 The Alameda

### COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.

Please refrain from wearing scented products to this meeting.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

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***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 20, 2012.***

A handwritten signature in black ink, appearing to read "Mark Numainville".

Mark Numainville, Acting City Clerk



## **Communications**

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

### **Pit Bull Ban**

1. Madeline Prichason

### **Citation Matter**

2. Gayle Cepparo

### **Response to Foreclosure Item**

3. Gregory Ahern

### **Aggressive Deer**

4. Bill McIntyre

### **Bay Trail / Ridge Trail**

5. Mike Vandeman

### **Rent Board**

6. Dorothea Dorenz

### **Exemption for Replacement Housing**

7. Craig Becker

