ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
TUESDAY, NOVEMBER 27, 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 WOZNIAK

Preliminary Matters

Roll Call: 7:29 p.m. Councilmember Anderson absent.

Ceremonial Matters:

1. Kris Welch Day – November 28, 2012
2. Jewish Family and Children Services of the East Bay – 135th Anniversary

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 2 speakers.

Public Comment on Consent Calendar and Information Items Only: 0 speakers.

Consent Calendar

Action: M/S/C (Maio/Moore) to adopt Consent Calendar in one motion except as indicated:

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

1. Amending BMC Chapter 7.36; Transient Occupancy Tax Ordinance
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,269-N.S. amending Berkeley Municipal Code Chapter 7.36, the Transient Occupancy Tax (TOT) Ordinance, to allow hotel/motel assessees to pass through the cost of Berkeley Tourism Business Improvement District (BTBID) assessments to their guests without it being subject to TOT.
First Reading Vote: All ayes
Financial Implications: See report
Contact: Michael Caplan, Office of Economic Development, 981-7530
Action: Adopted second reading of Ordinance No. 7,269–N.S.; Anderson absent.

Consent Calendar

2. Lease Agreement: The Framer's Outlet at 2435 Channing Way
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,270-N.S. authorizing the City Manager to execute a lease agreement with The Framer's Outlet, for an initial term starting February 1, 2013 through January 31, 2018, with an option to extend for an additional 5 years, for the purpose of operating a ready-made frame outlet at 2435 Channing Way in the Telegraph Channing Garage Shops.
First Reading Vote: All ayes
Financial Implications: See report
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted second reading of Ordinance No. 7,270–N.S.; Anderson absent.

3. Consolidating the Parks and Recreation Commission and the Waterfront Commission into a New Parks and Waterfront Commission; Repealing and Re-enacting BMC Chapter 3.26 and Repealing Chapter 3.36
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,271-N.S. repealing and re-enacting Berkeley Municipal Code Chapter 3.26 to create the Parks and Waterfront Commission and repealing Berkeley Municipal Code Chapter 3.36, effective July 1, 2013.
First Reading Vote: All ayes
Financial Implications: See report
Contact: William Rogers, City Manager’s Office, 981-7000
Action: Adopted second reading of Ordinance No. 7,271–N.S.; Anderson absent.

4. Consolidating the Parks and Recreation Commission and the Commission on Early Childhood Education into a new Children, Youth, and Recreation Commission; Adding BMC Chapter 3.27
From: City Manager
Recommendation:
Adopt second reading of Ordinance No. 7,272-N.S. adding Berkeley Municipal Code Chapter 3.27 to create the Children, Youth, and Recreation Commission.
First Reading Vote: All ayes
Financial Implications: See report
Contact: William Rogers, City Manager’s Office, 981-7000
Action: Adopted second reading of Ordinance No. 7,272–N.S.; Anderson absent.

5. Extension of the Term of the Waterfront Commission - Amending Berkeley Municipal Code Section 3.36.070
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,273-N.S. amending Section 3.36.070 of the Berkeley Municipal Code to extend the term of the Waterfront Commission to July 1, 2013.
First Reading Vote: All ayes
Financial Implications: See report
Contact: Mark Numainville, Acting City Clerk, 981-6900
Action: Adopted second reading of Ordinance No. 7,273–N.S.; Anderson absent.

Consent Calendar

6. Enacting BMC Chapter 13.79, Automatically Renewing Leases
From: City Manager
Recommendation: Adopt first reading of an Ordinance enacting Berkeley Municipal Code Chapter 13.79 Automatically Renewing Leases Ordinance.
Financial Implications: Unknown
Contact: Zach Cowan, City Attorney, 981-6950
Action: Item held over to the first meeting in January (January 22, 2013).

7. Revised Records Retention Schedule
From: City Manager
Recommendation: Adopt a Resolution approving the revised Records Retention Schedule in compliance with the City's Records Management Program and rescinding Resolution No. 64,546-N.S.
Financial Implications: None
Contact: Mark Numainville, Acting City Clerk, 981-6900
Action: Adopted Resolution No. 65,943–N.S.; Anderson absent.

8. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on November 27, 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: Various Funds - $340,000
Contact: Robert Hicks, Finance, 981-7300
Action: Approved recommendation.

9. Revenue Grant: U.S. Food and Drug Administration for Improving Retail Food Program Standards
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to accept a revenue grant award from the U.S. Food and Drug Administration (FDA) in the total amount of $2,500 in FY 2013 for improving retail food program standards and executing any resultant revenue agreements and amendments.
Financial Implications: One-Time Grant; Special Revenue - $2,500
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
Action: Adopted Resolution No. 65,944–N.S.; Anderson absent.

10. Amendment to Mental Health Commission Enabling Legislation
From: City Manager
Recommendation: Adopt a Resolution amending the Mental Health Commission Enabling Legislation and rescinding Resolution No. 57,078-N.S.
Financial Implications: None
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
Action: Adopted Resolution No. 65,945–N.S.; Anderson absent.

Consent Calendar

11. Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245
From: City Manager
Recommendation: Adopt a Resolution approving a new three (3) year Memorandum Agreement (hereinafter referred to as "Agreement") with the International Brotherhood of Electrical Workers Local 1245 (hereinafter referred to as the "Union") with a term of June 24, 2012 through June 20, 2015 and authorizing the City Manager to execute and implement the terms and conditions of employment set forth in the new Agreement.
Financial Implications: See report
Contact: David Hodgkins, Human Resources, 981-6800
Action: Adopted Resolution No. 65,946–N.S. as amended in Section 25.2.7 of the Agreement with a two-party rate of $1,441.94.; Anderson absent.

12. Contract No. 7187B Amendment: City of Inglewood Parking Citation Services
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 7187B with City of Inglewood for parking citation services, increasing the contract amount by $245,000 for a total not to exceed $2,995,000 from November 1, 2006 to June 30, 2013.
Financial Implications: General Fund - $245,000
Contact: Donna LaSala, Information Technology, 981-6500
Action: Adopted Resolution No. 65,947–N.S.; Anderson absent.

13. Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with TheatreFIRST, Inc. for the use and management of the Live Oak Theatre at the Live Oak Community Center located at 1301 Shattuck Avenue for a term of five years with one five-year option.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Moved to Action Calendar. 7 speakers. M/S/C (Capitelli/Moore) to adopt first reading of Ordinance No. 7,274–N.S. Second reading scheduled for Dec. 11, 2012.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Anderson.

14. Contract: AC Transit Bus Pass (EasyPass) Program for City Employees
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with the Alameda-Contra Costa County Transit District (AC Transit) for the continuation of an annual bus transit pass (EasyPass) program for City of Berkeley employees, in an amount not to exceed $190,000 for the 2-year period beginning January 1, 2013 and ending December 31, 2014.
Financial Implications: Payroll Deduction Trust Acct - $190,000
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 65,948–N.S.; Anderson absent.

Consent Calendar

15. Contract: URS Corporation for Planning and Engineering Services for Permeable Paver Demonstration Project
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with URS Corporation for planning and engineering services for a demonstration project using permeable pavers on a full-width section of a City street, the location of which to be determined during the initial phase of the contract, in an amount not to exceed $232,870 for a period of 2 years.
Financial Implications: Special Gas Tax Improvement Fund - $232,870
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 65,949–N.S.; Anderson absent.

16. License Agreement: Berkeley Unified School District to Use City Council Chambers and Adjoining Meeting Space at 2134 Martin Luther King, Jr. Way
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a license agreement with the Berkeley Unified School District (BUSD) to use City Council Chambers, located at 2134 Martin Luther King Jr. Way (Old City Hall) for the purpose of regular and special meetings of BUSD Board of Education, and to use adjacent onsite parking.
Financial Implications: Building Maintenance Fund - $7 (revenue)
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 65,950–N.S.; Anderson absent.

17. Update of the 5-Year Street Paving Plan FY 2013 - FY 2017
From: Public Works Commission
Recommendation: Adopt a Resolution updating the City's 5-Year Street Paving Plan for FY 2013 - FY 1`2017, and approving the allocation of up to 15% discretionary funding (approximately $420,000) in FY 2013 for a trial installation of permeable paving.
Financial Implications: See report
Contact: Jeffrey Egeberg, Commission Secretary, 981-6406
Action: Adopted Resolution No. 65,951–N.S.; Anderson absent.

18. Mental Health Commission Reappointment: Jeffrey Davis
From: Mental Health Commission
Recommendation: Adopt a Resolution approving the reappointment of Jeffrey Davis as a representative of the Special Public Interest Category for a second term beginning November 28, 2012 and ending November 27, 2015.
Financial Implications: None
Contact: Carol Patterson, Commission Secretary, 981-5217
Action: Adopted Resolution No. 65,952–N.S.; Anderson absent.

Council Consent Items

19. Appointment of Council Member Linda Maio as Vice President of the Council
From: Mayor Bates
Recommendation: Adopt a Resolution appointing Council Member Linda Maio as Vice President of the Council for a term of two years beginning December 3, 2012 to December 1, 2014.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 65,953–N.S.; Anderson absent.

20. Seating Arrangement for Council Members during City Council Meetings
From: Mayor Bates
Recommendation: Adopt a Resolution changing seating placement of City Council members as follows on the dais (From left to right, facing the dais): Wengraf, Anderson, Worthington, Capitelli, Bates, Maio, Moore, Wozniak, and Arreguin.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 65,954–N.S.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Wozniak, Bates; Noes – Worthington; Abstain – None; Absent – Anderson.

21. Council Appointments to Regional Committees and Commissions
From: Mayor Bates
Recommendation: Adopt a Resolution appointing Council members to their current committees, commissions, and regional bodies for the years 2013-2014. Please see the attached resolution for committee and committee names and the pertinent appointed council member.
Financial Implications: None
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 65,955–N.S.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Anderson.

22. Re-Appointment of Dr. Jan Washburn to the Alameda County Mosquito Abatement District Board of Trustees
From: Mayor Bates
Recommendation: Adopt a Resolution reappointing Dr. Jan Washburn to the Board of Trustees of the Alameda County Abatement District for a two-year term commencing on January 2, 2013 and ending on January 1, 2015.
Financial Implications: None for the City of Berkeley.
Contact: Tom Bates, Mayor, 981-7100.
Action: Adopted Resolution No. 65,956–N.S.; Anderson absent.

Council Consent Items

23. Rescinding Resolution No. 65,865-N.S. and Adopting the 2013 Meeting Schedule to Reflect the Cancellation of the January 15, 2013 Meeting and Adding a Regular City Council Meeting on January 29, 2013
From: Mayor Bates
Recommendation: Adopt a Resolution rescinding Resolution No. 65,865-N.S and adopting 2013 meeting schedule to reflect the cancellation of the January 15, 2013 regular council meeting and adding a regular City Council meeting on January 29, 2013.
Financial Implications: Minimal
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 65,957–N.S.; Anderson absent.

24. Sugared Beverage Tax
From: Councilmember Maio
Recommendation: Schedule a worksession regarding levying a tax on sugared beverages as was proposed on the Richmond ballot.
Financial Implications: None
Contact: Linda Maio, Councilmember, District 1, 981-7110
Action: Approved recommendation. Councilmember Capitelli added as a co-sponsor.

25. Proclamation Acknowledging the Contributions of Berkeley Rotary Club and the 10th Anniversary of the Berkeley Rotary 3rd Grade Dictionary Giveaway
From: Councilmember Wengraf
Recommendation: Approve a proclamation acknowledging the contributions of the Berkeley Rotary Club and the 10th Anniversary of the Berkeley Rotary's 3rd Grade Dictionary Giveaway, to be presented December 11, 2012.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Approved proclamation.

26. Adding a Meeting for the Public Works Commission
From: Councilmember Wozniak
Recommendation: Allow for an additional meeting in FY 2013 for the Public Works Commission (PWC) as a result of needing to add a Special Meeting on short notice.
Financial Implications: None
Contact: Gordon Wozniak, Councilmember, District 8, 981-7180
Action: Approved recommendation.

Action Calendar – Old Business

27. Youth Spirit Artworks Request for Additional Funding to Get and Keep Homeless Youth Off Berkeley Streets *(Continued from November 13, 2012)*
From: Councilmembers Anderson and Worthington
Recommendation: Consider Youth Spirit Artworks request for $50,000 leveraging existing homeless youth services to get and keep homeless youth off Berkeley Streets through art jobs combined with referrals to services and shelter.

Action Calendar – New Business

Financial Implications: Potentially $50,000
Contact: Max Anderson, Councilmember, District 3, 981-7130
Action: 6 speakers. M/S/C (Maio/Moore) to accept supplemental material from staff.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Anderson.

Action: M/S/C (Moore/Wengraf) to refer Youth Spirit Artworks to the community agency allocation process for consideration of their request for funding.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Wozniak, Bates; Noes – Worthington; Abstain – None; Absent – Anderson.

28. Perfect Plants Patient Group – 2840-B Sacramento Street - Determination Regarding a Public Nuisance Under BMC Chapter 23B.64
From: City Manager
Recommendation: Adopt a Resolution reflecting the City Council's November 13, 2012 action determining that 2840-B Sacramento Street, operating as Perfect Plants Patient Group (3PG), is:
1. In violation of a) BMC Chapter 12.26 The Patients Access to Medical Cannabis Act of 2008; b) BMC Section 23E.16.070 Medical Cannabis Uses; c) BMC Section 23A.12.010; and
2. A Public Nuisance under BMC Section 23B.64.020 and ordering the use enjoined and terminated.
Financial Implications: None
Contact: Gregory Daniel, Code Enforcement, 981-2492
Action: Moved to Consent Calendar. Adopted Resolution No. 65,958–N.S. (Anderson absent) reflecting the City Council's November 13, 2012 action determining that 2840-B Sacramento Street, operating as Perfect Plants Patient Group (3PG), is:
1. In violation of a) BMC Chapter 12.26 The Patients Access to Medical Cannabis Act of 2008; b) BMC Section 23E.16.070 Medical Cannabis Uses; c) BMC Section 23A.12.010; and
2. A Public Nuisance under BMC Section 23B.64.020 and ordering the use enjoined and terminated.

29. Contract Amendment: CalPERS 3% at Age 55 Retirement Formula for Police Safety Employees and 3 Year Highest Average Compensation Earnable
From: City Manager
Recommendation: Adopt second reading of Ordinance No. 7,266–N.S. amending the City's contract with CalPERS to provide the 3% at Age 55 Retirement Formula for new employees hired after the effective date of the contract amendment as set forth in California Government Code Section 21363.1 with "final compensation" calculated on the highest average annual compensation earnable by a member during three consecutive years of employment as provided in Section 20037 for local sworn police employees only to be effective December 28, 2012.
First Reading Vote: All ayes
Financial Implications: See report
Contact: David Hodgkins, Human Resources, 981-6800

Action Calendar – New Business

Action: 0 speakers. M/S/C (Bates/Moore) to adopt second reading of Ordinance No. 7,266–N.S. amending the City's contract with CalPERS to provide the 3% at Age 55 Retirement Formula for new employees hired after the effective date of the contract amendment as set forth in California Government Code Section 21363.1 with "final compensation" calculated on the highest average annual compensation earnable by a member during three consecutive years of employment as provided in Section 20037 for local sworn police employees only to be effective December 28, 2012.

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

30. 2010 Census: Redistricting Process and Timeline
From: City Manager
Recommendation: Review the schedule and process for the adjustment of City Council district boundaries following the decennial census as provided for in Berkeley City Charter Article V, Section 9.
Financial Implications: None
Contact: Mark Numainville, Acting City Clerk, 981-6900
Action: Moved to Consent Calendar. Approved the City Manager's recommendation to review the schedule and process for the adjustment of City Council district boundaries following the decennial census as provided for in Berkeley City Charter Article V, Section 9.

Council Action Items

31. Budget Referral: Annual Grant for Sunday Streets Events
From: Councilmember Capitelli
Recommendation: Refer to the 2013 budget process an ongoing budget item of $30,000 to cover City fees for twice-annual Sunday Streets events in Berkeley.
Financial Implications: $30,000
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150
Action: Item held over to December 11, 2012 by Councilmember Capitelli.

Information Reports

32. Status Report: Employee Benefits, Tough Decisions Ahead
From: City Manager
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000
Action: Received and filed.

33. Audit of Citywide Payment-Card Acceptance: Is Cardholder Information Safe?
From: City Manager
Contact: Robert Hicks, Finance, 981-7300
Action: Received and filed.

Information Reports

34. Condominium Conversion Program - Annual Report
From: City Manager
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400
Action: Received and filed.

35. Status Report: Failing Streets: Time to Change Direction to Achieve Sustainability
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
Action: Received and filed.

36. League of California Cities Annual Conference
From: Councilmember Wengraf
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Received and filed.

Public Comment – Including Items Not Listed on the Agenda – 0 speakers.

Adjournment in memory of:

1. Ann Chandler, Former Berkeley City Councilmember

Action: M/S/C (Worthington/Maio) to adjourn the meeting.

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

Adjourned at 8:48 p.m.

Communications

Item 13: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center

1. Michele Wolpe
2. Petra Lamberson
3. Annie Organ
4. Roseanne & Richard Packard
5. Mikel Clifford
6. Alma Pasic
7. Carolyn Day
8. Howard & Cindi Goldberg
9. Mina Jenner
10. Patrick Feigelson
11. Victoria Siegel
12. Melissa Bergen
13. Bruce Kaplan

Communications

14. Michelle Gabriel
15. Donna Davis
16. Jerome Solberg
17. Alan Barkan
18. Norah Foster
19. Stanley Spenger
20. Martha Luehrmann
21. Mrs. Lee Siegel
22. Shu Ping Guan
23. Jonathan Gordon
24. Peter Fisher

UC Football Game
25. sentwistle@***.net

Alta Bates Hospital Closure
26. Gretchen Snyder

Supplemental Communications and Reports 1

Oak Community Center
27. Jerome Solberg

Item 28: Perfect Plants Patient Group – 2840-B Sacramento Street - Determination Regarding a Public Nuisance Under BMC Chapter 23B.64
28. Robert Dorr

Supplemental Communications and Reports 2

Item 6: Enacting BMC Chapter 13.79, Automatically Renewing Leases
29. Rent Stabilization Board

Item 13: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center
30. Roberta Langren

Supplemental Communications and Reports 3

Item 11: Memorandum Agreement: International Brotherhood of Electrical Workers Local 1245
31. Barbara Gilbert

Item 13: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center
32. Jonathan Gordon

Item 27: Youth Spirit Artworks Request for Additional Funding to Get and Keep Homeless Youth Off Berkeley Streets

- Supplemental materials, submitted by Health, Housing & Community Services (see agenda item)

Supplemental Communications and Reports 3

Item 31: Budget Referral: Annual Grant for Sunday Streets Events
33. Michael Katz

UC Parking Solutions
34. Unknown