

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
TUESDAY, DECEMBER 11, 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:** 7:02 p.m. Councilmember Wengraf absent. Mayor Bates absent.

#### **Ceremonial Matters:**

1. Swearing in of newly elected Mayor and Councilmembers.

#### **Recess: 7:06 p.m. – 7:16 p.m.**

2. Recognition of Mary Martin and the Rosa Parks MathMatters Team
3. Berkeley Rotary Club – 3<sup>rd</sup> Grade Dictionary Giveaway
4. Judy Dater Day – December 11, 2012

#### **City Manager Comments:**

1. Public Comment for the Aquatic Park Improvement Plan Draft EIR has been extended to 2/11/13
2. The Telegraph Holiday Fair is December 14-16 and 22-24
3. Berkeley has a Buy Local App powered by Chinook Book
4. Observing the passing of Pat Hirabara, a 35 year employee of the City of Berkeley

**Public Comment on Non-Agenda Matters:** 1 speaker.

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

### **Consent Calendar**

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

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

## Consent Calendar

- 1. Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,274–N.S. 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.  
**First Reading Vote:** All ayes  
**Financial Implications:** See report  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Second reading of Ordinance No. 7,274–N.S. held over to December 18, 2012.
- 2. Annual Commission Attendance and Meeting Frequency Report**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving a revised commission meeting frequency schedule to remove the Downtown Berkeley Business Improvement District, adjust the meeting frequency for the Animal Care Commission, and accept the annual attendance report.  
**Financial Implications:** None  
Contact: Mark Numainville, Acting City Clerk, 981-6900  
**Action:** Adopted Resolution No. 65,959–N.S.
- 3. Minutes for Approval**  
**From: City Manager**  
**Recommendation:** Approve the minutes for the Council meetings of October 2, 2012 (regular), October 16, 2012 (special and regular) and October 30, 2012 (special and regular).  
**Financial Implications:** None  
Contact: Mark Numainville, Acting City Clerk, 981-6900  
**Action:** Approved minutes as submitted.
- 4. Confirming the Results of the November 6, 2012 General Municipal Election**  
**From: City Manager**  
**Recommendation:**  
1. Adopt a Resolution:  
a. Confirming the results of the November 6, 2012 General Municipal Election;  
b. Declaring the passage of Measure M – Streets and Watershed Bond, Measure P – Gann Limit Override, Measure Q – Utility Users Tax Amendments, Measure R – Redistricting Charter Amendment;  
2. Adopt an Ordinance amending the Berkeley Municipal Code to incorporate the passage of Measure Q – Utility Users Tax Amendments.  
**Financial Implications:** None  
Contact: Mark Numainville, Acting City Clerk, 981-6900  
**Action:** Adopted Resolution No. 65,960–N.S. and Ordinance No. 7,275–N.S.

## Consent Calendar

- 5. Designating City's Labor Negotiators Under Govt. Code Section 54957.6**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution establishing a standing list of representatives of the City of Berkeley designated to participate in closed sessions with the City Council to discuss labor negotiations with certain unions and unrepresented employees and rescinding Resolution No. 63,978-N.S.  
**Financial Implications:** None  
Contact: Zach Cowan, City Attorney, 981-6950  
**Action:** Adopted Resolution No. 65,961–N.S.
- 6. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on December 11, 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 - \$523,500  
Contact: Robert Hicks, Finance, 981-7300  
**Action:** Approved recommendation.
- 7. Approval of 2012 Housing Trust Fund Reservations**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution:  
1. Approving an initial round of Housing Trust Fund (HTF) reservations for two new construction projects at Harper Crossings (\$2,300,000, including a forward commitment of \$499,000) and Grayson Street Apartments (\$1,095,000), and additional funding for UA Homes (\$134,000); and  
2. Approving an alternative set of HTF reservations if Harper Crossings is unable to obtain sufficient project financing by December 2013 to complete the project; and  
3. Waiving the HTF Guidelines regarding predevelopment funding and project selection to allow the City Manager to enter into contracts and agreements for development and predevelopment loans.  
**Financial Implications:** See report  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 65,962–N.S.
- 8. Contract No. 8150 Amendment and Extension: Quest Diagnostic Services to Perform Laboratory Tests Related to Clinical Public Health Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend and extend Contract No. 8150 with Quest Diagnostics to perform laboratory tests related to clinical public health services, increasing the not to exceed amount by \$50,000 for a total not to exceed amount of \$275,000 through December 31, 2013.  
**Financial Implications:** Health Fund - \$50,000  
Contact: Jane Micallef, Health, Housing and Community Services, 981-5400  
**Action:** Adopted Resolution No. 65,963–N.S.

## Consent Calendar

- 9. Contract No. 7489C Amendment: Software AG for WebMethods Enterprise Service Bus ("Middleware")**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No 7489C with Software AG for WebMethods Enterprise Service Bus ("Middleware") licensing and maintenance, increasing the amount by \$51,055, for a total not to exceed \$306,055 from December 21, 2007 to December 31, 2014.  
**Financial Implications:** General Fund - \$51,055  
Contact: Donna LaSala, Information Technology, 981-6500  
**Action:** Adopted Resolution No. 65,964–N.S.
- 10. Contract No. 8865A Amendment: Accela, Inc. for Asset Management Software**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 8865A with Accela, Inc., adding \$176,750 for software, maintenance, and services related to the implementation of Asset Management software, for a total amount not to exceed \$416,750, from December 12, 2011 to June 30, 2016.  
**Financial Implications:** Sanitary Sewer Operation - \$176,750  
Contact: Donna LaSala, Information Technology, 981-6500  
**Action:** Adopted Resolution No. 65,965–N.S.
- 11. Grant Application: Caltrans Environmental Enhancement and Mitigation Program for Tree Planting Project in Berkeley**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the Environmental Enhancement and Mitigation Caltrans Program (EEMP) for the Berkeley Urban Reforestation Project in the amount of \$243,540; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant.  
**Financial Implications:** Caltrans Fund - \$243,540 (grant)  
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700  
**Action:** Adopted Resolution No. 65,966–N.S.
- 12. Amending BMC Section 17.04.030: Sewer Service Charges**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 17.04.030 to include administrative expenses of the Private Sewer Lateral (PSL) Program.  
**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted first reading of Ordinance No. 7,276–N.S. Second reading scheduled for December 18, 2012.

## Consent Calendar

- 13. Contract: California Trenchless, Inc. for Sanitary Sewer Rehabilitation Project on Potter Street, Ashby Avenue (State Highway 13), 7<sup>th</sup> Street, Folger Avenue, and Southern Pacific Co. ROW**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution:
1. Approving the plans and specifications for the Sanitary Sewer Project, 13-10690-C, located on Potter Street, Ashby Avenue (State Highway 13), 7th Street, Folger Avenue, and Southern Pacific Co. ROW; and
  2. Accepting the bid of the lowest responsive and responsible bidder, California Trenchless, Inc.; and
  3. Authorizing the execution of 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 \$1,138,862 for the period of 120 calendar days from the date of the execution of the contract.
- Financial Implications:** Sanitary Sewer Operation - \$1,138,862  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,967–N.S.
- 14. Contract: Gallagher & Burk, Inc. for Street Rehabilitation FY 2013**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Street Rehabilitation FY 2013 Project, 13-10687-C; accepting the bid of Gallagher & Burk, Inc.; rejecting the bid protest of MCK Services, Inc., the second lowest bidder; 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 \$2,756,494.  
**Financial Implications:** Various Funds - \$2,756,494  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,968–N.S.
- 15. Contract No. 7524C Amendment: SOHA Engineers for On-Call Structural Engineering Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7524C with SOHA Engineers to provide on-call structural engineering services for 3 City facilities, increasing the contract amount by \$40,500 for a revised not-to-exceed authorization and contract amount of \$139,320 and extending the contract term through June 30, 2013.  
**Financial Implications:** Capital Improvement Fund - \$40,500  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,969–N.S.
- 16. Contract No. R9140 Amendment: Association of Bay Area Governments for Trash Capture Demonstration Project Grant**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to negotiate and execute an amendment to the current grant agreement Contract No. R9140 with the Association of Bay Area Governments (ABAG), increasing the amount from \$65,000 up to \$88,203 for the installation of trash capture devices.

## Consent Calendar

**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,970–N.S.

- 17. Major Encroachment Permit: University of California for the Berkeley Art Museum and Pacific Film Archive**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the issuance of a major encroachment permit to the University of California for the Berkeley Art Museum and Pacific Film Archive, consisting of a building cantilever, an Americans with Disabilities Act compliant accessible ramp and stairs, fire department system test connections, and bookstore windows over and in the public right of way on Center Street.  
**Financial Implications:** None  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,971–N.S.
- 18. Reject and Re-bid Contract for Sanitary Sewer Rehabilitation Project on Sacramento Street and Woolsey Street**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the withdrawal of the bid by Andes Construction, Inc., including release of their bid bond, and rejecting all bids received on October 23, 2012, and authorizing the City Manager to re-scope and re-bid the Sanitary Sewer Rehabilitation Project on Sacramento Street and Woolsey Street.  
**Financial Implications:** See report  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Adopted Resolution No. 65,972–N.S.
- 19. Filling Vacancies Among the Elected Representatives of the Poor**  
**From: Human Welfare and Community Action Commission**  
**Recommendation:** Adopt a Resolution confirming the appointment of Mr. Rico Robinson (District 2), Ms. Justina Cross (District 3) and Ms. Veneita Porter (District 3) as elected representatives of the poor on the Human Welfare Community Action Commission (HWCAC), having been selected by the remaining elected representatives of the poor at the HWCAC November 14, 2012 meeting, and that their terms shall expire November 14, 2016.  
**Financial Implications:** None  
Contact: Charlotte Fredriksen, Commission Secretary, 981-5425  
**Action:** Adopted Resolution No. 65,973–N.S.

## Council Consent Items

- 20. Appointment of Mental Health Commission City Council Liaison**  
**From: Mayor Bates**  
**Recommendation:** Adopt a Resolution re-appointing Councilmember Arreguin as the City Council Liaison to the Mental Health Commission for one calendar year.  
**Financial Implications:** None  
Contact: Tom Bates, Mayor, 981-7100  
**Action:** Adopted Resolution No. 65,974–N.S. amended to read “officially reappoints” in the Now Therefore Be It Resolved clause.

## Council Consent Items

- 21. Streamlining Enforcement of Zoning and Municipal Code Violations and Public Nuisance Abatement Procedures**  
**From: Councilmembers Moore, Maio, Capitelli and Wengraf**  
**Recommendation:** Direct the City Manager to propose methods of enforcing the zoning and municipal codes that would result in more timely compliance of problematic uses, including those in undisputable violation of our laws, and/or propose ways in which to streamline the nuisance abatement procedure and return with a report and suggestions to improve the process in 6 months.  
**Financial Implications:** Unknown  
Contact: Darryl Moore, Councilmember, District 2, 981-7120  
**Action:** Approved recommendation.
- 22. The Robin Hood Tax Campaign; Supports the Inclusive Prosperity Act (HR 6411)**  
**From: Councilmember Anderson**  
**Recommendation:** Adopt a Resolution endorsing the Robin Hood Tax Campaign; supports the Inclusive Prosperity Act (HR 6411) introduced by Rep. Keith Ellison (D-MN), which would impose a small tax of 50 cents on the trade of every \$100 of stocks and a lesser tax on the trade of other financial instruments, and asks our Members of Congress, the US Senate and the President to support and help pass and sign into law the Prosperity Act (HR 6411).  
**Financial Implications:** None  
Contact: Max Anderson, Councilmember, District 3, 981-7130  
**Action:** Item held over to January 22, 2013.
- 23. The Berkeley Public Library Foundation 11<sup>th</sup> Annual Authors Dinner: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmembers Wengraf, Capitelli and Wozniak**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember including \$500 from Councilmembers Capitelli, Wengraf and Wozniak to the Berkeley Public Library Foundation's 11<sup>th</sup> Annual Authors Dinner with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmembers Capitelli, Wengraf, Wozniak and any other Councilmembers who would like to contribute.  
**Financial Implications:** No General Fund impact; \$500 is available from Councilmembers Capitelli, Wengraf, and Wozniak's Council Office Budget discretionary accounts.  
Contact: Susan Wengraf, Councilmember, District 6, 981-7160  
**Action:** Adopted Resolution No. 65,975–N.S.amended to include contributions from the following Councilmembers up to amounts listed: Councilmember Wozniak - \$500, Councilmember Anderson - \$200, Councilmember Maio - \$500.

## Action Calendar – Public Hearings

- 24. Public Hearing and Levying of Assessments in the Solano Avenue Business Improvement District for 2013**  
**From: Solano Avenue BID Advisory Board**  
**Recommendation:** Conduct a public hearing and, upon conclusion:

## Action Calendar – Public Hearings

1. Adopt a Resolution confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, “the District”) for 2013 and, if no majority protest exists, levy annual assessments in the area for calendar year 2013 to finance improvements in the District; and

2. Adopt a Resolution authorizing the City Manager to enter into a contract with Livable Berkeley for disbursement of District funds for purposes outlined in the Annual Report and Budget and adding an additional purpose for expenditures.

**Financial Implications:** Solano Avenue BID Fund - \$35,000 (projected revenue)  
Contact: Dave Fogarty, Commission Secretary, 981-7534

**Public Testimony:** The Mayor opened the public hearing. 0 speakers.  
M/S/C (Moore/Arreguin) to close the public hearing.

**Vote:** Ayes – Maio, Moore, Anderson, Arreguin, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Capitelli (recused), Wengraf, Bates

**Action:** M/S/C (Moore/Anderson) to adopt the following:

1. Resolution No. 65,976–N.S. confirming the Annual Report and Budget for the Solano Avenue Business Improvement District (hereafter, “the District”) for 2013 and, if no majority protest exists, levy annual assessments in the area for calendar year 2013 to finance improvements in the District; and

2. Resolution No. 65,977–N.S. authorizing the City Manager to enter into a contract with Livable Berkeley for disbursement of District funds for purposes outlined in the Annual Report and Budget and adding an additional purpose for expenditures.

**Vote:** Ayes – Maio, Moore, Anderson, Arreguin, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Capitelli (recused), Wengraf, Bates

## Action Calendar – Old Business

25. **Budget Referral: Annual Grant for Sunday Streets Events** (*Continued from November 27, 2012*)

**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 removed from the agenda by Councilmember Capitelli.

## Action Calendar – New Business

26. **Complete Streets Policy**

**From:** City Manager

**Recommendation:** Adopt a Resolution adopting the Berkeley Complete Streets Policy.

**Financial Implications:** See report

Contact: Andrew Clough, Public Works, 981-6300

**Action:** Moved to Consent Calendar. Adopted Resolution No. 65,978–N.S. adopting the Berkeley Complete Streets Policy.



## Council Action Items

**27. Revising the Recording of Council Annotated Agendas and Minutes to Include All Motions Voted On**

**From: Councilmember Arreguin**

**Recommendation:** Adopt a Resolution:

1. Revising the recording of City Council Annotated Agendas and Minutes to include all motions voted on, irrespective of whether they resulted in a final action being taken; and
2. Rescinding Resolution No. 65,462-N.S.

**Financial Implications:** Unknown

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

**Action:** M/S/C (Worthington/Arreguin) to accept supplemental material from Councilmember Arreguin for Item 27.

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

**Action:** 0 speakers. M/S/C (Arreguin/Anderson) to adopt Resolution No. 65,979–N.S. revising the recording of City Council Annotated Agendas and Minutes to include all motions voted on, irrespective of whether they resulted in a final action being taken; and rescinding Resolution No. 65,462-N.S. with the “Now Therefore, Be It Resolved” clause amended to read:

“NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the recording of Annotated Agendas and Minutes of meetings of the Berkeley City Council shall include any properly made and seconded motion, upon which a binding vote of the Council is taken, regardless of whether the motion results in a final action being taken.”

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

## Information Reports

**28. Settlement of Lawsuit: Cochrell v. Berkeley Unified School District and City of Berkeley**

**From: City Manager**

Contact: Zach Cowan, City Attorney, 981-6950

**Action:** Received and filed.

**29. Status Update: Implementation of Citywide Payroll Audit Recommendations**

**From: City Manager**

Contact: David Hodgkins, Human Resources, 981-6800

**Action:** Received and filed.

**30. LPC-NOD: 2517 Regent Street**

**From: City Manager**

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

**Action:** Received and filed.

## Information Reports

31. **Status Report: Purchase Order Audit - Select Public Works Divisions at the Corporation Yard**  
**From: City Manager**  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Received and filed.
32. **Update: Traffic Impacts Study for West Campus/Old Adult School Site**  
**From: City Manager**  
Contact: Andrew Clough, Public Works, 981-6300  
**Action:** Received and filed.

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

### Adjournment in Memory of:

1. Pat Hirabara, 35-year City of Berkeley employee
2. Alan Farley, local radio host and producer

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

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

Adjourned at 7:56 p.m.

## Communications

### Item 25: Budget Referral: Annual Grant for Sunday Streets Events

1. Michael Katz

### Bike Lanes on Tunnel Road/Hillegass Bicycle Blvd Crossing

2. Dave Campbell, on behalf of the East Bay Bicycle Coalition

### Misplaced Recycle Bins

3. Valerie Messer

## Supplemental Communications and Reports 1

### Item 7: Approval of 2012 Housing Trust Fund Reservations

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

## Supplemental Communications and Reports 2

### Item 1: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center

4. Victoria Siegel
5. Jonathan Gordon

### Item 27: Revising the Recording of Council Annotated Agendas and Minutes to Include All Motions Voted On

6. Stephen Wollmer

## **Supplemental Communications and Reports 3**

### **Item 1: Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center**

7. Paula Bauer

### **Item 27: Revising the Recording of Council Annotated Agendas and Minutes to Include All Motions Voted On**

- Revised materials, submitted by Councilmember Arreguin (see agenda item)

8. Peter Scheer

### **Aquatic Park Improvement Program Draft EIR**

9. Jacquelyn McCormick