ANOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
TUESDAY, DECEMBER 18, 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: 7:00 p.m. Mayor Bates absent.

Ceremonial Matters:

1. December 19, 2012 – Berkeley Animal Care Services Volunteer Appreciation Day

City Manager Comments:

1. Retirement of Fire Chief Debra Pryor

Public Comment on Non-Agenda Matters: 4 speakers.

Public Comment on Consent Calendar and Information Items Only: 1 speaker.

Consent Calendar

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

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

Consent Calendar – Continued Business

A. Lease Agreement: TheatreFIRST, Inc. for the Live Oak Theatre at the Live Oak Community Center *(Continued from December 11, 2012)*
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: Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – None; Absent – Anderson.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700
Action: Adopted second reading of Ordinance No. 7,274–N.S.

Consent Calendar – Continued Business

B. Amending BMC Section 17.04.030: Sewer Service Charges
From: City Manager
Recommendation Adopt second reading of Ordinance No. 7,276–N.S. amending Berkeley Municipal Code Section 17.04.030 to include administrative expenses of the Private Sewer Lateral (PSL) Program.
First Reading Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Wengraf, Bates.
Financial Implications: See report
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted second reading of Ordinance No. 7,276–N.S.

Consent Calendar

1. Contract No. 9024 Amendment: Andes Construction, Inc for Sanitary Sewer Project in the Union Pacific Railroad Right-of-Way
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 9024 with Andes Construction, Inc. for urgent sanitary sewer rehabilitation in the Union Pacific Railroad Right-of-Way (ROW) along the ROW formerly known as Southern Pacific ROW (and formerly known as 3rd Street), increasing the amount by $350,000 for a total amount not to exceed $1,396,408.
Financial Implications: Sanitary Sewer Fund - $350,000
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 65,980–N.S.

2. Support for S. 1925: The Violence Against Women Reauthorization Act of 2011
From: Peace and Justice Commission
Recommendation: Endorse and call for immediate passage of S. 1925, The Violence Against Women Reauthorization Act of 2011 to protect all victims.
Financial Implications: None
Contact: Eric Brenman, Commission Secretary, 981-5114
Action: Approved recommendation.

Council Consent Items

3. City Manager Referral: Amend BMC to Address Mold
From: Councilmember Worthington
Recommendation: Refer to the City Manager amending BMC to define and address mold growth in Berkeley residences.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Moved to Action Calendar. 1 speaker. M/S/C (Worthington/Anderson) to Approve the recommendation with the request that staff conduct research and bring back a recommendation to the Council for consideration.

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

Action Calendar – New Business

4. Formal Request for Information from Federal Agencies Conducting Radiation Fly-over Research Study
From: Peace and Justice Commission
Recommendation: Adopt a Resolution formally requesting information from the Department of Homeland Security's Domestic Nuclear Detection Office (DNDO) and the National Nuclear Security Administration (NNSA) on its August 27, 2012 and September 1, 2012 radiation fly-over research study, and that copies of the Resolution be sent to the Department of Homeland Security DNDO, the NNSA, President Barack Obama, Senators Barbara Boxer and Dianne Feinstein, and Congressperson, Barbara Lee.
Financial Implications: None
Contact: Eric Brenman, Commission Secretary, 981-5114
Action: 3 speakers. M/S/C (Worthington/Wozniak) to:

1. Adopt Resolution No. 65,981–N.S., as amended below, formally requesting information from the Department of Homeland Security's Domestic Nuclear Detection Office (DNDO) and the National Nuclear Security Administration (NNSA) on its August 27, 2012 and September 1, 2012 radiation fly-over research study, and that copies of the Resolution be sent to the Department of Homeland Security DNDO, the NNSA, President Barack Obama, Senators Barbara Boxer and Dianne Feinstein, and Congressperson, Barbara Lee.

- The third Whereas clause is stricken.
- Add a new Whereas clause that reads, “WHEREAS, the local radiation environment, whether from natural or human made sources is of interest to the residents of Berkeley.”
- Add a new Whereas clause that reads, “WHEREAS, there was no advance notice of the flyover and numerous residents were alarmed by the low-flying helicopter.”
- In the second Resolved clause, the phrase “and atom smashing facilities” is replaced with “University of California at Berkeley.”

2. Send a letter to Congresswoman Barbara Lee requesting that her office submit the information request to the Domestic Nuclear Detection Office on the City’s behalf.

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

Action Calendar – New Business

5. Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect
From: Peace and Justice Commission
Recommendation: Adopt a Resolution and Proclamation proclaiming:
1. Berkeley a No Drone Zone and instructing the City Attorney to perform the necessary legal tasks to transform this declaration of a No Drone Zone into an Ordinance for the City of Berkeley wherein drones are hereby banned from airspace.
2. That drones will not be purchased, leased, borrowed, tested or otherwise used by any agency of the City of Berkeley over the City of Berkeley, including drones in transit.
3. That exemptions will be made for hobbyists to continue to fly remote controlled model aircraft in specified areas, away from dwellings and the urban cityscape of people and buildings as long as those devices are not equipped with any kind of camera or audio surveillance equipment.
Copies of this Resolution shall be sent to Governor Jerry Brown, California Attorney General Kamala Harris, State Senator Loni Hancock, Assemblymember Nancy Skinner, the Alameda County Sheriff, Senator Dianne Feinstein, Senator Barbara Boxer, Representative Barbara Lee, President Barack Obama, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense.
Financial Implications: Unknown
Contact: Eric Brenman, Commission Secretary, 981-5114

Action: M/S/C (Worthington/Arreguin) to accept supplemental information from Councilmember Maio on Item 5.
Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Bates.

Action: 19 speakers. Motion/Second/Failed (Worthington/Anderson) to:

1. Refer the item to the Peace and Justice Commission, the Police Review Commission, and the Disaster and Fire Safety Commission for review;

2. Refer the issue to the Agenda Committee to schedule a worksession before the Council after the commissions have concluded their review; and

3. Send a letter to the Alameda County Board of Supervisors and the Alameda County Sheriff requesting that they delay any action on the purchase of a drone until the City of Berkeley has completed its evaluation of the issue.

Vote: Ayes – Anderson, Worthington; Noes – Maio, Capitelli, Wengraf, Wozniak; Abstain – Moore, Arreguin; Absent – Bates.

Action: Motion/Second/Carried (Wozniak/Moore) to:
1. Refer the item, including the proposed amendments from Councilmember Arreguin listed below, to the Peace and Justice Commission, the Police Review Commission, and the Disaster and Fire Safety Commission for review.

Delete from proposed Resolution:

The first Be It Resolved clause and the next two Be It Further Resolved clauses.

Action Calendar – New Business

Add the following text to the Resolution:

NOW THEREFORE BE IT RESOLVED by the Council of the City of Berkeley the City of Berkeley expresses its concern about the proliferation of drones and domestic law enforcement and the lack of adequate regulations to protect against improper surveillance and to protect the privacy rights of citizens.

BE IT FURTHER RESOLVED that police use of drones is permitted upon approval of City Manager, or upon approval of the Chief of police in emergency situations when the City Manager isn't available in the following circumstances: 1) in the case of a disaster, 2) to assist in locating missing persons, 3) to assist in rescue efforts, 4) to assist in police pursuit of known suspects who have committed serious or violent crimes. Armed drones are explicitly prohibited. Any grant application for or purchase of drones by the Berkeley Police Department requires the approval of the Berkeley City Council, before any decision to apply for funds for drones or to purchase a drone is made; and

BE IT FURTHER RESOLVED the Berkeley City Council urges the Alameda county sheriff and the Board of supervisors to not purchase a drone

BE IT FURTHER RESOLVED that the City of Berkeley urges the Alameda county Sheriff to not fly drones over Berkeley air space except 1) in the case of a disaster, 2) to assist in locating missing persons, 3) to assist in rescue efforts, 4) to assist in police pursuit of known suspects who have committed serious or violent crimes.

BE IT FURTHER AND FINALLY RESOLVED that copies of this Resolution be sent to Governor Jerry Brown, California Attorney General Kamala Harris, State Senator Loni Hancock, Assemblymember Nancy Skinner, the Alameda County Sheriff, Senator Dianne Feinstein, Senator Barbara Boxer, Representative Barbara Lee, President Barack Obama, the Federal Bureau of Investigation, the Department of Homeland Security, and the Department of Defense.

2. Refer the issue to the Agenda Committee to schedule a worksession before the Council after the commissions have concluded their review.

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

Action: Motion/Second/Carried (Worthington/Arreguin) to send a letter to the Alameda County Board of Supervisors and the Alameda County Sheriff requesting that they delay any action on the purchase of a drone until the City of Berkeley has completed its evaluation of the issue.

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

Council Action Items

6. Compassionate Sidewalks Plan
From: Councilmember Arreguin
Recommendation: Direct the City Manager to convene a working group of representatives of City staff, the Homeless, Housing Advisory, Human Welfare & Community Action, and Police Review Commissions, the Police Department, and other stakeholders, including but not limited to business owners, homeless persons, service providers, students, and academic experts to develop a Compassionate Sidewalks Plan over a series of workshops. The working group should focus but is not limited to the following topics: 1) The demographics and causes of homelessness 2) A survey of existing homeless services 3) An assessment of potential funding needs and sources 4) Existing laws and enforcement 5) Best Practices.
Financial Implications: Staff time
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: 3 speakers. M/S/C (Worthington/Arreguin) to hold the item over to January 22, 2013 and to refer the item to the Agenda Committee to schedule a worksession.

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

7. Scheduling Quarterly Economic Development Worksession
From: Councilmember Worthington
Recommendation: Schedule four Quarterly Economic Development Worksessions for 2013.
Financial Implications: Staff time
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: 0 speakers. M/S/C (Wengraf/Moore) to schedule quarterly reports on Economic Development in 2013 with two of the reports as presentations to Council scheduled by the Agenda Committee (worksession or regular agenda) and two of the reports as information items.

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Wozniak; Noes – Worthington; Abstain – Anderson; Absent – Bates.

Public Comment – Including Items Not Listed on the Agenda – 1 speaker.

Adjournment in memory of:

1. Ethel Manheimer, former Berkeley School Board Member

Adjourned at 9:44 p.m.

Communications

Bike Lanes on Tunnel Road-Referred to City Manager by Councilmember Worthington

1. Beth Reid
2. Sara Hood
3. Michel St. Pierre
4. Scott Donahue
5. Steven Keller
6. Stephen Hosemann
7. Morgan Bellinger
8. Adam Shapiro
9. Brian Gangelhoff
10. David Simpson
11. Farid Javendel
12. Victoria Jarvis
13. Toshi Takeuchi
14. Olin Timothy Jones
15. Robert Prinz
16. Mark Spencer
17. Stefan Brunnschweiler
18. Karlie Drutz
19. K. Benjamin Knipe
20. Reid Williamson
21. Zoe Chafe
22. Janet Drake
23. Mark Foy

Bicycle Light on Hillegass/Ashby

24. Burke Green - Referred to City Manager by Councilmember Worthington

Response to Community Choice Aggregation Council Item

25. John Coleman, on behalf of the EMBUD Board of Directors

Unfair Practices

26. Carol McGruder – Referred to the City Manager by Councilmember Anderson

Berkeley Main Post Office

27. John Caner, on behalf of the Downtown Berkeley Association (DBA)

Supplemental Communications and Reports 1

None

Supplemental Communications and Reports 2

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

28. Victoria Siegel

Item 4: Formal Request for Information from Federal Agencies Conducting Radiation Fly-over Research Study

29. Gordon Wozniak, District 8 (2)

Supplemental Communications and Reports 2

Item 5: Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect

30. Joan Levinson
31. Meaveen O'Connor
32. Phoebe Sorgen
33. Eugene Ruyle

Supplemental Communications and Reports 3

Item 5: Proclaim Berkeley a No Drone Zone and Enact an Ordinance to that Effect

34. Linda Maio, District 1
35. Marc Pilisuk
36. Vic Sadot