BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING

BERKELEY CITY COUNCIL SPECIAL MEETING

TUESDAY, FEBRUARY 19, 2013
2:30 P.M.

6th Floor Conference Room, 2180 Milvia Street

Committee Members:

Mayor Bates, Councilmembers Linda Maio and Gordon Wozniak
(Alternate: Councilmember Anderson)

AGENDA

1. Roll Call

2. Public Comment

3. Approval of Minutes: February 4, 2013

4. Review and Approve draft agendas for March 5, 2013
   a. 3/5/13 – 5:30 p.m. Special City Council Meeting
   b. 3/5/13 – 7:00 p.m. Regular City Council Meeting
   c. Adjournments in memory of -

5. Upcoming Council Items:
   a. Proposed Upcoming Council Worksessions
      1. Alta Bates Summit Community Benefits Plan (referred to CHC)
      2. Economic Development (Fall 2013)
   b. Councilmember Office Budget Donation Policy (Maio)
   c. Public Hearing for 1214 Glen Avenue
   d. Public Hearing for 1488 Keoncrest Drive

6. Land Use Calendar – accept and file

7. Adjournment – next meeting March 4, 2013

Additional items may be added to the draft agenda per Council Rules of Procedure.

Rules of Procedure Resolution No. 65,337-N.S., Article III, C3c - Agenda - Submission of Time Critical Items

Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.

The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.

The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.

This is a meeting of the Berkeley City Council Agenda Committee. Since a quorum of the Berkeley City Council may actually be present to discuss matters with the Council Agenda Committee, this meeting is being noticed as a special meeting of the Berkeley City Council as well as a Council Agenda Committee meeting.

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.

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.

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I hereby certify that the agenda for this special 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 February 14, 2013.

Mark Numainville, CMC, Acting City Clerk

BERKELEY CITY COUNCIL AGENDA COMMITTEE
SPECIAL MEETING MINUTES

MONDAY, FEBRUARY 4, 2013
2:30 P.M.

6th Floor Conference Room, 2180 Milvia Street

Committee Members:

Mayor Bates, Councilmembers Linda Maio and Gordon Wozniak
(Alternate: Councilmember Anderson)

AGENDA

1. Roll Call: 2:30 p.m. All present

2. Public Comment: 0 speakers.

3. M/S/C (Wozniak/Bates) to approve the Minutes of January 22, 2013

4. Review and Approve draft agendas for February 19, 2013

a. M/S/C (Bates/Wozniak) to approve the agenda of the 2/19/13 – 5:30 p.m. Special City Council Meeting

b. M/S/C (Maio/Wozniak) to approve the agenda of the 2/19/13 – 7:00 p.m. Regular City Council Meeting revised to reflect the following:

- *Item 15 Naming Berkeley's Public Health Clinic for Ann Chandler – Revised Item Submitted by Councilmember Maio*
- *Item 12 Driving Under the Influence (DUI) Policy Recommendations – Moved to Action Calendar*
- *Item Added by Councilmember Arreguin – Relinquishment of Council Office Budget Funds to Building Opportunities for Self-Sufficiency (BOSS)*
- *Item Added by City Manager – Appointment of City Clerk*

c. Adjournments in memory of – None.

5. Upcoming Council Items:

a. Proposed Upcoming Council Worksessions

1. Alta Bates Summit Community Benefits Plan (referred to CHC)
2. Economic Development (Fall 2013)

b. Councilmember Office Budget Donation Policy

6. Land Use Calendar – accepted and filed

7. Adjourned at 2:47 p.m.

Mark Numainville, CMC, Acting City Clerk

DRAFT PROCLAMATION
CALLING A SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

In accordance with the authority in me vested, I do hereby call the Berkeley City Council in special session as follows:

TUESDAY, MARCH 5, 2013

5:30 P.M.

Council Chambers – 2134 Martin Luther King Jr. Way

Preliminary Matters

Roll Call

Public Comment – Items on this agenda only

Worksession:

1. **Parks, Recreation and Waterfront Department Budget Presentation**
   From: City Manager
   Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

Adjournment

I hereby request that the City Clerk of the City of Berkeley cause personal notice to be given to each member of the Berkeley City Council on the time and place of said meeting, forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the City of Berkeley to be affixed on this 21st day of February, 2013.

Tom Bates, Mayor

Public Notice – this Proclamation serves as the official agenda for this meeting**.**

ATTEST:

Date: 2/21/13
Mark Numainville, CMC, Acting City Clerk

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

***NOTICE CONCERNING YOUR LEGAL RIGHTS**: If you object to a decision by the City Council to approve or deny an appeal, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6 and Government Code Section 65009(c)(1)(E), no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed and served on the City 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 Zoning Adjustments Board decision, 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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Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

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DRAFT AGENDA

BERKELEY CITY COUNCIL MEETING

TUESDAY, MARCH 5, 2013

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

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. Check for 2nd reading Ordinances and add them here.

2. City Council Rules of Procedure and Order
From: City Manager
Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to clarify the procedures for public comment relating to appeals on Council agendas and rescinding Resolution No. 65,910-N.S.
Financial Implications: None
Contact: Mark Numainville, Acting City Clerk, 981-6900

3. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on March 5, 2013
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 - $1,550,000
Contact: Robert Hicks, Finance, 981-7300

Consent Calendar

4. Contract No. 7394B Amendment: New World Systems, Inc. for Public Safety Computer System
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 7394B with New World Systems, Inc., increasing the amount by $441,329, for a total not to exceed $3,078,929 for the period September 1, 2006 to June 30, 2015.
Financial Implications: General Fund - $441,329
Contact: Donna LaSala, Information Technology, 981-6500

5. Contract No. 9091 Amendment: EVRA Construction, Inc. for Fire Station No. 5 Renovation
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9091 with EVRA Construction, Inc. for the provision of construction services, increasing the amount by $69,000 for a total revised contract amount not to exceed $544,200.
Financial Implications: Measure G Fire Seismic Bond Fund - $69,000
Contact: Andrew Clough, Public Works, 981-6300

Council Consent Items

6. Support SCA 3, Investing in Public Education
From: Councilmember Moore
Recommendation: Adopt a Resolution supporting SCA 3 for education funding, which would lower the voter threshold for local parcel taxes from two-thirds to 55 percent and would conform more closely with the vote requirement for local school bonds. That the City Clerk sends a copy of the Council action with the resolution to Senators Mark Leno, Jerry Hill, Fran Pavley, Ellen Corbett, Lois Wolk, Kevin de León, Mark DeSaulnier, Noreen Evans, Curren Price, Leland Yee, Darrell Steinberg and Loni Hancock and Assemblymembers Tom Ammiano, Joan Buchanan, Richard Gordon, John Pérez, Nancy Skinner and Rob Bonta.
Financial Implications: Unknown
Contact: Darryl Moore, Councilmember, District 2, 981-7120

7. Refer $25,000 to the FY 2013/2014 Budget Process to Expand K to College Service in Berkeley
From: Councilmembers Moore and Arreguín
Recommendation: Refer the following to the budget process: A request for $25,000 to expand K to College's service in Berkeley.
Financial Implications: Budget Referral - $25,000
Contact: Darryl Moore, Councilmember, District 2, 981-7120

Council Consent Items

8. 2013 Berkeley Juneteenth Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Anderson
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember including $250 from Councilmember Anderson to the 2013 Berkeley Juneteenth Festival with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Anderson and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Fund - $500
Contact: Max Anderson, Councilmember, District 3, 981-7130

9. The Persian Center for the Persian New Year Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds
From: Councilmember Arreguín
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember to the Persian Center for the Persian New Year Festival with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Jesse Arreguín and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Fund - $500
Contact: Jesse Arreguín, Councilmember, District 4, 981-7140

10. Support for Senate Bill SB59 (Evans) and Assembly Bill AB65 (Achadjian) to Amend the California Penal Code to Expand the Definition of Rape
From: Councilmembers Wengraf and Capitelli
Recommendation: Adopt a Resolution supporting Senate Bill SB 59 and Assembly Bill AB 65 which would amend Penal Code Section 261 (a) (5) to expand the definition of rape to include a sexually intimate partner. If adopted, send copies of the signed resolutions to Senator Loni Hancock, President ProTem Senator Darrell Steinberg, Assemblymember Nancy Skinner and to the Senate and Assembly Committees on Public Safety.
Financial Implications: None
Contact: Susan Wengraf, Councilmember, District 6, 981-7160

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 - Appeals

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the appeal. Written reports shall be available for public review in the office of the City Clerk.

11. ZAB Appeal: 1861 Solano Avenue
From: City Manager
Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to uphold the Zoning Adjustments Board's decision to approve Use Permit No. 11-10000032 to establish a new wireless telecommunication facility for AT&T including twelve antennas on the façade of the Oaks Theatre and related equipment in an outdoor lease area.
Financial Implications: None
Contact: Eric Angstadt, Planning and Development, 981-7400

Action Calendar – Old Business

12. Check for items carried over from 2/19/13 and add them here.

Council Action Items

13. Bringing the Peace & Justice Commission into Compliance with the Fair Representation Ordinance
From: Councilmembers Wozniak and Moore
Recommendation: Direct the City Manager to prepare enabling legislation that revises the relevant Municipal Code Section or Resolution to bring the Peace & Justice Commission into compliance with Berkeley's Fair Representation Ordinance (FRO) by restricting appointments to City Councilmembers.
Financial Implications: See report
Contact: Gordon Wozniak, Councilmember, District 8, 981-7180

Information Reports

14. Economic Development Update
From: City Manager
Contact: Michael Caplan, Economic Development, 981-7530

15. Berkeley Transportation Action Plan: Update on Parking and Transportation Demand Activities
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300

16. Commission Recommendations Based on Review of Complaint Filed Under Open Government Ordinance
From: Open Government Commission
Contact: Kristy van Herick, Commission Secretary, 981-6950

Public Comment – Including Items Not Listed on the Agenda –

Adjournment

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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.
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CITY COUNCIL

Darryl Moore
Councilmember District 2

4b.06

CONSENT CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore, District 2

Subject: Support SCA 3, Investing in Public Education

RECOMMENDATION

Adopt a Resolution supporting SCA 3 for education funding, which would lower the voter threshold for local parcel taxes from two-thirds to 55 percent and would conform more closely with the vote requirement for local school bonds. That the City Clerk sends a copy of the Council action with the resolution to Senators Mark Leno, Jerry Hill, Fran Pavley, Ellen Corbett, Lois Wolk, Kevin de León, Mark DeSaulnier, Noreen Evans, Curren Price, Leland Yee, Darrell Steinberg and Loni Hancock and Assemblymembers Tom Ammiano, Joan Buchanan, Richard Gordon, John Pérez, Nancy Skinner and Rob Bonta.

BACKGROUND

The California Constitution currently requires a two-thirds majority of the voters to approve a local parcel tax placed on the ballot by their school district or community college district. (A parcel tax is a flat tax usually assessed per parcel of land, regardless of the parcel's market value.) State law allows a school bond to be approved by 55% of the voters in a local school or community college district.

Local school districts have limited options for raising additional revenue that is not controlled by the state and can be spent in furtherance of local priorities. A parcel tax is one of the very few ways local school districts can raise discretionary revenue. SCA 3 will increase local choice for local education needs, while ensuring that every dollar generated goes to the school district for locally identified purposes. In the past, school districts have used parcel tax money to enhance instructional programs, hire additional teachers, and support libraries, music, and arts programs, reflecting local priorities in those local districts.

The two-thirds vote required for local parcel taxes is a significant impediment to raising revenue at the local level. Even when a parcel tax has the support of a significant majority of district parcel owners, it would fail passage if a relatively small minority of voters oppose it. Given the state's on-going financial crisis, school districts have faced years of severe cutbacks in funding. School districts need ways to maintain and restore quality programs in their schools. SCA 3 provides school districts with much-needed flexibility in raising local educational funds.

California still lags far behind virtually all other states (ranking 47th according to one recent analysis because of the high cost of living in the state) in its amount of per pupil spending.

SCA 3 allows a local parcel tax by a school district, community college district or a county office of education to be approved on the ballot with a 55 percent majority rather than the two-thirds majority currently required, provided that certain accountability restrictions are met. By lowering the vote threshold, SCA 3 provides for local choice and control, and conforms the vote required for a parcel tax to the 55 percent majority required for local school bonds.

SCA 3 authorizes school districts, community college districts, or county offices of education to impose a parcel tax on real property by a 55 percent vote of the voters in the district or county under specified circumstances, including:

- The district governing board approves the proposition by a majority vote;
- The ballot proposition contains a specific list of programs and purposes to be funded, and a requirement that funds be spent solely for those programs and purposes;
- The ballot proposition includes a requirement for annual independent audit of the amount of tax proceeds collected and expended and the specified purposes and programs funded;
- The ballot proposition requires the governing board to create a citizens' oversight board to review all expenditures of proceeds and financial audits, and report its findings to the governing board and the public;
- The ballot proposition allows for an exemption from the tax for parcels owned by persons over the age of 65 or those receiving SSI.

The measure also defines "parcel tax" as a special tax imposed upon real property at a rate determined without regard to the property's value. Tax proceeds may not be used to fund administrative salaries. SCA 3 also makes clarifying and conforming changes to the Constitution.

FISCAL IMPACTS OF RECOMMENDATION
Unknown

CONTACT PERSON
Councilmember Darryl Moore, District 2 981-7120

Attachments:
1) Resolution

RESOLUTION NO. ##,###-N.S.

SUPPORT SCA 3, INVESTING IN PUBLIC EDUCATION

WHEREAS, the California Constitution currently requires a two-thirds majority of the voters to approve a local parcel tax placed on the ballot by their school district or community college district, which serves as a significant impediment to raising revenue at the local level; and

WHEREAS, a two-thirds majority requirement means that even when a parcel tax has the support of a significant majority of district parcel owners, it would fail passage if a relatively small minority of voters oppose it; and

WHEREAS, local school districts have limited options for raising additional revenue that is not controlled by the state and can be spent in furtherance of local priorities, parcel taxes being one of the very few ways local school districts can raise discretionary revenue; and

WHEREAS, given the state's on-going financial crisis, school districts have faced years of severe cutbacks in funding, which has contributed to California's decline in per pupil spending, trailing virtually all other states (ranking 47th according to one recent analysis because of the high cost of living in the state); and

WHEREAS, SCA 3 provides school districts with much-needed flexibility in raising local educational funds, allowing a local parcel tax by a school district, community college district or a county office of education to be approved on the ballot with a 55 percent majority rather than the two-thirds majority currently required; and

WHEREAS, by lowering the vote threshold, SCA 3 provides for local choice and control, and conforms the vote required for a parcel tax to the 55 percent majority required for local school bonds.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council supports our public school system and SCA 3 for making it easier for our citizenry to pass parcel taxes, investing in our next generation's education.

CITY COUNCIL

Darryl Moore
Councilmember District 2

4b.07

CONSENT CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Darryl Moore
Councilmember Jesse Arreguin

Subject: Refer $25,000 to the FY 2013/2014 Budget Process to Expand K to College Service in Berkeley

RECOMMENDATION:
Refer the following to the budget process: A request for $25,000 to expand K to College's service in Berkeley.

BACKGROUND:
The mission of K to College to provide underserved children with the tangible resources they need to achieve. K to College operates the School Supply and Dental Kit Initiatives, intended to low-income students to help ensure that they are able to start the school year off on equal footing as their counterparts and provides the basic oral healthcare necessities: a toothbrush, toothpaste, and floss to ensure that oral health issues do not stand in the way of student's academic success.

The City of Berkeley partnered with K to College in 2009, contributing $10,000. According to the Berkeley Unified School District (BUSD), K to College was able to leverage that $10,000 into $200,000 worth of school supplies provided to BUSD students.

K to College is trying to expand their service to Berkeley's underserved student population and is embarking on a new program that would likely allow K to College to serve virtually all low-income students in the City of Berkeley.

Similar to previous K to College volunteer efforts in Berkeley, this new annual program would consist of two parts. The first would be a large-scale volunteer effort involving the University, Cal Greeks, and city and community members to assemble a grade-appropriate comprehensive school supply and dental kit for every local low-income student. The volunteer fulfillment or assembly would also enable us to make the kits contain various materials such as pamphlets or other publications advertising local services that could benefit low-income families. The assembly would take place on campus in the Pauley Ballroom.

The second piece of the program would be a citywide distribution in partnership with the Berkeley Unified School District and the Parks Recreation & Waterfront. It would involve volunteers from our corporate sponsors, the University, school district and elsewhere. Through our partnership with the school district, we would also be able to target the distribution to verifiably low-income students without violating privacy rights. Previous distributions have been 90% effective.

K to College has had similar efforts in the past, including one in December as a test-run for 2013. It was funded by Give Something Back Office Supplies, Kaiser, multiple county sources and some support from the ASUC. Many of these and other partnerships are likely to continue for 2013.

The amount being requested is $25,000, which is approximately 7% of the total project budget. Every dollar contributed by the City will also be matched by at least 100% by corporate partners, which is a commitment that has been made by Give Something Back Office Supplies' President and Founder Mike Hannigan.

FINANCIAL IMPLICATIONS:
$25,000

CONTACT PERSON:
Councilmember Darryl Moore District 2 510-981-7120

Max Anderson
Councilmember District 3

4b.08

CONSENT CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Max Anderson, District 3

Subject: 2013 Berkeley Juneteenth Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember including $250 from Councilmember Anderson to the 2013 Berkeley Juneteenth Festival with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Anderson and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; $250 is available from Councilmember Anderson's Council Office Budget discretionary account.

BACKGROUND

We are proposing that the City Council make a grant up to $500 to 2013 Berkeley Juneteenth Festival, Sunday, June 23 will bring families together through education, advocacy, social networking and grassroots community organizing. The Festival celebrates through music, song, dance, food and serves as an annual union for African Americans to congregate and to share in cultural enriching activities that allow them to bond as a people. The Festival has grown to serve upwards of 1250 diverse families including vendors, musicians, volunteers, faith based organizations, educators and service providers. Many of the patrons, volunteers, musicians, and families live in every community throughout Berkeley, and the Festival strives to reflect this rich multiculturalism in our work. Thus, we feel it extremely necessary that an event in the African American community of this magnitude exist to show solidarity and unity for the just causes of public safety, social improvement and peace.

CONTACT PERSON

Max Anderson, Councilmember, District 3, 510 981-7130

Attachment:
1. Resolution

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7130 ● TDD: (510) 981-6903 ● Fax: (510) 981-7133
E-Mail: manderson@cityofberkeley.info

RESOLUTION NO. ##, ###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Max Anderson has surplus funds in his office expenditure account (budget code 010-2223-410-35-10); and

WHEREAS, a California non-profit tax exempt corporation, 2013 Berkeley Juneteenth Festival, seeks funds in the amount up to $500 to provide the following public services to pay for the festival operations; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose that the festival provides education, entertainment, celebration, advocacy and grassroots community organizing for Berkeley families.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to $500 per office shall be granted to 2013 Berkeley Juneteenth Festival to fund the following services to pay for the festival operations.

Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: The Persian Center for the Persian New Year Festival: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION:
Adopt a Resolution approving the expenditure of an amount not to exceed $500 per Councilmember to the Persian Center for the Persian New Year Festival with funds relinquished to the City's General Fund for this purpose from the discretionary Council Office Budgets of Councilmember Jesse Arreguín and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION:
No General Fund impact; $500 is available from Councilmember Arreguín's Council Office Budget discretionary account.

BACKGROUND:
On March 12, 2013 on Durant Avenue between Shattuck and Milvia Streets, the Persian Center will host a Chahar-Shanbeh Souri celebration to commemorate the New Year.

Chahar-Shanbeh Souri in Farsi means "Eve of Wednesday" because the New Year festival is always held on the last Tuesday of winter.

This festival includes the ritual of jumping over a bonfire which has been handed down since ancient Zoroastrian times.

This annual event is designed to not only help strengthen the sense of identity and integrity of all Iranians and Iranian descendents but to educate and celebrate the Iranian culture with the larger community. This free, family-friendly event is a wonderful community building experience. It helps promote greater understanding of the Iranian culture but also celebrates the rich diversity of our community.

The City of Berkeley has in the past provided needed funding to help make this event happen. However, no city funding was approved for the event this year, making it difficult for the Persian Center to help organize this wonderful event.

Approval of this expenditure will provide needed funding for this important community-building event.

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7140 ● TDD: (510) 981-6903 ● Fax: (510) 981-7144
E-Mail: jarreguin@CityofBerkeley.info

CONTACT PERSON:
Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:
1. Resolution

RESOLUTION NO. ##,###-N.S.

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS TO THE PERSIAN CENTER FOR THE PERSIAN NEW YEAR FESTIVAL

WHEREAS, Councilmember Arreguín has surplus funds in his office expenditure account 010-0242-410-55-01; and

WHEREAS, on March 12, 2013 on Durant Avenue between Shattuck and Milvia Streets, the Persian Center will host a Chahar-Shanbeh Souri celebration to commemorate the new year; and

WHEREAS, Chahar-Shanbeh Souri in Farsi means “Eve of Wednesday” because the New Year festival is always held on the last Tuesday of winter. This festival includes the ritual of jumping over a bonfire which has been handed down since ancient Zoroastrian times; and

WHEREAS, a California non-profit tax exempt corporation the Persian Center seeks funds in the amount of $500 to cover the costs of the materials, foods, music, setting up of the children’s activities, and bringing in of crafts vendors and cultural organizations; and

WHEREAS, the provision of such funds would fulfill the following municipal public purpose: to educate and celebrate the Iranian culture with the larger community; to increase revenue to local businesses; to build community and promote greater understanding of the Iranian culture; and to celebrate the rich cultural diversity of our community through this multi-cultural event.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to $500 per office shall be granted to the Persian Center for the Persian New Year Festival.

Susan Wengraf
Councilmember District 6

CONSENT CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf and Laurie Capitelli

Subject: Support for Senate Bill SB59 (Evans) and Assembly Bill AB65 (Achadjian) to Amend the California Penal Code to Expand the Definition of Rape

RECOMMENDATION

Adopt a Resolution supporting Senate Bill SB 59 and Assembly Bill AB 65 which would amend Penal Code Section 261 (a) (5) to expand the definition of rape to include a sexually intimate partner. If adopted, send copies of the signed resolutions to Senator Loni Hancock, President ProTem Senator Darrell Steinberg, Assemblymember Nancy Skinner and to the Senate and Assembly Committees on Public Safety.

BACKGROUND

SB 59 and AB 65 have been introduced to address an outdated rape statute. The current rape statute language contains arcane and confusing language which upholds the rights of a married victim but not the rights of others. Due to this outdated language, the 2nd District Court of Appeals recently overturned a rape conviction due to the fact that the victim was not married. Because the current law was unclear, the conviction was overturned on a technicality.

SB 59 and AB 65 both intend to close this loophole in state law and expand the definition of rape by amending Penal Code 261 (a) (5). SB 59 specifically substitutes the word “spouse” for “sexually intimate partner”. AB 65 expands the definition of rape to include cases where there is impersonation of a boyfriend or girlfriend. The proposed changes would make the law equitable and close the loophole.

Support of these bills is consistent with the City of Berkeley’s commitment to ensuring justice for all.

FINANCIAL IMPLICATIONS

No General Funds impact

CONTACT PERSON

Councilmember Susan Wengraf Council District 6 510-981-7160

Attachments:

1. Resolution
2. Senate Bill SB-59
3. Assembly Bill AB-65

RESOLUTION NO. ##,###-N.S.

IN SUPPORT OF SENATE BILL 59 AND ASSEMBLY BILL 65 TO AMEND THE CALIFORNIA PENAL CODE TO EXPAND THE DEFINITION OF RAPE

WHEREAS, SB 59 and AB 65 were introduced to amend Penal Code Section 261(a)(5) to expand the definition of rape in response to outdated and confusing language in the current rape statute; and

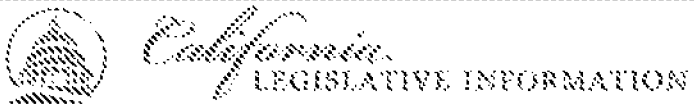
WHEREAS, the arcane language in the statute has resulted in overturned convictions for rape, based on a technicality; and

WHEREAS, the current rape statute upholds the rights of a married victim, but not the rights of others; and

WHEREAS, expanding the definition of rape ensures equality and justice for all.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby supports SB 59 and AB 65 to amend the California Penal Code section 261(a)(5) to expand the definition of rape.

Attachment 2



SB-59 Crimes: rape. (2013-2014)

CALIFORNIA LEGISLATURE — 2013-2014 REGULAR SESSION

SENATE BILL **No. 59**

Introduced by Senator Evans
(Coauthor(s): Senator Block, Corbett, De León, DeSaulnier, Galgiani, Hancock, Jackson, Lara, Leno, Pavley, Steinberg, Wolk)

January 07, 2013

An act to amend Section 261 of the Penal Code, relating to crimes, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 59, as introduced, Evans. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with an individual who is not the spouse of the perpetrator where the individual submits under the belief that the individual committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would instead provide that this type of rape occurs where the individual submits under the belief that the individual committing the act is the victim's sexually intimate partner.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 261 of the Penal Code is amended to read:

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets *any* one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is the victim's ~~spouse~~ *sexually intimate partner*, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

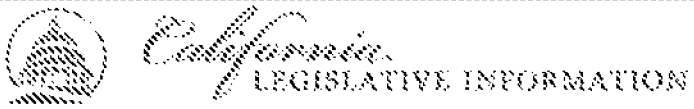
(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect the public safety by minimizing the threat posed by sexual predators at the earliest possible time, it is necessary that this act take effect immediately.

Attachment 3



AB-65 Crimes: rape. (2013-2014)

AMENDED IN ASSEMBLY JANUARY 30, 2013

CALIFORNIA LEGISLATURE— 2013–2014 REGULAR SESSION

ASSEMBLY BILL **No. 65**

Introduced by Assembly Member Achadjian, *Lowenthal*
(Principal Coauthor(s): Assembly Member Bradford, *Gomez, Mitchell,* Williams)
(Principal Coauthor(s): Senator Hill)
***(Coauthor(s): Assembly Member Alejo, Ammiano,* Atkins, Bigelow, Blumenfield, Buchanan, *Ian Calderon,* Chávez, Conway, *Dahle, Dickinson,* Donnelly, Frazier, *Garcia,* Gatto, *Gordon,* Gorell, Grove, Hagman, *Hall, Harkey,* Jones, Levine, *Logue,* Maienschein, Mansoor, Melendez, Morrell, Nazarian, Nestande, Olsen, Patterson, Perea, *John A. Pérez, Quirk-Silva, Rendon,* Skinner, Stone, Ting, Wagner, *Waldron, Weber,* Wilk)**
***(Coauthor(s): Senator Anderson,* Berryhill, *Block,* Cannella, Emmerson, Fuller, Gaines, Huff, Jackson, Knight, Lieu, Rubio, Walters, Wyland)**

January 07, 2013

An act to amend Section 261 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 65, as amended, Achadjian. Crimes: rape.

Existing law provides various circumstances that constitute rape, including an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator where the person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief.

This bill would additionally provide that this type of rape occurs where the person submits under the belief that the person committing the act is the victim's *domestic partner,* cohabitant, ~~fiancé, fiancée,~~ *fiancé, fiancée,* or someone with whom the victim has a dating relationship.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 261 of the Penal Code is amended to read:

261. (a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is the victim's spouse, *domestic partner*, cohabitant, fiancé, fiancée, or someone with whom the victim has a dating relationship, as defined in subdivision (f) of Section 243, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a

crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

Gordon Wozniak
Councilmember District 8

4b.13

ACTION CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Councilmembers Gordon Wozniak and Darryl Moore

Subject: Bringing the Peace & Justice Commission into Compliance with the Fair Representation Ordinance

RECOMMENDATION

Direct to the City Manager to prepare enabling legislation that revises the relevant Municipal Code Section or Resolution to bring the Peace & Justice Commission into compliance with Berkeley's Fair Representation Ordinance (FRO) by restricting appointments to City Councilmembers.

FISCAL IMPACTS OF RECOMMENDATION

The reduction in the number of commission members from 15 to 9 will enable the City to reduce resources allocated to staffing and appointing members to this commission and to realign those resources to meet community service demands.

CURRENT SITUATION AND ITS EFFECTS

The purpose of Berkeley's Fair Representation Ordinance is to give all nine elected members of the City Council equal responsibility in appointing representatives to Berkeley's appointed boards, commissions and committees.

The Peace and Justice Commission with 15 members (nine members appointed by Council, six members appointed by the School Board) does not conform to Berkeley's Fair Representation Ordinance. Reducing the composition of the Peace and Justice Commission to nine members, with one representative appointed by each Councilmember, would make it conform to the FRO. Since this commission was created by local ordinance, reducing its membership to nine is a discretionary decision for the City Council. The majority of recommendations from this commission are for primary consideration by the City Council and only rarely are items submitted to the School Board. Furthermore, currently the School Board has only filled 50% of its allotted positions.

CONTACT PERSON

Gordon Wozniak, District 8 981-7180

2180 Milvia Street, Berkeley, CA 94704 ● Tel: (510) 981-7180 ● TDD: (510) 981-6903 ● Fax: (510) 981-7188
E-mail: GWozniak@ci.berkeley.ca.us

Open Government Commission

4b.16

INFORMATION CALENDAR
March 5, 2013

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Steve Wollmer, Chair, Open Government Commission

Subject: Commission Recommendations Based on Review of Complaint Filed Under Open Government Ordinance

INTRODUCTION

The Open Government Ordinance (OGO) tasks the Commission, among other roles, with hearing complaints from the public regarding possible non-compliance with the OGO, the Brown Act or the Public Records Act. The OGO calls for the Commission to consider ways to informally resolve complaints, and advise the City Council of its opinion, conclusion or recommendation as to any complaint.

At its December 2012 meeting, the Commission considered a complaint related to the timing of public comment at the City Council work sessions.

For the reasons set forth in this Information Report, the Commission makes the following recommendations:

(1) Staff reports, including PowerPoint presentations, should be available to the public in advance of work session presentations to the extent feasible; and

(2) Council should hold public comment immediately after staff presentation at work sessions.

CURRENT SITUATION AND ITS EFFECTS

On November 16, 2012, Berkeley resident Merrilie Mitchell filed a complaint with the City Attorney's office asserting a violation of the Brown Act and the Open Government Ordinance. A supplemental/amended complaint was filed on November 28, 2012. The complaint alleged that the City Council violated the Brown Act and the Open Government Ordinance (OGO) on a number of occasions by calling for public testimony at work sessions before the staff presentation, rather than allowing the public to speak in response to the staff presentation.

City Council frequently holds special meetings for the purpose of being informed in detail about specific issues. These are known as "work sessions". Work sessions

generally consist of a presentation by staff or other experts or stakeholders, followed by discussion by and questions from the Council. The presentations and discussion are generally significantly longer than those at regular Council meetings. The Council does not take any action at work sessions. Rather, any action on a topic covered in a work session is placed on the agenda for a subsequent regular meeting, at which time any member of the public may comment on it before the Council acts. In many cases the Council calls for public testimony at the beginning of the work session, before the presentation.

The OGO does not address the issue of when the public is allowed to speak during Council meetings. The Brown Act states: "Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting *before or during consideration of that item*." (Gov. Code § 54954.3(a), emphasis supplied.)

Additionally, the Council Rules of Procedure reference the timing of public comment for work sessions. Section VI.F provides that "*in general*, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer." (Emphasis added.)

According to the complaint, the complainant has taken this matter up with the Council on more than one occasion, and the Council has not overruled the Presiding Officer's order as to the sequence of presentation,[1] Council discussion and testimony.

The City Attorney issued a report to the Commission addressing Ms. Mitchell's Complaint, stating that the complaint was without merit as the OGO does not specify at what point in a work session the Council must allow public testimony and the current practice is consistent with the Brown Act. The City Attorney's report further noted that the Commission's jurisdiction does not extend to allegations that the Council has violated its own rules of procedure.

Ms. Mitchell attended the December 13 Commission meeting and made a presentation to the Commission. The Commission received public comment, and held a discussion about the issues raised in the complaint.

The Commission did not determine that the City Council violated the OGO or the Brown Act. However, the Commissioners discussed whether it would benefit the public to have the presentation materials available for review in advance of the meeting and to have public testimony *after* presentation of those materials to the Council. The Commission considered its authority, under 2.06.190.A.2, to advise City Council "as to any other

[1] Section I.A. of the Council Rules of Procedure states that the Mayor, as the Presiding Officer, "shall preside at the meetings of the Council" and may "decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order."

action or policy that it deems advisable to enhance open and effective government in Berkeley."

As a result of input and Commission discussion, the Commission passed the following motion at its December 13 meeting:

Motion to recommend to Council:

(*1) staff reports, including PowerPoint presentations, be available before work session presentation to the extent feasible; and*

(2) Council allow public comment after staff presentation at work sessions as provided in Council procedure. (M/S/C: O'Donnell/Smith. Ayes: Costa, Murray, Lombardi, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

At its January 17, 2013 meeting, the Commission passed the following motion:

Authorize submission of draft Information Report to City Council, as amended, to include the following Commission recommendations:

(1) Staff reports, including PowerPoint presentations, should be available to the public in advance of work session presentations to the extent feasible; and
(2) Council should hold public comment immediately after staff presentation at work sessions.

(M/S/C Ritchie/Murray: Ayes: Costa, Murray, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: O'Donnell [Lombardi on approved leave of absence].)

BACKGROUND
See Current Situation and it Effects, above.

POSSIBLE FUTURE ACTION
Determine whether to amend Council Rules.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
None.

CONTACT PERSON
Steve Wollmer, Chair, Open Government Commission (510) 843-2053
Kristy van Herick, Secretary (510) 981-6998

Upcoming Workshops		
Scheduled Dates		
February 19	Budget Priority Setting – 1) Health, Housing and Community Services Status Update and Budget Projections; 2) Projections of Future City Liabilities; 3) FY 2013 Mid Year Budget Update	Worksession
March 5	Budget Priority Setting – Parks, Recreation and Waterfront Department Budget Presentation	Worksession
March 19	Budget Priority Setting – Public Works/Capital Improvement Plan	Worksession
April 2	Homeless/Compassionate Sidewalks	Worksession
April 30	Employee Safety/Workers Comp	Worksession
May 7	Budget – Presentation of Proposed FY 2014-2015 Budget	Worksession
May 21	Economic Development Update/Planning Work Plan	Worksession
June 11	2020 Vision Update	Worksession

CITY CLERK DEPARTMENT
WORKING CALENDAR FOR SCHEDULING LAND USE MATTERS
BEFORE THE CITY COUNCIL

Address	Board/ Commission	Appeal Period Ends	Council Date for Determination on Appeal Submitted	Council Date for Public Hearing[1]	Notes
NOD – Notices of Decision					
3100 Shattuck Ave (Durand Residence)	ZAB	2/15/2013			
2317 Channing Way (medical office conversion)	ZAB	2/15/2013			
2004 Emerson St (Sprint antennas)	ZAB	2/15/2013			
Appeals Submitted					
1861 Solano Avenue (AT&T antennas)	ZAB		3/5/2013		
245 Tunnel Road (Bentley School)	ZAB		3/19/2013		
2517 Regent Street (Mary J. Berg House)	LPC		3/19/2013		
2133 University Ave. (Acheson Commons)	ZAB		TBD		
1152 Amador Ave. (residential addition)	ZAB		5/7/2013		
2401 Telegraph Ave (carry-out restaurant)	ZAB		5/21/2013		
Public Hearings Scheduled					
1214 Glen Avenue (Residence)	ZAB			TBD	
1488 Keoncrest Dr. (residence addition)	ZAB			TBD	
Remanded to ZAB or LPC					

Last Updated: 2/14/13

[1]Dates for public hearings as directed by the City Council.