# REVISED AGENDA (ADDED CONTINUED ITEMS FROM SEPTEMBER 10, 2013)



## BERKELEY CITY COUNCIL MEETING TUESDAY, SEPTEMBER 17, 2013 7:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

Tom Bates, Mayor Councilmembers:

DISTRICT 1 – LINDA MAIO

DISTRICT 5 – LAURIE CAPITELLI

DISTRICT 2 – DARRYL MOORE

DISTRICT 3 – MAX ANDERSON

DISTRICT 7 – KRISS WORTHINGTON

DISTRICT 4 – JESSE ARREGUIN

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, 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.

### **Consent Calendar – Continued Business**

A. Sidewalk Vending Ordinance, Amending BMC Chapter 9.48 (Continued from September 10, 2013)

From: City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,307-N.S. amending Berkeley Municipal Code Section 9.48.045.B.1 to correct an inadvertent error.

First Reading Vote: All Ayes. Financial Implications: None

Contact: William Rogers, City Manager's Office, 981-7000

B. Amend BMC Section 14.52.120 Parking Meter and Pay-and-Display Station Fees to Reduce the Minimum Transaction Amount for Cash Payment (Continued from September 10, 2013)

From: City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,308-N.S. amending Berkeley Municipal Code Section 14.52.120 Parking Meter and Pay-and-Display (P&D) Station fees to eliminate the 12 minute minimum transaction amount for cash payment at parking meters and P&D Stations; so that each coin type accepted by the meter will purchase parking time on the meters.

First Reading Vote: All Ayes.
Financial Implications: See report

Contact: Andrew Clough, Public Works, 981-6300

### **Consent Calendar – Continued Business**

C. Amendments to the Berkeley Election Reform Act - Electronic Filing (Continued from September 10, 2013)

From: Fair Campaign Practices Commission

**Recommendation:** Adopt second reading of Ordinance No. 7,309-N.S. amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to provide for the electronic filing of campaign statements and reports and to designate the electronic filing as the filing of record.

First Reading Vote: All Ayes.
Financial Implications: See report

Contact: Kristy Van Herick, Commission Secretary, 981-6950

### **Consent Calendar**

1. Emergency Standby Officers for the Mayor and Councilmembers From: City Manager

**Recommendation:** Adopt a Resolution confirming the appointment of Standby Officers for the Mayor and each Councilmember to serve in the event the elected official is unavailable during an emergency, and rescinding Resolution No. 65,323-N.S.

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

2. Formal Bid Solicitation and Request for Proposal Scheduled for Possible Issuance After Council Approval on September 17, 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 - \$2,892,600

Contact: Robert Hicks, Finance, 981-7300

3. Contract No. 8960A Amendment: W.R. Forde for Transfer Station Green Waste Fluid Separation Project

From: City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 8960A with W.R. Forde Associates for the provision of construction services, increasing the amount by \$28,453 for a revised total contract not to exceed \$548,453.

Financial Implications: Refuse Collect Disposal Fund - \$28.453

Contact: Andrew Clough, Public Works, 981-6300

### **Council Consent Calendar**

#### 4. Appoint Daniel Rossi to the Berkeley Housing Authority

From: Mayor Bates

**Recommendation:** Adopt a Resolution appointing Daniel Rossi to the Berkeley

Housing Authority.

Financial Implications: None

Contact: Tom Bates, Mayor, 981-7100

#### 5. Red Curb Installation at Sacramento Street and Allston Way

From: Councilmember Arrequin

Recommendation: Direct the City Manager to mitigate the line-of-sight issue at the corner of Sacramento Street and Allston Way with alternative methods, such as signage and traffic light operation, and to restore the curbside parking spaces lost in the City's initial mitigation.

Financial Implications: Staff time

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

#### 6. Proclamation Declaring October 5, 2013 as Indigenous Peoples Day and **Approving City Co-Sponsorship**

From: Councilmembers Arrequin and Worthington

**Recommendation:** Approve a proclamation: 1. Declaring October 5, 2013 as Indigenous Peoples Day in the City of Berkeley; and 2. Approving City cosponsorship of the 2013 Indigenous Peoples Day event.

Financial Implications: None

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

#### 7. Support for AB 49 (Buchanan) Creating a Breast Cancer Awareness Specialized Pink License Plate

From: Councilmember Wengraf

**Recommendation:** Adopt a Resolution supporting AB 49 (Buchanan). Request that the City Clerk send copies of the adopted resolution to Governor Jerry Brown, Assemblywoman Joan Buchanan, Assemblywoman Nancy Skinner and State Senator Loni Hancock.

Financial Implications: None

Contact: Susan Wengraf, Councilmember, District 6, 981-7160

#### 8. Proclamation in Honor of Bisexual Pride Day and Bi Visibility Day

From: Councilmembers Worthington, Anderson, Moore, and Arrequin

Recommendation: Adopt a proclamation that September 23, 2013 is Bisexual Pride

Day and Bi Visibility Day in Berkeley.

Financial Implications: None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

#### 9. **Establish an Annual City Manager Evaluation Policy**

From: Councilmember Worthington

**Recommendation:** Establish a policy to conduct an annual performance evaluation

of the City Manager in order to ensure an efficient and competent workforce.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

### **Council Consent Calendar**

10. Manager Referral: Berkeley Animal Shelter Lost Pet Photographs

From: Councilmember Worthington

**Recommendation:** Refer to the City Manager that lost pets brought to the Berkeley Animal Shelter have their photos taken as soon as possible so that they can be displayed online for the public to see.

Financial Implications: Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

11. Support Proclamation for National Coming Out Day October 11, 2013 From: Councilmembers Worthington, Anderson, Moore, and Arreguin **Recommendation:** Support a proclamation for National Coming Out Day on

October 11, 2013.

Financial Implications: None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

### **Action Calendar**

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

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

### Action Calendar – Continued Business

D. Support Survivors of Sexual Violence by Sending a Letter to the Department of Education to Protect Assaulted Students, and Support Local Sexual Assault and Awareness Day (Continued from September 10, 2013)

From: Councilmember Worthington

**Recommendation:** Send a letter to the Department of Education in support of the recent petition that urges the Department of Education to hold Universities accountable to Title IX and support sexually assaulted students, and support local sexual assault and awareness day.

Financial Implications: None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

E. City-owned Retail Space at Telegraph Channing Mall (Continued from September 10, 2013)

From: City Manager

Contact: William Rogers, City Manager's Office, 981-7000

### Action Calendar - Continued Business

F. Update on the Status of Electric Vehicle Infrastructure in Berkeley (Continued from September 10, 2013)

From: City Manager

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

### **Action Calendar - Old Business**

# **12. Medical Cannabis Ordinance Revisions and Dispensary Selection Process** (Continued from June 11, 2013)

### a. From: Medical Cannabis Commission

### **Recommendation:**

- 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 12.26.030:
- 2. Adopt first reading of an Ordinance adding BMC Chapter 12.27, including the Medical Cannabis Commission's recommendations(Alternative A);
- 3. Adopt a Resolution establishing a ranking process for the selection of additional medical cannabis dispensaries in Berkeley; and
- 4. Refer to the Planning Commission an amendment to BMC Section 23E.16.070 to increase the number of dispensaries permitted from four to six.

Financial Implications: See report

Contact: Beth Greene, Commission Secretary, 981-7484

## b. From: City Manager Recommendation:

- 1. Adopt first reading of an Ordinance amending Berkeley Municipal Code (BMC) Section 12.26.030:
- 2. Adopt first reading of an Ordinance adding BMC Chapter 12.27, including the staff recommendations (Alternative B);
- 3. Adopt a Resolution establishing a ranking process for the selection of additional medical cannabis dispensaries in Berkeley; and
- 4. Refer to the Planning Commission an amendment to BMC Section 23E.16.070 to increase the number of dispensaries permitted from four to six.

Financial Implications: See report

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

# 13. a. Reducing Exposure to Mercury in Dental Amalgam by Informed Consent (Continued from July 16, 2013)

From: Community Health Commission

**Recommendation:** Adopt a Resolution requiring dentists practicing in Berkeley to:

1. Avoid or limit use of mercury dental amalgam, 2. Obtain documented informed consent from the patient before placement of each dental amalgam, and 3. Follow applicable regulations regarding dental amalgam practices and separators preventing mercury from reaching the environment.

Financial Implications: See report

Contact: Janet Berreman, Commission Secretary, 981-5301

### **Action Calendar – Old Business**

13. b. Reducing Exposure to Anthropogenic Mercury (Continued from July 16, 2013) From: Community Environmental Advisory Commission

**Recommendation:** Adopt a Resolution: 1. Strongly supporting local, national, and worldwide efforts to reduce exposure to anthropogenic mercury; 2. Encouraging dentists practicing in Berkeley to limit use of mercury dental amalgam: 3. Requesting DBC to remind dentists that they have a legal obligation to provide fact sheet to new patients and to patients on their initial amalgam application: 4. Requiring dental offices to: a. Post standard Proposition 65 labels or posters regardless of the number of employees, b. Require all dentists to provide the Dental Board of California's Dental Materials Fact Sheet at each dental amalgam application; 5. Directing staff to write a letter to the Dental Board of California to update Dental Material Fact Sheet: 6. Supporting continued education and advisories for Berkeley residents about potential risks associated with consuming fish caught in the Berkeley Marina and exposure to mercury from other sources; 7. Directing staff to provide copies of this resolution to the city's state and federal representatives and to the other cities in Alameda County with a request that they use their authority to take the necessary steps to phase-down the use of mercury in dentistry; 8. Writing to FDA and National Institute of Health (NIH) evaluate the knowledge gaps in risks of dental amalgam; 9. Supporting the United Nations efforts on use of mercury products; 10. Writing to the World Health Organization (WHO) to pledge support for the phase down of use of dental mercury; and, 11. Directing staff to continue educating the community on dental amalgam and other products containing mercury.

Financial Implications: Minimal fiscal impact

Contact: Nabil Al-Hadithy, Commission Secretary, 981-7461

# c. Reducing Exposure to Anthropogenic Mercury (Continued from July 16, 2013) From: City Manager

**Recommendation:** Adopt a Resolution recommending that dentists in Berkeley take specific actions to reduce the use of dental amalgam and educate the public on its risks and benefits; continue education on reducing the exposure dental amalgam and other sources of anthropogenic mercury within the City; distribute the Resolution to the City's state and federal representatives and other cities in Alameda County; and write letters to the U.S. Food and Drug Administration, the National Institute of Health, and the World Health Organization regarding the need for more research on dental amalgam and support for phasing down its use whenever possible.

Financial Implications: Minimal

Contact: Eric Angstadt, Planning and Development, 981-7400; Jane Micallef, Health, Housing, and Community Services, 981-5400

### **Council Action Items**

### 14. Mercury Dental Amalgams

From: Councilmember Arreguin

Recommendation:

- 1. Refer to the Agenda Committee the scheduling of a Work Session on Dental Amalgam.
- 2. Refer to the Work Session and for future City Council discussion all the proposed recommendations, proposals, including the ordinance, by the Community Environmental Advisory Commission, Community Health Commission, City Manager, and City Councilmembers Capitelli, Maio, and Arreguin.

Financial Implications: Staff time

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

# 15. Proposed Council Resolution Regarding Dental Amalgams From: Councilmembers Capitelli and Maio

**Recommendation:** Adopt a Resolution recommending that dentists in Berkeley educate their patients on the risks and benefits of dental amalgams and composite restorations; continue education on dental amalgam and other sources of anthropogenic mercury within the City; distribute the Resolution to the City's state and federal representatives and other cities in Alameda County; and write letters to the U.S. Food and Drug Administration, the National Institute of Health, and the World Health Organization regarding the need for more research on dental amalgam and support for phasing down its use whenever possible.

Financial Implications: Minimal

Contact: Laurie Capitelli, Councilmember, District 5, 981-7150

## **Information Reports**

## 16. Final Status Report- Employee Benefits: Tough Decisions Ahead

From: City Manager

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

# 17. Establish City Manager Evaluation Process Evoking the Brown Act and Contracting with a Firm to Administer the Evaluation

From: Councilmember Worthington

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

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

## **Adjournment**

**NOTICE CONCERNING YOUR LEGAL RIGHTS**: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:

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

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

Agendas and agenda reports may be accessed via the Internet at <a href="http://www.cityofberkeley.info/citycouncil">http://www.cityofberkeley.info/citycouncil</a> and may be read at reference desks at the following locations:

City Clerk Department Libraries:

2180 Milvia Street Main - 2090 Kittredge Street

Tel: 510-981-6900 Claremont Branch – 2940 Benvenue TDD: 510-981-6903

Fax: 510-981-6901 North Branch – 1170 The Alameda

Email: clerk@cityofberkeley.info

#### 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.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



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

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 12, 2013.

Mark Numainville, City Clerk

Mad Morning

### **Communications**

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

### **Advertising Planes**

1. Sabina McMurtry