### **AGENDA**



### BERKELEY CITY COUNCIL MEETING TUESDAY, NOVEMBER 12, 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, 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. Amendment: FY 2014 Annual Appropriations Ordinance From: City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,312-N.S. amending the FY 2014 Annual Appropriations Ordinance No. 7,303–N.S. for fiscal year 2014 based upon recommended re-appropriation of committed FY 2014 funding and other adjustments authorized since July 1, 2013, in the amount of \$42,956,138 (gross) and \$36,004,163 (net).

**First reading vote:** Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Anderson, Bates.

Financial Implications: See report

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

## 2. General Plan Re-designation and Re-zone 1000 - 1010 Gilman From: City Manager

**Recommendation:** Adopt second reading of Ordinance No. 7,313-N.S. amending Berkeley Municipal Code Title 23 (zoning), official zoning map, to rezone a portion of a parcel in west Berkeley from MU-LI to C-W.

**First reading vote:** Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Anderson, Bates.

Financial Implications: See report

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

### **Consent Calendar**

### 3. Settlement of Walsh v. City of Berkeley, ACSC No. RG13 671276 From: City Manager

**Recommendation:** Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. RG13 671276 entitled Walsh v. City of Berkeley, in the amount of \$70,000.

Financial Implications: Public Liability Fund - \$70,000

Contact: Zach Cowan, City Attorney, 981-6950

# 4. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance After Council Approval on November 12, 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:** Mental Health Service Act - \$100.000

Contact: Robert Hicks, Finance, 981-7300

# 5. Adoption of the 2013 California Fire Code with Local Amendments From: City Manager Recommendation:

- 1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Fire Code, Berkeley Municipal Code Chapter 19.48;
- 2. Adopt a Resolution setting forth findings of local conditions that require more stringent regulations than those provided by the 2013 California Fire Code and rescinding Resolution No. 63,930-N.S;
- 3. Adopt a Resolution establishing annual permit fees, inspection and billing rates for inspection of property sites by the Berkeley Fire Department, and rescinding Resolution No. 65,082-N.S. and all Resolutions amendatory thereof;
- 4. In compliance with state law on adopting such codes by reference, hold a public hearing following the first reading and before the second reading, and schedule the public hearing for December 3, 2013.

**Financial Implications:** See report Contact: Gil Dong, Fire, 981-3473

### **Consent Calendar**

# 6. Adoption of Berkeley Building Codes From: City Manager

### Recommendation:

- 1. Adopt first reading of an Ordinance repealing and reenacting the Berkeley Building Code including Appendix J, Residential Code including Appendix H, Electrical, Mechanical, Plumbing including Appendices A, B, D, I, Energy and Green Building Standards Codes in BMC Chapters 19.28, 19.29, 19.30, 19.32, 19.34, 19.36 and 19.37, and adopting related procedural and stricter provisions, and schedule a Public Hearing for the second reading on December 3, 2013 pursuant to state law.
- 2. Adopt a Resolution setting forth findings of local conditions that require more stringent regulations than those provided by the 2013 California Building Code and rescinding Resolution No. 65,083–N.S.

Financial Implications: See report

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

7. Grant Application: W.K. Kellogg Foundation for a Family Engagement Grant From: City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to submit a grant application to the W.K. Kellogg Foundation for a Family Engagement Grant in the amount of \$300,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the projects and appropriation of funding for related expenses, subject to securing the grant, and authorizing \$60,000 in General Funds as match.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

8. Grant Application: Priority Conservation Area Grant Program for the Bay Trail Extension Segment 3, Restroom, and Staging Area Project From: City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to submit a grant application to the Priority Conservation Area (PCA) grant program of the State Coastal Conservancy for \$1,000,000; accept any grants; execute any resulting grant agreements and any amendments; authorize the use of \$380,000 in local match from the Marina Fund for the project; and authorize the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, 981-6700

### **Consent Calendar**

9. Revenue Grant: Urban Areas Security Initiative Grant Program to Fund Acquisition of a 3D Laser Scanner Measurement Device for 3D Forensic Documentation

From: City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Department of Homeland Bay Area Security Urban Areas Security Initiative Grant Program in the amount of \$85,793, to fund the purchase of a Laser Scanner 3D measurement device for use in forensic investigation and operational planning.

Financial Implications: See report

Contact: Michael Meehan, Police, 981-5900

10. Contract: Precision Engineering, Inc. for Sanitary Sewer Rehabilitation Project on Panoramic Way – Phase II

From: City Manager

**Recommendation:** Adopt a Resolution: 1. Approving the plans and specifications for the Sanitary Sewer Project, 12-10617-C, located on Panoramic Way; and 2. Accepting the bid of the lowest responsive and responsible bidder, Precision Engineering, Inc.; and 3. Authorizing the execution of a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$944,386.

Financial Implications: Sanitary Sewer Operation - \$944,386

Contact: Andrew Clough, Public Works, 981-6300

### **Council Consent Items**

11. Zoning Amendments to Encourage New Businesses and Promote Economic Development Downtown and Citywide

From: Councilmembers Arreguin, Capitelli, and Wengraf

**Recommendation:** Refer to the City Manager and Planning Commission to consider the following zoning amendments and make a recommendation back to City Council: 1. Amend BMC Section 23E.68.030 (Commercial Downtown Mixed Use District, C-DMU) as follows: Full Service Restaurants with ZC 2,000 sq. ft. > 4,000 sq. ft. Increase the threshold for approving Full Service Restaurant uses in the Commercial Downtown Mixed Use District (C-DMU) with a Zoning Certificate from 2,000 square feet to 4,000 square feet. Department Stores with ZC up to 10,000 sq. ft. Increase the threshold for approving Department Store uses in the Commercial Downtown Mixed Use District (C-DMU) from 7,500 sq. ft. with a Zoning Certificate to 10,000 sq. ft. with a Zoning Certificate. 2. Develop a new use category and definition for museums and allow museums in the C-DMU either with an AUP or ZC. 3. Request that the City Manager report on the status of Phase 2 zoning amendments to promote economic development. On December 7, 2010 the Berkeley City Council adopted "Encouraging Economic Development and Increasing City Revenue from Business Activity" which referred to staff and the Planning Commission zoning amendments regarding changing use limitations, parking requirements and reducing levels of discretion to encourage new businesses to open up.

Financial Implications: Staff time

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

### **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 – Appeal**

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.

Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes.

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.

### 12. ZAB Appeal: 596 Spruce Street

From: City Manager

**Recommendation:** Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 13-10000021 to construct a new three-story, 2,818 square-foot, single-family dwelling with an average and maximum height of approximately 22' 7" and 33' respectively, on a 9,206 square-foot vacant lot.

Financial Implications: None

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

a. Appeal

1. David Feiten

b. Communications

1. David Feiten

### **Action Calendar - Public Hearing**

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

### Action Calendar – Public Hearing

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.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

# 13. Extend Residential Preferential Parking Permit Program on Two Blocks Along Bancroft Way and Wheeler Street

From: City Manager

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution amending Section 25C and 25J of Resolution No. 56,508-N.S. by adding subsections to extend Residential Preferential Permit Parking on two blocks along Bancroft Way and Wheeler Street.

**Financial Implications:** General Fund - \$1,050 Contact: Andrew Clough, Public Works, 981-6300

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

# 14. City Manager Referral: Add Procedural Due Process to Appeal a Warning for the Second Response Ordinance (Continued from October 29, 2013)

From: Councilmember Worthington

**Recommendation:** Refer to the City Manager that the Second Response Ordinance (BMC Chapter 13.48) be amended to include procedural due process to appeal a warning consistent with the Fifth and the Fourteenth Amendment.

Financial Implications: Minimal

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

### **Action Calendar – New Business**

### 15. Establishment of the Elmwood Business Improvement District

From: City Manager

Recommendation: Conduct a public meeting to review and discuss the

establishment of the Elmwood Business Improvement District.

Financial Implications: See report

Contact: Michael Caplan, Economic Development, 981-7530

# 16. a. Public Health and Mental Health Recommendations Contained in NAACP Town Hall Report

From: Community Health Commission

**Recommendation:** Act on the Public Health and Mental Health recommendations contained in the NAACP (National Association for the Advancement of Colored People) report of August 27, 2013.

Financial Implications: Unknown

Contact: Gail Feldman, Commission Secretary, 981-5232

### **Action Calendar – New Business**

# 16. b. Community Health Commission Endorsement of Berkeley NAACP Town Hall Report

From: City Manager

**Recommendation:** Refer the Community Health Commission's recommendations related to Public Health and Mental Health from the August 27, 2013 NAACP (National Association for the Advancement of Colored People) Town Hall Report to the City Manager's Office for review and possible action.

Financial Implications: See report

Contact: Jane Micallef, Health, Housing and Community Services, 981-5400

### **Council Action Items**

# 17. Support Take Back UC: A Grassroots Organization that Supports UC Students, Workers, Patients, and Neighbors

From: Councilmember Worthington

**Recommendation:** Adopt a Resolution supporting Take Back UC. This grassroots organization of students, workers, patients, alumni, and others that focuses on common sense solutions for the University of California (UC) system. Goals include providing safe staffing, fair pension reform, and more access to education.

Financial Implications: None

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

# 18. Send Letter to Alameda County Board of Supervisors to Pass a Moratorium Against Hydraulic Fracturing

From: Councilmember Worthington

Recommendation: Send a letter to Alameda County Board of Supervisors to pass a

moratorium against hydraulic fracturing.

Financial Implications: None

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

### **Information Reports**

### 19. LPC-NOD: 18 Alvarado Street

From: City Manager

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

### 20. Status Report: Utilization of Public Works Sewer Staff Can Be Improved

From: City Manager

Contact: Andrew Clough, Public Works, 981-6300

### 21. Status Report: Leases Audit: Conflicting Directives Hinder Contract Oversight

From: City Manager

Contact: Andrew Clough, Public Works, 981-6300

### 22. League of California Cities Annual Conference Report

From: Councilmember Moore

Contact: Darryl Moore, Councilmember, District 2, 981-7120

### **Information Reports**

### 23. Alameda County Lead Poisoning Prevention Program From: Councilmember Wengraf

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

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

### Adjournment in memory of:

1. Helen Barber

**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 South Branch – 1901 Russell

#### 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 October 31, 2013.



### 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.

# Item 13: Extend Residential Preferential Parking Permit Program on Two Blocks Along Bancroft Way and Wheeler Street

1. Eric Friedman

### **Public Records Request Issue**

2. Carol Denney

### **Dwight/Telegraph/Parker Sanitation Concerns**

3. Daniel Guerra (2)

### **Albany Landfill**

4. Daniel McMullan

#### **Demolition Ordinance Petition**

5. Nancy Lieblich

### Response to Council's Referral Regarding Drones

6. Police Review Commission