

**ANNOTATED 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

Preliminary Matters

Roll Call: 7:00 p.m. Mayor Bates absent.

Ceremonial Matters: None.

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 5 speakers.

Public Comment on Consent Calendar and Information Items Only: 3 speakers.

Consent Calendar

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

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

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

Action: Adopted second reading of Ordinance No. 7,312-N.S.

Consent Calendar

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

Action: Adopted second reading of Ordinance No. 7,313-N.S.

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

Action: Adopted Resolution No. 66,364–N.S.

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

Action: Approved recommendation.

Consent Calendar

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

Action:

1. Adopted first reading of Ordinance No. 7,314–N.S. Second reading scheduled for December 3, 2013.
2. Adopted Resolution No. 66,365–N.S.
3. Adopted Resolution No. 66,366–N.S.
4. Public hearing scheduled for December 3, 2013.

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

Action:

1. Adopted first reading of Ordinance No. 7,315–N.S. Second reading scheduled for December 3, 2013. Public hearing scheduled for December 3, 2013.
2. Adopted Resolution No. 66,367–N.S.

Consent Calendar

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

Action: Adopted Resolution No. 66,368–N.S.

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

Action: Adopted Resolution No. 66,369–N.S.

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

Action: Moved to Action Calendar. 3 speakers. Adopted Resolution No. 66,370–N.S.

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

Councilmember Worthington absent (not voting) 10:17 p.m. – 10:30 p.m.

Consent Calendar

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

Action: Adopted Resolution No. 66,371–N.S.

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: Approved recommendation.

Action Calendar – Appeal

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. 13-1000021 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: 3 speakers. M/S/C (Wozniak/Arreguin) to adopt Resolution No. 66,372–N.S. affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 13-1000021 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.

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

Action Calendar – Public Hearing

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

Public Testimony: The Vice-Mayor opened the public hearing. 9 speakers. M/S/C (Worthington/Moore) to close the public hearing.

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

Action: M/S/C (Worthington/Arreguin) to adopt Resolution No. 66,373–N.S. 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.

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

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: 22 speakers. Item held over to a future, unspecified date.

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
Action: 2 speakers. Discussion held.
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
- 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
- Action:** 18 speakers. M/S/C (Worthington/Anderson) to schedule a worksession on November 19, 2013 for a presentation to Council by the NAACP.
Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak; Noes – None; Abstain – None; Absent – Bates.
- Action:** 18 speakers. M/S/C (Worthington/Anderson) to refer the scheduling of town hall meetings on the NAACP recommendations and the Health Status Report to an

Action Calendar – New Business

ad hoc subcommittee of the Council, and request information from the City Manager on potential budget impacts of the NAACP recommendations.

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

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

Action: 8 speakers. M/S/C (Maio/Capitelli) to adopt Resolution No. 66,374–N.S. with the resolved clause amended to read, “Now, therefore, be it resolved by the Council of the City of Berkeley that the City of Berkeley does hereby support the goals of Take Back U.C, such as supporting low-income students, improving patient care, stabilizing U.C. finances, and initiating fair pension reform.”

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

Action: M/S/C (Wengraf/Maio) to suspend the rules and extend the meeting to 11:10 p.m.

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

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

Action: 0 speakers. M/S/C (Worthington/Arreguin) to accept revised material for Item 18 from Councilmember Worthington.

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

Action: M/S/Failed (Worthington/Anderson) to adopt the recommendation and send the letter as presented in the revised materials.

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

Council Action Items

Action: M/S/C (Wengraf/Wozniak) to adopt the recommendation and send the letter in the revised material with an amended first sentence as follows, "The Berkeley City Council urges the Alameda County Board of Supervisors to pass a moratorium on hydraulic fracturing - also known as fracking - unless adequate regulatory safeguards are adopted, joining the recent series of county-issued fracking moratoriums across the state."

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

Information Reports

19. **LPC-NOD: 18 Alvarado Street**
From: City Manager
Contact: Eric Angstadt, Planning and Development, 981-7400
Action: Received and filed.
20. **Status Report: Utilization of Public Works Sewer Staff Can Be Improved**
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
Action: Received and filed.
21. **Status Report: Leases Audit: Conflicting Directives Hinder Contract Oversight**
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
Action: Received and filed.
22. **League of California Cities Annual Conference Report**
From: Councilmember Moore
Contact: Darryl Moore, Councilmember, District 2, 981-7120
Action: Received and filed.
23. **Alameda County Lead Poisoning Prevention Program**
From: Councilmember Wengraf
Contact: Susan Wengraf, Councilmember, District 6, 981-7160
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 3 speakers.

Adjournment

Adjourned in memory of:

1. Helen Barber, Supporter of the Arts
2. Frank Moore, Artist
3. Nick Feldman, Disability Activist
4. William Trampleasure, Activist

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

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

Adjourned at 11:09 p.m.

Communications

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

Supplemental Communications and Reports 1

Item 14: City Manager Referral: Add Procedural Due Process to Appeal a Warning for the Second Response Ordinance

7. Isobel Schneider
8. Jeannie Battagin
9. Phyllis Fox
10. Marcia Poole and Laurie Chastain
11. Michelle Pellegrin
12. Carole Pertofsky
13. Martha Smith
14. Janelle Detten
15. Alison Gopnik
16. Joan Barnett
17. George Beier
18. Ken Watson
19. Wende Micco
20. Jeff & Joan Angell

Supplemental Communications and Reports 2

Item 14: City Manager Referral: Add Procedural Due Process to Appeal a Warning for the Second Response Ordinance

- 21. David Shiver – referred to City Manager by Councilmember Wozniak
- 22. Elizabeth Alexandro
- 23. Jacquelyn McCormick, on behalf of the Claremont Elmwood Neighborhood Association
- 24. Dean Metzger, on behalf of the Berkeley Neighborhoods Council
- 25. Karl Reeh, on behalf of the LeConte Neighborhood Association

Supplemental Communications and Reports 3

Item 12: ZAB Appeal: 596 Spruce Street

- 26. David Feiten

Item 14: City Manager Referral: Add Procedural Due Process to Appeal a Warning for the Second Response Ordinance

- 27. Doris & Joseph Willingham

Item 18: Send Letter to Alameda County Board of Supervisors to Pass a Moratorium Against Hydraulic Fracturing

- 28. Revised materials, submitted by Councilmember Worthington

Berkeley Jr. Bears

- 29. Unknown

Economics

- 30. M. Eid Abdallah