

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
TUESDAY, MARCH 25, 2014
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 WOZNAK

Preliminary Matters

Roll Call: 7:02 p.m. Councilmember Anderson absent. Councilmember Anderson present at 7:08 p.m.

Ceremonial Matters

1. National Library Week
2. Crowden School Day in Berkeley – March 25, 2014
3. Mayor announced a special meeting on May 1, 2014 for the purpose of considering the minimum wage item agendaized for April 1, 2014.

City Manager Comments:

1. Emergency Preparedness Fair - April 26, 2014

Public Comment on Non-Agenda Matters: 0 speakers.

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

Consent Calendar

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

Vote: All Ayes.

1. **Settlement of Claims by Pasand Courtyard, LLC and Rustic Restaurants, LLC**
From: City Manager
Recommendation: Adopt a Resolution approving the settlement of claims filed against the City of Berkeley by Pasand Courtyard, LLC and Rustic Restaurants, LLC in the amount of \$22,000.
Financial Implications: Public Liability Fund - \$22,000
Contact: Zach Cowan, City Attorney, 981-6950
Action: Adopted Resolution No. 66,499–N.S.

Consent Calendar

2. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of February 11, 2014 (special and regular) and February 25, 2014 (special and regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

Action: Approved minutes as submitted.

3. City Council Rules of Procedure and Order

From: City Manager

Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to include a new section of the Council agenda entitled "Referred Items" and incorporate procedures pertaining to the new section, and rescinding Resolution No. 66,180-N.S.

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

Action: Adopted Resolution No. 66,500–N.S.

4. Formal Bid Solicitation and Request for Proposal Scheduled for Possible Issuance After Council Approval on March 25, 2014

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 - \$675,000

Contact: Robert Hicks, Finance, 981-7300

Action: Approved recommendation.

5. Grant Application: Assistance to Fire Fighters Grant (AFG) Fire Prevention Program

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to apply for and accept a grant, and any amendments, from the Federal Emergency Management Agency Assistance to Fire Fighters Grant (AFG) Fire Prevention Grant Program in the amount of \$50,000 to fund arson investigation and comprehensive fire education training, as well as a smoke alarm distribution program.

Financial Implications: See report

Contact: Gil Dong, Fire, 981-3473

Action: Adopted Resolution No. 66,501–N.S.

Consent Calendar

6. Substantial Amendment to PY 2013 Annual Action Plan

From: City Manager

Recommendation: Adopt a Resolution approving a substantial amendment to the City of Berkeley's PY 2013 Annual Action Plan which changes the allocation of unspent PY 2013 Emergency Solutions Grant (ESG) funding; and 1. Approving an allocation of \$139,475 in PY 2013 ESG for the Berkeley Food and Housing Project (BFHP) public facility improvement project; and 2. Re-allocating \$1,800 in CDBG funds allocated for Rapid Re-Housing and Homeless Prevention in FY 2014 to project management costs related to the BFHP public facility improvement project; and 3. Authorizing the execution of resultant agreements and amendments with the Berkeley Food and Housing Project for the above-mentioned funds; and 4. Authorizing the City Manager to submit the ESG Substantial Amendment to the U.S. Department of Housing and Urban Development.

Financial Implications: See report

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

Action: Adopted Resolution No. 66,502–N.S.

7. Purchase Order No. 96348 Increase: Alameda County Criminalist Laboratory for Evidence Testing and Analysis Services

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to increase Purchase Order No. 96348 to Alameda County by \$50,000 for a total amount not to exceed \$100,000 to remit payment for FY 2014 invoices submitted to the Police Department by County of Alameda Treasurer for the Alameda County Criminalist Laboratory for evidence testing and analysis services provided in FY 2014 as expenditures exceed the purchase limit currently authorized.

Financial Implications: State - Prop 172 Public Safety Fund - \$50,000

Contact: Michael Meehan, Police, 981-5900

Action: Adopted Resolution No. 66,503–N.S.

8. Purchase Order No. 97161 Increase: Alameda County for Access to County Computerized Law Enforcement Records Systems

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to 1. increase Purchase Order No. 97161 to Alameda County by \$50,000 for a total amount not to exceed \$115,000 for access to County computerized law enforcement records systems; and 2. continue the annual Purchase Order in an amount not to exceed \$445,000 for access to the county computerized records systems for a total of four years from FY 2014 to FY 2017.

Financial Implications: Proposition 172 Fund - \$50,000

Contact: Michael Meehan, Police, 981-5900

Action: Adopted Resolution No. 66,504–N.S.

Consent Calendar

- 9. Contract No. 7966A Amendment: Clean Harbors Environmental Services, Inc. for Hazardous Waste Removal**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 7966A with Clean Harbors Environmental Services, Inc., increasing the amount by \$200,000 for a total not to exceed \$600,000, and extending the term to June 30, 2017.
Financial Implications: See report
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 66,505–N.S.
- 10. Purchase Order: Leader Industries for 4 Emergency Response Ambulances**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a purchase order with Leader Industries for 4 emergency response ambulances, for an amount not to exceed \$972,000.
Financial Implications: Equipment Replacement Fund - \$972,000
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted Resolution No. 66,506–N.S.
- 11. Lease Agreement: sodoi coffee, inc. at 2438 Durant Avenue**
From: City Manager
Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with sodoi coffee, inc. for an initial term of May 1, 2014 through April 30, 2024, with an option to extend for an additional 5 years, for the purpose of operating retail and e-commerce sales of coffee beans, sales and rentals of coffee-making equipment, and seminars at 2438 Durant Avenue in the Telegraph Channing Mall.
Financial Implications: See report
Contact: Andrew Clough, Public Works, 981-6300
Action: Adopted first reading of Ordinance No. 7,329–N.S. Second reading scheduled for April 1, 2014.
- 12. Appointment of Bart Grossman and Nadine Dixon to Mental Health Commission**
From: Mental Health Commission
Recommendation: Adopt a Resolution appointing Bart Grossman in the Albany General Interest category and Nadine Dixon in the Berkeley Special Interest category to the Mental Health Commission for three-year terms beginning March 26, 2014 and ending March 25, 2017.
Financial Implications: None
Contact: Carol Patterson, Commission Secretary, 981-5100
Action: Adopted Resolution No. 66,507–N.S.

Council Consent Items

13. **“Big Splash” on Telegraph Avenue: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Mayor Bates
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$7,500 per Councilmember, including \$7,500 from Mayor Bates, to the Telegraph Business Improvement District (TBID) to supplement funding for Block by Block operations on Telegraph Avenue with funds relinquished to the City's General Fund for this purpose from the discretionary Office Budgets of Mayor Bates and any other Councilmembers who would like to contribute.
Financial Implications: Mayor's Discretionary Fund - \$7,500
Contact: Tom Bates, Mayor, 981-7100
Action: Adopted Resolution No. 66,508–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Wengraf - \$100.
14. **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 Arreguin
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including up to \$500 from Councilmember Arreguín, 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 Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,509–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Arreguin - \$500; Councilmember Wengraf - \$100; Councilmember Anderson - \$100.
15. **Assembly Bill 2405: Ellis Act Reform**
From: Councilmember Arreguin
Recommendation: Adopt a Resolution supporting Assembly Bill (AB) 2405, authored by Assemlymember Tom Ammiano, which would amend the Ellis Act to allow local jurisdictions to impose moratoriums on Ellis Act evictions under specified conditions. Copies of the Resolution are to be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senator Loni Hancock, Assembly Speaker John A. Perez, and Assemblymembers Nancy Skinner and Tom Ammiano.
Financial Implications: None
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Item held over to April 29, 2014.

Council Consent Items

16. **Senate Bill 962, the “Cell Phone Kill Switch” Bill**
From: Councilmembers Worthington and Arreguin
Recommendation: Adopt a Resolution supporting Senate Bill (SB) 962, authored by State Senator Mark Leno, which would require that any new mobile communications device sold in California to be enabled with a remote solution to render the device inoperable when not in the possession of the rightful owner. Copies of the Resolution are to be sent to Governor Jerry Brown, Senate President Pro Tem Darrell Steinberg, Senators Mark Leno and Loni Hancock, Assembly Speaker John A. Perez, and Assemblymember Nancy Skinner
Financial Implications: None
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,510–N.S.
17. **Refer to the Budget Process: Recurring Funding for Alcohol Tobacco and Other Drugs (ATOD) Counselors at Berkeley High School, Longfellow and King Middle Schools**
From: Councilmembers Capitelli, Maio, and Moore
Recommendation: Refer to the budget process half funding for two full-time Alcohol Tobacco and Other Drugs (ATOD) counselors: one full-time counselor for Berkeley High School and one full-time counselor for both King and Longfellow Middle Schools. The other half funding will be paid by Berkeley Unified School District (BUSD).
Financial Implications: \$70,000
Contact: Laurie Capitelli, Councilmember, District 5, 981-7150
Action: Approved recommendation.
18. **San Francisco Lesbian-Gay-Bisexual-Transgender Pride Parade: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**
From: Councilmember Worthington
Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$1,000 per Councilmember, including up to \$1,000 from Councilmember Worthington, to support the Pacific Center with funds relinquished to the City's General Fund for this purpose so that the City of Berkeley be represented at the San Francisco Lesbian-Gay-Bisexual-Transgender (LGBT) Pride Parade and for costs of having a contingent in the Parade from Councilmember Worthington's discretionary Council Office Budget and any other Councilmembers who would like to contribute.
Financial Implications: Councilmember's Discretionary Fund - \$1,000
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Adopted Resolution No. 66,511–N.S. amended to include contributions from the following Councilmembers up to the amounts listed: Councilmember Anderson - \$400; Councilmember Worthington - \$1000.
Vote: Ayes – Maio, Moore, Anderson, Arreguin, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – Capitelli.

Council Consent Items

- 19. City of Berkeley Endorses Alameda County Measure A: Essential Health Care Services Initiative**
From: Councilmembers Worthington and Anderson
Recommendation: Support the renewal of Alameda County Measure A: Essential Health Care Services Initiative.
Financial Implications: None
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation.
- 20. City Manager Referral: Create One Joint Email Address for all Nine Berkeley City Councilmembers**
From: Councilmember Worthington
Recommendation: That the City Manager create one joint email address for all nine members of the Berkeley City Council in order to facilitate easier communication with constituents.
Financial Implications: None
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation.
- 21. Proclamation Honoring Asian Pacific Islander American Heritage Month**
From: Councilmember Worthington
Recommendation: Adopt the Proclamation Honoring May as Asian Pacific Islander American Heritage Month.
Financial Implications: None
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Adopted proclamation.
- 22. Commission on the Status of Women Recommendations for Outstanding Women in Berkeley Event**
From: Councilmember Worthington
Recommendation: Officially approve the Outstanding Women awards given on March 11, 2014 by the Commission on the Status of Women to: Diane Davenport and Sayre Van Young (joint award); Diana E. H. Russell, Ph.D; Kris Perry and Sandy Stier (joint award); Dr. Marilyn P. Wong, MD; Maia Sciupac; and Title IX.
Financial Implications: See report
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Approved recommendation.

Council Consent Items

23. Independent Arts and Media: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Worthington

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, to support the Independent Arts and Media's event to End Child Sexual Abuse (CSA) Now! with funds relinquished to the City's general fund for this purpose that the City of Berkeley is able to provide a community program supporting the end of child sexual abuse, community recognition and education about the preventing, addressing, and ending child sexual abuse, and bring unity among Berkeley residents from Councilmember Kriss Worthington's discretionary Council Office Budget and any other Councilmembers who would like to contribute.

Financial Implications: Councilmember's Discretionary Fund - \$500

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

Action: Adopted Resolution No. 66,512–N.S.

Action Calendar – Appeals

24. ZAB Appeal: 2635 Ashby Avenue

From: City Manager

Recommendation: Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to adopt a negative declaration and approve Use Permit No. 2013-0033 to establish a 5,282-square-foot Full Service Restaurant within an existing two-story commercial building, to exceed the C-E District's numerical limit on such restaurants, to establish incidental service of beer, wine and distilled spirits with food, and to exceed the C-E District's standard operating hours to allow a 12 midnight closing, Friday and Saturday.

Financial Implications: None

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

a. Appeal

1. Stuart & Louise Beattie and Rob Carter on behalf of the Elmwood Neighborhood Association

b. Communications

1. Joanne Harano
2. Holly Hartley

Action: 31 speakers. M/S/C (Moore/Wozniak) to Adopt Resolution No. 66,513-N.S. affirming the decision of the Zoning Adjustments Board (ZAB) to adopt a negative declaration and approve Use Permit No. 2013-0033 to establish a 5,282-square-foot Full Service Restaurant within an existing two-story commercial building, to exceed the C-E District's numerical limit on such restaurants, to establish incidental service of beer, wine and distilled spirits with food, and to exceed the C-E District's standard operating hours to allow a 12 midnight closing, Friday and Saturday.

Vote: All Ayes.

Action Calendar – Public Hearings

25. a. Use Permit No. 2014-0004: Bicycle Repair/Rental and Vocational Training at 90 Bolivar Drive, Aquatic Park

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board's approval of Use Permit No. 2014-0004, subject to the findings of BMC Section 23E.92.090, to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating in the Unclassified (U) District.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 0 speakers.

Action: M/S/C (Moore/Arreguin) to close the public hearing.

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

Councilmember Capitelli absent 8:49 p.m. – 9:55 p.m.

Councilmember Maio absent 8:49 p.m. – 9:59 p.m.

Action: M/S/C (Moore/Wengraf) to adopt Resolution No. 66,514-N.S., as revised by staff in Supplemental Reports #1, affirming the Zoning Adjustments Board's approval of Use Permit No. 2014-0004, subject to the findings of BMC Section 23E.92.090, to occupy a vacant, City-owned building in Aquatic Park for use as a bicycle rental and repair outlet, with community meeting/lecture/classroom space and an incidental café with indoor seating in the Unclassified (U) District.

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

Action: M/S/C (Worthington/Arreguin) to re-open the roll on item 25.a.

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

b. Lease Agreement: Waterside Workshops for the Property at 90 Bolivar Drive, Aquatic Park

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Waterside Workshops for the use and management of the City's property at 90 Bolivar Drive in Aquatic Park for a term of five years with one five-year option.

Financial Implications: See report

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

Action: 0 speakers. M/S/C (Moore/Arreguin) to adopt first reading of Ordinance No. 7,330–N.S. Second reading scheduled for April 1, 2014.

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

Action Calendar – Public Hearings

26. a. Use Permit No. 2014-0005: Youth Musical Theater at 2925-2945 Bolivar Drive, Aquatic Park

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion adopt a Resolution affirming the Zoning Adjustments Board's approval of Use Permit No. 2014-0005, subject to the findings of BMC Section 23E.92.090, to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, in the Unclassified (U) District.

Financial Implications: None

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

Public Testimony: The Mayor opened the public hearing. 9 speakers.

Action: M/S/C (Moore/Maio) to close the public hearing.

Vote: All Ayes.

Action: M/S/C (Moore/Capitelli) to adopt Resolution No. 66,515-N.S., as revised by staff in Supplemental Reports #1, affirming the Zoning Adjustments Board's approval of Use Permit No. 2014-0005, subject to the findings of BMC Section 23E.92.090, to allow two vacant, City-owned buildings at Aquatic Park to be used by a theater company for rehearsal space, classes and workshops, and set design and construction, in the Unclassified (U) District.

Vote: All Ayes.

b. Lease Agreement: Youth Musical Theater Company for the Property at 2925 and 2945 Bolivar Drive, Aquatic Park

From: City Manager

Recommendation: Adopt first reading of an Ordinance authorizing the City Manager to execute a lease agreement with Youth Musical Theater Company ("YMTC") for the use and management of the City's properties at 2925 and 2945 Bolivar Drive in Aquatic Park for a term of five years with one five-year option.

Financial Implications: See report

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

Action: 0 speakers. M/S/C (Moore/Capitelli) to adopt first reading of Ordinance No. 7,331-N.S. Second reading scheduled for April 1, 2014.

Vote: All Ayes.

Recess 9:09 p.m. – 9:21 p.m.

Action Calendar – New Business

27. **Audit: Construction Permits - Monitor Performance and Fee Assessments to Ensure Excellent and Equitable Customer Service**
From: Auditor
Recommendation: Accept the recommendations in the audit report and request that the City Manager report back on September 16, 2014, and every six months thereafter until management reports full implementation of all recommendations.
Financial Implications: See report
Contact: Ann-Marie Hogan, Auditor, 981-6750
Action: 0 speakers. M/S/C (Bates/Capitelli) to accept the recommendations in the audit report and request that the City Manager report back on September 16, 2014, and every six months thereafter until management reports full implementation of all recommendations.
Vote: All Ayes.
28. **Proclamation for Berkeley Police Department's Special Response Team**
From: Police Review Commission
Recommendation: Issue a proclamation congratulating the Berkeley Police Department's Special Response Team and its individual members on their first-place finish in the 2013 Urban Shield competition.
Financial Implications: None
Contact: Katherine Lee, Commission Secretary, 981-4960
Action: Moved to Consent Calendar. Approved proclamation.
Vote: Ayes – Maio, Moore, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – Anderson, Arreguin.

Council Action Items

29. **Opposition to Rail Transport of Hazardous Crude Oil through Berkeley and the East Bay**
From: Councilmembers Maio and Moore
Recommendation: Adopt a Resolution opposing the transport of hazardous crude by rail along the Union Pacific railway through California and the East Bay, and show a short video at the March 25 meeting on the topic.
Financial Implications: Staff time
Contact: Linda Maio, Councilmember, District 1, 981-7110
Action: M/S/C (Capitelli/Arreguin) to accept supplemental materials from Councilmembers Maio and Moore on Item 29.
Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Wozniak, Bates; Noes – None; Abstain – None; Absent – Anderson, Worthington.
Councilmember Anderson absent 9:21 p.m. – 9:23 p.m.
Councilmember Worthington absent 9:21 p.m. – 9:53 p.m.
Action: 25 speakers. M/S/C (Maio/Anderson) to adopt Resolution No. 66,516-N.S., opposing the transport of hazardous crude by rail along the Union Pacific railway through California and the East Bay, as amended in the supplemental item submitted by Councilmembers Maio and Moore, with the understanding that the

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work requested by staff is within existing budgets, and authorizing Councilmember Maio to draft and send the letters listed in the resolution:

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

RESOLUTION TO OPPOSE TRANSPORTATION OF HAZARDOUS MATERIALS ALONG CALIFORNIA WATERWAYS, THROUGH DENSELY POPULATED AREAS, THROUGH THE EAST BAY, AND BERKELEY

WHEREAS California refineries are in the process of securing permits to build rail terminals to import Canadian tar sands and Bakken crude oils from the Dakotas; and

WHEREAS existing rail terminals are securing permits to import Canadian tar sands and Bakken crude oils without any public notice or CEQA review; and

WHEREAS the volume of crude by rail shipments in Northern California increased by 57 percent during 2013 and this growth will continue to skyrocket if the proposed rail terminals are permitted and constructed: and

WHEREAS crude oil, like that coming from the Bakken shale reservoir, is known to be volatile, highly flammable, and contain elevated concentrations of benzene, a potent carcinogen; and

WHEREAS tar sands crude or bitumen is known to be an extremely viscous form of petroleum that will not flow unless heated or diluted with other lighter hydrocarbons that include toxic substances, and is known to be extremely difficult to clean up when spills occur especially in aquatic ecosystems; and

WHEREAS the last few years have seen a dramatic rise in transport of crude by rail, accompanied by a similar rise in spectacular accidents, nearly 100 in 2013; more crude oil was spilled in U.S. rail accidents in 2013 than in the preceding four decades, more than 1.15 million gallons in 2013; and

WHEREAS in July 2013, 72 tanker cars loaded with 2 million gallons of flammable Bakken crude oil derailed in Lac-Mégantic, Canada, causing explosions that destroyed dozens of buildings, killed 47 people, and caused over \$1 billion in damages; and

WHEREAS in July 2010, a tar sands oil pipeline burst and caused more than 1 million gallons of tar sands crude to flow into Michigan's Kalamazoo River, much of which sank to the river bottom and still remains today after \$1 billion in clean-up efforts; and

WHEREAS the National Transportation Safety Board and the Pipeline and Hazardous Materials Safety Administration recently acknowledged the failure of shippers to appropriately classify the contents of crude oil to reflect the hazardous and highly flammable nature of the substances being transported by rail, in particular Bakken crude, and the devastating consequences of a crude oil rail accident including loss of life, property and environmental damage; and

WHEREAS the National Transportation Safety Board, as a result of recent catastrophic crude oil rail accidents, made recommendations to federal agencies to improve rail safety regulations for the transport of crude oil, including requirements for comprehensive worst-case scenario emergency response plans and requirements for testing and documenting the physical and chemical characteristics of hazardous materials being offered for shipment by rail; and

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WHEREAS New York Governor Andrew Cuomo also recognized the risk of transporting volatile crude by rail to the State of New York and its citizens by passing Executive Order #125 directing New York state agencies to conduct a comprehensive review of crude rail transport safety procedures and emergency response preparedness; and

WHEREAS Albany County, New York, recognizing the hazards associated with the rapid increase in crude by rail shipments, issued a moratorium on increases at the Port of Albany, pending a public health investigation; and

WHEREAS increased rail traffic in California from crude oil as well as other fossil fuels such as coal and petcoke will lead to an increase in diesel emissions in communities along rail lines, and exposure to particulate matter from diesel engines has been linked to impaired pulmonary development in adolescents; increased cardiopulmonary mortality; measurable pulmonary inflammation; increased severity and frequency of asthma attacks, emergency room visits, and hospital admissions in children; increased rates of myocardial infarction (heart attack) in adults; increased risk of cancer; and increased asthma and lung disease in children; and

WHEREAS trains delivering crude traveling through the Bay Area will follow routes adjacent to densely populated areas and the San Francisco Bay Estuary and its tributaries, posing a serious threat to this ecosystem which is considered a biodiversity hotspot, sustaining significant aquatic and estuarine species and habitat, and is a treasured icon for millions of Bay Area residents; and

WHEREAS trains delivering crude traveling through the Bay Area will follow routes adjacent to the Sacramento River and the Sacramento-San Joaquin Delta, posing a serious threat to the water supply for most of California; and

WHEREAS hauling crude into California involves traversing some of the most challenging mountain passes in the nation, areas laced with earthquake faults and numerous unsafe old steel and timber bridges over major waterways, greatly increasing the probability of serious accidents; and

WHEREAS a crude-by-rail project, the Phillips 66 Santa Maria Refinery rail spur extension, is currently before San Luis Obispo County for approval, and trains delivering crude for this project would use Union Pacific rail tracks, which follow the Amtrak Capitol Corridor route through the East Bay and Berkeley; and

WHEREAS other refineries and existing rail terminals have similar projects planned to transport hazardous crude oil, coal, and petcoke by rail through our cities; and

WHEREAS given the record of crude-oil rail accidents in recent years, an event such as Lac Mégantic or a derailment and spill could have catastrophic effects to any populated area.

THEREFORE BE IT RESOLVED that the Berkeley City Council opposes using existing Union Pacific rail lines to transport hazardous crude along California waterways, through densely populated areas, through the East Bay and Berkeley, and resolves to:

- File comments in opposition on CEQA documents and any draft permit approvals, such as air permits or zoning changes for transport of crude as they occur;

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- File comments as quickly as possible on the Santa Maria project, which is the first that proposes to bring crude through the Bay Area;
- File comments on the DEIR for the Valero crude-by-rail project (Benecia) within the formal comment period when it is released in March;
- Send a letter to the Contra Costa Board of Supervisors expressing opposition to the proposed Phillips 66 Rodeo facility expansion, which is directly linked to the Santa Maria rail terminal by pipeline and all crude rail terminal expansions proposed at the County's other refineries, and send letters to other city and county boards expressing opposition to other proposed crude by rail terminal facilities;
- Write and submit comments to the U.S. Department of Transportation's anticipated federal rail safety rulemaking regulating the shipment of crude by rail in DOT-111 cars;
- Submit a letter to the Bay Area Air Quality Management District requesting public notice and CEQA review for all air permitting decisions made in connection with fossil fuel rail terminals, including change of use decisions, such as the recent substitution of Bakken crude for ethanol at the Richmond Kinder Morgan Terminal without any public notification or CEQA review;
- Submit a letter to Governor Jerry Brown requesting executive action similar to New York Governor Andrew Cuomo's executive order directing state agencies to conduct a comprehensive review of safety procedures and emergency response preparedness related to shipments of volatile crude oil;
- Commit to fighting crude oil transport through Berkeley and the East Bay utilizing Berkeley's legal staff, working with Berkeley stakeholders and other groups, including filing amicus briefs in support of neighbors and environmental organizations that file lawsuits;
- Address impacts to public health, safety, property, air quality and surface and groundwater caused by the transport of crude oil through Berkeley by actively enforcing applicable local public health, safety, building, electrical, nuisance, and fire codes; engaging in state and federal regulatory processes; and by actively enforcing applicable federal environmental statutes delegated to Berkeley;
- Request that railroads involved in crude oil and other fossil fuel transport proposals make public any plans for new or expanded rail facilities or significant rail traffic volume increases and that the railroad provide representatives to meet periodically with local citizen groups and local government officials from Berkeley to seek mutually acceptable ways to address local concerns;
- Require the railroad to update their emergency response plans with Berkeley to account for the transport of crude oil and other fossil fuels ;
- Through the California Public Utility Commission, assure the CPUC railroad safety program is adequately implemented in Berkeley and other areas that may receive crude by rail shipments, including detection and mitigation of risks;
- Require the railroad to draft road improvement plans for grading, widening, or otherwise providing crossings at intersections that would be impacted by rail traffic increases and require the railroad to pay in full for these upgrades;

Council Action Items

- Alert and communicate our opposition to other cities along the transportation route, support their efforts, and build a coalition;
- Work through the California League of Cities and California League of Counties to articulate opposition;
- Alert Alameda County and our State legislative representatives and lobbyists in Sacramento, and enlist their help;
- Lobby our U. S. Senators and Representative to enlist their help at the federal level.

Vote: All Ayes.

30. **Wearable Video Cameras for Police Officers**

From: Councilmembers Arreguin and Wozniak

Recommendation: Refer to the City Manager and the Police Review Commission to investigate the usage of wearable video cameras for police officers by other jurisdictions, including any reported benefits, attendant issues, and adopted policies, and to provide a report to Council on the issue. A recommendation or proposal is not needed at this time.

Financial Implications: Unknown

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

Action: Moved to Consent Calendar. Councilmember Worthington added as a co-sponsor. Approved recommendation.

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

Council Action Items

31. **City Manager Referral: Questions and Concerns about Western Burrowing Owls and Squirrels in Cesar Chavez Park and about the over 6,000 Disappeared Emails from In Defense of Animals Supporters to City Council From: Councilmember Worthington**
Recommendation: Refer to the City Manager: A). to provide a report on what happened to over 6,000 disappearing emails from In Defense Of Animals supporters; B). to schedule a community meeting for dialogue with concerned members of the public; C). to delay implementation of the pilot plan until after a vote of the City Council; and D). to provide answers to the two sets of questions and one list of alternatives suggested.
Financial Implications: Unknown
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: M/S/C (Maio/Arreguin) to suspend the rules and extend the meeting to 11:15 p.m.
Vote: All Ayes.
- Action:** 14 speakers. M/S/C (Maio/Moore) to request that the City Manager review all considerations and information received and submit a report to the City Council in two months with the results of the evaluation with the understanding that the pilot plan will be delayed.
Vote: All Ayes.
32. **City Manager Referral: Approve a Deferred Payment Plan for Outstanding Fees on Construction of Sequoia Apartment Building at 2441 Haste Street From: Councilmember Worthington**
Recommendation: Approve a deferred payment plan by which the owner of the Sequoia Apartment Building at 2441 Haste St. can pay the remaining building permit fees owed to the City of Berkeley right before obtaining a Certificate of Occupancy.
Financial Implications: See report
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: 2 speakers. M/S/C (Bates/Wozniak) to deny the request for deferred fees.
Vote: Ayes – Maio, Moore, Capitelli, Wozniak, Bates; Noes – Worthington; Abstain – Anderson, Arreguin, Wengraf.

Information Reports

33. **New Location for City Council Meetings**
From: City Manager
Contact: Mark Numainville, City Clerk, 981-6900
Action: Moved to Action Calendar and held over to May 6, 2014 agenda.
34. **FUND\$ Status Report**
From: City Manager
Contact: Donna LaSala, Information Technology, 981-6500
Action: Received and filed. Requested Information Report on the timing and funding for the replacement of the FUND\$ system.

Information Reports

35. **Median Dry-Growth Garden Pilot Project Proposal**
From: Councilmember Arreguin
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Received and filed.
36. **Access to Divisional Islands**
From: City Manager
Contact: Andrew Clough, Public Works, 981-6300
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 0 speakers.

Adjournment

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

Vote: All Ayes.

Adjourned at 11:14 p.m.

Adjourned in Memory of:

1. Judge Henry Ramsey, Former Berkeley Councilmember
2. Maurice Norisse, Former City Employee
3. Matthew Finch

Communications

Gophers/Squirrels at Cesar Chavez Park

1. Kelle Kacmarcik
2. J. Capozzelli

Youth Musical Theater Company

3. Jennifer Boesing
4. Bob Kliger

Vote Clarification

5. Judith Scherr – referred to the City Manager by Councilmember Arreguin.

Dog Park at Cesar Chavez Park

6. Gina Telcocci
7. Gordon Wozniak, District 8

Smokefree Ordinance

8. Carol Denney

Supplemental Communications and Reports 1

Item 19: City of Berkeley Endorses Alameda County Measure A: Essential Health Care Services Initiative

9. Revised materials, submitted by Councilmembers Worthington and Anderson

Item 25a: Use Permit No. 2014-0004: Bicycle Repair/Rental and Vocational Training at 90 Bolivar Drive, Aquatic Park

10. Revised materials, submitted by Planning & Development Department

Item 26a: Use Permit No. 2014-0005: Youth Musical Theater at 2925-2945 Bolivar Drive, Aquatic Park

11. Revised materials, submitted by Planning & Development Department

Item 31: City Manager Referral: Questions and Concerns about Western Burrowing Owls and Squirrels in Cesar Chavez Park and about the Over 6,000 Disappeared Emails from In Defense of Animals Supporters to City Council

12. Michael Graf

Supplemental Communications and Reports 2

Item 24: ZAB Appeal: 2635 Ashby Avenue

13. Verda Delp

14. Julian Alcala

15. Laurent de Janvry

16. Elizabeth Shun

17. Jianne Gimian and Bob Cassidy

18. Lynne Zickerman

19. Marti Grubb

20. Robert Cole and Eleanor Swift

21. Catherine Durand

22. Lucy Smallsreed

23. Poki Namkung

24. Lisa Bruce

25. Chrissy Hoffman

26. Ginger Ogle

27. Donald Riley

28. Michael & Leslie Easterday

29. Karyn Mandan

30. Richard Spohn

31. Mal Warwick

32. Jan Volz-Kelly

Item 29: Opposition to Rail Transport of Hazardous Crude Oil through Berkeley and the East Bay

33. Meaveen O'Connor

34. Dan Leaverton

35. Judy Stamps

36. Holly Landsbaum

37. Ben Burch

38. Dorothea Dorenz

39. Sandy Simon

40. Leslie Hassberg

41. Angharad Jones

42. Shoshanna Howard

- 43. Christophe LaBelle
- 44. Charlene Woodcock
- 45. Roberta Giordano
- 46. Zen Trenholm
- 47. Igor Tregub, on behalf of the Sierra Club Northern Alameda County Group

Item 31: City Manager Referral: Questions and Concerns about Western Burrowing Owls and Squirrels in Cesar Chavez Park and about the Over 6,000 Disappeared Emails from In Defense of Animals Supporters to City Council

- 48. Lila Travis, on behalf of Yggdrasil Urban Wildlife
- 49. Norman La Force, on behalf of the Sierra Club East Bay Public Lands Committee
- 50. Donald Bell
- 51. Elaine Bond
- 52. Jamie Ray
- 53. Jennifer Fearing, on behalf of the Human Society of the United States
- 54. Phillip Price, on behalf of the Golden Gate Audubon Society
- 55. Kelle Kacmarcik, on behalf of WildCare
- 56. Darlene Pratt

Supplemental Communications and Reports 3

Item 24: ZAB Appeal: 2635 Ashby Avenue

- 57. Stuart Flashman

Item 27: Audit: Construction Permits - Monitor Performance and Fee Assessments to Ensure Excellent and Equitable Customer Service

- 58. Presentation, submitted by the Auditor's Office

Item 29: Opposition to Rail Transport of Hazardous Crude Oil through Berkeley and the East Bay

- 59. Revised materials, submitted by Councilmember Maio
- 60. Nancy Rieser
- 61. Unknown

Item 31: City Manager Referral: Questions and Concerns about Western Burrowing Owls and Squirrels in Cesar Chavez Park and about the Over 6,000 Disappeared Emails from In Defense of Animals Supporters to City Council

- 62. Stephanie Thomas
- 63. Unknown

Mudslides/Fracking

- 64. M. Eid Abdallah