

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
MONDAY, DECEMBER 8, 2008  
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:** 7:01 p.m. All present.

### **Ceremonial Matters:**

1. Swearing in of newly elected Councilmembers.

**City Manager Comments:** Moved Item 28, Proposed Downtown Berkeley Bike Station Expansion Project to Action Calendar.

**Public Comment on Non-Agenda Matters: – 5**

**Public Comment on Consent Calendar and Information Items Only: 0**

## **Consent Calendar**

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

1. **Repeal of Ordinance No. 7,039–N.S. and Amendments to the 2008 Berkeley Fire Code**  
**From:** City Manager  
**Recommendation:** Adopt second reading of Ordinance No. 7,066–N.S. 1) repealing Ordinance No. 7,039–N.S. (thereby restoring Ordinance No. 7,003–N.S.); and 2) amending BMC 19.48.020. These amendments will clarify the intent of the code.  
**First Reading Vote:** Ayes: Maio, Moore, Anderson, Capitelli, Olds, Worthington, Wozniak. Absent: Bates.  
**Financial Implications:** See report  
Contact: Debra Pryor, Fire, 981-3473  
**Action:** Adopted second reading of Ordinance No. 7,066–N.S.

## Consent Calendar

- 2. Contract: City of Inglewood – Parking Citation Administration No. 7187, Amendment to Resolution No. 62,956–N.S.**  
**From: City Manager**  
**Recommendation:** Amend Resolution No. 62,956–N.S. dated June 21, 2005 authorizing the contract with the City of Inglewood for parking citation administration services to be the three-year term as originally authorized and match the dates of the actual contract for clarity and accounting purposes. The contract was signed and went into effect November 1, 2006 and shall end on October 31, 2009.  
**Financial Implications:** See report  
Contact: Lisa Caronna, City Manager's Office, 981-7000  
**Action:** Adopted Resolution No. 64,273–N.S.
- 3. Timothy Clement v. City of Berkeley; Settlement**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving the settlement of the Alameda County Superior Court Action No. RG 07 331421 entitled Clement v. City of Berkeley, in the amount of \$50,000.  
**Financial Implications:** Public Liability Fund - \$50,000  
Contact: Zach Cowan, City Attorney's Office, 981-6950  
**Action:** Adopted Resolution No. 64,274–N.S.
- 4. Confirming the Results of the November 4, 2008 General Municipal Election**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution confirming the results of the November 4, 2008 General Municipal Election and declaring the passage of: Measure FF – Library Bond, Measure GG – Fire and Emergency Services Tax, Measure HH – GANN Limit Override, Measure II – Charter Amendment, and Measure JJ – Patients Access to Medical Cannabis Act of 2008.  
**Financial Implications:** None  
Contact: Deanna Despain, City Clerk Department, 981-6900  
**Action:** Adopted Resolution No. 64,275–N.S. and confirmed adoption by the electorate of Ordinance No. 7,067-N.S. (Measure GG) and Ordinance No. 7,068-N.S. (Measure JJ).
- 5. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance in the Next 30 Days**  
**From: City Manager**  
**Recommendation:** Approve the attached new invitation for bid/request for proposal (RFP) that will be, or is planned to be, issued in the next 30 days upon final approval by the requesting department or division.  
**Financial Implications:** General Fund - \$217,329  
Contact: Robert Hicks, Finance, 981-7300  
**Action:** Approved recommendation.
- 6. Safety Members' Pension Fund (SMPF) Annual Report for FYE 2008**  
**From: City Manager**  
**Recommendation:** Approve the Safety Members Pension Fund (SMPF) annual report for fiscal year ended June 30, 2008.  
**Financial Implications:** None

## Consent Calendar

Contact: Robert Hicks, Finance, 981-7300

**Action:** Approved recommendation.

**7. Fee Assessment - State of California Self-Insurance Fund (Workers' Compensation Program)**

**From:** City Manager

**Recommendation:** Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2009 for administering the Workers' Compensation Program, in an amount not to exceed \$165,000.

**Financial Implications:** Workers' Compensation Self-Insurance Fund - \$165,000

Contact: David Hodgkins, Human Resources, 981-6800

**Action:** Adopted Resolution No. 64,276–N.S.

**8. Contracts: Mills Act for 2600 Durant Avenue, 2 Greenwood Common, 1770 Highland Place, 1780 Highland Place, 1790 Highland Place, 1790A Highland Place, and 1536 Oxford Street**

**From:** City Manager

**Recommendation:** Adopt Resolutions directing the City Manager to enter into Mills Act Contracts for the properties located at:

- 1) 2600 Durant Avenue
- 2) 2 Greenwood Common
- 3) 1770 Highland Place
- 4) 1780 Highland Place
- 5) 1790 Highland Place
- 6) 1790A Highland Place
- 7) 1536 Oxford Street

**Financial Implications:** See report

Contact: Dan Marks, Planning and Development, 981-7400

**Action:** Adopted Resolution Nos. 64,277–N.S., 64,278–N.S, 64,279–N.S, 64,280–N.S, 64,281–N.S, 64,282–N.S, and 64,283–N.S.

**9. Installation of Speed Feedback Signs**

**From:** City Manager

**Recommendation:** Approve the installation of speed feedback signs at selected locations throughout Berkeley.

**Financial Implications:** See report

Contact: Claudette Ford, Public Works, 981-6300

**Action:** Approved the installation of speed feedback signs at selected locations throughout Berkeley.

**10. \*\*Continued to December 16, 2008 per City Manager\*\*\*Underground Policy for Rule 20A Monies**

**11. Contract: DELTAWRX Management Consultants for Selection of Interoperable Communications System**

**From:** City Manager

**Recommendation:** Adopt a Resolution authorizing the City Manager to negotiate and execute a contract and any amendments with DELTAWRX Management Consultants for consultant services related to selection of an interoperable communications (radio) system to meet public safety requirements and Federal timelines for implementation, for a total amount of \$82,500 for the period January 1,

## Consent Calendar

2009 to June 30, 2009.

**Financial Implications:** Equipment Replacement Fund – 82,500

Contact: Claudette Ford, Public Works, 981-6300

**Action:** Adopted Resolution No. 64,284–N.S.

**12. Contract: AC Transit for Annual Bus Transit Pass (EasyPass) Program for City Employees**

**From: City Manager**

**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an agreement and any amendments with the Alameda-Contra Costa Transit District (AC Transit) for the continuation of an annual bus transit pass (EasyPass) program for City of Berkeley employees in an amount not to exceed \$200,000 for the period January 1, 2009 to December 31, 2010.

**Financial Implications:** See report

Contact: Claudette Ford, Public Works, 981-6300

**Action:** Adopted Resolution No. 64,285–N.S.

## Council Consent Items

**13. Referral to Budget Process: Violence Prevention and Response Plan**

**From: Councilmember Worthington**

**Recommendation:** Refer the Violence Prevention and Response Plan to the January 2009 public safety workshop and the mid-year budget process.

**Financial Implications:** Unknown

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

Darryl Moore, Councilmember, District 2, 981-7120

**Action:** Approved recommendation.

**14. Proclamation Honoring David and Suki An**

**From: Councilmember Worthington**

**Recommendation:** Adopt a proclamation in honor of David and Suki, owners of Ann's Kitchen, to be presented on December 16, 2008.

**Financial Implications:** None

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

**Action:** Approved recommendation.

**15. Whistleblower Protection Program**

**From: Councilmember Worthington**

**Recommendation:** Refer to the City Manager to explore the creation of a Whistleblower Protection Program for the City of Berkeley.

**Financial Implications:** None

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

**Action:** Approved recommendation.

**16. City of Berkeley Joining Lawsuit to Invalidate Proposition 8**

**From: Councilmembers Worthington and Moore**

**Recommendation:** That the City of Berkeley join San Francisco, Los Angeles and many other cities throughout the state in participating in the lawsuit to invalidate Proposition 8.

**Financial Implications:** None

## Council Consent Items

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

Darryl Moore, Councilmember, District 2, 981-7120

**Action:** Approved recommendation.

**17. The Policy of Appropriateness of Artworks be Revisited by the Arts Commission by the End of Feb 2009**

**From: Councilmember Maio**

**Recommendation:** Request that the Arts Commission revisit the policy of appropriateness of artworks in the Addison Street windows, and public art in general; and consider creating a practice that requires staff to direct any issues or questions regarding appropriateness of public art to the Public Art Subcommittee of the Arts Commission to make the final determination; and request that the Commission complete this work before the end of February.

**Financial Implications:** None

Contact: Linda Maio, Councilmember, District 1, 981-7110

**Action:** Removed from agenda by Councilmember Maio.

## Action Calendar

**18. Presentation: City Auditor's Annual Report for Fiscal Year 2008**

**From: City Auditor**

**Recommendation:** Accept City Auditor's Annual Report for Fiscal Year 2008.

**Financial Implications:** See report

Contact: Ann-Marie Hogan, City Auditor, 981-6760

**Action:** Presentation made. No action taken.

## Action Calendar – Appeals

**19. ZAB Appeal: 1725 University Avenue (Continued from November 18, 2008)**

**From: City Manager**

**Recommendation:** Adopt a Resolution affirming the decision of the Zoning Adjustments Board (ZAB) to approve Use Permit No. 07-1000020 for a new wireless telecommunications facility (with eight antennas and related equipment) for T-Mobile Wireless at 1725 University Avenue, and dismiss the appeal of this decision.

**Financial Implications:** None

Contact: Dan Marks, Planning and Development, 981-7400

**Action:** Councilmember Maio recused herself. Councilmember Arreguin Absent. Discussion held. No action taken. Item continued to December 16, 2008.

**20. HAC Appeal: Retaining Wall at Rear of 935 Regal Road**

**From: City Manager**

**Recommendation:** Adopt a Resolution affirming the Housing Advisory Commission's (HAC) decision to reject the appeal and to sustain the Building Official's Determination not to withdraw her Notice of Violation issued to the owners of 935 Regal Road for construction of a retaining wall and fence without the proper permits and concealing work without an inspection and sustaining the Order to obtain the required permits.

**Financial Implications:** See report

## Action Calendar – Appeals

Contact: Dan Marks, Planning and Development, 981-7400

**Action:** M/S/C (Maio/Capitelli) to adopt Resolution No. 64,286–N.S. Vote: Ayes – Maio, Moore, Anderson, Capitelli, Wengraf, Worthington, Wozniak, Bates; Absent – Arreguin.

## Action Calendar – Public Hearing

### 21. Fee Adjustment: Ambulance User Fee

**From:** City Manager

**Recommendation:** Conduct a public hearing and upon conclusion, adopt a Resolution to adjust the Ambulance User Fee to match the Alameda County's ambulance user fee schedule set and approved by the Alameda County Board of Supervisors effective October 16, 2008, included as an updated addendum to the Ambulance Provider Agreement.

**Financial Implications:** See report  
Contact: Debra Pryor, Fire, 981-3473

**Public Testimony:** The Mayor opened the public hearing. 0 speakers. M/S/C (Maio/Moore) to close the public hearing.

**Action:** M/S/C (Maio/Capitelli) to adopt Resolution No. 64,287–N.S. Vote: Ayes – Maio, Moore, Anderson, Capitelli, Wengraf, Worthington, Wozniak, Bates; Absent – Arreguin.

Recess: 9:09 p.m. – 9:20 p.m.

Arreguin absent: 9:43 p.m. – 10:18 p.m.

## Council Action Calendar

### 22. Appointment of Vice President of the Council

**From:** Mayor Bates

**Recommendation:**

1. Rescind Resolution No. 62,743–N.S and adopt a Resolution establishing a one-year term for the Vice President of the Council to be elected at the first meeting in December every year.
2. Elect the Vice-President of the Council for a one-year term beginning December 8, 2008.

**Financial Implications:** None

Contact: Tom Bates, Mayor, 981-7100

**1 Action:** M/S/C (Capitelli/Moore) to rescind Resolution No. 62,743–N.S and adopt a Resolution No. 64,288–N.S. establishing a one-year term for the Vice President of the Council to be elected at the first meeting in December every year.

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

**2 Action:** M/S/C (Capitelli/Moore) to elect Councilmember Maio as the Vice-President of the Council for a one-year term beginning December 8, 2008.

Vote: Ayes – Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Wozniak,

## Council Action Calendar

Bates; Abstain – Maio.

### 23. **John Yoo: Bush Administration Torture Memos**

#### **From: Peace and Justice Commission**

**Recommendation:** Adopt the following recommendations approved by the Peace and Justice Commission at its July 7, 2008 meeting:

1. Contact Carlos Villareal, Executive Director of the San Francisco Chapter of the National Lawyers Guild at carlos@nlgsf.org and communicate that the City of Berkeley wishes to be listed amongst the signers of the Call to Investigate Professor John Yoo, which is a letter to University of California Chancellor, Robert Birgeneau (Attachment I); and
2. The City should state that no student of U.C. Berkeley should be required to choose between taking a course with Professor John Yoo or waiting another semester to take and complete a required course. If the Law School is to permit Professor Yoo to teach non-elective courses, the school should make available to students the opportunity to take these non-elective courses with another professor during the same semester so as to assure students are not sanctioned or delayed in their fulfillment of non-elective courses due to their distaste for taking a class with someone who wrote memoranda that authorized the use of pain, violence and degrading treatment as a method of treatment of persons held in U.S. custody; and
3. Ask the U.S. Attorney for Northern California to bring charges of war crimes against John Yoo, now teaching in the City of Berkeley at U.C. Berkeley School of Law; and
4. Send another letter in February, 2009 to the then-Attorney General of the United States asking him/her to bring charges of war crimes against John Yoo, if such charges have not yet been brought; and
5. That a letter be sent to the President of the University of California, the Chancellor of U.C. Berkeley and the Dean of U.C. Berkeley School of Law incorporating the language of the above recommendations and advising them of the City's position.

**Financial Implications:** None

Contact: Eric Brenman, Commission Secretary, 981-5114

**1. Action:** M/S/C (Maio/Moore) to reaffirm Resolution 63,613 – N.S. passed March 13, 2007 (with the exception of language regarding the criminal complaint filed in Germany), supporting prosecution of Former Secretary of Defense Donald Rumsfeld and Other Government Officials, including, but not limited, to former Deputy Assistant Attorney General John Yoo and send copies to the Incoming Attorney General to be appointed by President- Elect Obama and the United States Attorney of Northern California, asking that they pursue prosecution as requested in the March, 2007 Resolution

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

## Council Action Calendar

**2. Action:** M/S/C (Maio/Moore) In the event former Deputy Assistant Attorney General John Yoo, is prosecuted and convicted of human rights violations for his participation in drafting the legal memoranda authorizing the use of torture on behalf of the United States government, urge John Yoo's current employer, the University of California, to terminate his tenured faculty status in accordance with faculty protocols.

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

**3. Action:** M/S/C (Maio/Moore) In the event Assistant Attorney General Jay Bybee is prosecuted and convicted of human rights violations for his participation in drafting the legal memoranda authorizing the use of torture on behalf of the United States government, urge the United States House of Representatives to impeach him as United States Federal Judge for the 9th Circuit Court of Appeals.

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

M/S/C (Maio/Anderson) to extend the meeting to 11:30 p.m.

M/S/C (Maio/Moore) to extend the meeting to 11:40 p.m.

### 24. Resolution for an End to Death Sentences in Alameda County

**From: Councilmembers Worthington and Anderson**

**Recommendation:** Adopt a Resolution calling for an end to death sentences in Alameda County.

**Financial Implications:** None

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

Max Anderson, Councilmember, District 3, 981-7130

**Action:** M/S/C (Maio/Worthington) to adopt Resolution No. 64,289–N.S.

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

### 25. Joint Workshop with Berkeley and Oakland City Councils on Community Choice Energy

**From: Councilmembers Worthington and Anderson**

**Recommendation:** Approve participation in a joint workshop, in early 2009, on Community Choice Energy with the Oakland City Council.

**Financial Implications:** None

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

Max Anderson, Councilmember, District 3, 981-7130

**Action:** Continued to December 16, 2008.

## Information Reports

26. **Update on the Medi-Cal Mental Health Interim Audit**  
**From: City Manager**  
Contact: Fred Medrano, Health and Human Services, 981-5100  
**Action:** Received and filed.
27. **LPC-NOD: 2901 Channing Way and 2350 Shattuck Avenue**  
**From: City Manager**  
Contact: Dan Marks, Planning and Development, 981-7400  
**Action:** Received and filed.
28. **Proposed Downtown Berkeley Bike Station Expansion Project**  
**From: City Manager**  
Contact: Matt Nichols, Public Works, 981-6300  
**Action:** Moved to Action Calendar by City Manager. M/S/C (Wozniak/Maio) to direct the City Manager to
1. Extend the grant and request that the City be allowed to transfer the grant funded facilities, at the end of the five-year period if and when the City has another location, to the other location
  2. Enter into a five-year agreement with BART, maximizing the City's contribution of \$60,000 annually, recognizing that there will be a tenant, and with the tenant, if they make money, the City will share in the proceeds.
  3. Examine the prospect, after at least a certain period of time, of the possibility of charging a fee.
  4. Return to Council if BART considers extending the agreement after five years.
  5. Return to Council with budget alternatives for unfunded program costs.
- Vote: All Ayes.
29. **1901-1905 Parker Street & 2543 Martin Luther King Jr. Way, Berkeley - Review of Planning Commission Approval of Tentative Tract Map 7954**  
**From: City Manager**  
Contact: Dan Marks, Planning and Development, 981-7400  
**Action:** Received and filed.

## Public Comment – Including Items Not Listed on the Agenda – 0

### Adjournment – 11:36 p.m.

## Communications

### Item 16: City of Berkeley Joining Lawsuit to Invalidate Proposition 8

1. John L.

### ZAB Decision on Use Permit No. 08-10000055

2. Allen Wagner

## Communications

### **BART/Caltrain**

3. Robert Allen

### **Berkeley Housing Authority/Affordable Housing Associates**

4. Jose Duarte – Referred to City Manager by Councilmember Maio.

### **Arson Fire**

5. Robin Wright
6. Linda Epley

## Supplemental Communications and Reports 1

### **Item 19: ZAB Appeal: 1725 University Avenue**

7. SEEDS Community Resolution Center
8. Wendy Alfsen

### **Item 23: John Yoo: Bush Administration Torture Memos**

- Supplemental material, submitted by the Peace and Justice Commission (see agenda item)

### **Item 24: Resolution for an End to Death Sentences in Alameda County**

9. Peter Seidman and Bonnie Benard
10. Maris Arnold

### **Item 25: Joint Workshop with Berkeley and Oakland City Councils on Community Choice Energy (see agenda item)**

- Supplemental material, submitted by the Berkeley Energy Commission (see agenda item)

### **Item 28: Proposed Downtown Berkeley Bike Station Expansion Project**

- Supplemental material, submitted by Public Works (see agenda item)
11. Hank Resnik
  12. Bakari Kafele (2)
  13. Robert Raburn
  14. Sylvia Paull
  15. Brit Harvey and Jamie Chau
  16. Mark Burdett
  17. Terri Compost
  18. Sara Shendelman
  19. Laura Lackey
  20. Mike Hoey
  21. Kyle Ostapuk
  22. John Carnahan

## **Supplemental Communications and Reports2**

### **Item 14: Proclamation Honoring David and Suki An**

23.23. Kriss Worthington, Councilmember, District 7

### **Item 18: Presentation: City Auditor's Annual Report for Fiscal Year 2008**

24.24. Ann-Marie Hogan, City Auditor

### **Item 19: ZAB Appeal: 1725 University Avenue**

25.25. Michael Barglow, BNAFU

### **Item 23: John Yoo: Bush Administration Torture Memos**

26. Tom Bates, Mayor, Linda Maio, Councilmember, District 1, and Laurie Capitelli, Councilmember, District 5

### **Item 28: Proposed Downtown Berkeley Bike Station Expansion Project**

27. Deborah Badhia, Downtown Berkeley Association

28. Jeffrey Pan

29. Dave Favello, BART Bicycle Advisory Task Force

### **Misc. Communications**

30. Unknown (2)