

**ANNOTATED AGENDA
BERKELEY CITY COUNCIL MEETING
TUESDAY, FEBRUARY 10, 2015
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 – LORI DROSTE

Preliminary Matters

Roll Call: 7:24 p.m. All present.

Ceremonial Matters: None.

City Manager Comments: None.

Public Comment on Non-Agenda Matters: 5 speakers.

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

Consent Calendar

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

Vote: All Ayes.

1. Amending Berkeley Municipal Code Section 2.06.090 (Open Government Ordinance) Related to Reports from Regional Body Representatives

From: City Manager

Recommendation: Adopt second reading of Ordinance No, 7,395-N.S. amending Municipal Code Section 2.06.090 (Open Government) related to reports from City Councilmembers that represent the City on regional bodies.

First Reading Vote: Ayes – Maio, Moore, Capitelli, Wengraf, Droste, Bates; Noes – Anderson, Arreguin, Worthington.

Financial Implications: None

Contact: Mark Numainville, City Clerk, 981-6900

Action: Adopted second reading of Ordinance No. 7,395-N.S.

Consent Calendar

- 2. Amending Open Government Ordinance, Berkeley Municipal Code Section 2.06.070 for Late Reports**
From: Open Government Commission
Recommendation: Adopt second reading of Ordinance No. 7,396-N.S. amending Berkeley Municipal Code Section 2.06.070(E)(1) to call for a "roll call" vote.
First Reading Vote: Ayes – Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Droste, Bates; Noes – Worthington.
Financial Implications: None
Contact: Kristy van Herrick, Commission Secretary, 981-6950
Action: Adopted second reading of Ordinance No. 7,396-N.S.
- 3. Formal Bid Solicitation and Request for Proposal Scheduled for Possible Issuance After Council Approval on February 10, 2015**
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 - \$7,925,000
Contact: Christine Daniel, Finance, 981-7300
Action: Approved recommendation.
- 4. Contract No. 9165B Amendment: Ken Hargis & Associates for Fire Promotional Examinations**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 9165B with Ken Hargis & Associates, increasing it by \$31,000 for a total not to exceed amount of \$104,200 for the period February 1, 2015 to June 30, 2015 for fire promotional examinations for the classifications of Assistant Fire Chief, Battalion Chief and Fire Marshal.
Financial Implications: General Fund - \$31,000
Contact: Gil Dong, Fire, 981-3473
Action: Adopted Resolution No. 66,926–N.S.

Council Consent Items

- 5. Naming of the South Berkeley Library for Tarea Hall Pittman**
From: Councilmembers Maio and Moore
Recommendation: Request that the Library Board of Trustees consider naming the South Berkeley Library for Tarea Hall Pittman.
Financial Implications: Minimal
Contact: Linda Maio, Councilmember, District 1, 981-7110
Action: Councilmember Anderson added as a co-sponsor. Approved recommendation.

Council Consent Items

- 6. Support the Creation of Financial Services by the United States Post Office**
From: Councilmembers Arreguin, Maio, and Wengraf
Recommendation: Adopt a Resolution supporting the creation of financial services by the United States Postal Service. Copies of the Resolution shall be sent to USPS Board of Governors Acting Chairman James H. Bilbray, Members of the Board of Governors Louis J. Guiliano and Ellen C. Williams, Postmaster General Megan J. Brennan, Deputy Postmaster General Ronald A. Stroman, Congresswoman Barbara Lee, Speaker of the U.S. House of Representatives John Boehner, U.S. House of Representatives Minority Leader Nancy Pelosi, U.S. Senators Dianne Feinstein and Barbara Boxer, U.S. Senate Majority Leader Mitch McConnell, U.S. Senate Minority Leader Harry Reid, and President Barack Obama.
Financial Implications: None
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Adopted Resolution No. 66,927–N.S.
- 7. City Manager Referral: Gender Neutral Restrooms**
From: Councilmember Worthington
Recommendation: Refer to the City Manager to create an ordinance making single stall restrooms gender neutral in all public accommodations.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: Councilmembers Moore and Droste added as co-sponsors. Approved recommendation.

Action Calendar – Old Business

- 8. Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras** *(Continued from January 27, 2015 – Item includes revised recommendation.)*
From: Councilmembers Moore, Arreguin, and Maio
Recommendation: Refer to the City Manager to develop a plan to implement the use of dash cameras and body-worn cameras for the Berkeley Police Department. The report should be presented to the City Council within 3 months.
Financial Implications: Unknown
Contact: Darryl Moore, Councilmember, District 2, 981-7120
Action: Moved to Consent Calendar. Referred the item to the Police Review Commission with a request that the commission report back to Council within six months.

Action Calendar – Old Business

9. **Support the National Demands by Ferguson Action** (Continued from January 27, 2015)

From: Councilmember Arreguin

Recommendation: 1. Adopt a motion endorsing the National Demands from Ferguson. 2. Advocate for changes to the Alameda County District Attorney policy to include investigations to all in-custody deaths. 3. Issue a statement of concern and support for people of color and their families who have been affected by injury or death by law enforcement agencies.

Financial Implications: None

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

Action: Councilmember Anderson added as a co-sponsor. Moved to Consent Calendar. Approved the recommendation with Paragraph 1 of Attachment 1 revised as follows:

*1. The De-militarization of Local Law Enforcement across the country
Strict limits on the transfer and use of military equipment to local law enforcement and the adoption of the Stop Militarizing Law Enforcement Act of 2014. ~~The federal government should discontinue the supply of military weaponry and equipment to local law enforcement and immediately demilitarize local law enforcement, including eliminating the use of military technology and equipment.~~*

10. **Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)** (Continued from January 27, 2015 - Item includes revised recommendation.)

From: Councilmember Arreguin

Recommendation:

1. Refer to the Police Review Commission (PRC) and City Manager the attached changes to BPD General Orders C-64, M-2, U-2, and request that they return to the City Council with recommended revisions to the General Orders. The proposed changes are modeled after the Oakland Police Department's recent amendments to their Crowd Control Policy and address issues raised with the police response to the December 6, 2014 Ferguson protests.

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), Specialty Impact Less-Lethal Weapons ("projectiles" or rubber bullets, wooden dowels, stinger grenades, rubber bullets) and over the shoulder baton strikes, are prohibited uses of force in responding to crowd situations, until such time as an investigation is conducted as to the Police response to the December 6, 2014 protests, and a review of General Orders C-64, M-2, and U-2 is completed.

Financial Implications: Unknown

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

Action: Councilmember Anderson added as a co-sponsor. 72 speakers. M/S/C (Arreguin/Anderson) to adopt Recommendation #1 from the revised materials included with the item amended to direct the Police Review Commission to review all police policies and orders and make recommendations as they deem appropriate.

Vote: All Ayes.

Action Calendar – Old Business

Action: M/S/C (Arreguin/Anderson) to adopt Recommendation #2 from the revised materials included with the item amended to read:

2. Adopt a motion declaring as a temporary City of Berkeley policy that the use of chemical agents (tear gas etc.), rubber bullets and other projectiles and over the shoulder baton strikes, are prohibited uses of force in responding to non-violent crowd situations, using the criteria for non-violent demonstrators established by the Council on April 28, 1992, until such time as an investigation by the Police Review Commission is completed regarding the Police response to the December 6, 2014 protests, and a review and revisions to police policy and General Orders are completed.

Vote: All Ayes.

Recess 9:44 p.m. – 9:58 p.m.

11. **Independent Investigation of Police Response to December 6, 2014 Protests** *(Continued from January 27, 2015 - Item includes revised recommendation.)*

From: Councilmember Arreguin

Recommendation: Direct the City Manager to initiate an independent investigation into the police response to protests on December 6, 2014 and to return to Council as soon as possible, but no later than 60 days with a contract to hire a qualified independent investigator. In considering who to select to conduct the investigation, the City Manager should give preference to former police chiefs or law enforcement officials with experience conducting internal investigations. To avoid the appearance of or possibility of conflicts of interests, the City Manager should avoid selecting an individual or firm who previously worked for the Berkeley Police Department or who previously or currently worked for any law enforcement agency in the San Francisco Bay Area. The City Manager shall ensure that the selected individual or firm has no apparent conflicts of interest.

The Council also refers the questions attached to the report for the City Manager and outside investigator to consider in conducting their investigation.

Financial Implications: Unknown

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

Action: Councilmember Anderson added as a co-sponsor. 20 speakers. M/S/C (Arreguin/Maio) to approve the recommendation as written in the revised materials included with the item:

Refer to the Police Review Commission to initiate an investigation into the police response to protests on December 6, 2014; the appropriateness of using tear gas, and other non-lethal munitions, and baton strikes to disperse the crowd; and make recommendations based on what was learned from the incident and what could be improved upon for revised policies and procedures on crowd control, the use of force in crowd control incidents (tear gas, non-lethal munitions, use of batons), as well as policies on mutual aid in First Amendment activity and crowd control incidents.

The Commission should report its recommendations to the City Manager, Chief of Police and City Council no later than six months.

Action Calendar – Old Business

The Council empowers the Commission to produce documents and witnesses for the purposes of the investigation, including using subpoena power in order to compel testimony and documents.

The Council also refers the attached questions to the Police Review Commission to consider in conducting their investigation (Attachment 1).

Vote: All Ayes.

12. **City Manager Referral: Amend the Berkeley Municipal Code to Require City Contractors to Submit an Equal Pay Report** *(Continued from January 27, 2015)*
From: Councilmember Worthington
Recommendation: Refer to the City Manager to amend the Berkeley Municipal Code to require City contractors and subcontractors with 20 more employees to submit a Equal Pay Report.
Financial Implications: Minimal
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
Action: 0 speakers. M/S/C (Worthington/Maio) to hold the item over to March 24, 2015.
Vote: All Ayes.
13. **Georgetown University Energy Prize Semi-Finalist Selection** *(Continued from January 20, 2015)*
From: City Manager
Contact: Eric Angstadt, Planning and Development, 981-7400
Action: Item held over to March 17, 2015.

Action Calendar – New Business

14. **Police and Community Relations: Action Items**
From: City Manager
Recommendation: Discuss and prioritize action items identified by the City Council at the January 20, 2015 worksession.
Financial Implications: None
Contact: Christine Daniel, City Manager, 981-7000
Action: 0 speakers. M/S/C (Bates/Arreguin) to accept revised material from Council member Maio on Item 14.
Vote: All Ayes.

Action: M/S/C (Bates/Worthington) to hold the item over to February 24, 2015 and for the item to be heard at the beginning of the Action Calendar.
Vote: All Ayes.

Action Calendar – New Business

15. Confidential Closed Session Documents

From: City Manager

Recommendation: Review and consider the information provided in response to the Council referral and determine whether to direct staff to develop a policy for closed session documents.

Financial Implications: None

Contact: Zach Cowan, City Attorney, 981-6950

Action: Item 15 held over to February 24, 2015.

16. Evaluation of Possible Ban on New Planting of Certain Tree Species

From: City Manager

Recommendation: Take action to either:

a) Direct the City Manager to proceed with Option 1, and continue the City's current practice regarding tree plantings on City property, which currently do not include Eucalyptus, and Monterey Pine (except at the Marina).

-OR-

b) Adopt a Resolution as described in Option 2 that would ban the new planting of certain tree species on City property.

-OR-

c) Direct the City Manager to develop an ordinance for Council adoption that bans the new planting of certain tree species on both public and private property, and includes enforcement mechanisms.

Financial Implications: See report

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

Action: 4 speakers. M/S/C (Worthington/Moore) to adopt recommendation 16(c) to direct the City Manager to develop an ordinance for Council adoption that bans the new planting of certain tree species on both public and private property, and to include enforcement mechanisms such as implementing the program within the construct of existing fire safety inspections.

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

17. a. Establishment of Disaster Council

From: Disaster and Fire Safety Commission

Recommendation: 1. Establish a Disaster Council, consisting of the City Manager, any of the City senior staff that she believes to be necessary for such a Council, the Mayor and/or such members of the City Council as the City Council deems appropriate, and such members of the public as either the City Manager or City Council deems appropriate with the authority to register, activate, and deploy Disaster Service Workers; 2. Authorize the City Manager to act on behalf of the Disaster Council between meetings of that Council; and 3. Authorize the City Manager to delegate any duties related to the Disaster Council to such members of the City Staff as she deems appropriate.

Financial Implications: None

Contact: David Brannigan, Commission Secretary, 981-3473

Action Calendar – New Business

17. b. Establishment of Disaster Council

From: City Manager

Recommendation: Defer creation of a Disaster Council separate from the Disaster and Fire Safety Commission pending a response from the California Office of Emergency Services (Cal OES) regarding compliance of the City of Berkeley's Disaster and Fire Safety Commission (D&FSC) serving as its Disaster Council.

Financial Implications: None

Contact: Gil Dong, Fire, 981-3473

Action: Item held over to March 24, 2015.

18. a. Amend BMC Chapter 11.60 for Compostable or Recyclable Foodware

From: Zero Waste Commission

Recommendation: Amend Berkeley Municipal Code Chapter 11.60 to encourage the use of reusable foodware and require disposable foodware to be 100% recyclable or compostable.

Financial Implications: See report

Contact: Andy Schneider, Commission Secretary, 981-6300

b. Amending BMC Chapter 11.60 for Compostable or Recyclable Foodware

From: City Manager

Recommendation: Direct the City Manager to analyze the Zero Waste Commission's recommendation; refer the fiscal impacts of the recommendation to the budget process; and report back on the impact to the City's Zero Waste operations of implementing the requirement for compostable or recyclable foodware.

Financial Implications: See report

Contact: Andrew Clough, Public Works, 981-6300

Action: Item 18.b. moved to Consent Calendar. Approved recommendation.

Information Reports

19. City Manager Referral: Create System of Regulation of Rideshare Companies

From: City Manager

Contact: Zach Cowan, City Attorney, 981-6950

Action: Received and filed.

20. Electronic Signatures on City Documents

From: City Manager

Contact: Mark Numainville, City Clerk, 981-6900

Action: Received and filed.

21. City Manager Referral: Police Department LeadsOnline Program

From: City Manager

Contact: Michael Meehan, Police, 981-5900

Action: Received and filed.

Information Reports

22. **Report on Regional Bodies Representation: Oakland Airport-Community Noise Management Forum**
From: Councilmember Arreguin
Contact: Jesse Arreguin, Councilmember, District 4, 981-7140
Action: Received and filed.

Public Comment – Items Not Listed on the Agenda – 6 speakers.

Adjournment in memory of:

1. Rita Bowes Perry
2. Dan Wall

Adjourned at 11:00 p.m.

Communications

Item 14: Police and Community Relations: Action Items

1. Bob Flasher

Gilman Street/Eastshore Freeway Intersection

2. Dorothea Miller

Cell Phone Safety

3. Phoebe Sorgen

Measure D Panel Recommendation

4. Rivka Mason

North Shattuck Farmers' Market Relocation

5. Martin Bourque, on behalf of the Ecology Center
6. Margaret Hasselman
7. Suzanne Delbanco

Support of Peace & Justice Commission Proposal

8. Reem Suleiman, on behalf of the Asian Law Caucus

Housing Stock

9. Avram Gur Arye

Downtown Street Behavior

10. Polly Armstrong, on behalf of the Berkeley Chamber of Commerce

Accessory Dwelling Units

11. Lisa Oglesby

Safety Issues at Willard Park/Middle School

12. David Lerman

Senior Center Repairs/Improvements

13. Commission on Aging

US Economy

14. Patrick Kennedy

Revolution Books

15. Mario Martinez

Supplemental Communications and Reports 1

Item 5: Naming of the South Berkeley Library for Tarea Hall Pittman

16. Charles Austin

Item 14: Police and Community Relations: Action Items

17. Diana Bohn

Supplemental Communications and Reports 2

Item 8: Berkeley Police Department Use of Police Vehicle In-Vehicle and Body-Worn Cameras

Item 9: Support the National Demands by Ferguson Action

Item 10: Amendments to BPD General Orders C-64 (Crowd Control), M-2 (Mutual Aid) and U-2 (Use of Force)

Item 11: Independent Investigation of Police Response to December 6, 2014 Protests

18. Jesse Townley

Item 14: Police and Community Relations: Action Items

19. Robert Lauriston

20. Andrea Prichett

Item 16: Evaluation of Possible Ban on New Planting of Certain Tree Species

21. Marcia Luperini

22. Isabelle Gaston

23. Steve Robey

24. Bob Flasher

25. Barbara Allen, on behalf of Neighbors for Fire Safety

26. Robert Riesenfeld

27. Charlie Bowen

Supplemental Communications and Reports 3

Item 14: Police and Community Relations: Action Items

28. Linda Maio, District 1

29. Democracy for America

30. Berkeley Copwatch

31. Unknown (2)

Item 16: Evaluation of Possible Ban on New Planting of Certain Tree Species

32. Karen Weinstein and Michael Goldhaber

Measure D

33. Berkeley Healthy Child Coalition