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# NEBA News

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*NORTH EAST BERKELEY ASSOCIATION*

*Spring 2014*

★★★★★ *BERKELEY CITY EDITION* ★★★★★

**THURSDAY, JUNE 5<sup>th</sup>, 2014 7:00 PM—NORTHBRAE COMMUNITY CHURCH**

## **A Conversation with City Councilmembers Susan Wengraf and Laurie Capitelli, and City Auditor Ann-Marie Hogan**

- 6:00-7:00 PM Meet and Mingle
- 7:00-9:00 PM A brief introduction followed by Questions from the Audience about New taxes and fees, CalPERS and employee benefits, Crime and false alarms, Redistricting

**NORTHBRAE COMMUNITY CHURCH, PARLOR, 941 The Alameda (at Los Angeles)**  
*Admission is free as always!*

### **President's Message:**

On behalf of the NEBA Board, I would like to extend an invitation to our Spring Meeting, a conversation with three of our elected City officials: our Auditor, Ann-Marie Hogan, and Councilmembers Laurie Capitelli (District 5) and Susan Wengraf (District 6). The focus of the meeting will be on four important issues that impact all Berkeley residents: new taxes and fees; crime and false alarms; skyrocketing pension and health care obligations for City employees and implications for City services; and redistricting. Please come early for a meet and mingle!

### ***New City Audit: "\$52,000 Theft: More Can Be Expected Without Citywide Changes in Culture and Procedures"***

At a recent (April 1st) City Council meeting, Ann-Marie Hogan, our City Auditor, presented an exhaustive 82-page report detailing the absence of "strong cash-handling operations" and "pervasive fraud" throughout the City ranks. The audit, "\$52,000 Theft: More Can Be Expected Without Citywide Changes in Culture and Procedures", is a must-read for Berkeley citizens, and raises the question whether the City should receive *any more dollars for any purpose* until they get a handle on the basic function of cash management – especially in the Parks, Recreation, and Waterfront (PRW) Department.

Despite 179 recommendations by the Auditor since 2002 regarding City-wide cash-handling procedures, "significant weaknesses continue to exist in how City staff handles cash, and thefts have continued to occur, including a theft of at least \$52,000 by a former employee". According to the audit, "the \$52,000 theft of Marina funds likely represents only a fraction of the money stolen." (Note to reader: despite a request, the City would not provide any additional information on this employee). Thousands of dollars have also been documented missing from a concession stand at the Tuolumne Camp store, and lesser amounts at James Kenny Recreation Center, Frances Albrier Community Center, and Willard Pool. The audit provides many new recommendations that our highly competent City Manager has agreed to immediately implement (and in some cases already has); however,

the recommendation for background checks for existing employees who perform cash handling activities has not been warmly received and will evidently take over a year to implement because of the requirement for the bargaining units to “meet and confer” with the City Manager and determine whether a mutual agreement can be hashed out.

The City is very fortunate to have Ms. Hogan and her department to perform audits such as these, and based on the number of staff in the Auditor’s department, we believe the City Manager thinks these reports serve a critical function as well. A major concern Ms. Hogan has is that many oversight positions have not been refilled when employees retire in the affected departments and this “reduces the City’s ability to offer the very programs and services that Council is attempting to save.”

### ***Proposed Rate Increases in Refuse Rate (AKA “Zero-Waste”) of 24.7%***

On May 20<sup>th</sup>, the City Council will vote on a proposed rate hike of approximately 25% for refuse fees. In addition to the 25% increase, there will be a 3% or higher annual inflator. As more of us are more careful than *ever* about the waste we generate, recycling virtually anything and everything, it seems extraordinary that the City would take such draconian steps to raise revenue. In fact, residential waste has probably decreased over the last several years.

A resident can attempt to object to this increase if they are a property owner and submit their written protest by snail mail to the City (don’t forget your stamp on the green envelope!). One can also attend the City Council meeting and protest the fee increase. Unfortunately, this may be an exercise in futility because the City must hear from a majority of property owners who DISAPPROVE of the rate increase and historically most property owners don’t bother. **Isabelle Gaston, PhD**



*3 Happy Turtles in Tilden, S. Robey*

***If you have not yet renewed or joined NEBA, now is the time !*** For over 30 years, your support has enabled NEBA to publish newsletters and present meetings of local interest. No other news medium focuses exclusively on issues concerning our area. Please support us. NEBA is too good to lose!

## **THE FOG OF REDISTRICTING**

**By Barbara Gilbert**

Berkeley's current redistricting process is a foggy mess. For readers, I'll try to clear some of the fog by, first, presenting a timeline of pertinent events and then offering my take on these events.

### **REDISTRICTING HISTORY**

**1986**—District elections established by voter initiative and enshrined in City Charter in response to perceived left v. moderate chaos and neighborhood unfriendliness of at-large Council elections. Boundary lines drawn for eight Council districts. These lines were to provide the template for future boundary adjustments in conjunction with population changes evidenced in the decennial censuses.

**1990 Census**—Minor boundary adjustments.

**2000 Census**—After contentious wrangling which delayed redistricting beyond the December 31, 2001 legal deadline, a redistricting plan was adopted with mostly minor adjustments to boundaries except for the transfer of some Northside student voters and the Hearst Avenue business district from District 6 to campus District 7. Grumblings of discontent from student representatives who wanted more students overall in District 7.

**2004**—Measure I approved by 72% of Berkeley voters amending charter to provide for Ranked Choice Voting for Mayor and Council.

**2008**—Measure II charter amendment adopted by voters extending redistricting deadline to December 31 of the 3<sup>rd</sup> year following the decennial census, starting with the 2010 census.

## 2010 Census Through Today

**March 2011**—2010 Census data released. Shows 9% population increase over ten years, from app. 102,800 to 112,600 residents. Increase is largely students (the impact of Berkeley's vastly increasing student population is the subject for another article). Each Council district must now encompass about 14,000 residents, up from about 13,000. Under existing lines, all district populations deviate substantially from the 14,073 ideal—ranging from a 4.90% to an 18.12% deviation or a 692 undercount in District 2 to a 2550 overcount in District 7.

**2011**—Using Charter guidelines, Council calls for map submittals and attempts to finalize adjusted district lines by April of 2012 in time for November 2012 Council election of four councilmembers. Students claim they are a neglected “community of interest” and need to have a coherent “student district” (Student District). Various plans submitted by community groups, notably by the Berkeley Student District Campaign (BSDC), aligned with the Bates Majority in Council (Bates-- Mayor, Capitelli--District 5, Maio--District 1, Moore--District 2, Wengraf--District 6, Wozniak--District 8). Other competing plans bubble up, sponsored by the Worthington Minority (Worthington--District 7, Arreguin--District 4, Anderson--District 3) and a new aligned student group, United Students District Amendment (USDA).

No timely agreement reached and no sought-after Student District said to be feasible under Charter guidelines.

**January to July 2012**—Decision made to amend City charter guidelines to scrap template of 1986 boundaries, but to continue protection of incumbents, and also to promote “students” as a primary (and the sole) “community of interest” deserving of an enhanced Council district. Measure R so amending City Charter placed on November 2012 ballot. Existing district lines, uncorrected for the 2010 census (the “Old Lines”), thereby remain in place for the November 2012 Council election.

**November 2012**—Measure R approved by 66% of voters. Under both old and new Charter provisions, Council can redistrict itself by simple ordinance without further voter approval, unless certain referendum protest procedures are accomplished.

**2013**--Various redistricting plans submitted under proposed new Measure R Charter rules. Official deadline for plans is March 15, 2013. Bates Majority moves forward with BSDC redistricting plan, giving no serious consideration to other plans, including a plan that includes a West Berkeley-based Council district. Worthington Minority submits various plans through July under the aegis of the United Students District Amendment (USDA).

**December 2013**—Council Majority approves new district lines (the “New Lines”) more or less along the lines proposed by its proxy, the BSDC and in time to meet the December 31, 2013 Charter deadline. Most contentious aspect of New Lines is the restoration to District 6 (Wengraf) of Northside's Hearst Avenue corridor containing some student co-ops and dorms and the Northside business district, and removal of aforesaid from District 7 (Worthington). District 7, the erstwhile new Student District, now has about 86% student-aged residents, slightly less than the Worthington/USDA plan which had about 90% students. All the Council Districts under the the New Lines have less than 1% variance from the equalized 14, 073 standard and are in compliance with one person-one vote principle.

**December 2013/January 2014**—Opponents of the New Lines gather signatures adequate to force the New Lines to a general vote in November 2014. Council has choice of placing New Lines on November 2014 ballot or continuing negotiations with the dissidents.

**February 2014**—The Bates Majority votes to place the New Lines on the November 2014 ballot for voters to decide. Key question—for the November 2014 Council election (four council seats—Maio, Arreguin, Worthington, Wozniak) will the Old Lines or New Lines or some other set of district lines be operative? Council Majority opts to get a definitive legal determination, or declaratory relief, by, of necessity, “suing itself in a friendly lawsuit”.

**March 2014**—New ballot initiative started by Councilmember Arreguin (of Worthington Minority) for the November 2014 election calling for an independent nonpolitical redistricting commission to propose boundaries for elections subsequent to November 2014 and in conjunction with future censuses. This initiative would also repeal Ranked Choice Voting for Council districts. To qualify for the November ballot, this charter amendment requires

11,629 valid signatures by May 8. Such a measure, while offering a new future approach to redistricting and to voting procedures, is a separate issue from the Old Lines/New Lines dispute now being adjudicated and put to the voters.

**March 2014-Present**—Old Lines/New Lines dispute in adjudication in Alameda County Superior Court and decision expected by April 30. Key issue is constitutional—under one person one vote principle, are not Old Lines clearly unconstitutional and New Lines constitutional?

## **WHAT DOES IT ALL MEAN?**

### **The Student District**

It seems to me that the city already effectively had a Student District under the Old Lines District 7. Old District 7 was overwhelmingly student-populated and could have offered and elected a student to Council at any time instead of longtime Councilmember Worthington. So the entire idea of a Student District was a form of political pandering, by all factions, to aroused student leaders who, in turn, may have experienced the issue as a righteous new claim to power they already possessed and/or as a path to more personal political power in the City. The Student District is a new garment on the Old District 7 body.

Students now make up about about one-third of the Berkeley population or about 40,000 students. They reside all over town, but mostly in District 7, with a very sizable presence also in Districts 4 and 8.

The Bates Majority likely viewed an ostensibly new Student District as a way to rid Council of nemesis Worthington and to pursue a different agenda for Telegraph Avenue and the campus area. The Worthington Minority needed to obfuscate the fact that Worthington was not a student and had not necessarily acted in their best interests.

### **The Charter Boundaries**

The old Charter boundaries could, arguably, have been adjusted to reflected 2010 Census population changes and enhance District 7 as a stronger student district, and Measure R trashing the Charter boundary template might actually have been unnecessary. However, there was so much confusion and political calculating, that Measure R was moved by Bates and Arreguin and

approved by Council. Measure R effectively bought time for more political jockeying.

### **An Independent Nonpolitical Redistricting Commission**

Readers need be aware that at at no point in the process (until it was over) did anyone in power call for an independent nonpolitical body to oversee redistricting, nor did anyone in power propose eliminating the legal protections for incumbents even where these produced arbitrary and jagged district lines. The appearance now on the November ballot of this “good government” measure will certainly layer on another level of confusion and fog, and I certainly do question the motives and timing of the proponents.

### **Communities of Interest**

Under the law, so-called communities of interest are to be considered, but not determinative, when redistricting (the main criteria for redistricting must always be equalization of population). A community of interest is a loose concept that can encompass contiguous racial, ethnic, economic and other groups who might justifiably benefit from having a cohesive voting district. In Berkeley's process, only the students were given substantial attention as a community of interest. It is certainly arguable that West Berkeley should have been given more consideration as a community of interest due to its geographic and economic status, especially subsequent to the City's failed attempt to completely re-zone West Berkeley in the losing Measure T of November 2012. But creating a new council district focused on West Berkeley would have completely disrupted the districts of Bates Majority incumbents Maio and Moore and would also have created an entirely new political calculus for other Council districts which would of necessity be affected at the boundaries. West Berkeley was never on the table, and no one from any Council faction ever seriously tried to put it there.

It was also argued by some that certain smaller neighborhoods in Berkeley constituted “communities of interest” that were split up or ill-treated by the redistricting process. However, given the complexities of reapportioning it is almost inevitable that certain smaller community entities might be split. In any event, some of the few affected neighborhoods had self-appointed spokespersons who appeared to be

partisans with a larger/different agenda than neighborhood well-being.

### **The 2012 Council Elections**

In 2012, Councilmembers Moore, Anderson, Capitelli and Wengraf were re-elected under the Old Lines which had not yet been adjusted for population changes. Except possibly for District 5 (Capitelli) which was a close election, it is likely that the use of the Old Lines made little difference in outcome, although since all of these districts are undercount one could say that each of these districts currently has more voting power than warranted by one-person one vote principles. Ranked Choice Voting (RCV) was not a factor in these elections (although RCV did influence the shifting and bizarre political configurations around the 2012 mayoral election). Berkeley voters should note the disaster produced by RCV in Oakland's mayoral race and rue the day they supported it for Berkeley.

### **The 2014 Council Elections**

For the 2014 Council election (Districts 1, 4, 7 and 8), Districts 7 and 8 are likely to be hotly contested, while Districts 1 and 4 will likely see an easy ride for incumbents Maio and Arreguin. The configuration of the district lines matters most for Districts 7 and 8 potential candidates and their Council allies. Remember readers, the Old Lines are patently unconstitutional under one person-one vote principles, and patently illegal under the City Charter requirement of new lines by December 31 of 2013. Complicating matters greatly is Ranked Choice Voting which will surely play a big role in Districts 7 and 8 and is already influencing the various players. Also in District 8, longtime Councilmember Wozniak will not be running for re-election and a whole slew of candidates is emerging ready to play the Ranked Choice game. Meanwhile, candidates cannot officially declare and prepare until the Old Lines/New Lines dispute is legally settled.

The Bates Majority is hoping that the judge will approve the New Lines. The Worthington Minority prefers the unequalized and illegal Old Lines but dare not say so, and obfuscates by calling for a judicial consideration of other redistricting proposals and by initiating the good government redistricting commission initiative.

Under the Old Lines, the population discrepancies have not been equalized. For District 7, Worthington would get to keep the students on Berkeley's Northside, who are ostensibly the more "progressive" students (dorms and coops v. fraternities) and thereby has a better chance of re-election even against an energized student candidate. For George Beier, a longtime political fixture who unsuccessfully ran against Worthington in the past, he would still be in District 7 and unlikely to gain his goal of councilmember against either Worthington or a student. Given no other choices, Beier would prefer the New Lines, where he'd be situated in District 8 with a marginally better chance of success (Beier has been unsuccessfully promoting his own redistricting plan which of course would maximize his own options). For the Bates Majority, the New Lines, by restoring the Hearst Avenue corridor to District 6, give their student allies a better chance of defeating Worthington and installing a Bates Majority student in District 7, and serve the secondary function of restoring a business district to District 6 (alone of Council districts in lacking one).

### **The Judicial Determination**

In my opinion, there is no way a judge would approve the Old Lines for the 2014 Council election as they are patently illegal under the Charter and constitutionally incompatible with numerical population changes. The New Lines were timely approved by the legally-authorized governing body and are likely to be confirmed by the voters in November.

Nor can I see a judge trying to draw or select a new configuration of district lines from among a variety of plans, as this is not the judicial function and no judge would have the expertise or resources to sort through this can of worms.

In sum, my bet is that the New Lines will be judicially approved at least for this 2014 council election. We will find out on April 30, subsequent to press time for this article.

### **The Voter Determination**

Although the current redistricting process has been a disheartening foggy bottom of political maneuvering and pandering by all of the players, I plan to vote YES for the New Lines. Even though I question the timing and motives of proponents, I will consider voting

affirmatively for the redistricting reform measure, but await more details and developments.

To function, our City must absolutely have a viable legal election this fall for Districts 1, 4, 7 and 8. To be

viable and legal, the court must choose the New Lines and the voters must approve them. What happens after that or should the voters not approve the New Lines, remains to be seen.

**Meet one of your neighbors:** Berkeley is a wonderful place to live, in part because of the diverse community of creative thinkers, artists, writers, scientists who live here. One such resident is David Sedlak, who lives in North East Berkeley with his wife, Meg, a daughter who is a junior at Berkeley High, a son in the eighth grade at the ML King Middle School and their dog, Enkidu, who loves jogging. David is a Professor of Civil and Environmental Engineering at UC Berkeley, and some of his areas of research are environmental chemistry, water recycling, natural treatment systems, and reinvention of urban water systems. Meg, also a water quality expert, is an Environmental Scientist at the San Francisco Estuary Institute.



David's book, *Water 4.0: The Past, Present, And Future of the World's Most Vital Resource*, published by Yale University Press, was described in the San Jose Mercury News as "engaging and informative". Margaret Catley-Carlson said in her review in *Nature*, "Sedlak... has contributed a gem to the growing shelf of books on the emerging crisis surrounding water... An erudite romp through two millennia of water and sanitation practice and technology." She continues, "His is an in-depth technical and often political history of water systems with a broad central theme -- techniques for water delivery and wastewater treatment, how they work, and what they cost." More: <http://yalepress.yale.edu/yupbooks/book.asp?isbn=9780300176490>.

I recently enjoyed a discussion with David about our finite water resources, and he told me about the Sustainable Water Infrastructure Tour of the UC Berkeley campus where examples of sustainable water management such as storm water detention ponds and catchment gardens as well as green roofs can be seen now. A map and guide can be seen at [http://strawberrycreek.berkeley.edu/creekmgmt/documents/SustainableWaterTourbooklet\\_000.pdf](http://strawberrycreek.berkeley.edu/creekmgmt/documents/SustainableWaterTourbooklet_000.pdf).

**Sharon Eige**

## RETIREMENT OBLIGATIONS FOR CITY EMPLOYEES SOAR

Imagine you hire one of the best financial management firms in the country. They tell you that you will have a guaranteed rate of return of 7.75%. You think, fantastic. However, a few years after the crash of 2008 the firm contacts you and says things aren't going as well as planned. Despite a lot of pressure on your firm by those in the financial industry to reduce the expected rate of return to a more realistic 3 or 4% because of the known volatility in investment returns, your firm drops it by only .25% to 7.50%. You're disappointed because you were guaranteed 7.75% but the new rate of return is still pretty good. Your friends who work elsewhere are baffled by your gains given the stock market had tanked. They quietly wonder how did you made such incredible returns when the (total) actual market return rate over the last 6 years was approximately 3% – at best. They do some back of the envelope calculations and present the following table to you and ask, "Hey, what is your secret?"

*Investment Returns Variances (2008-2013)*

Period	Assumed rate of return	Actual market rate
2008	7.75%	-5.1%
2009	7.75%	-24.0%
2010	7.75%	13.3%
2011	7.5%	21.7%
2012	7.5%	.1%
2013	7.5%	13.2%

Table from February 25<sup>th</sup> City Council worksession on FY2014 CalPERS update

You tell your friends that your financial management firm is CalPERS and that any investment return variance is picked up by the City, so even back in 2009 when the market was down a whopping 24%, your rate of return was a

guaranteed 7.75%, a variance of 31.75%. One of your friends then says, “Let me get this straight, so taxpayers bear all the investment risk based on these overly rosy assumptions by CalPERS?” Hmmm.

*Impact on City’s Budget due to New Actuarial Models*

New analyses in Sacramento show City employees are living longer and safety (police and fire) workers are retiring at earlier ages. The good news is that the City is finally being forced by CalPERS to acknowledge the impact of these demographic changes that it has long known about. The not so good news is that a larger percentage of the City’s budgetary pie will be sent to CalPERS to invest for employees’ retirement and thus less will be available to pave roads, help the homeless, fix the broken Rose Garden Pergola, etc. Even **without** the new demographic assumptions, this amounts to an additional two million dollars annually – assuming the overly optimistic rate of return of 7.5% each year.

*Dollar Contribution to Employee Pensions Based on Projected Rate Increases (dollars in millions)*

Dollars in Millions	Projected FY 2015	Projected FY 2016	Projected FY 2017	Projected FY 2018	Projected FY 2019	Projected FY 2020
Miscellaneous*	27.1	28.6	29.9	31.2	32.5	33.8
Police	10.5	10.8	11.3	11.8	12.2	12.7
Fire	5.2	5.6	5.9	6.3	6.7	7.0
Total	42.8	45.0	47.1	49.3	51.4	53.5

\* Includes annual \$7.3 million 8% employee contribution which is paid by the City on the employee’s behalf.

In order to balance the budget, where will the two million dollars come from? Since neither the City Council nor the City Manager have shown any real vision or inclination towards negotiating with the bargaining units to share in their escalating retirement or health-care costs (employees pay no premiums), additional cuts in City-wide programs will occur coupled with new taxes and fees. However, if miscellaneous (non-Safety) employees were to pick up even a small portion of the “employee” contribution of 8% of their salary towards their retirement benefits, this would help dig the City out of its hole. Even in liberal Chicago, City employees contribute 8.5%. As it stands, Berkeley taxpayers pay every year the “employer” (27.1 million) share and entire “employee” (7.3 million) share.

In light of the volatility of stock market returns, new analyses of how much the City must contribute to CalPERS will now be based on the market value of assets and not the actuarial value (7.5%). This marks a major change and will ultimately have a significant impact on the financial obligations of City taxpayers. CalPERS is essentially saying that all California cities (not just Berkeley) can no longer report the valuations of their assets based on the pie-in-the-sky 7.5% rate of return but the actual market rate of return. What are the implications of this? To start, the funded ratios, an indicator of short-term solvency, are less. For example, the funded value of pension assets set aside for police drops from 70.6% to 59% and from 81.7% to 68.5% for miscellaneous employees. But more importantly, these valuations will determine contribution rates starting with fiscal year 2016. Thus, a lower valuation will mean a higher contribution rate to CalPERS.

In addition to CalPERS and its new changes, the Governmental Accounting Standards Board (GASB) has imposed new requirements for all state and local governments regarding employer’s accounting and financial reporting for pensions (GASB68). As our City’s Finance Director, Mr. Hicks, outlined in a recent presentation, “these will require that pension liabilities, the difference between projected benefit payments and assets set aside to cover those payments, be on the face of financial statements instead of the notes to financial statements”. Simply put, the \$428.3+ million net (actuarial) pension liability the City presently owes will be displayed more prominently (included in the statement of net assets) and thus the impact of these changes will hopefully result in “more robust disclosures” and “increased transparency” per the intent of GASB68.



**NEBA wants you!** NEBA is inviting a small number of sincere new board members who love Berkeley. Please consider becoming one of us and communicate directly with your neighbors!

