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# NEBA News

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*NORTH EAST BERKELEY ASSOCIATION*

*Spring 2015*

★★★★★ *BERKELEY CITY EDITION* ★★★★★

“The City’s budget is a reflection of City policies, goals, and priorities. The budget process assigns resources to address the goals, objectives, and community priorities set by the City Council.”

Christine Daniels, City Manager



## Down the Garden Path with the Berkeley City Council

### **President’s Message:**

When the parks tax (Measure F) was passed by an overwhelming majority last fall, most residents probably assumed that the revenue raised would go towards finally fixing the dilapidated state of the city’s parks. After all, all the City council members were firmly on board and former Councilmember Wozniak writing in an editorial in *Berkeleyside*, stated “Measure F will provide over \$1 million a year to fix indoor and outdoor facilities that are deteriorating and hazardous”.

What most residents didn’t realize when they voted for Measure F was there are well over \$30 million in park projects that are in need of improvement and that a large portion of the new tax revenue (approximately 1/3) would go towards paying the structural deficit in the Parks Department. (The word “structural deficit” refers to a deficit that persists due to fundamental imbalances.) So while the Parks Department may now have an additional \$1.7 million per year in revenue, \$500,000 of that will go directly towards paying employees and their benefits, and only \$750,000 will be available for major maintenance projects – a very small amount by any measure. The remaining \$450,000 will be spent on “recurring maintenance projects like asphalt replacement, electrical upgrades, exterior painting and irrigation system repairs.”

This is important background for those in the city, and for District 6 residents in particular, who may wonder why another four to five years must pass before the Rose Garden, a city jewel and designated landmark, is made whole again. It is also why the John Hinkel clubhouse in District 5, also a designated landmark but “attractive nuisance” (per Councilmember Capitelli), will never be rebuilt after a fire gutted it this past January.

In a recent presentation to the City Council, Scott Ferris, the Parks Director outlined the spending plan for the \$1.4 million over each of the next five years. Starting sometime in fiscal year 2016, the Rose Garden’s existing trellis will be torn down and a small section of the new trellis will be constructed. This work, in FY2016, will not be paid with revenue from the Parks Tax but rather \$350,000 from Measure WW (a grant from the East Bay Regional Park District). It is not until over four years from now – FY2019 – that money is slated to be spent from Measure F for the Rose Garden (\$1,050,000) for a total cost of \$1.4 million.

I recently inquired about the cost and timeframe. From my vantage point, the cost and the more than four-year time horizon to replace a trellis seemed worthy of question. I was first told by Councilwoman Susan Wengraf’s office that it was a “complicated matter” because the Rose Garden is a designated landmark and any new work must adhere to ADA requirements. In a follow-up conversation with Scott Ferris, he told me that the cost of replacing the trellis would be approximately \$420,000 and making the garden ADA compliant would cost \$500,000 to \$800,000. The total cost of the trellis would therefore be approximately \$350,000 plus \$420,000 or \$770,000 (an amount that still baffles me given it is a wooden structure).

After speaking with Mr. Ferris, I understood how another project in the city was prioritized over the trellis. The James Kenney Community Center in West Berkeley is in dire need of attention, and, in contrast to the Rose Garden, safety is a major issue. It is in such bad shape – and has been ignored for so long – that it literally might collapse. In 2013 it received a “D” (or critical rating) for the condition of its facilities by professional engineers and architects. (Note: there are numerous “C” and “D” ratings of buildings in the city.) Consequently, all Measure F revenues for the first 2 years (FY2016 and FY2017) are earmarked for the demolition and reconstruction of Kenney. What makes the delay in fixing Kenney disturbing is that it serves as a designated emergency shelter. We can only hope the work will be completed before a major earthquake strikes because it will be closed during construction.

So we assumedly must sit patiently for four if not five years before the Rose Garden, a “regional destination” (per the city’s website), is fixed. The neglect of this landmark is symbolic of our city leaders’ indifference to the public good over the past decade with the closing of clubhouses, swimming pools, and senior centers (Table 1). Other parks and recreation centers in Berkeley are not budget priorities either. And sadly, things will continue to continue to get worse regardless of how much our taxes and fees increase every year because of the burgeoning structural deficit.

**Table 1: Reductions in Public Facilities from 2005 to 2015**

	<b>Number of clubhouses</b>	<b>Number of public swimming pools</b>	<b>Number of senior centers</b>
2005	3	4	3
2015	1	2 (warm water pool and Willard pool closed)	2 (West Berkeley Senior Center closed)

Over the past decade there has been an increase of only 26% in funding for the parks compared with the 222% increase in health care spending for city employees (Table 2). The significant increase in health care spending is attributable to the fact that city employees and their families receive effectively free health care – they pay no premiums, no deductibles, and no co-pays although they do pay \$5 per prescription. In contract negotiations with the unions, the city manager and the previous city manager have never pushed for cost-sharing (possibly because they have a conflict of interest – they receive the same benefits as well).

To make matters worse, according to recent statements by the budget manager, starting in FY2018 Berkeley taxpayers will pay an additional annual excise tax of 40% on the health care plans employees receive or approximately \$800,000. This amount will increase annually by the CPI plus 1%. The excise tax is per the Affordable Care Act’s provision for “Cadillac Plans” (health care plans valued at more than \$25,000 for a family). In 2009, President Obama said he wanted to add a penalty to “these really fancy plans that end up driving up costs.”

**Table 2: A Decade of Community Priorities Set by City Council (2005 to 2015)**

	Health care for active employees*	Storm drain maintenance	Dept. of information technology	Office of economic development	Dept. of parks, recreation, and waterfront	Dept. of health, housing, and community services* *
2005 Budget	5.4 million (health and dental)	881,000	3.2 million	2.07 million	19.06 million	39.2 million
2015 Budget	17.4 million (medical only)	825,000	7.5 million	4.03 million	24.01 million	35.8 million
\$ (%)	<b>Increase</b> of 12 million (+222%)	<b>Decrease</b> of 56,000 (-6%)	<b>Increase</b> of 4.3 million (+134%)	<b>Increase</b> of 1.96 million (+94%)	<b>Increase</b> of 4.95 million (+25%)	<b>Decrease</b> of 3.4 million (-8%)

\* There were approximately 200 fewer employees in 2015 than 2005 (actual numbers not provided in budget documents, only full-time equivalents). Nevertheless, there was an increase of 222% in health care costs.

\*\* In FY 2012, the Departments of Health Services and Housing & Community Services merged to become the Department of Health, Housing & Community Services. Note: Budget numbers reflect expenditures from all funds. Gross appropriations were 281 million in 2005 and 364 million in 2015, an increase of 29.5%. 2005 budget numbers are actual, not adopted numbers, reported in the 2006 budget.

Note: The total cost of salaries and benefits for active employees in 2015 is estimated as 225.5 million; 43 million dollars will be spent on city employees’ retirements.

So why isn’t the increase in the amount spent on parks (or community agencies for that matter) proportional to the increase spent on salaries, benefits, and running the city? Why are clubhouses, public swimming pools, and senior centers routinely being closed in Berkeley – one of the richest cities and most highly taxed in all of California? The money is clearly in the city’s budget but City Council has set it aside for other priorities.

In a presentation to council in February on Projections of Future Liabilities, the budget manager stated that over the next 10 years health care costs would increase \$10 million (she emphasized that this was a conservative estimate and didn’t include the new 40% excise tax); and personnel costs will grow \$25 million (assuming no increases in salaries) for a total of \$35 million. (The increase in personnel costs reflects a “fringe benefit rate” that will increase from 66% in 2015 to 90% in 2024. That means for every dollar an employee is paid, an additional 90 cents will go towards the employee’s medical and dental costs, commuter checks, health club memberships, cash-in-lieu, life insurance, shoes, and other benefits.) Assuming no changes are made, by 2030 the fringe benefit rate will well exceed 100%. In other words, for an employee making \$80,000 in salary, an extra \$80,000 must be set aside for their benefits.

***With the general fund (the “discretionary” fund of the city) revenues projected to increase by \$32 million by 2024, it is clear that every dime, plus some, will be needed to cover the increased personnel costs of \$35 million (assuming no salary increases). However, if employees receive even a 1% raise in 2015, 100% of the general fund increases will be expended on the increased personnel costs beginning in FY2017.***

Simply put, growth in obligations to employees outpaces revenues. This warning was issued in the 2005 adopted budget by the then city manager, “The City’s projected revenue growth is not expected to keep up with increases in salaries and benefits – representing a structural deficit...we cannot grow out of this problem by simply adding more revenue.” And in a 2010 audit report, “Employee Benefits: Tough Decisions Ahead”, the city auditor stated that, “Government employee benefits represent a rapidly increasing cost to the City.” In every year’s budget from

2005 through 2015, the City Council has been informed, in one way or the other, that the city cannot “grow out of this problem by increasing revenue”.

In summary, assuming the city manager opts out of negotiating with employees in terms of their health and retirement benefits (they are in contract talks now), the only way the city will be able to pay its employees in the future is by further neglect and/or shutting down of more pools, parks, and senior centers. It doesn't matter how much we say we love our parks. If you care, please contact your city council member, mayor, and friends. We can change the trajectory of our city if we wish to. Isabelle Gaston, PhD

Sources:

[http://www.cityofberkeley.info/uploadedFiles/Manager/Budget/BudgetBookPRINT\\_102313.pdf](http://www.cityofberkeley.info/uploadedFiles/Manager/Budget/BudgetBookPRINT_102313.pdf)

[https://www.cityofberkeley.info/Clerk/City\\_Council/2015/03\\_Mar/City\\_Council\\_03-24-2015\\_-\\_Special\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2015/03_Mar/City_Council_03-24-2015_-_Special_Meeting_Agenda.aspx)

[http://www.cityofberkeley.info/Clerk/City\\_Council/2015/02\\_Feb/City\\_Council\\_02-24-2015\\_-\\_Special\\_Meeting\\_Agenda.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/02_Feb/City_Council_02-24-2015_-_Special_Meeting_Agenda.aspx)

[http://www.cityofberkeley.info/uploadedFiles/City\\_Manager/Level\\_3\\_-\\_General/Adopted06-07Budget\[1\].pdf](http://www.cityofberkeley.info/uploadedFiles/City_Manager/Level_3_-_General/Adopted06-07Budget[1].pdf)

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## **NEW FEES AND MANDATES FOR HOMEOWNERS = PROPERTY TAXATION INCOGNITO**

**By Barbara Gilbert**

Given the City's \$1.2 Billion unfunded liability (resulting from years of fiscal distortions), already-high property taxation level, and cushy relationship with City labor unions whose contracts are the envy of most taxpaying residents, it is getting harder for City officials to justify new tax/bond measures for any but the most fundamental of City needs, such as streets and parks. So we see an increasing reliance by City officials on property-related fees and mandates which are only subject, at best, to the easy-to-override “protest vote” method outlined in Proposition 218 (property owners have to affirmatively vote NO on a confusing mail-in ballot). Usually, these fees are funneled into cleverly named “enterprise funds” or “special funds”, implying that they are somehow separate from the overall city budget, when in fact they cover all employee costs for the specific service as well as huge overhead costs for “management” services provided by e.g. City Manager, Department Manager, City Attorney.

By this method, the City finds new taxpayer funding for real or perceived needs, including escalating employee costs, while leaving the bulk of regular tax revenue available for continued funding of other City costs and as another revenue source for those ever-increasing employee costs, particularly for City employee PERS and health care.

### **Sanitary Sewer Service Rate Increase**

A huge chunk of my bi-monthly EBMUD water bill is allotted to the line item for City of Berkeley Sewer Service. However, according to City figures (see Council Worksession of March 17, 2015), Berkeley's average single family fee is actually on the lower end for seven jurisdictions (\$40.53 for Berkeley v. \$55 average overall).

Per Berkeley city officials and City rate study consultant, current sewer revenues are insufficient to fund sewer system capital improvements, operations and maintenance, particularly because of new requirements imposed (on Berkeley and six other EBMUD-related jurisdictions) by the recent Consent Decree with the federal Environmental Protection Agency (EPA). However, it is worth noting that labor costs for sanitary sewers have increased 90% over the last 10 years, from \$5.1 million to \$9.7 million. To make up the shortfall, in March Council approved a doubling of the average homeowner Sewer Service Fee over the next five years to about \$81 bi-monthly. This doubling of the fee would put Berkeley in the top tier of the rate structure, except for Piedmont, and well over the projected 2020 overall average of \$69. Note that under Prop 218, these and similar property-related fees are only allowed to cover the “cost of the service”, so that the more expansive the definition of the “service” (long term capital improvements, labor, flood control) the more justifiable are higher rates.

However, sewer service rates are now being reconsidered in light of the drought and new water use reduction strictures: since Berkeleyans will likely be using less water, and Berkeley sewer fees are based on water usage, the doubling of rates may actually be deemed inadequate to the needs, and an even larger rate increase might be necessary! To me, the logic here is somewhat spurious as less water use=less strain on system=less service=lower repair costs. Go figure.

Whatever rate increase is finally approved by Council, you can be sure it will be final as the undemocratic “protest vote” method is the order of the day here.

### **Berkeley Energy Saving Ordinance (BESO)**

In 2006, Berkeley voters passed an extremely ambitious and feel-good climate action goal which has regularly been used to justify a grab-bag of policies and ordinance which don't always obviously square with the climate goal—such as adding thousands of new resource-using housing units (See Edlin article below). Since the climate action goal was a gross and not per capita goal of reduced energy use, it is clear that its attainment will recede further away as population increases and normal energy-saving measures are long since implemented.

Along comes BESO—an ordinance requiring building energy audits at time of sale or major improvement for all Berkeley buildings and every 5 to 10 years for non-sale buildings starting in 2016. These audits plus City filing fees will cost at least several hundred dollars. Due to homeowner outrage, the fixed audit schedule for single family homes of 1-4 units has been set aside for three years but, in my opinion, is very likely to be re-included after three years. These required energy and water efficiency audits will purportedly provide property owners and buyers with a building-specific energy road map (i.e. laundry list of specific home energy improvements) and link them to available funding assistance.

The stated idea is to encourage voluntary energy-efficient building improvements and provide links to helpful resources. However, if “voluntary” efforts fall short, City officials will have all the climate action lingo and specific building information on file to mandate costly building retrofits and penalize recalcitrant property owners. Stay tuned!



***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!

### **A Looming Disaster for Property Owners by Ted Edlin**

Predicting the future may be a fool's errand, but the lack of analysis by city staff on the impact of large buildings leads one to speculations on the consequences of these large buildings. Others have covered well the impact on the city by the addition of 1900 plus units already approved or in the pipeline and the 2900 plus that the Association of Bay Area Governments (ABAG) Plan Bay Area One mandate. (Some cities have opted out of their ABAG housing mandate.)

Plan Bay Area projects Berkeley population to increase from current 115,000 to 140,000. There is no historical precedent for this increase. Since 1950 the city population has never exceeded 117,000 and has been as low as 102,000. (Please see Zelda Bronstein's article in the fall 2013 NEBA News for more information on Plan Bay Area: <http://northeastberkeleyassociation.org/Newsletters/NEBA%20Newsletter-fall%202013.pdf>).

Recently EBMUD increased the water supply to the downtown by replacing an 8” pipe with a new 12” pipe. This more than doubles the water supply to the downtown area. There has been no commensurate increase to the sanitary sewer system which is old and in need of replacement in much of the city. This water, when used by additional residents, will have to go into the inadequate existing sewer system. The replacement of the system is just a matter of time and the main source of funding (besides government grants) is property owners who will be asked to approve new bond issues, taxes and fees. Berkeley property owners are already in line for **at least a doubling** of City Sewer Service fees over the next five years. Similarly the water processing plant in Emeryville

run by EBMUD may not have the capacity to deal with the increased water supply from new construction in Berkeley, Oakland, Emeryville, Alameda and elsewhere. If the plant needs to be upgraded it will be EBMUD customers who will bear cost burden. Finally, given the drought emergency, does it make any sense to increase the demand on our shrinking water supply?

There are currently about 20,000 homeowners, 30,000 apartments and maybe 4,000 commercial properties in Berkeley. Add 3000 new apartments and assume a density of two persons/unit and you get an additional 6000 voters to approve new bond issues that the tenants figure they won't have to pay. This is the payoff to the local politicians in power. They can ignore the property owners who support the city bureaucracy.

A brief analysis of the Harold Way proposed 18 story building, which developers say will cost 100 million, should convince you that existing property owners will pay dearly for these new buildings. A 100 million project cost will result in a county property tax of 1.1% or about 1.1 million dollars of which Berkeley will get 1/3rd or \$360,000. Add in Berkeley special assessments, and you get maybe another \$300,000. Then there is the \$26 apartment inspection fee which generates an additional \$28,000, and the business license fee will generate another \$300,000 –thus the city collects about one million in revenue from the project annually.

During construction they will remove dirt for a four story underground garage. This plus the three-five years estimated for construction will generate thousands of truck trips on local streets already in terrible shape. Nowhere is the cost of this wear and tear estimated on the infrastructure taken into account. Voters recently approved a 30 million dollar bond issue for street repair and the city has taken nine million for staff salaries that were previously paid out of the general fund. Should the construction traffic cause streets already in marginal condition to deteriorate so that they need to be reconstructed then the cost today is approximately one million per mile. Thus revenue to the city from the project is paltry compared to the infrastructure replacement cost that will likely be required. While sewer connection fees are large from the developers viewpoint they don't go far in replacing or building required infrastructure.

Who will occupy the buildings? Students will jam into the apartments and are able, as a group living together, to pay higher rents, thereby decreasing housing supply for others. Techies from San Francisco. Old Berkeley residents who don't want to continue in their single family homes? The commute problem for students will be easily solvable. For all others it will be a problem. BART is standing room only during rush hours. AC Transit is slow and doesn't go where you need to go. If you work in Emeryville you can figure out how to get to West Berkeley and use the Emeryville shuttle bus funded by several companies. You can't work in downtown Berkeley because no office buildings are planned, and there won't be until the economics changes. Currently office space in downtown rents between \$2.50 and \$3.00 per square foot. New apartments are renting for \$4.00 and up per square foot. So no developer wants to build office buildings, and there will be no way for these new residents to walk to work. If you are fortunate enough to work for Google/Yahoo etc. you can likely get on a company bus.

This means that there will be lots of bike commuters and people with cars and no place to park them-or people working at home. None of these issues is dealt with in the submissions to the City, by the developer or by the Downtown plan.

What is obvious is that Mark Rhoades who was the city Planning director for a few years is now involved as a consultant to the developers to push their plans through the city bureaucracy and commissions. Ditto for the author of the downtown plan, Matt Taecker. It doesn't look good when the persons drafting the law, or overseeing it, are the ones who are being paid by the developers to get the projects through the bureaucracy they formerly worked for.

When the planning department was asked what cost impact these new buildings would have on the police, fire, health and other departments, I was told that I would have to talk to those departments. They do not return phone calls. It is inconceivable that you can add the fire inspection of thousands of new units without there being an associated substantial cost. Similarly adding 6000 new residents will put a new burden on the police department.

There will certainly be medical issues for our fire department to deal with as well as for Alta Bates hospital. None of these matters has been raised or discussed.

Currently developers can get a big project through the planning department with permits in about a year. However, if you want a second story on your house, plan on two years plus for approvals.

Meanwhile, City officials own up to a 1.2 billion dollar deficit for infrastructure and employee benefits according to *Berkeleyside* and the City Auditor. It will get substantially worse when the Public Employee Retirement System complies with new accounting rules and issues new contribution demands on cities. The city liabilities simply cannot be met by taxing property owners. It is time for the unions to contribute.

#### **SAFETY TIPS:**

- Sign up on <https://local.nixle.com/city/ca/berkeley/> to receive notifications and emergency alerts from the Berkeley Police Department and other local agencies.
- The City of Berkeley is offering free automatic gas shutoff valves: <http://cityofberkeley.info/gasshutoff/>

### **Fair And Impartial Policing In Berkeley by Pat Mapps**

On December 31, 2014, the Berkeley Police Department (BPD) issued General Order (GO) B-4 on the subject of Fair and Impartial policing. This GO reaffirms BPD's commitment to Fair and Impartial Policing (FIP), "clarifies the circumstances in which officers can consider race, ethnicity and other demographics", and attempts to "assure the public that we are providing service and enforcing laws in an equitable way."

There is a great deal to celebrate about this policy that was drafted by BPD itself. The proposed FIP policy underwent a "months-long review" by the Fair and Impartial Policing Subcommittee of the Police Review Commission (PRC). The Subcommittee received input from BPD as well as from various "stakeholders" including some who are convinced that BPD engages in unfair and partial policing. At the conclusion of the review, the PRC recommended that BPD adopt its proposed FIP policy. The City Council made the same recommendation while acknowledging that there was not wholesale "racial profiling" by BPD. The Council's supporting document instead mentioning claims of "individual cases" of racial profiling being reported at a forum on "Racial Profiling by BPD".

Most significantly, the FIP policy goes far beyond "racial profiling"/#BlackLivesMatter by explicitly prohibiting considerations of "race, national origin, gender, age, religion, sexual orientation/identity and socio-economic status in establishing probable cause, or when carrying out other law enforcement activities" It lists two reasonable exceptions that allow race to be considered but requires that officers be able "to articulate specific facts and circumstances that support reasonable suspicion or probable cause." In short, this policy, which reflects what BPD has done, is doing now and intends to continue doing, is exactly how most of us expect BPD officers to behave.

Another piece of good news is that available FIP training recognizes that "bias today is less likely to manifest as explicit bias and more likely to manifest as 'implicit' (or 'unconscious') bias." Furthermore, implicit bias "works outside of conscious awareness and manifests even in people who consciously hold non-prejudiced attitudes." This training has the potential to eliminate any valid instances of "individual cases" that were reported at the aforementioned forum.

Hopefully, BPD's adoption of this policy will give confidence to people who believe their treatment by BPD officers violates this FIP policy that they can complain to the PRC. Any such complaints need not be limited to allegations of "racial profiling" since the FIP policy offers its promise of fairness to everyone.

For more information, see an article in *Delayed Gratification Magazine*, published March 2015:  
<http://static1.squarespace.com/static/54722818e4b0b3ef26cdc085/t/5519b790e4b02e139d0eb460/1427748752819/FIP+in+Delayed+Gratification+Magazine.pdf>

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