

# AGENDA



## BERKELEY CITY COUNCIL MEETING

Tuesday, June 11, 2019

6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

1. Recognition of Susan Hodge
2. Recognition of Hannah and Friends Bikeathon
3. Presentation: East Bay Municipal Utility District

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder*

*of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.*

## **Consent Calendar**

*The Council will first determine whether to move items on the agenda for “Action” or “Information” to the “Consent Calendar”, or move “Consent Calendar” items to “Action.” Items that remain on the “Consent Calendar” are voted on in one motion as a group. “Information” items are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.*

*No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## **Consent Calendar**

### **1. Tax Exemption on Federal Research Grants**

**From: Mayor Arreguin**

**Recommendation:** Adopt a second reading of Ordinance No. 7,655-N.S. to add a subsection to Berkeley Municipal Code Section 9.04.165 to create an exemption on the taxing of business gross receipts relating to federal research grants.

**First Reading Vote:** Ayes – Kesarwani, Davila, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett, Wengraf.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

### **2. Grant from the William and Flora Hewlett Foundation**

**From: City Manager**

**Recommendation:** Adopt a Resolution accepting a \$20,000 grant from the William and Flora Hewlett Foundation for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in the City of Berkeley.

**Financial Implications:** \$20,000 (grant)

Contact: Jordan Klein, Economic Development, 981-7530

## Consent Calendar

- 3. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 11, 2019**  
**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:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 4. FY 2020 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.1729 (17.29 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 5. FY 2020 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0393 (3.93 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 6. FY 2020 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency services for the disabled at \$0.01638 (1.638 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 7. FY 2020 Tax Rate: Business License Tax on Large Non-Profits**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for Business License Tax on large non-profits at \$0.6420 (64.20 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 8. FY 2020 Tax Rate: Fund Disaster Fire Protection (Measure Q)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the procurement of disaster fire equipment at \$0.0125 (1.25 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 9. FY 2020 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0065%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 10. FY 2020 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.05818 (5.818 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.08804 (8.804 cents) per square foot of improvements.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300; David Brannigan, Fire, 981-3473
- 11. FY 2020 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0150%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 12. FY 2020 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0092%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 13. FY 2020 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0075%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 14. FY 2020 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0062%.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300
- 15. FY 2020 Special Tax Rate: Fund the Provision of Library Services**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2272 (22.72 cents) per square foot for dwelling units and \$0.3435 (34.35 cents) per square foot for industrial, commercial, and institutional buildings.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300; Elliot Warren, Library, 981-6100
- 16. Temporary Appropriations FY 2020**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2019, until the effective date of the FY 2020 Annual Appropriations Ordinance.  
**Financial Implications:** See report  
Contact: Henry Oyekanmi, Finance, 981-7300

## Consent Calendar

- 17. Contract: Bay Area Community Resources for the Placement of AmeriCorps Members**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager or her designee to execute an expenditure contract and any amendments or extensions thereto with Bay Area Community Resources in an amount not to exceed \$56,000 for the period July 1, 2019 through June 30, 2020 for the placement of AmeriCorps members.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 18. Contract: Berkeley Unified School District for Workplace Skills Training for YouthWorks Employment Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a sole-source expenditure contract and any needed amendments or extensions with the Berkeley Unified School District (BUSD) to provide workplace skills training to prepare YouthWorks participants for summer employment in an amount not to exceed \$26,694 for the period June 12, 2019 through August 31, 2022.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 19. Request for Proposals to Sell Single Family Home at 1654 Fifth Street to Operate as Homeless Housing**  
**From: City Manager**  
**Recommendation:** Direct the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.  
**Financial Implications:** See report  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 20. Contract No. 9149B Amendment: Advantel Networks assignment to ConvergeOne and for Voice Over IP (VoIP) Telephone System Support and Maintenance**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to amend Contract No. 9149B with ConvergeOne (formerly Advantel Networks) for Voice Over IP (VoIP) telephone system licensing and maintenance, increasing the contract by \$121,538 for a total not to exceed amount of \$1,509,038, from November 15, 2012 to June 30, 2020.  
**Financial Implications:** See report  
Contact: Savita Chaudhary, Information Technology, 981-6500

## Consent Calendar

21. **Contract: NEXGEN Asset Management for Computerized Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract with NEXGEN Asset Management for software hosting, implementation, maintenance and related services for a Computerized Maintenance Management System and Enterprise Asset Management (CMMS/EAM) system, for an amount not to exceed \$1,017,509 for the period commencing on July 12, 2019 through June 30, 2024.  
**Financial Implications:** Various Funds - \$1,017,509  
Contact: Savita Chaudhary, Information Technology, 981-6500
22. **Contract No. 10350 Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10350 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the term to June 30, 2021 and increasing the contract by \$100,000 for a total contract amount not to exceed \$150,000.  
**Financial Implications:** Various Funds - \$100,000  
Contact: Phillip Harrington, Public Works, 981-6300
23. **Contract: Gallagher & Burk, Inc. for Measure T1 Street Improvements Project**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution approving plans and specifications for the Measure T1 Street Improvements, Adeline Street, Hearst Avenue and Milvia Project, Specification No. 19-11278-C; accepting the bid of Gallagher & Burk, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$4,065,906.  
**Financial Implications:** Various Funds - \$4,065,906  
Contact: Phillip Harrington, Public Works, 981-6300
24. **Contract: GHD for Preparation of a Sanitary Sewer Master Plan**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract, and any amendments and extensions with GHD in an amount not to exceed \$940,000 to provide consultant services for the preparation of a Sanitary Sewer Master Plan for the period July 1, 2019 through June 30, 2022.  
**Financial Implications:** Sewer Capital Program Fund - \$940,000  
Contact: Phillip Harrington, Public Works, 981-6300

## Consent Calendar

25. **Contract: Zonar Systems, Inc. for Global Positioning System Telematics Program**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Zonar Systems, Inc. for software hosting, installation of hardware, implementation, maintenance and related services for a global positioning system, for an amount not to exceed \$278,698 for the period commencing on July 12, 2019 through June 30, 2024.  
**Financial Implications:** See report  
Contact: Phillip Harrington, Public Works, 981-6300
26. **Purchase Orders: National Auto Fleet Group for Ten Toyota Prius Prime Plus (PHEV) Sedans**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcwell contract bid procedures, and authorizing the City Manager to execute a purchase order for ten (10) new 2020 Toyota Prius Prime Plus Sedans with National Auto Fleet Group in an amount not to exceed \$296,475.  
**Financial Implications:** Various Funds - \$296,475  
Contact: Phillip Harrington, Public Works, 981-6300
27. **Amending the Commissioners' Manual Regarding Submission of Revised or Supplemental Agenda Material**  
**From: Open Government Commission**  
**Recommendation:** Adopt a resolution revising the Commissioners' Manual to require commissioners and board members be subject to the same procedures as the general public.  
**Financial Implications:** None  
Contact: Emma Soichet, Commission Secretary, 981-6950
28. **Resolution: No U.S. intervention in Venezuela** (*Continued from May 14, 2019. Item contains revised material*)  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a resolution that affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, economic, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela.  
**Financial Implications:** None  
Contact: Bre Slimick, Commission Secretary, 981-7000



## Consent Calendar

**29. Fire Prevention Inspections: Insufficient Resources Strain Code Compliance  
From: Auditor**

**Recommendation:** We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.

**Financial Implications:** See report

Contact: Jenny Wong, Auditor, 981-6750

## Council Consent items

**30. Support AB 1487 – Housing Alliance for the Bay Area**

**From: Mayor Arreguin, and Councilmembers Harrison, Robinson, and Bartlett**

**Recommendation:** Adopt a Resolution in support of AB 1487 (introduced by David Chiu) and to seek amendments from the author. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

**Financial Implications:** None

Contact: Jesse Arreguin, Mayor, 981-7100

**31. Measure O Affordable Housing Bonds and a Request for Proposals from the City's Housing Trust Fund** *(Reviewed by the Land Use, Housing & Economic Development Committee)*

**From: Mayor Arreguin, and Councilmembers Harrison, Hahn, and Droste**

**Recommendation:** Adopt a Resolution: 1. Directing the City Manager to prepare any documents required to use Measure O bond funds and Housing Trust Funds to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects; and 2. Directing the City Manager to release a Request for Proposals (RFP) under the City's Housing Trust Fund (HTF) guidelines for affordable housing development with a priority given to projects meeting certain readiness criteria, to be funded by the balance of the first issuance of Measure O funds (estimated at \$30M) and the Housing Trust Fund that remain after fully funding the projects identified above; and 3. Directing the Measure O Bond Oversight Committee: a. To act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP for both Measure O and existing HTF funds, b. To be responsible for providing both general priority recommendations and project-specific funding recommendations for Measure O bonds to the City Council; and c. To add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member; and 4. Approving certain waivers of the HTF Guidelines to ensure timely funding awards in this funding round and allow for consideration of a Berkeley Unified School District-sponsored educator housing development serving households at up to 120% of Area Median Income.

**Financial Implications:** See report

Contact: Jesse Arreguin, Mayor, 981-7100

## Council Consent Items

- 32. Prioritizing Transit Improvements at MacArthur Maze**  
**From: Mayor Arreguin**  
**Recommendation:** Adopt a Resolution requesting transit priority improvements to mitigate congestion associated with the MacArthur Maze Vertical Clearance Project.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
- 33. Oppose AB 56 – Centralizing Energy Procurement**  
**From: Mayor Arreguin and Councilmember Harrison**  
**Recommendation:** Adopt a Resolution opposing AB 56 (authored by Assemblymember Eduardo Garcia). Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Eduardo Garcia.  
**Financial Implications:** None  
Contact: Jesse Arreguin, Mayor, 981-7100
- 34. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention**  
**From: Mayor Arreguin and Councilmember Harrison**  
**Recommendation:**  
1. Adopt an Ordinance repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project; and  
2. Direct the City Manager to include standard conditions of approval for zoning permits requiring compliance with the Wage Theft Prevention Ordinance, BMC Chapter 13.104.  
**Financial Implications:** Staff time  
Contact: Jesse Arreguin, Mayor, 981-7100
- 35. Opposition to Revision of Title X Family Planning Regulations Proposed by United States Department of Health and Human Services**  
**From: Councilmembers Davila and Harrison**  
**Recommendation:** Adopt a resolution in opposition of the revision of Title X Family Planning Regulations proposed by the U.S. Department of Health and Human Services. The City Clerk is to mail a copy of the resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.  
**Financial Implications:** None  
Contact: Cheryl Davila, Councilmember, District 2, 981-7120

## Council Consent Items

- 36. Budget Referral: Funding for Berkeley Drop-In Center**  
**From: Councilmembers Bartlett and Davila**  
**Recommendation:** Refer \$190,015 annually to the FY 2020 - FY 2021 Budget process to support the Berkeley Drop-In Center, a program of the Alameda County Network of Mental Health Clients.  
**Financial Implications:** \$190,015  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 37. Budget Referral: Funding for Youth Spirit Artworks**  
**From: Councilmembers Bartlett and Davila**  
**Recommendation:** Refer \$198,000 annually to the Budget process to support Youth Spirit Artworks for the BUSD Homeless Student Program: \$55,000 to serve high school aged youth who are in school; the YSA Vocational Arts Program: \$65,000 to serve 130 Berkeley youth with job training services, and for the new YSA Tiny House Village Program: \$78,000 to case manage youth who are in transitional housing services.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 38. FY 2020-21 Budget Referral: Funding for Intercity Services**  
**From: Councilmembers Bartlett and Davila**  
**Recommendation:** That the City Council refer \$203,286 annually to the budget process to support the Intercity Services.  
ICS' Workforce Services Proposal requested was for \$203,286; however, the Commission and the City Manager made a Joint Recommendation for \$101,351.  
**Financial Implications:** See report  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 39. Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay**  
**From: Councilmember Bartlett, Mayor Arreguin, and Councilmember Harrison**  
**Recommendation:** Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.  
**Financial Implications:** To be determined  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130

## Council Consent Items

- 40. Proclamation to Honor June as LGBTQ Pride Month and authorize City Manager to Fly the Rainbow Flag every year on the month of June**  
**From: Councilmembers Bartlett, Droste, and Mayor Arrequin**  
**Recommendation:** Adopt a proclamation to honor June as LGBTQ Pride Month in the City of Berkeley and authorize City Manager to fly the rainbow every year on the month of June.  
**Financial Implications:** None  
Contact: Ben Bartlett, Councilmember, District 3, 981-7130
- 41. Strike Debt Bay Area's Medical Debt Relief Effort in Cooperation with RIP Medical Debt: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmembers Harrison and Bartlett**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Kate Harrison, to Strike Debt Bay Area's Medical Debt Relief Effort (<https://secure.qgiv.com/event/strikedebtbyarea/>), in cooperation with and hosted by RIP Medical Debt, a 501(c)(3) tax-deductible non-profit corporation. Funds would be relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$150  
Contact: Kate Harrison, Councilmember, District 4, 981-7140
- 42. Adopt a Resolution Opposing Anti-Abortion Bills Passed in 2019**  
**From: Councilmembers Hahn, Harrison and Wengraf**  
**Recommendation:** Adopt a Resolution Opposing anti-abortion bills passed in 2019 in Alabama, Mississippi, Ohio, Georgia, Missouri, Kentucky, Arkansas, Iowa, and Utah, and reaffirming the City of Berkeley's commitment to the fundamental right for women to choose whether, when, and how often to bear children.  
**Financial Implications:** None  
Contact: Sophie Hahn, Councilmember, District 5, 981-7150
- 43. Berkeley Art Center Artist Award Luncheon: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Hahn**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember, including \$250 from Councilmember Hahn, to Berkeley Art Center, for the Annual Artist Award Luncheon on Sunday, June 23, 2019 with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Funds - \$250  
Contact: Sophie Hahn, Councilmember, District 5, 981-7150

## Action Calendar

*The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.*

*The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

*Action items may be reordered at the discretion of the Chair with the consent of Council.*

## Action Calendar – Public Hearings

*Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.*

*Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.*

*Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.*

### 44. **FY 2020 Street Lighting Assessments**

#### **From: City Manager**

**Recommendation:** Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, approving the Engineer's Reports, and authorizing the levying and collection of assessments in Fiscal Year 2020.

**Financial Implications:** See report

Contact: Phillip Harrington, Public Works, 981-6300

## Action Calendar

### 45a. Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

#### **From: Housing Advisory Commission**

**Recommendation:** Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

**Financial Implications:** Staff time

Contact: Mike Uberti, Acting Commission Secretary, HHCS (510) 981-5114

## Action Calendar

### 45b. Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants From: Peace and Justice Commission

**Recommendation:** The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.

2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist low-income homeowners and/or tenants residing on the premises with legal matters of forced relocation, expenses, and/or other needs as applicable and appropriate.

4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.

5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

**Financial Implications:** See report

Contact: Bre Slimick, Commission Secretary, 981-7000

## Action Calendar

### 45c. Companion Report: Commission Recommendations Regarding Code Enforcement and Mr. Leonard Powell

**From: City Manager**

**Recommendation:** The City Manager appreciates the concerns identified by the Peace & Justice Commission and Housing Advisory Commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City Manager believes that current City policies, practices and records demonstrate the proper mechanisms are in place to ensure the outcomes each commission wishes and that additional recommendations are not needed. City staff have worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property.

**Financial Implications:** See report

Contact: Paul Buddenhagen, City Manager's Office, 981-7000; Kelly Wallace, Housing and Community Services, 981-5400

## Action Calendar – Public Hearings

### 46. Zoning Ordinance Amendments that apply Inclusionary Housing Regulations to Contiguous Lots under Common Control or Ownership *(Continued from April 30, 2019)*

**From: City Manager**

**Recommendation:** Conduct a public hearing and, upon conclusion, adopt the first reading of Zoning Ordinance amendments that modify Inclusionary Housing Requirements (BMC Section 23C.12.020: Applicability of Regulations) to apply to new residential development projects on contiguous lots under common ownership or control.

**Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, 981-7400

## Action Calendar

### 47. Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021 *(Continued from May 14, 2019)*

**From: Councilmember Davila**

**Recommendation:** Refer to the FY20 (2020/2021) RRV Budget Process for consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing.

Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.

**Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, 981-7120



## Action Calendar

- 48. City Council Comments on the FY 2020 & FY 2021 Proposed Biennial Budget**  
**From: City Manager**  
**Recommendation:** Provide comments on the FY 2020 & FY 2021 Proposed Biennial Budget.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000
- 49. City Council Recommendations on the FY 2020 and FY 2021 Proposed Biennial Budget** (*Continued from May 28, 2019*)  
**From: City Manager**  
**Recommendation:** Provide recommendations on the FY 2020 and FY 2021 Proposed Biennial Budget.  
**Financial Implications:** See report  
Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

## Information Reports

- 50. Referral Response: Tenant Opportunity to Purchase Act (TOPA) Ordinance**  
**From: City Manager**  
Contact: Kelly Wallace, Housing and Community Services, 981-5400
- 51. Animal Care Commission 2019 Work Plan**  
**From: Animal Care Commission**  
Contact: Amelia Funghi, Commission Secretary, 981-6600
- 52. FY 2019-20 Commission on the Status of Women Work Plan**  
**From: Commission on the Status of Women**  
Contact: Shallon Allen, Commission Secretary, 981-7000

## Public Comment – Items Not Listed on the Agenda

### Adjournment

**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.cityofberkeley.info/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.cityofberkeley.info/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department  
2180 Milvia Street  
Tel: 510-981-6900  
TDD: 510-981-6903  
Fax: 510-981-6901  
Email: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info)

Libraries:  
Main - 2090 Kittredge Street  
Claremont Branch – 2940 Benvenue  
West Branch – 1125 University  
North Branch – 1170 The Alameda  
South Branch – 1901 Russell

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

~~~~~  
***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 30, 2019.***

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

## Communications

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.*

### **Item 10: FY 2020 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)**

1. Disaster and Fire Safety Commission

### **Item 28: Resolution: No U.S. intervention in Venezuela**

2. russbumper (3)

### **Item 39: Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay**

3. Margy Wilkinson, on behalf of Friends of Adeline

### **Item 50: Referral Response: Tenant Opportunity to Purchase Act (TOPA) Ordinance**

4. Seema Rupani, on behalf of East Bay Community Law Center

### **Unsafe Intersection – University at Acton**

5. Diana Maria Rossi

### **Traffic Circle at Fulton and Stuart**

6. Pam Speich

### **Partnership with Dura Municipality Palestine**

7. Ahmed A.H. Swaitti

### **Gotta Give Them Hope Event**

8. John Bauters

### **Uncollected Garbage at 2110 Haste**

9. Martin Alperen

### **Ban Waste Initiative**

10. Sundaresh Begur

### **Safety Net Hospital**

11. Fred Dodsworth

### **Mama Washington Event**

12. Adriana Betti

### **BART Development**

13. David Lerman
14. Marilyn Margulius
15. Judy Massarano
16. Meryl Siegal
17. Barbara Fisher
18. Berkeley Citizens Action Steering Committee

**Living Trust Definition**

- 19. Joann Sullivan
- 20. Julie Holcomb

**Food Waste in Berkeley**

- 21. Sophie Ciurlik Rittenbaum

**East Bay Community Energy – Renewable Energy**

- 22. Alan Gould
- 23. Jane Kelly

**Citywide Siren System**

- 24. Pam Speich

**Berkeley Copwatch**

- 25. russbumper

**Full-Time City Council**

- 26. Topher Brennan

**Neighborhood Toxins**

- 27. Janice Greenberg

**Support of SB 276 – Vaccination Exemptions**

- 28. Ty Alper, on behalf of Berkeley Unified School District Board of Education

**People's Park**

- 29. Carol Denney
- 30. Michael Fullerton
- 31. russbumper

**Panoramic Hill Rehabilitation**

- 32. Heather Rudkin

**Treatment at Sutter's Alta Bates**

- 33. Christine Cosgrove

**Rosa Parks Elementary School Mock Trial**

- 34. Ty Alper

**Philadelphia Beverage Tax**

- 35. Holly Scheider

**5G Technology**

- 36. Phoebe Anne Sorgen

**West Campus Pool**

- 37. Nancy Kalter-Dills

**Homelessness**

- 38. Jacquelyn McCormick
- 39. Donald Goldmacher
- 40. Matthew Williams
- 41. Pam Speich
- 42. russbumper

**RVs at Berkeely Marina**

43. Berkeley Citizens Action Steering Committee

**Residential Preferential Parking (RPP) Program**

44. Lynda Koolish

45. Aurora Arding

46. Vici Casana

**Climate Disruption and Affordable Housing**

47. Charlene M. Woodcock

**Repaving of Roadways**

48. David Lerman

**Amazon Boycott**

49. Raja Sutherland

**Zero Carbon Retreat**

50. Amanda Hutchins

**A Healthy City for All**

51. Suzanne H. Crowhurst Lennard

**Restraint Devices**

52. russbumper

**Parking Enforcement Vehicles**

53. Majorie Alvord

54. Teresa J. Paris

55. Colleen

56. Debi Clifford

57. Cynthia Papermaster

58. Shauna Haines

59. Sallie Hanna-Rhyne

60. Gael Alcock

61. Kelly Hammargren

62. Keith Johnson

63. Charlene M. Woodcock

64. Ravi Mikkelsen

65. Sarah Nelson

66. Wendy Bloom

67. Jane Scantlebury

68. Sydney Gillett

69. David Finley

70. Tom Kelly

71. Richard Walker

72. Mary Behm-Steinberg

73. Margo Schueler

74. Eleven form letters, submitted by Alicia Puzak, Wendy Alfsen, Sheila Goldmacher, Micky Duxbury, Julia Cato, Rachel Katz, Lori Hines, Ruth Morgan, Ned Himmel, Cecile Leneman, Donald Goldmacher

75. Three form letters, submitted by Kathy Labriola, Eric Svahn, Rick Lewis
76. Ten form letters, submitted by Leonard Pitt, Sandy Emerson, Vanessa Warheit, Linda Franklin, Jack Kurzweil, Fred Dodsworth, Helen Osborne, Janice Cecil, Margaret Norman, Liz Ozol

### **Supplemental Communications and Reports**

*Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.*

- **Supplemental Communications and Reports 1**  
Available by 5:00 p.m. five days prior to the meeting.
- **Supplemental Communications and Reports 2**  
Available by 5:00 p.m. the day before the meeting.
- **Supplemental Communications and Reports 3**  
Available by 5:00 p.m. two days following the meeting.

## ORDINANCE NO. 7,655-N.S

## AMENDING BERKELEY MUNICIPAL CODED CHAPTER 9.04 BUSINESS LICENSES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Section 9.04.165 of the Berkeley Municipal Code is amended to read as follows:

**9.04.165 Professional--Semiprofessional--Connected business.**

A. Finance, Insurance, Banking (including Savings and Loans) and Real Estate. Every person in any business, profession or occupation within the business field of finance, insurance and real estate, as described in the most practicable version of the U.S. Government Printing Office publication North American Industrial Classification System Manual, except for those persons whose business is primarily renting real property, as defined in Section 9.04.195, shall be classified as a professional-semiprofessional.

B. Health, Veterinary, Legal, Educational, Engineering-Architectural-Surveying, Accounting-Auditing-Bookkeeping, and Miscellaneous Services Not Classified Elsewhere. Every person in any business, profession, or occupation within the business fields of health, veterinary, legal, education, engineering-architectural surveying, accounting-auditing-bookkeeping, and miscellaneous services not classified elsewhere, as described in the current U.S. Government Printing Office publication entitled North American Industrial Classification System Manual shall be classified as professional-semi-professional.

C. Nothing contained in this section shall be deemed or construed as applying to any person engaged in any of the professions or occupations enumerated in this section solely as an employee or partner of any other person or entity conducting, managing or carrying on any such business in the City.

D. Any person subject to a license under provisions of this section may exclude from gross receipts the portion of those receipts paid to subcontractors, providing that a list of such subcontractors and the amounts of payment are reported to the Director of Finance. The Finance Department shall pursue collection of the business license tax from all reported subcontractors.

E. Any person subject to a license under provisions of this section with less than \$100,000 in annual gross receipts, as defined in Section 9.04.025, net of governmental research grants, may exclude from gross receipts up to \$1,000,000 received from governmental research grants, providing that a list of those grants and the amounts of payments received are reported to the City as defined by the Director of Finance.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134

Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on May 28, 2019, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Davila, Droste, Hahn, Harrison, Kesarwani, Robinson and Arreguin.

Noes: None.

Absent: Bartlett and Wengraf.





Office of the City Manager

02

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Manager, Economic Development  
 Subject: Grant from the William and Flora Hewlett Foundation

RECOMMENDATION

Adopt a Resolution accepting a \$20,000 grant from the William and Flora Hewlett Foundation for an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in the City of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

There are no immediate fiscal impacts because the grant covers the total cost of the assessment and does not require matching funds. The grant funds will be deposited and expensed from the One-Time Grant Fund. The grant will be appropriated in the FY 2020 Annual Appropriations Ordinance and is subject to Council approval of this item on June 25, 2019.

CURRENT SITUATION AND ITS EFFECTS

The William and Flora Hewlett Foundation has awarded the City of Berkeley a \$20,000 grant to conduct an assessment of arts space affordability challenges, displacement risks and possible strategies to protect affordable spaces for arts organizations, artists and cultural workers in the City of Berkeley. The grant funding for this study will be used entirely for a project consultant who will be hired by the City of Berkeley through a competitive process to be conducted once the grant award has been approved by Berkeley City Council.

Under the supervision of Berkeley Civic Arts Program staff, the consultant will help assemble and then work with an ad-hoc, multi-disciplinary advisory group comprised of artists, arts organization leaders, planners, architects, experts on affordable housing, developers and City staff. This group will inform the development of a survey to be distributed to Berkeley-based artists and arts organizations. The consultant will work to ensure broad participation in the survey. Throughout the study period, the consultant will continue to convene the advisory group so that they may provide input on the analysis of the survey results and be engaged in vetting strategies for creating and preserving affordable spaces for artists and arts organizations in Berkeley. The final deliverable will be a report, which outlines the survey findings, provides analysis and

lists the strategies in prioritized order, indicating the steps and resources needed for implementation. The study will take one year to complete.

This assessment supports the City's Strategic Plan Priorities by advancing our goals to:

- Foster a dynamic, sustainable, and locally-based economy
- Create affordable housing and housing support service for our most vulnerable community members.

### BACKGROUND

The William and Flora Hewlett Foundation supported the 2018 Arts and Cultural Plan Update for the City of Berkeley, which originated in 2015 partially in response to economic conditions that were just beginning to affect affordability for Berkeley's arts organizations and artists. This cultural planning initiative allowed the Civic Arts Program and the Civic Arts Commission to take a leap forward in identifying and clarifying a common vision for the arts in Berkeley and to build consensus and community support around the specific policy priorities to get us there. Through the planning process, issues of housing affordability and art space affordability were identified as central concerns for artists and arts organizations in Berkeley. The plan identified as its first goal to increase access to affordable housing and affordable spaces for artists and arts organizations. It also specified a number of action steps towards that goal, while acknowledging that the resources to undertake many of these action steps did not currently exist.

In order to support Berkeley's arts and culture ecosystem at this critical time, the William and Flora Hewlett Foundation has awarded additional grant support in the amount of \$20,000 to conduct an assessment of current art space affordability challenges and displacement risks within Berkeley, and based upon those findings, develop strategies to protect affordable spaces for arts organizations, artists, and cultural workers in Berkeley.

### ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability effects.

### RATIONALE FOR RECOMMENDATION

Berkeley's artists and arts organizations make enormous creative contributions to the livability of our city and keep diverse cultural traditions alive. Along with the cultural vibrancy that the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated \$165 million annually in total economic activity in Berkeley, according to the economic impact analysis completed as part of the 2018 Culture Plan. Losing any part of our arts sector is a loss to our city and to the field of art and our various cultural legacies.

### ALTERNATIVE ACTIONS CONSIDERED

No alternatives were considered.

CONTACT PERSON

Jennifer Lovvorn, Chief Cultural Affairs Officer, 981-7533

Attachments:

- 1: Resolution
- 2: Grant Award Letter from the William and Flora Hewlett Foundation

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

GRANT FROM THE WILLIAM AND FLORA HEWLETT FOUNDATION FOR AN ASSESSMENT OF ARTS SPACE AFFORDABILITY CHALLENGES, DISPLACEMENT RISKS AND POSSIBLE STRATEGIES

WHEREAS, Berkeley's artists and arts organizations make enormous creative contributions to the livability of our city and keep diverse cultural traditions alive; and

WHEREAS, along with the cultural vibrancy that the arts infuse into the community, the arts sector is also a significant economic driver, generating an estimated \$165 million annually in total economic activity in Berkeley; and

WHEREAS, the William and Flora Hewlett Foundation supported the 2018 Arts and Cultural Plan Update for the City of Berkeley, which originated in 2015 partially in response to economic conditions that were just beginning to affect affordability for Berkeley's arts organizations and artists; and

WHEREAS, the 2018 Cultural Plan identified as its first goal to increase access to affordable housing and affordable spaces for artists and arts organizations; and

WHEREAS, the Civic Arts Program applied for a grant from the William and Flora Hewlett Foundation to conduct an assessment of current art space affordability challenges and displacement risks within Berkeley, and based upon those findings, develop strategies to protect affordable spaces for arts organizations, artists, and cultural workers in Berkeley; and

WHEREAS, the Hewlett Foundation has awarded a \$20,000 grant for this purpose and these funds will be put into revenue account code 336-21-208-252-0000-000-000-434110.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the \$20,000 grant from the Hewlett Foundation be accepted.

THE WILLIAM AND FLORA HEWLETT FOUNDATION

Office of the President

April 18, 2019

Ms. Jennifer Lovvorn  
Chief Cultural Affairs Officer  
City of Berkeley  
2180 Milvia Street, Fifth floor  
Berkeley, CA 94704

Reference: Grant #2019-8973

Dear Ms. Lovvorn:

I am pleased to inform you that The William and Flora Hewlett Foundation (the “Foundation”) has authorized a grant of \$20,000 over one year to City of Berkeley (“Grantee”) for an assessment of arts space affordability challenges, displacement risks and possible strategies. The grant will be paid in one installment. This grant is for an assessment of arts space affordability challenges, displacement risks and possible strategies.

In order for the Foundation to make payment, Grantee must accept the terms of the grant as set forth in the following paragraphs. The terms of this award letter constitute the entire agreement between the Foundation and the Grantee and supersede any prior oral or written understandings or communications between them. Please note that the Foundation reserves the right to cancel this grant if a signed copy of this Agreement is not received by the Foundation within 60 days of the date first written above.

**Tax Status.** Grantee confirms that it is a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code, or a Federal, state, local, or foreign government body, agency, or instrumentality that is treated as an organization described in Code Sections 501(c)(3) and 509(a)(1).

**Use of Grant Funds.** Grantee agrees that the grant funds will be used exclusively for charitable purposes as described in Section 501(c)(3) or Section 170(c)(1) of the Internal Revenue Code, and only in support of the activities described in Grantee's proposal of March 29, 2019 and the budget attached thereto. Funds not used during the term of the grant (April 22, 2019 to April 22, 2020) must be returned to the Foundation unless an extension is approved at Grantee's request and in the Foundation's discretion.

Grantee agrees to repay to the Foundation any portion of the grant funds expended in violation of this Agreement.

City of Berkeley  
April 18, 2019  
Page 2 of 6

**Prohibited Use of Funds.** Grantee agrees to not use any portion of the grant funds to any extent for any of the following:

- a. To participate in any political campaign on behalf of or in opposition to any candidate for public office or to otherwise influence the outcome of any specific public election as described in Section 4945(d)(2) of the Internal Revenue Code;  
or
- b. For any non-charitable purposes.

**Prohibition on Lobbying Activity.** No grant funds may be used for the carrying on of propaganda or attempting to influence legislation within the meaning of Internal Revenue Code Sections 501(h), 4945(d)(1) and 4945(e) and related regulations (these provisions include local, state, federal, and foreign legislation), and neither Grantee nor the Foundation has entered into any agreement, oral or written, to the contrary.

Please note that in the event Grantee uses any of the grant funds to influence governmental action in ways permissible under the Internal Revenue Code and the terms of this Agreement, Grantee may have lobby reporting or other disclosure requirements under the laws of a particular state or other jurisdiction; note further, that state law may include influencing state administrative agencies within the definition of lobbying. Grantee acknowledges that Grantee is solely responsible for complying with any and all applicable lobby reporting or other disclosures.

*Special Limitations for Ballot Questions.* The Foundation intends that the grant funds shall not be used to influence the qualification or passage of any ballot question or similar legislative decision put to voters. As an essential condition for receiving the grant funds, Grantee shall not use any portion of the grant funds in any manner that would cause the Foundation to be identified as funding reportable lobbying, or require the Foundation to register under any applicable state or local disclosure law, except as may otherwise be provided in this Agreement.

**Human Subject Research.** Safeguarding the rights and welfare of human subjects involved in research is principally the responsibility of the Grantee. However, while the Foundation does not micromanage or seek to interfere in the implementation of grants, Grantees conducting human subject research must have appropriate standards to ensure compliance with generally accepted research ethics. If grant funds will be used in whole or in part for research involving human subjects, Grantee represents that it has such rules and review processes in place and that these rules and processes will be followed. (Such processes may include: obtaining and maintaining institutional review board (or a research ethics review committee) approval, and informed consent of participating research subjects.) Grantee agrees that any subgrant or subcontract awarded by Grantee in its performance of the activities under this grant shall include similar rules and processes in regards to human subject research.

City of Berkeley  
 April 18, 2019  
 Page 3 of 6

**Grantee Control of Funds.** Grantee acknowledges that there is no agreement, oral or written, whereby the Foundation has designated or earmarked any part of the grant funds for any specific named organization or individual. Furthermore, Grantee retains full authority and control over the selection process of any re-grants contemplated under the proposal. Specifically, any re-grants will be approved by the Grantee’s Board of Directors or its designee. The Foundation may not select re-grantees.

**Reporting.** Grantee agrees to submit a narrative and financial report on use of the grant funds during the grant period. Reports should be submitted according to the following schedule:

| Reporting requirements | Due date   |
|------------------------|------------|
| Final Reports          | 05/22/2020 |

For your convenience, please see “Reporting Requirements” enclosed with this letter for further instructions on preparing these reports. *Please use the grant reference number located on the first page of this letter in all reports and correspondence.*

**Grant Payment.** The Foundation’s disbursement of payments is contingent upon the Foundation’s determination, in its sole discretion, that satisfactory performance of the grant purpose has occurred and is likely to continue to occur. Funding may be modified or discontinued, and any unspent grant funds must be repaid, if at any time the Foundation determines that the conditions of this Agreement are not being met or that satisfactory performance has not occurred.

Payment will be made as follows, subject to the contingencies provided in this grant agreement letter:

| Projected date                                       | Amount   | Contingency                              |
|------------------------------------------------------|----------|------------------------------------------|
| Within 30 days of receipt of signed letter agreement | \$20,000 | Receipt of signed grant agreement letter |

**Compliance with Laws; Government Officials.** Grantee represents to the Foundation that Grantee is legally authorized to enter into this Agreement and that Grantee has complied with and will continue to comply with all applicable local, state, federal and international laws or requirements, including laws governing contacts with government officials (e.g., anti-bribery laws such as the Foreign Corrupt Practices Act) and anti-terrorism laws and sanctions, in connection with the performance of the activities under this grant.

Grantee further represents, except as otherwise set forth in this Agreement, that there is no agreement, written or oral, between the Foundation and the Grantee whereby the Foundation

City of Berkeley  
April 18, 2019  
Page 4 of 6

may direct the activities of the Grantee, including, if applicable, causing the selection of any government official to attend or participate in any event or activity of the Grantee. The Grantee exercises control over that selection process and makes the selection completely independent of the Foundation. Grantee acknowledges that the Foundation is relying upon the representations made by the Grantee in this section in determining that there is no legal impediment to the Foundation's making a grant to the Grantee.

**Anti-Terrorism.** You will not use funds provided under this Grant Agreement, directly or indirectly, in support of activities (a) prohibited by U.S. laws related to combatting terrorism; (b) with or related to parties on the List of Specially Designated Nationals ([www.treasury.gov/sdn](http://www.treasury.gov/sdn)); or (c) with or related to countries against which the U.S. maintains a comprehensive embargo (currently, Cuba, Iran, (North) Sudan, Syria, North Korea, and the Crimea Region of Ukraine), unless such activities are fully authorized by the U.S. government under applicable law and specifically approved by the Foundation in its sole discretion. Further, you represent that Grantee is not the target of economic or trade sanctions, and Grantee will immediately inform the Foundation if Grantee becomes the target of economic or trade sanctions, including any ownership or control of Grantee by one or more persons on the List of Specially Designated Nationals.

**Notification.** Grantee agrees to notify the Foundation promptly of any organizational changes during the term of the grant, including, but not limited to, changes in key personnel and changes in tax status, and changes in the project timing or goals. Any such notification shall be provided in writing, which may be by electronic mail to the Program Officer or other Foundation representative responsible for overseeing this grant.

**Evaluation.** The Foundation may choose to conduct an evaluation of the effectiveness of this grant (the "Evaluation") either individually or as part of a broader Foundation strategy. Grantee agrees to cooperate in the Evaluation and provide such information to the Foundation or its representatives as is reasonably requested.

Grantee further agrees that the Foundation can disseminate to the public the results of the Evaluation, including any data created in connection with the Evaluation. In such cases, the Foundation agrees to first share the results of the Evaluation with the Grantee and provide an opportunity for the Grantee to comment.

**Grant Disclosure and Acknowledgement.** The Foundation supports transparency and will disclose its grants as required by law and through its own digital content, principally its website ([www.hewlett.org](http://www.hewlett.org)) and automated feeds to other data sources in the foundation sector. This data generally includes grantee name, grant amount, duration, award date and purpose. No additional permission from the Foundation is required for a grantee to share this information. The Foundation encourages, but does not require, grantees to include the Foundation in lists of funders and annual reports as a matter of transparency and



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April 18, 2019  
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accountability. Similarly, the Foundation encourages, but does not require, that Grantees that use our funds specifically for nonpartisan research and analysis should disclose us as a funder, as a matter of sound research practice. When it serves an organization's charitable goals and strategies, grantees are also welcome to acknowledge the Foundation's support in other ways. To ensure that the Foundation's grantmaking programs are portrayed accurately, any other use of the Foundation's brand, such as its name, logo or names of its staffers, in cases including but not limited to titles of programs, research reports, paid advertisements, press releases, in meeting materials and digital content, must be reviewed and preapproved by the Foundation. Grantees receiving project support should acknowledge Foundation support only in relation to the relevant project being funded. All requests for approval should be directed to the appropriate [Communications Officer](#).

(<http://www.hewlett.org/communicating-about-your-grant/>) The Communications Department endeavors to review and respond to requests within five business days.

Upon the expiration of this Agreement (including any Foundation-approved extensions) or the termination of this Agreement, or at the request of the Foundation at any time, Grantee shall promptly discontinue the use of the Foundation's name and logo in electronic materials and shall discontinue use within a reasonable period of time for printed materials. All uses beyond this period must be pre-approved in writing by the Foundation, which may be granted or withheld in the sole and absolute discretion of the Foundation.

**Signature.** Please have a corporate officer authorized to sign on behalf of the Grantee **sign and return** a copy of this grant agreement letter in its entirety to the Foundation to indicate the Grantee's acceptance of the terms of the grant. Grantee will return a signed copy of the entire grant agreement letter to the Foundation electronically by emailing a scanned copy to [grantagreements@hewlett.org](mailto:grantagreements@hewlett.org), which will ensure faster processing of your grant payment. Delivery of an executed signature page of this grant agreement by electronic mail in portable document format (PDF) will be effective as delivery of a manually-executed signature page of the grant agreement. Alternatively, Grantee may return an original signed copy of the grant agreement letter by mail to the Foundation's offices at 2121 Sand Hill Road, Menlo Park, CA 94025, Attention: Grants Management. For grant agreement letters submitted by email, the Grantee agrees to provide the original signed copy to the Foundation at the Foundation's request. This grant agreement may be executed by Grantee and the Foundation in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same agreement.

**Foundation Contact.** Should you have any questions related to this grant, please contact Adam Fong, Program Officer for Performing Arts. We are pleased to be able to assist you.

City of Berkeley  
April 18, 2019  
Page 6 of 6

Sincerely,



Larry Kramer  
President

LK  
Enclosures

ACCEPTANCE: On behalf of City of Berkeley, I hereby accept and agree to be legally bound by the terms of the grant as set forth herein.

*Date:* \_\_\_\_\_ *By:* \_\_\_\_\_ *Title:* \_\_\_\_\_



Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance  
 Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on June 11, 2019

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.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$965,000.

| <u>PROJECT</u>           | <u>Fund</u> | <u>Source</u>             | <u>Amount</u>    |
|--------------------------|-------------|---------------------------|------------------|
| Portable Toilet Services | 138<br>011  | Parks Tax<br>General Fund | \$965,000        |
| <b>Total:</b>            |             |                           | <b>\$965,000</b> |

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager’s purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB or RFP may be released to the public and notices sent to the potential bidder/respondent list.

Formal Bid Solicitations and Request for Proposals  
Scheduled for Possible Issuance After Council  
Approval on June 11, 2019

CONSENT CALENDAR  
June 11, 2019

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

CONTACT PERSON

Shari Hamilton, General Services Manager, Finance, 510-981-7329

Attachments:

1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on June 11, 2019

a) Portable Toilet Services

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

DATE SUBMITTED: June 11, 2019

| SPECIFICATION NO.  | DESCRIPTION OF GOODS / SERVICES BEING PURCHASED | APPROX. RELEASE DATE | APPROX. BID OPENING DATE | INTENDED USE                                                                              | ESTIMATED COST                                                                                                                                                                                                 | BUDGET CODE TO BE CHARGED                                                                                                         | DEPT. / DIVISION | CONTACT NAME & PHONE    |
|--------------------|-------------------------------------------------|----------------------|--------------------------|-------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|------------------|-------------------------|
| 19-11336-C         | Portable Toilet Services                        | 6/12/2019            | 7/2/2019                 | Rental and service of portable units for three years with two optional years of extension | \$110,000/year (Parks services)<br><br>\$9,000/year (Special events)<br><br>\$14,000/year (Day labor)<br><br>\$60,000/year (Misc. addl services)<br><br><hr/> \$193,000/year<br><br><hr/> \$965,000/five years | No (Funds will be allocated included in the FY20-21 budget, funds in future fiscal years will be appropriated at similar levels.) | PRW / Parks      | Bruce Pratt<br>981-6632 |
| <b>DEPT. TOTAL</b> |                                                 |                      |                          |                                                                                           | \$965,000                                                                                                                                                                                                      |                                                                                                                                   |                  |                         |
| <b>GRAND TOTAL</b> |                                                 |                      |                          |                                                                                           | <b>\$965,000</b>                                                                                                                                                                                               |                                                                                                                                   |                  |                         |





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2020 Tax Rate: Fund the Maintenance of Parks, City Trees and Landscaping

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding all improvements for the maintenance of parks, City trees, and landscaping in the City of Berkeley at \$0.1729 (17.29 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.1729 per square footage will result in estimated collections of \$14,143,821 for the Park Tax Fund. The increase in the tax rate of \$0.0066 per square foot will result in a \$12.54 annual increase for the citywide average 1900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2019 tax of \$0.1663 is being adjusted by the Consumer Price Index in the State of California of 4.015% as authorized on November 4, 2014, by voter approved Measure F.

It is recommended that City Council authorize the levy of a special tax of \$0.1729 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during FY 2020, as compared with the amounts for FY 2019:

| Square Feet | Annual Tax |          |
|-------------|------------|----------|
|             | FY 2020    | FY 2019  |
| 1,200       | \$207.48   | \$199.56 |
| 1,500       | 259.35     | 249.45   |
| 1,900       | 328.51     | 315.97   |
| 3,000       | 518.70     | 498.90   |
| 10,000      | 1,729.00   | 1,663.00 |

BACKGROUND

On May 6, 1997, the voters of the City of Berkeley approved a special tax solely to provide funding for the direct cost of acquisition and maintenance of improvements related to parks and landscaping in the City of Berkeley. As a result of the requirements of State Proposition 218, this special tax replaced the annual revenue previously generated by the Citywide Landscape Assessment District.

On November 8, 2016, over 87% of Berkeley voters approved Measure V1 to re-authorize the City, for a period of four (4) years through FY 2020, to spend the Parks Maintenance tax as approved by the voters.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance



ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND MAINTENANCE  
OF PARKS, CITY TREES AND LANDSCAPING IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate for the maintenance of parks, City trees and landscaping is set at \$0.1729 per square foot of taxable improvements.

Section 2. The cost to the taxpayer during FY 2020 will be \$207.48 for a 1,200 square foot home and \$518.70 for a 3,000 square foot home.

Section 3. This Tax Rate will result in estimated total collections of \$14,143,821.

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2020 Tax Rate: Fund the Provision of Emergency Medical Services (Paramedic Tax)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency medical services to Berkeley residents at \$0.0393 (3.93 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.0393 per square footage will result in estimated total collections of \$3,215,011 for the Emergency Medical Services fund. The increase in the tax rate of \$0.0015 per square foot will result in a \$2.85 annual increase for the citywide average 1900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2019 tax of \$.0378 is being adjusted by the increase in the Consumer Price Index in the immediate San Francisco Bay Area of 4.015%, as authorized by the voters on May 6, 1997.

It is recommended that the City Council authorize the levy of a special tax of \$0.0393 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during Fiscal Year 2020, as compared with amounts for FY 2019:

| Square Feet | Annual Tax |         |
|-------------|------------|---------|
|             | FY 2020    | FY 2019 |
| 1,200       | \$47.16    | \$45.36 |
| 1,500       | 58.95      | 56.70   |
| 1,900       | 74.67      | 71.82   |
| 3,000       | 117.90     | 113.40  |
| 3,900       | 153.27     | 147.42  |
| 10,000      | 393.00     | 378.00  |

BACKGROUND

On May 6, 1997, the voters authorized the City to replace the Emergency Medical Services Assessment District, with an Emergency Medical Services Tax. On November 8, 2016, over 87% of Berkeley voters approved Measure V1 to re-authorize the City, for a period of four (4) years through FY 2020, to spend the Emergency Medical Services tax.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND THE PROVISION  
OF EMERGENCY MEDICAL SERVICES FOR THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate for Emergency Medical Services is set at \$0.0393 per square foot of taxable improvements.

Section 2. The cost to taxpayers during FY 2020 will be \$47.16 for a 1,200 square foot home and \$117.90 for a 3,000 square foot home.

Section 3. This tax rate will result in estimated total collections of \$3,215,011.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





06

Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2020 Tax Rate: Fund Emergency Services for the Severely Disabled (Measure E)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of emergency services for the disabled at \$0.01638 (1.638 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.01638 will result in estimated collections of \$1,339,668 for the fund. The increase in the tax rate of \$0.00063 per square foot will result in a \$1.19 annual increase for the citywide average 1900 square foot home.

CURRENT SITUATION AND ITS EFFECTS

The FY 2019 tax of \$0.01575 is being adjusted by the Consumer Price Index in the immediate San Francisco Bay Area of 4.015% (or \$0.00063) as the voters approved the greater of the Personal Income Growth increase in California of 3.85% or Consumer Price Index in the immediate San Francisco Bay Area.

It is recommended that the City Council authorize the levy of a special tax of \$0.01638 per square foot of all improvements in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during Fiscal Year 2020, as compared with amounts for FY 2019:

| Square Feet | Annual Tax |         |
|-------------|------------|---------|
|             | FY 2020    | FY 2019 |
| 1,200       | \$19.65    | \$18.90 |
| 1,500       | 24.57      | 23.63   |
| 1,900       | 31.12      | 29.93   |
| 3,000       | 49.14      | 47.25   |
| 3,900       | 63.88      | 61.43   |
| 10,000      | 163.80     | 157.50  |

BACKGROUND

The Emergency Services for the Severely Disabled Tax (Measure E) was passed by the voters in November 1998. The tax is used to provide emergency services and incidental case management for severely physically disabled persons. The City Council is authorized to increase the tax rate by the greater of the Consumer Price Index in the immediate San Francisco Bay Area or Personal Income Growth in California.

On November 8, 2016, over 87% of Berkeley voters approved Measure V1 to re-authorize the City, for a period of four (4) years through FY 2020, to spend the emergency services for the severely disabled tax.

ALTERNATIVE ACTIONS CONSIDERED

The City Council may consider maintaining the current tax rate of \$0.01575 with projected revenue of \$1,270,257 and no increase to property owners. Or, the City Council may consider increasing the tax rate by the Personal Income Growth of 3.85% in California. This would result in projected revenue of \$1,319,162, and an increase of \$1.15 for the citywide average 1900 square foot home.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance



ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND EMERGENCY SERVICES FOR THE SEVERELY DISABLED IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate to fund emergency services for severely disabled persons is set at \$0.01638 per square feet of improvements.

Section 2. The cost to taxpayers during FY 2020 will be \$19.66 for a 1,200 square foot home and \$49.14 for a 3,000 square foot home.

Section 3. This tax rate will result in estimated total collections of \$1,339,668.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

07

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2020 Tax Rate: Business License Tax on Large Non-Profits

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for Business License Tax on large non-profits at \$0.6420 (64.20 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The increase in the tax rate from \$0.6173 (61.73 cents) per square foot of improvements in FY 2019 to \$0.6420 (64.20 cents) per square foot of improvements in FY 2020, based on the 4.015% increase in the Consumer Price Index (CPI) in the immediate San Francisco Bay Area, will result in estimated total collections of approximately \$441,858 from \$424,803 in FY 2019.

CURRENT SITUATION AND ITS EFFECTS

The non-profit organizations with over 120,000 square feet of business improvements were taxed at a rate of \$0.6173 (61.73 cents) in FY 2019, as approved by the voters with Measure G on November 3, 1998. That measure also approved the indexing of tax for inflation, based on the CPI in May. The CPI reported on May 10, 2019 by the U.S. Department of Labor's Bureau of Labor Statistics was 4.015%

BACKGROUND

In 1994, the voters of California adopted Article XIII, Section 26 of the California Constitution, which prohibits local governments from taxing non-profit organizations based on their gross receipts. Prior to this date, the City's business license tax ordinance had imposed a gross receipts tax on non-profit organizations, which raised approximately \$250,000 per year. Article XIII, Section 26 does not prohibit local agencies from taxing non-profit organizations on bases other than gross receipts. On November 3, 1998, the voters approved Measure G with over 61% of the votes cast. Measure G amended the City's business license tax ordinance to impose a charge of \$0.51 (51 cents) on the square footage of business improvements over the first 120,000 square feet, and would be indexed for inflation, according to the cost of living in the immediate San Francisco Bay Area in May.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7326

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FY 2020 MUNICIPAL TAX RATE FOR THE CITY OF BERKELEY FOR  
BUSINESS LICENSE TAX ON LARGE NON-PROFITS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The rate of tax for the FY 2020 business license tax on large non-profits is as follows:

\$0.6420 per square foot of improvements over 120,000 square feet

Section 2. This Ordinance shall take effect and be in full force from and after its final passage.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Henry Oyekanmi, Director, Finance Department  
 Subject: FY 2020 Tax Rate: Fund Disaster Fire Protection (Measure Q)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the procurement of disaster fire equipment at \$0.0125 (1.25 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of \$0.0125 per square footage will result in estimated total collections of \$985,734 for the Measure Q fund.

CURRENT SITUATION AND ITS EFFECTS

The Disaster Fire Protection Tax (Measure Q) does not allow an increase based on the annual change in the Bay Area Consumer Price Index. FY 2020 expenditures for disaster fire protection are expected to total approximately \$100,000 and the debt service on the bonds will be \$754,075. The tax proceeds of approximately \$985,734 will be enough to cover the projected project expenditures, debt service payments, and the amount set aside for equipment replacement. It is recommended that the City Council authorize the levy of a special tax of \$0.0125 per square foot of all improvements in the City of Berkeley. The tax will result in the same cost to taxpayers in the following average amounts during FY 2020, as compared to FY 2019: (no change)

| Annual Tax  |          |          |
|-------------|----------|----------|
| Square Feet | FY 2020  | FY 2019  |
| 1,200       | \$ 15.00 | \$ 15.00 |
| 1,500       | 18.75    | 18.75    |
| 1,900       | 23.75    | 23.75    |
| 3,000       | 37.50    | 37.50    |
| 3,900       | 48.75    | 48.75    |
| 10,000      | 125.00   | 125.00   |

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

BACKGROUND

In the November 2000 election, Berkeley voters approved Measure Q, which established a Community Facilities Special District for Disaster Fire Protection and authorized the levying of a special tax. The District was specifically designed to finance the purchase of \$8,000,000 in equipment, supplies and storage facilities to provide enhanced response to natural disasters such as urban wildfires and earthquakes.

The tax will raise approximately \$985,734 in FY 2020, which will be used to provide for the purchase of equipment, supplies and storage facilities (totaling \$100,000) to pay \$754,075 in debt service and for the equipment replacement fund. The rate proposed for FY 2020 (\$0.0125 per square foot), is the maximum allowable rate under the approved measure.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7301

Attachments:

1: Ordinance



ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND THE  
PROCUREMENT OF DISASTER FIRE EQUIPMENT FOR THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate for the procurement of disaster fire equipment is set at \$0.0125 per square foot of taxable improvements.

Section 2. The cost to taxpayers during FY 2020 will be \$15.00 for a 1,200 square foot home and \$37.50 for a 3,000 square foot home.

Section 3. This tax rate will result in estimated total collections of \$985,734.

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

09

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: FY 2020 Tax Rate: Fund the Debt Service on the Street and Watershed Improvements General Obligation Bonds (Measure M, November 2012 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Street and Integrated Watershed Improvements General Obligation Bonds (Measure M, November 2012) at 0.0065%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0065% will result in estimated collections of \$1,400,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2020 and September 1, 2020.

CURRENT SITUATION AND ITS EFFECTS

The 0.0065% tax rate for FY 2020 being set by the City Council is based on the current debt service, the estimated FY 2020 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2020 is a decrease in the rate charged in FY 2019.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2020 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2020 tax rate of 0.0065% which will result in the following cost to the average homeowner during FY 2020, as compared to FY 2019:

| Annual Tax     |             |             |
|----------------|-------------|-------------|
| Assessed Value | FY 2019 Tax | FY 2020 Tax |
| \$150,000      | \$13.50     | \$9.75      |
| 250,000        | 22.50       | 16.25       |
| 300,000        | 27.00       | 19.50       |
| 400,000        | 36.00       | 26.00       |
| 500,000        | 45.00       | 32.50       |
| 600,000        | 54.00       | 39.00       |
| 700,000        | 63.00       | 45.50       |
| 800,000        | 72.00       | 52.00       |
| 900,000        | 81.00       | 58.50       |
| 1,000,000      | 90.00       | 65.00       |

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the subject of this report.

**BACKGROUND**

In November 2012, the residents of Berkeley voted for and approved Ballot Measure M, for the sum of \$30,000,000 of General Obligation Bonds to accelerate street repaving and rehabilitation consistent with the 5-Year Street Rehabilitation Plan, integrating green infrastructure to the extent feasible. Green infrastructure includes, but is not limited to: (a) surface level bio-retention measures (rain gardens, swales, bio-retention cells, permeable paving, etc.) within the parking strip, planter area of sidewalks, red zone curb-extensions, and in street medians as feasible; and (b) large underground storage pipes, which would fill during storm events and then discharge metered flows into the existing storm drain pipelines.

\$15,000,000 of the \$30,000,000 in authorized bonds were issued in 2014, and the remaining \$15,000,000 of bonds were issued in 2016. The tax rate above reflects the debt service payments for the fiscal year.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE STREET AND WATERSHED IMPROVEMENTS GENERAL OBLIGATION BONDS (MEASURE M, NOVEMBER 2012 ELECTION) IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 tax rate for debt service on the General Obligation Bonds is set at 0.0065%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2020 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$1,400,000 needed to make the March 1, 2020 and September 1, 2020 debt service payments on the outstanding General Obligation Bonds.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department  
Dave Brannigan, Fire Chief, Fire Department

Subject: FY 2020 Tax Rate: Fund Fire Protection and Emergency Response and Preparedness (Measure GG)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding Fire Protection and Emergency Response and Preparedness in the City of Berkeley at the rate of \$0.05818 (5.818 cents) per square foot of improvements for dwelling units and setting the rate for all other property at \$0.08804 (8.804 cents) per square foot of improvements.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.05818 per square foot of improvements for dwelling units and \$0.08804 per square foot of improvements for all other properties are being adjusted by the Consumer Price Index in the immediate San Francisco Bay Area of 4.015%. This will result in estimated collections of \$5,328,686 for the fund. The increase in the tax rate of \$0.00224 per square foot of improvements for dwelling units and \$0.00339 for all other property will result in a \$4.25 annual increase for the citywide average 1900 square foot dwelling and \$6.43 for all other property.

CURRENT SITUATION AND ITS EFFECTS

The FY 2019 tax rates of \$0.05594 for dwelling units and \$0.08465 for all other property are being adjusted by 4.015%. The per capita Personal Income Growth in California was reported at 3.85%, and the Consumer Price Index (CPI) increase in the immediate San Francisco Bay Area was reported at 4.015%. The voters approved increasing the Measure GG tax rate annually by up to the greater of the Consumer Price Index increase in the immediate San Francisco Bay Area or the per capita Personal Income Growth in California. At their regular meeting on May 22, 2019, the Disaster and Fire Safety Commission voted not to recommend any increase for Measure GG.

It is recommended that the City Council authorize the levy of a special tax of \$0.05818 per square foot for dwelling units and \$0.08804 for all other property in the City of

Berkeley. The tax will result in an increase in cost to taxpayers in the following average amounts during Fiscal Year 2020, as compared with amounts for FY 2019:

**FY 2020**

| Square Feet | Dwelling Units | All Other Properties |
|-------------|----------------|----------------------|
| 1,200       | \$69.81        | \$105.64             |
| 1,500       | 87.27          | 132.06               |
| 1,900       | 110.54         | 167.27               |
| 3,000       | 174.54         | 264.12               |
| 3,900       | 226.90         | 343.35               |
| 10,000      | 581.80         | 880.40               |

**FY 2019**

| Square Feet | Dwelling Units | All Other Properties |
|-------------|----------------|----------------------|
| 1,200       | \$67.13        | \$101.58             |
| 1,500       | 83.91          | 126.98               |
| 1,900       | 106.29         | 160.84               |
| 3,000       | 167.82         | 253.95               |
| 3,900       | 218.17         | 330.14               |
| 10,000      | 559.40         | 846.50               |

**BACKGROUND**

In the November 2008 election, Berkeley voters approved Measure GG, which authorized the levying of a special tax. The tax proceeds will be used first to eliminate rotating closures of operating fire stations, and to provide advanced life support personnel (paramedics) and equipment on all first responder vehicles (ambulances, fire engines and ladder trucks). The funds would also be used to (1) hire a training officer to provide Emergency Medical Service training for first responders; (2) hire staff to conduct Community Emergency Response Training and other similar public disaster training and preparedness efforts and for neighborhood emergency preparedness caches; and (3) to acquire and maintain equipment to enhance emergency preparedness, including equipment to allow compatible radio communications throughout the City and with outside public safety agencies. On November 8, 2016, over 87% of Berkeley voters approved Measure V1 to re-authorize the City, for a period of four (4) years through FY 2020, to spend the Fire Protection and Emergency Response and Preparedness tax.



ALTERNATE CONSIDERATIONS

The City Council may consider adjusting the current recommended tax rate of \$0.05809 per square foot of improvements for dwelling units and \$0.08791 per square foot of improvements for all other property by the Personal Income Growth in California of 3.85% with projected revenue of \$5,320,233. The Commission considered an increase in the assessment rate but instead decided on no increase. However, as Measure GG funds salaries, as well as overtime and pay differentials tied to salaries, the increase is essential to support full staffing.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7301  
Dave Brannigan, Fire Chief, 981-5500

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND FIRE PROTECTION AND EMERGENCY RESPONSE AND PREPAREDNESS (MEASURE GG) IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate for the Fire Protection and Emergency Response and Preparedness (Measure GG) is set at:

\$0.05818 per square foot of improvements for dwellings  
\$0.08804 per square foot of improvements for all other properties

Section 2. The cost to taxpayers during FY 2020 will be \$69.81 for a 1,200 square foot dwelling and \$174.54 for a 3,000 square foot dwelling.

Section 3. This tax rate will result in estimated total collections of \$5,328,686.

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: FY 2020 Tax Rate: Fund Debt Service on 2015 Refunding General Obligation Bonds (Measures G, S & I)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the 2015 consolidation of Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0150%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0150% will result in estimated collections of \$3,200,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2020 and September 1, 2020.

CURRENT SITUATION AND ITS EFFECTS

The 0.0150% tax rate for FY 2020 being set by the City Council is based on the current debt service, the estimated FY 2020 assessed values for all rolls (secured, unsecured, and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2020 is a decrease in the rate charged in FY 2019.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2020 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2020 tax rate of 0.0150% which will result in the following cost to the average homeowner during FY 2020, as compared to FY 2019:

| Annual Tax     |             |             |
|----------------|-------------|-------------|
| Assessed Value | FY 2019 Tax | FY 2020 Tax |
| \$150,000      | \$30.75     | \$22.50     |
| 250,000        | 51.25       | 37.50       |
| 300,000        | 61.50       | 45.00       |
| 400,000        | 82.00       | 60.00       |
| 500,000        | 102.50      | 75.00       |
| 600,000        | 123.00      | 90.00       |
| 700,000        | 143.50      | 105.00      |
| 800,000        | 164.00      | 120.00      |
| 900,000        | 184.50      | 135.00      |
| 1,000,000      | 205.00      | 150.00      |

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the subject of this report.

**BACKGROUND****Measure G**

On November 3, 1992, the voters of the City of Berkeley approved the incurring of bonded indebtedness for fire safety and seismic improvements to emergency facilities (Measure G). This indebtedness was not to exceed an aggregate principal amount of \$55,000,000. The Series A Bonds in the amount of \$8,000,000 were issued on June 1, 1993; Series B Bonds in the amount of \$14,000,000 were issued on July 25, 1995; and Series C bonds in the amount of \$10,500,000 were issued on July 1, 1997.

The indebtedness on the total bonds issued of \$32,500,000 is payable solely from the levy of an ad valorem tax against taxable property in the City. The proceeds of the bonds were used to pay for, among other things, “repairing and seismic retrofitting of existing fire stations, the Public Safety Building, which contains the City communication center, and the Emergency Operations Center (EOC).”

On November 1, 2002, the City issued \$17,865,000 in General Obligation refunding bonds to refund the 1993 Measure G (Series A) and 1995 Measure G (Series B) General Obligation bonds. In May 2007, the City issued \$4,340,000 in refunding bonds to refund the 1997 Measure G, (Series C) General Obligation bonds.

**Measure S**

On November 5, 1996, the voters of the City of Berkeley approved incurring a total of \$49,000,000 bonded indebtedness to ensure the safety of its public and employees and to revitalize downtown.

The indebtedness is payable solely from the levy of an *ad valorem* tax against taxable property in the City. The proceeds were used to restore, expand and make the Main Library earthquake-safe and improve disabled access to it; to internally retrofit and increase disabled accessibility to Martin Luther King Jr., Civic Center Building; and to install landscaping, street improvements, street lighting, and other related capital improvements within the downtown area of Berkeley.

On June 4, 1997 Series A Bonds in the amount of \$10,000,000 were issued; on December 1, 1998 Series B Bonds in the amount of \$25,000,000 were issued; and on August 1, 1999 Series C Bonds in the amount of \$14,000,000 were issued. In May 2007, the City issued \$41,245,000 in refunding bonds to refund the 1997, 1998, and 1999 Measure S (Series A, B, and C) General Obligation bonds.

**Measure I**

In November 2002, the residents of Berkeley voted for and approved Ballot Measure I, in the sum of \$7,200,000 of General Obligation Bonds to acquire property, if necessary, and to construct or rehabilitate a building for an animal shelter that meets the requirements of state law.

The indebtedness on the total bonds issued of \$7,200,000 is payable solely from the levy of an *ad valorem* tax against taxable property in the City. The proceeds of the bonds were used to acquire property, and to construct a building for an animal shelter that meets the requirements of state law.

The General Obligation Bonds in the amount of \$7,200,000 were issued on January 9, 2008.

All bonds were consolidated in a refinancing completed on July 15, 2015 which included the issuance of \$36,680,000 in general obligation refunding bonds.

The tax rate above reflects the debt service payments for the fiscal year.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, 510-981-7326

**Attachments:**

1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FY 2020 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE  
2015 REFUNDING GENERAL OBLIGATION BONDS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate for the debt service on the 2015 Refunding General Obligation Bonds - Measures G, S and I (General Obligation Bonds - Elections of 1992, 1996 and 2002) at 0.0150%.

Section 2. The Tax Rate will be based on estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2020 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$3,200,000 needed to make the March 1, 2020 and September 1, 2020 debt service payments on Refunding General Obligation Bonds.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2020 Tax Rate: Fund the Debt Service on the Infrastructure and Facilities General Obligation Bonds (Measure T1, November 2016 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Infrastructure and Facilities Improvements General Obligation Bonds (Measure T1, November 2016) at 0.0092%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0092% will result in estimated collections of \$2,000,000. This amount will be sufficient to make the debt service payments on the outstanding general obligation bonds issued in 2017 with debt service on March 1, 2020 and September 1, 2020.

CURRENT SITUATION AND ITS EFFECTS

The 0.0092% tax rate for FY 2020 being set by the City Council is based on the current debt service of the Series A Bonds issued in September 2017 for \$35,000,000, the estimated FY 2020 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2020 is a decrease in the rate charged in FY 2019.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2020 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2020 tax rate of 0.0092% which will result in the following cost to the average homeowner during FY 2020, as compared to FY 2019:

| Annual Tax     |             |             |
|----------------|-------------|-------------|
| Assessed Value | FY 2019 Tax | FY 2020 Tax |
| \$150,000      | \$19.05     | \$13.80     |
| 250,000        | 31.75       | 23.00       |
| 300,000        | 38.10       | 27.60       |
| 400,000        | 50.80       | 36.80       |
| 500,000        | 63.50       | 46.00       |
| 600,000        | 76.20       | 55.20       |
| 700,000        | 88.90       | 64.40       |
| 800,000        | 101.60      | 73.60       |
| 900,000        | 114.30      | 82.80       |
| 1,000,000      | 127.00      | 92.00       |

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

BACKGROUND

In November 2016, the residents of Berkeley voted for and approved Ballot Measure T1, for the sum of \$100,000,000 of General Obligation Bonds to make infrastructure and facility improvements. The pace of financing and tax rate will be determined based on the overall growth of the City’s assessed value and the total outstanding general obligation bond debt service such that the total combined tax rate (for general obligation bond repayment will not exceed 0.0492% which represents the 10-year historical tax rate as of June 2016).

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

- 1: Ordinance



ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE INFRASTRUCTURE AND FACILITIES IMPROVEMENTS GENERAL OBLIGATION BONDS (MEASURE T1, NOVEMBER 2016 ELECTION) IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 tax rate for debt service on the General Obligation Bonds is set at 0.0092%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2020 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$2,000,000 needed to make the March 1, 2020 and September 1, 2020 debt service payments on the proposed General Obligation Bonds.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: FY 2020 Tax Rate: Fund Debt Service on Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the debt service on the Neighborhood Branch Library Improvements Project General Obligation Bonds (Measure FF, November 2008 Election) at 0.0075%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0075% will result in estimated collections of \$1,600,000. This amount (along with existing funds on hand) is sufficient to make the debt service payments on March 1, 2020 and September 1, 2020.

CURRENT SITUATION AND ITS EFFECTS

The 0.0075% tax rate for FY 2020 being set by the City Council is based on the debt service, the estimated FY 2020 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency. The tax rate in FY 2020 is a decrease in the rate charged in FY 2019.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2020 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2020 tax rate of 0.0075% which will result in the following cost to the average homeowner during FY 2020, as compared to FY 2019:

| Annual Tax     |             |             |
|----------------|-------------|-------------|
| Assessed Value | FY 2019 Tax | FY 2020 Tax |
| \$150,000      | \$12.75     | \$11.25     |
| 250,000        | 21.25       | 18.75       |
| 300,000        | 25.50       | 22.50       |
| 400,000        | 34.00       | 30.00       |
| 500,000        | 42.50       | 37.50       |
| 600,000        | 51.00       | 45.00       |
| 700,000        | 59.50       | 52.50       |
| 800,000        | 68.00       | 60.00       |
| 900,000        | 76.50       | 67.50       |
| 1,000,000      | 85.00       | 75.00       |

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the subject of this report.

**BACKGROUND**

In November 2008, the residents of Berkeley voted for and approved Ballot Measure FF, in the sum of \$26,000,000 of General Obligation Bonds to renovate, expand, and make seismic and access improvements at the four neighborhood branch libraries (excluding the Central Library).

The indebtedness on the total bonds issued of \$26,000,000 is payable solely from the levy of an ad valorem tax against taxable property in the City. The proceeds of the bonds were used to renovate, expand, and make seismic and access improvements at the four neighborhood branch libraries (excluding the Central Library).

\$10,000,000 of the \$26,000,000 in authorized bonds were issued in 2009, and the remaining \$16,000,000 of bonds were issued in 2010. The tax rate above reflects the debt service payments for the fiscal year.

**CONTACT PERSON**

Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

- 1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FY 2020 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT GENERAL OBLIGATION BONDS (MEASURE FF, NOVEMBER 2008 ELECTION) IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 tax rate for the debt service on the General Obligation Bonds is set at 0.0075%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2020 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$1,600,000 needed to make the March 1, 2020 and September 1, 2020 debt service payments on the outstanding General Obligation Bonds.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

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CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: FY 2020 Tax Rate: Fund the Debt Service on the Affordable Housing General Obligation Bonds (Measure O, November 2018 Election)

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate funding the debt service on the Affordable Housing General Obligation Bonds (Measure O, November 2018) at 0.0062%.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended 0.0062% will result in estimated collections of \$1,250,000. This amount will be sufficient to make the debt service payments on the proposed Series A Bonds to be issued in the spring of 2020 with debt service due September 1, 2020.

CURRENT SITUATION AND ITS EFFECTS

The 0.0062% tax rate for FY 2020 being set by the City Council is based on the projected debt service of the Series A Bonds for \$30,000,000, the estimated FY 2020 assessed values for all rolls (secured, unsecured and utility), a delinquency reserve of 5%, and the surplus remaining in the fund. Since Alameda County does not release final assessed value figures until early August, the City is using preliminary values. Staff is confident that the preliminary values will not be materially different from the County's final figure. The City must establish a tax rate that will be sufficient to make debt service payments even if there are unusual levels of delinquency.

Because all taxes collected from the general obligation levy will be deposited in a special fund, and collections not used to pay debt service for the FY 2020 bond year will be retained in the fund to pay future obligations, the tax impact of any over-collection will be credited against future debt service payments and the required levy.

It is recommended that the City Council authorize a FY 2020 tax rate of 0.0062% which will result in the following cost to the average homeowner during FY 2020:

| Annual Tax     |             |
|----------------|-------------|
| Assessed Value | FY 2020 Tax |
| \$150,000      | \$9.30      |
| 250,000        | 15.50       |
| 300,000        | 18.60       |
| 400,000        | 24.80       |
| 500,000        | 31.00       |
| 600,000        | 37.20       |
| 700,000        | 43.40       |
| 800,000        | 49.60       |
| 900,000        | 55.80       |
| 1,000,000      | 62.00       |

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

BACKGROUND

In November 2018, the residents of Berkeley voted for and approved Ballot Measure O, for the sum of \$135,000,000 of General Obligation Bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities.

It is anticipated that the first series of bonds will be issued in early 2020 and require a tax levy for the FY2020 tax cycle in order to make the September 1, 2020 debt service payment.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

- 1: Ordinance



ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 TAX RATE FOR FUNDING THE DEBT SERVICE ON THE AFFORDABLE HOUSING GENERAL OBLIGATION BONDS (MEASURE O, NOVEMBER 2018 ELECTION) IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 tax rate for debt service on the General Obligation Bonds is set at 0.0062%.

Section 2. The Tax Rate will be based on the estimated assessed values for all rolls (secured, unsecured, and utility) and will become a part of the FY 2020 property tax bill.

Section 3. This Tax Rate will result in estimated total collections of \$1,250,000 needed to make the September 1, 2020 debt service payments on the proposed General Obligation Bonds.

Section 4. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Elliot Warren, Acting Director of Library Services  
Henry Oyekanmi, Director of Finance  
Subject: FY 2020 Special Tax Rate: Fund the Provision of Library Services

RECOMMENDATION

Adopt first reading of an Ordinance setting the FY 2020 tax rate for funding the provision of Library Services in the City of Berkeley at \$0.2272 (22.72 cents) per square foot for dwelling units and \$0.3435 (34.35 cents) per square foot for industrial, commercial, and institutional buildings.

FISCAL IMPACTS OF RECOMMENDATION

The tax levy of the recommended \$0.2272 for dwelling units and \$0.3435 for industrial, commercial, and institutional buildings will result in estimated collections of \$20,452,814 for the Library Tax Fund. The increase in the tax rate of \$0.0088 for dwelling units and \$0.0133 for industrial, commercial, and institutional buildings will result in an increase of \$16.67 for the citywide average 1900 square foot dwelling and \$25.20 for all other property of similar size.

CURRENT SITUATION AND ITS EFFECTS

The FY 2020 tax of \$0.2272 for dwelling units and \$0.3435 for all other property are being adjusted by the Consumer Price Index in the immediate San Francisco Bay Area of 4.015%, as the voters approved the greater of that or the per capita Personal Income Growth factor in California of 3.85%. In addition, the Board of Library Trustees recommends that the City Council adjust the tax rate by 4.015%.

It is recommended that the City Council authorize the levy of a special tax of \$0.2272 per square foot for dwelling units and of \$0.3435 for all other property in the City of Berkeley. The tax will result in a cost to taxpayers in the following average amounts during FY 2020, as compared with amounts for FY 2019:

| Square Feet | Annual Tax – Dwelling Units |          | Annual Tax – All Other Properties |          |
|-------------|-----------------------------|----------|-----------------------------------|----------|
|             | FY20                        | FY19     | FY20                              | FY19     |
| 1,200       | \$272.68                    | \$262.16 | \$412.26                          | \$396.34 |
| 1,500       | 340.85                      | 327.70   | 515.32                            | 495.43   |
| 1,900       | 431.75                      | 415.08   | 652.74                            | 627.54   |
| 3,000       | 681.71                      | 655.39   | 1,030.64                          | 990.86   |
| 3,900       | 886.22                      | 852.01   | 1,339.83                          | 1,288.12 |
| 10,000      | 2,272.36                    | 2,184.64 | 3,435.47                          | 3,302.86 |

**BACKGROUND**

The Central Library and neighborhood branch libraries received approximately 99% of their FY 2019 funding through a citywide special tax (referred to as the Library Relief Act of 1980) of \$0.2185 per square foot on all improvements to residential real property in the City of Berkeley, and \$0.3303 per square foot on all improvements to industrial, commercial, and institutional real property. The purpose of this voter-approved tax is to provide a stable revenue source to assure the provision of library services at the level which permits library operations six days a week at branch libraries, seven days a week at the Central Library, and which permits the purchase of library materials at levels which are commensurate with the libraries’ hours of service, staffing and patron needs.

On November 8, 2016, over 87% of Berkeley voters approved Measure V1 to re-authorize the City, for a period of four (4) years through FY 2020, to spend the Library Services tax as approved by the voters.

**ENVIRONMENTAL SUSTAINABILITY**

There are no identifiable environmental effects or opportunities associated with the subject of this report.

**RATIONALE FOR RECOMMENDATION**

Adopting the Consumer Price Index in the immediate San Francisco Bay Area would contribute an incremental increase of approximately \$32,444 to projected FY 2020 revenue over that of the per capita Personal Income Growth factor in California.

**ALTERNATIVE ACTIONS CONSIDERED**

The fiscal impact on the Library Tax Fund of adopting the per capita Personal Income Growth factor in California of 3.85% instead of the Consumer Price Index in the immediate San Francisco Bay Area of 4.015% would be a reduction of \$32,444 in projected FY 2020 library tax receipts.

**CONTACT PERSON**

Henry Oyekanmi, Director of Finance, 981-7326  
Elliot Warren, Acting Director of Library Services, 981-6109

FY 2020 Special Tax Rate:  
Fund the Provision of Library Services

CONSENT CALENDAR  
June 11, 2019

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

SETTING THE FISCAL YEAR 2020 SPECIAL TAX RATE TO FUND LIBRARY SERVICES TAX IN THE CITY OF BERKELEY

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. The FY 2020 Tax Rate to support usual and current expenses of operating library services is set at \$0.2272 per square foot for dwelling units and \$0.3435 per square foot for industrial, commercial and institutional buildings.

Section 2. The cost to taxpayers during FY 2020 will be \$340.85 for a 1,500 square foot dwelling and \$515.32 for all other property of similar size.

Section 3. This tax rate will result in estimated total collections of \$20,452,814.

Section 4. The tax imposed by this ordinance does not apply to any property owner whose total personal income, from all sources for the previous calendar year, does not exceed that level which shall constitute a very low income, as established by resolution of City Council.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Henry Oyekanmi, Director, Finance Department  
Subject: Temporary Appropriations FY 2020

RECOMMENDATION

Adopt a Resolution authorizing a temporary appropriation in the sum of \$50,000,000 to cover payroll and other expenses from July 1, 2019, until the effective date of the FY 2020 Annual Appropriations Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

The financial implications are already stated in the Annual Appropriations Ordinance.

CURRENT SITUATION AND ITS EFFECTS

A temporary appropriation of funds is required to permit expenditures until the effective date of the Annual Appropriation Ordinance, which occurs 30 days after the second reading. Section 54, Article X of the Charter of the City of Berkeley authorizes such temporary appropriations.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

BACKGROUND

The budget is scheduled for adoption on June 25, 2019, and the Annual Appropriations Ordinance is to be passed on the same day with a required second reading on July 9, 2019. A temporary appropriation of funds is required to permit expenditures until the effective date of the Annual Appropriations Ordinance, which occurs approximately 30 days after the second reading (i.e., August 8). The sum appropriated, when expended, shall be chargeable to the Annual Appropriations Ordinance for FY 2020 when the budget has been adopted, and said Ordinance has been passed.

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 981-7301

Attachments:

1: Resolution

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

AUTHORIZING A TEMPORARY APPROPRIATION FOR PAYROLL AND OTHER EXPENSES FROM JULY 1, 2019 UNTIL THE EFFECTIVE DATE OF THE FISCAL YEAR 2020 ANNUAL APPROPRIATIONS ORDINANCE

WHEREAS, the City Charter of the City of Berkeley grants authority to the City Council to annually adopt an appropriations ordinance, to pay the expenses of conducting the business of City government for the next ensuing fiscal year; and

WHEREAS, the Annual Appropriations Ordinance to be passed on June 25, 2019 will not be effective earlier than August 8, 2019.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that \$50,000,000 be appropriated from available funds for payroll and other expenses from July 1, 2019 until the effective date of the FY 2020 Annual Appropriations Ordinance, chargeable to the appropriations for FY 2020.

BE IT FURTHER RESOLVED that it is the purpose and intent of this Resolution to make available funds as provided by Section 54, Article X, of the Charter of the City of Berkeley pending final adoption of the Annual Appropriations Ordinance for FY 2020.

BE IT FURTHER RESOLVED that the sum hereby appropriated shall, when expended, be chargeable to the appropriations of said fiscal year, when said Ordinance has been finally passed and adopted.

BE IT FURTHER RESOLVED that temporary inter-fund transfers be made as necessary to make funds available to carry out said purposes and intent of this resolution pending final adoption of said Ordinance.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Kelly Wallace, Interim Director, Health, Housing and Community Services  
Subject: Contract: Bay Area Community Resources for the Placement of AmeriCorps Members

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute an expenditure contract and any amendments or extensions thereto with Bay Area Community Resources in an amount not to exceed \$56,000 for the period July 1, 2019 through June 30, 2020 for the placement of AmeriCorps members.

FISCAL IMPACTS OF RECOMMENDATION

Funding sources for the Bay Area Community Resources contract include local funding in ERMA GL Account 011-51-506-560-0000-000-451-636110 (\$56,000) for Berkeley High School Health Center (BHS HC) and Berkeley Technology Academy Health Center (B-Tech) and has been assigned CMS No. EL6CM. Funding for this contract is included in the proposed FY 2020 budget and is subject to Council approval of the FY 2020 Annual Appropriations Ordinance on June 25, 2019.

CURRENT SITUATION AND ITS EFFECTS

Bay Area Community Resources (BACR) will provide up to four AmeriCorps members to work with the Public Health Division in providing health education services related to family planning and other youth health issues, and lead youth development/peer education programs at the Berkeley High School Health Center and Berkeley Technology Academy Health Center. Additionally, they will conduct community outreach, enter data into the electronic health records, and facilitate support group services. Members will be placed at the Berkeley High School Health Center and Berkeley Technology Academy Health Center.

BACKGROUND

Berkeley Public Health Division has a longstanding partnership with BACR and the AmeriCorps program to provide professional development opportunities to youth in the field of Public Health. AmeriCorps members provide essential near-peer services to Berkeley youth.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

At the Berkeley High School and Berkeley Technology Academy Health Centers, the AmeriCorps members provide much needed health education services to high school students. The AmeriCorps program provides peer education and group support services regarding healthy relationships, positive decision making and communication, pregnancy and sexually transmitted disease prevention and testing, and counseling regarding birth control methods. Additionally, the AmeriCorps volunteers receive training that supports development of an equitable and inclusive workforce.

ALTERNATIVE ACTIONS CONSIDERED

The City could not hire AmeriCorps members to support these programs. This would lead to a significant decrease in services Public Health could provide to Berkeley's youth.

CONTACT PERSON

Janice Chin, Public Health Division Manager, HHCS, 981-5121

Attachments:

1: Resolution

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

CONTRACT: BAY AREA COMMUNITY RESOURCES FOR THE PLACEMENT OF  
AMERICORPS INTERNS

WHEREAS, the City of Berkeley Public Health Division has supported the Berkeley High School Health Center and Berkeley Technology Academy and their provision of comprehensive health care to students since its inception in 1991; and

WHEREAS, the intern programs at the Berkeley High School Health Center and Berkeley Technology Academy allow for the provision of critical health education services for their high risk populations; and

WHEREAS, the AmeriCorps program provides professional development opportunities to youth in the field of public health; and

WHEREAS, funds are available in the FY20 budget in General Fund: Project Code HHPGHS1901; ERMA GL Account 011-51-506-560-0000-000-451-636110; CMS No. EL6CM.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute an expenditure contract and any amendments or extensions thereto with Bay Area Community Resources (BACR) in an amount not to exceed \$56,000 for the period July 1, 2019 through June 30, 2020 for the purpose of placing AmeriCorps interns at the Berkeley High School Health Center and the Berkeley Technology Academy Health Center. A record signature copy of said contract and any amendments shall be on file in the office of the City Clerk.





Office of the City Manager

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CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Contract: Berkeley Unified School District for Workplace Skills Training for YouthWorks Employment Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a sole-source expenditure contract and any needed amendments or extensions with the Berkeley Unified School District (BUSD) to provide workplace skills training to prepare YouthWorks participants for summer employment in an amount not to exceed \$26,694 for the period June 12, 2019 through August 31, 2022.

FISCAL IMPACTS OF RECOMMENDATION

The funding for this contract is in budget code 011-51-504-532-2025-000-444-636110 in the Health, Housing & Community Services Department budget. The cost for the first summer session in FY 2019 is \$8,605. The contract has been entered into the City's Contract Management System and assigned CMS No. FLM81.

CURRENT SITUATION AND ITS EFFECTS

Approximately 200 Berkeley youth ages 14-25 will begin their summer jobs with the YouthWorks Employment Program on July 1, 2019, including placement in city departments and community-based agencies. For many youth, these jobs will be their first, and it is important to provide workplace skills training before they begin those jobs. BUSD's Career Technical Education coordinator and the teacher who provides the training work closely with city staff to customize the training. The training includes important workplace topics such as conflict resolution, "do's and don'ts" of social media in the workplace, customer service, dressing for success, written/electronic communications and occupational health and safety. Staff anticipates that approximately 200 youth will participate in the workplace skills sessions each summer which will be held on the Berkeley High School campus. This training will supplement the training already provided by YouthWorks specific to city employment, i.e., Ethics, Sexual Harassment, Financial Literacy and youth worker Code of Conduct.

BACKGROUND

On June 3, 2014 and again on May 26, 2015, Council authorized the City Manager to execute contracts with BUSD to develop workplace skills training curriculum and to

provide the training to YouthWorks participants. YouthWorks provides Berkeley youth an opportunity to learn about the world of work, exploring potential careers while learning skills and earning a paycheck.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

As the only school district within Berkeley, BUSD can provide credentialed teachers with experience in the instruction of middle and high school students. Additionally, working directly with BUSD to provide the training allows for participants to receive school credit. Continuing to partner with BUSD through a sole-source contract aligns YouthWorks with one of the 2020 Vision's College and Career Readiness Goals which is to increase the percentage of students that are college and career ready.

ALTERNATIVE ACTIONS CONSIDERED

Alternative actions were not considered because by using BUSD credentialed staff, the youth may receive academic credit for the training and their summer work experience. It also allows city staff to focus on conducting the outreach, screening and preparation of payroll documents, orientations, and on-going operation of the summer program.

CONTACT PERSONS

Delfina Geiken, Employment Programs Administrator, HHCS, 510-981-7551  
Amy Davidson, Interim Manager, Housing & Community Services Division, 510-981-5406

Attachments:  
1: Resolution

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

CONTRACT: BERKELEY UNIFIED SCHOOL DISTRICT FOR WORKPLACE SKILLS TRAINING FOR YOUTHWORKS EMPLOYMENT PROGRAM

WHEREAS, the City of Berkeley and Berkeley Unified School District have historically collaborated on efforts to improve academic, health, social and career readiness for Berkeley youth; and

WHEREAS, BUSD has the capacity and resources to administer workplace skills training for YouthWorks participants and has provided this training since 2014; and

WHEREAS, Berkeley youth ages 14-15 will begin their summer jobs on June 17 and July 1, 2019; and

WHEREAS, for many youth, these jobs will be their first and it is important to provide work readiness training; and

WHEREAS, partnering with BUSD provides an opportunity to align with one of the 2020 Vision College and Career readiness goals which is to increase the percentage of students that are college and career ready.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a sole-source expenditure contract and any amendments or extensions with Berkeley Unified School District (BUSD) in an amount not to exceed \$26,694 for the period June 12, 2019 through August 31, 2022 for the purpose of workplace skills training for YouthWorks participants. Budget Code (expenditure) 011-51-504-532-2025-000-444-636110, CMS No. FLM81. A record signature copy of said contract to be on file in the office of the City Clerk.







Office of the City Manager

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Request for Proposals to Sell Single Family Home at 1654 Fifth Street to Operate as Homeless Housing

RECOMMENDATION

Direct the City Manager to issue a Request for Proposals to select a qualified organization to purchase the single family home at 1654 Fifth Street to operate as housing for the homeless.

FISCAL IMPACTS OF RECOMMENDATION

This property is currently vacant and incurs costs for ongoing monitoring and landscape maintenance. There has not been an appraisal of the property to determine a market rate value. Market estimates of surrounding properties indicate a potential value between \$600,000 and \$750,000, considering significant rehabilitation needs. However, restricting the future use to homeless housing significantly reduces the property's value. Staff is recommending that bidders propose a purchase price and rehabilitation plan, and the City record a deed restriction at the time of sale for a minimum of 30 years.

The property was acquired with CDBG funds, which restricts revenue from its sale to CDBG-eligible uses. Staff recommend allocating any revenue for use in the Housing Trust Fund (HTF) program, which includes CDBG-eligible activities such as housing acquisition and rehabilitation.

CURRENT SITUATION AND ITS EFFECTS

Selecting a qualified organization to purchase the City-owned property to provide homeless housing for the Berkeley community is a Strategic Plan Priority Project, advancing our goals to create affordable housing and housing support service for our most vulnerable community members.

The City acquired the single family home at 1654 Fifth Street as the Successor Agency to Redevelopment. The former Redevelopment Agency intended to sell this property, but the process was halted due to redevelopment's dissolution statewide. The property does not have the sufficient size or appropriate zoning to develop new affordable housing efficiently, and any new construction would be small scale and require

additional City subsidies beyond the City's standard contributions. The City also is incurring ongoing maintenance costs and liabilities while it holds the property.

City staff initially recommended selling this property at market rate and allocating the proceeds to support Housing Trust Fund program activities at the September 25, 2018 City Council meeting. This recommendation was supported by the Housing Advisory Commission at their July 11, 2018 meeting. The City Council referred the item to the Agenda Committee for future scheduling. Staff identified the following approach as an alternative way to respond to the housing crisis as expressed by Council.

Staff's analysis of the site's potential for the new construction of affordable housing determined it is not feasible due to size constraints and other limitations. A market rate sale was initially recommended in order to maximize funds to support the City's affordable housing priorities for new construction and rehabilitation of HTF-supported properties. However, issuing an RFP for purchase by a homeless-serving organization will provide the City an opportunity to first determine if the home can be repurposed to house and serve homeless or other housing vulnerable populations more cost effectively while still reserving the potential for a return on the City's CDBG investment.

Staff recommend using the RFP process to select a qualified organization for the disposition of the property for a positive value. This recommendation is consistent with the direction of Redevelopment Agency's Oversight Board and the direction of the State Department of Finance, as well as the Housing Advisory Commission's recommendation. Selling the property to a qualified organization will also remove the City's ongoing liabilities and return the property to an active use.

The RFP will require bidders to provide a positive sales value contingent on proposed services as well as immediate and ongoing rehabilitation and maintenance costs. HHCS' initial estimate for rehabilitation needs is approximately \$94,000. The property will be sold in "as is" condition, and proposals will be required to include a rehabilitation plan. Interested bidders will have the opportunity to inspect the property during the RFP period. The property is currently zoned to accommodate one household. A group living accommodation to serve multiple residents will require a use permit. It will be the bidder's responsibility to secure all permits required by their proposal as a condition of the sale.

Staff are proposing to complete a technical review of each application's organizational capacity and feasibility, and providing this information to the Housing Advisory Commission for evaluation. Staff would then provide a recommendation and a proposed disposition agreement to Council for approval. The disposition agreement would establish conditions of sale including the sale price, the requirement to obtain any needed land use approvals, the rehabilitation plan, and a timeframe for meeting these conditions.

## BACKGROUND

This property contains a three bedroom, two bathroom single family home on a 5,353 square foot lot. The property is zoned MU-R/MULI. Records for this property between 1969 and 1986 are not readily available. In 1987, the property was rented to low-income tenants. In 1993, the property was renovated and the tenants were provided a new lease with an option to purchase after ten years. The tenants did not secure financing when the Redevelopment Agency provided the option to purchase in 2004. In 2006 and 2007, the Agency solicited proposals for non-profit affordable housing developers to determine the viability of sale, however response was limited. NCLT submitted an offer to purchase, but the Redevelopment Agency rescinded its offer to sell following NCLT's bankruptcy filing. In 2010, the tenants were relocated from the site. In 2011, the Agency began proceedings for a market-rate sale of the property, but was forced to abandon its efforts following the adoption of the redevelopment dissolution legislation. The house has remained vacant since this time.

Following the dissolution of all California redevelopment agencies, the Berkeley Redevelopment Agency prepared a state-mandated Long Range Development Management Plan (LRDMP) which the City Council, acting as the Successor Agency, adopted in 2014. The LRDMP included the recommendation to sell this property at market rate. In 2015, for reasons related to Redevelopment law and the dissolution process, and acting at the direction of the State Department of Finance, the Redevelopment Agency's Oversight Board removed 1654 Fifth Street from the LRDMP and listed it as a housing asset to facilitate its disposition on the market.

## ENVIRONMENTAL SUSTAINABILITY

Adaptive reuse of existing structures is generally considered to promote environmental sustainability.

## RATIONALE FOR RECOMMENDATION

Issuing an RFP to sell the property to a qualified organization will: 1) leverage City-owned property to facilitate housing and services for homeless and/or housing vulnerable residents; 2) be consistent with the approvals and recommendations of the Redevelopment Oversight Board, State Department of Finance, and Housing Advisory Commission; and 3) provide CDBG revenue to support additional affordable housing priorities, including acquisition and preservation.

## ALTERNATIVE ACTIONS CONSIDERED

The City could consider:

- Leasing the property instead of selling it. Staff are not recommending this option because it is not consistent with Redevelopment's plans, and maintaining ownership of a single family home is not in the best long term interest of the City due to ongoing liabilities and the required staff time for administration relative to the property's size and capacity.

- Selling the property at market rate without a consideration for homeless housing. This option would yield a higher return on the City's CDBG investment that would be applied to the City's affordable housing priorities via the Housing Trust Fund program, but would not guarantee affordable housing offered at this site. Staff initially proposed this recommendation to maximize the support for the City's affordable housing goals and rehabilitation and preservation needs.

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114



Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Department of Information Technology  
Subject: Contract No. 9149B Amendment: Advantel Networks assignment to ConvergeOne and for Voice Over IP (VoIP) Telephone System Support and Maintenance

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to amend Contract No. 9149B with ConvergeOne (formerly Advantel Networks) for Voice Over IP (VoIP) telephone system licensing and maintenance, increasing the contract by \$121,538 for a total not to exceed amount of \$1,509,038, from November 15, 2012 to June 30, 2020.

FISCAL IMPACTS OF RECOMMENDATION

Funding for extended maintenance and support services in the amount of \$121,538, is allocated in the Department of Information Technology's FY 2020 VoIP Replacement and IT Cost Allocation funds as outlined below. Spending for this amendment in future fiscal years is subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

|                  |                                                                                                            |
|------------------|------------------------------------------------------------------------------------------------------------|
|                  | Software Maintenance and Support                                                                           |
| \$100,000        | FY 2020 Budget Code: 502-35-363-380-0000-000-412-613130-<br>(VoIP Replacement, IT, Software Maintenance)   |
|                  | IT: Software Maintenance and Support                                                                       |
| \$21,538         | FY 2020 Budget Code: 680-35-363-380-0000-000-472-613130-<br>(IT Cost Allocation, IT, Software Maintenance) |
| <b>\$121,538</b> | <b>Total FY 2020 Software Maintenance</b>                                                                  |

CURRENT SITUATION AND ITS EFFECTS

The City's current Voice Over IP (VoIP) telephone system has been in place since 2013. Advantel Networks has been the implementation and support vendor for the City's VoIP phone system since 2012.

In October 2018, Advantel Networks was acquired by ConvergeOne, a leading IT services provider of collaboration and technology solutions for large and medium

companies. ConvergeOne continues to provide support and maintenance of the City's Avaya phone system, which includes proactive monitoring and notification to City IT staff in the event of a server outage.

In addition to renewing annual licensing and maintenance, the City will be upgrading some software components that are out of date to keep us in support. In addition the City is asking for training for the Call Manager software, which will allow supervisors of Automated Call Distribution (ACD) teams to run reports against phone traffic. Some ACD groups in the City include the 311 Call Center, the IT Help Desk, and the Planning Department.

The ongoing maintenance and support is critical to advancing our City's strategic goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### BACKGROUND

In 2010, City staff consulted comparable cities, member agencies of the Municipal Information Systems Association of California (MISAC), Gartner Research Group, and hired a telephone system expert to help define requirements for a new telephone system solution.

In February 2011, the City issued a Request for Proposals (RFP) for a VoIP telephone system (Specification No. 11-10555-C) and received ten qualifying vendor responses. In December 2012, the City awarded the bid to Advantel networks for the implementation and ongoing maintenance of an AVAYA Voice Over IP (VoIP) Phone System.

In August 2013, the City implemented the new VoIP system across the downtown campus, including City Hall, 1947 Center Street, the Public Safety Building, the Rent Board, and the Corpyard. Throughout the rest of 2013 and 2014 the City completed infrastructure and bandwidth upgrades at all remote locations, to support VoIP phones at all remote locations.

#### ENVIRONMENTAL SUSTAINABILITY

The Avaya solution was selected in part because of the energy-efficient handsets which consume fewer than four watts of energy for each handset. This resolution continues to support the goals of environmental sustainability.

#### RATIONALE FOR RECOMMENDATION

ConvergeOne has provided support and maintenance for our Avaya system since 2013. We are requesting support for an additional year through the end of FY 2020. During FY20 the City will publish an RFP for to research the options for the system updates and ongoing support and will include disaster recovery and training.

#### ALTERNATIVE ACTIONS CONSIDERED

Staff considered ending our support agreement with ConvergeOne. This proposal was rejected as we did not want to risk having a gap in our maintenance and support in the event of a major outage with our enterprise phone system.

CONTACT PERSON

Savita Chaudhary, Director, Department of Information Technology, 981-6525

Attachments:

1: Resolution

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

CONTRACT NO. 9149B AMENDMENT: CONVERGEONE (FORMERLY ADVANTEL NETWORKS) FOR VOICE OVER IP (VOIP) TELEPHONE SYSTEM

WHEREAS, on February 22, 2011, the City issued a Request for Proposals (RFP) for a VoIP system (Specification No. 11-10555-C) and received ten qualifying vendor responses; and

WHEREAS, the RFP review committee evaluated each proposal and determined that the Advantel Networks proposal best met the City's operational, technological, and fiscal requirements; and

WHEREAS in May 2012 City Council Authorized Contract No. 9149 with Advantel Networks for a Voice Over IP Telephone System; and

WHEREAS in September 2016 City Council authorized an amendment to Contract No. 9149 with Advantel Networks for a Voice Over IP Telephone System; and

WHEREAS in October 2018 Advantel Networks was acquired by ConvergeOne, a leading IT services provider of collaboration and technology solutions for large and medium companies; and

WHEREAS, funding for extended maintenance and support services in the amount of \$121,538, is allocated in the Department of Information Technology's FY 2020 VoIP Replacement and IT Cost Allocation Funds, and spending for this amendment in future fiscal years is subject to Council approval of the proposed citywide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to amend Contract No. 9149B with ConvergeOne (formerly Advantel Networks) Networks for Voice Over IP (VoIP) telephone system licensing and maintenance, increasing the contract by \$121,538 for a total not to exceed amount of \$1,509,038, from November 15, 2012 to June 30, 2020.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Savita Chaudhary, Director, Information Technology  
Subject: Contract: NEXGEN Asset Management for Computerized Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract with NEXGEN Asset Management for software hosting, implementation, maintenance and related services for a Computerized Maintenance Management System and Enterprise Asset Management (CMMS/EAM) system, for an amount not to exceed \$1,017,509 for the period commencing on July 12, 2019 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this recommendation in the amount of \$1,017,509 will be provided by multiple funds and departments' FY 2020 and 2021 budgets as outlined below. Spending for this contract and related amendments in future fiscal years is subject to Council's approval of the proposed city-wide budget and annual appropriation ordinances.

|           |                                                                                                                                       |
|-----------|---------------------------------------------------------------------------------------------------------------------------------------|
| \$857,509 | FY 2020: Professional Services<br>Budget code: 503-35-362-376-0000-000-412-612990-<br>(FUND\$ Replacement, IT, Professional Services) |
| \$92,491  | FY 2021: Software Maintenance<br>Budget Code: 503-35-362-376-0000-000-412-613130-<br>(FUND\$ Replacement, IT, Software Maintenance)   |
| \$50,632  | FY 2021: Software Maintenance<br>Budget Code: 601-54-627-731-625-000-412-613130<br>(Zero Waste, Public Works, Software Maintenance)   |
| \$16,877  | FY 2021: Software Maintenance<br>Budget Code: 138-52-541-598-0000-000-412-613130<br>(Parks Tax, PRW, Software Maintenance)            |

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**\$1,017,509 Total FY 2020 and 2021: Professional Services and Software Maintenance**

### CURRENT SITUATION AND ITS EFFECTS

The City's current work order and maintenance management systems (FUND\$, Accela, and Verint) are antiquated and inadequate to perform proper maintenance of City assets and retrieve the information needed to comply with mandated reporting requirements and internal performance measures. These systems are not well integrated, lack digital field communications, and cannot provide effective fiscal management and data analytics typically offered by a modern CMMS/EAP system. The current situation has led to inefficiencies in business workflow, delayed community response times, and limited reporting and analysis required to manage City assets effectively.

On October 23, 2018, the City issued Request for Proposals (RFP) #19-11259-C for an improved Computerized Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System based upon business analysis completed by the Departments of Information Technology, Parks, Recreation and Waterfront, and Public Works in partnership with ThirdWave Corporation.

The City received seven (7) responses to the CMMS/EAM System RFP by the December 18, 2018 deadline. A committee of 12+ staff from the Parks, Recreation & Waterfront, Public Works, and Information Technology departments conducted a comprehensive evaluation process that included proposal reviews, vendor demonstrations, and reference checks. Staff selected NEXGEN Asset Management as presenting the most comprehensive, user-responsive, and effective solution for the City's current and future work order and asset management needs.

The Computer Maintenance Management System & Enterprise Asset Management (CMMS/EAM) System is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

The City maintains a vast portfolio of public assets: 134 traffic lights, over 8,000 street lights with 3,200 city-owned street light poles, 653 miles of streets, 388 miles of sanitary sewers, 78 miles of storm sewers, 2500 street signs, 35,000 trees, 300 miles of walkways, 325 retaining walls, over 2000 parking meters, and over 900,000 square feet of public facilities.

Additionally, the City maintains numerous facilities used by City staff or the public, including three city office buildings, seven fire stations, a Solid Waste transfer station, 52 parks, four swimming pools, an 1100 berth public marina, several public health clinics, and an animal shelter. There are 39 Parks Recreation and Waterfront facilities and 56 facilities in the Public Works inventory.

In 2006, the Department of Public Works contracted with Weston Solutions, Inc. to perform an in-depth needs analysis for a Computerized Maintenance Management

System (CMMS). The needs analysis provided recommendations for more efficient management of sanitary sewer and storm drain maintenance, paving, pothole repair, sidewalk maintenance, and facilities maintenance. On November 18, 2009 the Environmental Protection Agency (EPA) issued an Administrative Order requiring the City to submit an Asset Management Implementation Plan (AMIP). On July 15, 2012 the City submitted an AMIP that included plans to implement a “best-of-breed” CMMS directly linked to the City’s Geographic Information System (GIS).

On December 15, 2011, the City issued Request for Proposal (RFP) #12-10643-C for an improved Computerized Maintenance Management System (CMMS), including work order and asset management software to answer many of the needs outlined in the 2006 Weston Business Analysis, a 2009 City Audit of Public Works Sewer Operations, the 2009 EPA Administrative Order, and a 2010 Business Analysis update completed by staff in the Department of Information Technology and the Department of Public Works. The evaluation team, comprised of staff from Information Technology, Public Works, and Parks, Recreation, and Waterfront selected Accela’s Asset Management Software as the CMMS that best met the City’s requirements.

The City implemented Accela’s Asset Management solution for the Sewer division and have complied with the EPA’s administrative order. However, due to the unforeseen limitations in software functionality, unnecessary administrative overhead, and lack of adequate vendor support, the City decided to not proceed with rolling the system out to other divisions.

Since this time, staff has continued to manage the service and maintenance of all City assets and facilities with three separate software systems (FUNDS\$, Accela, and Verint). These systems collectively provide a makeshift solution that has minimum integration with each other, limited mobile capabilities, and insufficient reporting and data analytics required by the City.

#### ENVIRONMENTAL SUSTAINABILITY

An improved system, with greater efficiency, will lessen the number of trips field employees have to visit a site to address an issue which reduces greenhouse gas emissions associated with travel time. This supports the reduction of carbon footprint and the goals of the City’s Climate Action Plan. Further, the mobile application capability of the new CMMS/EAM system will eliminate the use of paper currently being used by virtually all field staff thus working towards the City’s goal of achieving zero waste to landfills by 2020.

#### RATIONALE FOR RECOMMENDATION

Staff recommends NEXGEN Asset Management as it best fits the requirements of the City scoring highest in the evaluation criteria outlined in the RFP and demonstrations. NEXGEN Asset Management’s features and functionalities exceed the City’s requirements. Furthermore, extensive reference checks reinforced Nexgen’s ability to deliver a quality asset management solution on time and within budget.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered staying with the existing systems. This proposal was rejected due to the inherent technical limitations and inadequacies of disparate existing systems FUNDS\$, Accela, and Verint.

CONTACT PERSON

Savita Chaudhary, Director, Information Technology, 510.981.6541

Attachments:

1: Resolution

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

CONTRACT: NEXGEN ASSET MANAGEMENT FOR A COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM & ENTERPRISE ASSET MANAGEMENT (CMMS / EAM) SYSTEM

WHEREAS, the City of Berkeley has identified the need to improve the efficiency of its asset management and work order processes; and

WHEREAS, the City of Berkeley desires to procure a Commercial Off-the-Shelf “Turnkey” system to handle maintenance and manage assets for facilities at various locations; and

WHEREAS, on October 23, 2018, the City of Berkeley issued Request for Proposal No. 19-11259-C for an improved computerized maintenance management system & enterprise asset management system and received seven responding bidders; and

WHEREAS, in response to the City’s Request for Proposal, vendor NEXGEN Asset Management responded with a proposal that was rated as the highest response submitted by competing vendors; and

WHEREAS, funding for this recommendation will be provided by the FY 2020 and 2021 FUNDS\$ Replacement, Zero Waste, and Parks Tax funds, and spending for this contract and related amendments in future fiscal years is subject to Council’s approval of the proposed city-wide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract and subsequent amendments with NEXGEN Asset Management for software hosting, implementation, maintenance and related services for a computerized maintenance management system & enterprise asset management (CMMS/EAM) system, for an amount not to exceed \$1,017,509 for the projected period commencing on July 12, 2019 through June 30, 2024.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract No. 10350 Amendment: Technology, Engineering, and Construction, Inc. for Tank Maintenance and Certification Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10350 with Technology, Engineering and Construction, Inc. for the provision of tank maintenance and certification services, extending the term to June 30, 2021 and increasing the contract by \$100,000 for a total contract amount not to exceed \$150,000.

FISCAL IMPACTS OF RECOMMENDATION

The contract for on-call repairs and routine inspection of the fuel storage tanks owned by the City. The existing contract is approaching its currently authorized not to exceed amount. This proposed contract amendment will provide funding through June 30, 2021. Annual costs are estimated at approximately \$30,000, but additional funding is requested in case of unanticipated repairs. Funding is available in the proposed FY 2020 budget in the Equipment Maintenance Fund (Fund 672), Fire Department Fund (Fund 011), Library Fund (Fund 101), Used Oil Grant Fund (Fund 329).

|                                          |                  |
|------------------------------------------|------------------|
| Original Authorized Contract Amount..... | \$50,000         |
| Current contract amendment.....          | \$100,000        |
| <b>Total contract amount.....</b>        | <b>\$150,000</b> |

This contract amendment has been assigned CMS No. HYA4H

CURRENT SITUATION AND ITS EFFECTS

Technology, Engineering and Construction, Inc. (TEC) maintains and inspects above ground and underground fuel storage tanks at the City's Corporation Yard, Transfer Station, Central Library, Public Safety Building, and all Fire Stations. The underground fuel tank storage systems at the Transfer Station, Corporation Yard, and Public Safety Building must be tested annually, and maintained to ensure proper operation of the monitoring and dispensing equipment. Types of testing conducted are:

- Secondary containment testing at the Corporation Yard and Public Safety Building

- Air quality testing, Healy tank testing at the Corporation Yard
- Monitoring system and certification of the storage tanks
- Spill bucket monitoring at the Corporation Yard, Transfer Station and Public Safety Building

#### BACKGROUND

Request for Proposal No. 16-11059 for tank maintenance and certification was issued in June of 2016. Two bids were received and evaluated. TEC was selected as the most qualified vendor. Contract No. 10350 with TEC for tank maintenance and certification services was originally executed in August 2016.

#### ENVIRONMENTAL SUSTAINABILITY

Regular maintenance and testing of the fuel storage tanks are critical to ensure that the tanks are intact and functioning properly, which minimizes potential contamination risk to soil and groundwater.

#### RATIONALE FOR RECOMMENDATION

The recommended amendment will enable the City to continue to comply with annual regulatory testing, conduct routine maintenance, and provide for unforeseen repairs. TEC has consistently provided high quality, cost effective, and timely professional services to the City.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Gregory Ellington, Superintendent, Equipment Maintenance, Public Works, (510) 981-6469

Joy Brown, Senior Management Analyst Public Works, (510) 981-6629

Attachment:

1: Resolution



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

CONTRACT NO. 10350 AMENDMENT: TECHNOLOGY, ENGINEERING AND CONSTRUCTION, INC. FOR TANK MAINTENANCE AND CERTIFICATION SERVICES

WHEREAS, Technology, Engineering and Construction, Inc. was selected through the City's competitive bid process, and in August 2016 the City Manager executed a contract to provide tank maintenance and certification services and training in an amount not-to-exceed \$50,000 for a 3-year term; and

WHEREAS, Public Works needs maintenance and certification services to provide maintain the aboveground and underground fuel storage tanks for the City; and

WHEREAS, funds are available in FY 2020 Budget Equipment Maintenance Fund (Fund 672), Fire Department Fund (Fund 011), Library Fund (Fund 101), Used Oil Grant Fund (Fund 329) for this amendment. This contract amendment has been entered into the City's contract management system as CMS No. HYA4H.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute the amendment of Contract No. 10350 with Technology, Engineering and Construction, Inc. increasing the contract by \$100,000 for a total contract amount not to exceed \$150,000 and extending the term through June 31, 2021. A record signature copy of said agreement and any amendments to be on file in the Office of the City Clerk.





Office of the City Manager

23

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phillip L. Harrington, Director, Department of Public Works  
 Subject: Contract: Gallagher & Burk, Inc. for Measure T1 Street Improvements Project

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Measure T1 Street Improvements, Adeline Street, Hearst Avenue and Milvia Project, Specification No. 19-11278-C; accepting the bid of Gallagher & Burk, Inc. as the lowest responsive and responsible bidder; and authorizing the City Manager to execute a contract and any amendments, extensions or other change orders until completion of the project in accordance with the approved plans and specifications in an amount not to exceed \$4,065,906.

FISCAL IMPACTS OF RECOMMENDATION

Funding will be recommended for appropriation as part of the first amendment to the FY 2020 annual appropriations ordinance for the Street Capital Improvement Program budget. No other funding is required, and no other projects will be delayed due to this expenditure.

|                                |                    |
|--------------------------------|--------------------|
| Low bid by Contractor          | \$3,696,278        |
| 10% Contingency                | \$369,628          |
| <b>Total construction cost</b> | <b>\$4,065,906</b> |

|                                                           |                    |
|-----------------------------------------------------------|--------------------|
| FY 2020 Funding                                           |                    |
| Measure T1 Fund (511-54-623-673-0000-000-431-612310)      | \$2,465,906        |
| Measure BB Sales Tax (134-54-623-673-0000-000-431-665110) | \$1,600,000        |
| <b>Total construction cost</b>                            | <b>\$4,065,906</b> |

This contract has been assigned CMS No. AG4BM.

CURRENT SITUATION AND ITS EFFECTS

The Measure T1 Street improvements (Specification No. 19-11278-C) was released for bids on March 22, 2019, and bids were opened on April 18, 2019 (see Attachment 3, Abstract of Bids). Four non-local bids were received, ranging from a low of \$3,696,278 to a high of \$4,544,216. Gallagher & Burk, Inc. of Oakland, California was the lowest responsive and responsible bidder, with a bid amount of \$3,696,278, and their references were found to be satisfactory. This project includes a 10% contingency, which brings the

total contract amount up to the requested of \$4,065,906. Staff recommends a contract for this project be awarded to Gallagher & Burk, Inc.

Measure T1 Street Improvements Project is a Strategic Plan Priority Project, advancing our goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

### BACKGROUND

These street improvements are part of Phase 1 of the Measure T1 Bond Program adopted by the City Council on June 27, 2017 per Resolution 68,076–N.S.<sup>1</sup>

This contract is for construction of approximately 1.25 miles of City streets and consists of the improvements on Adeline Street, between Ashby and Shattuck, Hearst Avenue, between Shattuck and Milvia, and Milvia Street, between Blake and Russell as shown in Attachment 2 (Location Map). It is anticipated that these projects will be completed by the end of 2019.

In addition to a street pavement, the project incorporates many other improvements to selected streets as part of a “complete street” approach that repairs or replaces street infrastructure such as curb ramps, curbs, sidewalks, drainage inlets and pipes, gutters, street signage, and striping. Among these incorporated complete street improvements are Bicycle Plan and Pedestrian Master Plan recommendations for protected bicycle lanes with bus boarding transit islands on Adeline Street, Hearst Avenue, and high visibility crosswalks. These non-pavement related costs represent approximately 40% of the construction costs.

The project plans and specifications have gone through planning, coordinating with outside utility companies, preliminary cost estimates, field investigations, surveys, and extensive design before being released for bid.

The project plans and specifications are on file in the Public Works Department. In accordance with the requirements of the California Environmental Quality Act (CEQA), these projects have been determined to be categorically exempt because they consist of maintenance of existing streets and do not expand their use beyond existing conditions.

The Living Wage Ordinance does not apply to this project since Public Works construction contracts are, pursuant to City policy, subject to State prevailing wage laws. Gallagher & Burk, Inc. has submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement applies to this project because the estimated value of the project exceeds \$500,000. As a result, the contractor and all subcontractors will be required to sign an agreement to be bound by the terms of the Agreement.

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<sup>1</sup> [https://www.cityofberkeley.info/uploadedFiles/Parks\\_Rec\\_Waterfront/Level\\_3\\_-\\_General/2017-06-27%20Resolution%2068,076%20Adopt%20the%20Final%20List%20of%20Projects%20for%20Implementation%20in%20Phase%201%20of%20Measure%20T1.pdf](https://www.cityofberkeley.info/uploadedFiles/Parks_Rec_Waterfront/Level_3_-_General/2017-06-27%20Resolution%2068,076%20Adopt%20the%20Final%20List%20of%20Projects%20for%20Implementation%20in%20Phase%201%20of%20Measure%20T1.pdf)

ENVIRONMENTAL SUSTAINABILITY

During the analysis and revision of the Five-Year Street Rehabilitation Plan, these project locations were analyzed for possible green infrastructure improvements to treat urban runoff before entering the storm drain system. Due to the underlying soil conditions and existing land use, it was determined that green infrastructure improvements would be more beneficial at alternative paving locations. The project includes rubberized hot mix asphalt treatments which will divert waste tires from local landfills.

RATIONALE FOR RECOMMENDATION

This street improvement project is part of the City's ongoing Measure T1 street improvements to rehabilitate deteriorated streets throughout the City. The work requires contracted services, as the City does not possess the in-house labor or equipment resources necessary to complete the project.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered for this pavement rehabilitation project. The City could choose not to proceed with this project. However, the street pavement would then continue to deteriorate, and drainage improvements would not be made, affecting use by the community and others.

CONTACT PERSON

Nisha Patel, Manager of Engineering & City Engineer (510) 981-6406  
Joe Enke, Supervising Civil Engineer (510) 981-6411

Attachments:

- 1: Resolution
- 2: Location Map
- 3: Abstract of Bids

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

CONTRACT: GALLAGHER & BURK, INC. FOR MEASURE T1 STREET  
IMPROVEMENTS PROJECT

WHEREAS, the Measure T1 Street Improvements Project is part of the City's Phase 1 of Measure T1 Bond Program and is part of the ongoing Street Capital Improvement Program to rehabilitate deteriorated streets located throughout the City; and

WHEREAS, the City has neither the labor nor the equipment necessary to undertake this street improvements project; and

WHEREAS, an invitation for bids was duly advertised and Gallagher & Burk, Inc. was the lowest responsive and responsible bidder; and

WHEREAS, funding will be appropriated as part of the first amendment to the FY 2020 annual appropriations ordinance in the Measure T1 (Fund 511) and for Measure BB Sales Tax (Fund 134), and the contract has been entered into the Citywide contract database with CMS No. AG4BM.

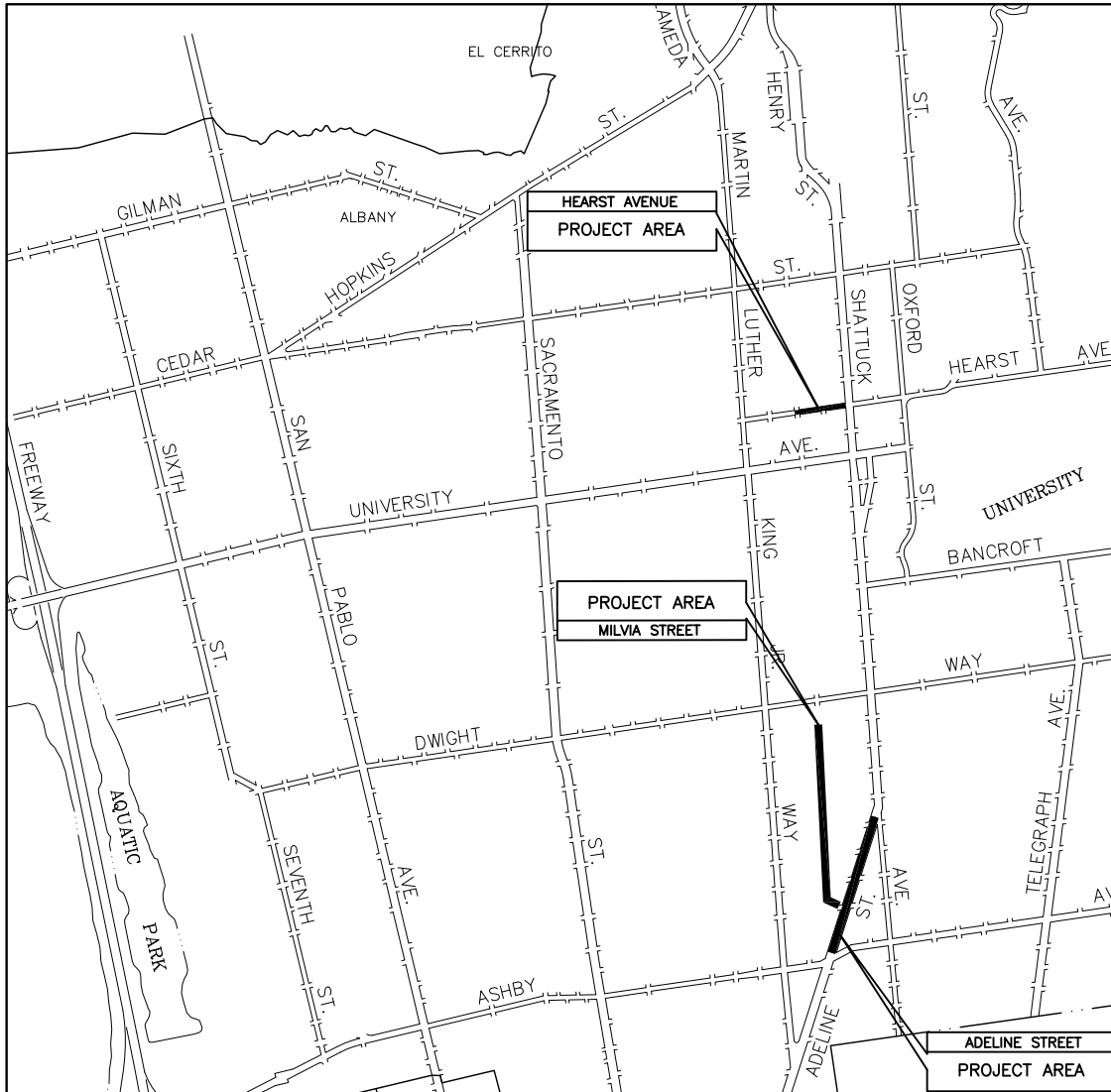
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specification No. 19-11278-C for the Measure T1 Street Improvements Project are approved.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute a contract and any amendments, extensions or change orders, until completion of the project in accordance with the approved plans and specifications with Gallagher & Burk, Inc. for the Measure T1 Street Improvements Project, in an amount not to exceed \$4,065,906 which includes a 10% contingency for unforeseen circumstances. A record signature copy of the said agreement and any amendments to be on file in the Office of the City Clerk.

CITY OF BERKELEY  
ALAMEDA COUNTY, CALIFORNIA

**MEASURE T1 STREET IMPROVEMENTS**  
**ADELINE STREET, HEARST AVENUE**  
**AND MILVIA STREET**

SPECIFICATION NO. 19-11278-C



SCALE: 1"=2400'

LOCATION MAP

|        |          |
|--------|----------|
| HORIZ. | AS NOTED |
| VERT.  | ----     |
| BOOK   |          |
| DATE   | 03/14/19 |

CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS

MEASURE T1 STREET IMPROVEMENTS  
ADELINE STREET, HEARST AVENUE &  
MILVIA STREET

TITLE SHEET

|       |         |
|-------|---------|
| PLAN  | 8199    |
| FILE  | 501-436 |
|       | TS-1    |
| SHEET | 1 OF 1  |



City of Berkeley  
Abstract of Bids Worksheet

Finance Department  
General Service Division

For: Measure T1 street Improvement Adeline, Nearts + Arivica

Specification#: 19-11278-C

Engineer's Estimate: 3,500,000

Bid Date: 04/18/2019

|    | Bidders                                | Base Bid            | Nuc Free | Work Force Comp | Opp. States | Living Wage | EBO      | Bid Bond | Addenda |
|----|----------------------------------------|---------------------|----------|-----------------|-------------|-------------|----------|----------|---------|
| 1  | <u>Interstate Marking &amp;</u>        | <u>3,828,717.70</u> | <u>/</u> |                 | <u>/</u>    |             | <u>/</u> | <u>/</u> |         |
| 2  | <u>Bay Cities Paving &amp; Grading</u> | <u>4,544,216.10</u> | <u>/</u> |                 | <u>/</u>    |             | <u>/</u> | <u>/</u> |         |
| 3  | <u>Gallagher &amp; Burk Inc.</u>       | <u>3,696,278.00</u> | <u>/</u> |                 | <u>/</u>    |             | <u>/</u> | <u>/</u> |         |
| 4  | <u>Gris Lott Company</u>               | <u>3,888,149.60</u> | <u>/</u> |                 | <u>/</u>    |             | <u>/</u> | <u>/</u> |         |
| 5  |                                        |                     |          |                 |             |             |          |          |         |
| 6  |                                        |                     |          |                 |             |             |          |          |         |
| 7  |                                        |                     |          |                 |             |             |          |          |         |
| 8  |                                        |                     |          |                 |             |             |          |          |         |
| 9  |                                        |                     |          |                 |             |             |          |          |         |
| 10 |                                        |                     |          |                 |             |             |          |          |         |

Bid Recorder: Bob Blankenship

Bid Opener: Bob Blankenship SD 4/18/19

Project Manager: Elson 04/18/19





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: Contract: GHD for Preparation of a Sanitary Sewer Master Plan

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract, and any amendments and extensions with GHD in an amount not to exceed \$940,000 to provide consultant services for the preparation of a Sanitary Sewer Master Plan for the period July 1, 2019 through June 30, 2022.

FISCAL IMPACTS OF RECOMMENDATION

Funding for the preparation of the Sanitary Sewer Master Plan will be available in the Sewer Capital Program Fund with allocations of \$225,000, \$550,000, and \$165,000 from the FY 2020, FY 2021, and FY 2022 budgets respectively. These funds are subject to Council approval of the FY 2020 Annual Appropriations Ordinance. The amounts have been proposed in the FY 2020-2024 budget. No other funding is required.

FY2020, FY2021, and FY 2022 Budgets:

|                                                                      |                  |
|----------------------------------------------------------------------|------------------|
| 611-54-623-676-0000-000-472-612310-PWENSR1908.....                   | \$852,085        |
| 611-54-623-676-0000-000-472-612310-PWENSR1908 (10% Contingency)..... | \$87,915         |
| <b>Total.....</b>                                                    | <b>\$940,000</b> |

The contract has been entered into the Contract Management System (CMS) as CMS No. N6ABY.

CURRENT SITUATION AND ITS EFFECTS

On November 13, 2018 the City issued a Request for Proposals (RFP Specification No. 18-11240-C) for preparation of a Sanitary Sewer Master Plan.

Development of the Sanitary Sewer Master Plan (Master Plan) will include flow monitoring, hydraulic modeling, condition assessment and a financial analysis of the City's Sewer Capital Program Fund. Findings from the work will be summarized in a comprehensive report which will identify areas of high inflow and infiltration and capacity deficiency in the sanitary sewer system, provide prioritization of capital improvements, develop 5-year and 15-year capital improvement plans, and analyze the City's current sanitary sewer rate structure's ability to fund future improvements. The Master Plan is a

Strategic Plan Priority Project, advancing the City's goal to provide well-maintained infrastructure and facilities. It will provide reliable information the City can use to project its long-term capital budget needs for sewer system improvements and to keep the City on target to meet its regulatory requirements.

Proposals were received from three consulting firms which provide sanitary sewer master plan services. A panel of City staff reviewed each firm's proposal with respect to the consultant's understanding of the project, the qualifications and related experience of the project team, the consultant's proposed schedule, the quality of client references, and other criteria. All three consultants were invited to make a presentation to the panel. After a thorough review and scoring of all proposals and presentations, City staff found GHD to be the most qualified firm to provide the desired services.

### BACKGROUND

On September 22, 2014, the City of Berkeley, the East Bay Municipal Utility District (EBMUD), and EBMUD's other satellite agencies entered into a Consent Decree with the United States Environmental Protection Agency (EPA), the Regional Water Board, and the State Water Board. The mandate of this consent decree is to eliminate sanitary sewer overflows (SSOs) and reduce wet weather inflow and infiltration (I&I) into the sanitary sewer system. The ultimate goal is to eliminate EBMUD facility discharges of untreated or partially treated wastewater into the San Francisco Bay during storm events. Under the Consent Decree, the City agreed to replace its sanitary sewer mains at an average annual rate of no less than 4.2 miles based on a three-fiscal-year rolling average. In addition, the Consent Decree requires the City continue its sewer system condition assessment program, replace noncompliant manholes, perform spot repairs to correct acute defects, increase required maintenance activities, and continue implementing programs set forth in the City's Sewer System Management Plan (SSMP) and Asset Management Implementation Plan (AMIP).

Approximately 220 miles of sanitary sewer mains and associated laterals have been replaced since the current sanitary sewer rehabilitation program started in 1987. Another 8 miles of sanitary sewer mains are currently in construction or in design. The remaining 26 miles of sanitary sewer mains range in age from 30 to 100 years and are in need of rehabilitation or repair. The Sanitary Sewer Master Plan will assist in the prioritization of these remaining rehabilitation improvements, giving higher priority to improvements resulting in the largest reduction of I&I. In addition, the condition assessment component of the Master Plan will identify problem areas in the sewer system providing the City with information needed to better focus its sewer maintenance activities and reduce SSOs.

### ENVIRONMENTAL SUSTAINABILITY

Preparation of a Master Plan will assist in the prioritization of sewer improvements. Improvements to the City's sanitary sewer system will help to minimize the frequency of SSOs, and reduce I&I into the City's sanitary sewer system, and subsequently protect water quality by minimizing impacts of untreated sewer discharge into the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

The proposal from the team led by GHD received the highest overall score after a thorough assessment of all the proposals and presentations. The firm is most qualified to prepare the City's Sanitary Sewer Master Plan.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered. The City does not have the staff capacity and equipment to provide the necessary civil engineering services.

CONTACT PERSON

Phillip L. Harrington, Director, Public Works (510) 981-6303

Andrew Brozyna, Deputy Director, Public Works (510) 981-6396

Nisha Patel, Manager of Engineering, Public Works (510) 981-6406

Tiffany Pham, Associate Civil Engineer, Public Works (510) 981-6427

Attachments:

1: Resolution: Contract with GHD

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

CONTRACT: GHD FOR PREPARATION OF A SANITARY SEWER MASTER PLAN

WHEREAS, the City of Berkeley entered into a Consent Decree with the United States Environmental Protection Agency (EPA), Regional Water Board, and State Water Board to eliminate sanitary sewer overflows (SSOs) and reduce wet weather flows by reducing inflow and infiltration (I&I); and

WHEREAS, under the Consent Decree, the City agreed to replace its sanitary sewer mains at an average annual rate of no less than 4.2 miles based on a three-fiscal-year rolling average, continue performing sewer system condition assessment, replace noncompliant manholes, perform spot repairs to correct acute defects, and increase required maintenance activities; and

WHEREAS, the City has a need for a Sanitary Sewer Master Plan, from which staff can expect reliable information that the City can use to prioritize improvements and maintenance activities, and project its long-term budget needs for system improvements as needed to comply with regulatory requirements of the Consent Decree; and

WHEREAS, the necessary civil engineering services cannot be performed by City staff due to the specialized nature of the work; and

WHEREAS, on November 13, 2018, the City released a Request for Proposals (Specification No. 18-11240-C) seeking firms or individuals to provide the sanitary sewer master plan services for the Program; and

WHEREAS, on December 18, 2018, the City received submissions from three consulting firms, and all three were invited to make a presentation before a consultant evaluation board; and

WHEREAS, after a thorough review and scoring of all proposals and presentations, City staff found GHD to be the most qualified firm to provide the desired services; and

WHEREAS, funding will be available in an allocation of \$225,000, \$550,000, and \$165,000 from the FY 2020, FY 2021, and FY 2022 Sewer Capital Program Fund budgets (Fund 611) respectively and no other funding is required; and the contract has been entered into the citywide contract database and assigned CMS No. N6ABY.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to approve a contract and any amendments and extensions with GHD for the preparation of a Sanitary Sewer Master Plan in an amount not to exceed \$940,000 for the period from July 1, 2019 through June 30, 2022. A record signature copy of said contract and any amendments is to be on file in the Office of the City Clerk.



Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Philip L. Harrington, Director, Public Works  
Subject: Contract: Zonar Systems, Inc. for Global Positioning System Telematics Program

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Zonar Systems, Inc. for software hosting, installation of hardware, implementation, maintenance and related services for a global positioning system, for an amount not to exceed \$278,698 for the period commencing on July 12, 2019 through June 30, 2024.

FISCAL IMPACTS OF RECOMMENDATION

Funds to cover the cost of this recommendation for FY2020 and FY 2021 will come from the Equipment Maintenance Fund 672. The appropriation of the remaining contract amount of \$157,367 and on-going maintenance in the future fiscal years FY 2022 through FY 2024 is subject to Council approval of the proposed City-wide budget and annual appropriation ordinances. Vehicles and equipment included in the program will be billed to the corresponding departments.

**Funding Breakdown**

| <b>Fiscal Year</b>                | <b>Funding Amount</b> |
|-----------------------------------|-----------------------|
| FY 2020 / FY 2021                 | \$170,626             |
| FY 2022                           | \$36,024              |
| FY 2023                           | \$36,024              |
| FY 2024                           | \$36,024              |
| <b>Total FY 2020 Thru FY 2024</b> | <b>\$278,698</b>      |

CURRENT SITUATION AND ITS EFFECTS

The City has determined that implementation of Global Positioning System Telematics Program (GPS) will produce beneficial business impacts for staff, budget and operations,

to provide improved employee safety and efficiencies in field operations. The GPS system will allow the City to:

- Access real-time data for decision support of operating crews and equipment, especially during disasters.
- Eliminate errors in paper reporting. Departments will ultimately be able to move from paper-based inspections to verifiable and regulatory compliant electronic reports that results in increased vehicle uptime and lower maintenance costs.
- Monitor vehicle idling, speeding and hard braking that may eliminate non-productive driving behaviors that result in immediate fuel efficiency and savings, improve operator safety and build in greater protection and confidence for members of the public.
- Improve vehicle/driver and equipment maintenance communication to allow data-driven real-time vehicle servicing, diagnostics reporting which leads to more efficient and effective maintenance, repair planning and staff time allocation.
- Reduce fuel consumption associated with duplicate or inefficient routing.
- Timely dispatch replacement vehicles in the event of breakdowns.
- Respond to customer needs with historical or real time information which improves customer service.

On November 29, 2018, the City issued Request for Proposals (RFP) #19-11266-C for a Global Positioning System – Telematics Program. The City received seven (7) responses to the GPS RFP by the December 20, 2018 deadline. A committee of Public Works and Information Technology staff conducted a comprehensive evaluation process that included proposal reviews, vendor demonstrations, and reference checks. Staff selected Zonar Systems, Inc. (Zonar) as presenting the most comprehensive, user-responsive, and effective solution for the City’s current and future global positioning system and telematics needs.

The global positioning system and telematics program advances the City’s Strategic Plan goal to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### BACKGROUND

The City maintains a large portfolio of over 700 vehicles and pieces of equipment. The initial roll out of the GPS program will apply to 111 vehicles from Public Works, Parks, Recreation and Waterfront, and Parking Enforcement.

The Equipment Maintenance Division is also in the process of implementing a new fuel management solution<sup>1</sup> and is in the process of procuring a new Fleet Management Software solution. Integrations of these other fleet software systems and the GPS system

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<sup>1</sup> Syntech Systems Contract Award - [https://www.cityofberkeley.info/Clerk/City\\_Council/2018/04\\_Apr/Documents/2018-04-24\\_Item\\_10\\_Contract\\_Syntech\\_Systems,\\_Inc.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2018/04_Apr/Documents/2018-04-24_Item_10_Contract_Syntech_Systems,_Inc.aspx)

will allow for seamless real-time information to be sent to the Equipment Maintenance Division.

The meet and confer process with Service Employees International Union Local 1021 was concluded in November 2018, and the City has agreed to not utilize GPS devices on City Fleet Vehicles as a means to track employee day to day locations for the purpose of monitoring an individual employee's performance. Only as part of an active investigation, that warrants management review and is triggered by something other than the GPS device, may the GPS data be used to support an adverse employment action. Further, any reasonable use of the GPS data specifically for disciplinary or performance related purposes, will be consistent with the existing disciplinary procedures. GPS will be utilized for enhancing efficient routing of vehicles and supporting operational logistics.

#### ENVIRONMENTAL SUSTAINABILITY

The GPS - Telematics program when coordinated with new routing systems will provide for improved routing of vehicles which will reduce greenhouse gas emissions associated with travel time. This supports the reduction of carbon footprint and the goals of the City's Climate Action Plan. Further, the mobile application capability of the new system will eliminate the use of paper currently being used by virtually all field staff thus working towards the City's goal of achieving Zero Waste to landfills by 2020.

#### RATIONALE FOR RECOMMENDATION

Staff recommends Zonar Systems, Inc. as it provides the most comprehensive solution and had the highest scoring in the evaluation criteria as required by the RFP and demonstrations. Zonar's features and functionalities exceed the City's requirements. Furthermore, extensive reference checks confirmed Zonar's ability to deliver a quality global positioning system telematics program on time and within budget.

#### ALTERNATIVE ACTIONS CONSIDERED

None. Currently there is no real-time vehicle servicing, diagnostics reporting on the state of the vehicles. The safety and maintenance benefits are critical to supporting the City's staff and equipment.

#### CONTACT PERSON

Gregory Ellington, Equipment Maintenance Superintendent, Public Works, 510-981-6469

Attachments:  
1: Resolution

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

CONTRACT: ZONAR SYSTEMS, INC. FOR GLOBAL POSITIONING SYSTEM  
TELEMATICS PROGRAM

WHEREAS, the City of Berkeley has identified the need to improve the efficiency of delivery logistics of services; and

WHEREAS, the City of Berkeley desires to procure a Commercial Off-the-Shelf “Turnkey” system for global positioning and telematics for City vehicles and equipment; and

WHEREAS, on November 29, 2018, the City of Berkeley issued Request for Proposal No. 19-11266-C for a global positioning system telematics program and received seven (7) responding bidders; and

WHEREAS, in response to the City’s Request for Proposal, vendor Zonar Systems, Inc. responded with a proposal that was rated as the highest response submitted by competing vendors; and

WHEREAS, the funds to cover the cost of this recommendation for FY2020 and FY 2021 will come from the Equipment Maintenance Fund. The appropriation of the remaining contract amount of \$157,367 and on-going maintenance in the future fiscal years FY 2022 thru FY 2024 is subject to council approval of the proposed city-wide budget and annual appropriation ordinances.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to execute a contract and any amendments with Zonar Systems, Inc. for software hosting, implementation, maintenance and related services for an amount not to exceed \$278,698 for the projected period commencing on July 12, 2019 through June 30, 2024.





Office of the City Manager

CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Phillip L. Harrington, Director, Department of Public Works  
 Subject: Purchase Orders: National Auto Fleet Group for Ten Toyota Prius Prime Plus (PHEV) Sedans

RECOMMENDATION

Adopt a Resolution satisfying requirements of City Charter Article XI Section 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for ten (10) new 2020 Toyota Prius Prime Plus Sedans with National Auto Fleet Group in an amount not to exceed \$296,475.

FISCAL IMPACTS OF RECOMMENDATION

The purchase of ten Toyota Prius Prime Plus will not exceed \$296,475 and includes document fees, the cost of seat covers, CA tire fees, delivery to City of Berkeley and sales tax. Funding for the purchase of these vehicles is available in the FY2019 Baseline Budget Fund for the various department funding sources provided below:

| Budget Code                         | Division                          | Cost     |
|-------------------------------------|-----------------------------------|----------|
| 011-51-501-501-0000-000-451-664120  | 2 - Environmental Health          | \$59,295 |
| 315-51-503-526-2017-000-451-664120- | 2 - Mental Health                 | \$59,295 |
| 316-51-503-521-2007-000-451-664120- | 2 - Mental Health                 | \$59,295 |
| 158-51-503-521-2006-000-451-664120- | 2 - Mental Health                 | \$59,295 |
| 313-51-505-548-2071-000-444-664120  | 1 - Mental Health, 1 - ASP Crisis | \$59,295 |

CURRENT SITUATION AND ITS EFFECTS

This purchase will replace two existing units 406 and 409 that have reached the end of their useful life and require replacement as well as to purchase 8 new vehicles in order to meet the demands of field-based services. These 10 vehicles are needed by the Health, Housing, and Community Services Department's Environmental Health, Mental Health, and Aging Services divisions to transport staff, supplies and equipment to conduct case management, provide mobile crisis support, and to perform food safety and vector inspections throughout the City of Berkeley.

This purchase will support the City's Strategic Plan Goal of being a global leader in addressing Climate change, advancing environmental justice, and protecting the environment.

## BACKGROUND

Throughout the year, the Department of Public Works purchases vehicles and equipment for City Departments paid through the Equipment Replacement fund and supplemented by individual departments if required. If a purchase request exceeds \$25,000, the Department of Finance General Services Division solicits bids or “piggybacks” off competitively bid contracts to ensure City departments receive the best pricing. Each City Department pays its proportionate share into the Equipment Replacement Fund, and those funds are utilized to replace equipment at the end of its useful life.

City of Berkeley Mayor Jesse Arreguin is a participant in Climate Mayors<sup>1</sup> a collaborative that includes Mayors from U.S. cities. The Collaborative founded in 2014 is a network of mayors who are working together as a dedicated voice to address climate change with action. In 2017 Climate Mayors released a Request for Information to help municipal agencies gain more knowledge on electric vehicles (EV). The responses that were received contained feedback and suggestions and led the pathway to the development of the Climate Mayors EV Purchasing Collaborative. “The Collaborative works to leverage the buying power of Climate Mayors cities to reduce the costs of EVs and charging infrastructure for all U.S. cities, counties, state governments and public universities, thereby accelerating fleet transitions. The Collaborative also provides training, best practices, educational resources and analysis support, creating a one-stop shop to support EV transitions for public fleets”.

Climate Mayors partnered with Sourcewell<sup>2</sup> formerly National Joint Powers Alliance (NJPA) a municipal contracting agency operating under the legislative authority of Minnesota Statute 123A.21. The original 1978 statute was revised in 1995 to allow government clients to better meet their specific needs through participation in a service cooperative, rather than paying the higher cost associated with individual procurement. Sourcewell allows participating municipal agencies to leverage the benefits of cooperative purchasing and reduces procurement costs. Sourcewell serves all educational, government, and non-profit agencies nationwide, and offers cooperatively contracted products, equipment and service opportunities to government entities throughout the U.S.

All Sourcewell contracts have been competitively solicited nationwide. On October 21, 2016 Sourcewell then NJPA released Request for Proposal No. 120716 for Vehicles, Cars, Vans, SUV’s and Light Trucks with Related Equipment, Accessories, and Services. The solicitation was released for approximately forty-eight days and four proposals were submitted. Upon their review NJPA selected National Auto Fleet Group

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<sup>1</sup> <http://climatemayors.org/>

<sup>2</sup> <https://www.sourcewell-mn.gov/>

as the best most responsive proposer to meet the specifications thusly awarding Contract No. 120716-NAF.

ENVIRONMENTAL SUSTAINABILITY

The Prius Prime Plus vehicle is a Plug in Hybrid Electric Vehicle (PHEV). Assets are equipped with an electric drive motor whose battery can be recharged by plugging it into an external source of electric power, as well by its on-board engine and generator. Unleaded fuel powers the on-board engine that meets all current state, federal, and local emissions regulations. This is in keeping with the City's 2009 Climate Action Plan emissions reduction goals.

RATIONALE FOR RECOMMENDATION

Requisition will provide department with needed transportation to accommodate increased staffing levels; reduce rental expense presently undertaken, and replace assets that have reached the end of their recognized economic lives.

ALTERNATIVE ACTIONS CONSIDERED

No other options considered at this time. Eight Vehicles are new acquisitions to the fleet. Two assets have reached the end of their useful life.

CONTACT PERSON

Greg Ellington, Superintendent, Public Works Maintenance, (510) 981-6469

Attachments:

1: Resolution

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

PURCHASE ORDER: NATIONAL AUTO FLEET GROUP FOR TEN TOYOTA PRIUS  
PRIME PLUS SEDANS

WHEREAS, ten Prius Prime Plus Sedans are needed by the City of Berkeley Health, Housing, and Community Services Department's Environmental Health, Mental Health, and Aging Services divisions to transport staff, supplies and equipment to conduct case management, provide mobile crisis support, and to perform food safety and vector inspections throughout the City of Berkeley; and

WHEREAS, eight vehicles will be new additions to the fleet, while vehicles 406 and 409 are between 20-23 years old and have reached the end of their useful lifecycle; and

WHEREAS, vehicles must be replaced based upon a reasonable schedule that allows city employees to efficiently and effectively carry out their duties; and

WHEREAS, City of Berkeley Mayor Jesse Arreguin is a participant in Climate Mayors, a collaborative of U.S. Mayor who are addressing climate change in voice and action; and

WHEREAS, Climate Change partnered with National Auto Fleet Group who is offering vehicles via their Contract No. 120716-NAF with Sourcewell; and

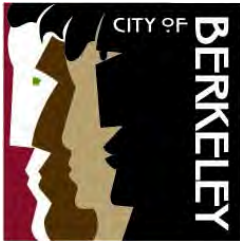
WHEREAS, City Charter XI Section 67.2 allows the City to purchase goods without undergoing a competitive bid process if the City uses pricing obtained by another entity through a competitive bid process; and

WHEREAS, on October 21, 2016 National Joint Powers Alliance (NJPA) released Request for Proposal No. 120716 for Vehicles, Cars, Vans, SUV's and Light Trucks with Related Equipment, Accessories, and Services, and upon their review NJPA selected National Auto Fleet Group as the best most responsive proposer to meet the specifications, thusly awarding Contract No. 120716-NAF: and

WHEREAS, Sourcewell contract bid procedures satisfy the procurement requirements of the City of Berkeley; and

WHEREAS, funds in the amount of \$296,475 are available and will be equally distributed through various Health, Housing, and Community Services FY 2019 Budget Funds to include: (011), (315), (316), (158), and (313).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a purchase order for ten Prius Prime Plus with National Auto Fleet Group in an amount not to exceed \$296,475.



CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Open Government Commission  
Submitted by: Dean Metzger, Chair, Open Government Commission  
Subject: Amending the Commissioners' Manual Regarding Submission of Revised or Supplemental Agenda Material

RECOMMENDATION

Adopt a resolution revising the Commissioners' Manual to require commissioners and board members be subject to the same procedures as the general public.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its January 18, 2018 meeting the Open Government Commission reviewed a complaint alleging violation of the Open Government Ordinance and Brown Act at the November 15, 2017 Planning Commission meeting. The complainant alleged, and it was not disputed, that a Planning Commissioner used a memo that was not part of the public packet. It was handed out to the Commission members at the meeting with a copy placed in a binder. The memo, unavailable to the public except for the copy in the binder, was used as the basis for much of the discussion. It became difficult for the public to follow the discussion without ready access to the document. While the Open Government Commission found no violation of the Open Government Ordinance or Brown Act, it was concerned about the difficulty the public had following a discussion among commission members without access to the documents.

The juxtaposition of the complaint suggested to the Commission members that a requirement to create more transparent discussion of items on the City's commissions and boards by providing the public with the same material available to members of the commission and/or board.

At its March 21, 2019 meeting, the Open Government Commission voted to recommend to Council the adoption of a resolution to add the following revision to Chapter V. Commission Procedures, Section E Administrative Procedures to the Commissioners' Manual (*Motion to send report to City Council, including corrections to be made before sent*; M/S/C: Metzger/Blome; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None):

Submission of Supplemental and Revised Agenda Material after the agenda and packet have been distributed and at or before the meeting.

#### E. ADMINISTRATIVE PROCEDURES

##### Commission and Board Documents

The agenda packet for a commission or board meeting contains the agenda, reports related to agenda items, and communications from the public received prior to the distribution of the agenda packet.

All writings or documents, including communications from the public, **Commissioners and Board Members** that are related to any item on an agenda and distributed to a majority of the commission or **board members** after the agenda packet is distributed, but before **or at** the meeting must be made available for public inspection at the time the writing or document is distributed to a majority of the commission or **board** at a designated location identified on the agenda. The commission **or board** secretary maintains a public viewing binder for these documents.

All writings or documents, including communications from the public, that are distributed to a majority of the commission **or board members** at the commission **or board** meeting must be made available for public inspection as quickly as possible. Members of the public submitting written communications at commission, **or board** meetings should be encouraged to bring enough copies for all commissioners **and board members**, staff and at least five additional copies for ' members of the public (15 copies total, for most commissions **and boards**).The secretary is not required to immediately make copies of documents provided at the meeting when adequate copies are not provided by the submitting individual. Documents distributed at the meeting will be available in the public viewing binder the next business day.

##### BACKGROUND

See above.

##### ENVIRONMENTAL SUSTAINABILITY

No impact on environmental sustainability.

##### RATIONALE FOR RECOMMENDATION

Berkeley Municipal Code 2.06.190(A)(t)(d) states the Open Government Commission shall advise the City Council of its opinion, conclusion or recommendation as to any complaint.

##### CITY MANAGER

City Manager takes no position on the recommendation of this report.

##### ALTERNATIVE ACTIONS CONSIDERED

None.

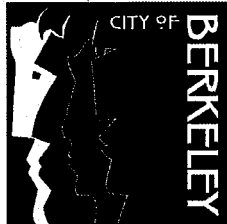
CONTACT PERSON

Dean Metzger, Chair, Open Government Commission, (510) 549-0379

Secretary Open Government Commission, City Attorney's Office, (510) 981-6998







Kate Harrison  
Councilmember, District 4

RECEIVED AT  
COUNCIL MEETING OF: 28  
MAY 14 2019

OFFICE OF THE CITY CLERK  
CITY OF BERKELEY

## REVISED AGENDA MATERIAL

**Meeting Date:** May 14<sup>th</sup>, 2019

**Item Number:** 57

**Item Description:** Resolution: No U.S. Intervention in Venezuela

**Submitted by:** Councilmember Harrison

Changes made in consultation with members of the Peace and Justice Commission following comments from the April 30<sup>th</sup> Council meeting. Removes mentions of Maduro and of sanctions from the United States to clarify that this is an anti-intervention resolution.

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

NO U.S. INTERVENTION IN VENEZUELA

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, Trump administration officials have openly declared their intention to overthrow the duly elected ~~militarily intervene in the government of Venezuela~~ President Nicolás Maduro,<sup>1</sup> have urged the Venezuelan military to overthrow the Maduro government, has recognized a self-appointed opposition politician as president and vetoed any possibility of dialogue despite the efforts of Maduro, the governments of Venezuela, Mexico, and Uruguay, and Pope Francis; and

WHEREAS, the U.S. has tightened illegal-unilateral economic sanctions,<sup>2</sup> including the seizure of Venezuela's oil properties and bank accounts in the United States and financial sanctions that prevent Venezuela from producing its oil or securing credit or refinancing debt, thereby increasing the hardship on the people of Venezuela by preventing them from accessing imported foods and medicines, while hypocritically seeking to promote a military confrontation by forcing truckloads of aid across the Brazilian and Colombian borders;<sup>3</sup> and

~~WHEREAS these unilateral sanctions are in violation of the UN and OAS<sup>4</sup> Charters; and~~

WHEREAS, the U.S. has historically used its economic power to destabilize independent-minded countries, most famously Chile in the early 1970's, making the economy "scream,"<sup>5</sup> as well as Nicaragua in the 1980's, and then using the peoples' economic misery as a pretext for military intervention;<sup>6</sup> and

WHEREAS, Venezuela has the largest oil reserves in the world, and leading administration foreign policy officials have made clear the Trump administration's intention to turn Venezuela's oil over to U.S oil companies for exploitation;<sup>7</sup> and

WHEREAS, Elliott Abrams has been named President Trump's Special Envoy to Venezuela, and is notorious for his central role in the 1980's as a top advisor to Presidents Reagan and Bush in the Iran-Contra scandal, which led to his conviction on criminal charges, and the arming of the Nicaraguan contras, the Salvadoran death squad government, and the genocidal regime in Guatemala responsible for the massacres of hundreds of thousands of indigenous people in that country;<sup>8</sup> and

WHEREAS, the U.S. campaign of regime change in Venezuela is in violation of international law,<sup>9</sup> against the interests of the people of Venezuela and the people of the United States;

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley affirms the sovereign right of the Venezuelan people to negotiate their political differences free

from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley requests the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Congresswoman Nancy Pelosi, Senator Dianne Feinstein, Senator Kamala Harris, President Trump, and Secretary of State Mike Pompeo.



Peace and Justice Commission

CONSENT CALENDAR  
June 11, 2019  
(Continued from May 14, 2019)

To: Honorable Mayor and Members of the City Council  
From: Berkeley Peace and Justice Commission  
Submitted by: Igor Tregub, Chairperson, Peace and Justice Commission  
Subject: Resolution: No U.S. intervention in Venezuela

RECOMMENDATION

Adopt a resolution that affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, economic, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

Trump administration officials have openly declared their intention to overthrow the duly elected government of Venezuelan President Nicolás Maduro. Years of U.S. sanctions have contributed to a severe economic crisis, following a decades-old pattern of destabilization of U.S. adversaries.

Using the crisis it helped create as a pretext, the U.S. administration recognized opposition leader Juan Guaidó as interim president of Venezuela, launching a diplomatic front to the campaign to undermine the elected government. Administration leaders have called on Venezuelan armed forces to mutiny, and have threatened that all military options are on the table to achieve regime change.

At its regular meeting on March 4, 2019, the Peace and Justice Commission recommended the Council of the City of Berkeley affirm the right to self-determination of the Venezuelan people, and urge that the U.S. government refrain from intervention in the internal affairs of the sovereign state of Venezuela.

M/S/C: Bohn/Lippman

Ayes: al-Bazian, Bohn, Chen, Gussman, Lippman, Meola, Morizawa, Pierce, Rodriguez, Tregub

Resolution: No U.S. intervention in Venezuela

CONSENT CALENDAR  
June 11, 2019

Noes: Maran

Abstain: None

Absent: Han, Pancoast

#### BACKGROUND

At its regular meeting on March 4, 2019, the Peace and Justice Commission recommended the Council of the City of Berkeley affirm the right to self-determination of the Venezuelan people, and urge that the U.S. government refrain from intervention in the internal affairs of the sovereign state of Venezuela.

The City of Berkeley has long expressed its opposition to U.S. military intervention and economic destabilization of sovereign nations in Asia, Africa, and Latin America.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental impacts or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The City of Berkeley has acknowledged that foreign interventions have a disastrous impact on life in cities such as Berkeley. The mandate of the Berkeley Peace and Justice Commission finds that: "The intentional destruction of cities in war is the rule and not the exception. The wealth to help the poor, heal the sick, house the homeless, educate the children, and care for the elderly is now spent on ever more costly weapons of mass destruction...Our best protection lies in initiating, devising, and promulgated peaceful and just policy alternatives." (Berkeley Municipal Code Chapter 3.68.010). As Rev. Martin Luther King Jr. put it in 1967, "The bombs we drop in North Vietnam are exploding in the ghettos and barrios of the U.S."

#### ALTERNATIVE ACTIONS CONSIDERED

None

#### CITY MANAGER

The City Manager takes no position on the content and recommendations of the Commission's Report.

#### CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Breanne Slimick, Commission Secretary, City Manager's Office (510) 981-7018

Attachments:

1: Resolution

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

NO U.S. INTERVENTION IN VENEZUELA

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, Trump administration officials have openly declared their intention to overthrow the duly elected government of Venezuelan President Nicolás Maduro,<sup>1</sup> have urged the Venezuelan military to overthrow the Maduro government, has recognized a self-appointed opposition politician as president and vetoed any possibility of dialogue despite the efforts of Maduro, the governments of Mexico and Uruguay, and Pope Francis; and

WHEREAS, the U.S. has tightened illegal unilateral economic sanctions,<sup>2</sup> including the seizure of Venezuela's oil properties and bank accounts in the United States and financial sanctions that prevent Venezuela from producing its oil or securing credit or refinancing debt, thereby increasing the hardship on the people of Venezuela by preventing them from accessing imported foods and medicines, while hypocritically seeking to promote a military confrontation by forcing truckloads of aid across the Brazilian and Colombian borders;<sup>3</sup> and

WHEREAS these unilateral sanctions are in violation of the UN and OAS<sup>4</sup> Charters; and

WHEREAS, the U.S. has historically used its economic power to destabilize independent-minded countries, most famously Chile in the early 1970's, making the economy "scream,"<sup>5</sup> as well as Nicaragua in the 1980's, and then using the peoples' economic misery as a pretext for military intervention;<sup>6</sup> and

WHEREAS, Venezuela has the largest oil reserves in the world, and leading administration foreign policy officials have made clear the Trump administration's intention to turn Venezuela's oil over to U.S oil companies for exploitation;<sup>7</sup> and

WHEREAS, Elliott Abrams has been named President Trump's Special Envoy to Venezuela, and is notorious for his central role in the 1980's as a top advisor to Presidents Reagan and Bush in the Iran-Contra scandal, which led to his conviction on criminal charges, and the arming of the Nicaraguan contras, the Salvadoran death squad government, and the genocidal regime in Guatemala responsible for the massacres of hundreds of thousands of indigenous people in that country;<sup>8</sup> and

WHEREAS, the U.S. campaign of regime change in Venezuela is in violation of international law,<sup>9</sup> against the interests of the people of Venezuela and the people of the United States;

NOW THEREFORE BE IT RESOLVED that the Council of the City of Berkeley affirms the sovereign right of the Venezuelan people to negotiate their political differences free from foreign intervention, and urges that the U.S. government withdraw its illegal, unilateral financial sanctions and refrain from military, or diplomatic intervention in the internal affairs of the sovereign state of Venezuela; and

BE IT FURTHER RESOLVED that the Council of the City of Berkeley requests the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Congresswoman Nancy Pelosi, Senator Dianne Feinstein, Senator Kamala Harris, President Trump, and Secretary of State Mike Pompeo.



[Commission Name]

<sup>1</sup> “Trump's declaration on Venezuela sets stage for 'confrontational moment',” CNN, January 24, 2019,

<https://www.cnn.com/2019/01/23/politics/venezuela-us-showdown/index.html>

<sup>2</sup> “Coercion, whether military or economic, must never be used to seek a change in government in a sovereign state,” said Idriss Jazairy, a UN special rapporteur concerned with the negative impact of sanctions.” From article: “The US is orchestrating a coup in Venezuela,” Marjorie Cohn, professor emerita at Thomas Jefferson School of Law, former president of the National Lawyers Guild, deputy secretary general of the International Association of Democratic Lawyers, February 2, 2019, <https://truthout.org/articles/the-us-is-orchestrating-a-coup-in-venezuela/>

<sup>3</sup> The United Nations and the Red Cross have refused to participate in Washington’s controversial aid plan to Venezuela. “We will not be participating in what is, for us, not humanitarian aid.” From article: “Red Cross, UN slam ‘Politicised’ USAID Humanitarian Assistance to Venezuela,” February 11, 2019, <https://venezuelanalysis.com/news/14316>

<sup>4</sup> OAS Charter--Article 15: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements.”

ARTICLE 16: “No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.”

<https://treaties.un.org/doc/Publication/UNTS/Volume%20119/volume-119-I-1609-English.pdf>

<sup>5</sup> “Measures were undertaken in 1970 to try to prevent a free and democratic election. There was a huge amount of black propaganda about how if Allende won, mothers would be sending their children off to Russia to become slaves-stuff like that. The US also threatened to destroy the economy, which it could-and did-do.

“Q: Nevertheless, Allende won. A few days after his victory, Nixon called in CIA Director Richard Helms, Kissinger and others for a meeting on Chile. Can you describe what happened?”

“A: As Helms reported in his notes, there were two points of view. The “soft line” was, in Nixon’s words, to “make the economy scream.” The “hard line” was simply to aim for a military coup.

“Our ambassador to Chile, Edward Korry, who was a Kennedy liberal type, was given the job of implementing the ‘soft line.’ Here’s how he described his task: ‘to do all within our power to condemn Chile and the Chileans to utmost deprivation and poverty.’ That was the soft line.”

*Secrets, Lies, and Democracy*, Noam Chomsky, 1994, <https://chomsky.info/secrets04/>

<sup>6</sup> “These sanctions have cut off the means by which the Venezuelan government could escape from its economic recession, while causing a dramatic falloff in oil production and worsening the economic crisis, and causing many people to die because they can’t get access to life-saving medicines. Meanwhile, the US and other governments continue to blame the Venezuelan government — solely — for the economic damage, even that caused by the US sanctions,” Noam Chomsky, former UN Rapporteur Alfred de Zayas, Phyllis Bennis, Boots Riley, and some 65 other academics and experts, January 24, 2019, <https://www.commondreams.org/news/2019/01/24/open-letter-over-70-scholars-and-experts-condemns-us-backed-coup-attempt-venezuela>

“The threats, the economic war, the financial blockade and the sanctions violate both the UN Charter and the OAS Charter.” February 23, 2019, <https://dezayasalfred.wordpress.com/2019/02/23/open-letter-to-the-united-nations-secretary-general-antonio-guterres-and-to-the-high-commissioner-for-human-rights-michelle-bachelet/>



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<sup>7</sup> Perhaps most brazenly, [National Security Adviser John] Bolton appeared in [an interview on Fox Business](#) and disclosed that the U.S. government was in talks with American corporations on how to capitalize on Venezuela's oil reserves, which are proven to be the [world's largest](#). We're in conversation with major American companies now," he said. "I think we're trying to get to the same end result here. ... It will make a big difference to the United States economically if we could have American oil companies really invest in and produce the oil capabilities in Venezuela," Time Magazine, January 30, 2019, <http://time.com/5516920/inside-john-boltons-month-long-p-r-campaign-against-venezuelas-government/>

<sup>8</sup> "Why Ilhan Omar and Elliott Abrams Tangled Over U.S. Foreign Policy," <https://www.nytimes.com/2019/02/14/us/politics/ilhan-omar-elliott-abrams.html>

"Guatemalan Army Waged 'Genocide,' New Report Finds," <https://www.nytimes.com/1999/02/26/world/guatemalan-army-waged-genocide-new-report-finds.html>

<sup>9</sup> UN Charter—Article 2: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." <http://www.un.org/en/sections/un-charter/un-charter-full-text/>

See also OAS Charter, above



CONSENT CALENDAR

June 11, 2019

**To:** Honorable Mayor and Members of the City Council

**From:** Jenny Wong, City Auditor *zw*

**Subject:** Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

RECOMMENDATION

We recommend City Council request that the City Manager report back by December 3, 2019, and every six months thereafter, regarding the status of our audit recommendations until reported fully implemented by the Fire Department. They have agreed to our findings and recommendations. Please see report for management's response.

FISCAL IMPACTS OF RECOMMENDATION

The Berkeley Fire Department (Fire) may need funding if the staffing analysis that we recommend they complete shows that they need additional staffing to effectively manage their fire prevention inspection program. This cost could be at least offset by an increase in revenues from fees and administrative citations due to increased inspections. Fire can also increase its revenues by implementing a process to issue, track, and follow up on citations issued as we recommend.

CURRENT SITUATION AND ITS EFFECTS

Fire is not meeting the mandate to perform required fire prevention inspections and ensure property owners correct code violations. As of June 2018, the Department had nearly 2,500 open violations and had not inspected over 500 properties. Their ability to meet inspection mandates is impacted by the City's extensive code enforcement requirements and growth across the City without a corresponding staffing increase.

Fire's inspection database, RedAlert, does not contain a complete inventory of properties requiring inspections or complete code violation records, making it harder for staff to complete all mandated properties and follow up on code violations. Further, important controls over how users input data are not in place in that database. Such controls provide assurance that staff input data accurately and consistently so the Fire Prevention Unit has all the necessary information needed to perform inspections and address violations, particularly violations posing the most significant safety risks.

Fire staff need more support to be able to complete mandated inspections. Fire does not perform complete assessments to balance the competing priorities and target high-risk properties. Fire also does not have a sufficient plan for communicating between Prevention and

Suppression staff, and they do not provide enough training. Fire’s communication with the public about the inspection program is not sufficient to help property owners know their responsibilities and options. Without better support, the already overburdened fire prevention program faces deeper challenges in completing the necessary work to keep the City safe.

We recommend that Fire analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that Fire management support the inspection program by coordinating work plans, use risk-assessment tools to identify high-risk properties, issue formal guidance for managing the program, develop a communication plan, create a public education program, and creating a process for managing administrative citations.

BACKGROUND

Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. The Fire Prevention Unit has eight staff members, only three of whom are Fire Prevention Inspectors. They have not had a staffing increase since the Hills Fire of 1991. Since 1995, Fire Prevention has had to rely on Suppression staff to perform the majority of the inspections in between responding to fire and medical emergencies, and complying with training and equipment maintenance requirements.

ENVIRONMENTAL SUSTAINABILITY

Our office manages and stores audit workpapers and other documents electronically to significantly reduce our use of paper and ink.

RATIONALE FOR RECOMMENDATION

The Berkeley Fire Department’s fire prevention inspection program is critical to keeping Berkeley safe for those who live, work, and visit the City. When high risk properties go uninspected and violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

CONTACT PERSON

Jenny Wong, City Auditor, City Auditor’s Office, 510-981-6750

Attachments:

- 1: Audit Report: Fire Prevention Inspections: Insufficient Resources Strain Code Compliance, issued May 9, 2019

Audit Report  
May 9, 2019

# Fire Prevention Inspections: Insufficient Resources Strain Code Compliance



BERKELEY CITY AUDITOR



# Fire Prevention Inspections: Insufficient Resources Strain Code Compliance

## Report Highlights

May 9, 2019



### Findings

1. The Fire Department is not meeting inspection mandates. In **fiscal year 2018, the Department's unresolved violations** increased to nearly 2,500 and it did not inspect over 500 properties. Without increased staffing, the Department is strained by both City inspection requirements that go beyond **California's requirements and the impacts of population growth.**
2. **The Fire Department's database does not contain a complete** inventory of properties requiring inspections and lacks controls to ensure complete data.
3. The Fire Department staff need more support to be able to complete mandated inspections. Fire does not perform complete risk assessments or sufficiently communicate within the Department and with the community.

Increased Unresolved Violations, Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

### Why This Audit Is Important

The Berkeley Fire Department's fire prevention inspection program is critical to keeping Berkeley safe. When properties go uninspected and open violations remain unresolved by property owners, the City exposes the public to fire risks that could have devastating effects.

### Objectives

1. To what extent has the Fire Department met the mandated inspection requirements?
2. How does the Fire Department manage fire inspections?
3. What challenges within the Fire Department remain in fire inspections?



### Recommendations

We recommend that the Fire Department analyze the impact of making changes to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections to align mandates with budgeted resources, and perform a workload analysis to quantify the staff needed now and in the future to comply with inspection requirements.

We also recommend that the Fire Department support the inspection program by coordinating work plans, using risk-assessment tools to identify high-risk properties, issuing formal guidance for managing the program, developing a communication plan, creating a public education program, and implementing a process for managing administrative citations.

The Fire Department agreed with our findings and recommendations.

For the full report, visit: <http://www.cityofberkeley.info/auditor>



BERKELEY CITY AUDITOR

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## Introduction

In June 2018, the San Jose Mercury News released an exposé on fire prevention inspections in the Bay Area. The article reported that the City of Berkeley was not in compliance with state mandated fire prevention inspection requirements. An impetus for the article was the devastating Oakland Ghost Ship fire in December 2016 where 36 people died when a warehouse, illegally used for events, went up in flames. Berkeley cannot allow a similar tragedy to occur by failing to complete life-saving fire prevention inspections.

The Berkeley Fire Chief acknowledged in the article that mandated inspections were not getting done and asked our office to perform an audit. Despite resource constraints, we initiated an audit to understand the extent of this significant life and safety risk and what the Fire Department (Fire) needed to do to address it.

## Objectives, Scope, and Methodology

This audit focused on identifying the problems with mandated fire prevention inspections and determining how Fire can better manage this important program to decrease risk. Our objectives were to determine:

1. To what extent has Fire met the mandated inspection requirements?
2. How does Fire manage fire inspections?
3. What challenges within Fire remain in fire inspections?

We examined fire prevention inspection records for fiscal years 2016 through 2018, performed interviews, conducted a survey, reviewed relevant California and Berkeley laws, and reviewed best practices to understand the program. For more information, see p. 22.

## Background

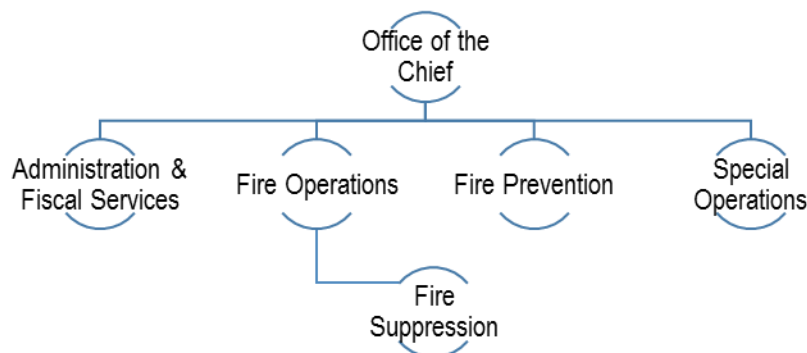
Fire prevention inspections help reduce the risk of fire. They also ensure that if a fire does occur, buildings are safer for residents evacuating and for firefighters entering the building. Fire prevention inspections examine a number of areas including:

- Exits are free from obstructions, do not lock, and are lighted
- Fire extinguishers are easy to access and have been serviced
- Flammable liquids and other hazardous materials have been properly stored
- Smoke and sprinkler systems are properly maintained
- Storage does not block sprinklers or escape routes, or provide fuel to a fire

The Berkeley Fire Department divides fire prevention inspection activities between the Fire Prevention (Prevention) and Fire Suppression (Suppression) Divisions (Figure 1). According to the Fire Chief, Prevention spends 30-40 percent of its time on inspections, which they must balance with other high-priority tasks. Their tasks include:

- Building plan reviews
- Code consultations
- Construction and building permit inspections
- Wildland-urban interface fire areas
- Citizen complaints
- Special permits for events or large parties
- Public education activities
- Group living accommodation inspections
- Inspections of large, complex, or high-risk buildings such as hospitals and schools

Figure 1: Berkeley Fire Department Organizational Chart



Source: City of Berkeley 2018-2019 Biennial Budget



The Fire Prevention Division reports directly to the Office of the Chief. Fire Prevention is overseen by the Fire Marshal and includes the Deputy Marshal, three Fire Prevention Inspectors, two Fire and Life Safety Plans Examiners, and an Assistant Management Analyst. Inspectors focus on field inspections, while Examiners focus on new construction plan reviews. Prevention uses a database system called Red Alert to record and track inspections and violations.

## Fire Not Meeting Inspection Mandates; Extensive Code Requirements and Population Growth Impact Staffing Workload

As of June 30, 2018, nearly 2,500 fire code violations were unresolved and over 500 properties were not inspected at all. Fire is not meeting the mandate to perform fire prevention inspections and make sure property owners correct code violations. **Fire's ability to meet City mandates is impacted by the City's extensive inspections requirements and growth across the City without a corresponding staffing increase. This puts the City at an increased risk since properties have known unresolved violations or haven't been inspected at all. This also means Fire cannot confidently state that residents and community members are working, shopping, and living in places that have mitigated the risk of fire.**

### Fire is not closing violations or inspecting all properties.

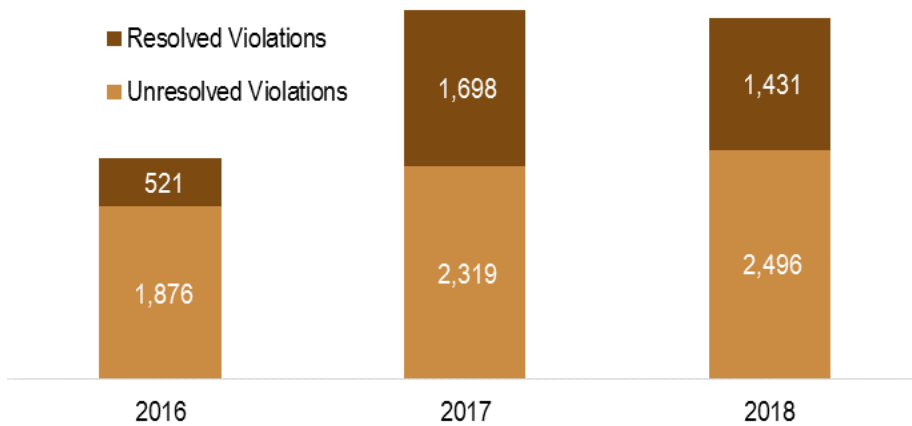
Unresolved violations increased from 1,876 to 2,496 between fiscal years 2016 and 2018 (Figure 2). These unresolved violations are associated with between 1,200 and 1,300 properties throughout the City. Unresolved violations indicate that a property has at least one issue, and at times multiple issues, that increase the risk of fire, loss of property, and loss of life. When Fire performs an inspection and finds violations, they are required to perform reinspections to ensure the violations are addressed by the property owner to reduce risk of fire. The data detailing the types and severity of the unresolved violations was not reliable enough to ascertain the details of the violations, but the number of unresolved violations is growing. Sixty-four percent of violations issued in fiscal year 2018 alone remain unresolved.



The Fire Department issued 3,927 violations in fiscal year 2018.

2,496 remain unresolved.

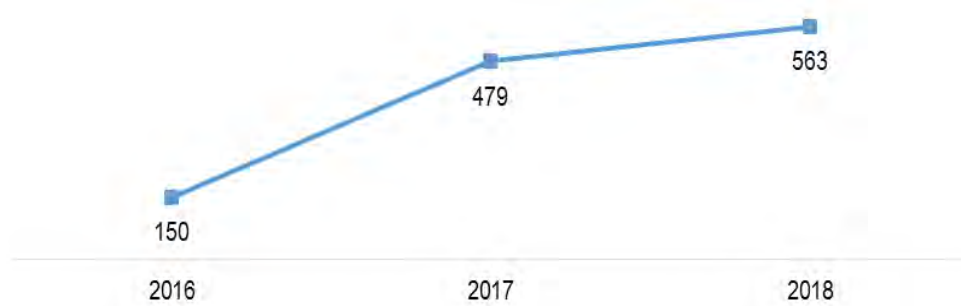
Figure 2: Unresolved Violations Increased from 1,876 to 2,496 in Fiscal Years 2016 to 2018



Source: Auditor analysis of Red Alert database

The number of uninspected properties has risen from 150 to 563, an increase of 275 percent, over the last three fiscal years (Figure 3). In fiscal year 2016, the number of uninspected properties was 1.9 percent of the total number of mandated inspections; by 2018 that had risen to 6.5 percent of all mandated inspections. While Fire closes most mandated inspections with no violations noted, there is an increase in the number of inspections that were not performed at all. This leaves the public vulnerable to increased fire risk.

Figure 3: Number of Uninspected Properties Increased Between Fiscal Years 2016 and 2018



Source: Auditor analysis of Red Alert database

**City’s inspections code goes beyond state requirements.**

Berkeley’s mandated fire prevention inspection requirements go well beyond those set by the California Fire Code, dramatically increasing Fire personnel’s workload. Not only does Berkeley require Fire to inspect more structures and properties than the state code, but it also requires that Fire inspect all

mandated properties every year. These additional requirements create a **workload burden that significantly limits Fire’s ability to perform all required inspections** and close unresolved violations. The Suppression staff we interviewed and surveyed pointed to the extensive requirements set forth by the City as a factor in being behind in closing violations and completing all inspections.

The California Fire Code, legislatively known as the California Building Standards Code, mandates most minimum fire safety requirements for new construction, existing buildings and facilities, and hazardous materials storage.<sup>1</sup> The California Health and Safety Code also includes relevant inspection mandates.<sup>2</sup> In 1973, Berkeley first adopted these codes, and additional requirements specific to Berkeley, into City law under the Berkeley Municipal Code (BMC). In 1982, Berkeley adopted into the BMC a local fire prevention inspections program that requires an additional number and types of inspections, and requires inspections to take place annually (Table 1).<sup>3</sup>
















Table 1: State and Local Mandated Fire Prevention Inspections

| Inspection Requirement                                                                                                                                                                        | California                 | Berkeley                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------------------|
| All structures used for amusement, entertainment, instruction, deliberation, worship, drinking or dining, awaiting transportation, or education.                                              | ✓<br>Frequency unspecified | ✓<br>Required every year |
| All organized camps with program and facilities established for the primary purposes of providing an outdoor group living experience for five days or more during one or more seasons a year. | ✓<br>Frequency unspecified | ✓<br>Required every year |
| All buildings or structures used by more than six persons at any one time for educational purposes through the 12th grade.                                                                    | ✓<br>Frequency unspecified | ✓<br>Required every year |

<sup>1</sup> California Building Standards Code (Cal. Code Regs., Title 24) is available here: <https://www.dgs.ca.gov/BSC/Codes>

<sup>2</sup> California Health and Safety Code Division 13 is available here: <https://leginfo.ca.gov/faces/codesTOCSelected.xhtml?tocCode=HSC>

<sup>3</sup> Berkeley Municipal Code Chapters 12.50 and 19.48 are available at: <https://www.codepublishing.com/CA/Berkeley/>

| Inspection Requirement                                                                                                                                                                                                                                                                  | California                                                                                                    | Berkeley                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| All buildings or structures in which care or supervision is provided to persons who are or are not capable of self-preservation without physical assistance or in which persons are detained for penal or correctional purposes or in which the liberty of the occupants is restricted. | <br>Required every two years | <br>Required every year   |
| All buildings or structures that store, handle, or use regulated hazardous materials.                                                                                                                                                                                                   | <br>Frequency unspecified    | <br>Required every year   |
| All buildings used for sleeping purposes including hotels, motels, lodging houses, and apartment houses.                                                                                                                                                                                | <br>Required every year      | <br>Required every year   |
| All high-rise structures with floors used for occupancy located more than 75 feet above the lowest floor level having building access.                                                                                                                                                  | <br>Required every year      | <br>Required every year   |
| All residential structures of three units or more.                                                                                                                                                                                                                                      | <br>Required every year     | <br>Required every year  |
| All commercial buildings and properties.                                                                                                                                                                                                                                                |                                                                                                               | <br>Required every year |
| All industrial buildings and properties.                                                                                                                                                                                                                                                |                                                                                                               | <br>Required every year |
| All institutional buildings and properties.                                                                                                                                                                                                                                             |                                                                                                               | <br>Required every year |
| All vacant buildings.                                                                                                                                                                                                                                                                   |                                                                                                               | <br>Required every year |
| All vacant lots.                                                                                                                                                                                                                                                                        |                                                                                                               | <br>Required every year |

Source: 2016 California Fire Code and Berkeley Municipal Code

## Berkeley grows, but Fire staffing may not be keeping up.

Berkeley’s population grew almost nine percent in the ten years following the 2000 census. The Association of Bay Area Governments projects that the City’s population will grow nearly 25 percent between 2010 and 2040. The resulting development can be seen all over the City as store fronts change hands and large multi-use developments rise to change the skyline. Prevention staffing has not grown to meet those demands, further exacerbating Fire’s ability to meet city inspection mandates.

### Berkeley’s growth over the past decade has stretched Fire’s resources.

Projected growth in the next 20 years means that the number of properties that require mandated inspections will stretch resources even more. Large, mixed-use developments put a further strain on Fire. It is more time consuming to review and approve life and safety plans for those structures, and it takes additional time and resources to respond to emergency calls at those buildings.

Fire Prevention has not seen an overall increase in authorized staffing since the Hills fire of 1991. In 1995, special funding for vegetation control in the hills ended. As a result, the Fire Marshal at the time restructured the Prevention Division, reducing staffing from 11.5 to 9.5 employees. Since then, Fire Prevention staffing has been further reduced and often averaged only four employees due to staff vacancies. Recently, Fire added three new positions in Fire Prevention. In July 2016, a new Examiner position was authorized. In July 2018, a new Inspector and a new Management Analyst were authorized. Fire stated that, while the new Inspector could help with some of the inspections backlog, this would not be enough to address all of the unresolved violations and uninspected properties.

**Prevention’s limited staffing has led to more reliance on Suppression to perform inspections.** This is despite an increase in emergency calls in recent years and no changes in Suppression staffing since at least 2013. This puts a strain on Suppression’s ability to perform all of their job functions, most of which are high-priority vital tasks like responding to 911 calls for service, maintaining fire and life safety equipment, and training. As a result, all of the 20 Suppression staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.



As of July 2018, the Fire Prevention Division was budgeted for 8 FTEs:

- Fire Marshal
- Deputy Fire Marshal
- Sworn Fire Inspector
- Non-sworn Fire Inspector (2)
- Fire and Life Safety Plans Examiner (2)
- Assistant Management Analyst



All of the Suppression Staff who responded to our survey stated that there were not enough people performing inspections to handle the workload.

Despite experiencing a long-term staffing shortage, Fire has not done a complete workload analysis to understand its staffing needs. This impedes its ability to manage the inspection program in the short- and long-term, and to understand its resource needs. The City of Portland and the National Fire Protection Association indicate that, while it is a difficult task to ensure that a department performs all of their required inspections each year due to the higher level of competing priorities, fire departments can take steps to better manage prevention despite staff limitations. In particular, they recommend performing a workload analysis, even if it is high-level or a ballpark, to understand where there may be gaps in coverage between inspections needed and staff available to perform those inspections.<sup>4</sup> Performing even a high-level workload analysis can help Fire understand where there are gaps in staffing and determine its future course of action to comply with inspection mandates.

## Recommendations

To align the inspection mandates with the current and anticipated needs of the City, we recommend the Fire Department:

- 1.1** Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

To understand the gaps in staffing needed to perform current and anticipated inspections, we recommend the Fire Department:

- 1.2** Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

---

<sup>4</sup> Portland's Fire and Rescue Department has taken effective actions on issues similar to those that Berkeley Fire is facing.

## Fire Relies on Incomplete Data to Manage Inspections

Fire's inspection database, Red Alert, contains incomplete data, making it harder for staff to make sure that they are inspecting all mandated **properties and unresolved violations**. Fire's database does not automatically link with other City databases to ensure new properties and property changes are quickly and accurately reflected in Red Alert. Further, important controls over how users input data are not in place in Red Alert. Such controls provide assurance that staff input data accurately and consistently so Prevention has all the necessary information needed to perform inspections and resolve violations, particularly violations posing the most significant safety risks.

### Fire does not have a complete inventory of properties requiring inspections.

Fire's database does not link to other City databases, which means that Fire does not have a complete inventory of all properties requiring inspection. Fire administrative staff reported that they manually enter new properties and changes to existing properties, such as a new address, new business name, or a change in business type, into Red Alert when they receive updates via interdepartmental mail or email from the Planning Department. Planning captures all data on new construction and changes to existing buildings and businesses in separate systems.

When Fire is not informed of new properties or changes to existing properties, those buildings may not be inspected as required. For example, we found that the new StoneFire Development on the corner of Milvia and University with 8,700 square feet of commercial space and 98 residential **units was not included in Fire's database (Figure 4)**. StoneFire opened in August 2017 making it due for an annual mandated inspection in the fall of 2018.



The StoneFire Development with 8,700 square feet of commercial space and 98 residential units was not included in the Fire Department's inspection database.



Figure 4: StoneFire Development



Source: Johnson Lyman Architects

**We found seven other large projects that were not in Fire’s database. After we alerted Fire to the issue, staff performed a labor-intensive manual reconciliation between Red Alert and the hard-copy memos sent out by the Planning Department. These memos identify property changes and new properties. As a result, Fire identified an additional 21 properties that require a fire prevention inspection. The new buildings were inspected prior to being occupied. However, because these properties were not included in Fire’s database, they have not since been inspected for compliance with fire prevention codes as required by City mandate. Because Fire’s database does not link to other City databases, there could be even more properties that have not been inspected since the City’s building landscape has changed dramatically over the years.**

### **The Fire database lacks controls to reduce user error and ensure complete data.**

**Fire’s database does not automatically restrict how users input data, leading to errors and missing information that Fire relies on to monitor whether properties are inspected and violations are resolved. Automated controls help database users enter data systematically, capture required data, and protect records from unauthorized changes. For example, users can be required to**



Seven other large projects were not included in the Fire Department’s database.

enter specific data in a field in order to save the record or only select from a list or menu of options. Because of the lack of controls, there's a risk of missing or incomplete data that ultimately affects Fire's ability to perform inspections, monitor properties used for specific purposes, and follow-up on critical code violations.

Throughout Fire's database, we found fields that users were not required to complete to save the inspection record, including fields that listed the property's complete address, the business name, and the inspecting individual's unit, shift, and name. We also found that the drop-down menus for inspection type, inspection status, and violation status fields allowed a user to select a blank option and still save the record. All of these fields are vital for Fire's record keeping to provide complete and accurate information to Prevention and Suppression staff.

We found similar issues with four fields used to record code violations: code number, code description, violation description, and violation location. In each case, users can leave a field blank or replace standard text with other, less specific information. For example, the code description field is intended to be the formal language of the code that is in violation but staff do not always input that information. We saw 196 examples of other text in the code description field such as "See open violations" or "See inspection from before." This removes the ability to easily search records, identify issues, and effectively manage the entire inspections program. Additionally, in 1,043 cases over the three years of our scope, the field reserved for the code number was either blank or did not directly reference a part of the fire code. That greatly impacts a firefighter or inspector's ability to perform comprehensive reinspections to close unresolved violations. It also impacts Fire management's ability to monitor and review the fire prevention inspection program.



Every field in the Fire Department's database is vital for them to capture complete and accurate information about a property.

## Recommendations

To ensure complete and accurate inspection records, we recommend the Fire Department:

- 2.1** Develop a process, in consultation with Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.
- 2.2** **Work with both the database's software vendor and the** Information Technology Department to strengthen controls over the database, including:
  - Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
  - Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the code violation numbers and violation description fields.

## Fire Staff Do Not Have Enough Support to Get Inspections Done

Fire staff need more support to be able to complete mandated inspections. Fire does not sufficiently take resource constraints, competing priorities, and risk factors into account when planning and assigning inspections. Fire also does not have a sufficient plan for communicating between Prevention and Suppression, nor do they provide enough training to those performing **inspections. Fire's communication with the public about the inspection** program is neither complete nor consistent enough to help property owners know the options available to them. Without better support, the already overburdened fire prevention inspections program faces deeper challenges in completing the necessary work to keep the City safe.

### Inspection assignments do not take competing priorities and risk into account.

Suppression staff have a number of important competing priorities that are not fully taken into consideration when Prevention assigns inspections. They perform all of the fire and medical calls in the City; are required to maintain extensive training in firefighting and emergency medical services; and perform most of the mandated inspections.

Prevention is in charge of the program, including assigning inspections to the Captains of the 27 Fire Suppression Companies. In 2018, that ranged from 235 to 310 for each Company. About every three months, the Fire Marshal sends out an email to Battalion Chiefs, the Deputy Chief, and the Chief detailing how many inspections each Company has completed and how many remain. The **Fire Marshal also occasionally reports these numbers during Fire's command** staff weekly meetings, attended by all staff members with a rank of Battalion Chief or higher.

Company Captains are assigned other divisional tasks, such as purchasing, **maintaining, and testing Fire staff's personal protective gear. They also** regularly have a new rookie firefighter in their Company who requires additional training and guidance. Even though fire prevention inspections are very important for mitigating the risk of fire, Suppression staff face the challenge of finding time to conduct inspections in between all of their other vital tasks.



A Fire Company is a single emergency response unit and its personnel. In Berkeley, a company is made up of three individuals on a fire engine or a truck: a fire captain and two firefighters.

Consequently, many Captains focus on completing inspections as quickly as possible rather than spending time focusing on high-risk properties or properties with long-standing issues. Of the 20 Captains that replied to our confidential survey, 55 percent replied that they do not conduct reinspections in a timely manner. One Captain reported in our survey that inspection assignments come out during one of their busy times of year, which makes **managing workload and the Company’s morale difficult.**

Fire does not sufficiently take risk factors into consideration when assigning inspections to Companies, despite resources constraints and competing priorities. Instead, inspections are assigned to Companies geographically based on the location of their fire station. The National Fire Protection Association and professional fire publications like *Firehouse* indicate that, while it is difficult to perform all of the required inspections each year due to the significant competing priorities, cities can address resource limitations using a risk-based approach to inspection assignments. By assessing pending inspections and unresolved code violations by risk such as community demographics, socio-economics, geographical features, building use, and hazards present, cities are able to address the more significant risks with their limited staff and time. Risk assessments can start off as high-level and over time build to become more robust. For example, identifying properties with numerous violations or a history of violations, or high-risk facilities based on occupancy type is a simple yet effective high-level approach to conducting a risk-based assessment.

Captains told us in interviews that they do not have an opportunity to provide input to Prevention on high-risk properties in their service area. These are properties that Suppression staff would like to focus time and resources on to enforce compliance. One Captain said that he uses risk factors to prioritize his **own company’s inspections, but he still has to get all of his assigned** inspections completed, even if a high-risk inspection took longer to close. He **said that if he spends “too much time” closing a high-risk property,** he falls behind in completing his other inspections and tasks.



70%

percent of the Captain we surveyed said their Firefighters have too many things to focus on to prioritize inspections.



Cities can address resource limitations by using a risk-based approach to inspection assignments.

## Fire Management and Prevention do not regularly communicate with Suppression about inspections.

Fire Management does not regularly communicate with Suppression about the importance of the Fire Prevention inspection program. Doing so would **strengthen Fire's ability to perform inspections efficiently and effectively.** The inspection program is managed by Fire Prevention, but Suppression, which takes direction from the Office of the Chief, is assigned the largest portion of mandated inspections. However, there is no regular formal or informal communication plan between Prevention and Suppression that acknowledges the barriers to effective communication in Fire. As a result, there is little communication between the two divisions.

Coordinating how to communicate with over a hundred people on varying schedules stationed across the City is a challenge, but can be accomplished with better communication between those doing the work and those in charge of it. The Fire Marshal attends the weekly command staff meetings with Suppression management, but there is little face-to-face interaction between Fire Prevention and the Companies tasked with performing the work. By comparison, Portland Fire uses both formal and informal methods to communicate with staff, including a weekly video address from the Chief. This varied communication style has led to bolstered motivation and respect through the large department, translating to more efficient and effective work.

**Fire's guidance for the inspection program lacks sufficient detail for** communicating and coordinating efforts. The General Order for fire prevention inspections has not been revised since 2011. It does not address the overall importance of performing the inspections, describe communication protocols between the Prevention and Suppression divisions, or identify resources for Suppression to use while performing inspections. Fire uses General Orders to communicate policy changes and department-wide initiatives to staff. By not updating the General Order for the prevention program, the department has indicated a lack of management support for the **program's needs.**



The Fire Department's guidance for the inspection program lacks sufficient detail for communicating and coordinating efforts.

## Firefighters do not receive hands-on training on performing inspections.

Firefighters do not receive the training they say they need to perform fire prevention inspections. Fire provides only a 4-hour classroom-based training to update firefighters on the changes to the database, including any fire code or process changes. We heard from Captains, both in interviews and in our survey, that this is not what is needed in the field. The National Fire Protection Association recommends that fire departments provide Suppression crews with help, including practical trainings, to increase the quality, efficiency, and consistency of the inspections.

During interviews, some firefighters said that they specifically need training in a real-world environment on how to communicate with property owners during the inspection process, use best practices for managing the workload, and perform inspections in an efficient but effective manner. All Captains complete a 40-hour Fire Inspections and Investigations course, including 29.5 hours of lecture and 3.5 hours of testing. However, in our survey of Captains, only 40 percent stated that they received adequate training to understand their responsibilities for performing inspections and to do their job well. Sixty-five percent of Captains surveyed said that they would like to receive additional training in performing inspections. Adding consistent, hands-on training using experienced Suppression staff will allow Fire to provide real-world training on how to perform inspections in the community.

## Fire does not educate property owners about the importance of inspections.

According to Prevention staff, capacity limitations lead to their inability to sufficiently educate the community about fire prevention inspections. This leaves property owners ill-informed about what inspections entail, how to remedy violations, and what the consequences are for noncompliance with fire codes. The National Fire Prevention Association and professional publications recommend that departments educate the community on the inspection **program and why it's important. By informing property owners of the** inspection program and how to identify and address common violations, Fire can perform inspections more efficiently and effectively. Conversely, when property owners lack information, it takes longer to perform inspections and there are more violations. Captains corroborated this when 55 percent of our



65% of

Captains surveyed said that they would like to receive additional training on performing inspections.

survey respondents stated that most people do not know why firefighters are there when they walk in the door to conduct inspections.

**Fire’s lack of public information and education also impacts how the community sees inspections.** Fire provides a valuable service and alerts property owners to violations that could impact the life and safety of those in their buildings. However, 70 percent of Captains we surveyed thought the community either did not appreciate, or were not sure if they appreciated the inspections. This may be a sign of the lack of public education around this program designed to reduce the risk of fire in the City.

### **Fire does not have a consistent process for enforcement.**

Fire has an enforcement option but is not consistently using it to compel property owners to fix code violations. The administrative citation process is available to Fire Prevention staff and some Fire Suppression management to enforce violations. Administrative citations are a useful tool to require compliance from property owners with unresolved fire code violations.<sup>5</sup> The City can levy fines of up to \$500 per violation per day of non-compliance and can place a lien on the property to recover those costs. According to Fire, they do not have the staff capacity to track the revenue collected as part of enforcement actions, which could help fund additional resources for the unit.

**Fire also has the authority to “red tag” a building, deeming it too dangerous for people to inhabit.** Other City divisions, such as Neighborhood Services, use the administrative citation process to bolster their enforcement capacity and target high-risk properties with numerous or long-standing violations.

**According to the City’s Code Enforcement Supervisor, Neighborhood Services** has seen an increased rate of compliance from property owners since staff have begun emphasizing the use of administrative citations.



Berkeley can levy fines of up to \$500 per code violation per day of non-compliance.

<sup>5</sup> Berkeley Municipal Code sections 1.20 through 1.28 outline the citation process and those authorized to issue them.



## Recommendations

To recognize competing priorities and address the most high-risk properties, we recommend:

- 3.1** The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.
- 3.2** The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

To facilitate communication with and training for all employees that perform inspections, we recommend:

- 3.3** The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.
- 3.4** The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.
- 3.5** The Fire Department revise fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

To strengthen public outreach and enforcement, we recommend the Fire Department:

- 3.6** Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.
- 3.7** Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

## Appendix I—Methodology and Statement of Compliance

### Methodology

We audited the Fire Department's fire prevention activities including processes for performing fire prevention inspections and reinspections, mandates regarding those processes, and inspection results for fiscal years 2016 to 2018. We did not specifically perform work around the designated Wildland-Urban Interface Fire Areas. We performed a risk assessment of the Fire Prevention Division's practices and procedures to identify potential internal control weakness and including fraud risks. While we did identify potential fraud risks, none were specific within context of our audit objective. We found control weaknesses within the context of our audit objectives that could prevent compliance with fire prevention inspection mandates: staffing capacity, incomplete data, and poor communication and coordination protocols. We designed our audit work accordingly. To accomplish our audit objective, we:

- Reviewed Berkeley Municipal Code sections 1.20, 1.28, 12.50, 19.28, and 19.48, and the California Fire Code to understand code inspection and citation requirements, and the variances between local and state codes. We focused on current requirements and did not investigate any proposed **legislative changes that could further impact Fire's workload.**
- Interviewed Fire Prevention, Administrative, and Suppression staff to gain an understanding of their processes for performing and managing inspections, and to obtain their professional perspective as to the constraints that they must work within and the process improvements that would address those constraints.
- Observed the sworn Fire Prevention Inspector performing inspections to understand the workflow of an inspector and the constraints they face in performing their work.
- Surveyed all 27 Fire Captains on their resource capacity, impressions of the fire prevention program, and needs to fully perform their work. Twenty responded.
- Reviewed historical Fire Department documents to understand trends in fire prevention workloads, priorities, funding, and staffing.
- Reviewed professional publications and major newspaper stories to understand the general issues facing fire departments and fire inspection programs.
- **Reviewed other municipalities' audits of fire prevention activities to understand how those audits were conducted and the challenges faced by those fire departments.**
- Analyzed the Red Alert database for violation and inspection trends, and input controls.

- Analyzed departmental reports, planning documents, and communications to understand how Fire manages the fire prevention program and communicates program needs and progress within work units and across the department.
- Reviewed best practices in the industry with respect to how other departments and professional organizations perform fire prevention inspections given limited time and staffing. We specifically relied on a comprehensive fire prevention report by the National Fire Protection Association as the primary standards organization for fire departments across the country. We also used a study of **the City of Portland, Oregon's fire department, which featured their improvements to manage their** fire prevention program more effectively and efficiently when faced with similar challenges as Berkeley.

## Data Reliability

We assessed the reliability of the Red Alert data by interviewing data system managers and owners; examining the data for completeness, consistency, and appropriateness; and reviewing system manuals. We found that some data fields were reliable for our purposes while others were not. We amended our audit work accordingly and limited the use of Red Alert data to those fields we found sufficiently reliable. We cited the critical data weaknesses in our findings and conclusions and made recommendations for addressing those weaknesses.

Red Alert data are stored in two separate datasets: inspections and violations. Both use drop-down menus to populate fields and we determined those were reliable for use in our analysis. The status field in the inspection dataset, which identifies whether an inspection has been completed, scheduled, or resulted in a violation, was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016, 2017, and 2018, the field was blank in only 0.95, 2.75, and 1.3 percent of the records, respectively, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the volume of uninspected properties.

Similarly, the violations dataset uses a drop-down menu to indicate whether a cited violation has been resolved or remains unresolved by the property owner. That field was populated as expected in nearly 100 percent of all records. For our scope, fiscal years 2016-2018, the field was blank in only three of 10,344 records, and all populated fields contained a selection from the dropdown menu as expected. We, therefore, determined that the data were sufficiently reliable for the purpose of quantifying the unresolved property violations.

In both datasets, we found that other fields were either left blank too often and/or contained data unsuitable for analysis, e.g., asterisks and references to other records. We, therefore, determined that we could not rely on those data fields for more extensive analysis on the number of uninspected properties by property type; the common types of violations; and the unresolved violations by property type. We also could not reliably

quantify the more severe types of violations that remain unresolved.

**Additionally, the City's land management and business license data systems do not have the data fields** needed to readily identify properties requiring annual fire prevention inspections. Therefore, we did not plan our work to match properties across platforms to identify properties missing from Red Alert. We limited our **assessment to focus on the lack of an automated process between Red Alert and the City's building permitting** system that leads to a cumbersome, manual process for communicating new construction and building changes to Fire Prevention.

We relied on US Census population and ABAG population predictions to understand population growth trends in Berkeley. We considered both organizations to be known, reliable sources and, therefore, their data to be sufficiently reliable for our purposes. We recognized both the US Census and ABAG offer slightly differing predictive data. However, the purpose of our predictions is to give readers a general understanding of future impact with an understanding that actual population growth will be different.

### **Statement of Compliance**

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Appendix II—Recommendations and Management Response

City Management agreed to our findings, conclusions, and recommendations. In our meetings with Fire Department management, they described their current and planned actions to address our audit **recommendations. We found those verbal responses reasonable. Below is the Fire Department’s initial** corrective action plan and proposed implementation dates. As part of the follow-up process, the Berkeley City Auditor will be actively engaging with the Fire Department every six months to assess the process they are making towards complete implementation.

### 1.1 Analyze the short- and long-term impact of putting forth a change to the Berkeley Municipal Code to reduce the types or frequency of fire prevention inspections.

Proposed Implementation Plan: Fire needs to research the history and rationale for the local adoption of an annual commercial inspection program. Based on the research results, Fire will evaluate the risk versus benefits of the type and frequency of fire prevention inspection that are not mandated by the state laws.

Proposed Implementation Date: April 1, 2020

### 1.2 Perform a workload analysis to quantify the staff needed now and in the future to comply with the local fire prevention inspection requirements.

Proposed Implementation Plan: The current Fire Prevention staff cannot complete some essential tasks to maintain a fire safe city. A consultant or other Fire Department staff providing that the resource is available would be best to conduct a comprehensive workload analysis for Fire Prevention.

Proposed Implementation Date: April 1, 2020

### 2.1 Develop a process, in consultation with the Information Technology Department, for sharing information on property changes and additions between Fire and other City database platforms.

Proposed Implementation Plan: Fire has been working with Information Technology (IT) as well as the Planning Department for the past couple of years. The newly implemented software, Accela, used by the Planning Department has its share of issues communicating with the current fire record management software, Red Alert that the Fire Department has been using. There are similar communicating issues between FUND\$ and Red Alert as experienced **with the implementation of Finance Department’s ERMA software. With support from IT, Fire** is currently seeking a software that can communicate with the software used by the Planning and Finance Department.

Proposed Implementation Date: July 1, 2021

## 2.2 Work with both the database's software vendor and the Information Technology Department to strengthen controls over the database, including:

- Assessing the needs for required fields for processing an inspection, such as unit, shift, inspector name, address, violation details, and violation location.
- Formatting drop-down menus for inspection status, inspection type, and violation status. Formatting the options available for the violation code numbers and violation description fields.

Proposed Implementation Plan: IT renewed the technical support contract with the software vendor in 2018. Fire Prevention will reach out to Red Alert to determine their ability to customize fields within the software. Additionally, Fire and IT are actively reviewing available software that can meet the needs of Fire and is compatible with software used by the other city departments.

Proposed Implementation Date: January 1, 2020

## 3.1 The Fire Prevention Division coordinate work plans with Suppression for all mandated fire prevention inspections. These should take into consideration the volume and nature of the other work Suppression performs.

Proposed Implementation Plan: Coordination of the workplan of suppression units will improve with the updated General Order giving clear expectations of inspection policy and procedure. Issues that arise due to the emergency response nature of suppression work will be coordinated across divisions.

Proposed Implementation Date: October 1, 2019

## 3.2 The Fire Department create a risk-assessment plan to identify those properties that are most at risk of a fire.

Proposed Implementation Plan: Fire Prevention has begun assigning inspections based on occupancy type and state mandated requirements. This basic level of risk assessment is improving compliance and prioritization. A longer term more holistic risk assessment requires algorithms that analyze data that include fire history, various socio-economic indicators, and occupancy type. The Fire Chief is researching the resources needed to conduct such **assessments using other cities' programs as models.**

### 3.3 The Fire Chief issue a General Order to the Department on the importance and necessity of performing fire prevention inspections.

Proposed Implementation Plan: The Fire Chief will revise the General Order to stress the importance and the expectations of Fire Prevention Inspections to the Suppression personnel.

Proposed Implementation Date: October 1, 2019

### 3.4 The Fire Marshal and Suppression Management jointly develop a communication plan between Fire Prevention and Suppression.

Proposed Implementation Plan: Beginning in March, Fire Prevention started issuing completion status of the annual inspection to the Battalion Chiefs and Captains with copy to the Fire Chief and Deputy Chief at the beginning of each month. In the long term, with the revised General Order, the designated Shift Fire Inspector will take on a more active role as a resource to guide the suppression staff on conducting annual inspections.

Proposed Implementation Date: October 1, 2019

### 3.5 The Fire Department revise the fire prevention inspection training to provide hands-on training, using experienced Suppression staff, on how to conduct inspections and interact with residents and community members during inspections.

Proposed Implementation Plan: The revised General Order shall clearly spell out training requirements and expectations of the Suppression Staff. Training Division shall allocate more time for the Suppression staff to be trained on Fire Prevention Inspections. The designated Shift Fire Inspector can provide hands on training to the Suppression staff in the field as needed. Also, Officers Academy shall include a fire prevention inspection module.

Proposed Implementation Date: October 1, 2019

### 3.6 Develop and distribute educational information to property owners prior to the beginning of the inspection cycle to provide information on the fire prevention inspection program, common violations, and any upcoming inspections for that area of the City.

Proposed Implementation Plan: Short term: The Fire Department is participating in the **City's efforts in revamping the website. It will include additional Fire Prevention and Public Education materials. The Fire Department's Office of Emergency Services will be preparing a comprehensive Wildfire Safety packet to all property owners.** Due to current staffing limitations, there is no capacity to engage in full time public education. Funding for additional staff will be considered in the budget process.

Proposed Implementation Date: July 1, 2020

**3.7** Create a process for issuing, tracking, and following up on administrative citations for properties with repeat or high-risk violations, including revenue collections and tracking. That process should collaborate with other City work units that perform enforcement activities to provide consistency.

Proposed Implementation Plan: The Fire Department will review internal policies and procedures then update the Fire Prevention General Order. The Fire Department will make every effort to coordinate **this policy with policies from the City Attorney's office and other city** enforcement units such as Code Enforcement, Environmental Health, Building and Safety, Housing Code Enforcement, etc. to ensure a common experience for the public.

Proposed Implementation Date: July 1, 2020



### Mission Statement

Promoting transparency and accountability in Berkeley government.

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Office of the Mayor

30

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Mayor Jesse Arreguín, Councilmember Kate Harrison, Councilmember Rigel Robinson, and Councilmember Ben Bartlett

Subject: Support AB 1487 – Housing Alliance for the Bay Area.

RECOMMENDATION

Adopt a Resolution in support of AB 1487 (introduced by David Chiu) and to seek amendments from the author. Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

BACKGROUND

Between the end of the Great Recession in 2010 and 2017, a net total of over 105,000 units were created in the Bay Area. During the same time period, the Bay Area's population is estimated to have grown by 600,000. This imbalance has resulted in most Bay Area communities unable to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing.

There is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis. In recent years, several ballot measures on the local, regional, and state level have passed to increase funding for affordable housing. This includes Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California. Despite efforts to increase funding for affordable housing, a large funding gap remains.

AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA). The purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area. Specifically, it empowers HABA to place a series of measures on the ballot, in addition to buying and leasing land, for affordable housing purposes. HABA would not have the power to use eminent domain or regulate/enforce local land use decisions.

On May 10, 2019, a joint meeting of the Metropolitan Transportation Commission (MTC) Legislation Committee and Association of Bay Area Governments (ABAG) Legislation Committee made a recommendation to seek the following amendments to AB 1487:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:

- a. A guaranteed source of funding that is not dependent upon voter approval;
  - b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region’s housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
  - 3) Exclude sales tax increases from revenue options; and
  - 4) Develop a formula that would distribute more than 25 percent of any employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

This bill is consistent with both the Plan Bay Area 2040’s Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

The creation of housing, especially near transit corridors, is consistent with the goals of the Climate Action Plan.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: Text of AB 1487
- 3: MTC/ABAG Item on AB 1487

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

IN SUPPORT OF AB 1487 – HOUSING ALLIANCE FOR THE BAY AREA

WHEREAS, the housing crisis has had profound effects in the Bay Area, resulting in accelerating displacement of vulnerable communities; and

WHEREAS, between 2010 and 2017, the Bay Area created a net total of approximately 105,000 new units, while the region's population grew by 600,000; and

WHEREAS, this imbalance has resulted in most Bay Area communities inability to meet their Regional Housing Needs Allocation (RHNA) goals, especially in affordable housing; and

WHEREAS, efforts have been made on a local, regional, and statewide level to increase funding for affordable housing, including Measure U1 (2016) and Measure O (2018) in Berkeley, Measure A1 (2016) across Alameda County, and Proposition 1 (2018) in California; and

WHEREAS, despite these efforts, there is an estimated annual shortfall of \$2.5 billion to address the Bay Area's housing crisis; and

WHEREAS, AB 1487 – introduced by Assemblymember David Chiu, would establish the Housing Alliance for the Bay Area (HABA); and

WHEREAS, the purpose of HABA would be to create funding mechanisms to construct affordable housing across the nine-county Bay Area by empowering it to place a series of measures on the ballot in addition to buying and leasing land for affordable housing purposes; and

WHEREAS, this bill is consistent with both the Plan Bay Area 2040's Action Plan to create a regional self-help funding for affordable housing, and the Committee to House the Bay Area (CASA) Element #10 of the CASA Compact calling for the creation of a Regional Housing Enterprise.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby supports AB 1487 – Housing Alliance for the Bay Area.

BE IT FURTHER RESOLVED that the following amendments are requested:

- 1) Ensure no new responsibilities are assigned to ABAG or MTC without the following:
  - a. A guaranteed source of funding that is not dependent upon voter approval;

- b. A provision for the reevaluation and potential dissolution of HABA in the event that the level of revenue approved is too small to meaningfully address the region's housing crisis;
- 2) Ensure the bill does not require that MTC staff report to a newly structured board;
- 3) Exclude sales tax increases from revenue options; and
- 4) Develop a formula that distributes more than 25 percent of employer-based (i.e. non-bond and parcel tax measures) revenue to a regional pool.

BE IT FURTHER RESOLVED that copies of the Resolution be sent to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and David Chiu.

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 29, 2019

AMENDED IN ASSEMBLY APRIL 4, 2019

AMENDED IN ASSEMBLY MARCH 26, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1487**

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**Introduced by Assembly Member Chiu**  
**(Coauthors: Assembly Members Mullin and Wicks)**  
(Coauthor: Senator Wiener)

February 22, 2019

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An act to add Title 6.8 (commencing with Section 64500) to the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1487, as amended, Chiu. San Francisco Bay area: housing development: financing.

Existing law provides for the establishment of various special districts that may support and finance housing development, including affordable housing special beneficiary districts that are authorized to promote affordable housing development with certain property tax revenues that a city or county would otherwise be entitled to receive.

This bill, the San Francisco Bay Area Regional Housing Finance Act, would establish the Housing Alliance for the Bay Area (hereafter the entity) and would state that the entity's purpose is to increase affordable housing in the San Francisco Bay area, as defined, by providing for enhanced funding and technical assistance at a regional level for tenant protection, affordable housing preservation, and new affordable housing

production. The bill would establish a governing board of the entity. *The membership, size, and geographic representation of the board shall be determined by the Metropolitan Transportation Commission and the Executive Board of the Association of Bay Area Governments.* The bill would authorize the entity to exercise various specified powers, including the power to raise revenue and allocate funds throughout the San Francisco Bay area, subject to applicable voter approval requirements and other specified procedures, as provided. The bill would also require the board to provide for annual audits of the entity and financial reports, as provided. The bill would include findings that the changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities within the San Francisco Bay area, including charter cities.

The bill would authorize the entity to, among other things, raise and allocate new revenue by placing funding measures on the ballot in the ~~9 San Francisco Bay area counties,~~ *revenue*, incur and issue indebtedness, and allocate funds to the various cities, counties, and other public agencies and affordable housing projects within its jurisdiction to finance affordable housing development, preserve and enhance existing affordable housing, and fund tenant protection programs, as specified, in accordance with applicable constitutional requirements. *In this regard, the bill would authorize the entity to impose various special taxes, including a parcel tax, certain business taxes, and a transactions and use tax, within its jurisdiction and to issue bonds, including revenue bonds, subject to specified procedures. The bill would also authorize the entity to impose a commercial linkage fee, as defined, and require a city or county in the San Francisco Bay area that has jurisdiction over the approval of a commercial development project, as defined, to collect that fee as a condition of that approval and remit the amount of fee to the entity, as provided. The bill would authorize the Metropolitan Transportation Commission to propose a ballot measure to establish any of those funding mechanisms at the November 3, 2020, election, as specified, provided that the entity assumes administration of the funding mechanism upon the approval of the measure. The bill would require that revenue generated by the entity pursuant to these provisions be used for specified housing purposes and require the entity to distribute those funds as provided.*

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Francisco Bay area.



By adding to the duties of local officials with respect to (1) providing staff for the entity and (2) elections procedures for revenue measures on behalf of the entity, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Title 6.8 (commencing with Section 64500) is  
2 added to the Government Code, to read:

3

4 TITLE 6.8. SAN FRANCISCO BAY AREA REGIONAL  
5 HOUSING FINANCE

6

7 PART 1. FORMATION OF THE HOUSING ALLIANCE FOR  
8 THE BAY AREA AND GENERAL POWERS

9

10 CHAPTER 1. GENERAL PROVISIONS

11

12 64500. This title shall be known, and may be cited, as the San  
13 Francisco Bay Area Regional Housing Finance Act.

14 64501. The Legislature finds and declares the following:

15 (a) The San Francisco Bay area is facing the most significant  
16 housing crisis in the region's history, as countless residents are  
17 contemplating moving, spend hours driving every day, are one  
18 paycheck away from an eviction, or experience homelessness.

19 (b) The San Francisco Bay area faces this crisis because, as a  
20 region, it has failed to produce enough housing at all income levels,  
21 preserve affordable housing, protect existing residents from  
22 displacement, and address the housing issue regionally.

1 (c) The housing crisis in the San Francisco Bay area is regional  
2 in nature and too great to be addressed individually by the region's  
3 101 cities and 9 counties.

4 (d) However, the current process is anything but regional;  
5 instead each city and county is each responsible for their own  
6 decisions around housing.

7 (e) The San Francisco Bay area faces an annual funding shortfall  
8 of two billion five hundred million dollars (\$2,500,000,000) in its  
9 efforts to address the affordable housing crisis.

10 (f) A regional entity is necessary to help address the housing  
11 crisis in the San Francisco Bay area by delivering resources and  
12 technical assistance at a regional scale, including:

13 (1) Providing critically needed funding to affordable housing  
14 projects across the San Francisco Bay area.

15 (2) Providing staff support to local jurisdictions that require  
16 capacity or technical assistance to expedite the preservation and  
17 production of housing.

18 (3) Funding tenant services, such as emergency rental assistance  
19 and access to counsel, thereby relieving local jurisdictions of this  
20 cost and responsibility.

21 (4) Assembling parcels and acquiring land for the purpose of  
22 building affordable housing.

23 (5) Monitoring and reporting on progress at a regional scale.

24 64502. For purposes of this title:

25 (a) "Board" or "entity board" means the governing board of  
26 the Housing Alliance for the Bay Area created pursuant to Section  
27 64511.

28 (b) "Entity" means the Housing Alliance for the Bay Area  
29 established pursuant to Section 64510.

30 (c) "San Francisco Bay area" means the entire area within the  
31 territorial boundaries of the Counties of Alameda, Contra Costa,  
32 Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma, and  
33 the City and County of San Francisco.

34 (d) "Lower income households" has the same meaning as that  
35 term is defined in Section 50079.5 of the Health and Safety Code.

36 (e) "Low- or moderate-income households" has the same  
37 meaning as "persons and families of low or moderate income," as  
38 defined in Section 50093 of the Health and Safety Code.

39 64503. The Legislature finds and declares that providing a  
40 regional financing mechanism for affordable housing development

1 and preservation in the San Francisco Bay area, as described in  
2 this section and Section 64501, is a matter of statewide concern  
3 and is not a municipal affair as that term is used in Section 5 of  
4 Article XI of the California Constitution. Therefore, this title  
5 applies to all cities within the San Francisco Bay area, including  
6 charter cities.

7  
8 CHAPTER 2. THE HOUSING ALLIANCE FOR THE BAY AREA AND  
9 GOVERNING BOARD

10  
11 64510. (a) The Housing Alliance for the Bay Area is hereby  
12 established with jurisdiction extending throughout the San  
13 Francisco Bay area.

14 (b) The formation and jurisdictional boundaries of the entity  
15 are not subject to the Cortese-Knox-Hertzberg Local Government  
16 Reorganization Act of 2000 (Division 3 (commencing with Section  
17 56000) of Title 5).

18 (c) The entity’s purpose is to increase affordable housing in the  
19 San Francisco Bay area by providing for enhanced funding and  
20 technical assistance at a regional level for tenant protection,  
21 affordable housing preservation, and new affordable housing  
22 production.

23 (d) It is the intent of the Legislature that the entity complement  
24 existing efforts by cities, counties, districts, and other local,  
25 regional, and state entities, related to addressing the goals described  
26 in this title.

27 (e) It is the intent of the Legislature that the entity be staffed by  
28 the existing staff of the Metropolitan Transportation ~~Commission,~~  
29 *Commission and the Association of Bay Area Governments*, or any  
30 successor agency, with the understanding that additional staff with  
31 expertise in affordable housing finance and other aspects of the  
32 entity’s work will be needed.

33 64511. (a) (1) The entity shall be governed by a ~~board~~  
34 ~~composed of \_\_\_\_\_ voting members. The board. The membership~~  
35 ~~of the board shall consist of commissioners of the Metropolitan~~  
36 ~~Transportation Commission and members of the Association of~~  
37 ~~Bay Area Governments Executive Board.~~

38 (2) *The Metropolitan Transportation Commission and the*  
39 *Executive Board of the Association of Bay Area Governments shall*

1 *serve as the appointing authority and appoint members to the entity*  
2 *board.*

3 (3) *The appointing authority shall determine the size and*  
4 *geographic representation of the entity board.*

5 (4) *The entity shall form an advisory committee comprised of*  
6 *nine representatives with knowledge and experience in the areas*  
7 *of affordable housing finance and development, tenant protection,*  
8 *resident service provision, and housing preservation.*

9 ~~(2)~~

10 (5) *Each member of the entity board shall serve at the pleasure*  
11 *of the appointing authority.*

12 ~~(3)~~

13 (6) *The appointing authority shall fill any vacancy on the entity*  
14 *board within 90 days from the date on which the vacancy occurs.*

15 (b) *The board shall select from its members a chair, who shall*  
16 *preside over meetings of the board, and a vice chair from its*  
17 *members, who shall preside in the absence of the chair.*

18 (c) (1) *A member appointed pursuant to this section may receive*  
19 *a per diem for each board meeting that the member attends. The*  
20 *board shall set the amount of that per diem for a member's*  
21 *attendance, but that amount shall not exceed one hundred dollars*  
22 *(\$100) per meeting. A member shall not receive a payment for*  
23 *more than two meetings in a calendar month.*

24 (2) *A member may waive a payment of per diem authorized by*  
25 *this subdivision.*

26 (d) (1) *Members of the board are subject to Article 2.4*  
27 *(commencing with Section 53234) of Chapter 2 of Part 1 of*  
28 *Division 2 of Title 5.*

29 (2) *The entity shall be subject to the Ralph M. Brown Act*  
30 *(Chapter 9 (commencing with Section 54950) of Part 1 of Division*  
31 *2 of Title 5), the California Public Records Act (Chapter 3.5*  
32 *(commencing with Section 6250) of Division 7 of Title 1), and the*  
33 *Political Reform Act of 1974 (Title 9 (commencing with Section*  
34 *81000)).*

35 64512. *A member shall exercise independent judgment on*  
36 *behalf of the interests of the residents, the property owners, and*  
37 *the public as a whole in furthering the intent and purposes of this*  
38 *title.*

1 64513. (a) The time and place of the first meeting of the board  
2 shall be at a time and place within the San Francisco Bay area  
3 fixed by the chair of the board.

4 (b) After the first meeting described in subdivision (a), the board  
5 shall hold meetings at times and places determined by the board.

6 64514. (a) The board may make and enforce rules and  
7 regulations necessary for the government of the board, the  
8 preservation of order, and the transaction of business.

9 (b) In exercising the powers and duties conferred on the entity  
10 by this title, the board may act either by ordinance or resolution.

11  
12 CHAPTER 3. POWERS OF THE HOUSING ALLIANCE FOR THE BAY  
13 AREA  
14

15 64520. In implementing this title, the entity may do all of the  
16 following:

17 (a) Raise revenue and allocate funds throughout the San  
18 Francisco Bay area, as provided in Part 2 (commencing with  
19 Section 64600).

20 (b) Apply for and receive grants from federal and state agencies.

21 (c) Solicit and accept gifts, fees, grants, and allocations from  
22 public and private entities.

23 (d) Deposit or invest moneys of the entity in banks or financial  
24 institutions in the state, as provided in Chapter 4 (commencing  
25 with Section 53600) of Part 1 of Division 2 of Title 5.

26 (e) Sue and be sued, except as otherwise provided by law, in  
27 all actions and proceedings, in all courts and tribunals of competent  
28 jurisdiction.

29 (f) Engage counsel and other professional services.

30 (g) Enter into and perform all necessary contracts.

31 (h) Enter into joint powers agreements pursuant to the Joint  
32 Exercise of Powers Act (Chapter 5 (commencing with Section  
33 6500) of Division 7 of Title 1).

34 (i) Hire staff, define their qualifications and duties, and provide  
35 a schedule of compensation for the performance of their duties.

36 (j) Use staff provided by the Metropolitan Transportation  
37 ~~Commission~~. *Commission and the Association of Bay Area*  
38 *Governments*. A person who performs duties as interim or  
39 temporary staff pursuant to this subdivision shall not be considered  
40 an employee of the entity.

1 (k) Assemble parcels and lease or acquire land for affordable  
2 housing development.

3 (l) Collect data on housing production and monitor progress on  
4 meeting regional and state housing goals.

5 (m) Provide support and technical assistance to local  
6 governments in relation to producing and preserving affordable  
7 housing.

8 (n) Provide public information about the entity's housing  
9 programs and policies.

10 (o) Any other express or implied power necessary to carry out  
11 the intent and purposes of this title.

12 64521. (a) If the entity proposes a measure pursuant to  
13 ~~subdivision (a) of Section 64520~~ *Part 2 (commencing with Section*  
14 *64600)* that will generate ~~revenues~~, *revenues and that requires*  
15 *voter approval pursuant to the California Constitution*, the board  
16 of supervisors of the county or counties in which the entity has  
17 determined to place the measure on the ballot shall call a special  
18 election on the measure. The special election shall be consolidated  
19 with the next regularly scheduled statewide election and the  
20 measure shall be submitted to the voters in the appropriate counties,  
21 consistent with the requirements of Articles XIII A, XIII C, and  
22 ~~XIII D XIII~~, *or Article XVI* of the California Constitution, as  
23 applicable.

24 (b) (1) The entity is a district, as defined in Section 317 of the  
25 Elections Code. Except as otherwise provided in this section, a  
26 measure proposed by the entity that requires voter approval shall  
27 be submitted to the voters of the entity in accordance with the  
28 provisions of the Elections Code applicable to districts, including  
29 the provisions of Chapter 4 (commencing with Section 9300) of  
30 Division 9 of the Elections Code.

31 (2) Because the entity has no revenues as of the effective date  
32 of this section, the appropriations limit for the entity shall be  
33 originally established based on receipts from the initial measure  
34 that would generate revenues for the entity pursuant to subdivision  
35 (a), and that establishment of an appropriations limit shall not be  
36 deemed a change in an appropriations limit for purposes of Section  
37 4 of Article XIII B of the California Constitution.

38 (c) The entity shall file with the board of supervisors of each  
39 county in which the measure shall appear on the ballot a resolution  
40 of the entity requesting consolidation, and setting forth the exact

1 form of the ballot question, in accordance with Section 10403 of  
2 the Elections Code.

3 (d) The legal counsel for the entity shall prepare an impartial  
4 analysis of the measure. The impartial analysis prepared by the  
5 legal counsel for the entity shall be subject to review and revision  
6 by the county counsel of the county that contains the largest  
7 population, as determined by the most recent federal decennial  
8 census, among those counties in which the measure will be  
9 submitted to the voters.

10 (e) Each county included in the measure shall use the exact  
11 ballot question, impartial analysis, and ballot language provided  
12 by the entity. If two or more counties included in the measure are  
13 required to prepare a translation of ballot materials into the same  
14 language other than English, the county that contains the largest  
15 population, as determined by the most recent federal decennial  
16 census, among those counties that are required to prepare a  
17 translation of ballot materials into the same language other than  
18 English shall prepare the translation, or authorize the entity to  
19 prepare the translation, and that translation shall be used by the  
20 other county or counties, as applicable.

21 (f) Notwithstanding Section 13116 of the Elections Code, if a  
22 measure proposed by the entity pursuant to this title is submitted  
23 to the voters of the entity in two or more counties, the elections  
24 officials of those counties shall mutually agree to use the same  
25 letter designation for the measure.

26 (g) The county clerk of each county shall report the results of  
27 the special election to the entity.

28 (h) (1) Notwithstanding Section 10520 of the Elections Code,  
29 for any election at which the entity proposes a measure pursuant  
30 to subdivision (a) of Section 64520 that would generate revenues,  
31 the entity shall reimburse each county in which that measure  
32 appears on the ballot only for the incremental costs incurred by  
33 the county elections official related to submitting the measure to  
34 the voters with any eligible funds transferred to the entity from  
35 the Association of Bay Area Governments or the Metropolitan  
36 Transportation Commission.

37 (2) For purposes of this subdivision, “incremental costs” include  
38 all of the following:

39 (A) The cost to prepare, review, and revise the impartial analysis  
40 of the measure that is required by subdivision (d).

1 (B) The cost to prepare a translation of ballot materials into a  
2 language other than English by any county, as described in  
3 subdivision (e).

4 (C) The additional costs that exceed the costs incurred for other  
5 election races or ballot measures, if any, appearing on the same  
6 ballot in each county in which the measure appears on the ballot,  
7 including both of the following:

- 8 (i) The printing and mailing of ballot materials.
- 9 (ii) The canvass of the vote regarding the measure pursuant to  
10 Division 15 (commencing with Section 15000) of the Elections  
11 Code.

12 (i) *If the Metropolitan Transportation Commission proposes a*  
13 *measure pursuant to Section 64601, the Metropolitan*  
14 *Transportation Commission shall assume all duties delegated to*  
15 *the entity under this section.*

16 64522. The entity shall not do either of the following:

- 17 (a) Regulate or enforce local land use decisions.
- 18 (b) Acquire property by eminent domain.

19  
20 CHAPTER 4. FINANCIAL PROVISIONS  
21

22 64530. The board shall provide for regular audits of the entity's  
23 accounts and records and shall maintain accounting records and  
24 shall report accounting transactions in accordance with generally  
25 accepted accounting principles adopted by the Governmental  
26 Accounting Standards Board of the Financial Accounting  
27 Foundation for both public reporting purposes and for reporting  
28 of activities to the Controller.

29 64531. The board shall provide for annual financial reports.  
30 The board shall make copies of the annual financial reports  
31 available to the public.

32  
33 PART 2. FINANCING ACTIVITIES OF THE HOUSING  
34 ALLIANCE FOR THE BAY AREA  
35

36 CHAPTER 1. GENERAL PROVISIONS  
37

38 64600. The entity may do all of the following:

- 39 (a) (1) Raise and allocate new revenue ~~by placing on the ballot~~  
40 ~~in all or a subset of the nine counties in the San Francisco Bay area~~



1 various funding measures, including through the following funding  
2 mechanisms:

3 ~~(A) A parcel tax.~~

4 ~~(B) A commercial linkage fee that is either of the following:~~

5 ~~(i) A variable rate fee assessed on new construction, providing~~  
6 ~~a credit for a project in a local jurisdiction with an existing linkage~~  
7 ~~fee program.~~

8 ~~(ii) A flat rate fee assessed on new construction.~~

9 ~~(C) A gross receipts tax with variable rates according to business~~  
10 ~~sector with an exemption for small businesses.~~

11 ~~(D) A business tax based upon the number of employees~~  
12 ~~assessed at a variable rate with an exemption for small businesses.~~

13 ~~(E) One-half of one cent (\$0.005) increase in sales tax.~~

14 ~~(F) A general obligation bond to be funded by an ad valorem~~  
15 ~~tax on the assessed value of local properties.~~

16 ~~(G) A revenue bond.~~

17 *(A) Special taxes, as provided in Article 1 (commencing with*  
18 *Section 64610) of Chapter 2, as follows:*

19 *(i) A parcel tax, as provided in Section 64610.*

20 *(ii) A gross receipts tax, as provided in Section 64611.*

21 *(iii) A special business tax, as provided in Section 64612.*

22 *(iv) A transactions and use tax, as provided in Section 64613.*

23 *(B) A commercial linkage fee, as provided in Article 2*  
24 *(commencing with Section 64620) of Chapter 2.*

25 *(C) Bonds, as provided in Article 3 (commencing with Section*  
26 *64630) of Chapter 2.*

27 *(2) Any funding mechanism authorized pursuant to paragraph*  
28 *(1) that requires voter approval pursuant to the California*  
29 *Constitution or this part may be placed on the ballot in all or a*  
30 *subset of the nine counties in the San Francisco Bay area. A*  
31 *measure placed on the ballot in a subset of those nine counties*  
32 *shall apply only in those counties in which the measure was*  
33 *submitted to the voters.*

34 ~~(2)~~

35 *(3) It is the intent of the Legislature that the funding measures*  
36 *authorized by this subdivision distribute the responsibility of*  
37 *addressing the affordable housing needs of the region across*  
38 *commercial developers, businesses above a certain size, taxpayers,*  
39 *and property owners within the region.*

1 (b) Incur and issue indebtedness and assess fees on any debt  
2 issuance and loan products for reinvestment of fees and loan  
3 repayments in affordable housing production and preservation.

4 (c) Allocate funds to the various cities, counties, and other public  
5 agencies and affordable housing projects within its ~~jurisdiction~~  
6 *jurisdiction, as provided in Chapter 3 (commencing with Section*  
7 *64650), to finance affordable housing development, preserve and*  
8 *enhance existing affordable housing, and fund tenant protection*  
9 *programs, pursuant to this title, in accordance with applicable*  
10 *constitutional requirements.*

11 *64601. The Metropolitan Transportation Commission may*  
12 *propose a measure pursuant to Part 2 (commencing with Section*  
13 *64600) that will generate revenues and that requires voter approval*  
14 *pursuant to the California Constitution at the November 3, 2020,*  
15 *statewide general election, provided that the following conditions*  
16 *are met:*

17 (a) *The purpose of the measure is to raise and allocate revenue*  
18 *for the entity through one of the mechanisms authorized by*  
19 *paragraph (1) of subdivision (a) of Section 64600.*

20 (b) *The Metropolitan Transportation Commission assumes all*  
21 *duties delegated to the entity in Section 64521.*

22 (c) *The measure provides that the entity will assume*  
23 *administration of the funding mechanism and all duties required*  
24 *under this part upon the approval of the measure.*

25

26 CHAPTER 2. REVENUE

27

28 Article 1. Special Taxes

29

30 *64610. (a) Subject to Section 4 of Article XIII A of the*  
31 *California Constitution, the entity may impose, by ordinance or*  
32 *resolution, a parcel tax within the San Francisco Bay area*  
33 *pursuant to the procedures established in Article 3.5 (commencing*  
34 *with Section 50075) of Chapter 1 of Part 1 of Division 1 of Title*  
35 *5, Section 64521, and any other applicable procedures provided*  
36 *by law.*

37 (b) *“Parcel tax” means a special tax imposed upon a parcel of*  
38 *real property at a rate that is determined without regard to that*  
39 *property’s value and that applies uniformly to all taxpayers or all*  
40 *real property within the jurisdiction of the local government.*

1 “Parcel tax” does not include a tax imposed on a particular class  
2 of property or taxpayers.

3 (c) The entity shall provide notice of any parcel tax imposed  
4 pursuant to this section in the manner specified in Section 54930.

5 64611. (a) (1) The entity may impose, by ordinance or  
6 resolution, a special tax, measured by gross receipts, for the  
7 privilege of engaging in any kind of lawful business transacted in  
8 the San Francisco Bay area pursuant to the procedures established  
9 in Article 3.5 (commencing with Section 50075) of Chapter 1 of  
10 Part 1 of Division 1 of Title 5, Section 64521, and any other  
11 applicable procedures provided by law.

12 (2) The ordinance or resolution imposing a special tax pursuant  
13 to this subdivision may provide for the following:

14 (A) Variable rates based on the business sector of each person  
15 subject to the tax.

16 (B) Exemptions for small businesses.

17 (C) Collection of the tax by suit or otherwise.

18 (b) If the entity levies a special tax pursuant to subdivision (a)  
19 upon a business operating both within and outside the entity’s  
20 taxing jurisdiction, the entity shall levy the tax so that the measure  
21 of tax fairly reflects that proportion of the taxed activity actually  
22 carried on within the taxing jurisdiction.

23 (c) A special tax levied pursuant to subdivision (a) shall not  
24 apply to any nonprofit organization that is exempted from taxes  
25 by Chapter 4 (commencing with Section 23701) of Part 11 of  
26 Division 2 of the Revenue and Taxation Code or Subchapter F  
27 (commencing with Section 501) of Chapter 1 of Subtitle A of the  
28 Internal Revenue Code of 1986, or the successor of either, or to  
29 any minister, clergyman, Christian Science practitioner, rabbi, or  
30 priest of any religious organization that has been granted an  
31 exemption from federal income tax by the United States  
32 Commissioner of Internal Revenue as an organization described  
33 in Section 501(c)(3) of the Internal Revenue Code or a successor  
34 to that section.

35 64612. (a) (1) The entity may impose, by ordinance or  
36 resolution, a special tax measured by the number of employees  
37 employed by the taxpayer for the privilege of engaging in any kind  
38 of lawful business activity transacted in the San Francisco Bay  
39 area pursuant to the procedures established in Article 3.5  
40 (commencing with Section 50075) of Chapter 1 of Part 1 of

1 *Division 1 of Title 5, Section 64521, and any other applicable*  
2 *procedures provided by law.*

3 *(2) The ordinance or resolution imposing a special tax pursuant*  
4 *to this subdivision may provide for collection of the tax by suit or*  
5 *otherwise.*

6 *(b) If the entity levies a special tax pursuant to subdivision (a)*  
7 *upon a business operating both within and outside the entity's*  
8 *taxing jurisdiction, the entity shall levy the tax so that the measure*  
9 *of tax fairly reflects that proportion of the taxed activity actually*  
10 *carried on within the taxing jurisdiction.*

11 *(c) A special tax levied pursuant to subdivision (a) shall not*  
12 *apply to any nonprofit organization that is exempted from taxes*  
13 *by Chapter 4 (commencing with Section 23701) of Part 11 of*  
14 *Division 2 of the Revenue and Taxation Code or Subchapter F*  
15 *(commencing with Section 501) of Chapter 1 of Subtitle A of the*  
16 *Internal Revenue Code of 1986, or the successor of either, or to*  
17 *any minister, clergyman, Christian Science practitioner, rabbi, or*  
18 *priest of any religious organization that has been granted an*  
19 *exemption from federal income tax by the United States*  
20 *Commissioner of Internal Revenue as an organization described*  
21 *in Section 501(c)(3) of the Internal Revenue Code or a successor*  
22 *to that section.*

23 *64613. The entity may impose, by ordinance or resolution, a*  
24 *transactions and use tax at a rate of no more than 0.5 percent that*  
25 *would, in combination with all taxes imposed in accordance with*  
26 *the Transactions and Use Tax Law (Part 1.6 (commencing with*  
27 *Section 7251) of Division 2 of the Revenue and Taxation Code),*  
28 *exceed the limit established in Section 7251.1 of the Revenue and*  
29 *Taxation Code, if all of the following requirements are met:*

30 *(a) The entity adopts an ordinance or resolution proposing the*  
31 *transactions and use tax by any applicable voting approval*  
32 *requirement.*

33 *(b) The ordinance or resolution proposing the transactions and*  
34 *use tax is submitted to the electorate and is approved by the voters*  
35 *voting on the ordinance pursuant to Article XIII C of the California*  
36 *Constitution and Section 64521 of this code.*

37 *(c) The transactions and use tax conforms to the Transactions*  
38 *and Use Tax Law (Part 1.6 (commencing with Section 7251) of*  
39 *Division 2 of the Revenue and Taxation Code), other than Section*  
40 *7251.1 of Division 2 of the Revenue and Taxation Code.*

1 64614. *An action to determine the validity of any special taxes*  
2 *levied pursuant to this article may be brought pursuant to Chapter*  
3 *9 (commencing with Section 860) of Title 10 of Part 2 of the Code*  
4 *of Civil Procedure.*

5  
6 *Article 2. Commercial Linkage Fee*  
7

8 64620. *As used in this article:*

9 (a) *“Commercial development project” means any project*  
10 *involving the issuance of a permit by an underlying land use*  
11 *jurisdiction for construction or reconstruction that is undertaken*  
12 *within the San Francisco Bay area for the development of land for*  
13 *commercial use, but does not include any project involving solely*  
14 *a permit to operate.*

15 (b) *“Commercial linkage fee” means a monetary exaction, other*  
16 *than a tax or special assessment, established for a broad class of*  
17 *projects by legislation of general applicability that is charged to*  
18 *an applicant in connection with the approval of a commercial*  
19 *development project by an underlying land use jurisdiction for the*  
20 *purpose of addressing the need for additional housing development*  
21 *necessitated by that commercial development project, as*  
22 *determined pursuant to the nexus study undertaken pursuant to*  
23 *subdivision (b) of Section 64621.*

24 (c) *“Underlying land use jurisdiction” means any of the*  
25 *following entities, as applicable, that has jurisdiction over the*  
26 *approval of a commercial development project:*

27 (1) *The following counties:*

- 28 (A) *The County of Alameda.*
- 29 (B) *The County of Contra Costa.*
- 30 (C) *The County of Marin.*
- 31 (D) *The County of Napa.*
- 32 (E) *The County of San Mateo.*
- 33 (F) *The County of Santa Clara.*
- 34 (G) *The County of Solano.*
- 35 (H) *The County of Sonoma.*

36 (2) *A city that is located within the territorial boundaries of any*  
37 *of the counties specified in paragraph (1).*

38 (3) *The City and County of San Francisco.*

39 64621. (a) (1) *The board may establish, increase, or impose*  
40 *a commercial linkage fee within the San Francisco Bay area by*

1 *enactment of an ordinance or resolution, in accordance with the*  
2 *requirements of this article, that is in addition to any fee, as defined*  
3 *in Section 66000, that is levied by an underlying land use*  
4 *jurisdiction.*

5 *(2) A commercial linkage fee may be established, increased, or*  
6 *imposed pursuant to this article by an ordinance or resolution of*  
7 *the board that provides for either of the following:*

8 *(A) A variable rate fee assessed on a commercial development*  
9 *project within the San Francisco Bay area that provides that the*  
10 *amount of fee required to be paid to the entity shall be reduced by*  
11 *the amount the applicant is required to pay, if any, for a*  
12 *commercial linkage fee imposed by the relevant underlying land*  
13 *use jurisdiction.*

14 *(B) A flat fee assessed on all commercial development projects*  
15 *within the San Francisco Bay area.*

16 *(b) Before establishing, increasing, or imposing a commercial*  
17 *linkage fee, the entity shall prepare a regional jobs and housing*  
18 *nexus study in order to support the necessity and amount of the*  
19 *fee.*

20 *(c) In any action to establish, increase, or impose a commercial*  
21 *linkage fee, the board shall do all of the following:*

22 *(1) Identify the purpose of the commercial linkage fee.*

23 *(2) Determine how there is a reasonable relationship between*  
24 *the fee's use and the type of commercial development project on*  
25 *which the fee is imposed, based on the regional nexus study*  
26 *prepared pursuant to subdivision (b).*

27 *(3) Determine how there is a reasonable relationship between*  
28 *the need for housing and the type of commercial development*  
29 *project on which the fee is imposed, based on the regional nexus*  
30 *study prepared pursuant to subdivision (b).*

31 *(4) Determine how there is a reasonable relationship between*  
32 *the amount of the fee and the cost of the housing necessitated by*  
33 *the commercial development project that is attributable to the*  
34 *development on which the fee is imposed, based on the regional*  
35 *nexus study prepared pursuant to subdivision (b).*

36 *64622. (a) A commercial linkage fee established, increased,*  
37 *or imposed pursuant to this article shall not exceed the reasonable*  
38 *cost of providing the housing necessitated by the commercial*  
39 *development project for which the commercial linkage fee is*

1 *imposed, as determined in the regional nexus study pursuant to*  
2 *subdivision (b) of Section 64621.*

3 *(b) It is the intent of the Legislature in adding this section to*  
4 *codify existing constitutional and decisional law with respect to*  
5 *the imposition of development fees and monetary exactions on*  
6 *developments by local agencies. This section is declaratory of*  
7 *existing law and shall not be construed or interpreted as creating*  
8 *new law or as modifying or changing existing law.*

9 *64623. (a) Before adopting an ordinance or resolution*  
10 *establishing or imposing a new commercial linkage fee or*  
11 *approving an increase in an existing commercial linkage fee or*  
12 *pursuant to this article, the board shall hold a public hearing, at*  
13 *which oral or written presentations can be made, as part of a*  
14 *regularly scheduled meeting. Notice of the time and place of the*  
15 *meeting, including a general explanation of the matter to be*  
16 *considered, shall be published in accordance with Section 6062a.*

17 *(b) Any costs incurred by the entity in conducting the hearing*  
18 *required pursuant to subdivision (a) may be recovered as part of*  
19 *the commercial linkage fee that is the subject of the hearing.*

20 *64624. (a) Except as otherwise provided in subdivision (c), if*  
21 *the board adopts an ordinance, resolution, or other legislative*  
22 *enactment establishing or imposing a new commercial linkage fee*  
23 *or approving an increase in an existing commercial linkage fee,*  
24 *each underlying land use jurisdiction shall, as a condition of*  
25 *approving a commercial development project for which it receives*  
26 *an application for a conditional use permit or other discretionary*  
27 *or ministerial approval, require an applicant to pay the amount*  
28 *of commercial linkage fee established, imposed, or increased by*  
29 *the entity pursuant to this article. The underlying land use*  
30 *jurisdiction shall provide notice to the applicant that does all of*  
31 *the following:*

32 *(1) Notifies the applicant that the entity has established,*  
33 *increased, or imposed a commercial linkage fee pursuant to this*  
34 *article.*

35 *(2) States the amount of commercial linkage fee established,*  
36 *increased, or imposed by the entity.*

37 *(3) States that the applicant may protest the commercial linkage*  
38 *fee, as provided in Section 64625, and notifies the applicant that*  
39 *the 90-day period for that protest and the 180-day period for filing*  
40 *an action specified in subdivision (c) of Section 64625 has begun.*

1 (b) Each underlying land use jurisdiction shall collect and, after  
2 deduction of any actual and necessary administrative costs  
3 incurred by the underlying land use jurisdiction, remit the amount  
4 of commercial linkage fee established, increased, or imposed  
5 pursuant to this article to the entity. An underlying land use  
6 jurisdiction shall remit the amounts required by this subdivision  
7 on or before the last day of the month next succeeding each  
8 calendar quarterly period.

9 (c) If any amount of commercial linkage fee established,  
10 increased, or imposed pursuant to this article is found to be invalid  
11 pursuant to Section 64625, each underlying land use jurisdiction  
12 shall immediately cease collection of the commercial linkage fee.

13 64625. (a) Any party may protest the imposition of a  
14 commercial linkage fee imposed on a commercial development  
15 project by the entity pursuant to this article as follows:

16 (1) The party shall pay the total amount of commercial linkage  
17 fee required by the ordinance or resolution enacted pursuant to  
18 Section 64621, or providing satisfactory evidence of arrangements  
19 to pay the commercial linkage fee when due, in accordance with  
20 Section 64624.

21 (2) Serving a written notice on the board and the legislative  
22 body of the relevant underlying land use jurisdiction that contains  
23 all of the following information:

24 (A) A statement that the required payment is tendered or will  
25 be tendered when due under protest.

26 (B) A statement informing the board and legislative body of the  
27 underlying land use jurisdiction of the factual elements of the  
28 dispute and the legal theory forming the basis for the protest.

29 (b) Compliance by any party with subdivision (a) shall not be  
30 the basis for an underlying land use jurisdiction to withhold  
31 approval of any map, plan, permit, zone change, license, or other  
32 form of permission, or concurrence, whether discretionary,  
33 ministerial, or otherwise, incident to, or necessary for, the  
34 commercial development project. This section does not limit the  
35 ability of an underlying land use jurisdiction to ensure compliance  
36 with all applicable provisions of law in determining whether or  
37 not to approve or disapprove a commercial development project.

38 (c) (1) A protest filed pursuant to subdivision (a) shall be filed  
39 at the time of approval or conditional approval of the commercial  
40 development project or within 90 days after the date of the



1 *imposition of the commercial linkage fee to be imposed on a*  
2 *commercial development project.*

3 (2) *Any party who files a protest pursuant to subdivision (a)*  
4 *may file an action to attack, review, set aside, void, or annul the*  
5 *imposition of the commercial linkage fee imposed on a commercial*  
6 *development project within 180 days after the delivery of the notice*  
7 *required by subdivision (a) of Section 64624. Thereafter,*  
8 *notwithstanding any other law, all persons shall be barred from*  
9 *any action or proceeding or any defense of invalidity or*  
10 *unreasonableness of the imposition. Any proceeding brought*  
11 *pursuant to this subdivision shall take precedence over all matters*  
12 *of the calendar of the court except criminal, probate, eminent*  
13 *domain, forcible entry, and unlawful detainer proceedings.*

14 (d) (1) *If the court grants a judgment to a plaintiff invalidating,*  
15 *as enacted, all or a portion of an ordinance or resolution*  
16 *establishing, increasing, or imposing a commercial linkage fee,*  
17 *the court shall direct the entity to refund the unlawful portion of*  
18 *the payment, plus interest at an annual rate equal to the average*  
19 *rate accrued by the Pooled Money Investment Account during the*  
20 *time elapsed since the payment occurred, or to return the unlawful*  
21 *portion of the exaction imposed.*

22 (2) *If an action is filed within 120 days of the date at which an*  
23 *ordinance or resolution to establish or modify a commercial*  
24 *linkage fee to be imposed on a commercial development project*  
25 *takes effect, the portion of the payment or exaction invalidated*  
26 *shall also be returned to any other person who, under protest*  
27 *pursuant to this section and under that invalid portion of that same*  
28 *ordinance or resolution as enacted, tendered the payment or*  
29 *provided for or satisfied the exaction during the period from 90*  
30 *days prior to the date of the filing of the action which invalidates*  
31 *the payment or exaction to the date of the entry of the judgment*  
32 *referenced in paragraph (1).*

33 (e) *The imposition of a commercial linkage fee occurs, for the*  
34 *purposes of this section, when it is imposed or levied on a specific*  
35 *commercial development project.*

36 64626. (a) *In any judicial action or proceeding to validate,*  
37 *attack, review, set aside, void, or annul any ordinance or resolution*  
38 *providing for the establishment, increase, or imposition of a*  
39 *commercial linkage fee pursuant to this article in which there is*  
40 *an issue whether the fee is a special tax within the meaning of*

1 Section 50076, the entity shall have the burden of producing  
2 evidence to establish that the commercial linkage fee does not  
3 exceed the reasonable cost of providing the housing necessitated  
4 by the commercial development project for which the commercial  
5 linkage fee is imposed, as determined in the regional nexus study  
6 pursuant to subdivision (b) of Section 64621.

7 (b) A party may only initiate any action or proceeding pursuant  
8 to subdivision (a) if both of the following requirements are met:

9 (1) The commercial linkage fee was directly imposed on the  
10 party as a condition of project approval, as provided in Section  
11 64624.

12 (2) At least 30 days before initiating the action or proceeding,  
13 the party requests that the entity provide a copy of the documents,  
14 including, but not limited to, the regional nexus study prepared  
15 pursuant to subdivision (b) of Section 64621, that establish that  
16 the commercial linkage fee does not exceed the reasonable cost  
17 of providing the housing necessitated by the commercial  
18 development project for which the commercial linkage fee is  
19 imposed. In accordance with subdivision (b) of Section 6253, the  
20 entity may charge a fee for copying the documents requested  
21 pursuant to this paragraph.

22 (c) For purposes of this section, costs shall be determined in  
23 accordance with fundamental fairness and consistency of method  
24 as to the allocation of costs, expenses, revenues, and other items  
25 included in the calculation.

26 64627. (a) Any person may request an audit in order to  
27 determine whether any fee or charge levied by the entity exceeds  
28 the amount necessary to cover the reasonable cost of providing  
29 the housing necessitated by the commercial development project  
30 for which the commercial linkage fee is imposed, as determined  
31 in the regional nexus study pursuant to subdivision (b) of Section  
32 64621. If a person makes that request, the board may retain an  
33 independent auditor to conduct an audit to determine whether the  
34 commercial linkage fee is reasonable, but is not required to  
35 conduct the audit if an audit has been performed for the same fee  
36 within the previous 12 months.

37 (b) If an audit pursuant to this section determines that the  
38 amount of any commercial linkage fee or charge does not meet  
39 the requirements of this article, the board shall adjust the fee  
40 accordingly.

1 (c) *The entity shall retain an independent auditor to conduct*  
 2 *an audit only if the person who requests the audit deposits with*  
 3 *the entity the amount of the entity’s reasonable estimate of the cost*  
 4 *of the independent audit. At the conclusion of the audit, the entity*  
 5 *shall reimburse unused sums, if any, or the requesting person shall*  
 6 *pay the entity the excess of the actual cost of the audit over the*  
 7 *sum which was deposited.*

8 (d) *Any audit conducted by an independent auditor pursuant to*  
 9 *this section shall conform to generally accepted auditing standards.*

10 (e) *This section shall not be construed as granting any additional*  
 11 *authority to any local agency to levy any fee or charge which is*  
 12 *not otherwise authorized by another provision of law, nor shall*  
 13 *its provisions be construed as granting authority to any local*  
 14 *agency to levy a new fee or charge when other provisions of law*  
 15 *specifically prohibit the levy of a fee or charge.*

16 64628. *Any action by the entity or interested person under this*  
 17 *article shall be brought pursuant to Chapter 9 (commencing with*  
 18 *Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.*

19  
 20  
 21

Article 3. Bonds

22 64630. *The board may, by majority vote, initiate proceedings*  
 23 *to issue bonds, other than revenue bonds subject to Section 64638,*  
 24 *pursuant to this chapter by adopting a resolution stating its intent*  
 25 *to issue the bonds.*

26 64631. *The resolution adopted pursuant to Section 64630 shall*  
 27 *contain all of the following information:*

28 (a) *A description of the facilities or developments to be financed*  
 29 *with the proceeds of the proposed bond issue.*

30 (b) *The estimated cost of the facilities or developments, the*  
 31 *estimated cost of preparing and issuing the bonds, and the*  
 32 *principal amount of the proposed bond issuance.*

33 (c) *The maximum interest rate and discount on the proposed*  
 34 *bond issuance.*

35 (d) *The date of the election on the proposed bond issuance and*  
 36 *the manner of holding the election.*

37 (e) *A determination of the amount of tax revenue available or*  
 38 *estimated to be available, for the payment of the principal of, and*  
 39 *interest on, the bonds.*

1 (f) A finding that the amount necessary to pay the principal of,  
2 and interest on, the proposed bond issuance will be less than, or  
3 equal to, the amount determined pursuant to subdivision (e).

4 64632. (a) Except as otherwise provided in subdivision (b),  
5 the clerk of the board shall publish the resolution adopted pursuant  
6 to Section 64630 once a day for at least seven successive days in  
7 a newspaper published in each county in the San Francisco Bay  
8 area at least six days a week, or at least once a week for two  
9 successive weeks in a newspaper published in a county less than  
10 six days a week.

11 (b) If there are no newspapers meeting the criteria specified in  
12 subdivision (a), the resolution shall be posted in three public places  
13 within each county in the San Francisco Bay area for two  
14 succeeding weeks.

15 64633. (a) The board shall submit the proposal to issue bonds,  
16 other than revenue bonds subject to Section 64638, to the voters  
17 who reside within the San Francisco Bay area in accordance with  
18 Section 64521 and this section.

19 (b) Ballots for the special election authorized by subdivision  
20 (a) may be distributed to qualified electors by mail with return  
21 postage prepaid or by personal service by the election official.  
22 The official conducting the election may certify the proper mailing  
23 of ballots by an affidavit, which shall be exclusive proof of mailing  
24 in the absence of fraud. The voted ballots shall be returned to the  
25 election officer conducting the election not later than the hour  
26 specified in the resolution calling the election. However, if all the  
27 qualified voters have voted, the election shall be closed.

28 64634. (a) Except for revenue bonds issued pursuant to Section  
29 64638, bonds may be issued if two-thirds of the voters voting on  
30 the proposition vote in favor of issuing the bonds.

31 (b) If the voters approve the issuance of the bonds as provided  
32 by subdivision (a), the board shall proceed with the issuance of  
33 the bonds by adopting a resolution that shall provide for all of the  
34 following:

35 (1) The issuance of the bonds in one or more series.

36 (2) The principal amount of the bonds that shall be consistent  
37 with the amount specified in subdivision (b) of Section 64631.

38 (3) The date the bonds will bear.

39 (4) The date of maturity of the bonds.

40 (5) The denomination of the bonds.

1 (6) *The form of the bonds.*

2 (7) *The manner of execution of the bonds.*

3 (8) *The medium of payment in which the bonds are payable.*

4 (9) *The place or manner of payment and any requirements for*  
5 *registration of the bonds.*

6 (10) *The terms of call or redemption, with or without premium.*

7 (c) *If any proposition submitted to the voters pursuant to this*  
8 *part is defeated by the voters, the board shall not submit, or cause*  
9 *to be submitted, a similar proposition to the voters for at least one*  
10 *year after the first election.*

11 (d) (1) *Every two years after the issuance of bonds pursuant*  
12 *to this section, the entity shall contract for an independent financial*  
13 *and performance audit. The audit shall be conducted according*  
14 *to guidelines established by the Controller. A copy of the completed*  
15 *audit shall be provided to the Controller, the Director of Finance,*  
16 *and to the Joint Legislative Budget Committee.*

17 (2) *Upon the request of the Governor or of the Legislature, the*  
18 *Bureau of State Audits may conduct financial and performance*  
19 *audits of districts. The results of the audits shall be provided to*  
20 *the board, the Controller, the Director of Finance, and the Joint*  
21 *Legislative Budget Committee.*

22 64635. *The board may, by majority vote, provide for refunding*  
23 *of bonds issued pursuant to Section 64634. However, refunding*  
24 *bonds shall not be issued if the total net interest cost to maturity*  
25 *on the refunding bonds plus the principal amount of the refunding*  
26 *bonds exceeds the total net interest cost to maturity on the bonds*  
27 *to be refunded. The board shall not extend the time to maturity of*  
28 *the bonds.*

29 64636. (a) *The board or any person executing the bonds issued*  
30 *pursuant to Section 64634 shall not be personally liable on the*  
31 *bonds by reason of their issuance. The bonds and other obligations*  
32 *of the entity issued pursuant to Section 64634 are not a debt of*  
33 *any city or county, or of the state or of any of its political*  
34 *subdivisions, other than the entity, and neither a city or county*  
35 *nor the state or any of its political subdivisions, other than the*  
36 *entity, shall be liable on the bonds, and the bonds or obligations*  
37 *shall be payable exclusively from funds or properties of the entity.*  
38 *Bonds issued pursuant to Section 64634 shall contain a statement*  
39 *to this effect on their face.*

1 (b) If any member of the boards whose signature appears on  
2 bonds issued pursuant to Section 64634 ceases to be a member of  
3 the board before delivery of the bonds, that member's signature  
4 shall be as effective as if the member had remained in office.

5 64637. (a) The bonds issued pursuant to Section 64634 may  
6 be sold at discount not to exceed 5 percent of par at public sale.  
7 At least five days before the sale, notice shall be published,  
8 pursuant to Section 6061, in a newspaper of general circulation  
9 and in a financial newspaper published in the City and County of  
10 San Francisco and in the City of Los Angeles. The bonds may be  
11 sold at not less than par to the federal government at private sale  
12 without any public advertisement.

13 (b) Bonds issued pursuant to Section 64634 are fully negotiable.

14 64638. (a) Notwithstanding any other provision of this article,  
15 the entity may issue bonds, payable from the revenues of any  
16 facility or enterprise acquired or constructed by the entity, in the  
17 manner provided in the Revenue Bond Law of 1941 (Chapter 6  
18 (commencing with Section 54300) of Part 1 of Division 2 of Title  
19 5), as modified by subdivision (b). For purposes of this section,  
20 the entity shall be deemed to be a local agency within the meaning  
21 of Section 54307.

22 (b) For purposes of this section, the provisions of the Revenue  
23 Bond Law of 1941 (Chapter 6 (commencing with Section 54300)  
24 of Part 1 of Division 2 of Title 5) are modified as follows:

25 (1) Notwithstanding Section 54309, the term "enterprise" means  
26 a revenue-producing improvement, building, system, plant, works,  
27 facilities, or undertaking used for or useful for the development  
28 of housing in the San Francisco Bay area by the entity.

29 (2) Notwithstanding Section 54340, the entity shall not acquire  
30 any enterprise by eminent domain.

31 (c) Revenue bonds issued pursuant to this section shall not be  
32 subject to the procedures specified in this article, but shall instead  
33 be issued in accordance with the procedures specified in the  
34 Revenue Bond Law of 1941 (Chapter 6 (commencing with Section  
35 54300) of Part 1 of Division 2 of Title 5), as modified by  
36 subdivision (b). Except as expressly provided in subdivision (b),  
37 if any provision of this title conflicts with the Revenue Bond Law  
38 of 1941 (Chapter 6 (commencing with Section 54300) of Part 1 of  
39 Division 2 of Title 5) as to the issuance of revenue bonds by the  
40 entity, the Revenue Bond Law of 1941 (Chapter 6 (commencing

1 with Section 54300) of Part 1 of Division 2 of Title 5) shall be  
2 controlling.

3 64639. (a) An action to determine the validity of bonds issued  
4 pursuant to Section 64634 may be brought pursuant to Chapter 9  
5 (commencing with Section 860) of Title 10 of Part 2 of the Code  
6 of Civil Procedure.

7 (b) In accordance with Section 64638, an action to determine  
8 the validity of revenue bonds issued pursuant to Section 64638  
9 may be brought in the manner specified in Section 54580.

10  
11 CHAPTER 2.3. EXPENDITURES

12  
13 ~~64610.~~

14 64650. (a) Revenue generated pursuant to ~~Section 64600~~ this  
15 part shall be used for the construction of new affordable housing,  
16 affordable housing preservation, tenant protection programs, and  
17 general funds made available to local jurisdictions as an incentive  
18 to achieve affordable housing benchmarks to be established by the  
19 entity. ~~Subject~~ entity as follows:

20 (1) Subject to funding eligibility and ~~subject to~~ adjustment  
21 pursuant to ~~subdivision (b), paragraph (2),~~ the entity shall  
22 distribute the ~~total funds~~ revenues derived from any special tax  
23 imposed pursuant to Article 1 (commencing with Section 64610)  
24 of Chapter 2 and the proceeds of bonds issued pursuant to Article  
25 2 (commencing with Section 64620) of Chapter 2 for the region  
26 over a five-year period commencing after revenue is approved by  
27 voters as follows:

28 (1)

29 (A) A minimum of 60 percent for production of housing units  
30 affordable to lower income households.

31 (2)

32 (B) A minimum of 5 percent and a maximum of 10 percent for  
33 tenant protection programs. The entity shall ~~give priority to~~  
34 ~~prioritize flexible funding sources for~~ tenant protection ~~programs~~  
35 ~~that have flexible funding sources.~~ programs. Funding for tenant  
36 protection programs may be used for any of the following:

37 (A) ~~Providing access to counsel for tenants facing eviction.~~

38 (i) Legal aid, including representation in eviction proceedings,  
39 mediation between landlords and tenants, preeviction legal  
40 services, and legal education and awareness for communities.

AB 1487

— 26 —

1 ~~(B)~~

2 (ii) Providing emergency rental assistance for lower income  
 3 households. *Rental assistance provided pursuant to this clause*  
 4 *shall not exceed 48 months for each assisted household, and rent*  
 5 *payments shall not exceed two times the current fair market rent*  
 6 *for the local area, as determined by the United States Department*  
 7 *of Housing and Urban Development pursuant to Part 888 of Title*  
 8 *24 of the Code of Federal Regulations.*

9 ~~(C)~~

10 (iii) Providing relocation assistance for lower income  
 11 households.

12 ~~(D)~~

13 (iv) Collection and tracking of information related to  
 14 displacement risk and evictions in the region.

15 ~~(3)~~

16 (C) A minimum of 15 percent and a maximum of 20 percent  
 17 for preservation of housing affordable to low- or moderate-income  
 18 households.

19 ~~(4)~~

20 (D) A minimum of 5 percent and a maximum of 10 percent for  
 21 general funds awarded to a local government that achieves  
 22 affordable housing benchmarks established by the entity. *Subject*  
 23 *to any limitations on the funding source, eligible expenditures*  
 24 *pursuant to this subparagraph include, but are not limited to,*  
 25 *infrastructure needs associated with increased housing production,*  
 26 *including, but not limited to, transportation, schools, and parks.*

27 ~~(b)~~

28 (2) ~~The entity may lower the minimum distribution in paragraph~~  
 29 ~~(1), (2), (3), or (4) of subdivision (a) shall change the distribution~~  
 30 ~~requirements in subparagraph (A), (B), (C), or (D) of paragraph~~  
 31 ~~(1) if it adopts a finding pursuant to this subdivision paragraph~~  
 32 ~~that the minimum funding amount exceeds the region's needs.~~  
 33 *region's needs differ from those requirements. The finding shall*  
 34 *be placed on a meeting agenda for discussion at least 30 days*  
 35 *before the entity adopts the finding.*

36 (3) *The entity shall distribute the revenues derived from a*  
 37 *commercial linkage fee established, increased, or imposed pursuant*  
 38 *to Article 2 (commencing with Section 64620) of Chapter 2 to each*  
 39 *city or county in proportion to the amount of fee collected and*  
 40 *remitted by each city and each county pursuant to Section 64624.*



1 *A city or county that receives revenues pursuant to this paragraph*  
 2 *shall use that revenue solely for the production of housing units*  
 3 *necessitated by a commercial development project on which the*  
 4 *fee was imposed, as determined by the entity pursuant to Section*  
 5 *64621.*

6 ~~(e) The~~

7 *(b) Except as otherwise provided in paragraph (3) of subdivision*  
 8 *(a), the entity may allocate funds directly to a city, a county, a*  
 9 *public entity, or a private project sponsor.*

10 ~~(d)~~

11 *(c) (1) Subject to paragraph ~~(2); (3)~~ of subdivision (a), the entity*  
 12 *shall distribute funds so that an amount equal to or greater than 75*  
 13 *received through the funding measures described in subdivision*  
 14 *(a) of Section 64600 as follows:*

15 *(A) Seventy-five percent of the revenue received from a county*  
 16 *over a five-year period through funding measures authorized by*  
 17 *subdivision (a) of Section 64600 is expended in the county. shall*  
 18 *be expended in the county of origin.*

19 *(B) Twenty-five percent of the revenue received shall be*  
 20 *collected by the entity for expenditures consistent with the purposes*  
 21 *set forth in subdivision (a). These funds can also be leveraged and*  
 22 *grown for reinvestment in affordable housing. The entity shall*  
 23 *adopt an expenditure plan for the use of such funds by July 1 of*  
 24 *each year, beginning in 2021.*

25 *(2) Each county shall submit an expenditure plan to the entity*  
 26 *as follows:*

27 *(A) The expenditure plan shall be submitted by July 1 of each*  
 28 *year, beginning in 2021.*

29 *(B) To be deemed complete, the expenditure plan shall specify*  
 30 *the proposed allocation of funds for the next 12 months, as follows:*

31 *(i) The proposed share of revenues to be allocated to the*  
 32 *construction of new affordable housing, affordable housing*  
 33 *preservation, and tenant protection programs. The plan shall*  
 34 *include a minimum allocation of 40 percent towards construction*  
 35 *of new affordable housing, 5 percent towards affordable housing*  
 36 *preservation, and 5 percent towards tenant protection programs,*  
 37 *unless the county adopts a finding and the entity concurs that those*  
 38 *minimum targets are inconsistent with subdivision (a) or are*  
 39 *otherwise not feasible.*

1 (ii) *The plan shall include a description of any specific project*  
 2 *or program proposed to receive funding, including the location,*  
 3 *amount of funding, and anticipated outcomes.*

4 (3) *If the entity determines, by a vote of its board, that a county*  
 5 *has not submitted a complete expenditure plan pursuant to the*  
 6 *requirements of subparagraph (B) of paragraph (2), the entity*  
 7 *may, by a vote of its board, withhold allocation of revenues to a*  
 8 *county until the county submits a complete expenditure plan.*

9 (4) *The entity shall post each completed expenditure plan on*  
 10 *its internet website.*

11 ~~(2) (A)–~~

12 (5) A county may request to administer all or a portion of the  
 13 funds required to be expended in the county pursuant to paragraph  
 14 (1). ~~The entity shall approve, deny, or conditionally approve the~~  
 15 ~~request based on factors, including, but not limited to, whether the~~  
 16 ~~county has a demonstrated track record of successfully~~  
 17 ~~administering funds for the purposes listed in subdivision (a) and~~  
 18 ~~has sufficient staffing capacity to conduct the work effectively.~~

19 ~~(B) The entity shall distribute funds to a county based on an~~  
 20 ~~expenditure plan submitted by the county and approved by the~~  
 21 ~~entity. A county's proposed expenditure plan may contain funding~~  
 22 ~~amounts different than those listed in subdivision (a). In approving~~  
 23 ~~a county's expenditure plan and allocating funds, the entity may~~  
 24 ~~adjust the funding amounts to ensure compliance with subdivision~~  
 25 ~~(a).~~

26 ~~(C)~~

27 (6) If funds provided to a county for administration pursuant to  
 28 this subparagraph (A) are not committed within three years of  
 29 collection, the county shall return the funds to the entity.

30 ~~(e)~~

31 (d) The entity may expend up to 3 percent of funds for program  
 32 administration.

33 ~~64611.~~

34 64651. The entity shall monitor expenditures in coordination  
 35 with local jurisdictions.

36 ~~64612.~~

37 64652. To ensure oversight and accountability, the entity shall  
 38 provide an annual report on expenditures which shall include a  
 39 tracking of projects funded and the extent to which the minimum  
 40 targets in subdivision (a) of Section ~~64610~~ 64650 were achieved.

1 SEC. 2. The Legislature finds and declares that a special statute  
2 is necessary and that a general statute cannot be made applicable  
3 within the meaning of Section 16 of Article IV of the California  
4 Constitution because of the uniquely severe shortage of available  
5 funding and resources for the development and preservation of  
6 affordable housing and the particularly acute nature of the housing  
7 crisis within the nine counties of the San Francisco Bay area region.  
8 SEC. 3. If the Commission on State Mandates determines that  
9 this act contains costs mandated by the state, reimbursement to  
10 local agencies and school districts for those costs shall be made  
11 pursuant to Part 7 (commencing with Section 17500) of Division  
12 4 of Title 2 of the Government Code.

O

**Metropolitan Transportation Commission and the Association of Bay Area Governments  
Joint MTC Legislation Committee and  
ABAG Legislation Committee**

May 10, 2019

Agenda Item 7c3

**AB 1487 (Chiu): Housing Alliance for the Bay Area**

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**Subject:** AB 1487 (Chiu) would establish the Housing Alliance for the Bay Area (HABA) to increase funding for affordable housing in the nine-county region. The bill authorizes HABA to place on the ballot a series of revenue raising measures, subject to certain return to source provisions, to provide funding and technical assistance to local jurisdictions and affordable housing developers to help produce and preserve affordable housing and pay for tenant protection services. The bill provides that HABA would have the authority to buy and lease land for affordable housing purposes, but not the ability to purchase land by eminent domain or regulate or enforce local land use decisions.

**Background:** Plan Bay Area 2040's Action Plan (adopted jointly by MTC and ABAG in July 2017) called for the creation of regional self-help funding for affordable housing. This position was later incorporated into the Committee to House the Bay Area (CASA) Compact as Element #10. This bill is co-sponsored by the Nonprofit Housing Association of Northern California (NPH) and Enterprise Community Partners, Inc. and calls for the creation of a regional housing entity to raise funds and support local jurisdictions to help achieve the region's bold housing goals.

**Discussion:** **Funding**  
The primary stated purpose of AB 1487 is to raise regional funding for affordable housing to help close an estimated annual funding shortfall of \$2.5 billion to address the region's affordable housing production, preservation and tenant protection needs. Unlike transportation, which has long had access to substantial regional funding through bridge tolls and federal and state funds distributed at the regional level, affordable housing is strictly reliant upon private, local, state and federal funding. A regional funding source would be immensely valuable to help close the funding gap on affordable housing projects that are otherwise struggling to cobble together enough funds across multiple sources, especially for those jurisdictions that have less resources available at the local level.

**Key Concerns**

From a policy perspective, staff agrees that establishing a regional funding source for affordable housing production and protection-related needs is likely a necessity if we are to make serious progress on the housing crisis. Opportunities to build or preserve affordable housing projects are unpredictable, making a more robust regional funding source a useful option, instead of every jurisdiction needing to close the funding gap by levying taxes locally that might not be put to use for many months or even years.

However, in our various meetings with local elected officials over the last few months we heard concerns about the use of a sales tax or parcel tax for a regional housing program due to concerns this might supplant *future* revenue raising opportunities at the local level. Concerns were also frequently raised regarding the establishment of another regional agency, which may duplicate authorities of existing regional agencies, and/or local governments. While staff does not have a

recommendation on these points per se, we are raising them for discussion given their importance. In addition to those observations, we outline some significant practical and operational concerns we have with the bill.

**Start-Up Funding**

The bill requires that MTC staff the HABA but does not provide any start-up or sustaining funding associated with imposition of this new role. While the bill authorizes up to 3 percent of voter-approved funds to be reserved for administrative costs, this doesn't address how the agency is to absorb what would be substantial near-term responsibilities before revenues are collected, or address what should occur if any or all contemplated voter-approved measures fail. In addition, the bill requires that either ABAG or MTC reimburse the counties for the cost of placing the measure on the ballot. The RM 3 election cost MTC \$3.2 million in direct charges from county election offices. Neither agency has funding available (or even eligible) to cover this cost if an election fails.

As such, we recommend amendments to ensure that no new responsibilities are assigned to MTC or ABAG without a) providing a guaranteed source of support funding that is not dependent upon voter approval; and b) including a provision for the re-evaluation and potential dissolution of HABA in the event that the compendium of funds approved by the voters are determined to fall substantially short of the amounts needed to meaningfully address the housing crisis across the region.


**Governing Board**

The current version of the bill has removed all references to ABAG and MTC as the foundational membership for the HABA governing board, to provide for further discussion of this critical question at the regional level. Nonetheless, we remain concerned that the bill could require MTC staff to serve a new and separate board, potentially placing staff in a conflicted situation. While we have no specific recommendation on the governance question, we believe it is critical that we communicate to the author and bill supporters that neither ABAG nor MTC can support an outcome where MTC staff are assigned to directly report to a newly structured board.

**Recommendation:** Seek Amendments

**Bill Positions:** See attached

**Attachments:** Attachment A: Bill Positions

  
Therese W. McMillan

**Official Positions on AB 1487 (Chiu)**

**Support**

Bay Area Council  
Bay Area Housing Advocacy Coalition  
Burbank Housing Development Corporation  
California Community Builders  
California YIMBY  
Chan Zuckerberg Initiative  
Enterprise Community Partners, Inc.  
Greenbelt Alliance  
Habitat For Humanity East Bay/Silicon Valley  
Non-Profit Housing Association Of Northern California (Nph)  
Pico California  
Silicon Valley At Home (Sv@Home)  
Techequity Collaborative  
TMG Partners  
Urban Displacement Project, Uc-Berkeley

**Support If Amended**

Community Legal Services In East Palo Alto  
Genesis  
Monument Impact  
City of Oakland  
Public Advocates Inc.  
San Francisco Foundation  
City of Vallejo

**Oppose**

California Taxpayers Association  
Howard Jarvis Taxpayers Association

**Oppose Unless Amended**

Alameda County Transportation Commission



Office of the Mayor

CONSENT CALENDAR  
June 11, 2019

To: Members of the City Council  
From: Mayor Jesse Arreguin, Councilmember Kate Harrison, Councilmember Sophie Hahn, and Councilmember Lori Droste  
Subject: Measure O Affordable Housing Bonds and a Request for Proposals from the City's Housing Trust Fund

RECOMMENDATION

Adopt a Resolution:

1. Directing the City Manager to prepare any documents required to use Measure O bond funds and Housing Trust Funds to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects; and
2. Directing the City Manager to release a Request for Proposals (RFP) under the City's Housing Trust Fund (HTF) guidelines for affordable housing development with a priority given to projects meeting certain readiness criteria, to be funded by the balance of the first issuance of Measure O funds (estimated at \$30M) and the Housing Trust Fund that remain after fully funding the projects identified above; and
3. Directing the Measure O Bond Oversight Committee:
  - a. To act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP for both Measure O and existing HTF funds,
  - b. To be responsible for providing both general priority recommendations and project-specific funding recommendations for Measure O bonds to the City Council; and
  - c. To add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member; and
4. Approving certain waivers of the HTF Guidelines to ensure timely funding awards in this funding round and allow for consideration of a Berkeley Unified School District-sponsored educator housing development serving households at up to 120% of Area Median Income.

POLICY COMMITTEE RECOMMENDATION

On May 16, 2019, the Land Use, Housing & Economic Development Committee adopted the following action: M/S/C (Arreguin/Hahn) to send the item to the full Council with a Positive Recommendation. Vote: All Ayes.

BACKGROUND

On November 6, 2018, Berkeley voters approved Measure O, authorizing the City to issue up to \$135M in general obligation bonds to support the development, rehabilitation, and preservation of affordable housing for extremely low-, very low-, low-, median-, and middle-income households, including teachers, seniors, veterans, the homeless, students, people with disabilities, and other vulnerable populations. The City's bond counsel indicated that up to \$30M in Measure O funds can be reserved through the first issuance in late 2019 or early 2020. In addition to a predevelopment loan, Council reserved \$23.5M for Berkeley Way. Of that Berkeley Way reservation, \$14M will be for the project's capitalized operating reserve which is not a Measure O-eligible expense and will require a local funding source, such as mitigation fees in the HTF or General Funds received pursuant to Measure U1. The BHA's recent approval of project-based Section 8 vouchers is expected to greatly reduce this need. Council also reserved \$6M in funding for 1601 Oxford on October 16, 2018. All funds requested for 1601 Oxford are Measure O eligible. To date, Council has not identified sources of funding for the reservations.

On May 9, 2019, the Berkeley Housing Authority board voted to allocate a total of 75 project-based Section 8 vouchers to the project, including 53 for the permanent supportive housing component. If the project can satisfy all of the voucher program's requirements during this calendar year, these vouchers will significantly reduce the need for the \$14M capitalized operating reserve. The project may still need to include a smaller, funder-required operating reserve; BRIDGE is currently revising the budget in preparation for work with City staff on examining this issue. Since the project is still waiting on state funding awards and the operating subsidies still require closer examination, the attached resolution does not yet specify the sources for meeting the project's funding reservation. Staff will work with BRIDGE with a goal of reducing the total amount of City funds needed and minimizing the amount of non-Measure O funds (i.e. General Funds received pursuant to Measure U1, mitigation fee revenue, and other funding sources for the Housing Trust Fund.)

On June 13, 2017, with Resolution 68,025-NS, Council made the full funding of the Berkeley Way project the first priority for funds allocated to the HTF program. Until the reserve needs of that project have been finalized, HTF program funds are not available for other projects. Therefore, although projects can apply for HTF predevelopment funding at any time, there are no funds currently available. Staff have determined that Measure O funds cannot be used for predevelopment, but the City could provide a predevelopment loan from another source for example, General Funds received pursuant to Measure U1, and then a Measure O funded loan could repay the predevelopment loan at the time of construction start and stay in the project as permanent financing. Satellite Affordable Housing Associate's predevelopment loan for 2527 San Pablo Avenue has been recommended for funding by the Housing Advisory Commission, but is still outstanding since no funds are currently available for predevelopment loans. The Council could consider making a pool of General Funds available for predevelopment loans.

The HTF program has a current balance of approximately \$4.5M. HTF funds include funds generated through local impact and mitigation fees and approximately \$1M in federal HOME funds. The HOME funds carry commitment and expenditure requirements, and staff would need to review existing projects and proposed projects for suitability with the HOME program requirements. The HTF Guidelines were adopted to



formalize the processes and standards for awarding City HTF funds. The guidelines include certain thresholds for borrower eligibility, and standards for developer capacity. The HTF Guidelines require projects to restrict at least 60% of the units to households earning below 30% and 60% AMI. The guidelines identify the Housing Advisory Commission as the public body designated to make recommendations on funding priorities and recommendations for affordable housing. HTF guidelines are being updated to remove duplicative requirements and help streamline processes, but the revisions will not be finalized prior to the RFP issuance.

#### CURRENT SITUATION AND ITS EFFECTS

Assuming a \$30M issuance of Measure O bond funds later this year, the City will have approximately \$34.5M in Measure O bond funds and HTF funds for affordable housing developments. The City has already reserved \$29.5M for the Berkeley Way and 1601 Oxford projects for which funding sources have not previously been identified.

The attached resolution prioritizes using those funds for \$29.5M in existing reservations for Berkeley Way and 1601 Oxford. However, due to Berkeley Way's proposed funding including up to \$14M for a capitalized operating reserve it is likely that the \$29.5M could be greatly reduced or eliminated due to project-based Section 8 vouchers approved by the Berkeley Housing Authority and described in more detail in the Background, resulting in these funds being returned to the Measure O/HTF pool of funds and available for other projects. The purpose of the capitalized operating reserve is to subsidize homeless tenant rents for about 16 years, and it is not Measure O- or HOME-eligible; these funding requires another local source (general fund/U1). Staff will be working with BRIDGE to minimize the impact of the funding need from local sources.

The Measure O funds and HTF funds remaining after both Berkeley Way and 1601 Oxford are fully funded can then be combined into a Request for Proposals (RFP). This RFP would make approximately \$14.5M in Measure O funds available; HTF funds will be dependent on the need to capitalized Berkeley Way's operating reserve noted above. Due to the anticipated demand for City funding, it is recommended that projects are prioritized based on how far along they are in the predevelopment process, in addition to typical criteria such as developer capacity and project feasibility. Eligible proposals include applications for acquisition, development, or renovation of projects for the purpose of creating or preserving affordable housing units. Since HTF guidelines allow projects to apply for predevelopment funding at any time, the emphasis of this RFP would be development loans for permanent financing, provided at the time of construction.

The RFP would be issued based on the HTF Guidelines, with certain sections waived to mitigate duplicative processes and facilitate the expedient reservation of funds. Specifically, the City would waive sections related to noticing neighbors within a certain radius of the proposed project, which is already required by Planning as part of the entitlement process. The City would also waive the requirement to solicit feedback on RFP priorities and applications from City commissions, other than the Measure O Bond Oversight Committee, which can add several months to the RFP process, particularly during the summer when commissions meet less frequently. This would in no way preclude commissions from providing feedback at any point in the process.

Based on actions taken by the Land Use, Housing & Planning Policy Committee on May 16, 2019, the resolution creates the opportunity for Berkeley Unified School District-sponsored projects serving educator households earning up to 120% of the Area Median Income to be considered in this RFP. These projects would otherwise not meet the HTF guidelines' affordability requirements.

In addition, the attached Resolution establishes the Measure O Bond Oversight Committee as the body to assume any roles delegated to the Housing Advisory Commission in the HTF Guidelines for the purpose of this RFP. This includes providing input on RFP priorities, reviewing applications, and making funding recommendations to Council for both the Measure O funds and any available balance of the HTF program that is left after fully funding Berkeley Way.

At its May 15, 2019 meeting, the Measure O Bond Oversight Committee approved correspondence (Attachment 1) expressing interest in providing both general recommendations on priorities for Measure O bond funds and the distribution of funds to eligible areas, and specific recommendations on the use of Measure O funds for specific projects. The attached resolution provides that direction. Staff recommend that for each new priority area, the City develop administrative guidelines and competitive processes before awarding funds for specific projects.

The proposed HTF Program RFP, using both Measure O bond funds and the HTF balance, subject to input and recommendations by the Measure O Bond Oversight Committee, is a Strategic Plan Priority Project, advancing our goal to create affordable housing and housing support service for our most vulnerable community members.

#### RATIONALE FOR RECOMMENDATION

Allocating Measure O and HTF funds to Berkeley Way and 1601 Oxford will facilitate moving these projects forward to construction on schedule and help the City identify the types and amounts of funding available for other affordable housing projects. Issuing an RFP will allow the City to identify a pipeline for future projects and facilitate a transparent and fair public process to provide financial support for affordable housing developments. These recommendations were discussed and supported by the Land Use, Planning & Economic Development Policy Subcommittee at its May 16, 2019 meeting and at Staff presentations on January 15, 2019 Measure O worksession report, and the Land Use, Housing & Economic Development Policy Committee reports from April 25, 2019 and May 2, 2019.

#### FISCAL IMPACTS OF RECOMMENDATION

These recommendations will commit up to \$30M in Measure O funds and up to the available balance of the Housing Trust Fund (currently approximately \$4.5M) to affordable housing developments.

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### CONTACT PERSON

Mayor Jesse Arreguín, 510-987-7100

**Attachments:**

- 1: May 15, 2019 Correspondence from the Measure O Bond Oversight Committee
- 2: Resolution

## Attachment 1: Correspondence from the Measure O Bond Oversight Commission

May 15, 2019

Dear Honorable Members of the Land Use, Housing and Economic Development Policy Committee:

The Measure O Bond Oversight Committee (“MOBOC”) respectfully submits this letter in order to share our desired role and responsibilities.

As you know, the Measure O ballot question stated that the use of Measure O funds would be “subject to citizen oversight and independent audits.” Additionally, the Measure O impartial analysis stated, in part, that Measure O “include[d] financial accountability requirements to ensure that the expenditure of Bond proceeds will be used only for the purpose of financing affordable housing projects and related costs. Financial accountability measures include an annual independent financial audit and oversight by an independent oversight committee to ensure that Bond proceeds are expended to finance affordable housing projects.” MOBOC enthusiastically embraces its role as an independent oversight committee and we look forward to fulfilling this required responsibility.

MOBOC is also interested in, and believes it has the expertise to be entrusted with, additional responsibilities regarding the use of Measure O funds and affordable housing funds more broadly. MOBOC respectfully requests that it be tasked with the following responsibilities:

- To provide **general recommendations** to the City Council on (a) the priorities for Measure O funds as well as (b) the distribution of Measure O funds for eligible program areas
- To provide **specific recommendations** as to the use of Measure O funds for specific projects (e.g., Berkeley Way)

To the extent the Land Use, Housing & Economic Development Policy Committee feels that it is appropriate and would not contribute to procedural duplication, MOBOC also would be interested in taking on the same responsibilities (i.e., providing general and specific recommendations) with respect to other affordable housing funding sources (e.g., General Fund.)

At its May 15, 2019 meeting, the MOBOC took the following vote in support of this letter:

Action: M/S/C (Tregub/Calavita) to send a letter, with edits noted, to the Land Use, Housing and Economic Development Policy Committee outlining the Committee’s desired roles and responsibilities.

Vote: Ayes: Calavita, Cutler, Daniels, Marthinsen, Smith and Tregub. Noes: None. Abstain: None. Recused: Oatfield. Absent: Carr (excused) and Williams (unexcused).

June 11, 2019

Thank you for your consideration.

Sincerely,

Josh Daniels, Chair

On Behalf of the Measure O Bond Oversight Committee

June 11, 2019

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

RESERVING MEASURE O AND HOUSING TRUST FUND PROGRAM FUNDS FOR  
BERKELEY WAY AND 1601 OXFORD, AND ISSUING A REQUEST FOR  
PROPOSALS FOR AFFORDABLE HOUSING DEVELOPMENT PROJECTS

WHEREAS, on November 6, 2018, Berkeley voters approved Measure O, a \$135 million affordable housing bond measure to support the acquisition, development, and renovation of property for the creation or preservation of affordable housing; and

WHEREAS, the City's bond counsel indicated that approximately \$30 million is available for the first issuance of Measure O bonds; and

WHEREAS, City Council established a Housing Trust Fund Program (the "HTF Program") to assist in the development and expansion of housing affordable to low and moderate income persons who either work or reside within the City of Berkeley; and

WHEREAS, the HTF Program has approximately \$4.5 million in uncommitted funds, which, combined with the first issuance of Measure O bonds, creates \$34.5 million in City funds available to support affordable housing development projects; and

WHEREAS, on June 26, 2018 and December 4, 2018, Council made two reservations of development funding for Berkeley way totaling \$23.5 million, of which \$9.5 million is Measure O-eligible; and

WHEREAS, on October 16, 2018, Council reserved \$6 million for the development of 1601 Oxford; and

WHEREAS, City Council did not identify the source(s) of funds to be used for the Berkeley Way and 1601 Oxford reservations; and

WHEREAS, City Council appointed a Measure O Bond Oversight Committee to oversee Measure O funding and confirm that expenditures meet the intent of the measure; and

WHEREAS, City Council adopted HTF guidelines (the "Guidelines"), as revised on April 5, 2016, and authorized the City Manager to implement the HTF Program in accordance with the Guidelines; and

WHEREAS, the HTF Guidelines designate the Housing Advisory Commission to make funding recommendations to Council for HTF funds; and

WHEREAS, the City has not adopted Measure O-specific guidelines for administering and reserving the bond funds; and

WHEREAS, the HTF Guidelines currently require developments that receive HTF funding to establish rent limits below the threshold criteria for Moderate Income households that would exclude many households employed by the Berkeley Unified School District.

June 11, 2019

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to prepare any documents required to use funds from the Measure O bond and Housing Trust Fund Program to fulfill existing funding reservations for the Berkeley Way and 1601 Oxford affordable housing projects.

BE IT FURTHER RESOLVED, the City Manager is hereby authorized to issue a Request for Proposals for the balance of the Measure O and HTF Program funds remaining after the Berkeley Way and 1601 Oxford reservations are fulfilled, estimated at up to \$19 million, which will be made available for affordable housing developments and prioritized for projects meeting certain readiness criteria.

BE IT FURTHER RESOLVED, that the Measure O Bond Oversight Committee will:

1. Act in any role specified for the Housing Advisory Commission in the HTF Guidelines for the purpose of both Measure O and funds in the Housing Trust Fund balance for this RFP; and
2. In the implementation of Measure O, provide both general priority recommendations and project-specific funding recommendations to the Council; and
3. Add the Housing Advisory Commission's Chair to the committee as an ex-officio, non-voting member.

BE IT FURTHER RESOLVED, that the Request for Proposals will be issued in accordance with the HTF Guidelines, with the following sections waived to encourage an expedient process:

1. Section VI.C.5, which requires that staff solicit recommendations for housing priorities from interested commissions.
2. Section VI.B.3.c and VI.B.3.d, which require that staff forward proposal summaries to the Planning Commission, Zoning Adjustments Board, and the Commission on Disability.
3. Section VI.B.3.e, which requires that written notice of the public hearing be given to neighbors within 300 feet of the proposed project.
4. For applications for educator-serving housing sponsored by the Berkeley Unified School District (BUSD), Section VI.A.1.a which establishes rent restrictions. Units funded in BUSD-sponsored educator housing will be limited to households earning up to Moderate Income with associated rent limits. The Guidelines define Moderate Income as up to 120% of the Area Median Income.







Office of the Mayor

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Mayor Jesse Arreguín  
 Subject: Prioritizing Transit Improvements at MacArthur Maze

RECOMMENDATION

Adopt a Resolution requesting transit priority improvements to mitigate congestion associated with the MacArthur Maze Vertical Clearance Project.

BACKGROUND

The California Department of Transportation (Caltrans) is planning a project to increase the vertical clearance on some roadways within the MacArthur Maze. The project calls for either reconstructing, raising, lowering or replacing the following connectors:

- Westbound I-80 to eastbound I-580
- Westbound I-580 to westbound I-80
- Westbound I-80 to southbound I-880
- Eastbound I-80 to eastbound I-580

The project is huge, “probably running a close second to the building of the eastern span of the Bay Bridge” according to a Caltrans spokeswoman<sup>1</sup>. The stated purpose of the rebuild is to bring the Maze’s connectors into compliance with state and national guidelines that call for a minimum clearance of 16 feet, 6 inches. The current connectors are 1 to 2 feet short. Currently, trucks that do not clear the Maze have to make lengthy detours.

Caltrans has issued a draft Environmental Impact Report (EIR) for this proposed project with a ‘negative declaration’, asserting the project will have no effect on air quality, transportation and traffic, with a less than significant impact on noise.

The construction associated with the project will likely divert significant automobile, freight, and transit traffic onto the streets of Berkeley and our neighbors in Emeryville and Oakland. The proposed infrastructure project centers around one of the most impactful choke points of the San Francisco/East Bay commute affecting 14,000 daily

<sup>1</sup> <https://www.sfchronicle.com/bayarea/philmatier/article/Rebuild-of-MacArthur-Maze-gets-tangled-up-in-East-13799916.php?psid=4Y0fP>

trips, projected to grow by a third by 2025. This will lead to increased gridlock, traffic backup, delayed commutes and more polluted air. Furthermore, nearly every driver or bus transit user that enters the interstate from Berkeley at Gilman, University or Ashby would be impacted by this project in their commute or daily travels. The Maze provides access to the South Bay, Highway 24, Downtown Oakland, Hayward and more. AC Transit has 14,000 riders on weekday transbay buses that would be delayed and 13,000 daily passengers on major surface streets that could be affected by diverted motorists.

With these significant impact to our transit systems and environment it is critical that this project prioritize transit improvements to mitigate congestion on our streets. Berkeley would join Oakland, and the AC Transit Board in supporting this resolution.

FINANCIAL IMPLICATIONS

None

ENVIRONMENTAL SUSTAINABILITY

Additional traffic congestion caused by this project during construction will likely increase greenhouse gas emissions. However, a design that results in time savings for transit or HOV travel can promote a mode shift toward more sustainable means of transportation.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: Resolution
- 2: AC Transit Letter to Caltrans regarding MacArthur Maze Project

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

A RESOLUTION REQUESTING TRANSIT PRIORITY IMPROVEMENTS TO MITIGATE  
CONGESTION ASSOCIATED WITH MACARTHUR MAZE VERTICAL CLEARANCE  
PROJECT

WHEREAS, the California Department of Transportation (Caltrans) has issued a draft Environmental Impact Report (EIR) for a proposed project to increase vertical clearance on some roadways within the MacArthur Maze; and

WHEREAS, the Alameda-Contra Costa Transit District (District or AC Transit) operates nearly 1,000 bus trips each day through the MacArthur Maze, carrying more than 14,000 passengers through the interchange each weekday; and

WHEREAS, the construction associated with the project will likely divert significant automobile, freight and transit traffic onto the streets in the cities of Berkeley, Emeryville, and Oakland; and

WHEREAS, this change in traffic patterns will result in significant delays for transit operations and customers as well as negatively impact conditions for bicyclists and pedestrians; and

WHEREAS, this additional traffic will likely lead to an increase in traffic backup, gridlock, delayed commutes, and worse air quality in Berkeley; and

WHEREAS, once complete, the project will lead to an increase in freight traffic through the interchange, competing for already limited space for transit and leading to delays on AC Transit; and

WHEREAS, the region has made relieving congestion and reducing automobile traffic across the San Francisco-Oakland Bay Bridge a priority, including the completion of the Metropolitan Transportation Commission's Core Capacity Transit Study and through the recent passage of Regional Measure 3; and

WHEREAS, funding from Regional Measure 3 will result in a 30-percent increase in AC Transit Transbay service through the area which should be supported through opportunities to prioritize this increase in transit capacity; and

WHEREAS, the Alameda County Transportation Commission has prioritized improvements to local bus transit service through its County-wide Transportation Plan, which has resulted in such efforts as the San Pablo Avenue Corridor Project; and

WHEREAS, the inclusion of elements supporting transit priority and facilitating complete streets (include transit, bicycles, and pedestrians) within the MacArthur Maze Vertical

Clearance Project is necessary mitigation for the impact from construction and increased freight movement through the interchange; and

**NOW, THEREFORE,** the Council of the City of Berkeley does resolve as follows:

**Section 1.** Request that Caltrans include transit-only lanes on all roadways in the project where AC Transit currently operates transit service.

**Section 2.** Request that Caltrans include measures to mitigate transit service disruption and prioritize transit service in identified mitigations during the construction phase of the project through improvements including but not limited to: dedicated transit lanes, transit signal priority, transit queue-jump lanes, bus stop optimization and traffic signal coordination/actuation.

**Section 3.** Request that Caltrans coordinate with the cities of Berkeley, Emeryville & Oakland to provide dedicated transit lane access to the Bay Bridge.

**Section 4.** Request that Caltrans ensure any elements of the project or mitigations associated with the project or its construction conform to and support existing regional plans being developed or already adopted by MTC; ACTC; the District; and the cities of Berkeley, Emeryville, and Oakland.



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Alameda-Contra Costa Transit District

Michael Hursh, General Manager

April 23, 2019

Rebecca De Pont, Associate Environmental Planner  
California Department of Transportation, District 4  
PO Box 23660, MS 8B  
Oakland, CA 94623

Dear Rebecca De Pont,

The MacArthur Maze Vertical Clearance Project will affect a key regional junction for AC Transit service. As proposed, the project has the potential to greatly disrupt and delay Transbay Express and local bus services, with no benefit to transit as either a project construction mitigation or project outcome.

This letter details AC Transit's concerns with the project as proposed in the Initial Study (IS). It also advocates for larger project scoping, including transit enhancements to benefit the region's growth at a potentially marginal increase in project cost and scale, depending on the alternative pursued.

AC Transit currently runs Transbay Express buses on I-580 leading up to the approaches to the San Francisco-Oakland Bay Bridge, including lines B, E, NX, NX1, NX2, NXC, NX3, NX4, P and V. On the I-880 to westbound I-80 connector, AC Transit operates lines 800, O, OX, S, SB and W. Along I-80, AC Transit operates lines C, F, FS, G, H, L, LA and Z. Any weekday delays on these Transbay lines will affect over 14,000 passengers per day, while weekend delays will impact over 3,000 passengers per day.

Major local bus lines on surface streets that could be affected by traffic congestion caused by diverting motorists include lines 72, 72M, 72R and 800 serving San Pablo Avenue and Line NL serving West Grand Avenue and Grand Avenue. These lines alone carry over 13,000 daily passengers. Construction detours could also affect Emeryville traffic and impact over 9,000 daily passengers on lines 57, 36, 29 operating on and around Powell St.

By proposing a Negative Declaration for this project, Caltrans asserts there will be no effect on Air Quality, Transportation and Traffic, with a less than significant impact on noise. AC Transit strongly disagrees with these assertions, which consider none of the impacts during the construction period. Also, this proposed major infrastructure project centers around the most impactful choke points of the San Francisco/East Bay commute affecting 14,000 daily trips, projected to grow by a third by 2025. It would be a regional wasted opportunity if Caltrans did not use this project to both meet its vertical height clearance goals but also improve the daily commute for all Bay Area residents.

## Section 1.2 Purpose and Need

The IS states the purpose of the project is to meet the Caltrans standards for vertical height clearance, which would allow access for oversized freight vehicles through the maze. While there are stated worthy goals of reducing the numbers of oversized vehicles diverting through local streets, and subsequent reduction in Vehicle Miles Traveled (VMT) and Greenhouse Gas (GHG) emissions, the numbers of these affected vehicles (and therefore the scale of this impact) is not specified. This *need* is not articulated anywhere in the IS document. The lack of information on which to initiate a project of this scale, let alone see it through to an initial study is a critical flaw.

### Section 1.4.2 Construction Impacts

All the alternatives would create delays to existing Transbay Express bus service, resulting in added operating costs and lost ridership. This should be detailed in the IS. Based on the time required for closures, the construction of Alternative C would cause the highest level of impact to Transbay buses and Alternative B would have the least disruption to existing operations. In addition, all project alternatives would cause traffic to divert onto local streets during construction, creating delays to local bus lines described above.

### Section 1.4.2 Project Alternatives

AC Transit recommends any alternative selected should include significant improvements to transit priority in its scope. The most suitable Alternative to include transit priority is Alternative C, which could include widened connector ramps to provide HOV or transit-only lanes. The lanes would benefit AC Transit Transbay Bus service and other HOVs.

### Section 1.4.2 Transportation System Management & Transportation Demand Management

The IS states that “No TDM or TSM measures have been incorporated into the build alternatives for this project.” AC Transit urges Caltrans to re-consider the scope of this project to include transit benefits to facilitate regional growth and mode shift to transit and help meet the state’s GHG reduction goals.

The Traffic Management Plan should include mitigations that reduce construction delay to Transbay and local bus service. Overnight or weekend closures should be undertaken to minimize impacts to transit and best management practices to shorten construction times.

## Section 2. Affected Environment

- AC Transit’s Major Corridors Plan and Multimodal Design Guidelines should be considered under the local plans and programs list. There will be local impacts during the construction phase and Caltrans should refer to these documents to consider the type of improvements for local arterials as mitigations.
- The Metropolitan Transportation Commission’s (MTC’s) Regional Transportation Plan should be considered under the regional plans and programs list. The plan discusses the Freight Emissions Reduction Action Plan that supports the purpose of this project. It also details recommendations from the Core Capacity Transit Study that outline the importance of transit improvements to support focused growth and reduce GHGs, specifically on the capacity of the

Bay Bridge corridor. Caltrans should explore any synergies from combining these goals into one project. It could be more cost effective than pursuing these goals individually.

- AC Transit disagrees with the statement on the negligible impacts to growth:

“There would be no changes in access to employment, shopping, or other destinations, or permanent impacts to travel times, travel behavior, trip patterns, or the attractiveness of some areas to development.”

There are two points Caltrans needs to consider:

1. This project explicitly allows for increased truck movements through the maze. It will increase slow moving traffic with the potential to increase travel times for all vehicles. Caltrans needs to quantify this impact.
2. The opportunity cost of not including transit/HOV lanes in the project scope is not included. The project could lead to lower regional growth and reduction in attractiveness for development etc., due to the increased congestion projected through 2040.

#### Section 2.5.4 Construction Mitigation for Traffic and Transportation/Pedestrian and Bicycle Facilities

There is no mention of the impacts to transit as part of the potential construction closures. AC Transit requests the following mitigation measures for any of the alternative’s construction phases:

1. **Install temporary bus lanes** on I-580, new or modified connectors and on the following surface streets: West Grand between I-580 and the bridge, San Pablo Avenue between 20<sup>th</sup> Street and 40<sup>th</sup> Street.
2. **Fund and expedite the planning and design phases of the Powell St On-Ramp Westbound I-80 transit priority project.** This intersection could be critical during any construction phase with detoured traffic. Expediting and funding this project would help mitigate transit impacts if traffic is detoured to I-80.

Our Board of Directors is expected to pass a resolution on April 24<sup>th</sup>, 2019, officially supporting these mitigation measures as part of the project.

#### Long-Term Project Impacts - Greenhouse Gas (GHG) Emissions Reductions

Senate Bill 391 sets greenhouse gas emission targets. The IS asserts that estimates of greenhouse gases cannot be made at the project alternative level. By considering construction impacts alone, the IS asserts that all the alternatives would have similar GHG impacts. However, there can be a significant difference in GHG emissions between alternatives during a lifetime of operations. For example, a design that results in time savings to transit or HOV travel time can promote a mode shift toward more sustainable means of transportation. This can be modeled and the GHG emission reductions calculated. Neglecting to include designs that meet both the project purpose and support the mode shift is a significant oversight that must be remedied before a final project alternative is selected.

A modification to the project could produce long-term emission reductions during the operation of the facility. In this regard, the project alternatives do not have the same climate change impacts based only on the embedded energy of construction. The section on “State Efforts” for GHG reduction, while noteworthy is not relevant to this project.

*This approach encourages planning for sustainable highways by addressing climate risks while balancing environmental, economic, and social values—“the triple bottom line of sustainability.”<sup>10</sup> Program and project elements that foster sustainability and resilience also support economic vitality and global efficiency, increase safety and mobility, enhance the environment, promote energy conservation, and improve the quality of life. Addressing these factors up front in the planning process will assist in decision making and improve efficiency at the program level, and will inform the analysis and stewardship needs of project-level decision-making.*

From SB 391

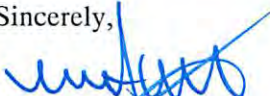
*(b) A strategies element that shall incorporate the broad system concepts and strategies synthesized from the adopted regional transportation plans prepared pursuant to Section 65080. The California Transportation Plan shall not be project specific.*

Section 3.3.4 CEQA Conclusion

This section is mostly irrelevant regarding the GHG emissions of the various project alternatives. Caltrans is making a dubious claim that the state’s policies, programs or projects (including those done by Caltrans elsewhere in the State) obviate the need and desirability to reduce GHG emissions associated with the long term operation of the project. Focusing only on construction impacts limits the necessary public disclosure of cumulative impacts.

The lack of transit and HOV accommodation in these design alternatives is a major oversight. Currently, buses and carpools on I-580 experience the same congestion as in the general purpose lanes. Enshrining this situation for the 40-year life of the project is not acceptable and under no circumstances should this project be undertaken in a manner that precludes needed improvements to the transit and HOV network.

We thank you for the opportunity to comment on the project. Unfortunately, the current iteration of the IS is lacking in a discussion of environmental impacts to AC Transit’s service and riders as a result of the project and project construction. We look forward to seeing our comments addressed in the next iteration of the environmental documents and project scope.

Sincerely,  


Michael Hursh  
General Manager

Cc: AC Transit Board of Directors  
Tony Tavares, Caltrans District 4 Director  
Sabrina Landreth, Oakland City Manager  
Christine Daniel, Emeryville City Manager  
Eric Levitt, Alameda City Manager  
Dee Williams-Ridley, Berkeley City Manager  
Therese McMillan, MTC Executive Director





Office of the Mayor

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Mayor Jesse Arreguín and Councilmember Kate Harrison  
 Subject: Oppose AB 56 – Centralizing Energy Procurement

RECOMMENDATION

Adopt a Resolution opposing AB 56 (authored by Assemblymember Eduardo Garcia). Send a copy of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Eduardo Garcia.

BACKGROUND

The City of Berkeley is one of eleven cities in Alameda County that is a part of East Bay Community Energy (EBCE). Launched in June 2018, EBCE is one of 19 Community Choice Aggregation (CCA) programs across California serving 10 million residents, with dozens more jurisdictions across the state currently planning or debating joining a CCA. CCAs allow local jurisdictions to pool together their resources in procuring energy, with an emphasis on renewables.

AB 56 would allow the California Public Utilities Commission (CPUC) to establish the California Clean Electricity Authority, which would be responsible for the procurement of electricity on behalf of retail customers of electrical corporations, community choice aggregators, and electric service providers.

AB 56 as currently written would have a negative impact on CCAs. It threatens a CCA's autonomy when it comes to procurement, which in turn could make it more difficult to acquire renewables. AB 56 aims to address the underlying issues of being able to meet the state's future energy needs, especially during a time of uncertainty given PG&E's bankruptcy woes relating to its connections to recent wildfires. However, CCAs are already obligated to meet state standards when it comes to meeting the Renewables Portfolio Standard as defined under SB 350 – which requires energy utility companies to reach 33% renewable by 2020 and 50% by 2030. Potentially removing procurement from CCAs would limit local jurisdictions' ability to meet and/or exceed environmental standards.

FINANCIAL IMPLICATIONS

None.

ENVIRONMENTAL SUSTAINABILITY

AB 56 would potentially limit CCAs such as EBCE from procuring energy at higher renewable levels.

CONTACT PERSON

|                             |              |
|-----------------------------|--------------|
| Mayor Jesse Arreguín        | 510-981-7100 |
| Councilmember Kate Harrison | 510-981-7140 |

Attachments:

- 1: Resolution
- 2: Text of AB 56

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

IN OPPOSITION TO AB 56

WHEREAS, East Bay Community Energy is the Community Choice Aggregate (CCA) for Berkeley and most of Alameda County; and

WHEREAS, CCAs allow local jurisdictions to pool together their resources in procuring energy, with an emphasis on renewables; and

WHEREAS, there are 19 CCA programs across California serving 10 million residents, with dozens more jurisdictions across the state currently planning or debating joining a CCA; and

WHEREAS, AB 56 would allow the California Public Utilities Commission (CPUC) to establish the California Clean Electricity Authority, which would be responsible for the procurement of electricity on behalf of retail customers of electrical corporations, community choice aggregators, and electric service providers; and

WHEREAS, this proposal could threaten a CCA's autonomy when it comes to procurement, which in turn could make it more difficult to acquire renewables; and

WHEREAS, potentially removing procurement from CCAs would limit local jurisdictions' ability to meet and/or exceed environmental standards.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby opposes AB 56.

BE IT FURTHER RESOLVED that copies of the Resolution to Governor Gavin Newsom, State Senator Nancy Skinner, and Assemblymembers Buffy Wicks and Eduardo Garcia.





Office of the Mayor

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CONSENT CALENDAR

June 11, 2019

To: Members of the City Council

From: Mayor Jesse Arreguin and Councilmember Kate Harrison

Subject: Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention

RECOMMENDATION

1. Adopt an Ordinance repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation at completion of the project; and
2. Direct the City Manager to include standard conditions of approval for zoning permits requiring compliance with the Wage Theft Prevention Ordinance, BMC Chapter 13.104

FINANCIAL IMPLICATIONS

Staff time to enforce requirements of the ordinance through the building permit process.

BACKGROUND

The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage

projections through disclosure and transparency requires the involvement of local government police powers.

Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information regarding mandatory and voluntary fringe benefits pursuant to Labor Code section 2810.5.

In response to a growing number of complaints over lack of compliance with state construction wage and employment laws, the Berkeley City Council in 2016 adopted a Wage Theft Prevention Ordinance, BMC Chapter 13.104. Since that time staff has met with the Alameda County Building and Construction Trades Council and Carpenters Union Local 713 regarding how to enforce the requirements of the ordinance. There was no clear department or division responsible for enforcement, and projects have been approved without informing applicants of the requirements of the Wage Theft Ordinance.

Despite this ordinance, there are a number of current construction jobs in Berkeley where contractors have willingly violated state wage laws, resulting in judgements by the state Labor Commissioner. Additionally with the growing amount of residential development occurring in Berkeley, it is critical that this ordinance be revised to develop a streamlined compliance and enforcement process to ensure that workers are paid the wages they are owed. The ordinance requires a series of attestations to ensure knowledge of and compliance with the requirements.

The revised Wage Theft Prevention Ordinance will require that permit applicants provide the city with a Pay Transparency Acknowledgement. The form includes an attestation under penalty of perjury that the permit applicant has reviewed Chapter 13.104 and following project completion, if the City cannot make a finding of compliance with the provisions of the Wage Theft Prevention Ordinance, then the permit applicant will be responsible for demonstration either compliance with Labor Code Sections 226 and 2810.5 or the existence of a Labor Payment or a Lien Release Bond pursuant to BMC Section 13.104.070(B). The revised ordinance also requires the Contractor to sign a Pay Transparency Acknowledgement.

The revised ordinance requires that a Pay Transparency Attestation be executed under penalty of perjury to attest to compliance with the Wage Theft Prevention Ordinance and state wage laws.

The ordinance also requires posted noticed of the requirements of the Wage Theft Prevention Ordinance and where workers can report violations of the labor code to the Labor Commissioner and current contact information of the Labor Commissioner.

Finally the revised ordinance requires that the City make a finding of compliance with the provisions of the Chapter prior to the issuance of a Certificate of Occupancy.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects from adopting this ordinance.

CONTACT PERSON

Mayor Jesse Arreguin      510-981-7100

Attachments:

- 1: Ordinance
- 2: PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT
- 3: CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT
- 4: PAY TRANSPARENCY ATTESTATION





ORDINANCE NO.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 13.104,  
WAGE THEFT PREVENTION

Section 1. That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

**Chapter 13.104**  
**WAGE THEFT PREVENTION**

Sections:

- 13.104.010 Findings.
- 13.104.020 Definitions.
- 13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.
- 13.104.040 Pay Transparency Attestations Following Project Completion.
- 13.104.050 Posting of Ordinance.
- 13.104.060 Determination of Construction Pay Transparency Compliance.
- 13.104.070 Issuance of a Certificate of Occupancy.
- 13.104.080 Private Right of Action.
- 13.104.090 City Manager Regulations.
- 13.104.100 Severability.

**13.104.010 Findings.**

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local

government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information regarding mandatory and voluntary fringe benefits pursuant to Labor Code section 2810.5.

### **13.104.020 Definitions.**

Whenever used in this chapter, the following terms shall have the meanings set forth below.

A. "City" shall mean the City of Berkeley.

B. "Completion of the project" means that construction is complete and the project is eligible for a Certificate of Occupancy or Temporary Certificate of Occupancy.

C. "Contractor" shall mean the prime contractor for the Project.

D. "Labor Commissioner" shall mean the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.

E. "Owner" shall mean the person or persons, firm, corporation or partnership exercising ownership of the Project.

F. "Permit Applicant" shall mean Owner, developer, or Contractor who applied for the building permit for the Project.

G. "Project" shall mean a new construction project of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.

H. "Project construction employees" shall mean employees of the Contractor or Subcontractor.

I. "Qualifying Subcontractor" shall mean a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

J. "Responsible Representative" shall mean an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company) or qualifying person associated with the Owner, contractor and/or subcontractor. A qualifying person is defined in Section 7068 of the California Business and Professions Code.

### **13.104.030 Pay Transparency Acknowledgments from Permit Applicant, Contractor, and Qualifying Subcontractor.**

A. Within 30 days of issuance of a building permit, the Permit Applicant shall provide to the City a Permit Applicant Pay Transparency Acknowledgment on a form approved by the City for this purpose. The form shall include an attestation under penalty of perjury under the laws of the State of California by a Responsible Representative of the Permit Applicant that: (i) the Permit Applicant has reviewed Chapter 13.104 of the Berkeley

Municipal Code; and (ii) following Project completion, if the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060, the Permit Applicant will be responsible for demonstrating either (a) compliance with Labor Code sections 226 and 2810.5 or (b) the existence of a Labor Payment or a Lien Release Bond(s) pursuant to 13.104.070(B).

B. Within 30 days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project, for each Contractor and Qualifying Subcontractor, the Permit Applicant shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. On each Contractor Pay Transparency Acknowledgment, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California, that: (i) the Contractor or Qualifying Subcontractor has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees will receive Labor Code Section 2810.5 compliant notices and Labor Code Section 226(a) compliant itemized wage statements, or (b) Project construction employees meet one or more of the criteria of Labor Code section 2810.5(c).

**13.104.040 Pay Transparency Attestations Following Project Completion.**

Within 10 days of the completion of the Project, for each Contractor and Qualifying Subcontractor, Permit Applicant shall provide to the City a Pay Transparency Attestation on a form approved by the City for this purpose. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor must attest under penalty of perjury under the laws of the State of California that: (i) the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code; and (ii) either (a) Project construction employees received complete and accurate information pursuant to Labor Code Sections 226 and 2810.5, or (b) Project construction employees met one or more of the criteria of Labor Code section 2810.5(c).

**13.104.050 Posting of Ordinance.**

Each day work is performed on the Project, the Permit Applicant shall post and keep posted in a conspicuous location frequented by Project construction employees, and where the notice may be easily read by Project construction employees during the hours of the workday, a notice that: (i) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (ii) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (iii) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

**13.104.060 Determination of Construction Pay Transparency Compliance.**

Prior to approval of a Certificate of Occupancy for the Project, the City shall make a finding of compliance with the provisions of this Chapter. Such finding shall be issued if: (i) the City determines after review of the information provided pursuant to

sections 13.104.030 and 13.104.040 that the Permit Applicant, Contractor and all Qualifying Subcontractor(s) have complied with the provisions of this Chapter; and (ii) the City has not received any information that a complaint is pending before the Labor Commissioner, or that the Labor Commissioner has issued a final order of enforcement, regarding violations of Labor Code Sections 226 or 2810.5 by any Contractor or Qualifying Subcontractor at the Project.

**13.104.070 Issuance of a Certificate of Occupancy.**

A. The City shall issue a Certificate of Occupancy to the Permit Applicant if it makes a finding of Construction Pay Transparency Compliance pursuant to 13.104.060 and all requirements of the building code are met.

B. If the City cannot make a finding of compliance with the provisions of this Chapter pursuant to section 13.104.060 , the City will approve a Certificate of Occupancy only if:

- (i) the Permit Applicant demonstrates that the Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; or
- (ii) the Permit Applicant demonstrates the existence of a Labor Payment or a Lien Release Bond(s) for the Project. The bond shall be in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks Pay Transparency Acknowledgment or Attestations, or 125 percent of the amount of any Project-related, Labor Commissioner issued Civil Wage and Penalty Assessment(s) or mechanics lien(s), whichever is greater.

**13.104.080 Private Right of Action.**

Nothing in this chapter shall be interpreted to authorize a right of action against the City.

**13.104.090 City Manager Regulations.**

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

**13.104.100 Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

# PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

1. I, \_\_\_\_\_, the \_\_\_\_\_ of  
 (Name) (Title)  
 \_\_\_\_\_, \_\_\_\_\_ (“Permit Applicant”), who has applied for a  
 (Permit Applicant) (LIC#)  
 building permit for \_\_\_\_\_, have the authority to act for and on behalf of  
 (Project)  
 Permit Applicant.

2. Permit Applicant has reviewed Berkeley Municipal Code Chapter 13.104 (“Wage Theft Prevention Ordinance”), which is attached to this form.

3. Permit Applicant understands that all contractors on the Project listed above (“Project”) must comply with Labor Code section 226. Semi-monthly or at the time of each payment of wages, each contractor must provide each of its employees on the Project with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

4. Permit Applicant understands that all contractors on the Project must comply with Labor Code section 2810.5 by satisfying one of the following requirements:

- The contractor will provide complete and accurate information to employees not exempt under section 2810.5(c), including the following:

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

## PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

- At the time of hiring, a written notice, in the language the contractor normally uses to communicate employment-related information to the employee, containing the following information:
  - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
  - Any benefits provided by the contractor;
  - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
  - The regular payday designated by the contractor in accordance with the requirements of this code;
  - The name of the contractor, including any “doing business as” names;
  - The physical address of the contractor’s main office or principal place of business, and a mailing address, if different;
  - The telephone number of the contractor;
  - The name, address, and telephone number of the contractor’s workers’ compensation insurance carrier; and
  - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
  
- A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

**-OR-**

- All employees of the contractor are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

**5. Permit Applicant understands that, pursuant to Berkeley Municipal Code section 13.104.030, Permit Applicant must submit all Pay Transparency Acknowledgment forms to the City within thirty (30) days of the issuance of a building permit. Permit Applicant must submit this Permit Applicant Pay Transparency Acknowledgment form and Contractor Pay Transparency Acknowledgment forms from the prime contractor of the Project (“Contractor”) and all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project (“Qualifying Subcontractors”). Contractor Pay Transparency Acknowledgment forms must be submitted within thirty (30) days of the issuance of a building permit if the Contractor(s) and Qualifying Subcontractor(s) have been selected by then, but in any event no later than the Contractor(s) or Qualifying Subcontractor(s) first day of work on the Project.**

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

## PERMIT APPLICANT PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

6. Permit Applicant understands that, pursuant to Berkeley Municipal Code section 13.104.040, it is Permit Applicant’s responsibility to submit all Pay Transparency Attestation forms to the City within 30 days of issuance of the building permit for the Project. Pay Transparency Attestations must be completed by each Contractor and Qualifying Subcontractor of the Project.

7. Permit Applicant understands that, following Project completion, if the City cannot make a finding of compliance with Berkeley Municipal Code Ch. 13.104, Permit Applicant will be responsible for demonstrating one of the following:

- Permit Applicant, Contractor, and all Qualifying Subcontractors have complied with Labor Code sections 226 and 2810.5; OR
- Permit Applicant has obtained a Labor Payment or Lien Release Bond(s) in an amount equal to 20 percent of the combined value of the contract(s) of all Contractor(s) and/or Qualifying Subcontractor(s) for which the City lacks a Pay Transparency Acknowledgment or Attestation, or 125 percent of the amount of any Project-related, Labor Commissioner-issued Civil Wage and Penalty Assessment(s) or mechanics lien(s), whichever is greater.

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.



# CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

1. I, \_\_\_\_\_, the \_\_\_\_\_ of  
 \_\_\_\_\_, \_\_\_\_\_ (“Contractor”) performing work at  
 \_\_\_\_\_, \_\_\_\_\_ (“Contractor or Qualifying Subcontractor<sup>1</sup>”), \_\_\_\_\_ (LIC#)  
 \_\_\_\_\_ for \_\_\_\_\_, \_\_\_\_\_, have the  
 \_\_\_\_\_ (Project) \_\_\_\_\_ (General Contractor) \_\_\_\_\_ (LIC#)

authority to act for and on behalf of Contractor.

2. I declare that Contractor has reviewed Berkeley Municipal Code Chapter 13.104 “Wage Theft Prevention Ordinance”), which is attached to this form.

3. I declare that Contractor will comply with Labor Code section 226 on the Project listed above (“Project”). Semi-monthly or at the time of each payment of wages, Contractor will provide each of its employees on the Project with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

4. I declare that Contractor will comply with Labor Code section 2810.5 by satisfying one of the following requirements (please check which applies):

- All employees of this Contractor not exempt under section 2810.5(c) will receive complete and accurate information including the following:

<sup>1</sup> Berkeley Municipal Code Ch. 13.104 defines “Qualifying Subcontractor” as all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

# CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

- At the time of hiring, a written notice, in the language Contractor normally uses to communicate employment-related information to the employee, containing the following information:
  - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
  - Any benefits provided by Contractor;
  - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
  - The regular payday designated by Contractor in accordance with the requirements of this code;
  - The name of Contractor, including any “doing business as” names;
  - The physical address of Contractor’s main office or principal place of business, and a mailing address, if different;
  - The telephone number of Contractor;
  - The name, address, and telephone number of Contractor’s workers’ compensation insurance carrier; and
  - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
  
- A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

**-OR-**

- All employees are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

**If the box above is checked, please list the Union(s) to which Contractor is signatory:**

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**5. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor’s first day of work on the Project.

# CONTRACTOR PAY TRANSPARENCY ACKNOWLEDGMENT

Chapter 13.104, Berkeley Municipal Code

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 30 days of the issuance of a building permit if the Contractor and Qualifying Subcontractors have been selected by that date, but in any event no later than the Contractor or Qualifying Subcontractor's first day of work on the Project.

# PAY TRANSPARENCY ATTESTATION

Chapter 13.104, Berkeley Municipal Code

1. I, \_\_\_\_\_, the \_\_\_\_\_ with authority to  
 (Name) (Title)  
 act for and on behalf of \_\_\_\_\_, \_\_\_\_\_, certify under  
 (Contractor or Qualifying Subcontractor<sup>1</sup>) (LIC#)  
 penalty of perjury that the work performed by \_\_\_\_\_ at  
 (Contractor or Qualifying Subcontractor)  
 \_\_\_\_\_ for \_\_\_\_\_, \_\_\_\_\_, complied with  
 (Project) (General Contractor) (LIC#)

Labor Code sections 226 and 2810.5, and Berkeley Municipal Code Ch. 13.104 (“Wage Theft Prevention Ordinance”).

2. **Contractor or Qualifying Subcontractor listed above (“Contractor”) complied with Labor Code section 226.** Semi-monthly or at the time of each payment of wages, Contractor provided each of its employees on the Project listed above (“Project”) with accurate itemized wage statements showing the following:

- Gross wages earned,
- Total hours worked by the employee, unless the employee is exempt under Labor Code section 226(j);
- Number of piece-rate units earned and any applicable piece rate, if the employee is paid on a piece-rate basis;
- All deductions, provided that deductions requested by the employee may be aggregated and shown as one item, and all deductions are properly dated, showing month, day, and year;
- Net wages earned;
- Inclusive dates of the period for which the employee is being paid;
- Name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- Contractor’s correct legal name and address; and
- All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

3. **Contractor also complied with Labor Code section 2810.5 by satisfying one of the following requirements (please check which applies):**

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<sup>1</sup> Berkeley Municipal Code Ch. 13.104 defines “Qualifying Subcontractor” as all subcontractors of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.

## PAY TRANSPARENCY ATTESTATION

Chapter 13.104, Berkeley Municipal Code

- All employees of this Contractor not exempt under section 2810.5(c) received complete and accurate information including the following:**
  - At the time of hiring, a written notice, in the language Contractor normally uses to communicate employment-related information to the employee, containing the following information:
    - The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any overtime rates, as applicable;
    - Any benefits provided by Contractor;
    - Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
    - The regular payday designated by Contractor in accordance with the requirements of this code;
    - The name of Contractor, including any “doing business as” names;
    - The physical address of Contractor’s main office or principal place of business, and a mailing address, if different;
    - The telephone number of Contractor;
    - The name, address, and telephone number of Contractor’s workers’ compensation insurance carrier; and
    - That an employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
  - A notification in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies: (1) all changes are reflected on a timely wage statement furnished in accordance with Labor Code section 226, or (2) notice of all changes is provided in another writing required by law within seven days of the changes.

**-OR-**

- All employees are covered by a valid collective bargaining agreement that (1) expressly provides for wages, hours of work, and working conditions and (2) provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.**

**If the box above is checked, please list the Union(s) to which Contractor is signatory:**

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Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.

**PAY TRANSPARENCY ATTESTATION**

Chapter 13.104, Berkeley Municipal Code

**4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Pursuant to Berkeley Municipal Code section 13.104.040, each Contractor and Qualifying Subcontractor shall complete this form, and Permit Applicant must submit all forms to the City within 10 days of the completion of the Project.



Cheryl Davila  
Councilmember  
District 2

CONSENT CALENDAR

June 11, 2019

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmembers Cheryl Davila and Kate Harrison  
**Subject:** Opposition to Revision of Title X Family Planning Regulations  
Proposed by United States Department of Health and Human Services

RECOMMENDATION

Adopt a resolution in opposition of the revision of Title X Family Planning Regulations proposed by the U.S. Department of Health and Human Services. The City Clerk is to mail a copy of the resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.

FISCAL IMPACTS OF RECOMMENDATION

None.

ENVIRONMENTAL SUSTAINABILITY

Supporting a woman's rights including the right to choose and upholding Roe v. Wade (1973) is environmentally sustainable and has been for decades.

BACKGROUND

On March 4, 2019, new final regulations for Title X grants were published in the Federal Register, with a phased-in implementation period that commences on May 3, 2019. The regulations make many changes to the requirements for Title X projects that will significantly reshape the program and provider network available to low-income people through Title X. Specifically, the regulations prohibit Federal Title X funds from going to any family planning site that also provides abortion services. The Title X statute specifies that no federal funds appropriated under the program “shall be used in programs where abortion is a method of family planning.” Throughout most of the history of the program, the ban has generally been

interpreted to mean that Title X funds cannot be used to pay for or support abortion, as is the policy under the current regulations.

The final regulation requires that Title X funded activities have full physical and financial separation from abortion-related activities. Moreover, in addition to separate accounting and electronic and paper health records, providers need to have separate treatment, consultation, examination and waiting rooms, office entrances and exits, workstations, signs, phone numbers, email addresses, educational services, websites, and staff. This new requirement essentially disqualifies any provider from receiving Title X funds if they also offer abortions. It also prohibits Title X projects from using Title X funds to participate in a variety of “activities that encourage abortion” including lobbying, attending an event during which they engage in lobbying, or paying dues to a group that uses the funds for lobbying or supporting a candidate for office.

The proposed regulations are nearly identical to regulations issued under President Reagan, which were legally challenged by Title X projects and providers, and were ultimately upheld by the Supreme Court in Rust v. Sullivan in 1991. However, the Reagan era regulation was never fully implemented as President Clinton issued an executive order to suspend the regulations and then issued new regulations that were in place until the new regulation was published on March 4, 2019.

CONTACT PERSON

Cheryl Davila  
Councilmember  
District 2

510.981.7120

ATTACHMENT 1: Resolution



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

**Opposition to Revision of Title X Family Planning Regulations  
Proposed by U.S. Department of Health and Human Services**

WHEREAS, Title X, enacted in 1970, is the only federal program specifically dedicated to supporting the delivery of family planning care; and

WHEREAS, Administered by the HHS Office of Population Affairs (OPA), and funded at \$286.5 million for Fiscal Year 2018, the program serves over 4 million low-income, uninsured, and underserved clients; and

WHEREAS, in 2017, nearly 4,000 clinics nationwide relied on Title X funding to help serve 4 million people. The sites include specialized family planning clinics such as Planned Parenthood centers, community health centers, state health departments, as well as school-based, faith-based, and other nonprofit organizations; and

WHEREAS, Title X grants made up about 19% of revenue for family planning services for participating clinics in 2017, providing funds to not only cover the direct costs of family planning services, but also pay for general operating costs such as staff salaries, staff training, rent, and health information technology; and

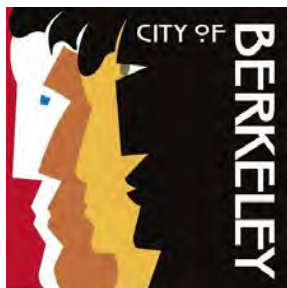
WHEREAS, the current White House Administration's new final regulations published on March 4, 2019, for the Federal Title X family planning program make significant changes to the program and will:

- Block the availability of federal funds to family planning providers that also offer abortion services;
- Prohibit sites that participate in Title X from referring pregnant clients to abortion providers;
- Eliminate current requirements for Title X sites to provide non-directive pregnancy options counseling that includes information about prenatal care/delivery, adoption, and abortion;
- Prioritize providers that offer comprehensive primary health care services over those that specialize in reproductive health services; and
- Encourage participation by “non-traditional” organizations such as those that only offer one method of family planning, such as fertility awareness-based methods; and

WHEREAS, if implemented, the changes to Title X will shrink the network of participating providers and could reduce the scope of services offered to low-income and uninsured people that rely on Title X-funded clinics for their family planning care;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council hereby records its opposition to revisions of Title X family planning regulations proposed by the U.S. Department of Health and Human Services.

BE IT FURTHER RESOLVED that the Council of the City of Berkeley request that the City Clerk mail a copy of this resolution to Alex M Azar II, U.S. Secretary of Health and Human Services and to the President of the United States.



# Councilmember Ben Bartlett

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CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Ben Bartlett & Cheryl Davila  
Subject: Budget Referral: Funding for Berkeley Drop-In Center

### RECOMMENDATION

Refer \$190,015 annually to the FY 2020 - FY 2021 Budget process to support the Berkeley Drop-In Center, a program of the Alameda County Network of Mental Health Clients.

### FINANCIAL IMPLICATIONS

\$190,015.

### BACKGROUND

The City of Berkeley is allocating funding for community agencies for a two-year funding cycle. The \$190,015 budget referral represents annual funding for the Berkeley Drop-In Center for the following sub-programs: Alcohol and Other Drug reduction/prevention (\$22,199); Homeless Drop-In Services (\$73,515); Supportive Housing/Case Management (\$47,033); and Representative Payee Services (\$47,268).

The Berkeley Drop-In Center (BDIC) is a multi-purpose South Berkeley peer to peer community center run by and for past and present mental health clients and persons undergoing varying ranges of emotional distress. The BDIC runs several programs to create a safe place for people to meet and socialize, as well as participate in peer to peer activities and support groups. In 2017, of clients that voluntarily chose to sign in the front desk, the BDIC had 12,377 annual contracts.

The BDIC has the following basic service, that without the proposed budget referral will be cut or reduced: Daytime drop-in service (mailboxes for people suffering housing insecurity); Housing advocacy and case management; payee services; arts and crafts; alcohol and other drug counseling; mail services; and women’s and men’s groups; volunteer/job training. The BDIC was selected as the recipient of the 2019 City of Berkeley Mental Health’s Achievement Award.

RATIONALE FOR RECOMMENDATION

The BDIC is the only Drop-In Center in South Berkeley and has served the Berkeley no-income and very low-income mental health / homeless community for 30 years. Many of the staff identify as individuals with lived experience meaning they have experience living with mental health challenges, they have been homeless, and/or they understand the journey of sobriety. The BDIC is GRASSROOTS.

It is important to look at what has happened with past allocations and contracts.

- Historical inequities in contract deliverables. The contracts in the past have never truly covered the expense of the services the agency provides.
- No Cost of Living increases to contracts places the agency out of compliance with Living wage / Minimum wage requirements
- South Berkeley serves primarily African American mentally distressed men and women who have been displaced by the decade-long gentrification.
- Vital services such as housing services and payee representation are key components to combat the potential risk of homelessness and breaks in mental health services.

ENVIRONMENTAL SUSTAINABILITY

None.

CONTACT PERSON

Councilmember Ben Bartlett  
James Chang

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### CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Ben Bartlett & Cheryl Davila  
 Subject: Budget Referral: Funding for Youth Spirit Artworks

### RECOMMENDATION

Refer \$198,000 annually to the Budget process to support Youth Spirit Artworks for the BUSD Homeless Student Program: \$55,000 to serve high school aged youth who are in school; the YSA Vocational Arts Program: \$65,000 to serve 130 Berkeley youth with job training services, and for the new YSA Tiny House Village Program: \$78,000 to case manage youth who are in transitional housing services.

### BACKGROUND

Youth Spirit Artworks (YSA) is a twelve-year old interfaith jobs and job training non-profit located in South Berkeley which is committed to empowering and transforming the lives of homeless and other underserved low-income Bay Area young people, ages 16-25. YSA is a proven community leader in youth-initiated and led efforts, providing innovative jobs training in seven vocational areas, as well as jobs placement involving over 150 youth each year.

YSA engages youth as leaders in running their own art gallery and store with a regular, youth-led public events program. It is deeply involved in community revitalization efforts. YSA participants have created more than a dozen murals adorning public space in South Berkeley, with more murals being executed every year toward creation of its Alcatraz Alley Mural Park.

YSA engages young people in leadership through publication of *Street Spirit*, the 24 year old East Bay homeless newspaper, which serves as a fundamental economic anchor for eighty homeless and unstably housed adult street vendors in any given month.

YSA's Youth Tiny House Village project is part of its larger ten-year organizing campaign to create "100 Homes for Homeless Youth." With the strong leadership of

homeless and other YSA youth leaders and over twenty-five committed community volunteers, YSA has been working for over 18 months on plans to develop a model, first-in-nation youth Tiny House Village (THV). This project involves completion of up to 22 tiny houses for homeless and unstably housed Berkeley young people, three on-site resident manager living units & two support buildings.

YSA began its Tiny House Village organizing efforts with the design and construction of a tiny house prototype, teaching youth construction skills. In addition to housing homeless and unstably-housed couchsurfing youth, the project empowers over 20 YSA underserved young adults with job skills through engagement in construction efforts, community outreach and organizing, and project management.

YSA's tiny house prototype has been featured in multiple local publications, including a prominent *SF Chronicle* front-page article highlighting innovative, model tiny house solutions to the current Bay Area housing crisis.

Six volunteer-led working groups are currently actively engaged in organizing and design efforts related to the Village. The Tiny House Village project plans rely primarily on private funding for construction and development of the village.

Construction of tiny houses will involve YSA youth trainees and groups of volunteers from the interfaith religious community in an active "Adopt-A-Tiny House" program, with 100 volunteers per day building houses in two sets of three weekend build days, twelve houses at a time in 2019/20. Fifty-five community Build Leaders are leading volunteers engaged with the project Aug 17, 18, 24, 25, Sept. 7 & 8.

In March and April 2019 "Build Leaders" training to lead volunteers in 12-house builds constructed two additional tiny houses which are currently engaged on a tiny house congregation tour, involving the interfaith religious community in supporting YSA's efforts.

The strong focus of YSA's Tiny House Village Program Model is on youth jobs training and placement as well as academic success of Berkeley youth, with wrap around case management services and deep support in a caring community for all residents through rootedness in Youth Spirit Artwork's activities.

Multiple local non-profit partners are being organized to collaborate as partners in this effort, carrying out elements of the work to ensure the project is a success. Collaborators enlisted in YSA's Tiny House Village development and programs already include: Rising Sun Energy, The Berkeley School, Planting Justice, Berkeley Youth

Alternatives, The Way Christian Center, Lifelong Medical Center, YEAH Shelter, Urban Adamah, Berkeley City College, and UC Berkeley Public Service Center.

#### CURRENT SITUATION & NEED

On any given night as many as 400 Berkeley young people (ages 18 to 25) find themselves homeless, couchsurfing, sleeping in unstable housing settings, and/or desperately in need of consistent, basic care and other supports necessary for success. Youth facing housing instability have difficulties pursuing academic excellence and their vocational goals, and face life-threatening challenges and risks. Many of our African American and Latino youth face challenges of displacement from the Berkeley neighborhoods where their families have lived for decades, which impacts our historic diversity and cultural richness. Youth hold the key to our future and while working to pursue goals and dreams, our community seeks ways to provide stabilizing housing to these transitional aged young people in poverty. We are in an emergency housing crisis that is growing worse.

Providing the necessary funding for YSA to sustain current activities benefiting youth is a way to directly address youth homelessness and other issues many youth face and struggle with in the City of Berkeley.

#### REVIEW OF EXISTING PLANS, PROGRAMS, POLICIES, AND LAWS

In response to the growing homelessness crisis locally and regionally, the City Council voted unanimously on January 19, 2016 to declare a Homeless Shelter Crisis. This resolution was reaffirmed in 2017 and is currently operating. The initiative serves as a key step in both expediting actions needed toward solving the problems of homelessness, minimizing the red tape of potential solutions, as well as encouraging creative partnerships and innovative solutions.

#### ACTIONS/ALTERNATIVES CONSIDERED

YSA provides its youth art vocational students with stipends to incentive them to attend classes consistently and to stay connected to YSA support services. No one is charged a fee for participation. YSA has a diverse funding portfolio of individual, business, and foundation donors and grant makers, and holds a contract with the AlaCosta Regional Center to serve neurodiverse young adults, and a new contract with Berkeley Mental Health to provide case management services to youth with a serious emotional disturbance that affects their ability to function. Approximately 15% of revenues come from the City of Berkeley's CDBG funds to partially cover the services to Berkeley youth. Currently, YSA holds two of these grant contracts. One, to serve 40 homeless high school aged youth in the Berkeley Unified School District (\$50,000 per year), and the other, to provide Vocational Arts training to an additional 60 low income City of

Berkeley youth (\$33,777 per year). This translates to a financial contribution from the City of \$833 per youth per year.

### OVERVIEW AND RESULTS

YSA has historically met and exceeded its service goals, and last fiscal year served 69 Berkeley High School youth and 74 additional Berkeley youth with Vocational Arts programming, at an average actual cost to Berkeley of \$585 per youth per year. Annual goals met or exceeded for Berkeley students included improvements in grades, math scores, school attendance, enrollment in post-secondary education, and a decrease in suspension days. Each youth in Vocational Arts was offered 22 weeks of programming, and each averaged over 200 hours of instruction, with stipends, life skills classes, youth empowerment meetings, case management, and peer support services. Supportive relationships developed, and peers and housing providers worked to place youth in housing.

### RATIONALE FOR RECOMMENDATION

YSA has increased its size and budget by over 100% in the past 3 years to meet the needs of a growing population of homeless youth. The Tiny House Village project has attracted interest from the media, the faith based community, and volunteers; the addition of *Street Spirit* has brought a new venue for youth art and poetry, and the youth voice; the entire agency is growing rapidly. To strengthen administrative infrastructure, YSA is currently working with a Management Information Systems Specialist and a Technology Consultant to improve data collection, data entry, and management reporting processes to better capture the success that it is having with youth. As a valuable member of the Berkeley community, YSA and YSA youth should have the full support of the Berkeley City Council.

### FISCAL IMPACTS OF RECOMMENDATION

YSA has a cost effective model to deliver youth services, to provide a safe place for youth to work under adult supervision, and a process to tackle the root cause of homelessness, to prepare youth for a life of financial and emotional stability in a caring community. A homeless youth will cost taxpayers well over \$585 a year (the Foldes report prepared for Youthlink calculated taxpayer costs at \$18,000 a year). The long term benefit of supporting this vulnerable population is much more.

### SUSTAINABILITY

YSA is working toward a sustainable operating budget, and is laying the groundwork to provide Medi-Cal billable case management services. Rents from Tiny House Village tenants will be another stable source of revenue, and as we expand Art Sales (using an



online platform), we anticipate an increase in earned income, a portion of which will go to the youth artists. YSA has a 3 year strategic plan, and is meeting its objectives as a healthy and growing agency.

Our request to the City of Berkeley for the fiscal year 2020/2021 is:

- BUSD Homeless Student Program: \$55,000 to serve 60 Berkeley high school aged youth
- Vocational Arts Program: \$65,000 to serve 130 Berkeley youth, and
- Tiny House Village Program: \$78,000 to serve 22 residents with social services

### **BERKELEY HIGH SCHOOL CAREER AND SUCCESS PROGRAM**

YSA provides after school job training for low income, homeless and at risk of homeless high school aged youth who are referred by BUSD. Using art as a vocational medium, youth trainees progress through 5 levels, called: aspirant, apprentice, apprentice leader, leader, job placement/employment. Students are paid stipends if they participate a minimum of 10 hours a week, which increase when additional responsibilities are earned, and can earn sales commissions. In addition to art skills training, there are 7 key services youth receive each week: 1) individual case management with referrals to wrap around services; 2) behavioral coaching and mentoring; 3) 12 hr educational sessions on inter personal skills; 4) a 1 hr Youth Empowerment meeting to facilitate self determination and youth led organizational growth; 5) business skills training and an accredited personal finance curriculum; 6) a written individualized job Progression Ladder; 7) training in the use of (SMART) goal setting.

Funds will be used to allow students who are homeless, at risk of homelessness, and low income youth to receive direct assistance with meeting survival needs (paid internships) and vocational training to create a path out of poverty. Studies have shown that early intervention in adolescence is highly effective, and saves lives and taxpayer dollars. Working alongside the City of Berkeley 2020 Vision Program, YSA programs will help close the achievement gap, help students stay in school, and we help them prepare for college, within a community of support.

Request: **\$55,000**

Proposed Number of City of Berkeley youth to serve in 2020-2021: **60**

### **VOCATIONAL ARTS TRAINING PROGRAM**

YSA provides job training for homeless and at risk youth in the Berkeley area, using art as a vocational medium. Youth receive hands on instruction and are paid stipends, which increase when additional responsibilities are earned and trainees move up the progression ladder. Last year, YSA youth completed 3 major community murals, helping to revitalize Berkeley's poorest neighborhoods and completed and sold over 300 works of art, with 50% of the sold proceeds going to the artists. The training program currently runs Fall Winter Spring, with three 16-week terms a year and a summer session. Youth become part of a cohort that meets 3 to 5 times a week, with rolling admissions. YSA

runs concurrent programs for youth in different progression levels. Our aim is to motivate and engage hard to reach youth, and strengthen peer to peer education and opportunities for employment/entrepreneurship, to move youth into productive lives.

Request: **\$65,000**

Number of City of Berkeley youth to serve in 2020/2021: **130**

### **TINY HOUSE VILLAGE PROGRAM**

YSA is fundraising for a Tiny House Village for homeless youth and seeks funding for a Case Manager/Social Worker to assist Berkeley youth with placement and transition to permanent housing for 22 youth.

Request: **\$78,000.**

#### CONTACT PERSON

Councilmember Ben Bartlett  
Katie Ly

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## Councilmember Ben Bartlett

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### CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmembers Ben Bartlett & Cheryl Davila  
 Subject: FY 2020-21 Budget Referral: Funding for Intercity Services

### RECOMMENDATION

That the City Council refer \$203,286 annually to the budget process to support the Intercity Services.

- ICS' Workforce Services Proposal requested was for \$203,286; however, the Commission and the City Manager made a Joint Recommendation for \$101,351.

### FINANCIAL IMPLICATIONS

\$101,351

- The financial implication of not receiving the full recommended amount will result in a fewer number of homeless individuals in the City of Berkeley being provided workforce services by Inter-City Services, Inc.
- 45% + of the homeless population in the city of Berkeley are African-American
- Inter-City Services, Inc.'s goal is to reduce the digital divide and focus on diversity in technology for Berkeley homeless populations.
- Please note that the majority of homeless populations lack the cyber and digital skills to participate in job search activities, search for job resources, and maintain employment.
- For these reasons, we are requesting to receive our full recommendation of \$203,286. Receiving this full amount will allow us to serve a larger homeless population in the city of Berkeley.

### BACKGROUND

Inter-City Services (ICS) provide quality vocational skill training and educational programs that are high in quality and implemented by hardworking, dedicated staff. Providing an educational standard of excellence in post-secondary education, ICS offers a variety of financial aid programs in which qualifying students may be eligible for tuition-free training, counseling, career enhancement workshops, and lifetime job placement assistance. In addition, childcare and transportation stipends are provided in some cases.

### RATIONALE FOR RECOMMENDATION

Inter-City Services, Inc. (ICS) is a resource for the most marginalized and underserved people residing in the city of Berkeley. ICS's Workforce Training mission is based in part on the city's need to significantly increase the level of workforce services to Berkeley's Homeless. Over the next 4 years, ICS's goal is to become Berkeley's Hub for Homeless Job Seekers. We will put the full strength of our 35 years of experience providing rapid response workforce services to Berkeley's most vulnerable residents. We will provide effective state-of-the-art services which include: digital literacy, vocational skills training, job placement assistance, and support services for all at-risk residents. ICS' mission, through a collaborative effort with local businesses, government, education, community-based and faith-based entities, to provide workforce readiness for low/moderate income Berkeley residents in-demand occupations. Impoverished individuals are located citywide; hence, we will provide inclusive seamless services to help reduce the skills gap that causes the quality of life inequities. This makes ICS invaluable to the Berkeley Homeless population.

(1) ICS' Workforce Services Proposal requested was for \$203,286; however, the CM Recommended, by CM for \$101,351.

(2) The SSBPPE Commission's recommendations and adopt thirteen (13) organizations; however, not one of the agencies recommended for funding are serving the Homeless. ICS' proposal, "Hydrating the Homeless" was for \$200,000; however, we were not funded. Again, there was no agency that plans to serve the homeless. The SSBPPE must fund some kind of homeless services.

#### ENVIRONMENTAL SUSTAINABILITY

No environmental impact.

#### CONTACT PERSON

Councilmember Ben Bartlett  
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# Councilmember Ben Bartlett

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## CONSENT CALENDAR

June 11, 2019

To: Policy Committee: Land Use, Housing & Economic Development Committee, and Honorable Mayor & Members of the City Council  
 From: Councilmember Ben Bartlett, Mayor Jesse Arreguin, and Councilmember Kate Harrison  
 Subject: Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

### SUBJECT

Berkeley Opportunity Zone Displacement Mitigation Zoning Overlay

### RECOMMENDATION

Direct the City Manager and refer to the Planning Commission to create one or several zoning overlays, and/or recommend any mechanism, which protects Berkeley residents living in one or all of Berkeley's Federal Opportunity Zones from gentrification and displacement. Overlays and/or recommendations may also confer community benefits, including but not limited to: affordable housing, supportive social services, green features, open space, transportation demand management features, job training, and/or employment opportunities.

### CURRENT SITUATION

The IRS, working with individual states, designated certain low-income Census tracts as Opportunity Zones as part of the Tax Cuts and Jobs Act of 2017. Investors can defer taxes on capital gains by investing those gains in property in these zones. Investments in Opportunity Zones excuse a percentage of those capital gains from taxes, and property appreciation is untaxed if the property is held longer than 10 years. Opportunity Zones offer a powerful investment vehicle for the wealthy. There are no stipulations protecting neighborhoods from gentrification and displacement caused by rapid, top-down investment from members outside their community. Berkeley's residents living in Opportunity Zones, specifically around the Adeline Corridor and West Berkeley, are currently vulnerable to gentrification and displacement caused by unmitigated, top-down speculation.

### BACKGROUND

The Tax Cuts and Jobs Act of 2017 created a vehicle for investors to defer taxes on capital gains while investing in economically-distressed communities. When an individual sells their investment and generates capital gains, that person can invest any portion of those gains into a qualified Opportunity Fund within 180 days. The deferred capital gains will be taxed on the date the investment in the Opportunity Fund is sold, or on December 31, 2026, whichever comes first. Opportunity Funds must invest in property in distressed communities designated as qualified Opportunity Zones by the IRS<sup>1</sup>. Investors can defer taxes on capital gains by investing in an Opportunity Fund until the investment in the Opportunity Fund is sold, or on

<sup>1</sup> <https://www.congress.gov/bill/115th-congress/house-bill/1>

December 31, 2026, whichever occurs first. Investments in qualified Opportunity Funds held longer than 5 years allow taxpayers to exclude 10% of the deferred gain, those held longer than 7 years allow taxpayers to exclude a total of 15% of the deferred gain, and those held longer than 10 years allow the taxpayer to exclude the post-acquisition gain on the investment in the Funds<sup>2</sup>. The above structure incentivizes investors to buy properties in Opportunity Zones and either refurbish or replace them with structures to maximize post-acquisition gain.

Such zones in Berkeley that have been designated by the California Department of Finance as qualified Opportunity Zones include the Alameda County tract numbers 4232, 4235, 4239.01, and 4525. These areas include several blocks surrounding Shattuck Avenue from University Avenue to Ashby Avenue, several streets surrounding Adeline Street until 52nd Street (often referred to as the “Adeline Corridor”), and a rectangular shape of land bordering University Avenue north and San Pablo Avenue to the east and terminating at Dwight Way<sup>3</sup>.

Berkeley’s Opportunity Zones, specifically in the Adeline Corridor and West Berkeley, are in areas vulnerable to, or currently undergoing, gentrification. The National Community Reinvestment Coalition (NCRC) compared Census data from 2010 with 2000 to determine Census tracts vulnerable to gentrification, including those currently gentrifying. Census tract 4240.01, the neighborhood between Sacramento Street, Ashby Avenue, Adeline Street, and Alcatraz Street in South Berkeley was deemed gentrifying. Between 2000 and 2010 the African American population decreased by roughly one third, from 1,821 to 1,264. In Census tract 4232 in West Berkeley, the African American population nearly halved, from 1,025 in 2000 to 687 in 2010. Both Census tracts contain Opportunity Zones. Furthermore, the neighborhoods surrounding these Opportunity Zones share similar demographic shifts. Census tract 4234, north of the Adeline Opportunity Zone, saw its African American population decline almost a third from 2000 to 2010. Census tract 4005, to the East, experienced the same phenomenon over the same period. This pattern applies to almost every neighborhood surrounding West Berkeley’s Opportunity Zone, as well<sup>4</sup>. UC Berkeley Urban Displacement Project has similarly captured these startling trends. It currently lists tracts 4240.01 and 4234, the Adeline Corridor Opportunity Zone and neighborhood to its north, as experiencing “ongoing gentrification/displacement”. It does not have sufficient data for West Berkeley’s Opportunity Zone tract<sup>5</sup>.

Many of the neighborhoods in and around Berkeley’s Opportunity Zones are either vulnerable to gentrification and displacement, or currently experiencing them. With new, powerful investment incentives from Tax Cuts and Jobs Act of 2017, these neighborhoods are perhaps more vulnerable than they have ever been to top-down negligence and gentrification from profit-driven outside investors.

#### ACTIONS/ALTERNATIVES CONSIDERED

Councilmember Bartlett is proposing a municipal Opportunity Fund as well. The municipal Opportunity Fund will be a powerful tool to direct investment in a way that protects Berkeley’s residents, instead of expediting the ongoing gentrification. A zoning overlay, multiple overlays, or any other recommendation which protects Berkeley residents, is necessary as an immediate

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<sup>2</sup> <https://fundrise.com/education/blog-posts/what-are-opportunity-zones-and-how-do-they-work>

<sup>3</sup> <https://opzones.ca.gov/oz-map/>

<sup>4</sup> <http://maps.ncrc.org/gentrificationreport/index.html>

<sup>5</sup> <https://www.urbandisplacement.org/map/sf>

protection to Berkeley residents and is meant to work with the Municipal Opportunity Fund to ensure a robust investment mechanism that develops Berkeley while benefiting both existing and new residents.

#### RATIONALE FOR RECOMMENDATION

Berkeley residents living in census tracts designated as Opportunity Zones are vulnerable to possible adverse effects from investment in zoned projects. As the Tax Cuts and Jobs Act of 2017 created powerful incentives for investment into Opportunity Zone census tracts, an influx of wealthy investor funds will flow into projects in Berkeley. Those investments will build structures and property that yield the greatest return for investors, not necessarily Berkeley residents. By creating a zoning overlay or similar mechanism to protect those census tracts, Berkeley residents will be protected from displacement.

#### ENVIRONMENTAL SUSTAINABILITY

No adverse effects. A zoning overlay, or similar recommendations, can specify projects in Opportunity Zones to be more environmentally friendly than current policies require.

#### FISCAL IMPACTS

To be determined. Pending recommendations by the Planning Commission. Depending on the Planning Commission's recommendations, staff time and cost to the City will vary.

#### CONTACT PERSON

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# Councilmember Ben Bartlett

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CONSENT CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Ben Bartlett, Lori Droste, and Mayor Jesse Arreguin

Subject: Proclamation to Honor June as LGBTQ Pride Month and authorize City Manager to Fly the Rainbow Flag every year on the month of June.

## RECOMMENDATION

Adopt a proclamation to honor June as LGBTQ Pride Month in the City of Berkeley and authorize City Manager to fly the rainbow every year on the month of June.

## BACKGROUND

Berkeley has been committed to representing and supporting all members of the community in favor of tolerance, respect, and celebration.

Berkeley honors special days and months such as National Freedom to Marry Day and LGBT Mental Health Awareness Month but also has the first city council in the nation to endorse marriage equality.

The City of Berkeley has continued each year to honor June as a symbolic month in which lesbians, gay men, bisexual and transgendered people, and supporters come together and affirm their various forms of freedom and pride.

## FINANCIAL IMPLICATIONS

None.

## CONTACT PERSONS

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**HONOR JUNE AS LGBTQ PRIDE MONTH**

**WHEREAS**, Berkeley has a committed history of being at the forefront of supporting equity for people within this community.

**WHEREAS**, Berkeley is the first city in the nation to establish a Domestic Partner registration system that includes same-gender couples, to establish an LGBTQ Sensitivity Training with the LGBTQ Liaison for all members of the Police Department, and the first City Council in the nation to endorse marriage equality.

**WHEREAS**, Berkeley honors special days and months such as National Freedom to Marry Day and LGBTQ Mental Health Awareness Month. Our city also supports the annual community LGBTQ Labor Day Brunch, begun the much-needed funding and support for planning an LGBTQ Community Center for Berkeley, and continues to strive in increasing the diversity of our city boards and commissions; and

**WHEREAS**, many of the residents, students, city employees, and business owners within the City of Berkeley who contribute to the enrichment of our City are a part of the lesbian, gay, bisexual, transgender, and questioning community; and

**WHEREAS**, various advancements have been made with respect to equitable treatment of lesbians, gay men, bisexual, transgendered, and questioning persons throughout the nation, there continues to be strong opposition against people from this community around the world making it imperative for Berkeley to stand up and show support for our citizens who are affected; and

**WHEREAS**, June has become a symbolic month in which lesbians, gay men, bisexual people, transgender, and supporters come together in various celebrations of pride; and

**THEREFORE BE IT RESOLVED**, that the City of Berkeley hereby declares the month of June:

**LGBTQ PRIDE MONTH**

We invite everyone to reflect on ways we all can live and work together with a commitment to mutual respect and understanding.



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
June 11<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmembers Harrison and Bartlett

Subject: Strike Debt Bay Area's Medical Debt Relief Effort in Cooperation with RIP Medical Debt: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds.

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Kate Harrison, to Strike Debt Bay Area's Medical Debt Relief Effort (<https://secure.ggiv.com/event/strikedebtbayarea/>), in cooperation with and hosted by RIP Medical Debt, a 501(c)(3) tax-deductible non-profit corporation. Funds would be relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Harrison and any other Councilmembers who would like to contribute.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact; \$150 is available from Councilmember Kate Harrison's Council Office Budget discretionary account.

ENVIRONMENTAL SUSTAINABILITY

None.

BACKGROUND

Strike Debt Bay Area is a local activist group dedicated to fighting against unjust debt. In partnership with RIP Medical Debt, a non-profit corporation with extensive experience in the medical debt market, they are conducting a campaign to raise at least \$15,000 to buy up and then annul more than \$1,000,000 in unpaid medical debt owed by residents of Berkeley, Alameda County and the greater East Bay. RIP Medical Debt has partnered with many local groups across the country in similar campaigns, including nurses in Michigan, high school students in Florida and a church in Annapolis. In existence since 2012, Strike Debt Bay Area has taken part in the campaigns to Save the Downtown Berkeley Post Office from Privatization and for an East Bay Public Bank, supported the country's only nonprofit check-cashing operation, and worked with KPFA on a set of debt-related radio segments, among its many projects.

In America, 41% of people are struggling to pay their medical bills or have accumulated medical debt over time.<sup>1</sup> 60% of all uninsured and underinsured people have medical debt of some kind and, of every person with medical debt, the largest share, 11%, were 27 years old<sup>2</sup>, as they are no longer under parents' insurance. Escalating debt over time can affect people's ability to buy houses or automobiles or even have children. With such a large share of people in debt being millennials, debt is now a generational issue.

RIP Medical Debt and other organizations like it purchase bundles of medical debt on the market, allowing them to pay it off for pennies on the dollar. Bundle purchasing of this kind is often the best chance people have of paying off their debt for good. Several hundred dollars for the Berkeley City Council can relieve thousands of dollars in medical debt for people in Berkeley and the Bay Area.

#### CONTACT PERSON

Kate Harrison, District 4 510-981-7140

ATTACHMENT: 1: Resolution

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<sup>1</sup> <https://www.commonwealthfund.org/publications/newsletter-article/survey-79-million-americans-have-problems-medical-bills-or-debt>

<sup>2</sup> <https://www.pbs.org/newshour/health/millennials-rack-up-the-most-medical-debt-and-more-frequently>

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE  
EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR RIP  
MEDICAL DEBT

WHEREAS, medical debt is a large and rapidly growing problem that can suddenly confront anyone, even those with insurance coverage; and

WHEREAS, the United States is the only G20 nation to allow its citizens to incur massive medical debt; and

WHEREAS, many individuals in the United States end up in medical debt to the tune of tens of thousands, and even hundreds of thousands, of dollars, with no possibility of being able to pay it off; and

WHEREAS, being in such debt causes serious stress, with deleterious mental and psychological effects; and

WHEREAS, RIP Medical Debt is a non-profit tax-exempt corporation created to buy up the right to collect debts at pennies or less on the dollar and cancel said debts; and

WHEREAS, RIP Medical Debt has already bought up and cancelled hundreds of millions of dollars of such debt, both through its own fundraising efforts and in partnership with local organizations and activist groups around the country; and

WHEREAS, Strike Debt Bay Area is a local activist organization which has participated in the campaign to save the Downtown Berkeley Post Office from privatization, the ongoing campaign for an East Bay Public Bank, supported the country's only nonprofit check-cashing operation, and has worked with Berkeley-based KPFA on a set of debt-related radio segments, among other campaigns; and

WHEREAS, Strike Debt Bay Area is partnered with RIP Medical Debt; and

WHEREAS, RIP Medical Debt seeks funds for their campaign, the *Strike Debt Bay Area Fundraiser* to eliminate more than \$1,000,000 of the unpaid medical debts of unspecified and presently unknown individuals in the East Bay; and

WHEREAS, Strike Debt Bay Area has already raised, locally, over \$9000 for RIP Medical Debt to buy East Bay medical debt on the debt market;

THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from discretionary funds up to \$250 per office shall be granted to RIP Medical Debt's *Strike Debt Bay Area Fundraiser*; and

THEREFORE BE IT FURTHER RESOLVED that the funds either be donated online at the campaign website or a check be made out to RIP Medical Debt and sent to: RIP Medical Debt, Strike Debt Bay Area 2019 Campaign, 80 Theodore Fremd Ave., Rye, NY 10580.





Berkeley City Council, District 5  
2180 Milvia Street, 5th Floor  
Berkeley, CA 94704  
(510) 981-7150  
shahn@cityofberkeley.info

CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Sophie Hahn, Kate Harrison, and Susan Wengraf  
Subject: Adopt a Resolution Opposing Anti-Abortion Bills Passed in 2019

RECOMMENDATION

Adopt a Resolution Opposing anti-abortion bills passed in 2019 in Alabama, Mississippi, Ohio, Georgia, Missouri, Kentucky, Arkansas, Iowa, and Utah, and reaffirming the City of Berkeley's commitment to the fundamental right for women to choose whether, when, and how often to bear children.

FINANCIAL IMPLICATIONS

None

BACKGROUND

On May 22, the Governor Kay Ivey of Alabama signed a bill banning abortions into law, as an open challenge not just to *Roe v. Wade*, but to women's' right to choose whether, when, and how often to bear children. This law is the most restrictive anti-abortion bill introduced to date, and is the latest of a number of recent anti-abortion bills passed in states across the country to restrict or outright ban abortion, and to challenge *Roe v. Wade*.

Ohio, Georgia, Missouri, and Arkansas adopted bans on abortion before 18 weeks, the standard set by *Roe*. It is expected that many if not all of these laws will be challenged in court. Similar bans in Mississippi, Kentucky, Utah, and Iowa have been signed into law, but halted from enforcement by the courts. 30 other similar bans have been introduced around the country, representing a renewed effort to challenge the constitutional and human right to choose when and if to have children.

In light of this attack on abortion access, the ACLU, NARAL, Emily's List, Planned Parenthood, and many other social justice and civil rights organizations have initiated plans to oppose these unconstitutional bans through legal challenges, demonstrations and rallies, and legislative advocacy campaigns. District Attorneys in certain counties

have stated their opposition to such bans and made statements that they would not seek to prosecute violations of the new laws.

The City of Berkeley has long been committed to a woman's right to reproductive health choices, including abortion, and most recently marked the 46th anniversary of the *Roe v. Wade* decision with a proclamation and reaffirmation of its commitment to the rights afforded to all women under *Roe v. Wade*. In the face of the successful passage of laws across the country seeking to curtail the basic human right of choosing whether, when, and how often to bear children, Berkeley must reaffirm its commitment to reproductive rights and reiterate its opposition to anti-abortion legislation in the strongest terms.

#### ENVIRONMENTAL SUSTAINABILITY

This recommendation supports Berkeley's environmental sustainability goals.

#### CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

#### ATTACHMENT

1. Resolution



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

OPPOSING ANTI-ABORTION BILLS PASSED IN 2019 IN ALABAMA, MISSISSIPPI, OHIO, GEORGIA, MISSOURI, KENTUCKY, ARKANSAS, IOWA, AND UTAH, AND REAFFIRMING THE CITY OF BERKELEY'S COMMITMENT TO THE FUNDAMENTAL RIGHT FOR WOMEN TO CHOOSE WHETHER, WHEN, AND HOW OFTEN TO BEAR CHILDREN

WHEREAS, on May 22, 2019 Governor Kay Ivey of Alabama signed a bill banning abortions into law, as an open challenge not just to *Roe v. Wade*, but to women's' right to choose whether, when, and how often to bear children; and

WHEREAS, this law is the most restrictive anti-abortion bill introduced to date, and is the latest of a number of recent anti-abortion bills passed in states across the country to restrict or outright ban abortion; and

WHEREAS, 30 other similar anti-abortion bans have been introduced around the country, and nine states have successfully passed such bans into laws, representing a renewed effort to challenge the constitutional and human right to choose when and if to have children; and

WHEREAS, the ACLU, NARAL, Emily's List, Planned Parenthood, and many other social justice and civil rights organizations have initiated plans to oppose these unconstitutional bans through legal challenges, demonstrations and rallies, and legislative advocacy campaigns; and

WHEREAS, the City of Berkeley has long been committed to a woman's right to reproductive health choices, including abortion, and most recently marked the 46th anniversary of the *Roe v. Wade* decision with a proclamation and reaffirmation of its commitment to the rights afforded to all women under *Roe v. Wade*.

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF BERKELEY that the City of Berkeley opposes any and all legislation that seeks to limit the fundamental human right of a woman to choose whether, when, and how often to bear children.

BE IT FURTHER RESOLVED that the City of Berkeley re-affirms its commitment to the basic human reproductive rights afforded to all women under *Roe v. Wade*.



**SOPHIE HAHN**

Berkeley City Council, District 5  
 2180 Milvia Street, 5th Floor  
 Berkeley, CA 94704  
 (510) 981-7150  
 shahn@cityofberkeley.info

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CONSENT CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
 From: Councilmember Sophie Hahn  
 Subject: Berkeley Art Center Artist Award Luncheon: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember, including \$250 from Councilmember Hahn, to Berkeley Art Center, for the Annual Artist Award Luncheon on Sunday, June 23, 2019 with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn and any other Councilmembers who would like to contribute.

FINANCIAL IMPLICATIONS

\$250 from the Councilmember's discretionary Council office budget.

BACKGROUND

Since 1967, Berkeley Art Center has been a home for contemporary artists and curators from throughout the Bay Area to respond to the issues of their time. Working in diverse media, they have inspired, provoked, challenged and amused viewers of every generation to think and see differently.

Berkeley Art Center, nestled in Live Oak Park, supports Bay Area artists to create exhibitions and programs that showcase local talent and explore the social and political concerns of our community. Berkeley Art Center hosts thousands of visitors each year through exhibitions, performances, lectures and workshops. Berkeley Art Center provides access to visual arts for art-lovers of all ages, from exhibitions by local artists to hands-on activities for families, with the mission to make Berkeley a stronger, more vibrant, and more interesting place.

Each year, the Berkeley Art Center Artist Award Luncheon honors a Bay Area artist and raises funds to support the Art Center's exhibitions and programs showcasing a diverse slate of local artists. At this year's Annual Artist Award Luncheon, Berkeley Art Center honors Jim Melchert, a maverick artist across disciplines. As a professor at UC Berkeley, Jim had tremendous influence on a generation of artists. Berkeley Art Center honors him for both his impressive career and his pivotal role as a mentor.

ENVIRONMENTAL SUSTAINABILITY

This recommendation supports Berkeley's environmental sustainability goals.

CONTACT PERSON

Councilmember Sophie Hahn, Council District 5, (510) 981-7150

ATTACHMENTS

1. Resolution
2. Berkeley Art Center Annual Artist Award Luncheon information page

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

AUTHORIZE THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Hahn has surplus funds in her office expenditure account; and

WHEREAS, a California non-profit tax-exempt corporation -- Berkeley Art Center -- will receive funds in the amount of \$250; and

WHEREAS, Berkeley Art Center programs provide thousands of Berkeley residents of all ages with access to the visual arts; and

WHEREAS, the Art Center Annual Artist Award Luncheon is an opportunity to celebrate local artists and promote the importance of the arts; and

WHEREAS, 2019 honoree Jim Melchert has had an impressive career across disciplines and has mentored a generation of younger Bay Area artists.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and councilmembers from their council office budget of up to \$250 per office shall be granted to Berkeley Art Center.



# Berkeley Art Center 2019 Artist Award Luncheon Honoring Jim Melchert

**Sunday, June 23**  
**11am to 2pm**

Proceeds support Berkeley Art Center's exhibitions and programs showcasing a diverse slate of local artists.

**Honorary Event Chair**

Ann Hatch

**Host Committee**

- Kim Anno
- Rena Bransten
- Trish Bransten
- Marna Braunstein Clark
- Squeak Carnwath & Gary Knecht
- Penny Cooper & Rena Rosenwasser
- Judy Dater\*
- Ed Gilbert
- Mildred Howard\*
- Charles & Naomie Kremer
- Lynn Landor
- Hung Liu\* & Jeff Kelley
- Dennis Markham & Modesto Covarrubias
- Kelsey Nicholson & Rusty Schwartz
- Josh Oliver & Azar Zavvar
- Gay Outlaw & Bob Schmidt
- Nancy Selvin
- Jeffrey Spahn & Paul Bontekoe
- John Toki
- Stephen Walrod & Lauren McIntosh
- Kriss Worthington

**Organizational Sponsors**

- BAMPFA
- Mechanics Bank

*\*Indicates 2018 Award recipient*

**ABOUT JIM MELCHERT**

Jim Melchert has been at the center of the Bay Area's artistic scene for decades. His process blurs the boundaries between conceptual art, ceramics and painting, and has cemented his reputation as a maverick across disciplines. As a professor at UC Berkeley, Jim had tremendous influence on a generation of artists. Berkeley Art Center honors him for both his impressive career and his pivotal role as a mentor.

Melchert served as head of the Visual Arts Program at the NEA, as well as director of the American Academy in Rome. His work has been exhibited at the Whitney Museum, LACMA, SFMOMA, BAMPFA, the Victoria and Albert Museum and Documenta 5, among many other institutions and galleries. He is represented by Anglim Gilbert in San Francisco, and his work can be found in private collections throughout the Bay Area and beyond.





Office of the City Manager

PUBLIC HEARING  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Phillip L. Harrington, Director, Department of Public Works  
Subject: FY 2020 Street Lighting Assessments

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt two Resolutions confirming the assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, approving the Engineer’s Reports, and authorizing the levying and collection of assessments in Fiscal Year 2020.

FISCAL IMPACTS OF RECOMMENDATION

On May 14, 2019, Council adopted Resolutions No. 68,878-N.S. and No. 68,879-N.S. declaring the City’s intent to levy and collect FY 2020 assessments for Berkeley Street Lighting Assessment District No. 1982-1 and Street Lighting Assessment District 2018, collectively referred to herein as the Districts; preliminarily approving the Engineer’s Reports for the Districts; and setting a public hearing for the June 11, 2019 Council Meeting.

The attached Resolutions confirm the assessments, approve the final Engineer’s Reports, and authorize the levying and collection of the assessment in Fiscal Year 2020. If the Resolutions are adopted, the revenue and expenditure budgets described below will be appropriated, and the final Assessor’s tax rolls will be prepared and filed with the County Auditor’s Office allowing the assessments to be included in the FY 2020 tax roll. After collection by the County the total amount of the assessment minus a county collection fee would be paid to the City of Berkeley and the revenue posted in the Street Light Assessment District Fund (Fund 142).

The City’s Street Lighting Program in FY 2020 has projected expenditures in the amount of \$2,523,459. FY 2020 revenue from proposed street lighting assessment is estimated at \$1,918,446 resulting in a shortfall of approximately \$605,013. This deficit can be covered by the projected available fund balance in the Street Light Assessment District Fund. A summary of FY 2020 revenue, expenditures and fund balances for the assessment districts is shown in the Table 1, below.

**Table 1:**

|                                               |                     |
|-----------------------------------------------|---------------------|
| <b>Estimated Beginning Balance (Fund 142)</b> | <b>\$ 860,733</b>   |
| <b>Street Lighting Program Expenditures</b>   | <b>\$ 2,523,459</b> |
| <b>Projected Assessments</b>                  |                     |
| Street Light Assessment District 1982-1       | \$ 1,394,780        |
| Street Light Assessment District 2018         | \$ 556,843          |
| County Collection Fee (1.7%)                  | \$ (33,178)         |
| <b>Projected Net Assessments</b>              | <b>\$ 1,918,446</b> |
| <b>Deficit</b>                                | <b>\$ (605,013)</b> |
| <b>Estimated End Balance (Fund 142)</b>       | <b>\$ 255,720</b>   |

Proposed assessment rates for the Districts are summarized in the following sections of this report.

### **Street Lighting Assessment District No. 1982-1**

The proposed rates for Assessment District 1982-1 are incorporated into the Engineer's Report (Attachment 3) and reflect no changes to assessment rates in FY 2020.

Accordingly, this action is exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XIII D, Sec. 5). Any increase or change in formula for the assessments would make the annual assessment subject to procedures and approval process of Proposition 218 (Government Code Section 53750-53754). Table 2, below details prior year and proposed FY 2020 assessment rates for this district:

**Table 2:**

| <b>Rate Category</b>          | <b>Assessment<br/>2018-2019</b> | <b>Proposed<br/>Assessment<br/>2019-2020</b> | <b>Unit</b>      |
|-------------------------------|---------------------------------|----------------------------------------------|------------------|
| Residential and Institutional | \$ 0.0108                       | \$ 0.0108                                    | BSF <sup>1</sup> |
| Industrial and Utility        | \$ 0.0216                       | \$ 0.0216                                    | BSF              |
| Commercial                    | \$ 0.0432                       | \$ 0.0432                                    | BSF              |

### **Street Lighting Assessment District 2018**

The assessment for the 2018 District is subject to an annual adjustment equal to the annual change in the Bay Area Consumer Price Index (CPI), up to a maximum of 3%

<sup>1</sup> Building Square Footage (BSF)



per year. The 4.5% CPI increase for the annual period ending on December 2018 exceeds the 3% threshold, therefore the proposed annual adjustment for the 2018 Assessment in FY 2020 is 3%. This adjustment is incorporated into the Engineer's Report (Attachment 4). As authorized by voters this adjustment may be calculated based upon the sum of the 2018 Assessment and the 1982 Assessment. The inclusion of the 1982 Assessment in the adjustment calculation for the 2018 Assessment results in effective rate increases of 10 to 11 percent depending on rate category. These rate increases and the methodology used in their calculation are in accordance with the voter approved measure; therefore the proposed adjustments are exempt from the notice, protest, and hearing requirements of State Proposition 218 as set forth in Government Code Section 53753.5 (Article XIII D, Sec. 5). Table 3, below, details prior year and proposed FY 2020 assessment rates for this district. A detailed calculation of the annual adjustment and the corresponding rate increases are included in the Engineer's Report.

**Table 3:**

| <b>Assessment Rate Schedule</b> |                                 |                                              |             |
|---------------------------------|---------------------------------|----------------------------------------------|-------------|
| <b>Rate Category</b>            | <b>Assessment<br/>2018-2019</b> | <b>Proposed<br/>Assessment<br/>2019-2020</b> | <b>Unit</b> |
| <b>Residential</b>              |                                 |                                              |             |
| Single Family                   | \$ 11.17                        | \$ 12.33                                     | parcel      |
| Multi-Family<5 units            | \$ 8.94                         | \$ 9.86                                      | unit        |
| Multi-Family 5 or more units    | \$ 6.70                         | \$ 7.40                                      | unit        |
| Condominium                     | \$ 8.94                         | \$ 9.86                                      | parcel      |
| Mobile Home                     | \$ 5.59                         | \$ 6.16                                      | unit        |
| Multiple SFR on parcel          | \$ 11.17                        | \$ 12.33                                     | unit        |
| <b>Non-Residential</b>          |                                 |                                              |             |
| General Commercial              | \$ 167.55                       | \$ 184.88                                    | acre        |
| Industrial / Warehouse          | \$ 16.76                        | \$ 18.49                                     | acre        |
| Auto Repair                     | \$ 111.70                       | \$ 123.25                                    | acre        |
| Hotel / Motel / Boarding        | \$ 111.70                       | \$ 123.25                                    | acre        |
| Hospital                        | \$ 69.81                        | \$ 77.03                                     | acre        |
| Retirement Home                 | \$ 13.96                        | \$ 15.41                                     | acre        |
| School / Day Care               | \$ 25.13                        | \$ 27.73                                     | acre        |
| Medical / Dental / Vet          | \$ 139.63                       | \$ 154.07                                    | acre        |
| Church                          | \$ 8.38                         | \$ 9.24                                      | acre        |
| Mortuary                        | \$ 2.79                         | \$ 3.08                                      | acre        |
| Recreational                    | \$ 27.93                        | \$ 30.81                                     | acre        |
| Parking / Transportation        | \$ 55.85                        | \$ 61.63                                     | acre        |
| Mini Storage                    | \$ 8.38                         | \$ 9.24                                      | acre        |
| Office                          | \$ 41.89                        | \$ 46.22                                     | acre        |

|                                 |                     |           |      |
|---------------------------------|---------------------|-----------|------|
| Bank                            | \$ 139.63           | \$ 154.07 | acre |
| Park / Open Space / Agriculture | \$ 0.56             | \$ 0.62   | acre |
| Vacant                          | <i>Not assessed</i> |           |      |

**CURRENT SITUATION AND ITS EFFECTS**

Historically, the Street Lighting Assessment District 1982-1 rates have failed to generate sufficient revenue to sustain operations of the City’s Street Lighting Program (Program). For a period beginning in FY 2006 the General Fund (011) subsidized the City’s Street Light Assessment District Fund (142), but the subsidy was discontinued as part of a City-wide budget balancing measure in FY 2018, when the General Fund faced a deficit. Subsequently, in FY 2018 the City used available Street Light Assessment District Fund balance to cover the operating deficit of the Program. To establish financial sustainability for the Program and to avoid significant reductions in service levels in the future, the City moved forward with the formation of a new district in FY 2018, Street Lighting Assessment District 2018. This district was formed separately from the 1982 District leaving that district’s structure and rates in place. Assessments for the 2018 District were first levied in FY 2019.

Allowable annual adjustments of the 2018 District assessment rates are expected to raise revenues over the coming years. Until these rates increase to a level which allows total revenues to fully cover operating expenses, the Street Light Assessment District Fund will continue to incur a deficit, and will require continued use of fund balance or transfers in from other eligible funds to offset operating deficits.

**BACKGROUND**

The Berkeley Street Lighting Assessment District No. 1982-1 was established under the Landscaping and Lighting Act of 1972 (Streets and Highway Code Section 22620-22631) on July 27, 1982 (Resolution No. 51,449-N.S.)<sup>2</sup>. The Street Lighting Assessment District 2018 was established under the same Act on June 12, 2018 (Resolution No. 68,482-N.S.). The Act requires the City Council to hold a public hearing each year to consider adoption of an annual budget and approve changes to the Engineer’s Report. At this hearing owners of assessed properties within the district are allowed to make an oral or written protest against the annual levy.

During the course of, or upon conclusion of the public hearing, City Council may order changes in any of the matters provided in the Engineer’s Reports, including changes in improvements; zones within the assessment district; the proposed district diagram; or

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<sup>2</sup> State of California legislation (Streets & Highways §22500) allows local governmental agencies to form Landscape & Lighting Maintenance Districts. A 1972 Act Landscaping and Lighting District is a flexible tool used by local government agencies to pay for landscaping, lighting and other improvements and services in public areas. It is based on the concept of assessing only those properties that benefit from improvements financed, either directly, or indirectly through increased property values.  
<http://www.californiataxdata.com/pdf/1972LLact.pdf>

the proposed assessment, as long as any proposed changes are less than the proposed annual levy. With the incorporation of any changes made by Council to the Engineer's Report, it is then adopted upon supporting vote by Council confirming the diagrams, assessments, and levying assessments for the coming Fiscal Year.

The City's Engineering Division has filed the FY 2020 Engineer's Reports for the assessment districts with the City Clerk. Copies of the Engineer's Reports with FY 2020 assessments will be on file as of April 26, 2019 at the main branch of the Berkeley Public Library and at the City Clerk's Office.

The improvements to be made in these assessment districts are generally described as maintenance and/or servicing of existing and future public lighting facilities including: traffic signals; installation and construction of curbs, gutters, walls, sidewalks or paving; water, irrigation, or drainage related to operation of the public lighting facilities. The improvements and services provided support the Strategic Plan goals of creating a resilient, safe, connected, and prepared city and providing state-of-the-art, well-maintained infrastructure, amenities, and facilities.

#### ENVIRONMENTAL SUSTAINABILITY

The City exclusively uses LED (light emitting diode) street lighting. LED lights provide environmental benefits by reducing the level of greenhouse gases emitted; reducing level of toxic materials disposed; maximization of energy and energy cost savings; achieving the City's illumination standards; and minimizing administration costs and staff time for street light maintenance.

#### RATIONALE FOR RECOMMENDATION

Failure to conduct a public hearing and adopt the Resolutions would result in non-compliance of the requirements set forth in the Landscaping and Lighting Act of 1972 thus preventing the City from levying assessments in FY 2020. The District assessments are needed to establish financial sustainability for the Program and to avoid significant reductions in service

#### CONTACT PERSON

Phillip L. Harrington, Director, Department of Public Works, (510) 981-6303  
Nisha Patel, Manager of Engineering/City Engineer, (510) 981-6406  
Ricardo Salcedo, Assistant Civil Engineer, Public Works, (510) 981-6407

#### Attachments:

- 1: Resolution – Levy and Collection – Street Lighting Assessment District 1982-1
- 2: Resolution – Levy and Collection – Street Lighting Assessment District 2018
- 3: Engineer's Report - Street Lighting Assessment District 1982-1
- 4: Engineer's Report - Street Lighting Assessment District 2018
5. Public Hearing Notice

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

LEVY AND COLLECTION OF FY 2020 ASSESSMENTS FOR STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 68,878-N.S. declaring the City's intent to levy and collect assessments for FY 2020, approving the preliminary Engineer's Report, dated April 2019, for the Berkeley Lighting Assessment District 1982-1, and setting a public hearing for June 11, 2019; at a regular Council Meeting conducted in the Berkeley Unified School District Board Room located at 1231 Addison Street; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, June 11, 2019 at 1231 Addison Street at the regular City Council meeting; and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the same rate as was levied in FY 2019 and the assessment is in compliance with the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the final Engineer's Report dated April 2019 and authorizes the levy and collection of assessments within Berkeley Street Lighting Assessment District No. 1982-1 for FY 2020. The area of Land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that improvements to be made in this assessment district are generally described as maintenance or servicing, or both, of existing and future public lighting facilities, including, but not limited to, traffic signals and the installation and construction of public lighting or the maintenance or servicing thereof, including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk or paving, or water or irrigation, drainage or operation of the public lighting facilities.

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

LEVY AND COLLECTION OF FY 2020 ASSESSMENTS FOR STREET LIGHTING  
ASSESSMENT DISTRICT 2018

WHEREAS, the Council of the City of Berkeley adopted Resolution No. 68,879-N.S. declaring the City's intent to levy and collect assessments for FY 2020, approving the preliminary Engineer's Report, dated April 2019, for the Street Lighting Assessment District 2018, and setting a public hearing for June 11, 2019; at a regular Council Meeting conducted in the Berkeley Unified School District Board Room located at 1231 Addison Street; and

WHEREAS, the City Clerk published notice of the public hearing 10 days prior to the public hearing in accordance with Streets and Highway Code Sections 22625, 22626, 22552, and 22553 and Government Code Section 6061 in a newspaper with general circulation; and

WHEREAS, a public hearing was held on Tuesday, June 11, 2019 at 1231 Addison Street at the regular City Council meeting; and all interested persons were afforded the opportunity to hear and be heard or file a written protest with the Clerk; and

WHEREAS, the Council considered all public comments received against the levy of an annual assessment at the proposed assessment rate of TWELVE DOLLARS AND THIRTY-THREE CENTS (\$12.33) per single-family equivalent benefit unit; and

WHEREAS, the proposed annual assessment adjustment is in accordance with formulas established when the assessment district was formed and the assessment is in compliance with the provisions of Proposition 2018 (Article XIII D of the California Constitution) and the Landscape and Lighting Act of 1972.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the final Engineer's Report dated April 2019 and authorizes the levy and collection of assessments within Street Lighting Assessment District 2018 for FY 2020. The area of Land to be assessed is located in the City of Berkeley, Alameda County.

BE IT FURTHER RESOLVED that improvements to be made in this assessment district are generally described as maintenance or servicing, or both, of existing and future public lighting facilities, including, but not limited to, traffic signals and the installation and construction of public lighting or the maintenance or servicing thereof, including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk or paving, or water or irrigation, drainage or operation of the public lighting facilities.

CITY OF BERKELEY

# **STREET LIGHTING ASSESSMENT DISTRICT 1982-1**

## **ENGINEER'S REPORT**

on the  
Levy of an Assessment  
for  
Fiscal Year 2020

April 2019

Prepared by

RICARDO SALCEDO, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

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**BACKGROUND**

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By its Resolution 51,230 N.S., adopted April 6, 1982, the Berkeley City Council initiated proceedings under the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled “Landscaping and Lighting Act of 1972”. The required public hearing was held on July 20, 1982, at which time the Council ordered the improvements and the formation of the assessment district, and confirmed the diagram and assessment. The district so formed was designated the “City of Berkeley Street Lighting Assessment District 1982-1”. Assessments were levied for the 1983 through 2019 fiscal years.

This report was prepared and filed pursuant to Division 15, Part 2, of the California Streets and Highway Code Section 2250, and is exempt from Government Code Section 53753 since the proposed assessment for FY 2020 will not be increased.

**PLANS AND SPECIFICATIONS**

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The plans and specifications for this assessment district were prepared and filed with the Engineer’s Report for the 1983 fiscal year, which plans and specifications are incorporated herein by this reference thereto.

**METHODOLOGY**

---

The benefit to individual parcels within the Assessment District was established in 1982 based on the median light intensity a parcel receives. Parcel’s Land Use Code (LUC) is used to categorize the parcels. The assessment is calculated by multiplying the building square footage on the parcel times the rate of its category. The rate structure has three categories: 1) Residential and Institutional, 2) Industrial, 3) Commercial. An industrial area has twice the median light intensity of a residential area and a commercial area has four times the median light intensity; therefore, the rates are two and four times higher, respectively, than the residential rate. The rates are:

|                               |                                  |
|-------------------------------|----------------------------------|
| Residential and Institutional | \$0.0108/Building Square Footage |
| Industrial and Utility        | \$0.0216/Building Square Footage |
| Commercial                    | \$0.0432/Building Square Footage |

**ESTIMATE OF COSTS**

---

The improvements to be made in this assessment district are generally described as the maintenance or servicing, or both, of existing and future public lighting facilities, including, but not limited to, traffic signals and the installation and construction of public lighting or the maintenance or servicing thereof, including but not limited to grading, clearing, removal of debris, installation and construction of curbs, gutters, walls, sidewalk or paving, or water or irrigation, drainage or electrical facilities.



A summary budget for fiscal year 2020 for the maintenance of the improvements is provided below. A more detailed breakdown of costs is included as an appendix.

**Table 1- FY 2020 Budget Summary**

|                                                                   |                     |
|-------------------------------------------------------------------|---------------------|
| <b>Estimated Beginning Balance<br/>Street Lighting Fund (142)</b> | <b>\$ 860,733</b>   |
| <b>Costs</b>                                                      |                     |
| <b>Personnel Costs</b>                                            | <b>\$ 923,594</b>   |
| <b>Non-Personnel Costs</b>                                        |                     |
| <i>Supplies, etc...</i>                                           | \$ 99,211           |
| <i>Debt Service</i>                                               | \$ 370,451          |
| <i>PG&amp;E Electric Costs</i>                                    | \$ 350,647          |
| <i>Infrastructure/Streets</i>                                     | \$ 0                |
| <i>Deferred Capital Maintenance</i>                               | \$ 416,608          |
| <i>Indirect Costs</i>                                             | \$ 112,971          |
| <i>Operating Transfer Out</i>                                     | \$ 12,120           |
| <i>Internal Services</i>                                          | \$ 237,857          |
| <b>Subtotal Non-Personnel Costs</b>                               | <b>\$ 1,599,865</b> |
| <b>Total Costs</b>                                                | <b>\$ 2,523,459</b> |
| <b>Assessments</b>                                                |                     |
| Street Light Assessment District 1982-1                           | \$ 1,394,780        |
| Street Light Assessment District 2018                             | \$ 556,843          |
| County Collection Fee (1.7%)                                      | \$ (33,178)         |
| <b>Net Assessment</b>                                             | <b>\$ 1,918,446</b> |
| <b>Deficit</b>                                                    | <b>\$ (605,013)</b> |
| <b>Estimated End Balance<br/>Street Lighting Fund (142)</b>       | <b>\$ 255,720</b>   |

## DIAGRAM

The diagram for this assessment district was prepared and filed with the Engineer's Report for the 1983 fiscal year.

**ASSESSMENT**

---

Except as described below, the assessments to be made against the assessable lots and parcels of land within this assessment district are contained in the "2020 Assessment Roll" for this district, which roll is filed herewith and incorporated herein by this reference thereto.

Said assessment roll filed herewith is based on data contained in the City's 2019 Library Tax tape and the County Assessor's 2019 maps. In the event that data contained in the 2019 Library Tax tape and 2019 maps, when issued, conflict therewith, assessments to be made against the affected parcels for this 2020 Fiscal Year shall be based upon the revised data contained in said 2020 tape and 2020 maps.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Ricardo Salcedo, RCE 83969  
Engineer of Work

Filed in the office of the City Clerk of the City of Berkeley, Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019

\_\_\_\_\_  
Mark Numainville  
City Clerk

Filed in the office of the County Auditor-Controller of Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Melissa Wilk  
County Auditor-Controller

DETAIL OF STREET LIGHTING COSTS IN FY 2020

|                                     | Personnel           | Supplies, etc       | Debt Service        | PGE Electric        | Infrastructure/<br>Streets | Deferred<br>Capital/<br>Maintenance | Indirect Costs      | Operating<br>Transfer Out | Internal<br>Services | TOTALS                |
|-------------------------------------|---------------------|---------------------|---------------------|---------------------|----------------------------|-------------------------------------|---------------------|---------------------------|----------------------|-----------------------|
| Customer Service - 311              |                     |                     |                     |                     |                            |                                     |                     |                           | \$ 30,483.00         | \$ 30,483.00          |
| Revenue Collection                  | \$ 18,654.00        |                     |                     |                     |                            |                                     | \$ 2,205.00         |                           |                      | \$ 20,859.00          |
| Financial Admin<br>Services         |                     |                     |                     |                     |                            |                                     |                     | \$ 364.00                 |                      | \$ 364.00             |
| Corp Yard<br>Administration         |                     |                     |                     |                     |                            |                                     |                     | \$ 1,091.00               |                      | \$ 1,091.00           |
| General Engineering                 |                     |                     |                     |                     |                            |                                     |                     | \$ 121.00                 |                      | \$ 121.00             |
| Communication System<br>Maintenance |                     | \$ 1,000.00         |                     |                     |                            |                                     |                     |                           |                      | \$ 1,000.00           |
| Street Lighting<br>Maintenance      | \$904,940.00        | \$ 85,471.00        | \$370,451.00        | \$342,493.00        |                            | \$ 416,608.00                       | \$110,766.00        | \$ 10,544.00              | \$191,238.00         | \$2,432,511.00        |
| Traffic Signal<br>Maintenance       |                     |                     |                     |                     |                            |                                     |                     |                           |                      | \$ -                  |
| Corp Yard Maintenance               |                     | \$ 12,740.00        |                     | \$ 8,154.00         |                            |                                     |                     |                           | \$ 16,136.00         | \$ 37,030.00          |
| <b>TOTALS</b>                       | <b>\$923,594.00</b> | <b>\$ 99,211.00</b> | <b>\$370,451.00</b> | <b>\$350,647.00</b> | <b>\$ -</b>                | <b>\$ 416,608.00</b>                | <b>\$112,971.00</b> | <b>\$ 12,120.00</b>       | <b>\$237,857.00</b>  | <b>\$2,523,459.00</b> |

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1**

**FY 2020 Assessment Roll  
Listed by  
Assessor's Parcel Number**

April 2019

Engineer's Report with Full Listing of Assessments by Assessor's Parcel Number is available at the following locations on or after April 26, 2019:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4th Floor, Berkeley, CA 94704

Prepared by

RICARDO SALCEDO, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 1982-1**

**FY 2020 Assessment Roll  
Listed by  
Street Address**

April 2019

Engineer's Report with Full Assessments Roll by Street Address is available at the following locations on or after April 26, 2019:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4<sup>th</sup> Floor, Berkeley, CA 94704

Prepared by

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DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

**CITY OF BERKELEY**  
**ASSESSMENT DISTRICT NO. 1982-1**  
**FY 2020 ASSESSMENT SUMMARY**

| Type         | Rate   | Assessment            |
|--------------|--------|-----------------------|
| Residential* | 0.0108 | \$729,633.54          |
| Commercial   | 0.0432 | \$501,135.00          |
| Industrial** | 0.0216 | \$164,011.58          |
| <b>Total</b> |        | <b>\$1,394,780.12</b> |

- \* Includes Institutional and No Rate
- \*\* includes Utility

CITY OF BERKELEY

# **STREET LIGHTING ASSESSMENT DISTRICT 2018**

## **ENGINEER'S REPORT**

on the  
Levy of an Assessment  
for  
Fiscal Year 2020

April 2019

Prepared by

RICARDO SALCEDO, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

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## **INTRODUCTION**

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The City of Berkeley (“City”) provides maintenance and servicing of certain publicly-owned streetlights throughout the City. In order to fund the installation, maintenance and operation (the “Services”) of these improvements (“Improvements”), the City formed a city-wide streetlight assessment district in 1982. The district so formed was designated the “City of Berkeley Street Lighting Assessment District 1982-1” (SLAD 1982-1) and assessments have been levied for the 1983 through 2019 fiscal years.

The Street Lighting Assessment District 1982-1 rates have never been increased above their initial rates and historically have failed to generate sufficient revenue to sustain operations of the City’s Street Lighting Program (Program). For a period beginning in FY 2006 the General Fund (011) subsidized the City’s Street Lighting Fund (142), but the subsidy was discontinued as part of a City-wide budget balancing measure in FY 2018, when the General Fund faced a deficit. Subsequently, in FY 2018 the City used available Street Lighting Fund balance to cover the operating deficit of the Program.

To establish financial sustainability for the Streetlight Fund and avoid significant reductions in service levels, the City moved forward with the formation a new district, Street Lighting Assessment District 2018 (“SLAD 2018” or “District”). The District would be formed separately and leave the 1982 assessment structure in place. By Resolution 68,333 N.S., adopted February 13, 2018, the Berkeley City Council initiated proceedings for the formation of the District pursuant to the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled “Landscaping and Lighting Act of 1972” (Act). Balloting procedures in accordance with Proposition 218 (Articles XIII C and XIII D of the California Constitution) and pertinent statutes, were adopted by Resolution 68,376-N.S. Following tabulation of returned ballots and confirmation of voter approval, Council adopted Resolution 68,482-N.S., dated June 12, 2018, accepting the ballot tabulation results, formally establishing the District, and ordering that assessments be levied for Fiscal Year (FY) 2019.

## **PLANS AND SPECIFICATIONS**

The work and Improvements proposed to be undertaken by the City and the cost paid from the levy of the annual assessment provide special benefit to assessor parcels within the District. Consistent with the Act, the Improvements are generally described as follows:

- The installation, maintenance, and servicing of local streetlights in close proximity to certain lots and parcels which provide a direct special benefit to such lots or parcels.
- The installation, maintenance, and servicing of peripheral streetlight structures which provide a special benefit to all the assessable parcels within the District whether or not such parcels are in close proximity to such lighting.
- The installation or construction of public lighting facilities, or the acquisition of any new improvements.

Plans and Specifications for the Improvements for the District are voluminous and are not bound in this Report but by this reference are incorporated and made a part of this Report. The Plans and Specifications are on file in the office of the Public Works Director where they are available for public inspection.

Article XIII D of the California Constitution defines "maintenance and servicing expenses" as, "the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care and supervision necessary to properly operate and maintain a permanent public improvement". The Improvement funding includes, but is not limited to, the removal, repair, replacement or relocation of light standards, poles, bulbs, fixtures and appurtenances, electrical energy, supplies, engineering and incidental costs relating to the maintenance and servicing of the local lighting improvements benefiting the parcels within the District.

The Improvements to be maintained and serviced within the District are to be part of the local streetlight system of the City of Berkeley that confers special benefit to the District's parcels. The specific location of local streetlight Improvements within the City can be found in the Streetlight Condition Assessment by Tanko Lighting, which is on file in the office of the Director of Public Works, where it is available for public inspection.

**FISCAL YEAR 2020 BUDGET**

A summary budget for FY 2020 for the maintenance of the Improvements is provided below as Table 1.

Table 1- FY 2020 Budget Summary

|                                                                   |           |                  |
|-------------------------------------------------------------------|-----------|------------------|
| <b>Estimated Beginning Balance<br/>Street Lighting Fund (142)</b> | <b>\$</b> | <b>860,733</b>   |
| <b>Costs</b>                                                      |           |                  |
| <b>Personnel Costs</b>                                            | <b>\$</b> | <b>923,594</b>   |
| <b>Non-Personnel Costs</b>                                        |           |                  |
| <i>Supplies, etc...</i>                                           | \$        | 99,211           |
| <i>Debt Service</i>                                               | \$        | 370,451          |
| <i>PG&amp;E Electric Costs</i>                                    | \$        | 350,647          |
| <i>Infrastructure/Streets</i>                                     | \$        | 0                |
| <i>Deferred Capital Maintenance</i>                               | \$        | 416,608          |
| <i>Indirect Costs</i>                                             | \$        | 112,971          |
| <i>Operating Transfer Out</i>                                     | \$        | 12,120           |
| <i>Internal Services</i>                                          | \$        | 237,857          |
| <b>Subtotal Non-Personnel Costs</b>                               | <b>\$</b> | <b>1,599,865</b> |
| <b>Total Costs</b>                                                | <b>\$</b> | <b>2,523,459</b> |
| <b>Assessments</b>                                                |           |                  |
| Street Light Assessment District 1982-1                           | \$        | 1,394,780        |
| Street Light Assessment District 2018                             | \$        | 556,843          |
| County Collection Fee (1.7%)                                      | \$        | (33,178)         |
| <b>Net Assessment</b>                                             | <b>\$</b> | <b>1,918,446</b> |
| <b>Deficit</b>                                                    | <b>\$</b> | <b>(605,013)</b> |
| <b>Estimated End Balance<br/>Street Lighting Fund (142)</b>       | <b>\$</b> | <b>255,720</b>   |

## **METHOD OF ASSESSMENT**

---

This section of the Engineer's Report includes an explanation of the benefits derived from the installation, maintenance and servicing of the Improvements throughout the District and the Assessment methodology used to apportion the total Assessment to properties within the District.

The District consists of all assessor parcels within the boundaries as defined by the Assessment Diagram and the parcels identified by the Assessor Parcel Numbers listed with the levy roll included with this Report. The parcel list includes all assessable privately and publicly owned parcels within the boundaries. The method used for apportioning the Assessment is based on the proportional special benefits to be derived by the properties in the District over and above general benefits conferred on real property or to the public at large. The apportionment of special benefit is a two-step process: the first step is to identify the types of special benefit arising from the Improvements and the second step is to allocate the Assessments to property based on the estimated relative special benefit for each type of property.

## **DISCUSSION OF BENEFIT**

In summary, the Assessments can only be levied based on the special benefit to property. This benefit is received by property over and above any general benefits. Moreover, such benefit is not based on any one property owner's use of the Improvements or a property owner's specific demographic status. With reference to the requirements for Assessments, Section 22573 of the Act states:

*The net amount to be assessed upon lands within an assessment district may be apportioned by any formula or method which fairly distributes the net amount among all assessable lots or parcels in proportion to the estimated benefits to be received by each such lot or parcel from the improvements.*

Proposition 218, as codified in Article XIII D of the California Constitution, has confirmed that Assessments must be based on the special benefit to property:

*No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel.*

## **SPECIAL BENEFIT**

Streetlighting is an optional improvement, not required by state or federal law, that is an enhancement over and above requisite infrastructure, and thus is a special benefit. The majority of the benefits of the streetlights are received by the benefited property, with a small portion of the benefits received by the general public on major streets

only. This portion received by the general public is captured and quantified in the following section.

### **Improved Visibility and Safety**

Well maintained, effective street lighting provides special benefit to proximate parcels, within range of the light, because it allows for safer and improved use of the property in the evenings, early morning, and at night. Street lighting provides special benefit because it increases neighborhood safety and, at least indirectly, reduces the likelihood of crime on the proximate parcels. Over time, the Improvements continue to confer a particular and distinct special benefit upon parcels within the District because of the nature of the Improvements. The proper maintenance of the streetlights and appurtenant facilities increases visibility and local human presence and, in many situations, helps reduce property-related crimes, especially vandalism, against assessed properties in the District.

### **Improved Access, Navigation, and Traffic Safety**

Well maintained, effective street lighting enhances ingress, egress and accessibility of all forms to the assessed parcels in the evening, early morning, and at night by increasing visibility. Improved visibility also helps prevent local automobile, bicycle, and pedestrian traffic accidents related to the assessed parcels. This benefit includes a reduction in accidents during non-daylight hours.

### **Improved Community Character and Vitality**

Well maintained, effective street lighting promotes evening and nighttime social interaction of residents and customers of businesses and industry. This creates a positive atmosphere and enhanced community image in the evening and at night for the assessed parcels.

All of the above-mentioned items also contribute to a specific enhancement to each of the parcels within the District. The proximate street lights make each parcel safer, more visible, more accessible, more useful, more valuable and more desirable; and this further strengthens the basis of these Assessments.

## **GENERAL VERSUS SPECIAL BENEFIT**

The proceeds from the Assessments are used to fund the described Improvements and increased levels of maintenance to the other City facilities that serve and benefit the properties in the District. In absence of the Street Lighting Assessment District 2018, such Improvements would not be properly maintained. Therefore, the District's purpose is to ensure that the necessary and beneficial public facilities for property in the District are properly maintained, operated and repaired over time. The Assessments will ensure that street lighting and associated improvements within and adjacent to the District are functional, well maintained and effective. These public resources directly benefit the property in the District and will confer distinct and special benefits to the properties within the District.

The Improvements and Services are specifically designed, located and created to provide additional and improved resources for property inside the District and not the public at large although the Improvements maintained by the Services may be available to the general public. Other properties that are outside the District do not enjoy the unique proximity and other special benefit factors described previously. These Improvements and Services are of special benefit to properties located within the District because they provide a direct advantage to properties in the District that would not be provided in the absence of the Assessments. Any general benefits to surrounding properties outside of the Assessment District, if any, are collateral and conferred concomitantly.

### **QUANTIFICATION OF GENERAL BENEFIT**

Although the analysis used to support these assessments concludes that the benefits are solely special, as described above, consideration is made for the suggestion that a portion of the benefits are general. General benefits cannot be funded by these assessments. The funding for general benefits must come from other sources.

The maintenance and servicing of these Improvements is also partially funded, directly and indirectly, from other sources, including the City of Berkeley, Alameda County, and the State of California. This funding comes in the form of grants, development fees, special programs, and general funds, as well as direct maintenance and servicing of facilities (e.g. curbs, gutters, streets, drainage systems, etc.).

A detailed calculation, separation, and quantification of general benefits and of the current benefit contribution from the City is included in the Engineer's Report for Fiscal Year 2018-19. The 2018-19 Engineer's Report concludes :the total general benefit is liberally quantified at 3.0%, which is more than offset by the total non-assessment contribution toward general benefit of 28%. In other words, funding from other sources more than compensates for general benefits received by the properties within the Assessment District.

### **METHOD OF ASSESSMENT**

The method used for apportioning the Assessment is based on the proportional special benefits to be received by the properties in the District over and above general benefits conferred on real property or to the public at large. The special benefit factors considered are as follows:

- Improved visibility and safety
- Improved access, navigation and traffic safety
- Improved community character and vitality

Traffic generated to and from a particular parcel is used as the basis to quantify the special benefits received by each parcel. This is used because the amount of traffic generated by a parcel is directly proportional to the relative quantity of benefits it receives. The calculations, described in detail in the Fiscal Year 2018-2019 Engineer's Report, arrive at single-family equivalent ("SFE") rates for each category of parcel. The

SFE rate for each rate category is a relative measure of the special benefit received by each parcel category. It is based on average daily trips<sup>1</sup> adjusted by a darkness factor which accounts for non-operational hours of non-residential parcels. Each rate category is assigned an SFE rate using the following formula.

$$\frac{ADT \times \text{Darkness Factor}}{ADT \text{ for SFR}} = \text{SFE Rate}$$

Where:

- ADT = Average Daily Trips for each parcel category
- ADT for SFR = ADT for single-family residential, which is used as a baseline figure for SFE rate
- SFE Rate = SFEs per unit shown (parcel, [living] units, or acre)

The results of these calculations are summarized in Table 2.

**Table 2 – Single-Family Equivalent Rates**

| Rate Category                   | ADT  | Darkness Factor | Adj ADT | SFE Rate | Unit                |
|---------------------------------|------|-----------------|---------|----------|---------------------|
| <b>Residential</b>              |      |                 |         |          |                     |
| Single Family                   | 10   | 1               | 10      | 1.00     | parcel              |
| Multi-Family<5 units            | 8    | 1               | 8       | 0.80     | unit                |
| Multi-Family 5 or more units    | 6    | 1               | 6       | 0.60     | unit                |
| Condominium                     | 8    | 1               | 8       | 0.80     | parcel              |
| Mobile Home                     | 5    | 1               | 5       | 0.50     | unit                |
| Multiple SFR on parcel          | 10   | 1               | 10      | 1.00     | unit                |
| <b>Non-Residential</b>          |      |                 |         |          |                     |
| General Commercial              | 600  | 0.25            | 150     | 15.00    | acre                |
| Industrial / Warehouse          | 60   | 0.25            | 15      | 1.50     | acre                |
| Auto Repair                     | 400  | 0.25            | 100     | 10.00    | acre                |
| Hotel / Motel / Boarding        | 200  | 0.5             | 100     | 10.00    | acre                |
| Hospital                        | 250  | 0.25            | 62.5    | 6.25     | acre                |
| Retirement Home                 | 50   | 0.25            | 12.5    | 1.25     | acre                |
| School / Day Care               | 90   | 0.25            | 22.5    | 2.25     | acre                |
| Medical / Dental / Vet          | 500  | 0.25            | 125     | 12.50    | acre                |
| Church                          | 30   | 0.25            | 7.5     | 0.75     | acre                |
| Mortuary                        | 10   | 0.25            | 2.5     | 0.25     | acre                |
| Recreational                    | 100  | 0.25            | 25      | 2.50     | acre                |
| Parking / Transportation        | 200  | 0.25            | 50      | 5.00     | acre                |
| Mini Storage                    | 30   | 0.25            | 7.5     | 0.75     | acre                |
| Office                          | 300  | 0.125           | 37.5    | 3.75     | acre                |
| Bank                            | 1000 | 0.125           | 125     | 12.50    | acre                |
| Park / Open Space / Agriculture | 2    | 0.25            | 0.5     | 0.05     | acre                |
| Vacant                          |      |                 |         |          | <i>not assessed</i> |

<sup>1</sup> Average trip generation rates used for Assessment calculation are based on trip generation rates published by the San Diego Association of Governments.

The SFE rates derived in Table 2 are then applied to each individual parcel according to its rate category and the number of units or the lot acreage as applicable. For large, multi-family parcels with more than 100 units, the trip generation tends to increase less with additional units because of the density and number of residents who use public transportation or non-motorized modes of transportation. There, the units in excess of 100 are computed at one-tenth the rate. Similarly, with non-residential parcels in excess of five acres, the trip generation tends to increase less with size. There, acres (or portions thereof) are also computed at one-tenth the rate. A summary of these calculations is shown in Table 3.

**Table 3 – Summary of SFEs by Category**

| Rate Category                    | SFE Rate | No. of Parcels | Parcels or Units or Acres | SFEs              |
|----------------------------------|----------|----------------|---------------------------|-------------------|
| <b>Residential</b>               |          |                |                           |                   |
| Single Family                    | 1.00     | 17,509         | 17,509                    | 17,509.000        |
| Multi-Family<5 units             | 0.80     | 3,412          | 9,040                     | 7,232.000         |
| Multi-Family 5 or more units*    | 0.60     | 1,445          | 23,969                    | 12,200.880        |
| Condominium                      | 0.80     | 2,415          | 2,415                     | 1,932.000         |
| Mobile Home                      | 0.50     | 3              | 3                         | 1.500             |
| Multiple SFR on parcel           | 1.00     | 669            | 1,406                     | 1,406.000         |
| <b>Non-Residential</b>           |          |                |                           |                   |
| General Commercial*              | 15.00    | 784            | 184.45                    | 2,766.750         |
| Industrial / Warehouse*          | 1.50     | 397            | 257.27                    | 345.621           |
| Auto Repair                      | 10.00    | 121            | 28.65                     | 286.500           |
| Hotel / Motel / Boarding         | 10.00    | 49             | 17.79                     | 177.900           |
| Hospital                         | 6.25     | 9              | 13.15                     | 82.188            |
| Retirement Home                  | 1.25     | 1              | 0.29                      | 0.363             |
| School / Day Care*               | 2.25     | 107            | 180.78                    | 331.790           |
| Medical / Dental / Vet           | 12.50    | 105            | 15.75                     | 196.875           |
| Church                           | 0.75     | 106            | 41.55                     | 31.163            |
| Mortuary                         | 0.25     | 1              | 0.11                      | 0.028             |
| Recreational*                    | 2.50     | 31             | 54.92                     | 81.455            |
| Parking / Transportation         | 5.00     | 123            | 44.11                     | 220.550           |
| Mini Storage                     | 0.75     | 8              | 7.51                      | 5.633             |
| Office*                          | 3.75     | 227            | 79.73                     | 292.676           |
| Bank                             | 12.50    | 18             | 5.70                      | 71.250            |
| Park / Open Space / Agriculture* | 0.05     | 93             | 206.17                    | 6.718             |
| Vacant                           |          |                | <i>not assessed</i>       |                   |
| <b>TOTALS</b>                    |          |                |                           | <b>45,178.837</b> |

\* Categories where some parcels are over the size threshold (100 units for MFR and 5 acres for non-residential) and excess units are charged at reduced rates.

To arrive at the Assessment amount for a single-family equivalent (SFE), the total amount of Assessments to be collected must be divided by the total SFEs. The calculation is represented by the following formula;

$$\frac{\text{Total Assessments to be Collected}}{\text{Total SFEs}} = \text{Assessment per SFE}$$



Per the Annual Assessment Increase section of this report on the following page, an increase of 3%, based upon the sum of the 1982 and 2018 assessments is permitted for FY 2020. This adjustment formula was presented to and approved by the property owner balloting in 2018. In FY 2019, the total assessments collected were \$500,000 for the 2018 assessment and \$1,394,780 for the 1982 assessment. Using this information, the calculation above can be rewritten as follows:

$$\frac{2018 \text{ Assmt in FY 19} + (1982 \text{ Assmt in FY19} + 2018 \text{ Assmt in FY19}) \times (\% \text{ Increase})}{\text{Total SFEs}}$$

$$= \text{Assmt per SFE}$$

Or, substituting numbers from the analysis:

$$\frac{\$500,000 + (\$1,394,780 + \$500,000) \times (0.03)}{45,178.837} = \$12.33 \text{ per SFE}$$

**Table 4 – Assessment Rate Schedule**

| Rate Category                   | Assessment<br>2018-2019 | Proposed<br>Assessment<br>2019-2020 | Unit   |
|---------------------------------|-------------------------|-------------------------------------|--------|
| <b>Residential</b>              |                         |                                     |        |
| Single Family                   | \$ 11.17                | \$ 12.33                            | parcel |
| Multi-Family<5 units            | \$ 8.94                 | \$ 9.86                             | unit   |
| Multi-Family 5 or more units    | \$ 6.70                 | \$ 7.40                             | unit   |
| Condominium                     | \$ 8.94                 | \$ 9.86                             | parcel |
| Mobile Home                     | \$ 5.59                 | \$ 6.16                             | unit   |
| Multiple SFR on parcel          | \$ 11.17                | \$ 12.33                            | unit   |
| <b>Non-Residential</b>          |                         |                                     |        |
| General Commercial              | \$ 167.55               | \$ 184.88                           | acre   |
| Industrial / Warehouse          | \$ 16.76                | \$ 18.49                            | acre   |
| Auto Repair                     | \$ 111.70               | \$ 123.25                           | acre   |
| Hotel / Motel / Boarding        | \$ 111.70               | \$ 123.25                           | acre   |
| Hospital                        | \$ 69.81                | \$ 77.03                            | acre   |
| Retirement Home                 | \$ 13.96                | \$ 15.41                            | acre   |
| School / Day Care               | \$ 25.13                | \$ 27.73                            | acre   |
| Medical / Dental / Vet          | \$ 139.63               | \$ 154.07                           | acre   |
| Church                          | \$ 8.38                 | \$ 9.24                             | acre   |
| Mortuary                        | \$ 2.79                 | \$ 3.08                             | acre   |
| Recreational                    | \$ 27.93                | \$ 30.81                            | acre   |
| Parking / Transportation        | \$ 55.85                | \$ 61.63                            | acre   |
| Mini Storage                    | \$ 8.38                 | \$ 9.24                             | acre   |
| Office                          | \$ 41.89                | \$ 46.22                            | acre   |
| Bank                            | \$ 139.63               | \$ 154.07                           | acre   |
| Park / Open Space / Agriculture | \$ 0.56                 | \$ 0.62                             | acre   |
| Vacant                          | Not assessed            |                                     |        |

## **ANNUAL ASSESSMENT INCREASE**

The District assessment is subject to an annual adjustment tied to the San Francisco-Oakland-Hayward Consumer Price Index-U as of December of each succeeding year ("CPI"), with a maximum annual adjustment not to exceed 3%. The maximum authorized rate is equal to the maximum rate in the first fiscal year the Assessment was approved adjusted annually by the lower of either 3% or the increase in the CPI. In order for the City's dedicated Streetlight Fund revenue sources to satisfy cost requirements into the future, the annual adjustment for each property may be calculated based upon the sum of the SLAD 1982-1 assessment and the SLAD 2018 assessment.

For the Period of December 2017 to December 2018, the CPI increased by 4.5% which exceeds the maximum annual adjustment. For Fiscal Year 2020 assessments, the annual adjustment is limited to 3%.

## **DURATION OF ASSESSMENT**

The assessments may be continued every year after their formation, so long as the public Improvements need to be maintained and improved and the City requires funding from the assessments for these Improvements in the District. Assessments can continue to be levied annually after the City Council approves an annually updated Engineer's Report, budget for the Assessment, Improvements to be provided and other specifics of the Assessment. In addition, the City Council must hold an annual public hearing to continue the Assessment.

## **APPEALS AND INTERPRETATION**

Any property owner who feels that the Assessment levied on the subject property is in error as a result of incorrect information being used to apply the foregoing method of assessment, may file a written appeal with the City of Berkeley Public Works department. Any such appeal is limited to correction of an assessment during the then current or, if before July 1, the upcoming fiscal year. Upon the filing of any such appeal, the City of Berkeley City Engineer or his or her designee will promptly review the appeal and any information provided by the property owner. If the City Engineer or his or her designee finds that the assessment should be modified, the appropriate changes shall be made to the assessment roll. If any such changes are approved after the assessment roll has been filed with the County for collection, the City Engineer or his or her designee is authorized to refund to the property owner the amount of any approved reduction. Any dispute over the decision of the City Engineer or her or his designee shall be referred to the Public Works Director and the decision of the Public Works Director shall be final.

**ASSESSMENT STATEMENT**

The amount to be paid for the Improvements and the expense incidental thereto to be paid by the City of Berkeley Street Lighting Assessment District 2018 for the fiscal year 2020 are generally as listed in Table 1.

As required by the Act, an Assessment Diagram is hereto attached and made a part hereof showing the exterior boundaries of the City of Berkeley Streetlight Assessment District 2018. The distinctive number of each parcel or lot of land in the City of Berkeley Streetlight Assessment District 2018 is its Assessor Parcel Number appearing on the Assessment Roll.

And I do hereby assess and apportion the net amount of the cost and expenses of the Improvements, including the costs and expenses incident thereto, upon the parcels and lots of land within the City of Berkeley Street Lighting Assessment District 2018, in accordance with the special benefits to be received by each parcel or lot, from the Improvements, and more particularly set forth in the cost estimate and method of assessment hereto attached and by reference made a part hereof.

The Assessments are made upon the parcels or lots of land within the City of Berkeley Street Lighting Assessment District 2018 in proportion to the special benefits to be received by the parcels or lots of land from the Improvements.

Each parcel or lot of land is described in the Assessment Roll by reference to its parcel number as shown on the Assessor's Maps of the County of Alameda for the fiscal year 2018. For a more particular description of said property, reference is hereby made to the deeds and maps on file and of record in the office of the County Recorder of the County.

I hereby place opposite the Assessor Parcel Number for each parcel or lot within the Assessment Roll, the amount of the assessment for the fiscal year 2020 for each parcel or lot of land within the City of Berkeley Street Lighting Assessment District 2018.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Ricardo Salcedo, RCE 83969  
Engineer of Work

Filed in the office of the City Clerk of the City of Berkeley, Alameda County, California,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019

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Mark Numainville  
City Clerk

Filed in the office of the County Auditor-Controller of Alameda County, California, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2019.

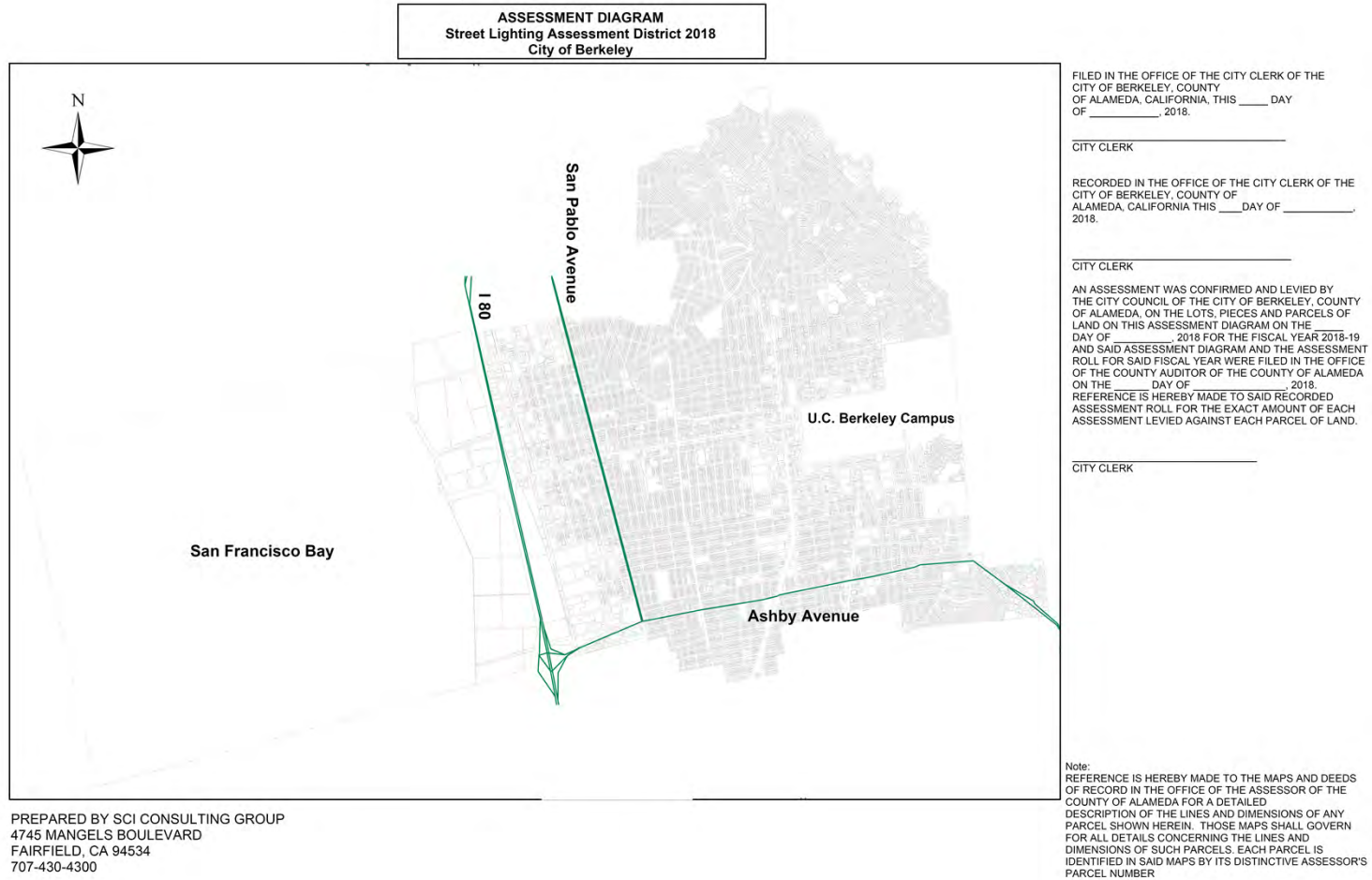
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Melissa Wilk  
County Auditor-Controller

**DIAGRAM**

The boundaries of the City of Berkeley Streetlight Maintenance Assessment Districts and Annexations are displayed on the Assessment Diagram below.

**Figure 1 – Assessment Diagram**



CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 2018**

**FY 2020 Assessment Roll  
Listed by  
Assessor's Parcel Number**

April 2019

Engineer's Report with Full Listing of Assessments by Assessor's Parcel Number is available at the following locations on or after April 26, 2019:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4th Floor, Berkeley, CA 94704

Prepared by

RICARDO SALCEDO, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

CITY OF BERKELEY

**STREET LIGHTING  
ASSESSMENT DISTRICT 2018**

**FY 2020 Assessment Roll  
Listed by  
Street Address**

April 2019

Engineer's Report with Full Assessments Roll by Street Address is available at the following locations on or after April 26, 2019:

- City Clerk's Office, 2180 Milvia Street, Berkeley, CA 94704
- Main Berkeley Library, Reference Desk, 2090 Kittredge Avenue, Berkeley, CA 94704
- Public Works Engineering Division, 1947 Center Street, 4<sup>th</sup> Floor, Berkeley, CA 94704

Prepared by

RICARDO SALCEDO, PE  
CITY OF BERKELEY  
DEPARTMENT OF PUBLIC WORKS  
ENGINEERING DIVISION

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL  
STREET LIGHTING ASSESSMENTS**

**Street Lighting Assessment District 2018:**

In accordance with the voter-approved 2018 Streetlight Assessment Initiative, Street Lighting Assessment District 2018 is subject to an annual assessment adjustment equal to the annual change in the Bay Area Consumer Price Index (CPI), up to a maximum of 3%. The 4.5% CPI increase for the annual period ending December 2018 exceeds the 3% threshold, therefore the proposed annual assessment adjustment for the 2018 District in Fiscal Year (FY) 2020 is limited to 3%. As authorized by voters, the adjustment may be calculated based upon the sum of the 2018 District assessment and the Berkeley Street Lighting Assessment District 1982-1 assessment. The inclusion of the 1982 District assessment in the adjustment calculation for the 2018 District results in effective rate increases of 10% to 11% depending on the rate category. Detailed calculations of the annual adjustment and the corresponding rate increases are included in the 2018 District Engineer's Report for FY 2020. Copies of this report are on file at the main branch of the Berkeley Public Library and at the City Clerk's Office. The proposed assessment rates are summarized below:

| <b>Rate Category</b>            | <b>Assessment<br/>2018-2019</b> | <b>Proposed<br/>Assessment<br/>2019-2020</b> | <b>Unit</b> |
|---------------------------------|---------------------------------|----------------------------------------------|-------------|
| <b>Residential</b>              |                                 |                                              |             |
| Single Family                   | \$ 11.17                        | \$ 12.33                                     | parcel      |
| Multi-Family<5 units            | \$ 8.94                         | \$ 9.86                                      | unit        |
| Multi-Family 5 or more units    | \$ 6.70                         | \$ 7.40                                      | unit        |
| Condominium                     | \$ 8.94                         | \$ 9.86                                      | parcel      |
| Mobile Home                     | \$ 5.59                         | \$ 6.16                                      | unit        |
| Multiple SFR on parcel          | \$ 11.17                        | \$ 12.33                                     | unit        |
| <b>Non-Residential</b>          |                                 |                                              |             |
| General Commercial              | \$ 167.55                       | \$ 184.88                                    | acre        |
| Industrial / Warehouse          | \$ 16.76                        | \$ 18.49                                     | acre        |
| Auto Repair                     | \$ 111.70                       | \$ 123.25                                    | acre        |
| Hotel / Motel / Boarding        | \$ 111.70                       | \$ 123.25                                    | acre        |
| Hospital                        | \$ 69.81                        | \$ 77.03                                     | acre        |
| Retirement Home                 | \$ 13.96                        | \$ 15.41                                     | acre        |
| School / Day Care               | \$ 25.13                        | \$ 27.73                                     | acre        |
| Medical / Dental / Vet          | \$ 139.63                       | \$ 154.07                                    | acre        |
| Church                          | \$ 8.38                         | \$ 9.24                                      | acre        |
| Mortuary                        | \$ 2.79                         | \$ 3.08                                      | acre        |
| Recreational                    | \$ 27.93                        | \$ 30.81                                     | acre        |
| Parking / Transportation        | \$ 55.85                        | \$ 61.63                                     | acre        |
| Mini Storage                    | \$ 8.38                         | \$ 9.24                                      | acre        |
| Office                          | \$ 41.89                        | \$ 46.22                                     | acre        |
| Bank                            | \$ 139.63                       | \$ 154.07                                    | acre        |
| Park / Open Space / Agriculture | \$ 0.56                         | \$ 0.62                                      | acre        |
| Vacant                          | <i>Not assessed</i>             |                                              |             |



Assessments under the 2018 District are generally determined by the number of parcels, units or acres, as applicable to each parcel category, and the associated rate category.

**Berkeley Street Lighting Assessment District 1982-1:**

The Department of Public Works is proposing no increase in FY 2020 for Street Lighting Assessment District 1982-1 rates. The existing assessment rates are as follows:

| Rate Category                 | Assessment Rate | Unit     |
|-------------------------------|-----------------|----------|
| Residential and Institutional | \$ 0.0108       | Bldg. Sf |
| Industrial                    | \$ 0.0216       | Bldg. Sf |
| Commercial                    | \$ 0.0432       | Bldg. Sf |

Assessments under this district are determined by building square footage and rates.

**Public Hearing Information**

The hearing will be held on June 11, 2019 at 6:00 p.m. at a regular council meeting conducted in the Berkeley Unified School District Board Room located at 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of May 30, 2019.

FY 2020 Assessment Rolls for both street lighting districts will be available at the City Clerk’s Office 2180 Milvia Street, 1<sup>st</sup> Floor, and at the main Public Library, 2090 Kittredge Street.


For further information, please contact Nisha Patel at (510) 981-6406 or Phil Harrington, Director of Public Works at (510) 981-6303

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** May 24, 2019 – The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 30, 2019.

  
\_\_\_\_\_  
Mark Numainville, City Clerk



Housing Advisory Commission

45a

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Housing Advisory Commission  
Submitted by: Xavier Johnson, Chairperson, Housing Advisory Commission  
Subject: Recommendations Related to Code Enforcement Actions and Leonard Powell Fact Finding

RECOMMENDATION

Establish policies that will provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved.

Commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Leonard Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

FISCAL IMPACTS OF RECOMMENDATION

Staff time.

CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

## BACKGROUND

Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The HAC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations?

The Housing Advisory Action adopted the following motion at its March 7, 2019 meeting:

Action: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

## ENVIRONMENTAL SUSTAINABILITY

This recommendation to undertake fact finding into what happened at 1911 Harmon Street does not impact the environment directly. However, if this recommendation ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

RATIONALE FOR RECOMMENDATION

This recommendation is an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. Both renters and homeowners can be negatively impacted by these code violations. Therefore efforts to address them in a constructive and expeditious manner would be consistent with the HAC's and City of Berkeley's other ongoing priorities.

ALTERNATIVE ACTIONS CONSIDERED

The Housing Advisory Commission will be examining ways to assist lower- and moderate-income homeowners in the future whose homes have code violations, but who lack the financing to abate all the violations in a timely manner.

CITY MANAGER

See companion report.

CONTACT PERSON

Mike Uberti, Acting Commission Secretary, HHCS, (510) 981-5114





Peace and Justice Commission

45b

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Peace and Justice Commission  
Submitted by: Igor Tregub, Chairperson, Housing Advisory Commission  
Subject: Recommendation to Bring Justice to Mr. Leonard Powell and to Change Certain Policies to Ensure Housing Stability for Homeowners and Tenants

RECOMMENDATION

The Peace and Justice (PJC) recommends that the Berkeley City Council take the following actions:

The Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements.

PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged

code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and

3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. “Reimburse” Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds.

#### FISCAL IMPACTS OF RECOMMENDATION

Staff time and up to \$68,000 if recommendation (5) above is adopted.

#### CURRENT SITUATION AND ITS EFFECTS

Several years ago, the City of Berkeley’s code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell. The City requested that Mr. Powell address these violations. Although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City’s Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed. Since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance. However, many more repairs were made, bringing the total costs to over \$600,000.

The house is now certified by the City for occupancy. However, Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans.

#### BACKGROUND

At its regularly scheduled March 4, 2019 meeting, the PJC took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast



Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family. Since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him. The conversion from a duplex to a single family home was done without permits and inspections.

Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised. The PJC believes that more fact finding will be very beneficial for the Berkeley community for three main reasons. (1) What triggered the code enforcement actions specifically against Mr. Powell, when in fact, there are many single family homes in various neighborhoods throughout the City (including the hills) that lack code compliance? (2) How did costs increase so quickly, so that the costs of repair are almost equivalent to the costs of new construction (excluding land)? (3) How can lower- and moderate-income households be protected from displacement if similar code enforcement actions are taken by the City and if these owners do not have access to financing to address these violations? Further, the PJC feels that adoption of these recommendations would ensure that the City take steps to make Mr. Powell whole and allow him to recover possession of his property upon the abatement of any remaining code violations.

#### ENVIRONMENTAL SUSTAINABILITY

These recommendations do not impact the environment directly. However, if the application of these recommendations ultimately reduces displacement, then this could contribute to reductions in vehicle miles traveled and greenhouse gas emission reductions.

#### RATIONALE FOR RECOMMENDATION

These recommendations are an important complement to ongoing local, regional, and state efforts to prevent displacement due to code violations that exceed households' abilities to pay. They are also consistent with the Peace and Justice Commission's charter and goals.

#### ALTERNATIVE ACTIONS CONSIDERED

Several additional recommendations were also suggested to the PJC by community members. The PJC elected to focus only on those recommendations that it deemed to be most constructive toward the achievement of the goals enumerated above and resulting in interests that further equity and justice for Berkeley homeowners and tenants.

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

Breanne Slimick, Associate Management Analyst, 981-7018

Attachments:

1. Letter to Judge Brand

**RESOLUTION  
IN SUPPORT OF BRINGING JUSTICE TO MR. LEONARD POWELL AND TO  
CHANGE CERTAIN POLICIES TO ENSURE HOUSING STABILITY FOR  
HOMEOWNERS AND TENANTS**

**Whereas** Mr. Powell, a veteran and retired U.S. Postal worker had purchased the house at 1911 Harmon Street over forty years ago as a home for himself and family; and

**Whereas** since purchasing the duplex house, which Mr. Powell converted to a single family home, there had been no major repairs made by him; and

**Whereas** the conversion from a duplex to a single family home was done without permits and inspections; and

**Whereas** several years ago, the City of Berkeley's code enforcement department was alerted to possible code violations at 1911 Harmon St. owned by Leonard Powell; and

**Whereas** although Mr. Powell arranged for some work to be done (and received a \$100,000 loan from the City's Senior and Disabled Home Rehabilitation Program) to do this work, not all of the violations cited by the City were addressed; and

**Whereas** since Mr. Powell did not correct all the violations, the City petitioned the court to appoint a receiver to bring the house into code compliance; and

**Whereas** many more repairs were made than were requested, bringing the total costs to over \$600,000; and

**Whereas** the house is now certified by the City for occupancy; and

**Whereas** Mr. Powell faces additional costs which exceed the amount that was provided to him through public loans; and

**Whereas** Mr. Powell's situation has triggered public concern that he has not been treated fairly, and concerns of inequitable treatment of a Berkeley resident have been raised; and

**Whereas** at its regularly scheduled March 4, 2019 meeting, the Berkeley Peace and Justice Commission (PJC) took the following action:

**Action:** To authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to council as amended

**Motion** by: Lippman

**Seconded** by: Bohn

**Ayes:** al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub

**Noes:** None

**Abstain:** None

**Absent:** Han, Pancoast; and

; and

**Whereas** the Peace and Justice Commission (PJC) recommends that the City Council send a letter to the Superior Court Judge overseeing Mr. Leonard Powell's receivership case thanking him for the fairness and justice of his decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and allowing Mr. Powell and his friends and family time to make the necessary financial arrangements; and

**Whereas** PJC also recommends to the Berkeley City Council that it set in place the following policies that would provide housing stability for homeowners. In particular, when legal action is being attempted by the City as a result of code enforcement violations, the following practices should be put into place:

1. Punitive actions such as eviction, substantial fines, or placing an individual into legal guardianship, or receivership that are likely to result in the permanent displacement of a homeowner or their low-income tenants presently occupying or renting their home is the very last resort that city staff should take. It should only be conducted if all other attempts to resolve the situation have been unsuccessful; and should only be a response to severe code enforcement violations that cause immediate danger to life safety or have been determined by a quasi-judicial body (e.g., Zoning Adjustments Board, City Council) to endanger the health and safety of the immediate neighbors.
2. The Mayor, and Councilmember representing the district of the address in question, and Housing Advisory Commission are notified of their constituent's name (if allowed by applicable privacy laws), address, the nature of the alleged code violations, and a report detailing the status of the matter and any past, ongoing, and anticipated future attempts to resolve the matter; and
3. The City shall explore the use of anti-displacement funds to assist *low-income* homeowners and/or tenants residing on the premises with legal matters of *forced* relocation, expenses, and/or other needs as applicable and appropriate.
4. Establish a policy that code enforcement should aim to improve the safety and security of the property for its current residents and their neighbors.
5. "Reimburse" Mr. Powell, Friends of Adeline and NAACP by placing an amount not to exceed \$68,000 raised privately to pay for Receivers legal and administrative fees. These parties may collectively determine how to best use these funds; and

**Now, Therefore, Be it Resolved** that the Berkeley City Council adopt the actions recommended by the PJC.

[Month] [Day], 2019

The Honorable Jeffrey Brand  
Judge, Alameda County Superior Court  
24405 Amador Street, Department 511  
Hayward, California 94544

Fax: (510) 690-2824  
Email: [dept511@alameda.courts.ca.gov](mailto:dept511@alameda.courts.ca.gov)

Re: **Mr. Leonard Powell - Alameda County Case No. RG1576267**  
**1911 Harmon Street**  
**Berkeley, California**

Dear Judge Brand:

The Berkeley City Council writes to express concern over the case of Mr. Leonard Powell, a longtime resident, homeowner and valued member of our community. We write to thank you for the fairness and justice of your recent decision to deny the Bay Area Receivership Group's ongoing requests to sell Mr. Powell's home, and for allowing Mr. Powell and his friends and family time to make the necessary financial arrangements. We hope to see a speedy and just resolution to this longtime case.

This case began when police accompanied by Berkeley Code Enforcement entered Mr. Powell's home during the investigation of an alleged drug crime by a family member. No criminal charges were levied. However, code violations originally estimated at between \$200,000 and \$300,000 have now ballooned to more than \$700,000, threatening Mr. Powell and his family with the loss of their home, loss of the inheritance, loss of their equity and security.

While we understand that the court appointed a receiver to correct the outstanding code violations, the work appears to have exceeded the original purpose and now the outstanding fines are too much for Mr. Powell to pay. Certainly Mr. Powell should not have let conditions deteriorate to the point of requiring such drastic action. However, given his age and limited income, we hope that you continue to exercise your discretion toward an outcome that is in the interest of justice.

Thank you for your time and consideration.

Sincerely,

Jesse Arreguin  
Mayor, City of Berkeley  
On behalf of the Berkeley City Council





Office of the City Manager

45c

ACTION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager & Kelly Wallace, Interim Director, Health, Housing and Community Services

Subject: Companion Report: Commission Recommendations Regarding Code Enforcement and Mr. Leonard Powell

RECOMMENDATION

The City Manager appreciates the concerns identified by the Peace & Justice Commission and Housing Advisory Commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City Manager believes that current City policies, practices and records demonstrate the proper mechanisms are in place to ensure the outcomes each commission wishes and that additional recommendations are not needed. City staff have worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property.

FISCAL IMPACTS OF RECOMMENDATION

No additional staff time or expense would be required should Council adopt the City Manager recommendation.

CURRENT SITUATION AND ITS EFFECTS

At its regularly scheduled March 4, 2019 meeting, the Peace & Justice Commission (PJC) took the following action: M/S/C: (Lippman/Bohn) to authorize the Chair to draft proposed letter from the Council to the judge and adopt recommendations to Council as amended.

Vote: Ayes: al-Bazian, Bohn, Chen, Gussmann, Lippman, Maran, Meola, Morizawa, Pierce, Rodriguez, Tregub. Noes: None. Abstain: None. Absent: Han, Pancoast

The recommendations adopted by the PJC are in summary: 1) receivership should only be conducted in response to severe code enforcement violations or with input from the Zoning Adjustments Board and Council; 2) the Mayor and representative Councilmember and the Housing Advisory Commission should be notified in cases of receivership; 3) the City should assist affected low-income homeowners and tenants financially; 4) the City should establish a policy that code enforcement should aim to improve the safety and security of the affected property for residents and their

neighbors; and 5) Mr. Leonard Powell, Friends of Adeline and the NAACP should be reimbursed for legal and administrative fees paid to the receiver.

At its regularly scheduled March 7, 2019 meeting, the Housing Advisory Commission adopted a similar action related to the City's code enforcement procedures and Mr. Leonard Powell: M/S/C (Tregub/Wolfe) to recommend to City Council that it set in place the policies that would provide housing stability for homeowners and tenants. The City Council should set in place clear, objective, and equitable standards for conducting code enforcement actions and ensure that due process rights of affected homeowners and/or tenants are preserved. In addition, the HAC recommends that the City Council commission a formal fact-finding process to ascertain what occurred in the matter of Mr. Powell. It should also refer this matter to the City Auditor. The fact finding should, among other things, focus on any actions taken by the Receiver in the case of Mr. Powell and any communications that the City has had with the Receiver. The HAC recognizes that additional steps may be necessary in regard to this matter, and may forward additional recommendations to the City Council at a later date.

Vote: Ayes: Abdeshahian, Johnson, Sharenko, Simon-Weisberg, Tregub, Wolfe and Wright. Noes: None. Abstain: Lord. Absent: Owens (excused) and Sargent (excused).

The City appreciates the concerns of each commission regarding the effects of code enforcement actions on low-income homeowners, including Mr. Powell. The City made repeated efforts to assist Mr. Powell in addressing serious health and safety issues at his property, including an interest free Senior & Disabled Home Rehabilitation loan, without the need for a receivership. Unexpected costs during receivership created a challenging situation for all parties involved, and the City made good faith efforts to assist Mr. Powell with staying in his home.

The goal of the City's code enforcement unit is to provide a clean and safe environment for all Berkeley residents, workers and visitors. The Berkeley Municipal Code details the procedures for issuing citations, the penalties for violations, and the provisions for abating code violations when property owners are unresponsive. If a good faith effort was made to correct the violation, the officer may grant an extension so long as there is no risk to life and safety. If the offender remains noncompliant, the officer will force remediation through civil action and abatement.

The City's efforts in Mr. Powell's case demonstrate the City's commitment to operating with clear, objective, and equitable standards for conducting code enforcement actions and due process rights. To assist with renovations, City resources of \$100,000 were allocated to Mr. Powell via the Senior and Disabled Home Rehabilitation Loan program ("Rehabilitation Loan"). This is a zero-interest loan, payable only when the property changes hands. After several years of notices and meetings with Mr. Powell, his property remained unsafe, in violation of state and local codes, and created a nuisance



which endangered the health and safety of the public and residents of the property. The Alameda County Court ultimately decided to place the property in receivership.

The City took all steps possible to obtain voluntary compliance with state and local laws and only referred Mr. Powell's case to the Court as a last resort. The City actively tried to assist Mr. Powell to complete the renovations prior to receivership with standards that are beneficial to the borrower via the Rehabilitation Loan. More generally, receivership is already viewed by City code enforcement staff as a last resort, to be used when other measures to obtain voluntary compliance fail, and it presently the policy of the City Attorney to seek the approval of the City Council before seeking a receivership. However, receivership remains an important tool to protect public health and safety when property owners are unwilling or unable to correct serious code violations on their property. The Housing Advisory Commission is currently designated as the City's appeals board for all matters respecting the abatement of substandard or deficient buildings.

A formal fact finding case should not be necessary for Mr. Powell's case as the City Attorney's Office clearly documented the City's actions throughout the process (more detailed information is available in the Background section of this report), and worked extensively with Mr. Powell and the receiver to facilitate Mr. Powell's ability to maintain ownership and reside in his property. This is part of the City's ongoing work, with the direction and support of the City Council and community, to implement multiple policies and programs across departments to protect our community members from displacement. The City's policies, practices and records demonstrate the City has the proper mechanisms in place to ensure the outcomes each commission wished to achieve with these recommendations.

### BACKGROUND

On August 13, 2014, the City's Code Enforcement Unit inspected Mr. Powell's property pursuant to a referral from the Berkeley Police Department ("BPD"). BPD had observed potentially substandard conditions at the property during a July 24, 2014 execution of a search warrant and arrest of a guest staying at Powell's home. Code Enforcement inspectors observed the following code violations:

1. General dilapidation or improper maintenance in violation of Health & Safety Code § 7920.3(a)(13).
2. Inadequate sanitation in violation of Health & Safety Code § 17920.3(a)(5).
3. A lack of adequate heating in violation of Health & Safety Code § 17920.3(a)(6).
4. Improper venting, which presents a fire hazard and is a violation of Health & Safety Code § 17920.3(a)(7).
5. Faulty weather protection in the form of deteriorated plaster, a violation of Health & Safety Code § 17920.3(g)(l).

6. Deteriorated or ineffective waterproofing due to broken windows, a violation of Health & Safety Code § 17920.3(g)(2).
7. Inadequate egress, in violation of Health & Safety Code § 17920.3(1).
8. A lack of operational smoke detectors, in violation of Health & Safety Code § 17920.3(m).
9. A lack of carbon monoxide devices, in violation of Health & Safety Code § 17926(a)(3).
10. Unsafe electrical conditions in violation of the California Building Code § 116.1 and BMC § 19.28.020.

On October 2, 2014, the Building and Safety Division issued a Notice of Substandard and Unsafe Building and Public Nuisance ordering Mr. Powell to correct the code violations. The Order instructed Mr. Powell to submit complete Building, Plumbing and Electrical Permit applications to the Planning Department within 45 days, or by Monday, November 17, 2014.

Following the issuance of the Notice, the City met with Mr. Powell on more than 20 occasions by Mr. Powell's own admission. The City also provided \$100,000 to Mr. Powell through a Rehabilitation Loan issued on September 18, 2015. The terms of the loan provide that Mr. Powell has no obligation to make payments on the loan so long as he resides at the property and the loan does not accrue any interest.

Despite the City's efforts to actively assist Mr. Powell, the unsafe conditions persisted at the property through April 2017. On April 17, 2017, the Court entered an order placing the property in receivership on the ground that the property was "maintained in such a condition as to violate the Health & Safety Code and Berkeley Municipal Code, thus creating a nuisance which substantially endangers the health and safety of the public." The Court appointed George Keena as receiver.

The receiver initially planned to borrow \$175,000 to correct the known code violations. However, inspection of the property identified serious foundation issues. (The house was leaning to one side and had floors that slope more than six inches from one side to the other.) The receiver was also required to perform lead and asbestos abatement work, and was required to perform additional work to meet FHA guidelines for habitability. Mr. Powell applied for a Veteran's Administration (VA) loan to assist with costs that require the more strict standards of FHA guidelines for rehabilitation work.

The receiver ultimately incurred borrowing costs (including interest) of \$498,217 (estimated as of March 1, 2019). The receiver also advanced additional fees, so that amount of debt is estimated to be approximately \$680,000. The receiver has waived his personal fees totaling more than \$133,000, but has charged fees for staff time and has also incurred legal fees. The receiver's scope of work and expenses were approved by the court, and not by the City; the receiver does not report to the City, and the City exercises no control over his work.

On February 7, 2019, the City executed an agreement to subordinate its Rehabilitation Loan to Mr. Powell's VA loan, allowing Mr. Powell to obtain financing from the VA. Mr. Powell has qualified for a VA loan in the amount of \$571,000.

On March 21, 2019, the parties received confirmation that the necessary documentation for underwriting Mr. Powell's loan was in place. In addition, Mr. Powell has obtained funds to pay off the balance of the debt on the property through contributions from his family, generous donations from members of the community, and a refund of certain building permit fees paid to the City. With these contributions, there will be sufficient funds available to pay off Mr. Powell's debts and dissolve the receivership when the VA loan is finalized. At the time of this report's writing in March 2019, the parties anticipate completing this process in late April. After dissolution of the receivership, Mr. Powell will be able to return to his home, and he will have significant equity in the property and the ability to earn income from renting the legal second unit (which was restored to its legal status under the receivership).

#### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

#### RATIONALE FOR RECOMMENDATION

The City's Code Enforcement already operates with clear and equitable standards to support and protect the Berkeley community. The City's efforts to support Mr. Powell prior to and during receivership (when the case is legally out of the City's control) demonstrate the City's commitment to assisting our community members with staying in their homes, and improving their health and safety. Receivership that may result in the permanent displacement is the very last resort that the City takes related to code enforcement activity. The Housing Advisory Commission is also currently designated as the City's appeals board for all matters respecting the abatement of substandard or deficient buildings.

#### ALTERNATIVE ACTIONS CONSIDERED

None.

#### CONTACT PERSON

Breanne Slimick, Peace & Justice Commission Secretary, City Manager's Office, 981-7018

Mike Uberti, Acting Housing Advisory Commission Secretary, HHCS, (510) 981-5114





Office of the City Manager

PUBLIC HEARING

June 11, 2019

*(Continued from April 30, 2019)*

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Timothy Burroughs, Director, Planning and Development Department  
Subject: Zoning Ordinance Amendments That Apply Inclusionary Housing Regulations to Contiguous Lots under Common Control or Ownership

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt the first reading of Zoning Ordinance amendments that modify Inclusionary Housing Requirements (BMC Section 23C.12.020: Applicability of Regulations) to apply to new residential development projects on contiguous lots under common ownership or control.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the proposed ordinance may increase revenues to the Housing Trust Fund. Implementation of the proposed ordinance may increase staff time required to review application ownership history.

CURRENT SITUATION AND ITS EFFECTS

The City of Berkeley's Inclusionary Housing Requirements (BMC Chapter 23C.12) currently apply to housing development projects of five or more units, additions to properties with buildings constructed after August 14, 1986 that add units and produce a new unit count of five or more, and residential housing projects proposed on lots whose size and zoning designation allow construction of five or more units. When adjacent lots owned by one entity are developed in sequence, the overall unit count may in some cases exceed five. However, the present inclusionary housing requirements do not apply in those cases; each lot is regarded in isolation.

One of the City's housing goals is to increase the supply of affordable housing, which is implemented either by requiring developers to build affordable units or pay into the Housing Trust Fund (HTF). The HTF is used by the City to assist in the preservation and construction of affordable housing. Development on adjacent lots with common ownership may not be subject to these requirements in some cases. The proposed amendments (*see Attachment 1: Draft Zoning Ordinance Amendments*) explicitly state that Inclusionary Housing Requirements will consider residential development on contiguous lots under common ownership as a single project, regardless of the sequence of development.

**BACKGROUND**

On February 19, 2019, the City Council referred to the Planning Commission a short-term referral to consider Zoning Ordinance amendments that modify Applicability of Regulations (BMC Section 23C.12.020) of the Inclusionary Housing Requirements. This referral requests four actions that modify the Affordable Housing Mitigation Fee (AHMF) structure and its application to residential projects. Only the first requested referral action is presented in this report. The proposed action would broaden the Inclusionary Housing Requirements to include residential projects built on contiguous lots under common ownership or control (*see Attachment 2: February 19, 2019 City Council Referral and Meeting Minutes*). The other three actions will be addressed in the second half of 2019 in conjunction with on-going work and related referrals (*see the "Related Work" section below*).

A subcommittee of the Planning Commission was formed and held a meeting on March 14, 2019 to discuss the Zoning Ordinance language proposed in the referral and to consider feedback from the public. The subcommittee heard testimony from several community members who are concerned about the phasing of developments to avoid the inclusionary housing / mitigation fee requirements and suggested several wording changes for the referral and identified additional issues with lot line adjustments. Based on that discussion and feedback, the subcommittee drafted language for the Planning Commission to consider.

On April 3, 2019, the Planning Commission held a public hearing to consider draft Zoning Ordinance amendments and considerations forwarded by the subcommittee. Members of the Planning Commission expressed a desire to discuss overall inclusionary housing policy and AHMF structure, but recognized that the referral direction focused on whether the proposed language achieved City Council's goal to "close a loophole" in the existing Inclusionary Housing Requirements.

Planning Commission acknowledged that the suggested amendments introduce implementation challenges and complexity into the project intake and review process. With this understanding, the Planning Commission voted to recommend draft language to City Council for approval. [*Motion/Second: Lacey/Wiblin. Vote: 7-2-0-2; Ayes: Beach, Fong, Kapla, Lacey, Martinot, Twu (Alternate for Schildt), Wrenn. Noes: Cutler (Alternate for Vincent), Wiblin. Abstain: None. Absent: Schildt, Vincent.*]

**Implementation Challenges**

Implementation of the proposed Zoning Ordinance amendments will require a substantial amount of research on each project to determine for the subject lot, and adjacent lots, the potential existence of common ownership and/or control. Staff research / applicant submittal requirements could include:

- Title history
- Property easements

- LLC and other corporate parties with financial interests and controlling roles
- Property marketing materials
- Property designers
- Property financing mechanisms

Implementation may also require applying the ordinance to sequential development projects that may not have first been known to be related, requiring additional research to track the above information over time as properties are developed and/or change ownership.

Other concerns raised by the community at the public hearing include the following: draft language proposes that “common ownership and control will be interpreted broadly,” leaving open the exact meaning of undefined terms that could make it difficult to administer; builders or developers, although in control of development, may not be providing capital to support the development of projects on adjacent lots so it could be confusing to determine who is subject to the AHMF; and proposed amendments treat certain property owners differently than the vast majority of other property owners in the City, potentially limiting their property rights in ways that could create a legal risk for the City.

### **Related Work**

On March 21, 2019, City Council’s Policy Committee on Land Use, Housing & Economic Development discussed a related proposal that may come before City Council later (*see Attachment 3: March 21, 2019 City Council Policy Committee Proposal*). The new policy would focus on reforming the entire AHMF structure, including consideration of replacing the per-unit fee with a per-square-foot fee. While the proposal would focus on rental-housing projects, it could also apply to ownership projects. The Committee discussed how the new Policy Committee proposal and the February 19 Council referral aim to accomplish similar goals, and requested that the Planning Commission be made aware of the AHMF referral that is under consideration at the City Council Policy Committee. Staff shared this information with the Planning Commission at the April 3, 2019 meeting.

### **ENVIRONMENTAL SUSTAINABILITY**

Increasing the supply of affordable housing in the City of Berkeley may help address the job-housing imbalance (e.g. housing residents near jobs, shortening commutes) and therefore reducing vehicle miles traveled and greenhouse gas emissions.

### **RATIONALE FOR RECOMMENDATION**

Close a loophole in the Zoning Ordinance that allows residential projects on adjacent lots under common ownership to bypass Inclusionary Housing Requirements when the lots are sized to accommodate less than five units each.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Alene Pearson, Principal Planner, Land Use Planning Division, 510-981-7489

Attachments:

- 1: Ordinance
- 2: City Council Referral
- 3: City Council Policy Committee Proposal
- 4: Public Hearing Notice



ORDINANCE NO. -N.S.

MODIFYING INCLUSIONARY HOUSING REQUIREMENTS (BMC SECTION 23C.12.020: APPLICABILITY OF REGULATIONS) TO APPLY TO NEW RESIDENTIAL DEVELOPMENT PROJECTS ON CONTIGUOUS LOTS UNDER COMMON OWNERSHIP OR CONTROL

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

**Section 23C.12.020 Applicability of Regulations**

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential ~~H~~housing ~~P~~projects for the construction of five or more Dwelling Units;
2. Residential ~~H~~housing ~~P~~projects proposed on any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements and zoning designation is such to allow for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential ~~H~~housing ~~P~~projects proposed on ~~lots~~any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing -whose collective size, including the area of any surface easement, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously.

B. For the purposes of this Section, "common ownership and/or control" shall be interpreted broadly.

BC. For purposes of this Section, "Residential Housing Project" means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units, provided however that. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

CD. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

**ANNOTATED AGENDA  
BERKELEY CITY COUNCIL MEETING  
Tuesday, February 19, 2019  
6:00 PM**

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI  
DISTRICT 2 – CHERYL DAVILA  
DISTRICT 3 – BEN BARTLETT  
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – RIGEL ROBINSON  
DISTRICT 8 – LORI DROSTE

**Preliminary Matters**

**Roll Call:** 6:13 p.m.

**Present:** Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, Arreguin

**Absent:** None

**Ceremonial Matters:**

- 1. Adjourned in memory of Jim Samuels, Berkeley Commissioner.

**City Manager Comments:** None

**City Auditor Comments:**

The City Auditor discussed the importance taking operational cost information and tradeoffs into consideration in the decision making process for the delivery of services. The City Auditor also noted her that her upcoming Audit Plan will include a focus on payments leaving the City.

**Public Comment on Non-Agenda Matters:** 7 speakers.

**Consent Calendar**

**Public Comment on Consent Calendar and Information Items Only:** 15 speakers.

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

**Vote:** All Ayes.

## Council Action Items

21. **Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation**

**From: Councilmembers Harrison, Robinson, and Hahn**

**Recommendation:** Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

**Financial Implications:** See report

Contact: Kate Harrison, Councilmember, District 4, 981-7140

**Action:** M/S/C (Harrison/Davila) to accept revised material from Councilmember Harrison on Item 21.

**Vote:** Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Droste.

**Action:** 3 speakers. M/S/Failed (Droste/Wengraf) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report.
2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.
3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.
4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

**Vote:** Ayes – Kesarwani, Wengraf, Droste; Noes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Abstain – None; Absent – Davila.

Councilmember Davila absent 8:38 p.m. – 9:14 p.m.

## Council Action Items

**Action:** M/S/Carried (Harrison/Hahn) to adopt the revised material submitted by Councilmember Harrison revised to read as follows:

1. Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements – Applicability of Regulations) and BMC Section 22.20.065 (Affordable Housing Mitigation Fee) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for projects by modifying property lines so that no lot is large enough to construct five or more units; the Commission should return to Council with a report by April 30, 2019.

2. Refer to the Planning Commission to consider modifying the structure of in-lieu fees for owner-occupied developments to a flat per-unit fee, as with rental developments, or a per square foot fee; the Commission should return to Council with a report.

3. Refer to the Housing Advisory Commission to assess the appropriateness of the fee level as suggested in the proposed amendments to BMC 23C.12.

4. The Planning Commission is to consider the following language from the item submitted at the meeting: *It is possible that the new fee structure will be adopted prior to the Housing Advisory Commission approving the level of the fee. In this instance, those projects that opt to pay the in-lieu fee and are permitted after the new fee structure is adopted but before the new fee level is adopted shall be given the choice of paying the current fee level, or the one that is adopted.*

**Vote:** Ayes – Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – Wengraf; Abstain – Kesarwani, Droste; Absent – Davila.

## Information Reports

### 22. Referral Response: Supporting Worker Cooperatives

**From:** City Manager

Contact: Jordan Klein, Economic Development, 981-7530

**Action:** Item 22 held over to February 26, 2019.

### 23. Referral Response: City Maintained Below Market Rate Units (BMR) Online Resource

**From:** City Manager

Contact: Kelly Wallace, Housing and Community Services, 981-5400

**Action:** Received and filed.

### 24. Mental Health Commission 2018/2019 Work Plan

**From:** Mental Health Commission

Contact: Karen Klatt, Commission Secretary, 981-5400

**Action:** Received and filed.

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

## Adjournment



Kate Harrison  
Councilmember District 4

ACTION CALENDAR  
February 19<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council

From: Councilmember Kate Harrison, Rigel Robinson, and Sophie Hahn

Subject: Refer to the Planning Commission an amendment to BMC Chapter 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) and the Affordable Housing Mitigation Fee Resolution to Close a Loophole for Avoiding the Mitigation Fee through Property Line Manipulation

RECOMMENDATION

Refer to the Planning Commission an amendment to BMC Section 23C.12.020 (Inclusionary Housing Requirements - Applicability of Regulations) to close a loophole allowing prospective project applicants to avoid inclusionary affordable housing requirements for owner occupied projects by modifying property lines so that no lot is large enough to construct five or more units. Adopt an updated resolution pursuant to BMC 22.20.065 (Affordable Housing Mitigation Fee) addressing the same issue for rental projects.

BACKGROUND

A key strategy in Berkeley's effort to develop affordable housing requires that new housing construction include a portion of below market rate units. This requirement can be found in BMC Chapter 23C.12 (Inclusionary Housing Requirements) and BMC Section 22.20.065 (the Affordable Housing Mitigation Fee, or AHMF, Ordinance). The Inclusionary Housing Requirements section covers owner-occupied housing, while the AHMF Ordinance covers rented housing. The AHMF Ordinance for rental housing also provides for the Council to enact an enabling resolution to set the level of the fee and "additional limitations" on the application of the fee.

The Inclusionary Housing Requirements section mandates inclusionary affordable housing in owner-occupied projects if they either 1) result in the construction of five or more new dwelling units, 2) result in the construction of fewer than five new units if they are added to an existing one- to four-unit property developed after August 14, 1986, and increase the total number of units to more than five, or 3) are built on lots whose size and zoning designation would allow construction of five or more dwelling units. Developers have exploited the ability to modify lot lines on contiguous properties they own so that no lot is big enough to include five or more units, thus avoiding any affordability requirement under condition 3.

The AHMF Enabling Resolution, meanwhile, covers only those projects that result in the construction of 5 or more new units of rental housing, regardless of whether the lot could fit more units or if the project is adding units to an existing building.

This item:

- Amends the Inclusionary Housing Requirements section to cover owner-occupied projects built on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units, regardless of how the property is divided.
- Amends the AHMF Enabling Resolution for rental housing to mirror the provisions of the Inclusionary Housing Requirements section regarding projects that add units to existing projects or are on property that could accommodate more than five units, including the amended language discussed above.

FISCAL IMPACTS OF RECOMMENDATION

May increase revenues to the Housing Trust Fund.

ENVIRONMENTAL SUSTAINABILITY

Increasing the supply of affordable housing in Berkeley may limit commute times and thus greenhouse gas emissions, in line with Berkeley's environmental goals.

CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

Attachments:

- 1: Ordinance
- 2: Resolution
- 3: Track Changes from Resolution No. 68,074-N.S

ORDINANCE NO. -N.S.

CLOSING MODIFIED PROPERTY LINE LOOPHOLE IN INCLUSIONARY  
HOUSING REQUIREMENTS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.12.020 is amended to read as follows:

**23C.12.020 Applicability of Regulations**

A. The following types of projects must comply with the inclusionary housing requirements of this chapter:

1. Residential housing projects for the construction of five or more Dwelling Units;
2. Residential housing projects for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
3. Residential housing projects proposed on any part of a single property or two or more contiguous properties under common ownership and control whose size and zoning designation is such to allow construction of five or more Dwelling Units.

B. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units. Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.

C. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



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

CHANGING THE AFFORDABLE HOUSING MITIGATION FEE PURSUANT TO BERKELEY MUNICIPAL CODE SECTION 22.20.065; AND RESCINDING RESOLUTION NO. 68,074-N.S.

WHEREAS, on June 28, 2011, the City adopted the Affordable Housing Mitigation Fee Ordinance No. 7,192-N.S., adopting Berkeley Municipal Code Section 22.20.065, which would require developers of market rate housing to pay an mitigation fee to address the resulting need for below market rate housing, and offered the alternative to provide units in lieu of the fee; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 did not establish the fee, but authorized the City Council to adopt such fee by resolution; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 authorizes the City Council to specify by resolution additional limitations not inconsistent-with section 22.20.065; and

WHEREAS, on June 27, 2017 the City adopted Resolution NO. 68,074, establishing the fee at \$37,000 per new unit of rental housing; and

WHEREAS, Berkeley Municipal Code Section 22.20.065 and the Affordable Housing Mitigation fee both aim to address the need for below market rate housing and therefore should have parity in applicability;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley as follows:

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
  - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units in such a property are subject to the requirements of this resolution;

- b) Residential housing projects proposed on any part of a contiguous property under common ownership and control whose size and zoning designation is such to allow construction of five or more units, regardless of how said property may be divided.
5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
7. No fee shall be assessed under the following circumstances.
  - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
  - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.

BE IT FURTHER RESOLVED that Resolution No. 68,074-N.S. is hereby rescinded.

### Track Changes from Resolution No. 68,074-N.S

1. The Affordable Housing Mitigation Fee authorized and provided for by Section 22.20.065 shall be \$37,000 per new unit of rental housing, payable at the issuance of Certificate of Occupancy, but shall be subject to a \$3,000 discount if paid in its entirety no later than issuance of the building permit for the project on which the fee is due. The Affordable Housing Mitigation Fee shall only apply to market rate units.
2. The Affordable Housing Mitigation Fee will be automatically adjusted by the annual percentage shown in the California Construction Cost Index published by the California Department of General Services, every other year beginning in 2018, on July 1. The automatic adjustment tied to the California Construction Cost Index shall not cause the fee to exceed the maximum fee established by the most recent Nexus study, and shall apply to all projects that have not received final approval by the City of Berkeley prior to the date of the automatic adjustment.
3. For purposes of this resolution, "new rental housing" includes group living accommodations, except for those categories that are currently exempt pursuant to BMC Section 23C.12.020.B, at an equivalency rate of one new rental unit per two bedrooms in a group living accommodation, such that one-half the fee adopted by this resolution shall be imposed on each bedroom.
4. For purposes of this resolution, "new rental housing" shall not include developments of four units or fewer units unless they meet any of the following criteria:
  - a) Residential housing projects for the construction of one to four new units, when such units are added to an existing one to four unit property or any part of two or more contiguous properties, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All units on such a property are subject to the requirements of this resolution;
  - b) Residential housing projects proposed on any part of a property or two or more contiguous properties under common ownership and control whose size and zoning designation would cumulatively allow construction of five or more units.
- 4.5. For the purposes of this resolution, "new rental housing" shall not include cooperative student housing developed by the Berkeley Student Cooperative.
- 5.6. The definition of "new rental housing" excludes units which are offered at no cost to support nonprofit public benefit activities.
- 6.7. No fee shall be assessed under the following circumstances.
  - a) No fee shall be assessed when new rental housing is built to replace rental units that have been destroyed through no fault of the owner of those units, as long as the applicant files a complete permit application within two years after destruction of the pre-existing units. Staff shall determine on a case by case basis both whether rental units have been "destroyed" and whether such destruction was through the fault of the owner. The issuance of a permit to demolish all or part of a building containing rental units shall not be determinative. However fees shall be assessed on rental units in a replacement project in excess of the number destroyed.
  - b) No fee shall be assessed on rental units that have been expanded, renovated, or rehabilitated unless the units were vacant for more than two years before the applicant filed a complete permit application for such expansion, renovation or rehabilitation.
- 7.8. Notwithstanding anything to the contrary, staff may waive all or part of the fee adopted by this resolution pursuant to Sections 22.20.070 and 22.20.080.
- 8.9. Except as set forth in section 2, this and future increases in the Affordable Housing Mitigation Fee shall apply only to projects whose applications for the required discretionary entitlements have not received final approval as of the effective date of the fee.



CITY COUNCILMEMBER  
**RIGEL ROBINSON**  
 DISTRICT 7

## ATTACHMENT 3

CONSENT CALENDAR  
 TBD (Continued from February  
 26, 2019)

To: Honorable Mayor and Members of the City Council

From: Councilmembers Rigel Robinson, Sophie Hahn, Mayor Jesse Arreguin,  
 and Councilmember Lori Droste

Subject: Refer to the City Manager and the Housing Advisory Commission to Consider  
 Reforming the Affordable Housing Mitigation Fee

RECOMMENDATION

Refer to the City Manager, the Planning Commission, and the Housing Advisory Commission to consider possible reforms to the Affordable Housing Mitigation Fee, including adopting a per-square-foot fee structure, potentially on a geographic basis.

BACKGROUND

Currently, all new residential development of five units or more must either pay an Affordable Housing Mitigation Fee to the City's Affordable Housing Trust Fund, set aside 20% of a project's units as below market rate housing, or some combination of the two. For rental developments, the fee is currently calculated based on the number of residential units in the project according to the following formula (BMC Section 22.20.065):

$$[A \times \text{Fee}] - [(B+C)/(A \times 20\%) \times (A \times \text{Fee})]$$

Where:

A = Total number of units in the project

B = Number of Very-Low Income Units provided in the project.

C = Number of Low-Income Units provided in the project.

By calculating Affordable Housing Mitigation Fees on a per-unit basis, current law incentivizes developers to build fewer units. In the past, developers have replaced standard layouts (studio, one-bedroom, and two-bedroom units) with dorm-style layouts (up to eight beds per unit). This increases the *density* of each unit but reduces the overall *number* of units, allowing applicants to pay significantly smaller fees without providing any additional housing.

Another way for developers to reduce their contribution to the Affordable Housing Trust Fund is to build larger, more expensive units, rather than smaller, more affordable units. This perverse incentive is clearly in opposition to the City's affordable housing goals.

This problem was highlighted in a recent report by the Turner Center. In interviews with architects and builders, they were told that a conscious decision was sometimes made to increase unit size but decrease unit count to reduce fees.<sup>1</sup> Calculating the fee on a per-square-foot basis eliminates that incentive. Developers would no longer be able to reduce their contribution to the Affordable Housing Trust Fund by manipulating floor layouts. In addition, by eliminating the financial penalty for building more units, developers would be incentivized to propose denser projects, which is directly in line with the City's housing goals.

Such a change was recently enacted in San Francisco, taking effect January 1<sup>st</sup> of this year. The language from San Francisco's website (<https://sf-planning.org/inclusionary-affordable-housing-program>) describing the process they undertook to arrive at their new model is attached. Staff and the Commissions should consider their research, methodology, and conclusions when drafting their response.

A per-square-foot fee may not be desirable across all neighborhoods in Berkeley. The same Turner Center study found that "in some cities there is a need for larger family-sized units, and in those places a per-square-foot fee that incentivizes smaller units might be less desirable."<sup>2</sup> In considering this referral, staff and the Commissions should consider the need for different housing types in different parts of the City. A per-bed fee may be more appropriate for some neighborhoods where micro-units would be out of place while still disincentivizing dorm-style layouts.

This referral asks staff and the Commissions to analyze the current fee structure and possible alternatives, with particular regard to the per-unit form. Staff and the Commissions should consider the need for different styles of housing in different parts of the city. The final recommendation presented to council should include one or more possible amendments to the code to address these changes.

#### FINANCIAL IMPLICATIONS

Potential revenues increases to the Affordable Housing Trust Fund from larger structures facing higher fees; potential revenue decreases from smaller units facing lower fees. Analysis must be conducted to determine the overall effect of these countervailing forces. Multiple fee levels should be assessed, including those that results in net zero changes in Affordable Housing Trust Fund revenues and those that increase revenues.

#### ENVIRONMENTAL SUSTAINABILITY

Increasing the affordability and density of housing near public transit has the potential to substantially reduce greenhouse gas emissions in line with the City's environmental

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<sup>1</sup> [http://turnercenter.berkeley.edu/uploads/Development\\_Fees\\_Report\\_Final\\_2.pdf](http://turnercenter.berkeley.edu/uploads/Development_Fees_Report_Final_2.pdf)

<sup>2</sup> Ibid

goals. Potential revenue increases to the Affordable Housing Trust Fund could permit greater expenditures on housing affordability near transit.

CONTACT PERSON

Councilmember Rigel Robinson, (510) 981-7170

Attachments:

1: San Francisco's Amendments (<https://sf-planning.org/inclusionary-affordable-housing-program>)

## Attachment 1: San Francisco's Amendments

### 2019 Affordable Housing Fee Update

Effective January 1, 2019, residential development projects that comply by paying the Affordable Housing Fee will be subject to the following fee based on the Gross Floor Area of residential use, rather than the number of dwelling units. The fee will be applied to the applicable percentage of the project, as set forth in Section 415.5 of the Planning Code:

**Affordable Housing Fee:** \$199.50 per square foot of Gross Floor Area of residential use, applied to the applicable percentage of the project:

- **Small Projects** (fewer than 25 dwelling units): 20% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Rental:** 30% of the project's Gross Floor Area of residential use
- **Large Projects** (25 or more units), **Ownership:** 33% of the project's Gross Floor Area of residential use

**Note:** The impact fee register in place at the time of payment shall be applied. However, a project for which a Site Permit has been issued prior to January 1, 2019 shall remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. Additionally, projects with an Environmental Evaluation Application that was accepted prior to January 1, 2013 pursuant to Planning Code Section 415.3(b) shall also remain subject to the fee method and amount set forth in the impact fee register in place as of December 31, 2018. [The impact fee register may be found here.](#)

This change is pursuant to amendments to Section 415.5 that were adopted by the Board of Supervisors in July, 2017 (Board File No. 161351). Specifically, the Code requires that the Fee reflect MOHCD's actual cost to subsidize the construction of affordable housing units over the past three years, and directed the Controller to develop a new methodology for calculating, indexing, and applying the Fee, in consultation with the Inclusionary Housing Technical Advisory Committee (TAC). In May, 2018 the Controller and TAC determined that the Fee should be applied on a per gross square foot basis to ensure that MOHCD's cost to construct the required amount of off-site affordable housing is appropriately and equitably captured from all projects, regardless of the size and number of units distributed within the project. The Controller directed MOHCD, in consultation with the Planning Department, to convert MOHCD's per unit cost to a per-square-foot fee, based on the average residential Gross Floor Area of projects that have paid the Fee in the past three years. The Fee amount indicated above has been calculated accordingly.

Pursuant to Section 415.5 and the specific direction of the Controller and TAC, MOHCD shall update the amount of the Affordable Housing Fee each year on January 1, using the MOHCD average cost to construct an affordable unit in projects that were financed in the previous three years and the Planning Department's average residential Gross Floor Area of projects that have elected to pay the Fee and have been entitled in the same time period. Each year this analysis will be updated to include new projects from the most recent year, and drop older projects that no longer fall into the three year period of analysis. The updated Fee amount will be included in the Citywide Impact Fee Register that is posted December 1 and effective on January 1.

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

**DATE/TIME: TUESDAY, APRIL 30, 2019 – 6:00 P.M.**

**LOCATION: BUSD Board Room, 1231 Addison Street, Berkeley**

### ZONING ORDINANCE AMENDMENTS THAT MODIFY THE INCLUSIONARY HOUSING REQUIREMENTS FOR PROJECTS ON CONTIGUOUS LOTS UNDER COMMON OWNERSHIP

The proposed amendments modify the Applicability of Regulations Section of the Inclusionary Housing Requirements (BMC 23C.12.020) to cover residential projects built on contiguous lots under common ownership and/or control. Amendments respond to City Council's February 19, 2019 referral to broaden inclusionary housing requirements. The Planning Commission recommended substantially similar amendments and considerations at its meeting on April 3, 2019. Changes would apply Citywide in all zoning districts where residential development is allowed.

Changes to be considered are as follows:

#### **23C.12.020 Applicability of Regulations**

- A. The following types of projects must comply with the inclusionary housing requirements of this chapter:
1. Residential Housing Projects for the construction of five or more Dwelling Units;
  2. Residential Housing Projects proposed on any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements and zoning designation is such to allow for the construction of one to four new Dwelling Units, when such Units are added to an existing one to four unit property, which has been developed after August 14, 1986, and the resulting number of units totals five or more. All Units in such a property are subject to the requirements of this chapter;
  3. Residential Housing Projects proposed on any part of a single lot or on a grouping of contiguous lots under common ownership and/or control, design, marketing, or financing, whose collective size, including the area of any surface easements, and zoning designation is such to allow construction of five or more Dwelling Units, regardless of whether those units are all built simultaneously.
- B. For the purposes of this Section, "common ownership and/or control" shall be interpreted broadly.
- C. For purposes of this Section, "Residential Housing Project" means a project involving the construction of at least one Dwelling Unit. This chapter does not apply to Dormitories, Fraternity and Sorority Houses, Boarding Houses, Residential Hotels or Live/Work Units, which are not considered Dwelling Units provided however that Live/Work Units are subject to low income inclusionary provisions set forth in Section 23E.20.080.
- D. This chapter sets forth specific inclusionary housing requirements for the Avenues Plan Area, which prevails over any inconsistent requirements set forth elsewhere in this chapter. (Ord. 6478-NS § 4 (part), 1999)



A copy of the agenda material for this hearing will be available on the City’s website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of April 18, 2019.

For further information, please contact Alene Pearson at 510-981-7489. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City’s electronic records, which are accessible through the City’s website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.

**Published:** Friday, April 19, 2019

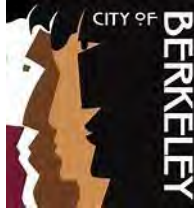
**Noticing per California Government Code Sections 65856(a) and 65090**

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on April 18, 2019.

\_\_\_\_\_  
Mark Numainville, City Clerk





Councilmember  
Cheryl Davila  
District 2

ACTION CALENDAR

June 11, 2019

*(Continued from May 14, 2019)*

**To:** Honorable Mayor and Members of the City Council  
**From:** Councilmember Cheryl Davila  
**Subject:** Budget Referral: Remediation of Lawn Bowling, North Green and Santa Fe Right-of-Way, FY2020-2021

RECOMMENDATION

Refer to the FY20 (2020/2021) RRV Budget Process for consideration of at least \$150,000 and up to remediate the Lawn Bowlers, North Green and Santa Fe Right-of-Way in advance of Request for Proposal (RFP) for these areas that potentially could provide much needed affordable alternative housing.

Refer to the Homeless Services Panel of Experts to consider Measure P funds for remediation purposes for these properties.

FISCAL IMPACTS OF RECOMMENDATION

Costs of remediation are estimated to range from \$150,000- \$TBD.

BACKGROUND

The City Attorney advised that in order to put a RFP out for the Lawn Bowler’s and the North Green properties that remediation must be completed by the City first. Funding the currently needed reclamation is critical to preservation of these valuable City of Berkeley land assets and preventing further deterioration which would result in greater future costs of remediation.

Phase 1 and Phase 2 analysis was completed approximately four years ago. This item is seeking to confirm provision of either the General Fund or Measure P funds required to restore these areas which could provide an opportunity to create affordable tiny homes communities with gardens for the entire community.

RATIONALE FOR RECOMMENDATION

Remediation of these green spaces is in keeping with Berkeley’s commitment of creating equitable housing opportunities for Berkeley residents. These properties would be ideal to create tiny home communities with food forests and gardens.

FINANCIAL IMPLICATIONS


Depending on assessment of the level of remediation required, costs are estimated to range from \$150,000 – \$TBD.

ENVIRONMENTAL SUSTAINABILITY

Preservation of green spaces through remediation adds significantly to the environmental quality of life in Berkeley and operates to offset impacts of greenhouse gases affecting the overall environment.

CONTACT PERSON

Councilmember Cheryl Davila 510.981.7120



City Council Comments  
on the FY 2020 &  
FY 2021 Proposed  
Biennial Budget

Please refer to the following Agenda Packets for the material for this item.

- May 7, 2019 Agenda Packet (Worksession)  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/City\\_Council\\_05-07-2019\\_-\\_Special\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/City_Council_05-07-2019_-_Special_Meeting_Agenda.aspx)
- May 14, 2019 Agenda Packet  
[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/City\\_Council\\_05-14-2019\\_-\\_Regular\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/City_Council_05-14-2019_-_Regular_Meeting_Agenda.aspx)

This material is also on file and available for review at the City Clerk Department, or can be accessed from the City Council Website.


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**City Clerk Department**  
2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

or from:

**The City of Berkeley, City Council's Web site**  
[www.cityofberkeley.info/citycouncil](http://www.cityofberkeley.info/citycouncil)





City Council  
Recommendations  
on the FY 2020 and  
FY 2021 Proposed  
Biennial Budget

Please refer to the following Agenda Packet for the material for this item.

- May 7, 2019 Agenda Packet (Worksession)

[https://www.cityofberkeley.info/Clerk/City\\_Council/2019/05\\_May/City\\_Council\\_05-07-2019\\_-\\_Special\\_Meeting\\_Agenda.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2019/05_May/City_Council_05-07-2019_-_Special_Meeting_Agenda.aspx)

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or from:

**The City of Berkeley, City Council's Web site**  
[www.cityofberkeley.info/citycouncil](http://www.cityofberkeley.info/citycouncil)







Office of the City Manager

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INFORMATION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing, and Community Services

Subject: Referral Response: Tenant Opportunity to Purchase Act (TOPA) Ordinance

SUMMARY

On November 28, 2017, the City Council adopted the Housing Action Plan, which included as the second High Priority referral to “develop an ordinance modeled after Washington, DC’s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.”

This memo summarizes staff’s research on TOPA, which incorporates Washington, DC’s ordinance and administration and several studies of the policy and its implementation. Staff conducted multiple interviews with DC staff, as well as tenant advocates, legal advocates, real estate advocates, and other stakeholders to inform the City’s research. As the first step in the referral response, this memo outlines staff research on TOPA and its administration and implementation requirements.

CURRENT SITUATION AND ITS EFFECTS

This report responds to the second High Priority referral from the Housing Action Plan that originally appeared on the agenda of the November 28, 2017 Council meeting and was sponsored by Mayor Jesse Arreguín and Councilmember Kate Harrison. The referral directed staff to develop an ordinance modeled after Washington, DC’s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants in multi-unit properties of three units or more the first right of refusal when property owners place rental property on the for-sale market, which can be transferred to a qualifying affordable housing provider. In Washington DC, the ordinance complements local funding for building acquisitions to preserve affordable housing.

Washington, DC’s TOPA ordinance provides tenants in multi-family buildings the right to purchase the property in which they reside if the owner opts to sell, and the right to match a third party sale (“right of first refusal”). Tenants can work together as a group (known as a “Tenant Association”) to purchase the apartment building, or transfer their right to another buyer. Tenants may assign their rights to either a market rate or an affordable housing developer at their discretion. Tenants in buildings of five or more

units must form a Tenant Association to enact their rights. The TOPA ordinance also establishes a process for property owners and tenants to follow prior to selling on the open market, including defined time periods for negotiation and financing.

### Administration

TOPA is managed by Washington, DC's Department of Housing and Community Development (DHCD) Rental Conversion and Sales Division, which also administers a condo conversion ordinance and a condo warranty program. Primary duties include landlord and tenant education and responding to public inquires, processing complaints, and administration (processing notices, reviewing files, drafting reports, etc). Staffing includes:

- One full-time equivalent (FTE) division director;
- Four FTE attorney specialists; and
- Three FTE program support specialists for administration (approximately 1.5 FTE dedicated to TOPA).

DHCD employs attorneys to manage TOPA cases given the complex nature and legal implications of many transactions and complaints. Despite the education and technical support provided by the DC's Office of the Tenant Advocate and outside agencies, DHCD staff noted the majority of their time is dedicated to public inquires and support.

Enforcement is complaint driven and TOPA transactions are not actively monitored by the District. DHCD staff noted processing complaints and paperwork for each reported sale offer is time consuming, and requires full-time administrative staff. DC can serve a cease and desist order if provided a notice of violation before closing of a third party sale, but holds little power should a sale go through. Following a sale, it is typically the onus of the tenants to pursue a lawsuit. DC staff noted many title companies rely on TOPA compliance reports provided by the DHCD to verify TOPA compliance prior to approving a sale, as a registered complaint could delay a sale for an extended period of time. They noted most title companies will not close with a registered TOPA complaint, but this is not a legal requirement and is the result of years of familiarity with the ordinance.

DHCD staff publish weekly reports with information on all reported TOPA-related offers, assignments, and sales. However, TOPA's complaint-driven design likely results in transactions occurring off record, and there is not reliable data for all TOPA-related transactions.

While the TOPA ordinance and administration applies to all multi-family properties, the District provides additional support for low-income tenants to exercise their TOPA rights. DHCD staff indicated two specific programs – technical assistance and acquisition/rehabilitation loans – are critical for TOPA to serve as an affordable housing preservation tool.

Technical Assistance and Tenant Support

Research indicates tenants typically require significant education and support to exercise TOPA for an acquisition. Interested tenants of multi-family buildings require substantial technical, financial, organizational, and legal assistance. This includes:

- Education on rights and responsibilities;
- Formation of tenant associations;
- Securing a deposit;
- Securing loans (acquisition, rehabilitation, etc);
- Legal services;
- Identifying property management; and
- Bargaining with third parties (non-profits/for-profits).

Washington, DC complements the TOPA ordinance by funding purchase and technical assistance programs to support low-income tenants in multi-family properties in exercising their TOPA rights. The technical assistance is administered by non-profit tenant advocate organizations funded via a Request for Proposals. DHCD funded two non-profits to provide these services in the past fiscal year. There are also organizations independent of City funding that support tenants with TOPA rights, including law firms specializing in TOPA law.

In addition to the staff in the DHCD and District-funded community agencies described above, Washington, DC maintains the Office of the Tenant Advocate (OTA), a city department dedicated to providing legal and technical assistance to tenants, which includes navigating TOPA. The FY 17/18 budget for this department is over \$3.1M and includes 19 FTE employees.

Acquisition/Rehabilitation Loans

DHCD's Development Finance Division oversees the Department's financing of eligible TOPA acquisitions, independent of the Administrative staff in Rental and Sales Division. In FY 17/18, 22 of the 62 total projects closed were TOPA acquisitions. They estimate TOPA projects required four FTEs for underwriting project managers and administrative support staff, and project managers can typically close 4-5 projects per year.

DHCD's loan program provides financing support to projects that have:

- Five units or more;
- At least 50% of the residents qualifying as low-income; and
- Approval of 50% of the Tenant Association

Washington, DC dedicates \$10M per year in Housing Trust Fund (HTF) allocations directly to TOPA projects. In addition, their staff noted the majority of current projects are being routed to the recently created public/private Housing Preservation Fund,

which has \$40M for affordable housing preservation (including a \$10M per year District contribution).

Most properties purchased with the City's TOPA acquisition loans have substantial rehabilitation needs, which can serve as a barrier to acquisition. Most projects return to DHCD via a competitive RFP for rehabilitation funding but only one-third of applications are funded. All projects must include a rehabilitation strategy at acquisition if they do not receive additional funding. DHCD staff also noted supporting smaller projects can be a challenge due to a lack of economies of scale.

#### Staffing and Implementation Recommendations

The Council referral calls for a TOPA ordinance to apply to buildings of three or more units, and to be assumed by a qualified affordable housing nonprofit developer. This differs from DC's ordinance, as it 1) does not include duplexes and 2) limits ownership models to a transition to permanent affordable housing. In this scenario, only buildings with low-income tenants would qualify, and this would significantly limit the scope compared to DC. Ultimately, any implementation recommendations would be based on the scope of an ordinance.

Administration is the only need directly related to the adoption of an ordinance. However, DHCD and local stakeholders indicated the following three-pronged approach is necessary for TOPA to serve as an affordable housing preservation tool. Council's referral would likely require all three of these components for TOPA to have long term success in Berkeley.

- A) *Dedicated Staffing for Administration.* DC's Rental and Sales Division staff oversee approximately 163,874 rental housing units, compared to Berkeley's 26,367 rental units. Using this scale, 1.5 FTE's minimum would be needed to augment existing staffing to be consistent with their staffing.
- B) *Technical Assistance.* The technical assistance needs outlined above are beyond the capacity of current staff. DC currently funds a separate department, the OTA, in addition to two nonprofit technical assistance providers for tenant support. Council could consider releasing a Request for Information (RFI) to determine the capacity and needs of local tenant advocacy organizations to complete TOPA related work. The City could consider applications from qualified nonprofits to provide low-income tenants with additional technical support outside the scope of the ordinance through the City's Community Agency Funding RFP process, and evaluate proposals in the context of City funding priorities.
- C) *Loans and Financial Assistance.* In Washington DC, low-income tenants rely heavily on local funding to make acquisition and rehabilitation through the TOPA

ordinance feasible. In order for a nonprofit affordable housing developer to acquire and rehabilitate an eligible property in Berkeley, they would likely require significant local financial support at a level similar to the City's new Small Sites program (up to \$375,000 per unit). Council could consider funding the Small Sites program for acquisitions and rehabilitations by low-income tenants under a TOPA ordinance.

## BACKGROUND

Washington, DC's TOPA ordinance provides a defined sales process for tenants to purchase the property in which they reside if the owner opts to sell, and for the first right of refusal to any third party sale if they initially decline. TOPA defines a sales process for two rental categories: 2-4 unit buildings and 5+ unit buildings. The DC Council opted to exempt single family homes in March 2018.

Under TOPA, property owners must follow a defined process when pursuing a sale:

1. Owner declares intent to sell by providing a letter to the tenants and City that includes a "bona fide offer of sale"
2. Tenant Response and Negotiation Period
  - a. Tenants are provided an official amount of time to respond and then negotiate, respectively, dependent on the size of their building
  - b. Buildings with five or more units must form a Tenant Association
  - c. Tenants have option to assign their rights to a third party
3. Landlord options: (a) sell to tenants (if tenants invoke right) or (b) move to market for third party sale
4. Tenants have 15 day period to match a third party sale (right of first refusal)

Staff reviewed research and conducted interviews with multiple stakeholders to inform research on ordinance design, implementation and administration. These include:

- Apartment and Office Building Association of Metropolitan Washington
- City of Los Angeles, Office of the Chief Legislative Analyst
- City of San Francisco, Office of Supervisor Sandra Lee Fewer
- DC Association of Realtors
- East Bay Community Law Center
- Housing Counseling Services (City-funded technical assistance provider)
- Latino Economic Development Corporation (City-funded technical assistance provider)
- Washington, DC Department of Housing and Community Development, Rental and Sales Division

Staff also attended the Oakland Community Land Trust's *Peoples Land and Housing Convening* to hear a presentation from DHCD Development Finance staff and Housing

Counseling Services on the TOPA ordinance and implementation. Staff presented its initial research to the Housing Advisory Commission in July 2018.

### Other Cities and Programs

Staff did not identify any other US cities with active TOPA-style ordinances with the exception of a Washington, DC suburb: Takoma Park, Maryland (population approximately 17,000). Their city's TOPA data is not readily available, and Takoma Park's has far fewer rental units than DC or Berkeley. The City of Los Angeles' Council reviewed TOPA in 2007, but the item did not move forward after subcommittee review.

At the time of this report's writing in April 2019, the Office of Supervisor Sandra Lee Fewer prepared an ordinance for the San Francisco Board of Supervisors modeled on TOPA. This proposal focuses exclusively on establishing rights for nonprofit affordable housing developers. Their ordinance would provide qualifying organizations the first-right-to-purchase, consisting of both a right of first offer and a right of first refusal, over all multi-family residential buildings (and related construction sites and vacant lots) in San Francisco, for the purpose of creating and preserving rent-restricted affordable rental housing. It would also establish procedures for implementation and enforcement, likely to be managed by the Mayor's Office of Housing and Community Development (MOHCD).

San Francisco's proposal is different from Washington, D.C's iteration of TOPA as it confers the purchase rights solely to nonprofit developers (instead of tenants) and therefore acquisitions would only be eligible for income-qualifying properties. Staff from the Office of Supervisor Lee-Fewer report this ordinance is intended to complement and support the city's Small Sites affordable housing acquisition program. As of the time of this writing, the San Francisco Board of Supervisors adopted the first reading on an ordinance.

Berkeley's condominium conversion ordinance does provide tenants the right of first refusal to purchase their homes at conversion. Santa Monica had a similar but further-reaching ordinance known as the Tenant Ownership Rights Charter Amendment which sunsetted in 1996. TOPA is different than these two ordinances because it applies to all rental housing units, rather than just those requesting land use approvals.

### ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability effects associated with the information of this report.

### POSSIBLE FUTURE ACTION

TOPA's implementation relies on tenant engagement, loan financing and ongoing legal and administrative processes. Staff recommends developing an implementation strategy prior to or in conjunction with the adoption of an ordinance to identify staffing and administration needs for the ongoing management of a TOPA ordinance.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Costs associated with additional staffing and administration needs would need to be determined predicated on the scope of an ordinance. Washington, DC also provides significant financial resources to support TOPA in the local community, including tenant advocacy funding and acquisition and rehabilitation loans for low-income tenants in multi-family buildings.

CONTACT PERSON

Mike Uberti, Community Development Project Coordinator, HHCS, (510) 981-5114

Attachments:

1: Original Referral Report from November 28, 2017



Office of the Mayor

ACTION CALENDAR  
November 14, 2017

To: Members of the City Council

From: Mayor Jesse Arreguín and Councilmember Kate Harrison

Subject: Implementation Plan for Affordable Housing Action Plan Referrals

**RECOMMENDATION**

Approve the following priority order for Affordable Housing Action Plan referrals, and adopt the interdepartmental implementation plan as revised:

**High Priority**

1. Design a Small Sites Program to assist non-profits in acquiring existing properties that fall under certain criteria with the intention of allocating \$1 million annually. As a first step, contact owners of seven apparently vacant properties constituting 68 rental units for their interest in selling them to non-profit affordable housing developers or land trusts that could rehabilitate them, and then rent the units at affordable rents. As a second step, investigate properties that are being vacated over time for possible purchase to retain affordable housing. Consider master leasing as a mechanism for managing distinct, smaller properties.
2. Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.
3. Draft an ordinance for a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.
4. Create specific per acre density standards to strengthen City posture vis-à-vis the State Housing Accountability Act.
5. Examine and eliminate barriers to developing student housing and senior housing.
6. Refer to the City Manager, City Attorney and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through



an Owner Move-In or (Measure Y) auction, and other forms of displacement as defined by Council.

7. Utilize list of vacant city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.
8. Identify Parcels of City owned land appropriate for siting assisted-living modular micro unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non- profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.
9. Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing.
10. Streamline AH Permitting process for Projects with majority of AH; Remove Structural barriers to AH (Green AH Package Policy #2).
11. Examine and eliminate barriers to building and renting ADUs.

### **Medium Priority**

12. Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).
13. Develop enforcement tools for Short-Term Rentals/Section 8.
14. Amend planning code to allow housing and other non-commercial uses on the ground floor.
15. Review method of monitoring BMR units and associated fees. Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current.
16. To encourage landlords to accept Section 8 and Shelter + Care vouchers: create a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code.

17. Collaborate with BHA Board to invest capital funds from sale of the public housing for more affordable housing (Longer term referral).
18. To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.
19. To encourage landlords to accept Section 8 and Shelter + Care vouchers: allow parcel and/or property tax reductions based on the percentage of property of units that are currently Section 8 and/or decided during annual Section 8 inspection.
20. Increase commercial housing linkage fee by CCCI.
21. Establish Office of Anti-Displacement, and hire Anti-Displacement Advocate (non-city funded position).

### **Referrals Being Completed**

- Evaluate feasibility of developing affordable senior housing above Senior Centers.
- Hold fines on Oregon Park Senior Apartments (OSPA) in abeyance with the agreement until the OSPA conducts a financial audit and structural review and hires a property manager.
- Adopt Council policy that two-thirds of short term rental tax be allocated to the Housing Trust Fund (with remaining one-third to the arts), following administrative costs.
- Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and possible bonding against revenues.

### **Referrals Completed**

- Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.
- Expand legal eviction defense of Berkeley tenants beyond current 10-20% receiving this assistance.
- Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.
- Increase the Rental Assistance Fund for Berkeley tenants.

- To encourage landlords to accept Section 8 and Shelter + Care vouchers: provide legal and/or mediation support, offered either through the City or a partner, in negotiating Landlord/Tenant disputes out-of-court.
- Eliminate discount in Affordable Housing Fee if paid at issuance of building permit; require full fee at building permit, and add periodic increase by reference to California Construction Cost Index (CCCI).
- Designate admin powers to Zoning Officer to expedite permit approval for affordable housing.
- Include Land Value Capture fee in future area development plans.
- Work with Rent Board to identify the causes and remedies for shortfalls in current collection of business license tax.
- Provide flexibility to Council to establish variable affordable housing percentage requirements in given areas of the City. Reflect these differences in area plans (e.g., for San Pablo, Adeline Corridors).
- Create a Deputy Director or Division Manager (Additional Management Analyst added as part of June budget process)

#### FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact from adopting this plan. Future fiscal impacts will be dependent on the specific referral implemented.

#### CONTACT PERSON

|                             |              |
|-----------------------------|--------------|
| Mayor Jesse Arreguín        | 510-981-7100 |
| Councilmember Kate Harrison | 510-981-7140 |



Office of the City Manager

ACTION CALENDAR

November 28, 2017

(Continued from November 14, 2017)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing and Community Services  
Timothy Burroughs, Interim Director, Planning & Development

Subject: Implementation Plan for Affordable Housing Action Plan Referrals

RECOMMENDATION

Adopt the attached interdepartmental implementation plan for Affordable Housing Action Plan referrals.

FISCAL IMPACTS OF RECOMMENDATION

There is no fiscal impact from adopting this plan. Future fiscal impacts will be dependent on the specific referral implemented.

CURRENT SITUATION AND ITS EFFECTS

On May 30, 2017, the City Council decided to establish a set of housing-related referrals in addition to the City's Reweighted Range Voting (RRV) list of referrals. The Council's list included items in the following categories: Funding, New Development/Land Acquisition, Policies, Permit Streamlining, Anti-Displacement, and Staffing.

The Council directed the City Manager to review the referral list and return with a prioritized Affordable Housing Action Plan. Staff from the Planning Department and the Health, Housing, and Community Services Department (HHCS) organized an interdepartmental working group to develop a coordinated Affordable Housing Action Plan Implementation Strategy (*Attachment 1*). The City Manager's Office, Finance, Office of Economic Development, and Information Technology as well as the Berkeley Housing Authority and Rent Board are also identified as lead and/or supporting departments.

As of this writing in October, staff have completed ten of the referrals Council previously ranked through the RRV system. Staff are currently working on the next ten referrals, as they continue to implement current programs. The remaining 16 referrals were ranked in priority order in Attachment 1 based on several factors, including:

- Estimated scale of the potential impact and benefits;

- Currently available funding;
- Currently available staff capacity; and
- Consistency with current programs.

Attachment 1 provides a status update for each Council referral currently underway and lists the departments assigned to their respective implementation.

### BACKGROUND

The referrals in the Affordable Housing Action Plan are new projects to be added to the programs the City currently provides. The Planning Department is currently developing a department work plan that will illustrate how implementation of the Affordable Housing Action Plan is being sequenced with other existing and upcoming efforts. HHCS's Housing Services unit includes 5.0 FTEs. A detailed outline of the Housing Services unit's current duties are provided in Attachment 2, and are summarized below:

- Housing Trust Fund support for projects and long-term monitoring;
- Below Market Rate housing requirements for new market rate rental and ownership housing, including long-term monitoring and Short Term Rental regulations implementation;
- Condominium Conversion program;
- Environmental review of all projects the City funds with HUD dollars;
- Loan administration for existing housing loans made in the past outside the Housing Trust Fund program;
- Staffing the Housing Advisory Commission; and
- Disposition of City-owned property, including the Berkeley Way site for affordable and supportive housing.

### ENVIRONMENTAL SUSTAINABILITY

There are no direct environmental sustainability effects associated with the content of this report; it is intended to serve as a guiding document for other referrals. Infill development associated with some of the referrals is generally considered to support environmental sustainability.

### RATIONALE FOR RECOMMENDATION

This Implementation Plan represents the efforts of an interdepartmental team to coordinate resources and staff time. Adopting this Implementation Plan will facilitate an efficient process for completing referrals across City departments.

### ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered as staff is responding to a direct referral from Council to manage housing related referrals.

CONTACT PERSON

Michael Uberti, Community Development Project Coordinator, Health, Housing and Community Services, (510) 981-5114

Amy Davidson, Senior Community Development Project Coordinator, Health, Housing and Community Services, (510) 981-5406

Steve Buckley, Land Use Planning Manager, Planning Department, (510) 981-7411

Attachments:

1: Housing Action Plan Implementation Plan

2: HHCS HCS Housing Services' Current Projects and Services

| Completed Referrals |                                                                                                                                                                                                                     |                 |                    |                                                                                                                        |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------|------------------------------------------------------------------------------------------------------------------------|
|                     | Item                                                                                                                                                                                                                | Department Lead | Department Support | Status Update                                                                                                          |
|                     | Utilize list of vacant city properties developed by city staff and further examine opportunities for placing affordable housing on these sites.                                                                     | HHCS            |                    | 2/14/2017 Council information report                                                                                   |
|                     | Green Affordable Housing Package policy #1: Prioritize housing over parking in new developments. Reduce parking in R-4.                                                                                             | Planning        |                    | State law passed in October 2015 implementing Referral request.                                                        |
|                     | Expand legal eviction defense of Berkeley tenants beyond current 10-20% receiving this assistance.                                                                                                                  | Council         | HHCS; RSB          | Council allocated \$300,000 for eviction defense and housing counseling on June 27 as part of biennial budget process. |
|                     | Provide housing counseling and legal services for Berkeley's low-income, elderly or disabled distressed homeowners.                                                                                                 | Council         | HHCS; RSB          |                                                                                                                        |
|                     | Increase the Rental Assistance Fund for Berkeley tenants.                                                                                                                                                           | Council         | HHCS               | Council allocated \$250,000 for rental assistance on June 27 as part of biennial budget process.                       |
|                     | To encourage landlords to accept Section 8 and Shelter + Care vouchers: provide legal and/or mediation support, offered either through the City or a partner, in negotiating Landlord/Tenant disputes out-of-court; | HHCS            |                    | City has a contract with SEEDS to provide these services.                                                              |

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**Attachment 1 - Housing Action Plan Implementation Plan**

|                              | Item                                                                                                                                                                                                           | Department Lead | Department Support         | Status Update                                                                                               |
|------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------|-------------------------------------------------------------------------------------------------------------|
|                              | Eliminate discount in Affordable Housing Fee if paid at issuance of building permit; require full fee at building permit, and add periodic increase by reference to California Construction Cost Index (CCCI). | Council         | HHCS;<br>Planning          | Resolution adopted 06/13/2017; Ordinance (second reading) amending BMC Section 22.20.065 adopted 06/27/2017 |
|                              | Develop enforcement tools for Short-Term Rentals/Section 8.                                                                                                                                                    | Planning        | IT; Finance;<br>Rent Board | Short-Term Rental application process opened on 9/1/17. Enforcement date TBD.                               |
|                              | Designate admin powers to Zoning Officer to expedite permit approval for affordable housing.                                                                                                                   | Planning        |                            | Ordinance No. 7,573-N.S. was adopted on 10/3 expediting approval for HTF projects.                          |
|                              | Streamline AH Permitting process for Projects with majority of AH; Remove Structural barriers to AH (Green AH Package Policy #2).                                                                              | Planning        |                            | Ordinance No. 7,573-N.S. was adopted on 10/3 expediting approval for HTF projects.                          |
| <b>Referrals In Progress</b> |                                                                                                                                                                                                                |                 |                            |                                                                                                             |
| A                            | Examine and eliminate barriers to building and renting ADUs.                                                                                                                                                   | Planning        | HHCS                       | Anticipated Public Hearing at Planning Commission in November 2017                                          |
| B                            | Include Land Value Capture fee in future area development plans.                                                                                                                                               | Planning        | OED                        | On-going effort as part of Adeline Corridor Plan and other future plans.                                    |



**Page 10 of 28**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|   | Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Department Lead | Department Support | Status Update                                                                                                               |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------|
| C | Evaluate feasibility of developing affordable senior housing above Senior Centers.                                                                                                                                                                                                                                                                                                                                                                                                               | PRW             | Planning, HHCS     | Measure T-1 implementation includes analysis of housing potential                                                           |
| D | Refer to the City Manager and Planning Commission an ordinance to clarify existing preferences in allocating City affordable housing units to Berkeley residents living within 1/2 mile of any new development and tenants evicted under the Ellis Act, expand the second category of preference for eligible tenants displaced under the Ellis Act to include certain tenants displaced through an Owner Move-In or (Measure Y) auction, and other forms of displacement as defined by Council. | CAO             | HHCS; Planning     | Evaluation of options has begun. Harper Crossing project incorporated a preference for people who live or work in Berkeley. |
| E | Draft an ordinance for a new City Density Bonus plan to allow developers of multi-family housing to add up to 15% more density in exchange for fees only.                                                                                                                                                                                                                                                                                                                                        | Planning        | HHCS               | Developing Local Density Bonus Ordinance to be piloted in the C-T District                                                  |
| F | Amend planning code to allow housing and other non-commercial uses on the ground floor.                                                                                                                                                                                                                                                                                                                                                                                                          | Planning        |                    | Issue has been discussed by Planning Commission. Local Density Bonus pilot may include flexible ground floor uses.          |

**Page 18 of 28**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|                           | <b>Item</b>                                                                                                                                                                     | <b>Department Lead</b>              | <b>Department Support</b> | <b>Status Update</b>                                                                              |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------|---------------------------------------------------------------------------------------------------|
| G                         | Impose fees when multifamily properties are destroyed due to fault of property owner (Demolition ordinance, RHSP, Relocation fees, fines).                                      | Planning                            | HHCS                      | Working on amendments to Demolition Ordinance (No. 7,458–N.S.)                                    |
| H                         | Establish Office of Anti-Displacement, and hire an Anti-Displacement Advocate (non City-funded position).                                                                       | CBO                                 |                           | This activity is expected to take place at a nonprofit organization.                              |
| I                         | Increase commercial housing linkage fee by CCCI.                                                                                                                                | Planning                            |                           | Feasibility Study for all fees is underway.                                                       |
| J                         | Hold fines on Oregon Park Senior Apartments (OSPA) in abeyance with the agreement until the OSPA conducts a financial audit and structural review and hires a property manager. | Planning / Housing Code Enforcement | HHCS                      | Housing Code Enforcement fines are not being collected while OPSPA works to complete their tasks. |
| <b>Upcoming Referrals</b> |                                                                                                                                                                                 |                                     |                           |                                                                                                   |
| 1                         | Adopt Council policy that two-thirds of short term rental tax be allocated to the Housing Trust Fund (with remaining one-third to the arts), following administrative costs.    | City Manager                        | Finance; HHCS             |                                                                                                   |
| 2                         | Work with Rent Board to identify the causes and remedies for shortfalls in current collection of business license tax.                                                          | Finance                             | Rent Board; IT; HHCS      | Finance plans to work on enhancing collections in partnership with Rent Board                     |

**Page 12 of 28**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|   | <b>Item</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Department Lead</b> | <b>Department Support</b> | <b>Status Update</b>                                                                                                                                                                                                                                                                                                                                                                                            |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | Identify Parcels of City owned land appropriate for siting assisted-living modular micro unit buildings; take affirmative steps to speed the permitting and approvals process; obtain zoning approval and a building permit and approvals process for the creation of below market housing; identify a housing non-profit to be responsible for managing and operating the building; and establish criteria for selecting individuals and determining eligibility.                                                                                                                                                                                                             | HHCS                   | Planning                  | HHCS is working on the Council referral related to the disposition of 1281 University (current home of Kenney Cottage) and microunit projects will be eligible. HHCS completed an analysis of City owned parcels appropriate for multifamily housing development in February 2017.                                                                                                                              |
| 4 | Establish a City maintained online resource that would provide a brief overview of the history and purpose of Below Market Rate (BMR) units, a current list of all buildings that contain BMR units and the characteristics of the units, the % of median income qualification levels for the units, the HUD published income guidelines for % of median and family size, the property owner, rental agent, and/or management company contact information, and other relevant information that would be helpful to potential renters of BMR units. The City shall update the information as more units become available, and quarterly, to ensure that information is current. | HHCS                   | IT                        | The City currently has a list of projects with address and property manager contacts available online. The income and rent for each BMR unit vary according to the affordability level and size, and change annually. With 0.33 FTE available for this program, staff are first working to update the online reporting tool, catch up on on-site inspections, and update online FAQ for tenants and developers. |

**Page 26 of 28**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|   | Item                                                                                                                                                                                                                                                                                                                                                                                 | Department Lead | Department Support | Status Update                                                                                                               |
|---|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------------|
| 5 | Create specific per acre density standards to strengthen City posture vis-à-vis the State Housing Accountability Act.                                                                                                                                                                                                                                                                | Planning        |                    | Anticipated completion 2019/2020 as part of comprehensive analysis of development potential and impacts                     |
| 6 | Investigate the feasibility of developing workforce housing, in conjunction with Berkeley Unified School District, for teachers and employees. The investigation should include research into what other California jurisdictions (such as San Francisco, Oakland, Santa Clara, and San Mateo County) are considering as part of their pursuit of School District workforce housing. | PRW             | Planning, HHCS     | PRW is in communication with BUSD regarding publicly owned real estate in Berkeley.                                         |
| 7 | Develop Measure U1 Priorities and Implementation Criteria. Include consideration of ability to leverage funds and possible bonding against revenues.                                                                                                                                                                                                                                 | Finance; CMO    | HHCS               | Housing Advisory Commission has appointed a U1 subcommittee to look at the issue. U1 revenue collection will begin in 2018. |
| 8 | Collaborate with BHA Board to invest capital funds from sale of the public housing for more affordable housing.                                                                                                                                                                                                                                                                      | HHCS            | BHA                | To be analyzed based on BHA proposal when available.                                                                        |

|    | Item                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Department Lead | Department Support   | Status Update                                                                                                                                                                                                                                                                                                                        |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9  | Design a Small Sites Program to assist non-profits in acquiring existing properties that fall under certain criteria with the intention of allocating \$1 million annually. As a first step, contact owners of seven apparently vacant properties constituting 68 rental units for their interest in selling them to non-profit affordable housing developers or land trusts that could rehabilitate them, and then rent the units at affordable rents. As a second step, investigate properties that are being vacated over time for possible purchase to retain affordable housing. Consider master leasing as a mechanism for managing distinct, smaller properties. | HHCS            | Planning;<br>Finance | Since Council prioritized full funding of the Berkeley Way project in May 2017, a source for an additional \$1M for acquisition and rehab has not yet been identified. Both organizations which have done similar projects in Berkeley, NCLT and BACLT, are relatively small and are currently working on other HTF-funded projects. |
| 10 | Develop an ordinance modeled after Washington D.C.'s Tenant Opportunity to Purchase Act (TOPA) that offers existing tenants the first right of refusal when property owners place rental property on the sale market, which can be transferred to a qualifying affordable housing provider.                                                                                                                                                                                                                                                                                                                                                                             | HHCS            |                      | A TOPA-like program would work in partnership with a Small Sites program and could be implemented at the same time.                                                                                                                                                                                                                  |
| 11 | To encourage landlords to accept Section 8 and Shelter + Care vouchers: identify organizations who can support financial literacy and management for Section 8 tenants, including establishing bank accounts with direct deposit to Landlords.                                                                                                                                                                                                                                                                                                                                                                                                                          | HHCS            | BHA                  |                                                                                                                                                                                                                                                                                                                                      |

**Page 23 of 28**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|    | Item                                                                                                                                                                                                                                                 | Department Lead | Department Support | Status Update                                                                                  |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|--------------------|------------------------------------------------------------------------------------------------|
| 12 | To encourage landlords to accept Section 8 and Shelter + Care vouchers: create a list of qualified, efficient, and affordable contractors vetted by the City, and a discount or waiver of permit fees, to support bringing their unit(s) to code;    | Planning        | HHCS               |                                                                                                |
| 13 | Provide flexibility to Council to establish variable affordable housing percentage requirements in given areas of the City. Reflect these differences in area plans (e.g., for San Pablo, Adeline Corridors).                                        | Planning        | HHCS               | This flexibility was added to BMC 22.20.065 with Ordinance 7,569-NS adopted on August 18, 2017 |
| 14 | To encourage landlords to accept Section 8 and Shelter + Care vouchers: allow parcel and/or property tax reductions based on the percentage of property of units that are currently Section 8 and/or decided during annual Section 8 inspection; and | Finance         | BHA                |                                                                                                |
| 15 | Examine and eliminate barriers to developing student housing and senior housing.                                                                                                                                                                     | HHCS            | Planning           |                                                                                                |

**Page 26 of 26**  
**Attachment 1 - Housing Action Plan Implementation Plan**

|    | Item                                         | Department Lead | Department Support | Status Update                                                                                                                                                                                                |
|----|----------------------------------------------|-----------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 16 | Create a Deputy Director or Division Manager | HHCS            |                    | HHCS Deputy Director works with all 6 HHCS divisions. The Housing Services unit has 5.0 FTEs while HHCS divisions range in size from 14 to 69 FTEs. Funding for additional staffing has not been identified. |

## Health, Housing & Community Services Department (HHCS) Current Housing Projects and Services

Housing projects and services are staffed in HHCS' Housing and Community Services Division's Housing Services unit (5.0 FTEs).

### Housing Trust Fund

- Managing active loans
  - Northern California Land Trust scattered site rehabilitation
  - Bay Area Community Land Trust predevelopment
  - Satellite Affordable Housing Associates All Souls predevelopment
  - Satellite Affordable Housing Associates Grayson Street Apartments construction
  - Resources for Community Development William Byron Rumford Sr. Plaza rehabilitation close out
  - Harper Crossing construction loan amendment, completion and close out
  - Satellite Affordable Housing Associates Hillegass Apartments loan amendment
  - Resources for Community Development MLK House loan amendment
- Monitoring completed units
  - Annual Compliance Reports and on-site monitoring
  - Continued work to customize online reporting tool
  - Federal HOME and CDBG compliance monitoring

### Below Market Rate Housing Program

- New regulatory agreement in process with Stonefire
- Respond to requests from developers regarding program requirements
- Revisions to materials available for developers and tenants
- Preparing revisions to fee proposal based on 5/16/2017 Council meeting
- Follow up with State of California to record Acton Courtyard revised regulatory agreement
- Short Term Rental regulations implementation
- Monitoring completed units
  - Annual Compliance Reports and on-site monitoring
  - Continued work to customize online reporting tool
  - Homeownership units portfolio review and monitoring program



Attachment 2 - Current HHCS Housing Projects and Services

Condominium Conversion Program

- Review current applications
- Invoice and collect fee repayments at property sales
- Process subordination requests for subdivided properties

Environmental Review

- Complete NEPA review for approximately 140 City-funded projects per year
- Coordinate with State Historic Preservation Officer under City's agreement

Loan Administration (Outside of HTF)

- Reviewing \$1.7M in older outstanding loans for compliance and status updates

Housing Advisory Commission

- Monthly meeting agenda development, packet preparation, posting and staffing
- Scheduling meeting rooms and posting agendas for 8 ad hoc subcommittees
- Reports follow up

Disposition of City-Owned Property

- 1920 West Street (1281 University Ave.)
- 5<sup>th</sup> Street Redevelopment Agency Properties
- Berkeley Way site
  - Amendment to predevelopment loan
  - Review of funding request
  - Collaboration with Planning, Public Works, and Fire





INFORMATION CALENDAR  
June 11, 2019

To: Honorable Mayor and Members of the City Council  
From: Dr. Dianne Sequoia, Chair, Animal Care Commission  
Submitted by: Amelia Funghi, Manager, Animal Services  
Subject: Animal Care Commission 2019 Work Plan

INTRODUCTION

In a general meeting held on March 20, 2019 the Animal Care Commission adopted a work plan for 2019 (M/S/C: Ayes: Elbasani, Shumer, Sequoia, Stevens. Noes: None. Absent: O'Day, Elkhoraibi) which is presented below.

CURRENT SITUATION AND ITS EFFECTS

The top priorities of the Animal Care Commission for 2019 are as follows:

1. Infrastructure:

A. Obtain permission to enclose an area close to the animal shelter suitable for training and exercising shelter dogs. The area under the pedestrian bridge leading to the Berkeley City Marina would be a possible location.

2. Advocacy

A. Homeless people and their pets - Continue to support efforts to ensure that pets are not separate from their companions. Make available food and other supplies that will enable all people in need to keep their pets with them, particularly in times of stress.

B. Pet Friendly Housing - Bring to the attention of Berkeley's City Council Members, the city's administrators and landlords the need for pet-friendly housing. Examples of other cities efforts to ensure adequate pet-friendly housing should be obtained and forwarded to the relevant groups.

C. In Berkeley we share our living space with a number of other animal species: Turkeys, Coyotes, Skunks, Opossums, Raccoons, and perhaps a mountain lion, or two. It is important that we keep the human population aware of the presents of these animals and how best to deal with their presence among us through education.

The ACC will work with other commissions, including Parks & Waterfront Commission, the Public Works Commission, and non-profit organizations involved in these issues in Berkeley.

BACKGROUND

The Animal Care Commission (ACC) meets six (6) times per year with the mission of overseeing the treatment of animals in all shelters established within Berkeley. The ACC advises the council on the care, treatment and control of animals.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION

The ACC and the Animal Services Manager will research options and associated costs to establish an area suitable for training and exercising shelter dogs. The ACC will research ways to assist homeless pet owners to secure housing. The ACC will also research and implement practical means to increase pet-friendly housing in Berkeley.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

The ACC will research information regarding the cost of establishing an area suitable for training and exercising shelter dogs as well as possible sources of funding.

CONTACT PERSON

Amelia Funghi, Manager, Animal Services, 981-6603



Commission on the  
Status of Women

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INFORMATION CALENDAR

June 11, 2019

To: Honorable Mayor and Members of the City Council

From: Commission on the Status of Women

Submitted by: Juliet Leftwich, Chairperson, Commission on the Status of Women

Subject: FY 2019-20 Commission on the Status of Women Work Plan

INTRODUCTION

The Commission on the Status of Women seeks to improve the conditions of all women and advocates to the City Council on policies affecting women. At its March 20, 2019 meeting, the Commission on the Status of Women adopted its FY 2019-20 Work Plan (Attachment 1).

CURRENT SITUATION AND ITS EFFECTS

The Commission will be working on developing policies to send to the City Council on a variety of women's issues, including paid family leave, equal pay, conditions for female inmates at Santa Rita Jail, and homelessness.

M/S/C: Shanoski/Campbell

Ayes: Campbell, Shanoski, Leftwich, Lu, Verma

Absent: Howard

Excused: Freedman

BACKGROUND

In 2016, the Council adopted direction to Commissions to submit a work plan annually.

ENVIRONMENTAL SUSTAINABILITY

There are no environmental sustainability impacts directly associated with the adoption of the work plan.

POSSIBLE FUTURE ACTION

The Commission has appointed subcommittees to work on areas of the work plan and will return to Council with recommendations as appropriate.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Fiscal impacts will depend on the actions recommended and the Council's decisions.

CONTACT PERSON

Shallon Allen, Secretary, Commission on the Status of Women, 510-981-7071

**Attachment 1:** FY 2019-20 Commission on the Status of Women Work Plan

## 2019 Commission Work Plan

### 1. Mission Statement

The Commission on the Status of Women seeks to improve the conditions of all women and advocates to the City Council on policies affecting women.

### 2. Commission's goals

In 2019, the Commission will continue to work on developing innovative policies to recommend to the City Council on a variety of women's issues, including paid family leave, equal pay, conditions for female inmates at Santa Rita jail, and homelessness.

The Commission's Paid Family Leave Subcommittee worked closely with the City Council's ad-hoc subcommittee in 2018 to develop a paid family leave ordinance for Berkeley. That work has continued into 2019 and we expect the full City Council to vote on the ordinance by year's end.

The Commission's Equal Pay subcommittee will continue to work to ensure the implementation of the Commission's Gender Pay Equity Recommendation, which passed the City Council on April 4, 2017. Since April 4, 2017, despite the Commission's repeated inquiries, no work has been done by the City on any of the three recommendations, which were passed unanimously by Council and highly prioritized during the annual prioritization process. On January 22, 2019, the Commission recommended that Council hire Dr. Martha Burk, an independent auditor and nationally recognized gender pay equity expert, to help facilitate completion of the work. The Labor Commission co-sponsored the recommendation. Our Equal Pay Subcommittee will continue to monitor implementation efforts and we're hopeful that progress will be made this year.

In 2018, the Commission established a Santa Rita Jail Subcommittee in response to a prior City Council referral asking that the Commission look into alleged abuses of female prisoners at the facility. Our Subcommittee has researched jail conditions, hosted an expert guest speaker and tracked relevant state legislation. The Subcommittee is continuing its investigation and the Commission expects to provide a report to Council by the end of 2019.

In March 2019, the Commission formed a Homelessness Subcommittee to examine existing services for homeless women and identify the ways in which those services could be improved. We began our investigation into this topic in late 2018, and have already heard compelling and informative presentations from homeless women, nonprofit leaders and city staff.

### **Resources:**

The Commission has no budget and uses no City materials or equipment. The Commission does rely on staff time in several ways: through our Commission secretary, and through the advice of expert staff who we consult about specific policy questions. We expect to meet with a number of city staffers this year to ask for their input on existing city programs and how to best implement any new recommendations that we develop for the City Council.

### **Program Activities:**

Our ultimate goal in 2019 is to submit at least one policy recommendation to the City Council. To accomplish this goal, our subcommittees will follow an established process. First, the subcommittee chair will prepare a research packet for members of the subcommittee so they may familiarize themselves with the research on the issue. The subcommittee will next meet with relevant city staff to learn about related existing Berkeley policies. The subcommittee will then speak with experts about initiatives that have been developed in other jurisdictions. At this point, the subcommittee will meet to formulate a draft of a recommendation.

The subcommittee will present the draft recommendation to key stakeholders for feedback. This may include other Commissions, community or business organizations, or others with a particular interest or expertise in the topic.

Finally, the subcommittee will draft a recommendation to present to the full Commission for a vote. If approved, the recommendation will be sent to the City Council.

### **Outputs:**

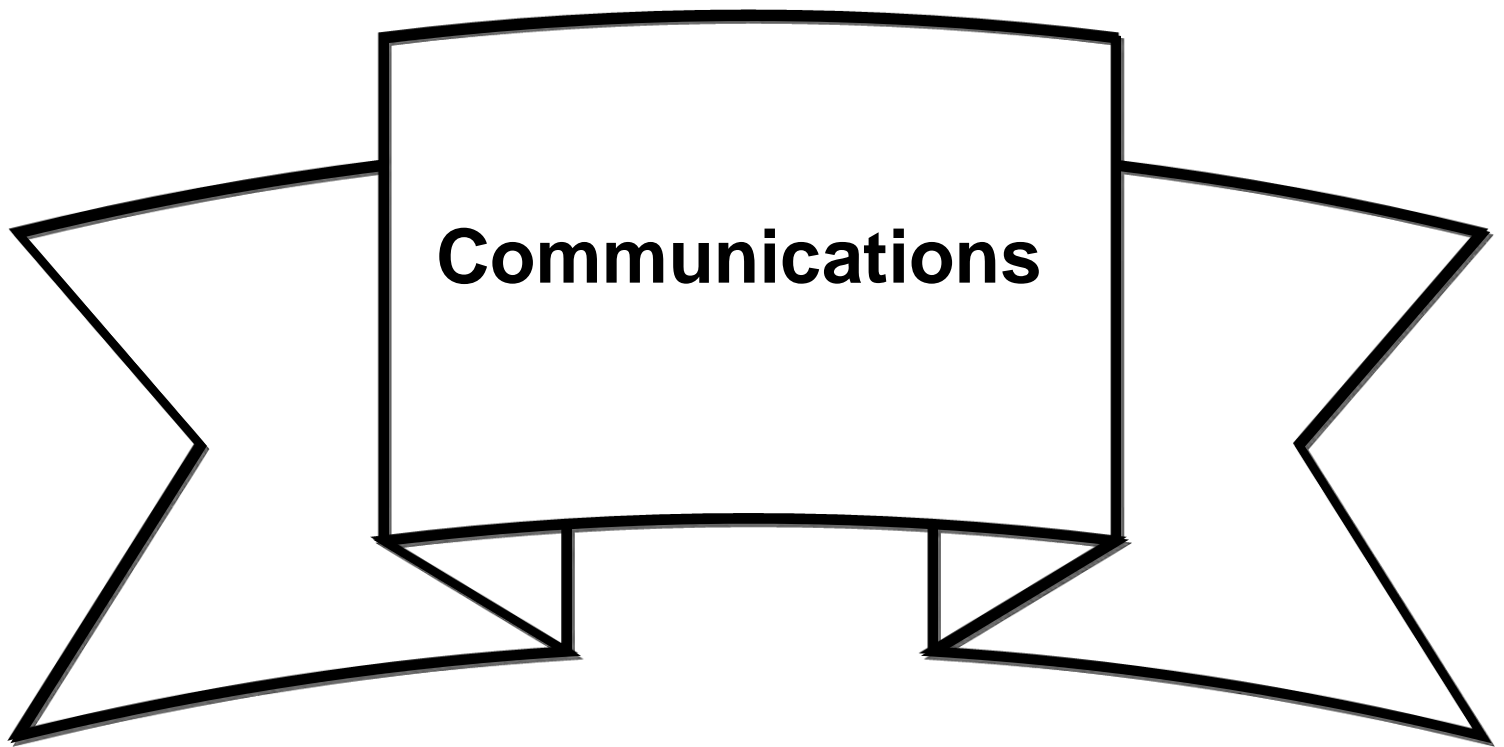
We hope to present at least one major substantive policy recommendation to City Council this year. We will hold 8-10 full Commission meetings, and as many subcommittee meetings as needed. We may also present to key stakeholders.

### **Outcomes:**

The Commission's policy recommendations will be developed over the course of 2019. We hope to suggest useful changes to city policies and ordinances that will positively impact the women in our community, as well as our community as a whole, for many years to come.







All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

**City Clerk Department**

2180 Milvia Street  
Berkeley, CA 94704  
(510) 981-6900

**Records Online**

<http://www.cityofberkeley.info/recordsonline>

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